

18 June 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email to economics.sen@aph.gov.au

Dear Senators

Re: Inquiry into Australia's Mandatory Last Resort Home Warranty Insurance Scheme

Thank you for undertaking this much needed inquiry into our building industry.

We are in the process of setting up a community based consumer building support group in Tasmania called Zebra, *"A zebra is a very distinctive creature but if it moves in a pack it's less likely to be preyed upon,"*

Since the announcement of Zebra we have received a constant flow of letters from consumers and at this stage our collective observations and findings are:-

- Consumers are babes in the wood against the experience of builders in disputes: they hand over a family's dreams, savings, future earnings, and welcome builders into their homes. They need to trust, want to trust. They look to membership of associations for reassurance when selecting a builder.
- Builders' duty of care is not taken seriously. Govt intervention is required to protect consumers who can't trust Associations to regulate the industry, and can't stand up to the resources of builders in a legal battle. The high incidence of building disputes demands attention at the highest level. We aim to alert consumers yet to embark on a renovation /building project to stop and look again, until consumer protection is improved.
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- We have no doubt there are good builders who also work ethically, but consumers are not able to discern who they are. [Awards, publicity show people builders can self promote, holding high office and memberships of industry bodies and

associations show that the builder is interested in attending meetings - these things are no guides to integrity].

- Consumer protection has been so poor for so long that the culture of the industry is to 'blame the victim'. Disputes are so prevalent that builders are experts. [Builders are collecting protective evidence from the outset in case the consumer becomes 'difficult', whilst the unsuspecting consumer is making them cups of tea]. Consumers have no hope of becoming experts because one building disaster is all they can afford in a lifetime. **That's why we need to find our collective power, and that's why Zebra has been set up.**
- The dispute resolution process is a lame duck

Typical dispute process emerging:

- Builder starts to slow down and problems emerge. Talk to the builder. Builder makes a promise to address problem. Fails to do so. Consumer gets angry. Builder begins to blame something about the job: you, your expectations, or some small thing like you haven't chosen a doorknob.
- Consumer can't believe that this person you trusted, in your house, could not be reasonable, so you keep onto them. They move offsite. You ring Consumer Affairs... [until recently they didn't want to hear if the dispute involved matters over \$30000. They now offer to mediate, through the new Building Dispute Officer, who has no power to enforce agreements so this probably will be as ineffective for seasoned disputers as the usual mediation and arbitration processes]. Complain to MBA/HIA. Sympathy but no action. Consumer resorts to the contract for help. Delays incur a minor penalty [never assuming you'd need that clause] There's tens of thousands of dollars at stake. You realise that your only recourse is mediation: you want someone to help you with your case, and that's a problem. The builder brings out things that were irrelevant and he had been ferreting away, like a request to choose a paint colour they made once on the way out the door that you forgot, and discredit you. You reach a mediated agreement. The builder fails to honour his. You go to arbitration. The costs are significant and you are left with a decision which if not honoured, you must take to court. You find a lawyer who isn't representing your client [perhaps needing to go out of area to do so]. You get advice that you have a good case and it will take 2 more years and cost 150,000.
- You sell.
- Many know how hopeless it is and don't pursue it, pay out enormous amounts to get the builder out of their lives.

From the information we have received so far we have begun to devise

Tips to avoid a tragedy

It is not guaranteed, nor even likely with some contracts, that mediation, arbitration or the contract provisions will protect you in the current climate. If you take legal action to resolve a dispute then think years, and probably over a hundred thousand dollars... and still no guarantee of justice. You will more likely choose to pay substantial variation fees to get things sorted, just to get the problem out of your life. When things go wrong the consumer is most often blamed; there is no realistic recourse against a company with massive turnover and armies of lawyers, against the small family with a dream and a debt.

1. The best hope of averting a tragedy is in the early days of selecting a builder and design documentation, before work begins. Take little comfort from your contract (for the most part these are standard industry contracts created by the building association and therefore in the builder's best interest – not consumers!) unless you can afford to enforce it in court.
2. A builder may be capable of good work, but whether you get it is a very different matter.
3. Heed the hesitations of friends when you ask for opinions. Many builders are blaming the consumer and so friends may say things like 'they said we were an exception and they don't usually have these problems', or 'we paid heaps in variations' which is an indication of insufficient planning and design before building [and payment] begins. Don't assume it will be better for you, no matter how you try. Don't trust publicity, only word of mouth from trusted consumers with jobs on a similar scale to your own
4. Never take Industry Awards as any indication builders can do *your* job, as opposed to a job for an Award. There are no awards for integrity. There's a risk that if your job's progress doesn't look like it will benefit Award nomination those builders addicted to them will lose incentive to finish your job or fix your faults.
5. Things are not always what they seem – paying more doesn't always mean a better job. Ask around, not just the clients recommended by builders. All builders probably have some happy clients. You want to find one with all happy clients, within reason.
6. Be aware you may want to trust too much to get the job underway, and this is your weakest point.
7. Lines like 'we have a waiting list' 'we've just had a cancellation so we can take you on if we get started by...' should be warning signs that you are at risk. Proceeding in a rush, without detailed plans and designs, places you in an incredibly vulnerable situation. If something goes wrong you have virtually no effective recourse

8. Look with suspicion on a contract with a low penalty for delay. The builder's greatest weapon in a dispute is delay: take delays seriously as soon as they begin. They may be a warning sign.
9. If you are not happy with what is on offer, ignoring it won't make it go away. It will come back as an expensive problem.
10. Before signing up call a few lawyers to see if they would represent you against your builder if it comes to a dispute. If you can't find a lawyer who could represent you because they all represent the builder, take note.
11. Don't trust membership of a professional association like the MBA or HIA as a sufficient recommendation in itself. Almost all complaints received by Zebra so far mention membership of professional associations.
12. Look at your contract. Don't sign it if you don't feel your interests are protected. Take it to your lawyer, but make sure they know what they are doing: some see the HIA logo and say it must be good. These obviously don't handle disputes. If your builder insists on a dodgy contract, shop around.
13. You have lost your power as soon as you have signed. Builders will demand payment at every stage and threaten not to proceed until they get their money even though things aren't finished. Most contracts only offer a small penalty for delay.
14. Take notes at all meetings and get them signed off by both parties. Keep a photographic record and a diary of work done and personnel attending day by day, as accurately as possible. Read and correct all minutes and make sure these are signed off. Odd inclusions may be evidence that your builder is anticipating a dispute. Query these and correct.
15. Plan how you will file and store all papers etc before the job starts.
16. Use mail and not email and keep an organised copy of everything. Sign and date all emails, and get the person responsible for your job to do so. You may be blamed for problems within their staff, so be prepared to defend yourself and put the problem back to the most senior person.
17. If asked by the builder to do something, like choose a colour, take a diary note and ask for a due date, and comply, and send a note acknowledging this. The little things can become very significant. This will not necessarily prevent the problems, but you will be less vulnerable to blame, and this will help your mental health.

18. If you fail to do so, this may be used as evidence that delays were your fault. When a dispute is in progress no one will care that it didn't really matter to the progress: it's the builder's word against yours.
19. If your builder gets uncomfortable with this level of correspondence it's better to know early, and decide for yourself why. Getting out early may be a better option, even if costly. Reality check: though you've done nothing wrong and you're a nice person you will lose lots of money if you have a builder without good management practices and integrity. You could lose a lot more: health, happiness, house, and end up with a lifetime of debt.
20. Throughout the job warning signs need to be taken extremely seriously.
21. Re-search your builder thoroughly as he may be working with the cover of multiple business names.
22. Keep a note of any seemingly suspicious appropriation of faulty or wrongly ordered materials or oversupply. This may a criminal matter, and such costs would force up the cost of insurance. Zebra is interested in hearing about this in order to discover any common practices

We believe it appropriate to support the presentation of the Builders Collective as it encompasses all our past and current concerns and more.

Also, that presentation included the solution for reform which is based on the holistic open and transparent Queensland model of industry management that also delivers appropriate consumer protection.

This model has been professionally researched on our behalf and we endorse a uniform national approach to be overseen by the Federal Government.

The Australian building industry is deserving of such an approach, undertaken with the appropriate oversight from the Government of Australia.

We commend this principle to you.

Yours Faithfully

Anne Fitzgerald & Janine Bransden.
Zebra – Tasmania.