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

Via e-mail - economics.sen@aph.gov.au

Dear Committee Secretary

Preliminary HIA Submission – Australia’s mandatory Last Resort Home Warranty Insurance scheme.

Mr Phillip Dwyer’s testimony to the Committee contains untrue and highly prejudicial comments to which HIA feels compelled to respond. HIA’s response is provided to assist in ensuring that factual information is considered in the inquiry into Australia’s Mandatory Last Resort Home Warranty Insurance Scheme.

This correspondence deals with testimony that vilified HIA and HIA professional staff. A submission directed to the specific terms of reference outlined for this inquiry will be submitted in due course. This correspondence does not address other false or incorrect testimony concerning matters related to the terms of reference of this inquiry - this will be detailed in HIA’s final submission to the inquiry.

Mr Dwyer was not intimidated

Mr Dwyer alleges that HIA had attempted to intimidate him because of his campaign against warranty insurance. This is not a new claim, but is nevertheless a false claim. This claim has been investigated by a variety of government agencies. It is currently before the Human Rights and Equal Opportunity Commission of Victoria. Each agency has had the benefit of extensive material from HIA rebutting Mr Dwyer’s claims. In no instance, has any public authority substantiated Mr Dwyer’s claims.

HIA never cancelled his membership

Mr Dwyer is not telling the truth when he claims that HIA ‘cancelled’ his membership. Mr Dwyer resigned from HIA in 2002. He publicly campaigned against HIA throughout 2003 and vilified the organisation in the media. He then sought to rejoin HIA in December 2003. The HIA Victorian Regional Executive, comprised wholly of elected members of HIA from the Victorian region, refused his application.

Non-members can buy insurance too

Mr Dwyer is again falsifying the facts when he claims that non-members like him cannot or could not obtain warranty insurance. After the collapse of HIH Insurances, Royal and Sun Alliance (RSA) was the only insurer offering this insurance. RSA offered it to any builder or other member of the public. HIA membership was **not** a prerequisite. RSA did offer discounts for HIA members under an arrangement that predated the HIH collapse, as HIH offered discounts to MBA members prior to its collapse.

Mr Dwyer joined MBA and their insurer refused to sell him insurance

In his complaint to the Victorian HREOC, Mr Dwyer states that after resigning from HIA, he joined the Master Builders Association of Victoria. He applied for home warranty insurance through MBAV. For reasons unknown and unconnected to HIA, their insurer declined to cover him.

No member has been ‘kicked out of HIA’ for complaining about warranty insurance

Mr Dwyer is deliberately seeking to mislead the Committee when he claims the HIA ‘kicked members out’ in order to quiet them. HIA does not and cannot arbitrarily expel members. Like many other trade and professional associations it has a detailed natural justice process for disciplining members. It is not lightly undertaken and occurs very rarely. No builder has ever been expelled from HIA because of any matter related to insurance.

Defending yourself against defamation is not intimidation

Mr Dwyer is refusing to accept the consequences of his own actions when he claims a defamation action brought against him by Mr Chris Lamont, an HIA employee, is part of this campaign to intimidate him.

The matter is due to be heard by the ACT Supreme Court later this year. As it is sub judice, there are strict limits to what HIA can say about it. However, we can make the Committee aware that in the course of denying Mr Dwyer’s application to have the case transferred from ACT to Victoria, Connolly J of the ACT Supreme Court¹ commented that:

“the matters complained of in the letters are, on their face, serious and prima facie defamatory.....Mr Lamont, who lives in Canberra and works in Canberra and who claims to have been defamed in Canberra, has a legitimate interest in having his reputation upheld in an action for defamation brought in the jurisdiction where the claimed defamation occurred.”

Defending your reputation against defamation is not intimidation. The courts should be allowed to decide this matter without further prejudicial comment.

Defending yourself against racial vilification is not intimidation

Mr Dwyer is wrong when he claims a complaint by Dr Ron Silberberg, HIA’s Managing Director, of Racial Vilification was an attempt to intimidate him. Defending yourself against race hate is not intimidation.

¹ Lamont v Dwyer [2007] ACTSC 47 (6 July 2007)

The case arose from race hate comments Mr Ken Buckley – a Builders Collective member and also a submitter to this Committee – posted on the Builder’s Collective website regarding Dr Silberberg’s Jewish ancestry. The Builder’s Collective refused to remove the comments and Dr Silberberg took action.²

The Court found that the comments were offensive and defamatory and that Mr Buckley had contravened the *Racial Discrimination Act 1975* (C’w) and a number of Orders were made against him including an order for costs (which he has not paid). Dr Silberberg’s claims against the Builder’s Collective failed on a technicality, because he could not prove beyond reasonable doubt that its refusal to remove the offensive material from its website was racially based. He was not ordered to pay the Builders Collective’s costs as alleged, just the re-imbusement of Mr Dwyer’s out of pocket expenses.

Mr Joseph was disciplined for bringing HIA into public disrepute, not for his views about warranty insurance

Like any member organisation, HIA’s members, through its Constitution, reserve the right to regulate the people with whom they are associated. One of the long accepted bases for expelling a member is bringing the organisation into disrepute.

On 15 January 2007 a letter by Mr Joseph was published in the Australian Financial Review. It implied that HIA was motivated by improper considerations in its policies and actions in relation to HOWI, and that it was involved in a deliberate fraud or ‘scam’.

Another member complained that Mr Joseph was making untrue claims about HIA and engaging in conduct likely to bring the HIA into disrepute, contrary to HIA’s constitution. A Disciplinary Committee convened under our Articles upheld the complaint. Mr Joseph was asked to apologise and give an undertaking to cease the conduct, or resign. Mr Joseph gave the apology and undertaking as requested.

We commend his decision to resign ahead of continuing his attempts to bring HIA into disrepute.

Mr Joseph was more truthful when he said in his testimony that he had decided to leave HIA because he had become tired of trying to persuade other HIA members of the merits of his cause. He mentioned addressing the Victorian AGM of HIA but felt that ‘people just weren’t listening’.

In fact people simply did not agree with him and Mr Dwyer, a fact that neither of them can accept. Every rejection of their allegations by a public authority is portrayed by the Builders Collective as a widening of the conspiracy against them.

HIA did not bribe Senator Coonan.

In relation to the bizarre allegations against Senator Coonan, and the not-quite-explicit suggestion that HIA was somehow involved in paying her a \$55,000 bribe (for what?), HIA can only say that it does not pay bribes to anyone and has no knowledge of this matter whatever.

² Gyles J, Silberberg v Builders Collective [2007] FCA 1512

HIA requests that this Committee refer these very serious allegations of corrupt behaviour by a Senator to the Privileges Committee or the Australian Federal Police for thorough investigation.

Concluding comments

HIA has not engaged in any conduct to intimidate Mr Dwyer. He is the victim of his own actions.

HIA has not attempted to intimidate Mr Joseph. He was disciplined by his peers for bringing into disrepute an organisation of which he chose to be, and desired to remain, a member.

HIA requests that this preliminary submission be placed on the public register of submissions. It is regrettable that Mr Dwyer and Mr Joseph sought to abuse parliamentary privilege and divert senators from the terms of reference articulated. We trust that this correspondence will assist senators in getting accurate and truthful information.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LTD



Glenn I Simpson
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