

Home Warranty Insurance Inquiry Public Hearing
Thursday 10th April 2008

1. Appropriateness and Effectiveness

- a. Junk Insurance
- b. No evidence submitted (eg: Tasmania)
- c. No claims (eg: Huntly conversation)
- d. Absurd profits (eg: Tassie Owner builder policy)
- e. Builder guarantees and indemnities (WA Court Decision)

2. Corporations Regulation 7.1.12(2)

- a. Meaning – makes a 'wholesale product'
- b. Timing – Post HIH collapse
- c. 10 Point Plan – hatched by HIA and insurers, including Murray Nugent
- d. Coonan claim – Max payout, none other known of
- e. Ramifications – Inability of ASIC, APRA or ACCC to effectively investigate consumer and/or builder complaints

3. Future Supply

- a. Update on Tasmania (latest motion)
- b. Clearly has not worked (Kons comments)
- c. Held to Ransom (copy of Hansard)
- d. Community confidence in the product is destroyed
- e. To protect Governments then it must be withdrawn immediately
- f. Potential for class action

4. Potential Reforms and Cost Benefits

- a. Qld scheme
- b. No cost to taxpayer
- c. Open and Transparent
- d. Accountable to the Parliament
- e. Whole of industry model
- f. No private vested interest
- g. Currently working

5. Related Matters

- a. Affordability reality is related to finance and Cost of building (show chart)
- b. Old financial model needs a change of process



Level 1, 369 High Street, Kew VIC 3101
Telephone: 1300 300 125 Facsimile: 1300 300 115
A Division of Australian Underwriting Services Pty Ltd
ABN: 25 075 021 476 AFSL No: 791325

Policy Schedule / Certificate of Insurance

Underwritten by Australian International Insurance Ltd. (ABN 29 006 544 690) (Insurer)

TAX INVOICE

Residential Building Work - OWNER BUILDER - (TAS)

It is hereby declared that the Owner Builder named below has purchased the Insurance Policy referred to herein. This certificate is to be read in conjunction with the Policy Wording. The Policy is designed to comply with the requirements of the Housing Indemnity Act 1992 (The Act).

POICY No.: AIL - 001 CERTIFICATE No.: 114217 POLICY ISSUED: 07/12/2006

INSURED

The Building Owner (Insured): E Macfie & M Jessup
Postal Address: C/- Po Box 86, Blackmansbay TAS 7052
Interested Parties: None Declared

BUILDING WORK

Building Work Covered by this Policy: Extension to an existing dwelling, consisting of double brick with tiled roof - Cover only extends to the works disclosed in the application dated 21/11/2006 and the PBP report dated 21/11/2006
At (Situation): 18 Willowdene Avenue, Sandy Bay TAS 7005
Building Work Start Date: 10/12/2002
Building Work Completion Date: 05/11/2005
Value of Building Work: \$48,000.00

OWNER BUILDER

Carried out by (Owner Builder): CS & MA Wallace
Business Address: 18 Willowdene Avenue Sandy Bay WA 7005
ABN / ACN No.:
Phone No.: 03 62252025

SCOPE OF COVER

Cover is provided in the terms set out in the Policy issued by the Insurer, via its underwriting agent Australian Home Warranty. All terms in the Policy have the same meaning and interpretation as those terms are given by the Act.

PERIOD OF INSURANCE

8 years from the date of practical completion of the residential building work.

LIMIT OF INDEMNITY

\$203,000.00 in aggregate or the cost of the Building Work, whichever is the lesser.

CLAIMS EXCESS

The Insured shall bear at his/her/its own risk five hundred dollars (\$500) in respect of each Claim made under this Policy.

PREMIUM

Net Premium	\$1,518.80	(Includes agent fees of \$918.80 and GST on fees)
GST:	\$60.00	
SD:	\$52.80	
Total Premium and Charges:	\$1,631.60	

SIGNED BY A PERSON AUTHORISED BY THE INSURER

Australian International Insurance Ltd, Level 1, 369 High Street, Kew VIC 3101 (ABN 29 006 544 690)

Margaret J Nugent

National agent/agent for Australian Home Warranty, a Division of Australian Underwriting Services Pty Ltd

* see note: double the value of work



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Tuesday 26 June 2007 - Part 2 - Pages 30 - 96

[12.33 p.m.]

Mr GUTWEIN - Chairman, I rise to make a contribution about a number of matters in relation to this portfolio area. I want to speak today about a couple of matters in relation to planning, but I also want to put on the record a couple of comments regarding the home owners warranty insurance and the victims of crime compensation issue.

In regards to home owners warranty insurance, as the minister has indicated that he is going to be bringing forward a review of this matter, it is important that it is looked at as quickly as possible. This side of the House has been pursuing this matter for some time, as has Mr Booth as well, with his connections with the builders' collective.

Having just in the last couple of days gone through the process of taking out home warranty insurance for a project that my wife managed as an owner-builder, I think this insurance is just abominable with regard to the lack of cover that it provides. There is no other insurance cover that covers me for absolutely nothing as long as I am still alive. It is just extraordinary. We wrote a cheque for several thousand dollars of cover for a project in which we did not even drive a nail in. We used builders and tradesmen, but it was managed by my wife and it was decided to do it that way because we wanted to source the subtrades ourselves. We had to spend a couple of thousand dollars for insurance cover for which, as long as I am alive, can be found and have not gone bankrupt, I am responsible for the next six years for making good any claims against the policy. There is no other insurance cover that you pay a premium for that provides this lack of cover.

It is timely that this matter is being looked at and last week in Estimates I was very pleased to hear that the minister is going to do it. The proviso from this side of the House is that we would like to see it progressed as quickly as possible. Having gone through this process myself, I have become aware of the commission that is payable to the agent representing the insurance company. For sending out a policy form to our household and two phone calls, they made around \$900 in commission, which I find an absolute disgrace. It needs to be looked at.

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The Builders' Collective of Australia inc. Reg No: A0044153G

Representing the small to medium Builders of the nation

8th April 2008

Committee Secretary

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

Dear Mr Dawson

ASIC finally provided me with the letter dated the 30th September 2007 which was through a calculated and combined effort in conjunction with disaffected groups such as Westpoint Investors, Fincorp action group and the like, and we all concentrated our efforts on making the commonwealth authorities accountable. I then received a further email from ASIC on the 11th of October 2007 giving me the date the Corporations regulation was changed which I have since found that change was originally put in train on the 15th October 2001, and those events were followed by Senator Helen Coonan's builder contacting me only very recently and providing the facts that took place at that time.

In terms of Minister Hockey and Senator Coonan, I'm not sure if they deserve any benefit of the doubt as both have looked me straight in the eye and told me BWI has nothing to do with the Federal Government and provided letters to the same effect. Whether they were conned at the time or whether it was plain apathy I don't know, but in any event Senator Coonan was paid \$200,000.00 (the maximum payout available) whereas no other consumer has ever had such a payout, and it was amid much controversy, and the only reason it did not come to anything at that time was the fact the builder went to ground at the specific direction of HIA.

The Federal law was changed relating to BWI and came into effect on the 11th March 2002 these changes were undertaken by those with carriage of the BWI regime who at that time were Senator Coonan, Minister Hockey and the Hon Ross Cameron, MP who was representing the Commonwealth on the Ministerial Council of Consumer Affairs at that time. They were all directly responsible through their actions for implementing the 10 point plan conceived by Vero and the HIA and implemented by the States that removed consumer protection and the basic rights of builders, while using the Percy Allan Review as a smokescreen and a means to suppress the outcry at the time, however that Review ended up stating our industry was in crisis for both the consumers and the builders and generally it targeted all our industry concerns, the very same concerns we hold today, however it ended up being published in June 2002 well after the 10 point plan had been put to bed.

Why haven't the problems with Last Resort Builders Warranty ever been able to be addressed?

The following information contains the 'The Missing Links' and some of the last pieces remaining to complete the puzzle. The Players are listed as follows, and their roles described.

1. THE PRIMARY PLAYERS:

2. **The Hon Joe Hockey MP**, Federal Minister for Small Business and Tourism, and Financial Services & Regulation (Doc 1)

- a. **The Hon Helen Lloyd Coonan**, Federal Minister for Revenue and Assistant Treasurer (Doc 1)
- b. **The Ministerial Council on Consumer Affairs**, dominated by NSW and Victoria Governments whose building industries represented 70% of the Australian total turnover. (Ministerial Council Members Doc. as attached)
- c. **Royal & Sun Alliance/Promina/Vero**, and their Managers being Duncan West, Nick Kirk, Paul Jameson and Michael Huntley.
- d. **Housing Industry Association**, and their Directors and Management being Ron Silberberg, Glen Simpson and Shane Goodwin

3. SECONDARY PLAYERS:

- a. Reward Insurance – Murray Nugent
- b. Murray Nugent was the Executive Director of the Housing Guarantee Fund Ltd, the Victorian Government provider of Builders Warranty before privatization in 1996
- c. He was seen as one of the most experienced professionals in the industry with wide knowledge and experience in the market and how the privatised system would and should work
- d. He had direct input and leverage into the 10 point plan (see below)
- e. **The Builder** who carried out the major renovations on Helen Coonan's home in Woolahra in 2001- 2002

4. THIRD TIER PLAYERS:

- a. Refer to the attachment above detailing various criminal charges laid by ASIC.
- b. These entities did not play any active role per-se as they were the small insurers and brokers whose allowed presence in this market merely played a supporting role to satisfy political convenience and expediency so as to maintain the illusion there was not a situation of TOTAL MARKET FAILURE (eg: a monopoly by Royal and Sun Alliance).

- c. If any of these bit part players/insurers were allowed to collapse under the weight of R&SA market dominance then Total Market Failure would have meant immediate collapse of the last resort BWI product and its removal from sale. (ASIC.Rouges Gallery of BWI providers attached)

5. TIMELINE

- a. March 2001: HIH collapse
- b. 2001 -2002:
- c. Senator Coonan had a conflict with a builder completing a major renovation (\$620,000.00) on her private residence over this time and unlike any other BWI claim she suddenly receives the maximum payout of \$200,000 amid much controversy and probity allegations (Doc 6)
- d. The BWI claim was lodged on Ministerial letterhead as were other insurance claims outside of BWI, it is alleged.
- e. The Coonan Builder was told by HIA to lay low, and if he did then there would be no impact on him or recovery action taken, even though the insurer had just paid out \$200,000.00 against his guarantee that was already in place whereby he agreed to repay any such payouts. (The Builder was Forsite Constructions)
- f. This is a circumstance that has not existed anywhere as all other builders across the nation have been pursued for every claims recovery under the Deeds of Indemnity or the Bank Guarantees they have provided, most often under extreme duress. This practice continues today even though it is not as widespread.
- g. 10 months ago a WA builder had a summary judgment in favor of Vero overturned which was in relation to such a funds recovery.
- h. In Judges Eaton's opinion the deeds of indemnity and bank guarantees are illegal and un-enforceable and the matter is a triable issue. (Doc 10)
- i. This is because builders are, under the Act deemed to be re-insurers if they provide such guarantees, however they cannot be re-insurers without holding a financial services licence, which of course none of them hold, and none of them are even aware of this requirement.
- j. September 2001: Building Industry in turmoil/crisis with businesses going to the wall across the nation, further compounded by the terrorist attack in New York which the Insurance Industry used as convenient leverage on the Governments who were at the same

time receiving enormous pressure from the medical profession, building industry and even pony clubs etc

- k. October 2001: Joe Hockey (Federal Minister) and John Watkins (NSW) Minister for Fair Trading **jointly** announced the Ministerial Council on Consumer Affairs would undertake a Review of home builders warranty insurance schemes across Australia, and they commissioned Professor Percy Allan with a terms of reference that **did not allow** the inclusion of the successful Queensland model or reviewing any form of government scheme. Simply put, the inquiry was always going to find in favor of the private insurance market, however the review was a smokescreen and became totally irrelevant anyway as the 10 point plan was introduced well before the Allan Review was released in late June 2002. (Doc 2)
- l. R&SA and HIA (the duopoly) conceived and further developed the 10 point plan and the selling of it to the Federal, NSW, and Victorian Governments. (Insurance Industry are considered the worlds best salesmen and the panacea for all circumstances)
- m. HIA used the Government perception that they held the support of Builders in that their broad member base supported a move to last resort BWI however this was never the case and still does not remain the case as HIA are a private company whereby members have no policy say.
- n. With the insurance industry and the perceived 'building industry' in agreement for a way forward then the selling of the 10 point plan to Government was simply a walk in the park. (Doc 3)
- o. The HIA recruiting methods to achieve and maintain the illusion of the blanket representation of the building industry has been very successful as this method was applied in the NT as can be seen in (Doc 8) and the Duopoly/Monopoly achieved and endeavored to implement the product there. To date unsuccessfully.
- p. March 2002: To enact the principles of the 10 point plan and its associated benefits to the insurance industry it required specific action from the Federal Government in the form of relief from 'burdensome' regulatory control.
- q. The responsible Ministers at the time were Senator Coonan, and the Hon Joe Hockey MP
- r. The change required to the financial Services Act took was put in place on the 15th October 2001 (Doc 9) and came into effect on the 11th March 2002 to Corporations Regulation 7.1.12(2)
- s. This action removed the BWI product from any form of consumer protection scrutiny by any authority including ACCC, APRA and of course ASIC as last resort BWI was now deemed a wholesale product (Doc 4)

- t. It is worth noting that the procedure for 'selling' last resort BWI from the insurer, to the broker, to the builder and finally to the consumer **did not change** whatsoever from pre to post 11th March 2002. That is, there was no realistic or legitimate marketing or market rationale for the reclassification from retail to wholesale.
- u. The upshot of this was that it allowed Reward Insurance to maintain a minor presence in the market as the other insurer, even though they had been under the scrutiny of both APRA and ASIC and were being accused of alleged criminal conduct at that time and still are.
- v. Saving Reward from increased scrutiny removed the risk of Total Market Failure occurring and allowed the last resort BWI scheme and the final stages of the 10 point plan to be developed
- w. ASIC only admitted to this specific regulation on the 30.9.07 as prior to this date no one was aware of it as BWI has always been simply presented as a **wholesale product** therefore not subject to any consumer protection devices of any description that all other insurance products in the nation are subject to.
- x. The Federal Government stated then and continues to state now there is nothing they can do on the BWI matter as it is policy of the Labor States and they are powerless, however it is their specific legislation and regulations that underpins the entire regime.
- y. That is, without regulatory scrutiny of consumer protection provided by what is only a consumer protection product then the Federal Government have allowed open slather for the insurance industry and their agents to gouge consumers and builders in what is clearly a protected regulatory environment. (Doc 7)

6. April 2002;

- a. The 10 point plan had been reviewed and the consensus was that it would impact adversely on builders and consumers if implemented
- b. Opponents to the 10 point plan were staggered when the first phase was implemented being the exclusion of hi-rise developments from the need to purchase consumer protection in Victoria on the 10th April 2002 (Doc 5)
- c. The intense lobbying continued with NSW removing Hi-Rise later and Press releases continually talking up the virtues of the 10 point plan and the strength of the industry and the apparently departed problems with BWI.

7. July 2002:

- a. The Ministerial Council became the conduit to enable the Duopoly/Monopoly of R&SA and HIA to expand the BWI regime to the other States and Territories which progressively took place with the implementation of Last Resort Builders Warranty insurance taking effect from 1st July 2002
- b. Consumers and Builders have been trashed ever since and no amount of State initiated enquiry or complaint can move the regulators to action because this product is **exempt from proper scrutiny** by direct action from the Federal Government and in particular Senator Helen Coonan and Minister Hockey.

8. Today

- a. The Federal Government and the States of NSW and Victoria are directly and jointly responsible for the BWI product that is a proven abject failure and continually described by the Australian Consumers Association as a 'scam', 'junk insurance' and 'making a mockery of consumer protection'

9. ACTION REQUIRED

- a. Corporations Regulation 7.1.12(2) to be immediately repealed and, subsequently,
 - b. BWI as a retail product to be immediately subject to the scrutiny and formal investigation of all regulatory authorities, in particular ASIC, APRA and the ACCC.
10. A Royal Commission or a Senate Inquiry established to consider the level of corruption and collusion that may have transpired between Government and the Private Sector which has enabled substantial financial benefit to flow from BWI by way of commissions, kickbacks and/or gratuities to any and all persons and/or organizations.

Kind Regards

Phil Dwyer

Registered Office: 27 Advantage Rd Highett Vic 3190. Mobile 0414 699 905. Ph (03) 9532 1722
Fax (03) 9553 5215 Email dwyerbld@bigpond.net.au www.builderscollective.org.au

The information contained in this letter is confidential and privileged and may not be forwarded, copied or disseminated in any way to any person unless prior approval is given in writing by the sender.

Ministerial Council of Consumer Affairs members 2002

Margaret Keech MP Tourism@ministerial.qld.gov.au

Hon Karlene Maywald chaffey@parliament.sa.gov.au

Hon Ross Cameron, MP ross.cameron.MP@aph.gov.au

Hon Judy Jackson, MP judy.jackson@parliament.tas.gov.au

Hon John Kobelke, MLA jkobelke@mp.wa.gov.au

Mr John Lenders, MLC john.lenders@parliament.vic.gov.au

Hon Reba Meagher, MP reba.meagher@parliament.nsw.gov.au

Mr Jon Stanhope, MLA stanhope@act.gov.au

Hon Dr Peter Toyne, MLA minister.toyne@nt.gov.au

Hon Judith Tizard, MP jenny.stevens@parliament.govt.nz



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COONAN, the Hon. Helen Lloyd

Senator for New South Wales

Liberal Party of Australia



Parliamentary service

Elected to the Senate for New South Wales, 1996 (term began 1.7.1996) and 2001.

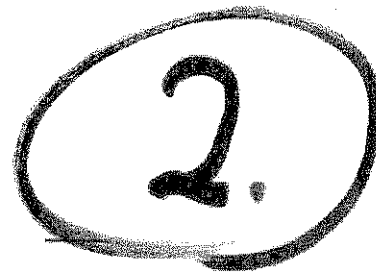
Ministerial appointments

Minister for Revenue and Assistant Treasurer from 26.11.01 to 18.7.04.

Minister for Communications, Information Technology and the Arts from 18.7.04.

Welcome from the Hon Joe Hockey MP

Minister Hockey has been the Member for North Sydney since 1996. He was appointed Minister for Financial Services and Regulation in 1998, Minister for Small Business and Tourism in 2001 and Minister for Human Services in 2004. He was appointed the Minister for Employment and Workplace Relations in 2007.



**Joint Media Release
with John Watkins, NSW Minister for Fair Trading**

National Review Of Builders Warranty Insurance

The Minister for Financial Services and Regulation, Joe Hockey and the NSW Minister for Fair Trading, John Watkins, today announced the Ministerial Council on Consumer Affairs had agreed to a review of home builders warranty insurance schemes across Australia.

Consumer Affairs Ministers agreed in July to a national review that would look at improving the operations of compulsory home builders warranty insurance schemes.

Home builders warranty insurance protects home owners from defective or incomplete building work. It is taken out by builders, but covers the work they do on behalf of consumers.

The schemes are run by the States or territories and are all currently different.

"Although the home warranty market now seems to be settling down, it is timely to look at how the schemes can be strengthened to provide greater security for home owners and builders and to encourage more competition in the sector," Minister Watkins said.

"The review will seek to improve consistency and competition and that will mean a better deal for consumers and builders alike."

Minister Hockey said the Commonwealth was not seeking to take over the schemes, but the national nature of the insurance business meant the Federal Government had a facilitation role to play for the States.

The former head of the NSW Treasury, Percy Allan, would conduct the review which was expected to be completed by mid 2002.

The review's Terms of Reference [attached] had been drafted by Mr Watkins.

For inquiries, contact: Neil Power, Ministerial Council on Consumer Affairs, 02 6263 3051.

4 October 2001

Media contact: Matthew Abbott, Minister's office 0413 076 213



New Model for Builders' Warranty Insurance in NSW/Victoria

1. The threshold for compulsory home warranty insurance will be raised to \$12,000.
2. The minimum period of cover for structural defects will be 6 years.
3. The minimum period of cover for non-structural defects will be 2 years
4. The mandatory requirement for builders of high-rise residential buildings is to provide builders warranty insurance will be removed. Owners of high-rise dwellings will have access to a last resort catastrophe fund which is to be funded by builders and insurers.
5. The maximum cover (i.e. excluding legal costs) for non-completion claims will be 20 per cent of the original building contract amount.
6.
 - A. A homeowner will be able to claim under a home warranty insurance policy when their builder:
 - Is dead
 - Has disappeared; or
 - Is insolvent.
 - B. Insurers and NSW and Victorian agencies will agree procedures which will provide insurers with an opportunity to meet consumer needs for settlement of a claim prior to the 6A trigger points being reached
7. The minimum amount of cover will be \$200,000 (inclusive of legal and other costs).
8. New South Wales and Victoria will use their best endeavours to harmonise their builders' warranty insurance products and the specified processes to be followed by all parties (insurers, builders and homeowners).
9. Insurers' liability in respect of claims above \$10 million arising from the death, disappearance or insolvency of any single builder will be capped. The catastrophe fund referred to at 4 above will also be available to meet claims liabilities in excess of \$10 million.
10. New South Wales and Victoria will use their best endeavours to harmonise the reporting requirements for insurers between the two States.



4.

ASIC

Australian Securities & Investments Commission

ANGUS DALE-JONES
Regional Commissioner

66 St Georges Terrace, Perth
GPO Box 9827 Perth WA 6001
DX 158 Perth

Telephone: (08) 9261 4199
Facsimile: (08) 9261 4156

30 September 2007

Mr Phil Dwyer
National President
The Builders' Collective of Australia
27 Advantage Road
Highett VIC 3190

BY EMAIL TO: dwyerbld@bigpond.net.au

Dear Phil

BUILDERS WARRANTY INSURANCE

I refer to your correspondence and discussions with me over recent weeks, in particular your emails of 7, 14 and 20 September and our meeting in Melbourne on 12 September. I also note your various discussions and correspondence with ASIC over the last few years, including over ten complaints about industry practices.

First, my thanks to you for bringing these matters to our attention, and for the helpful detail you have provided. I appreciate that this will have consumed a not inconsiderable amount of time, and your efforts have provided us with a clearer understanding of the issues.

We have now concluded a thorough re-review of all the matters you have brought to ASIC's attention. As foreshadowed in my telephone conversation with you on 19 September, I can now confirm that based on the information you have provided to us and extensive information from other sources, we have identified no breaches of the companies and financial services provisions in the Corporations Act that warrant regulatory intervention.



As discussed, *Corporations Regulation 7.1.12(2)* specifically provides that a home building insurance product, as regulated in the financial services provisions of the

4.



Corporations Act, "*does not include insurance ... that relates to building or construction work in relation to a home building*". This is a specific decision of Parliament and ASIC must act within its mandate under the law.

Although my internal ASIC discussions about the possible use of our consumer protection powers are not yet finalised, it is unlikely that we will have jurisdiction to take much, if any, action in regard to the issues you raise. Generally ASIC does not enter into correspondence with complainants about the further action it may take on a matter. If we require more information we will contact you.

It is a matter for you as to whether you obtain legal advice in relation to any of the issues you raise. Although ASIC may not be able to assist in taking action on the points you raise, particularly those in your email of 20 September, independent legal advice may help you ascertain whether there were sufficient grounds to obtain successful legal remedies.

Yours sincerely

A handwritten signature in cursive script, appearing to read "A Dale Jones".

**ANGUS DALE-JONES
REGIONAL COMMISSIONER**

From: Angus Dale-Jones [mailto:angus.dale-jones@asic.gov.au]
Sent: Thursday, 11 October 2007 10:55 AM
To: Phil Dwyer
Cc: Philip Laird
Subject: Re: FW: BWI & HIA [SEC=UNCLASSIFIED]

Dear Phil

Thank you for your phone call last night and the two emails below.



My copy of the Corporations Regulations indicates that Reg 7.1.12(2) was effective 11 March 2002, which was when many of the Financial Services Reform Act changes to Corporations legislation took effect.

kind regards
Angus

"Phil Dwyer" <dwyerbld@bigpond.net.au>

To "Angus Dale-Jones" <angus.dale-jones@asic.gov.au>

cc

11/10/2007 07:52 AM

Fax to

Subject FW: BWI & HIA

Dear Angus

Thank you for your time on the phone yesterday, and providing me with an update in relation to your inquires into the consumer protection aspect of BWI. I now have every confidence that you are taking our concerns very seriously and addressing them in a timely manner.

I look forward to hearing from you this morning in regard to my request seeking the date the Corporations regulation 7.1.12(2) was introduced as legislation, and secondly if possible I would like to know who introduced this legislation to the Parliament.

The attached Hansard above I have just obtained , and as you can see there are others that have similar opinions to myself in respect to the HIA, and again ask you to consider our concerns in this area.

The Federal Court action against me by Dr Silberberg for racial vilification was unsuccessful last week and the charges were dismissed with costs in my favor.

Kind Regards

Phil Dwyer



Media release

From the Minister for Finance and the Minister for Planning

Wednesday, 10 April 2002

GOVERNMENT ACTS ON WARRANTY INSURANCE FOR HIGH RISE DEVELOPMENTS

The Bracks Government has moved swiftly to protect Victoria's \$1.4 billion residential high-rise construction industry by fast-tracking a new regulation to release builders from the requirement to have warranty insurance.

Finance Minister John Lenders said the new regulation came into force today and would allow building permits to be approved without insurance in place.

"With the changes to insurance products offered builders of high-rise residential developments were in an impossible situation," he said.

"They could not have their building permit approved unless they had warranty insurance.

"The exemption has been made because the bulk of the insurance industry has indicated it will no longer provide warranty insurance for residential buildings of more than three storeys.

"The government has acted quickly to ensure that Victoria's building and construction industry was not adversely affected by the insurers' decision."

The Minister for Planning Mary Delahunty said the move follows the announcement to establish a domestic building marketplace dispute resolution process to be managed by the Building Commission and Consumer Affairs.

Consumers who buy high-rise apartments, as well as the builders who construct them, will also have access to the new dispute resolution process to help them resolve issues more quickly, she said.

"The Government has developed the new process to allow consumers and builders to resolve disputes in a timely manner," Ms Delahunty said.

"The Building Practitioner's Board will be able to suspend the license of a builder who fails to satisfactorily repair substandard work."



Changes to high-rise builder warranty insurance were agreed to by Victoria and New South Wales under the 10 Point Plan announced last month.

Media contact: Premier's Media Unit on 9651 5799 www.vic.gov.au



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Coonan not prepared to hand over her letters
By Mark Riley, Political Correspondent
December 14 2002



The Revenue Minister, Helen Coonan, refused yesterday to release letters written on her ministerial letterhead in pursuit of a personal claim for a \$200,000 insurance payout.

The Opposition demanded Senator Coonan's resignation, saying she had misused her public office as minister responsible for the insurance industry.

But the Prime Minister, John Howard, continued to stand by his minister, repeating that her actions did not constitute a "hanging offence". He added, though, that using ministerial letterhead in private affairs was "not normal practice" and "I encourage ministers not to do it".

The *Herald* revealed on Thursday that Senator Coonan had used her parliamentary letterhead in several letters to Woollahra Council and a builder over renovations to her multi-million-dollar Woollahra home.

After a day of Opposition attacks over the affair, Senator Coonan admitted on Thursday night that she had used the letterhead twice in writing to the Royal & SunAlliance insurance company over a claim for defects in the renovations.

The minister was paid the maximum amount of \$200,000 under the Home Owners Warranty scheme after estimates of the cost of rectifying the defects grew from between \$60,000 and \$80,000 to \$331,430.

Documents published by the *Herald* yesterday showed Senator Coonan used her parliamentary letterhead to argue successfully for the council to drop a \$542.40 application fee for a Section 96 modification to the building application covering her renovations.

The general manager of Woollahra Council, Gary James, said the application related to a lattice fence Senator Coonan wanted to build at the back of her property which would encroach on three adjoining properties.

He said the council received hundreds of such applications a year, but conceded it was rare for the fees to be waived. The council did not have statistics for the period covering Senator Coonan's application but it had not waived fees on any Section 96 applications in the past year.

Mr James said the council had used its discretion in dropping Senator Coonan's fees because much of the assessment work for the application had been covered in her original building approval.

The Leader of the Opposition, Simon Crean, said Senator Coonan should release all correspondence related to the insurance claim, including that sent on her ministerial letterhead and from her ministerial offices.



Senator Coonan declined. She reissued her statement from Thursday night, which said she had written two letters to the insurance company on parliamentary letterhead after the claim amount had been settled, and that there "was no inappropriate use of ministerial letterhead".



A spokesman for the minister said on Thursday night that one of those letters had been sent to the insurance company before the matter had been settled and one afterwards.



Mr Howard said yesterday that both letters had been sent "after the claim was settled".

Labor vowed yesterday to use the powers of the Senate to compel the minister to release the documents, if necessary. However, Parliament is not due to resume until February 4.

This story was found at: <http://www.smh.com.au/articles/2002/12/13/1039656221202.html>



7

**The Hon Ian Macfarlane MP
Minister for Industry, Tourism and Resources**

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

18 NOV 2006

Mr Phil Dwyer
National President
The Builders' Collective of Australia
27 Advantage Road
HIGHETT VIC 3190

Dear Mr Dwyer *Phil*

* Thank you for your letter of 19 October 2006 concerning builders warranty insurance. I note that you have also written to a number of my colleagues in Government. I am responding on behalf of the Australian Government.

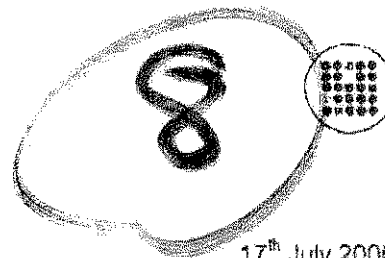
Arising from recommendations contained in *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, the Australian Government will request the Productivity Commission to undertake a public inquiry of Australia's consumer protection policy framework. I believe this inquiry will achieve an appropriate level of independent scrutiny, as proposed in your letter.

I would also like to lend my support to the course of action suggested to you on 19 April 2006, by the Minister for Small Business and Tourism, the Hon Fran Bailey MP. She too recommended your active participation in the Productivity Commission inquiry but she also urged you to continue to raise this issue with the states and territories, who have regulatory responsibility for this matter.

Thank you for taking the time and effort to bring this matter to my attention.

Yours sincerely

Ian Macfarlane



17th July 2006

Mr [REDACTED]
[REDACTED]
[REDACTED] NSW 2170

Dear Mr [REDACTED]

Congratulations! Through a special relationship with the Housing Industry Association (HIA), Cumberland Newspapers is pleased to extend to you a complimentary 'Trial Services Offer' with Australia's largest renovation and home building association.

By taking advantage of this offer you have access to a great range of benefits including:

- **Legal Assistance** – offering professional advice on a wide range of workplace matters;
- **Technical Support** – help with issues involving the Building Code of Australia, Australian Standards, Local and State building regulations;
- **Safety Services** – access to professional Safety Advisers with housing sector trade experience to ensure you deal with safety in the most cost effective and practical way;
- **Business Partner Network** – supporting partners who help run your business by providing practical advice, services and networking opportunities;
- **Industry Information and updates** – through accredited training courses, information nights, exhibitions, publications and member alerts;
- **Equipment, stationery and supplies** – discounted contracts, safety equipment, standards, clothing, sub-contractor agreements and much more;
- **HIA Insurance Services** – providing the most comprehensive products and services designed specifically for the construction industry at competitive rates;

To find out more about HIA and the helpful range of products & services available please visit the HIA website at www.hia.com.au; available 24 hours a day, 7 days a week.

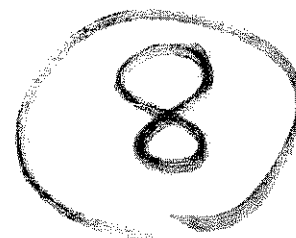
Your complimentary 'Trial Services Offer' is valid until the 31st October 2006. Whilst there is no obligation to continue beyond this time, you do have the opportunity to join HIA, at any time, and receive all of the benefits of membership.

Should you prefer not to take advantage of this offer, please let us know by faxing back the attached form to 02 9688 7677 by 28th July 2006. If we do not hear from you by that date, we will proceed to contact HIA to provide you with the service offer. When you are contacted, you will again be given the opportunity to accept or decline the offer.

We trust that this offer will add value to your business by giving you a competitive advantage and assisting you to cut/contain costs.

Kind regards

Karla Hepburn
True Local Category Manager
Cumberland Newspapers



You only need to complete and return this form by 28th July 2006 should you NOT wish to take up the complimentary 'Trial Services Offer'.

Fax: 02 9888 7677

I wish to decline the complimentary 'Trial Services Offer'

Contact Name: [REDACTED]

Company / Trading Name:

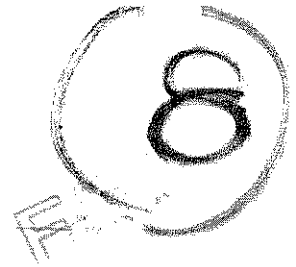
Telephone Number:

Signed:

Date:

925451

The Builders' Collective
Representing Registered Building Practitioners



Facsimile

Facsimile to: Stephen Ward
Company: Contractor Accreditation Limited
Facsimile No. 08 89844003
From: Phil Dwyer
Date: 21.05.07
Subject: BWI & HIA
No. of Pages: 3

Dear Steve

Still battling with the matter of BWI and I must admit under severe circumstances as HIA currently have two actions against me, one in the Federal Court and the other in the Supreme Court.

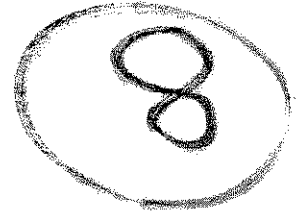
In the meantime I would appreciate you confirming to me the HIA method of obtaining membership in NSW as demonstrated in the attached documentation is the same principle that was applied in the Northern Territory that would have allowed the HIA to claim they represented the whole of your industry when they were lobbying for the introduction of the Last Resort Insurance regime. _____

Would appreciate hearing from you as soon as possible to confirm this method was applied.

Kind Regards

Phil Dwyer

The Builders Collective ph. 9532 1722 fax. 9553 5215 mob. 0414699905



From: Steve Ward [mailto:stephen.ward@accreditation.com.au]
Sent: Tuesday, 22 May 2007 12:50 PM
To: dwyerbid@bigpond.net.au
Subject: HIA Free Membership

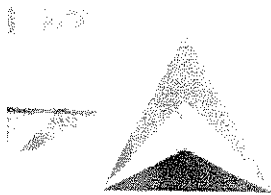
Phil

Thanks for your fax.

The process of offering unsolicited free membership is consistent with HIA's actions in the NT a couple of years ago. The only difference seems to be that our locals were offered 12 months membership.

Those that didn't respond to reject the offer subsequently received demands for fee payment after the free period had expired.

Regards
Steve



Contractor Accreditation Limited

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Industry recognition for financially viable and technically capable contractors working in the Northern Territory's building and construction sector.

Contractor Accreditation Ltd (CAL) is a non-profit company established by the NT Chamber of Commerce and Industry, the Territory Construction Association and the NT Small Business Association to manage a scheme of self regulation for the building and construction industry. CAL also proudly supports Territory business through its close links with the NT Industry Capability Network (NTICN).

CAL provides a process of certification for contractors looking to become CAL accredited, and a register of existing accredited businesses. This register is freely available to the community at large.

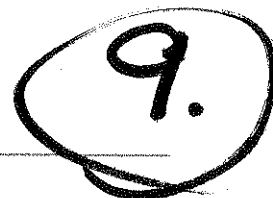
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- Interrogate CAL's Accreditation System for contractors Territory-wide
- Browse a complete listing of CAL Accreditation Categories and Sub Categories
- Provide feedback on a service provided by a contractor, or on CAL in general

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**Phil Dwyer**

From: Catherine Cusack [Catherine.Cusack@parliament.nsw.gov.au]
Sent: Wednesday, 20 February 2008 4:46 PM
To: Phil Dwyer
Subject: Fwd: Information request
Follow Up Flag: Follow up
Flag Status: Yellow

Please find attached the the Commonwealth Government Gazette entry for the insertion of Corporations Regulation section 7.1.12 (2). It was inserted by Corporations Amendment Regulations 2001 (No 4) 2001 NO. 319 in Commonwealth Government Gazette No S 431 on 15 October 2001.
This is text of section 7.1.12 (2).

CORPORATIONS AMENDMENT REGULATIONS 2001 (NO. 4) 2001 NO. 319

TABLE OF PROVISIONS

1. Name of Regulations
2. Commencement
3. Amendment of Corporations Regulations 2001
SCHEDULE 1 Amendments

CORPORATIONS AMENDMENT REGULATIONS 2001 (NO. 4) 2001 NO. 319 - SCHEDULE 1
Amendments

.....

7.1.12 Meaning of retail client and wholesale client: home building insurance product

(1)

For subparagraph 761G (5) (b) (ii) of the Act, a home building insurance product is a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of destruction of or damage to a home building.

(2)

A home building insurance product does not include insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of a State or Territory) that relates to building or construction work in relation to a home building.

The Hon Catherine Cusack MLC
Country North Liberals
Shadow Minister for Fair Trading
Shadow Minister for Volunteering
tel: 9230 2915 fax: 9230 2385

2. Special Gazette

Act under which the Statutory Rule was made	Description of the Statutory Rule	Year and number of the Statutory Rule
<i>Royal Commissions Act 1902</i>	Royal Commissions Regulations 2001	2001 No. 315
<i>A New Tax System (Australian Business Number) Act 1999</i>	A New Tax System (Australian Business Number) Amendment Regulations 2001 (No. 1)	2001 No. 316
<i>Australian Securities and Investments Commission Act 2001</i>	Australian Securities and Investments Commission Amendment Regulations 2001 (No. 1)	2001 No. 317
<i>Corporations Act 2001</i>	Corporations Amendment Regulations 2001 (No. 3)	2001 No. 318
<i>Corporations Act 2001</i>	Corporations Amendment Regulations 2001 (No. 4)	2001 No. 319
<i>Corporations (Fees) Act 2001</i>	Corporations (Fees) Amendment Regulations 2001 (No. 1)	2001 No. 320
<i>Fringe Benefits Tax Assessment Act 1986, Income Tax Assessment Act 1997, Superannuation Guarantee (Administration) Act 1992, Taxation Administration Act 1953, Tobacco Charges Assessment Act 1955 and Wool Tax (Administration) Act 1964</i>	Taxation Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. 1)	2001 No. 321

9.

JURISDICTION : DISTRICT COURT OF WESTERN AUSTRALIA
IN CHAMBERS

LOCATION : PERTH

CITATION : VERO INSURANCE LTD -v- HARDEN-JONES &
ANOR [2007] WADC 98

CORAM : EATON DCJ

HEARD : 21 DECEMBER 2006

DELIVERED : 19 JUNE 2007

FILE NO/S : CIV 2428 of 2005

BETWEEN : VERO INSURANCE LTD (ACN 005 297 807)
Plaintiff (Respondent)

AND

JENNIFER ANNE HARDEN-JONES
First Defendant (Appellant)

GILES HARDEN HARDEN-JONES
Second Defendant (Appellant)

ON APPEAL FROM:

For File No : CIV 2428 of 2005

Jurisdiction : DISTRICT COURT OF WESTERN AUSTRALIA

Coram : DEPUTY REGISTRAR HARMAN

File No : CIV 2428 of 2005

Catchwords:

Appeal from Deputy Registrar - Plaintiff's summary judgment application -
Whether an indemnity is re-insurance - Illegality

Legislation:

Builders Registration Act 1939
District Court Rules 2005
Home Building Contracts Act 1991
Insurance Act 1973
Rules of the Supreme Court 1971

Result:

Appeal allowed - Summary judgment application dismissed
Leave to amend granted

Representation:

Counsel:

Plaintiff (Respondent) : Mr P McGowan
First Defendant (Appellant) : Mr G R Hancy
Second Defendant (Appellant) : Mr G R Hancy

Solicitors:

Plaintiff (Respondent) : Lavan Legal
First Defendant (Appellant) : Clavey Legal
Second Defendant (Appellant) : Clavey Legal

Case(s) referred to in judgment(s):

Fancourt v Mercantile Credits Limited (1983) 154 CLR 87, 99
Jacob v Booth's Distillery Co (1901) 85 LT 262
Yango Pastoral Co Pty Ltd & Ors v First Chicago Australia Ltd [1978] 139 CLR
410

EATON DCJ

1 **EATON DCJ:** The appellants are husband and wife. The husband is a
qualified architect and a registered builder. The wife is a director of
"Harden-Jones Architects", a business conducted by her.

2 HBC Pty Ltd is a company incorporated in Western Australia,
having been registered on 30 September 1999. Giles Harden-Jones was
appointed director and secretary of that company at that date. The
appellants were, at all material times, shareholders of that company,
holding two fully paid shares.

3 HBC Pty Ltd carried on business as "Hamersley Building Company".
It was registered as a builder under the provisions of the *Builder's
Registration Act 1939* on 29 June 2001. That business was conducted
from premises at Suite 6, 204 Hampden Road, Nedlands, Western
Australia. The office of "Harden-Jones Architects" was next to that of
"Hamersley Building Company". Indeed, the letterhead of the latter
prescribes its email address as being "hjarchitect@hotmail.com."

4 The principle business of Hamersley Building Company was
residential home building and extensions. That business was conducted
by Giles Harden-Jones.

5 In mid 2001, Hamersley Building Company undertook a building
project at 31 and 33 Clement Street, Swanbourne involving the
construction of two residential units or houses. Under the provisions of
the *Home Building Contracts Act 1991* a builder must not perform
residential building work unless a policy of insurance that complies with
Part 3A, Div 2 of that Act is in force in relation to that work. In about
July 2001, Hamersley Building Company applied for insurance pursuant
to that requirement from HIA Insurance Services Pty Ltd. In December
2001 the plaintiff/respondent, then known as Royal and Sun Alliance
Insurance Australia Limited, issued policies of insurance in compliance
with the Act to HBC Pty Ltd with respect to building work at 31 and
33 Clement Street, Swanbourne. Prior to the issue of the policies, the
plaintiff/respondent (hereafter referred to as "Vero") required that Mr and
Mrs Harden-Jones each enter into a general deed of indemnity whereby
each would indemnify Vero against "all claims, payments, costs and any
other expenses, losses and damages" that Vero might reasonably and
properly sustain or incur that result from (a) the proposer's act or
omission; and (b) a claim made by an insured under the terms of a policy.
The proposer, in each case, was HBC Pty Ltd. On 6 November 2001 Mr
and Mrs Harden-Jones each granted an indemnity in those terms and the
policies, in due course, issued.

6 The work at Clement Street, Swanbourne on both lots was being undertaken for the owner, Abersea Pty Ltd. It seems that work was undertaken by HBC Pty Ltd at that project during the first part of 2002. It got into financial difficulties. On or about 5 September 2002 a creditor's meeting was called and later in that month a liquidator was appointed. The work at Clement Street had not been completed. On 9 October 2002 Abersea Pty Ltd claimed under the terms of the policies issued by Vero. The latter engaged L.A.C. Building Consultants Pty Ltd to provide a report on those properties. Both were inspected on 23 October 2002 and a first inspection report for each was issued to Vero on 4 November 2002. Those reports suggested that, in addition to work required to complete the projects, there was also defective work requiring rectification. It appears that Vero called for quotations for the completion of the work to be done and that, in due course, that work was undertaken by Jaxon Construction Pty Ltd. Vero paid that company \$61,896.20 for 31 Clement Street and \$58,044.70 for 33 Clements Street. By letter of 10 March 2005, Vero made claim against Mr and Mrs Harden-Jones under the provisions of the deeds of indemnity. The demands were not met.

7 On 28 October 2005, Vero filed a writ in this court against seeking to recover damages in the sum of \$110,977.64 plus interest pursuant to the deed of indemnity in each case. Both defendants entered an appearance to the writ on 9 November 2005. On 3 February 2006, Vero amended its statement of claim. On 10 March 2006, the defendants filed a defence to the amended statement of claim admitting certain of the plaintiff's allegations, not admitting other matters and making a general denial as to their liability.

8 On 25 May 2006, Vero, by chamber summons, applied to strike out the defence, for leave to apply for summary judgment and for summary judgment. That application was heard by Deputy Registrar Harman on 7 August 2006. On 21 December 2006 he granted summary judgment to the plaintiff against each defendant.

9 On 4 January 2007, Mr and Mrs Harden-Jones filed a notice of appeal from that decision. On 24 April 2007 they applied by chamber summons for leave to amend their notice of appeal and their defence in terms of a minute of proposed amended defence filed on that day.

10 The appeal and application were heard by me on 21 May 2007. Both counsel for the appellants, Mr G R Hancy, and for the respondent, Mr P G McGowan, filed written submissions prior to the hearing of the appeal and spoke to those submissions before me.

11 Rule 15 of the *District Court Rules 2005* provides that if a party is dissatisfied with the decision of a registrar, the party may appeal to a Judge. That appeal is by way of a new hearing of the matter that was before the Registrar.

12 Order 14 of the *Rules of the Supreme Court 1971* provides that where a statement of claim has been served on a defendant and the defendant has entered an appearance, the plaintiff may, on the ground that the defendant has no defence to the claim included in the writ, apply to the court for judgment against the defendant.

13 On the hearing of such an application, unless the court dismisses the application, or the defendant satisfies the court with respect to the claim or part of the claim to which the application relates that there is an issue or question in dispute which ought to be tried, or that there ought for some other reason to be a trial of that claim or part, the court may give such judgment for the plaintiff against the defendant on that claim or part thereof as may be just, having regard to the nature of the remedy or relief claimed. The power of a court to order summary judgment is required to be exercised "with exceptional caution" and should never be exercised unless it is clear that there is no real question to be tried (*Fancourt v Mercantile Credits Limited* (1983) 154 CLR 87, 99). In the present case counsel for the appellants submits that there is a real question to be tried. Counsel for the respondent submits to the contrary.

14 The appellants rely upon the affidavits of Giles Harden-Jones sworn 2 August 2006 and 9 February 2007, upon the affidavit of Jennifer Harden-Jones sworn 2 August 2006 and upon the affidavit of Terrence Michael Clavey sworn 2 August 2006. The respondent relies upon the affidavits of Elon Charles Zlotnick sworn 23 May 2006 and Stefan Molcik sworn 18 May 2006.

Confusion as to the insured

15 The plaintiff's amended statement of claim asserts that by certificates of insurance numbered 137708 and 137709, the plaintiff issued two policies on 18 December 2001 for home building work carried out by HBC Pty Ltd at 31 and 33 Clement Street, Swanbourne for the owner of the properties, Abersea Pty Ltd, pursuant to a lump sum contract for home building work dated 12 December 2001. That allegation was not admitted by the defendants in their defence. The two certificates of insurance referred to in the plaintiff's pleading are annexed to the affidavit of Stefan Molcik sworn 18 May 2006. In annexing those certificates the deponent, who described himself as the southern regional manager of Vero, deposed

to his belief that on or about 18 December 2001 Vero entered into a home building insurance policy with HBC Pty Ltd as builder for the insurance of building works to be completed by that company for Abersea Pty Ltd at 31 and 33 Clement Street, Swanbourne. The relevant certificates certify that a policy of insurance complying with s 25D or s 25G of the *Home Building Contracts Act 1991* had been issued for the relevant work. Section 25G relates to owner builders. Section 25D relates to builders and provides that a policy of insurance complies with Div 2 of Part 3A of the Act in the case of residential building work to be performed by a builder on behalf of another person, other than a developer, under a residential building work contract, if it insures that person and that person's successors in title against the risk of losing an amount paid by way of deposit under the residential building work contract, up to a limit of \$13,000 or such other limit as is prescribed; and the risk of loss, other than indirect, incidental or consequential loss, resulting from non-completion of the residential building work by reason of the insolvency or death of the builder or by reason of the fact that, after due search and enquiry, the builder cannot be found.

- 16 Quite clearly, the certificates of insurance referred to are erroneous on their face because they refer to, in each case, the registered builder as being HBC Pty Ltd and, in each case, the owner as being HBC Pty Ltd. Clearly, the owner was Abersea Pty Ltd and the insurance policy, I infer, was issued for the benefit of Abersea Pty Ltd in each case. The certificate of insurance, in each case, is wrong. I infer that the relevant policy of insurance said to comply with the provisions of s 25D of the *Home Building Contracts Act 1991* is not and that the owner or insured is Abersea Pty Ltd. In my view, this apparent error would not give rise to a triable issue.

Illegality

- 17 At the core of the appellants' contentions is the proposition that the deeds of indemnity required by Vero as a condition of providing home indemnity insurance are re-insurance. Counsel for the appellants points to s 21 of the *Insurance Act 1973* which provided at the time, *inter alia*, that a body corporate that carries on insurance business without being authorised under the Act to do so is guilty of an offence. Insurance business is defined by the Act to include the business of undertaking liability, by way of insurance (including re-insurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event and includes any business incidental to insurance business as so defined. Section 34 of the

Act provided, *inter alia*, that a body corporate authorised under the Act to carry on insurance business shall have arrangements, being arrangements approved by the Australian Prudential Regulatory Authority (APRA) on application by the body corporate, for re-insurance of liabilities in respect of risks against which persons are, or are to be, insured by the body corporate in the course of its carrying on insurance business. The approval of APRA must be in writing. Counsel for the appellants contends that the requirement for a deed of indemnity in the case of the appellants amounts to re-insurance and that Vero has not treated the deeds of indemnity as re-insurance and had not provided any notification to APRA of its re-insurance arrangements.

18 Counsel for the respondent contends that the deeds of indemnity are not re-insurance but accepted before Deputy Registrar Harman and before me that, for the purposes of deciding this application, they should be regarded as such.

19 HBC Pty Ltd was in correspondence with HIA Insurance Services Pty Ltd in September 2001, having submitted certain information to the proposed insurer in support of its application for insurance. In mid-October 2001 HIA Insurance Services advised Mr Giles Harden-Jones that it would provide insurance for the project upon receipt of a general deed of indemnity executed by each of the appellants. By letter of 6 November 2001 HBC Pty Ltd returned both deeds, executed by the appellants, and inquired as to when the "facility" would be in place.

20 The deeds of indemnity were in identical terms, other than as to the indemnifier in each case. The proposer, in each case, was HBC Pty Ltd. By way of important information the deed recited that the insurers named in the policy would be entitled, by virtue of the deed, to seek compensation from the indemnifiers personally for any claim the insurers might pay under building indemnity policies issued for HBC Pty Ltd. Each deed recited that it was not a policy of insurance. It recited further that each indemnifier had requested that the insurer issue a policy for specific building work to be done by HBC Pty Ltd and that the insurer would not consider issuing such a policy unless the indemnity were provided.

21 The terms of the indemnity were as follows:

"We indemnify you against all claims, payments, costs and any other expenses, losses and damages that you reasonably and properly sustain or incur that result from:

- (a) the proposer's act or omission; and
- (b) a claim made by an insured under the terms of a policy."

22 HIA Insurance Services Pty Ltd issued certificates of insurance dated 18 December 2001 for each of the Swanbourne projects, the registered builder being HBC Pty Ltd.

23 Do the deeds of indemnity in each case represent re-insurance? Re-insurance is the means by which a "primary" (or "direct") insurer reduces its exposure to a risk which it has covered by off-loading part (sometimes all) of that risk to a re-insurer. In many cases the primary insurer "cedes" to the re-insurer exactly the same types of insurance it has covered. (Kelly and Ball, Principles of Insurance Law, par [16.0010]). A contract of re-insurance is not an insurance against the perils insured under the primary policy. It is an insurance of the re-insured against its liability in respect of those perils (*op cit* par [16.0060]). Generally speaking, a contract of re-insurance is a contract of indemnity insurance (insuring the re-insured against liability) even when the primary insurance is itself a contract of non-indemnity insurance. (*op cit* par [16.0070]).

24 The appellants, by their minute of proposed amended defence to the amended statement of claim, seek to plead that each of the general deeds of indemnity was a contract of re-insurance by which the appellants were required to indemnify the respondent against the respondent's liability under a contract of insurance to an insured. Further, they seek to plead that the respondent was not at any time authorised by APRA to enter into re-insurance arrangements in the form of general deeds of indemnity with individuals who were not conventional re-insurers and that the respondent's conduct in entering into the general deeds of indemnity was a breach of or non-compliance with certain provisions of the *Insurance Act 1973* (Cth). Section 22 of that Act provided that a body corporate may apply to APRA for an authorisation to carry on insurance business. The term "insurance business" includes re-insurance. If APRA authorises an applicant, it must give written notice to the applicant and ensure that notice of the authorisation is published in the Commonwealth Gazette.

25 The appellants argue that, the general deeds of indemnity being contracts of re-insurance, they were illegal and that the respondent was committing an offence under the provisions of the Act by entering into those deeds.

26 The respondent submits that if the general deeds of indemnity were, indeed, contracts of re-insurance, which is disputed, then the failure to

obtain approval from APRA to engage in re-insurance does not render, as a matter of course, the deeds of indemnity unenforceable. The respondent contends that the purpose of the section creating the offence is to penalise the entity engaging in the conduct rather than to prohibit any particular contract of re-insurance. The Act, says the respondent, does not contain an express provision dealing with any consequential effect on a contract entered into between an insurer committing an offence and a third party. There is, therefore, no scope for the argument that a contract of insurance, so made, is illegal. In any event, the respondent contends, that the general deeds of indemnity are not contracts of re-insurance.

27

The respondent relies upon the authority of *Yango Pastoral Co Pty Ltd & Ors v First Chicago Australia Ltd* [1978] 139 CLR 410. In that case First Chicago Australia Ltd had sued Yango Pastoral Co Pty Ltd for a sum of money alleged to be due under a personal covenant contained in a mortgage. Other defendants were sued as guarantors. The Defendants pleaded that the plaintiff had entered into the transaction in question as part of an unauthorised banking business and that the mortgage, the loan and the guarantees were illegal and unenforceable. The case primarily turned upon the impact of s 8 of the *Banking Act 1959* which provided:

"Subject to this Act, a body corporate shall not carry on any banking business in Australia unless the body corporate is in possession of an authority under the next succeeding section to carry on banking business."

The section then provided for a penalty of \$10,000 per day during continuance of any contravention. It was, therefore, an offence against the Act to contravene the section and was punishable, upon conviction, by the imposition of the penalty referred to. In the High Court the appeal was dismissed with the Court holding that s 8 of the *Banking Act 1959* (*C'th*) prohibits a body corporate from carrying on any banking business in Australia unless it is in possession of an authority to do so but that neither a mortgage nor guarantees given to a body corporate carrying on an authorised banking business to secure a loan made by it in the course of that business are void or unenforceable. Mason J (at p 420) observed that the Act contained no definition of the expression "banking business". He asked whether s 8 expressly prohibited the making of a contract of loan and decided that it did not. He then asked whether the section, by implication, prohibited the making of a contract of loan. In answer to that question he said (at 426):

"Where, as here, a statute imposes a penalty for contravention of an express prohibition against carrying on a business without

a licence or an authority and the business is carried on by entry into contracts, the question is whether the statute intends merely to penalise the person who contravenes the prohibition or whether it intends to go further and prohibit contracts the making of which constitute the carrying on of the business. In deciding this question the Court will take into account the scope and purpose of the statute and the consequences of the suggested implication with a view to ascertaining whether it would conduce to, or frustrate, the object of the statute."

He concluded, after some consideration, that the legislative intention expressed by the Act was that a contract made by a corporation carrying on banking business in breach of s 8 is not illegal and void, but rather that it is a valid contract and that the only penalty which the corporation suffers in consequence of its breach of the section is a liability to conviction and fine under the provisions of the section. Therefore, he said, the plaintiff in that case was able to enforce the mortgage against the defendants as the contract was not rendered void either expressly or impliedly by the Act and that considerations of public policy operated, in the circumstances, to make inapplicable the maxim *ex turpi causa non oritur actio*. In short, that principle represents the proposition that the Courts will not recognise a benefit accruing to a criminal from his crime.

28 As mentioned, the term "insurance business" is expressly defined to include re-insurance of any loss of damage, including liability to pay damages or compensation contingent on the happening of a specified event. Section 21 of the Act provided that a body corporate that carries on insurance business without being authorised under the Act to do so is guilty of an offence. A monetary penalty is applicable. It would therefore appear to be an offence for a general insurer to carry on insurance business for which it was not appropriately authorised under the Act. It is contended by the appellants that the general deeds of indemnity required of them as the condition of acceptance of the proposal by HBC Pty Ltd were acts of re-insurance and, there being no authorisation, they were illegal.

29 Under the heading "Contracts Illegal by Legislation" Seddon and Ellinghous in "Cheshire & Fifoot's Law of Contract" 8th Australian ed at par [18.8] begin with the following passage:

"If making or performing a particular contract is expressly prohibited by legislation, the contract is illegal unless the statute itself indicates that a prohibited contract shall nevertheless be enforceable. In the absence of such an indication, a contract the

formation or performance of which is expressly prohibited by legislation is illegal – as where a statute expressly prohibits selling land or goods, contracting without a licence, or some other specified kind of contract.

In deciding whether a contract falls within the ambit of express prohibition, the Court is entitled to look at the substance of the transaction. The Court will not enforce a contract which ostensibly conforms to statutory requirements but in fact attempts to evade them.

Legislation which prohibits the formation or performance of contracts must be distinguished from legislation which precludes the enforcement of specified contracts by legal action or provides that they are illegal or void. Such contracts are not necessarily illegal, and the rules which apply to illegal contracts do not apply to them. The question whether such contracts are 'illegal' is, strictly speaking, otiose. Their operation depends upon what the statute, properly interpreted, prescribes."

30 The authors of that work then consider the case of *Yango Pastoral Co Pty Ltd & Ors v First Chicago Australia Ltd*. They said, in consideration of the judgments in that case (at p 844):

"In interpreting the statute the consequences of implying a prohibition of contracts had to be taken into account. The business of banking involved contractual relations of great variety. Holding that all contracts made by First Chicago were illegal and therefore unenforceable would result in harm to innocent parties (for example, depositors, whose contracts with Yango would be unenforceable, and employees, whose contracts of employment would similarly be affected), while conferring an unmerited windfall to Yango and other borrowers. Moreover, the act provided for a sufficient sanction against breach of section 8 by imposing a substantial penalty."

It is clear from the foregoing and from the judgments in that case that public policy considerations played an important role.

31 In the matter before me it seems that the effect of the general deeds of indemnity was to bring about a circumstance whereby the insurer, in consideration of the payment of a premium by the proposer, granted a policy of insurance in circumstances where, in the event of a claim under that policy, the extent of the insurer's liability to make payment could be

recovered, under the general deeds of indemnity, from persons who were either a director of the proposer or associated with the business undertaken by the proposer. It would appear to me that the transaction involving the general deeds of indemnity can be characterised as re-insurance and that a court being asked to determine questions of illegality and enforceability might well conclude that the public policy considerations which existed in *Yango Pastoral Co Pty Ltd & Ors v First Chicago Australia Ltd* are not at all akin to the matter before me. The combination of the policy of insurance and the general deeds of indemnity would mean that the proposer would be required to pay to the insurer a premium for the issue of the policy and that persons associated with the proposer would be, in effect, the re-insurers of the general insurer insofar as its exposure to the risk insured is concerned.

32 An O 14 application is mounted on the ground that the defendants have no defence to the claim. If the defendants satisfy the Court on such an application that, with respect to the claim, there is an issue or question in dispute which ought to be tried, summary judgment should not be granted.

33 In his judgment on the application brought by the plaintiff for summary judgment Deputy Registrar Harman, having quoted s 34 of the former *Insurance Act 1973*, noted that the plaintiff was content, while not conceding that s 34 of the Act applied, that the application be determined on the basis that it did. He then expressed the opinion that there was nothing in the language of that section which would indicate an intention on the part of Parliament to do more than regulate the circumstances in which a party could engage with the particular market. He said:

"It is patent that it does not purport to prohibit recovery under an instrument that had not been approved by the Commissioner."

Deputy Registrar Harman then considered whether the hearing of such an application was an appropriate context to assess parliamentary intention, accepting that in most instances such a question, on an application for summary judgment, would be one to be determined at trial. He then, however, said: "In this case the proposition that section 34 would prescribe recovery is clearly without any foundation." Having expressed that view he indicated that the issue of illegality and enforceability would not be an impediment to the granting of summary judgment.

34 The learned Deputy Registrar made no reference in his judgment to s 34A of the *Insurance Act 1973* at the relevant time. That section defined the phrase "re-insurance agreement" to mean an agreement:

- "(a) to which a body corporate authorised under this Act to carry on insurance business is a party; and
- (b) that sets out arrangements for the re-insurance of liabilities of the body corporate in respect of risks against which persons are, or are to be, insured by the body corporate in the course of its carrying on that business."

35 Section 34A(1) provides that it applies if a body corporate authorised under the Act to carry on insurance business enters into, or has at any time entered into, a re-insurance agreement. The section obliges a body corporate in those circumstances to comply with certain requirements and provides in sub-section (10) that a body corporate that intentionally or recklessly contravenes the section is guilty of an offence punishable upon conviction by a fine.

36 The appellants contend that the clear regulatory aim of the *Insurance Act 1973* was that an authorised insurer would have regular re-insurance arrangements with recognised and conventional re-insurers under conventional re-insurance contracts. Section 34A clearly evidences a concern to monitor and approve arrangements for re-insurance and re-insurance agreements. It is concerned with a particular area of insurance business called re-insurance. It is an offence to carry on insurance business without being authorised under the Act to do so. A body corporate authorised to carry on insurance business is obliged to have arrangements, being arrangements approved by APRA on application by the body corporate, for re-insurance of liabilities. The regime imposed by s 34A is to be complied with and in the event that it is not, either intentionally or recklessly, an offence is committed. Given that s 34A deals specifically with re-insurance and stipulates a regulatory regime in that regard and given that a failure to comply with that regulatory regime is an offence punishable by a fine and that the carrying on of insurance business without authorisation to do so is itself an offence it does seem to me that it could well be argued that it is implicit in the legislation (as it was at the time) that re-insurance without authorisation and falling outside the regulatory regime stipulated is illegal and unenforceable. The public policy considerations are, as already mentioned, significantly different from those which governed the High Court's interpretation of the *Banking Act 1959* and, the impact of s 8 of

EATON DCJ

that Act in *Yango Pastoral Co Pty Ltd & Ors v First Chicago Australia Ltd*.

37 With great respect I disagree with the conclusion reached by the learned Deputy Registrar. I do consider that there is, in the circumstances of this case, a triable issue as to the illegality and enforceability of the general deeds of indemnity required by the plaintiff of the defendants. That issue alone should have, in my view, been sufficient to defeat the plaintiff's application for summary judgment. The general rule is that the defendant should have unconditional leave to defend if there is a fair issue to be tried (*Jacob v Booth's Distillery Co* (1901) 85 LT 262 at 263). I am inclined to the view that the general rule should in this case be applied. I will, however, hear counsel in that regard. I rule therefore that the appeal should be allowed and that the plaintiff's summary judgment application should be dismissed. The defendants will have leave to amend. I will hear counsel as to the terms of that leave.

I certify that this and the preceding...13.....
 pages comprise the reasons for judgement of
 his Honour Judge...EATON.....
 19.1.06/20.07... Associate

Mella Maddalena



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[Home/What's new](#)

[Search](#)

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[Printer version](#)

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[Lodging changes to company details](#)

[ASIC forms](#)

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Financial services

[Homepage](#)

[Licensing](#)

[Compliance](#)

[Relief](#)

[Disclosure](#)

[Training](#)

[Managed investment schemes](#)

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[Auditors](#)

[Financial reporting](#)

[Markets](#)

[Takeovers](#)

[Fundraising](#)

[Relief](#)

Insolvency & liquidators

[Homepage](#)

06-332 ASIC bans Victorian Builders Warranty provider

Wednesday 20 September 2006

ASIC has banned Mr Dennis Murvan Gentry, of Collingwood, Victoria, from providing financial services for five years.

ASIC banned Mr Gentry after finding that he had not complied with financial services laws and that there was reason to believe he would not comply with financial services laws in the future.

ASIC found that Mr Gentry engaged in dishonest and misleading or deceptive conduct in relation to a financial product and financial service between June 2003 and September 2004.

During this period Mr Gentry had been operating as an insurance broker and working for several insurance broking businesses. His dishonest conduct related to the purported issuing of Builders' Warranty Insurance (BWI) by the New Zealand-based insurer, Contractor's Bonding Limited (CBL).

ASIC formed the view that:

- Mr Gentry issued false certificates of insurance to clients Tenth Zital, Emval Pty Ltd and Como Constructions Pty Ltd without CBL's consent;
- the persons to whom the certificates were issued assumed that the certificates were valid, afforded insurance protection and undertook building on that basis; and
- Mr Gentry held \$14,135 on trust for the benefit of Tenth Zital, to be paid to CBL, or returned to Tenth Zital, however he used the monies for other purposes.

Mr Gentry has the right to appeal to the Administrative Appeals Tribunal for a review of ASIC's decision.

Background

Victorian legislation requires that registered builders of domestic dwellings must have BWI to obtain a building permit. For builders to become eligible for BWI they must obtain a letter of eligibility from an insurer, who will first assess the financial and historical information provided by the builder to the insurer. The Building Commission requires all registered builders to obtain and provide a letter of eligibility as a condition of their registration. During this twelve-month eligibility period, the builder is required to make an insurance application for each new project they commence.

Updated: 20/09/2006

[BACK](#)

REGULATORY NEWS

Dexta co-founder due to face court



Former Dexta Corporation MD and co-founder Ashraf Kamha (pictured) and his old FAI Insurance colleague Daniel Wilkie - the company's COO - are due to face court next month to answer charges related to their involvement in the collapse of HIH.

Mr Kamha and Mr Wilkie will face court on August 14 for a six-week hearing on charges related to an alleged \$30 million accounting scam, which involved deceiving the stock exchange about FAI's profits.

The Australian Securities and Investments Commission (ASIC) alleges both men knew about the accounting scandal, which resulted in improper reductions of more than \$31 million in FAI's books.

They were originally charged in November at the same time as former FAI Financial Controller Anthony Boulden, who last month pleaded guilty in the NSW Supreme Court to breaching section 590(1) of the Corporations Act. The matter was adjourned for a two-day sentencing hearing on October 12.

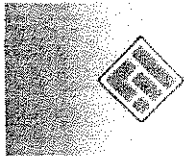
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DEXTA Corporation.

Footnote: Phil Dwyer

DEXTA Corporation were authorised providers of Builders Warranty Insurance through the goodwill of the Victorian Government who underwrote their re-insurance up until the 07.09.2002 when they withdrew that support and Dexta exited the warranty market, leaving only RS&A and Reward.



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Enforcement

FAI General Insurance investments
Footnote: Phil Dwyer
FAI were providers of Builders Warranty from the inception of the privatised scheme.
Note Mr Kamha founded Dexta.

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Sea

Home/What's new

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Popular page

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money, finan
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Information :

Publications

Industry liai

CLERP

How to comp

Job vacanci

Laws we adr

Using this w

Site map

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site

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Freedom of
Information
requests

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closing your
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05-363 ASIC lays charges against FAI officers

Lodging changes to
company details

Tuesday 22 November 2005

ASIC forms

Mr Jeffrey Lucy, Chairman of ASIC, today confirmed that criminal charges have been laid against Messrs Daniel Wilkie, Ashraf Kamha and Antony Boulden, former officers of FAI General Insurance Company Limited (FAIG).

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All three appeared in the Downing Centre Local Court in Sydney this morning.

Homepage

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The charges arise from the investigation by ASIC into the affairs of the HIH group of companies.

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Messrs Wilkie and Kamha have both been charged with one count of failing to act honestly in the exercise of their powers and discharge of their duties as officers of FAIG.

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It is alleged this was done with the intention of deceiving the Australian Stock Exchange (ASX), resulting in a falsely inflated profit result in the accounts of FAI Insurances Limited released to the ASX for the half-year ended 31 December 1997. They have also both been charged with one count of being privy to the fraudulent altering of a book affecting or relating to the affairs of FAIG. The charges relate to reductions in the recording of case estimates (estimates of claims made on insurance policies written by FAIG).

Corporate finance
& markets

Mr Boulden has been charged with one count of being privy to the fraudulent altering of a book affecting or relating to the affairs of FAIG concerning case estimates for the same financial period.

Auditors

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Fundraising

Insolvency &
liquidators

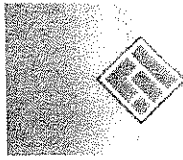
The matter involving Mr Wilkie returns to court on 31 January 2006 and the matters involving Messrs Kamaha and Boulden were adjourned to 28 February 2006.

Homepage

This matter is being prosecuted by the Director of Public Prosecutions.

Updated: 22/11/2005

BACK



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About us | Contact

Search

Home/What

Authorised by the Building Commission as providers of Builders Warranty Insurance

Lodge

Apply

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Your compar.

Media and information releases

Printer version

Popular pages

Starting, running, closing your company

Lodging changes to company details

ASIC forms

Get a corporate key

Financial services

Homepage

Licensing

Compliance

Relief

Disclosure

Training

Managed investment schemes

Corporate finance & markets

Auditors

Financial reporting

Markets

Takeovers

Fundraising

Insolvency & liquidators

Homepage

05-331 Homesafe director found guilty of providing builders warranty insurance without a licence

Friday 21 October 2005

Mr Geoffrey Wade, of Castlemaine, Victoria, today pleaded guilty in the Melbourne Magistrates Court to one charge of carrying on a financial services business service without holding an Australian financial services licence (AFSL).

Mr Wade, a director of Homesafe Equities Pty Ltd (Homesafe) appeared before the Court on the charge following an investigation by the Australian Securities and Investments Commission (ASIC) in relation to the provision and distribution of builders warranty insurance by Homesafe in Victoria between 1 July 2003 and 14 February 2004.

Magistrate John Dugdale, in consideration of Mr Wade's undertaking to cooperate with ASIC and the Commonwealth Director of Public Prosecutions, under the *Crimes Act 1914*, sentenced Mr Wade to a non conviction bond under the *Crimes Act 1914 (Cth)* (the Act) in the amount of \$2,000 to be of good behaviour for 24 months subject to a condition that he pay \$2,000 to the Court fund and costs.

The Commonwealth Director of Public Prosecutions prosecuted the matter.

Background

Builders in Victoria are required, under the *State Building Act 1993* (the Act), to be covered by an insurance policy that complies with the Act and a related Ministerial Order. For domestic building contracts, the required insurance covers property owners against non-completion of work and structural defects for a specified period, where the builder dies, disappears or becomes insolvent.

ASIC conducted an investigation into the activities of Homesafe, Home & Renovators Group Pty Ltd (HRG) and Builders Owners Pty Ltd (B&O) and alleges that between June 2003 and February 2004, Homesafe issued approximately 790 builder's warranty and financial guarantee bonds to builders in Victoria. B&O distributed a large number of the bonds as agent for Homesafe.

ASIC obtained orders in the Supreme Court of Victoria in August 2004 appointing Mr Gess Rambaldi as liquidator to Homesafe and HRG. In his report to the court, Mr Rambaldi found that both companies were insolvent.

Mr James Alexander Scott, of Mentone, Victoria, was charged with 231 offences, including providing a financial service without holding an Australian financial services licence, making misleading statements in relation to financial products and engaging in dishonest conduct in relation to financial products between 1 July 2003 and 25 March 2004. His father, Mr Anthony John Scott, of Blackburn, Victoria, faces 15 similar charges.

Messrs James Scott and Anthony Scott were directors of Homesafe, and will both appear again in the Melbourne Magistrates Court for a committal hearing on 4 November 2005.

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Super Choice

Media centre

Information

Publications

Industry liaison

CLERP

How to complain

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Laws we administer

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Site map

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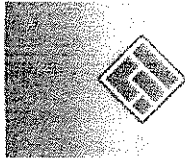
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Further, ASIC permanently banned Mr James Scott from providing any financial services, and banned Mr Anthony Scott from providing any financial services for five years. ASIC has also banned Mr Mepstead from providing any financial services for three years. Mr James Scott has appealed ASIC's decision to the Administrative Appeals Tribunal.

Today's hearing follows the earlier sentencing of Mr Gary Mepstead of Patterson Lakes in July this year (see **ASIC Media Release 05-212**). Mr Mepstead pleaded guilty to one charge of providing a financial service without holding an Australian financial services licence between 1 July 2003 and 15 February 2004 under the *Corporations Act*. Magistrate Lisa Hannon sentenced Mr Mepstead to a non conviction bond under the *Crimes Act 1914 (Cth)* in the amount of \$2,000 to be of good behaviour for a period of 12 months subject to a condition that he pay \$1,500 to the Court Fund and costs.

Updated: 21/10/2005

[BACK](#)



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Sea

Home/What's new

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Financial services

Homepage

Licensing

Compliance

Relief

Disclosure

Training

Managed investment schemes

Corporate finance & markets

Auditors

Financial reporting

Markets

Takeovers

Fundraising

Insolvency & liquidators

Homepage

HOMESAFE EQUITIES P/L & Builders & Owners P/L
Both entities authorised by the Building Commission

05-212 ASIC charges three former builders warranty insurance providers

Wednesday 27 July 2005

Three Victorian men have appeared before the Melbourne Magistrates Court on charges in relation to Homesafe Equities Pty Ltd (Homesafe) and Builders & Owners Pty Ltd (B&O) following an investigation by the Australian Securities and Investments Commission (ASIC). The charges relate to the provision and distribution of builders warranty insurance in Victoria between June 2003 and February 2004.

Mr Gary Mepstead, of Patterson Lakes, Victoria, pleaded guilty to one charge of providing a financial service without holding an Australian Financial Services licence between 1 July 2003 and 15 February 2004 under the *Corporations Act 2001*.

Magistrate Lisa Hannon sentenced Mr Mepstead, a director of B&O, to a non-conviction bond under the Crimes Act 1914 (Cth) in the amount of \$2,000 to be of good behaviour for 12 months subject to a condition that he pay \$1,500 to the Court Fund and costs.

Mr James Alexander Scott, of Mentone, Victoria, was charged with 231 offences, including providing a financial service without holding an Australian Financial Services licence, making misleading statements in relation to financial products and engaging in dishonest conduct in relation to financial products between 1 July 2003 and 25 March 2004. His father, Mr Anthony John Scott, of Blackburn, Victoria, faces 15 similar charges.

Messrs James Scott and Anthony Scott were directors of Homesafe, and will both appear again in the Melbourne Magistrates Court for a filing hearing on 25 August 2005.

The Commonwealth Director of Public Prosecutions is prosecuting the matter.

Background

Builders in Victoria are required, under the *Building Act 1993* (the Act), to be covered by an insurance policy that complies with the Act and a related Ministerial Order. For domestic building contracts, the required insurance covers property owners against non-completion of work and structural defects for a specified period, where the builder dies, disappears or becomes insolvent.

ASIC conducted an investigation into the activities of Homesafe, Home & Renovators Group Pty Ltd (HRG) and B&O and alleges that between June 2003 and February 2004, Homesafe issued approximately 790 builder's warranty and financial guarantee bonds to builders in Victoria. B&O distributed a large number of the bonds.

ASIC obtained orders in the Supreme Court of Victoria in August 2004 appointing Mr Gess Rambaldi as liquidator to Homesafe and HRG. In his report to the court, Mr Rambaldi found that both companies were insolvent.

Further, ASIC permanently banned Mr James Scott from providing any

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Information :

Publications

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Job vacanci

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Site map

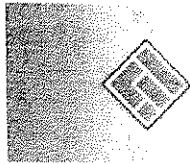
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company](#)

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company details](#)

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[Homepage](#)

[Licensing](#)

[Compliance](#)

[Relief](#)

[Disclosure](#)

[Training](#)

[Managed
investment schemes](#)

[Corporate finance
& markets](#)

[Auditors](#)

[Financial reporting](#)

[Markets](#)

[Takeovers](#)

[Fundraising](#)

[Insolvency &
liquidators](#)

[Homepage](#)

[Media an](#)

[tion releases](#)

[Printer version](#)

06-166 Former builders warranty insurance providers to face trial

May 2006

Two Victorian men have been committed to stand trial in the Victorian County Court in relation to numerous charges brought by ASIC.

Mr Anthony John Scott, of Blackburn, Victoria, and his son, Mr James Alexander Scott, of Mentone, Victoria, appeared before the Melbourne Magistrates Court on charges in relation to Homesafe Equities Pty Ltd (Homesafe) following an investigation by ASIC. The charges relate to the provision and distribution of builders warranty insurance in Victoria between June 2003 and February 2004.

Mr Anthony Scott has pleaded not guilty to 15 charges including providing a financial service without holding an Australian Financial Services licence (AFSL), making misleading statements in relation to financial products, and engaging in dishonest conduct in relation to financial products.

Mr James Scott has reserved his plea in relation to 231 similar offences. Both men have been bailed to appear before the County Court on 1 August 2006.

The Commonwealth Director of Public Prosecutions is prosecuting the matter.

Background

Builders warranty insurance protects homeowners in the event that the builder goes bankrupt, disappears, or dies and therefore cannot complete or make good any defects in construction.

Homesafe Equities Pty Ltd issued insurance certificates in relation to 792 projects in Victoria that provided insurance over building contracts with a potential value in excess of \$100,000,000. ASIC alleges that, unknown to the builders who obtained the certificates, there was no pool of money set aside in what Homesafe Equities Pty Ltd called the 'Captive Pool' to pay any claims, and that contrary to what was claimed, full reinsurance was not in place in respect of any claims that might have been made.

Further, ASIC alleges that neither Mr Anthony Scott nor Mr James Scott were appropriately licensed to deal in financial products.

[Popular page](#)

[Scams, uncl
money, finan
tips, and cal](#)

[Super Choic](#)

[Media centre](#)

[Information :](#)

[Publications](#)

[Industry liai](#)

[CLERP](#)

[How to comp](#)

[Job vacanci](#)

[Laws we adr](#)

[Using this w](#)

[Site map](#)

[Hints for usi
site](#)

[Conditions c](#)

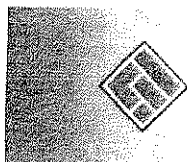
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[Freedom of
Information
requests](#)

Updated: 25/05/2006

[BACK](#)



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About us | Contact

Search

[Home/What's new](#)

[Search](#)

[Lodge](#)

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Your company

[Starting, running, closing your company](#)

[Lodging changes to company details](#)

[ASIC forms](#)

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Financial services

[Homepage](#)

[Licensing](#)

[Compliance](#)

[Relief](#)

[Disclosure](#)

[Training](#)

[Managed investment schemes](#)

Corporate finance & markets

[Auditors](#)

[Financial reporting](#)

[Markets](#)

[Takeovers](#)

[Fundraising](#)

Insolvency & liquidators

[Homepage](#)

Media and information releases

05-108 Former HIH managing director jailed

Friday 29 April 2005

Mr Jeffrey Lucy, Chairman of the Australian Securities and Investments Commission (ASIC), today announced that Mr Terry Cassidy, the former Managing Director, Australia of HIH Insurance Limited, has been sentenced to 15 months imprisonment, to be released on 28 February 2006 after serving 10 months, in relation to three criminal charges arising from his management of the HIH group of companies from 1998 to 2000.

Mr Cassidy was sentenced before Justice Wood in the New South Wales Supreme Court, having earlier pleaded guilty to two criminal charges under the Crimes Act (NSW) and one criminal charge under the Corporations Act.

In sentencing, His Honour Justice Wood recognised that Mr Cassidy has, and will continue to provide assistance to ASIC during the course of its investigations and any future prosecutions.

'The sentencing of Mr Cassidy to 15 months jail reflects the community's belief that company directors who act recklessly, and by so doing, distort the true financial position of a company, should be held accountable for their actions', Mr Lucy said.

'Conduct which misleads regulators, and the market more generally, undermines public confidence and puts at risk the investments of shareholders. The jailing of Mr Cassidy sends a very strong message that this type of conduct will not be tolerated', Mr Lucy said.

Mr Cassidy was sentenced in relation to criminal charges that he:

- acted with reckless disregard in the making of a false or misleading statement to the Australian Prudential Regulation Authority (APRA) by not disclosing, contrary to the Insurance Act, that \$129 million in assets of CIC Insurances Ltd (CIC) were charged for the benefit of a party other than CIC;
- acted with reckless disregard in the making of a false or misleading statement to APRA that CIC had exceeded the minimum solvency requirements of the Insurance Act by approximately \$17 million, when in fact there was a deficiency of approximately \$111 million;
- was reckless and failed to properly exercise his powers and discharge his duties for a proper purpose as a director of HIH Investment Holdings Ltd (HIH) and FAI Insurances Limited (FAI), in that he signed a series of documents concerning an application by HIH for 200 million shares in FAI which documents he knew had been backdated to 23 June 2000.

'This is the fourth guilty plea, and third jailing that ASIC has achieved as part of its HIH investigation. ASIC will continue to ensure that company directors or officers who act recklessly or dishonestly are brought before the Courts', Mr Lucy said.

ASIC's investigation into the collapse of HIH is continuing.

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Media centre

Information

Publications

Industry liaisons

CLERP

How to complete

Job vacancies

Laws we administer

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Site map

Hints for using the site

Conditions of use

Privacy

Copyright and our website

Freedom of information requests

Background

- On 23 December 2003, Mr William Howard, a former General Manager of HIH Insurance Limited, was sentenced to three years imprisonment, fully suspended on the basis of on-going assistance to the HIH investigation. Mr Howard had pleaded guilty to two counts of criminal misconduct, namely that he dishonestly received from Mr Brad Cooper approximately \$124,000 in return for facilitating payments by HIH directly or indirectly in favour of Mr Cooper. Mr Howard also admitted facilitating a payment of \$737,000 to a company associated with Mr Cooper knowing that the payment obligation had already been discharged.
- On 22 October 2004, Mr Bradley Cooper was committed for trial on six charges of corruptly giving a cash benefit to influence an agent of HIH Insurance Limited, namely Mr Howard, and seven charges of publishing a false or misleading statement with intent to obtain financial advantage. The trial is set down to commence on 1 August 2005.
- On 20 April 2004, Mr Charles Abbott, the former Deputy Chairman of HIH Insurance Limited, was charged with dishonestly using his position as a company director. The committal hearing is set down to commence on 30 May 2005.
- On 19 July 2004, Mr Timothy Maxwell Mainprize was committed for trial on charges of failing to act honestly in the exercise of his powers and discharge of his duties as an officer of FAI General Insurance Company Limited. He was also committed on one count of providing false and misleading information. His trial is set down to commence on 5 September 2005.
- On 19 July 2004, Mr Daniel Wilkie was committed for trial on charges of failing to act honestly in the exercise of his powers and discharge of his duties as an officer of FAI General Insurance Company Limited. He was also committed on one count of providing false and misleading information. His trial is set down to commence on 5 September 2005.
- On 19 July 2004, Mr Stephen Burroughs was committed for trial on charges of failing to act honestly in the exercise of his powers and discharge of his duties as an officer of FAI General Insurance Company Limited.
- On 16 February 2005, Mr Rodney Adler pleaded guilty to four charges, two of disseminating false information that was likely to induce people to buy HIH shares, one of making and publishing false statements and one of being intentionally dishonest and failing to discharge his duties in good faith. Mr Adler was sentenced on 14 April 2005 to four-and-a-half years' jail with a non-parole period of two-and-a-half years.
- On 15 December 2004, Mr Ray Williams pleaded guilty to three charges, namely of failing to properly exercise his duties as company director by signing a misleading letter to FAI Note Holders, giving investors misleading information in the HIH 1998-99 Annual Report and omitting information from a prospectus to raise up to \$155 million for the takeover of FAI. On 15 April 2005, Mr Williams was sentenced to four-and-a-half years jail, with a non-parole period of two years and nine months.

Updated: 29/04/2005

BACK

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ASIC

Australian Securities & Investments Commission

SAVILLE HICKS CORP P/L

2001 media and information releases

01/373 Insurance broker suspended

Editor's note: Changes were made to this media release on 3 September 2003

Wednesday 17 October 2001

The Australian Securities and Investments Commission (ASIC) has suspended the registration of Perth-based insurance broker Savill Hicks Corp Pty Ltd (Savill Hicks) for one year, after Savill Hicks illegally invested \$200,000 held in its insurance broking account.

ASIC required Savill Hicks to deposit \$200,000 of its own money into the insurance broking account to make up the shortfall caused by the illegal investments.

'It is vital that insurance brokers comply with the regulatory requirements for the operation of their accounts. Improper investment of the money held in these accounts can lead to irrecoverable losses, and ASIC will take action against brokers that expose insurers and consumers to this risk', an ASIC Director of Financial Services Regulation, Sean Hughes said.

In July 1999, Savill Hicks invested \$200,000 from its insurance broking account into two loans of \$100,000, to be secured by second mortgages over two houses. It was illegal for Savill Hicks to make these investments, as they were not prescribed under the Insurance (Agents and Brokers) Act (IABA) and the IABA Regulations.

Under IABA, insurance brokers may keep clients' premiums in an insurance broking account for up to 90 days and can retain interest earned on the account, subject to legislative requirements. They can also invest account moneys in 'prescribed investments' which are safe and liquid, such as government securities and bank deposits, cash management trusts or bills of exchange.

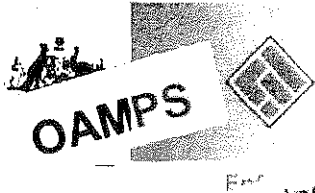
The loans were made to a separate entity, the sole director of which was a family friend of Mr Hicks, managing director of Savill Hicks. The loans in this case were not in writing, and no interest or principal repayments were ever received under the loans, which are now in default.

During the course of the suspension period, ASIC will permit Savill Hicks to carry on business as an insurance broker provided it meets additional audit and audit reporting obligations which show that it is operating correctly its insurance broking account.

Savill Hicks is based in Perth, with operations in Sydney and Melbourne.

Savill Hicks is entitled to apply to review ASIC's decision in the Administrative Appeals Tribunal.

Perth based broker who provided Builders Warranty on behalf of Master Builders WA



Purchased Reward Insurance which has since been sold to Westfarmers the owner of Bunnings Hardware.
Note the involvement of other warranty providers in these proceedings

About us | Cor

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2001 media and information releases

01/187 OAMPS director Kingsley Lamont gives court undertaking to resign from board

Friday June 1 2001

Kingsley Lamont, an executive director and former chairman of OAMPS Ltd, has today agreed to resign from the OAMPS board, as part of an undertaking to the Court that he will not act as a director of either any public company or certain specified proprietary companies for a period of three years.

Mr Lamont gave this undertaking to the Supreme Court of Victoria this morning in order to resolve civil proceedings initiated against him by the Australian Securities and Investments Commission (ASIC) in August 2000.

ASIC alleged that during 1998 Mr Lamont breached his statutory duties as Managing Director of Steadfast Insurance Brokers Management Group Ltd (Steadfast), from which he resigned in December 1998.

ASIC contended that while in office, Mr Lamont negotiated with Mr Rodney Adler, the then Chief Executive of FAI Insurances Ltd (FAI), for FAI to provide a loan to Mr Lamont's private company for the purpose of purchasing OAMPS shares.

ASIC also alleged that Mr Lamont negotiated with Mr Adler for the interest payments on the loan to be tied to the volume of insurance business generated for FAI by the insurance brokers who were shareholders of Steadfast.

The trial of these proceedings was due to commence this morning.

In the agreement between ASIC and Mr Lamont to resolve these civil proceedings, Mr Lamont gave an undertaking to the Court that he would not act as a director of any public company or any subsidiary of OAMPS Ltd, Australian International Insurance Ltd, OAMPS Funds Management Pty Ltd or OAMPS Insurance Brokers Ltd, for a period of three years from 1 July 2001.

Mr Lamont has already contributed to ASIC's costs by a payment of \$30,000.

ASIC did not allege any wrongdoing by Steadfast, OAMPS, FAI or Mr Adler, in this proceeding.

For further information contact:

Sean Hughes
Director DISC, Victoria
Telephone: 03 9280 3646
Mobile: 0411 549 026

Felicity Glennie-Holmes
ASIC Media Unit
Telephone: 02 9911 2600
Mobile: 0412 673 038

Popular page

Scams, uncl
money, finan
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Information :

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Job vacanci

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information
requests

- ...ing, running,
closing your
company
- Lodging changes to
company details
- ASIC forms
- Get a corporate key

Financial services

- Homepage
- Licensing
- Compliance
- Relief
- Disclosure
- Training
- Managed
investment schemes

Corporate finance
& markets

- Auditors
- Financial reporting
- Markets
- Takeovers
- Fundraising

Insolvency &
liquidators

- Homepage

Home Warranty Insurance Inquiry Public Hearing
Thursday 10th April 2008

1. Appropriateness and Effectiveness

- a. Junk Insurance
- b. No evidence submitted (eg: Tasmania)
- c. No claims (eg: Huntly conversation)
- d. Absurd profits (eg: Tassie Owner builder policy)
- e. Builder guarantees and indemnities (WA Court Decision)

2. Corporations Regulation 7.1.12(2)

- a. Meaning – makes a 'wholesale product'
- b. Timing – Post HIH collapse
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3. Future Supply

- | |
|---|
| <ul style="list-style-type: none">a. Update on Tasmania (latest motion)b. Clearly has not worked (Kons comments)c. Held to Ransom (copy of Hansard)d. Community confidence in the product is destroyede. To protect Governments then it must be withdrawn immediatelyf. Potential for class action |
|---|

4. Potential Reforms and Cost Benefits

- a. Qld scheme
- b. No cost to taxpayer
- c. Open and Transparent
- d. Accountable to the Parliament
- e. Whole of industry model
- f. No private vested interest
- g. Currently working

5. Related Matters

- a. Affordability reality is related to finance and Cost of building (show chart)
- b. Old financial model needs a change of process

FACT SHEET

HOUSING INDEMNITY AMENDMENT BILL 2008

The *Housing Indemnity Act 1992* commenced on 1 July 1993 and established a compulsory first resort housing indemnity insurance scheme. However, following the collapse of HIH, the Act was amended in 2003 to change the scheme to a last resort scheme. This means that the current insurance applies only where the builder becomes insolvent, dies or disappears.

The current scheme has received significant criticism from industry. The current scheme does not provide value for money for consumers. Further, consumers are confused about the scheme and often do not realise its limitations until a claim is made.

In late 2007, the Government agreed to remove the existing requirement for housing indemnity insurance. It was initially envisaged that this would be undertaken in two stages:

- stage one - removal of mandatory housing indemnity insurance for owner builders; and the provision of a consumer guide before commencement of building work.
- stage 2 removal of mandatory insurance to all remaining building work. This stage was to follow the implementation of a process of dispute resolution and prudential supervision.

However, the Government has now decided to remove the scheme completely.

The Office of Consumer Affairs and Fair Trading already has in place a functioning system for resolving consumer disputes, including building disputes. This is currently being enhanced by an improved statutory framework. Work has also commenced on the development of a 'light-touch' system of prudential guidance for builders that will result in a reduced risk to consumers from builder insolvency.

When the mandatory requirements for all building work have been removed the consumer guide, the statutory warranties and the minimum deposit requirements of the current Act will be retained.

The *Housing Indemnity Amendment Bill 2008* implements mandatory provision of a consumer guide and allows for the removal of housing indemnity insurance.

DEPARTMENT OF JUSTICE

SPEECH NOTES

House of Assembly

Housing Indemnity Amendment Bill 2008

Mr Speaker, I move that the *Housing Indemnity Amendment Bill 2008* be read a second time.

Mr Speaker, this Bill amends the *Housing Indemnity Act 1992* so as to:

- require builders to give a 'consumer guide' to prospective consumers of building services before the commencement of building work over \$12,000; and
- remove requirements for mandatory housing indemnity insurance in Tasmania.

Mr Speaker, *the Housing indemnity Act* commenced on 1 July 1993 and established a compulsory first resort housing indemnity insurance scheme.

However, following the collapse of HIH, the Act was amended in 2003 to change the scheme to a last resort scheme. This means that the current insurance applies only where the builder becomes insolvent, dies or disappears.

Mr Speaker, the change from a first resort scheme to a last resort scheme has resulted in significant criticism of the scheme from industry about the value of the insurance. Further, there is confusion among consumers who often do not realise the limitations of the scheme until they make a claim.

The Tasmanian Government is of the view that the current scheme does not offer value for money for consumers. As a result, the Tasmanian Government had originally intended to phase out mandatory housing indemnity insurance in 2 stages.

This Bill was intended to be stage 1 and stage 2 was to remove requirements for housing indemnity insurance for all remaining building work. This stage was to follow the implementation of a process for dispute resolution and prudential supervision.

However, the Tasmanian Government has now decided that it should simply get on with the job of removing this insurance scheme and not wait any longer. Removing housing indemnity insurance in 2 stages will create confusion in the market and it is preferable to complete this step in one simple action.

For this reason Mr Speaker, the Bill before the House will remove all requirements for housing indemnity insurance in Tasmania.

The Office of Consumer Affairs already has in place a well functioning system for the resolution of consumer disputes. While this will later be enhanced by a better statutory framework, this Office is currently providing assistance to consumers.

Further, work has already begun on a light-touch system of prudential guidance for builders that will help builders adopt contemporary practices to reduce the risk of insolvency. For this reasons we should act now and not wait until some future time to remove this insurance.

Mr Speaker, the consumer guide that is to be required by this Bill will provide advice to consumers on their rights and responsibilities and about the building dispute resolution service that is currently provided by the Office of Consumer Affairs and Fair Trading.

When the mandatory requirements for all building work have been removed, the consumer guide, the statutory warranties and the minimum deposit requirements of the current Act will be retained.

Mr Speaker, I commend the Bill to the House.

Government Media Statement

16 January 2007

STEVEN KONS
Minister for Justice

Scrapping of Mandatory Housing Indemnity Insurance

The Minister for Justice and Workplace Relations, Steven Kons, today announced plans to scrap the mandatory housing indemnity insurance scheme.

Mr Kons said the scheme would be replaced with a range of other measures that would better protect consumers.

“Currently home owners who are having their house built are required to pay high premiums to take out the insurance which they believe guards against building defects.

“On average, this costs more than \$1500 for a project worth between \$200,000 and \$250,000.

“Consumers are then left thinking they are covered if something goes structurally wrong.

“But because housing indemnity is last resort insurance, claims can only be made if a builder dies, disappears or becomes insolvent, and if a builder disputes an allegation of faulty work, the consumer can be left with little recourse.

“A legislatively mandated scheme of last resort insurance is simply not good enough for Tasmanian consumers. It risks leaving families with an unsaleable or devalued house due to faulty workmanship and little recourse.

“This insurance does not provide the resolution or security that people expect nor peace of mind.

“It is not the sort of insurance cover that the consumer thinks they are buying, and often leaves home owners with no option but to turn to the courts, which can be both time-consuming and costly.”

“Many Tasmanians aspire to build their own home, and the State Government wants to ensure that these people remain in control of their investment by having access to proper recourse an advice should they experience problems into the future.”

Mr Kons said the insurance scheme for residential building work would be phased out in Tasmania during the next 18 months.

“Replacing it will be a new statutory framework, which will include a program allowing the resolution of disputes between consumers and builders as an alternative to the courts.

“The Office of Consumer Affairs and Fair Trading will administer this program to quickly and equitably deal with complaints between consumers and builders.

“It will include a quick response approach to deal with issues as soon as they emerge and will establish powers to make rectification orders to remedy faulty workmanship.”

Mr Kons said the new framework would mandate the use of standard form contract provisions and also include the parties having to agree to variations in writing for all residential building work.

“In the short term, the Housing Indemnity Act will be amended to mandate the disclosure to the consumer that housing indemnity insurance is a last resort scheme.

“We will also require that consumers are given a fact sheet advising them of their rights and responsibilities,” Mr Kons said.

Mr Kons said while he expected the insurance industry to be critical of this decision, the State Government was acting in the best interests of consumers.

“We have acted responsibly by undertaking consultation on this issue, and the recent Productivity Commission Report supports this move to give Tasmanians a fairer system and greater protection,” Mr Kons said.

Tasmanian Parliament – House of Assembly 28 October 2003

**HOUSING INDEMNITY AMENDMENT BILL 2003 (No. 76)
In Committee**

Clauses 1 to 3 agreed to.

Clause 4 -

Excerpt from the speech made by the Tasmanian Attorney General Judy Jackson

Mrs JACKSON - Just on your other issue about insurance. As I say, it is making them happy to the extent that we wish them to be in the market because if they are not in the market then people do not have the cover, and we do want people to have the cover. We want the cover to be available, otherwise these builders will not be able to build; you said that yourself. So we do want to encourage them, and it is the same principle that we have been grappling with here in this State and other States and federally for the last couple of years since the collapse of HIH.

In a sense the insurance industry is holding us to ransom; they are overseas companies, multinational companies in most cases - not always but in many cases. I understand we are a small market and they can really tell us that they do not really care whether we come on board or not. Similarly, the other companies say that to Tasmania, we are sort of at the end of the food chain, you might say, because it is happening around Australia. In many respects, because we are a small economy, a small number of people, we are just smaller people at the end of it. It is wrong, but what can you do about it, apart from having a national insurance scheme? You are held to ransom; you do not have to be very smart to work that out. We are doing this to give them some more security; we do it because we do want insurance here and we do want insurance to be offered to people.

Hon. Judy Jackson
Attorney-General



Minister for Justice and
Industrial Relations

16 DEC 2004

Mr Phil Dwyer
National President
Builders' Collective of Australia
27 Advantage Road
HIGHETT VIC 3190

Dear Mr Dwyer

I refer to your email of 18 November attaching a report prepared by your organisation on the current state of home warranty insurance in Australia.

Clearly there is considerable concern about the operation of this market and it appears that some urgent dialogue and revision may be needed to ensure that this scheme continues to achieve the best outcome for consumers.

To this end I have publicly given a commitment to a review of the *Housing Indemnity Act 1992* during 2005. The object of such a review would be, in the first instance, to develop a common view about the objectives of such a scheme and to explore the best ways of achieving these objectives. Clearly, your experiences in the building market will enable you to make a valuable contribution to this review process.

I will develop terms of reference in the New Year so that we can be clear as to the scope and direction of this review. You will be contacted early in 2005 about this process and I trust that we can together explore some mutually agreeable options.

I thank you for raising your concerns with me.

Yours sincerely

A handwritten signature in cursive script that reads 'Judy Jackson'.

Judy Jackson
ATTORNEY-GENERAL

Home Warranty Insurance Inquiry Public Hearing
Thursday 10th April 2008

1. Appropriateness and Effectiveness

- a. Junk Insurance
- b. No evidence submitted (eg: Tasmania)
- c. No claims (eg: Huntly conversation)
- d. Absurd profits (eg: Tassie Owner builder policy)
- e. Builder guarantees and indemnities (WA Court Decision)

2. Corporations Regulation 7.1.12(2)

- a. Meaning – makes a 'wholesale product'
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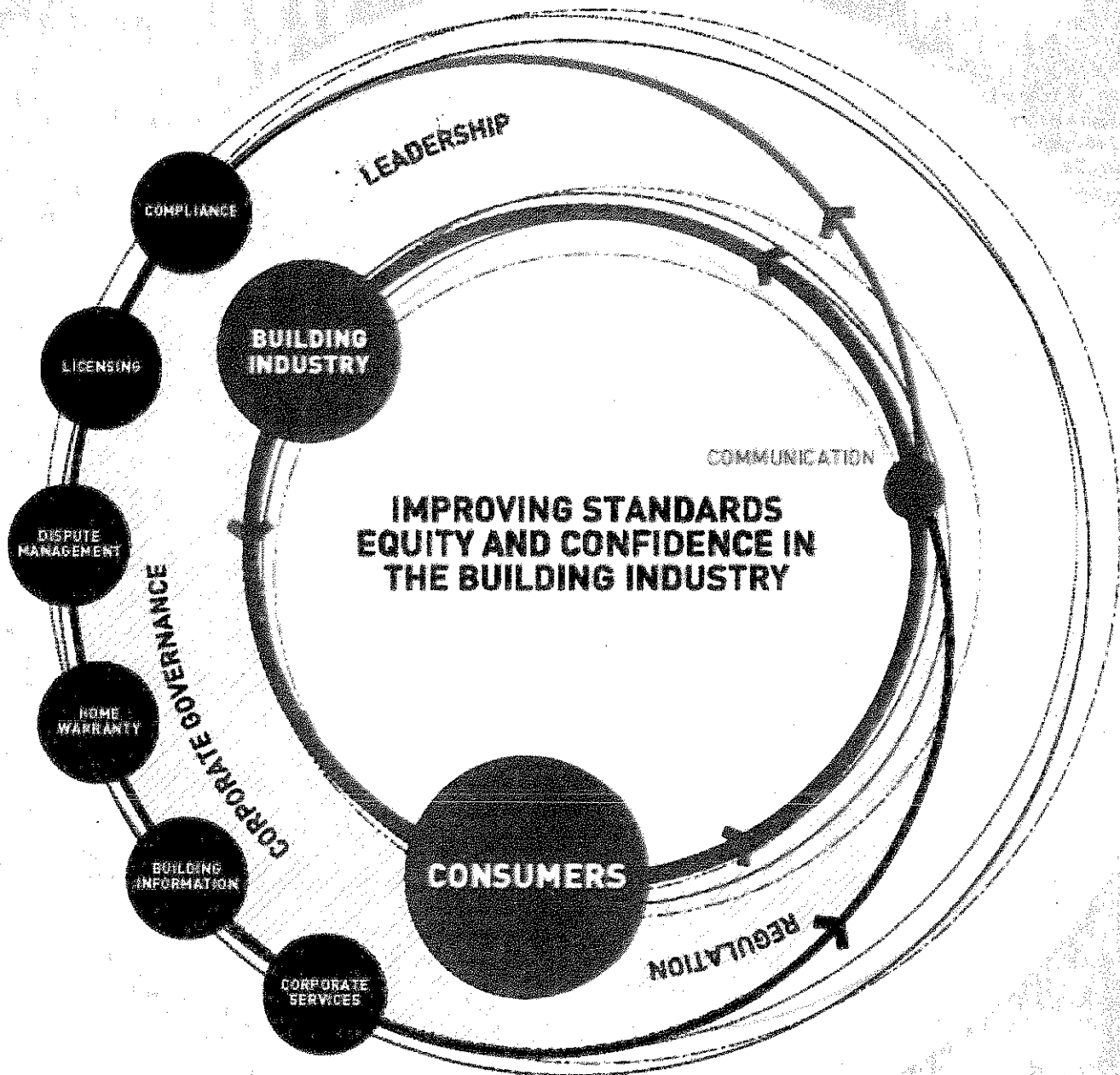
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- f. Potential for class action

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- a. Qld scheme
- b. No cost to taxpayer
- c. Open and Transparent
- d. Accountable to the Parliament
- e. Whole of industry model
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- b. Old financial model needs a change of process



AN INTEGRATED APPROACH

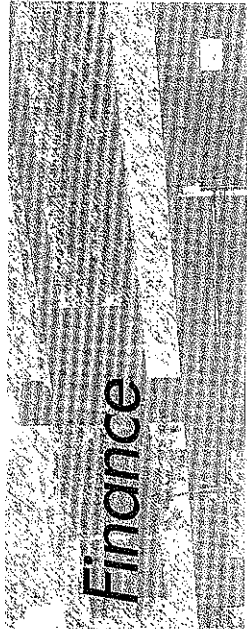


BUILDING SERVICES AUTHORITY ANNUAL REPORT 2003



Lewis Hayes
Executive Manager,
Corporate Services

Lewis has over 19 years experience managing corporate services functions in government organisations.



Financial overview

The strong performance of past years has continued with BSA yielding an operating profit of \$21.041M and a balance sheet position of \$57.280M. These outcomes have been achieved through improved financial reporting and forecasting capability, investment performance, rigorous financial management practices, prudent expenditure and income streams growth above CPI.

Financial progress

Year	Operating result (\$M)	Net assets (\$M)
06/07	21.041	57.280
05/06	8.162	36.239
04/05	9.010	28.077
03/04	5.799	19.330
02/03	8.167	13.531

At the segmented level (Note 21), the General Fund returned a profit of \$2.171M (net assets of \$17.175M) and the Insurance Fund a profit of \$18.870M (net assets of \$40.105M) and provided a balanced result between the internal operations, further consolidating the position of the overall financial health of BSA.

Income grew by \$11.629M (11.09%) or 8.99% in real terms after allowing for a 2.1% CPI increase for the year.

Licensing revenue (Note 2) increased by \$1.795M (9.6%) and was driven by continuing high levels of new entrants

to, and minimal licensee exits from, the Queensland building industry. This trend is forecast to continue in 2007/08.

Premium revenue (Note 3.1) i.e. earned premium combined with BSA's reinsurer's portion of underwriting premium (outward reinsurance premium expense) increased by \$14.734M (41.77%). This result was due to high levels of building activity due to continued underlying housing demand.

Investment revenue (Note 4) improved by \$2.403M (26%) with a third consecutive year of outstanding returns.

Cash investments yielded 6.57% on average and managed fund investments 16.92%. While cash returns are expected to remain steady it is forecast managed fund investments will ease to approximately 8%. The longer term outlook is for an average yield of 8% characterised by shorter term volatility.

Administration fees increased (Note 3.3) due to a decrease in the movement in the provision for future claims processing.

Expenses decreased by \$1.250M (1.29%) for the year.

Administrative expenses increased by 21.31% (Note 7) with variations across the expense types planned to support operations and included general CPI increases.



Net claims (refer Note 3.2) i.e. claims approved and charged netted against reinsurance and other recoveries revenue decreased by \$8.323M (63.8%).

Increased employment expenses of \$2.503M (14.56% or 10.56% in real terms after the 4.0% salary increase under the enterprise development agreement) resulted from additional resources for proactive services such as compliance and customer information.

To support BSA's strategic technology agenda over the next two years, additional staff resources were also directed to information technology to decrease processing costs and reallocate staff to proactive activities.

BSA's balance sheet reflects its sound financial position. There are no inherent weaknesses in the balance sheet and all current and future liabilities are fully funded.

The future:

BSA will:

- continue to improve its strong financial position with a forecast operating profit of \$8.607M and net assets of \$65.885M next year

Queensland Building Services Authority

Income Statement
for the year ended 30 June 2007

	Note	2007 \$'000	2006 \$'000
Revenue			
Licence renewal and application fees	2	20 373	18 778
Premium revenue	3.1	50 074	35 320
Reinsurance and other recoveries revenue	3.2	19 635	29 358
Investment revenue	4	11 623	9 220
Administration fees	3.3	10 387	9 361
Other revenue	5	4 194	2 820
Total Revenue		116 486	104 857
Expenses			
Administrative expenses	7	10 498	8 654
Claims approved and changed	3.2	24 357	42 403
Outward reinsurance premium expense	3.1	39 296	26 950
Employment expenses	8	19 692	17 189
Other expenses	9	1 602	1 499
Total Expenses		95 445	96 695
Operating Surplus		21 041	8 162

The above Income Statement is to be read in conjunction with the Notes to and forming part of the Financial Statements.

Queensland Building Services Authority

Balance Sheet
for the year ended 30 June 2007

	Note	2007 \$'000	2006 \$'000
Current assets			
Cash and cash equivalents	26	14 726	5 499
Trade and other receivables	11	11 299	4 161
Reinsurance receivable	12	18 888	15 405
Other financial assets	10	116 548	97 550
Other current assets	13	22 514	13 723
Total current assets		183 975	136 338
Non-current assets			
Reinsurance receivable	12	54 719	57 717
Property, plant and equipment	14	4 120	1 552
Intangibles	15	1 806	1 174
Total non-current assets		60 645	60 443
Total assets		244 620	196 781
Current liabilities			
Trade and other payables	16	34 818	16 752
Provisions	17	54	768
Future claims and associated costs	19	31 524	22 595
Unearned premium liability	18	27 560	18 348
Total current liabilities		93 956	58 463
Non-current liabilities			
Provisions	17	2 411	1 792
Future claims and associated costs	19	90 973	100 287
Total non-current liabilities		93 384	102 079
Total liabilities		187 340	160 542
Net assets		57 280	36 239
Equity			
Retained surplus		57 280	36 239
Total equity		57 280	36 239

The above Income Statement is to be read in conjunction with the Notes to and forming part of the Financial Statements.

Home Warranty Insurance Inquiry Public Hearing
Thursday 10th April 2008

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- | |
|---|
| <ul style="list-style-type: none">a. Affordability reality is related to finance and Cost of building (show chart)b. Old financial model needs a change of process |
|---|

Victorian Building Costs over the term of the Bracks/Brumby Government

Domestic Building Work only

Dates	Number of Domestic Building Permits	Value of Domestic Building Works	Average Building cost per permit	% Cost Increase from previous year	Cummulative % Cost Increase from 1998
1998	78489	4,864,086,000	61,972		
1999	86850	6,000,209,000	69,088	11.5%	11.5%
2000	81082	5,662,697,695	69,840	1.1%	12.7%
2001	86426	6,929,659,000	80,181	14.8%	29.4%
2002	90052	7,929,317,000	88,053	9.8%	42.1%
2003	90313	8,458,322,000	93,656	6.4%	51.1%
2004	87984	8,725,755,457	99,175	5.9%	60.0%
2005	83740	8,592,019,914	102,604	3.5%	65.6%
2006	83893	8,871,929,241	105,753	3.1%	70.6%

The 70.6% increase in building costs since 1998 represents an unprecedented explosion in the cost of building that is now having a direct impact on housing affordability for the community

This chart shows the "Number of domestic building permits" have decreased since 1999 while the "Value of domestic building works" has increased. This clearly shows that the much touted 'record figures' promoted by the Government are really only an indication of increased consumer cost for an industry that is in decline.

Victorian and National Estimates
of
Warranty Insurance Premiums

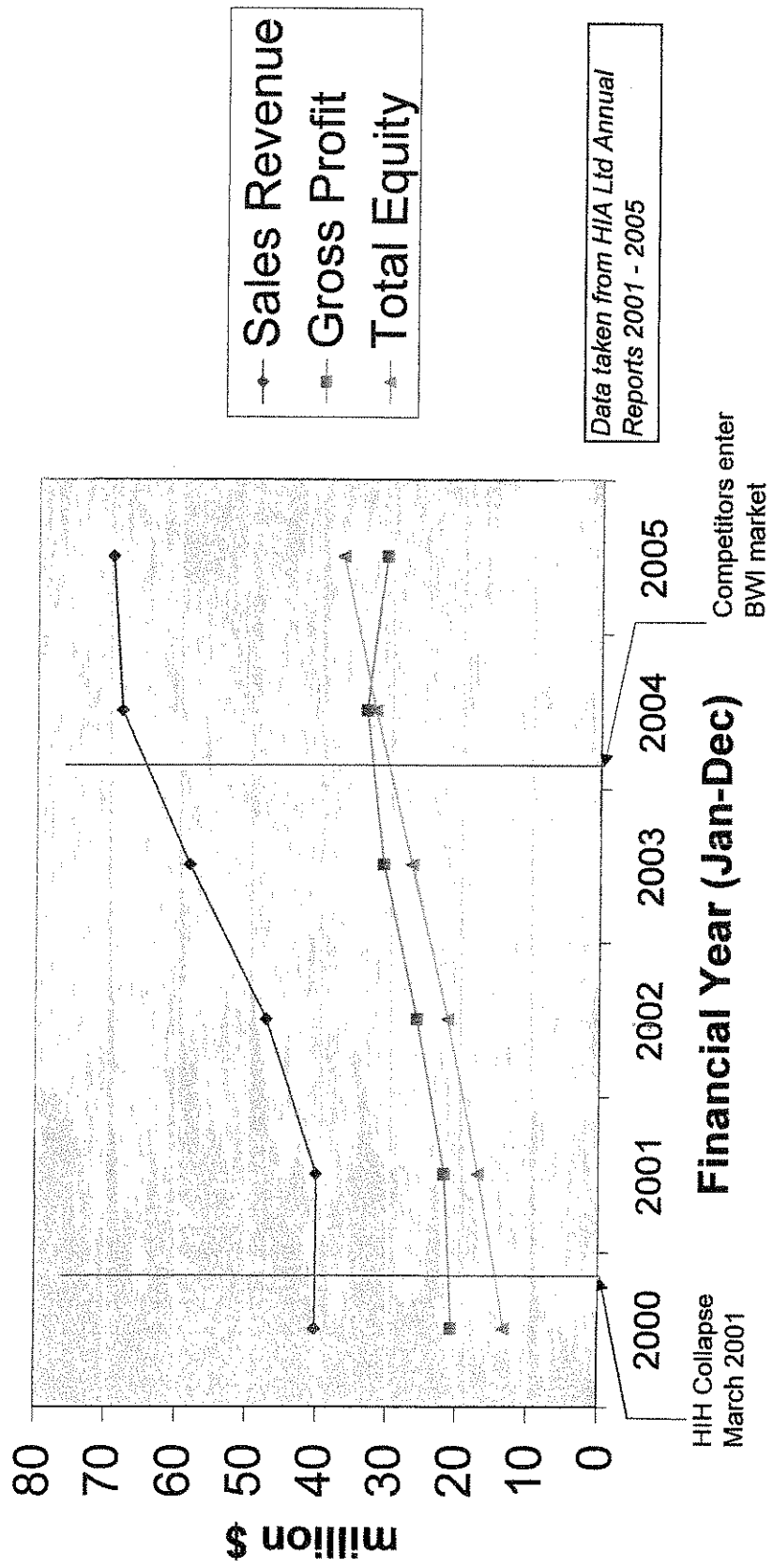
Nature of domestic building work - July 2004 to June 2005

Nature of work	New building			Re-erection			Extension/Alteration ¹			Change of use			Demolition/Removal			Other							
	Number of building permits	Value of building work (\$,000)	Category 3 Warranty Insurance Premium (\$,000)	Number of building permits	Value of building work (\$,000)	Category 3 Warranty Insurance Premium (\$,000)	Number of Projects From permit bid Warranty Schemes	Value of building work (\$,000)	Category 3 Warranty Insurance Premium (\$,000)	Number of building permits	Value of building work (\$,000)	Category 3 Warranty Insurance Premium (\$,000)	Number of building permits	Value of building work (\$,000)	Category 3 Warranty Insurance Premium (\$,000)	Number of building permits	Value of building work (\$,000)	Category 3 Warranty Insurance Premium (\$,000)					
< \$5,000	0	0	0	184	553	0	7625	27366	0	52	150	0	2010	6801	0	3301	10755	0					
\$5,000 - < \$10,000	0	0	0	139	1128	0	10248	75650	0	50	376	0	2066	13932	0	1565	10785	0					
\$10,000 - < \$25,000 ²	0	0	0	229	3173	0	33520	495504	30805	79	1112	84	437	5398	402	1708	30827	1570					
\$25,000 - < \$50,000 ²	158	5747	155	223	7933	207	19654	684772	19280	42	1491	41	90	1972	59	2150	70307	2108					
\$50,000 - < \$100,000	1261	102635	145	231	15708	27	5034	345326	580	42	2725	5	31	2089	4	458	29932	53					
\$100,000 - < \$150,000	8515	829832	8023	68	7728	91	1996	233965	2751	11	1352	19	8	842	1	47	5398	85					
\$150,000 - < \$200,000	8886	1530509	14162	23	3866	37	1149	191978	1829	18	3063	29	2	308	3	16	2868	28					
> \$200,000	13330	4451838	34171	11	339	28	1420	468795	3824	39	15942	100	4	1739	10	14	4626	36					
Total	30,220	6,925,953	57,657	1,108	43,406	609	40,958	1,630,166	58,879	324	26,211	284	4,618	33,281	489	9,261	164,797	3,861					
Source: Building Commission (Table 4) & HIA Renovations Monitor																Total Annual Victorian Premium - (\$,000)		121,749		Estimated Annual National Premium - (\$,000) ³		368,086	

Notes

- 1 Extension/Alteration figures are based on the addition of the HIA figures derived from the HIA Renovations Monitor. The HIA Renovations monitor estimates the realistic level of domestic renovations and the numbers are gleaned from actual Warranty Insurance policy sales figures.
- 2 These estimates show that the official Building Commission figures would account for 25% of all Renovations under \$50,000.00. These figures have been increased in the above table by a factor of 4 for projects over \$10,000 ie: those projects that would attract a Warranty Insurance premium
- 3 The National Estimated Premium is taken from data available which shows that excluding Queensland, Victoria accounts for 34% of all building work.

HIA Financial History



30 January 2006



FORMER MINISTERIAL ADVISER JOINS HIA

The Housing Industry Association has announced the appointment of former senior ministerial adviser Chris Lamont as its Executive Director for Federal Relations.

Mr Lamont was previously Chief of Staff to the Minister for Small Business and Tourism, Fran Bailey, a post he took up following the 2004 Federal election. Before that he was Ms Bailey's Defence, Infrastructure and Employment Services Adviser when she was the Minister for Employment Services and Minister Assisting the Minister for Defence.

A Queenslander, he completed his university education in the state before joining the Department of Defence through its graduate entry program. While there he focussed on the department's property, infrastructure and contracting issues.

Mr Lamont says he has always held a deep interest in the infrastructure, property and housing industries. "HIA is one of the most respected and influential industry associations in Australia and I am looking forward to making a contribution towards its aims and objectives," he said.

"The housing industry is crucial to the health of the Australian economy and there can be no more important task than advancing its interests."

Announcing the appointment, HIA Managing Director Ron Silberberg says Mr Lamont will be a strong addition to the association's team.

"The large majority of our members are small business people and Chris' experience in this sector will be invaluable," he said.

Mr Lamont takes up his position on February 6.

FOR FURTHER INFORMATION please contact:
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media release

