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



13<sup>th</sup> April 2008

Dear Senator Milne

I have been asked by Phil Dwyer of *The Builders' Collective of Australia* to contribute information from my own case against the HIA to the State Inquiry into housing, in particular points a-e of 2 with reference to the Economics Committee for investigation and report.

I have enclosed all legal documents pertaining to our case. A brief breakdown includes:

- We entered into the contract for building our home at Lot 63 Jillian Street, Kings Meadows, Tasmania on 4<sup>th</sup> July 1997.
- On the 4<sup>th</sup> December 1997 we sought help from the director, Peter Geeves, of the HIA, as we suspected our builder Eddie Cook had become insolvent.
- Directed by Peter Geeves to terminate the contract.
- A one page document was signed by the builder, Eddie Cook, the director of HIA, Peter Geeves and home owners, Cliff and Donna Cunningham on 4<sup>th</sup> December 1997
- Peter Geeves told Cliff and Donna if they signed the agreement it would release the builder from the contract and enable a new builder to start work on the dwelling immediately, and that a new builder had been instructed to complete the dwelling with the money that was left owing on the contract (\$36 260). We understood that Home Owners Warranty states that if your builder is found insolvent that a new builder is assigned and works are completed to the original cost of the contract.
- The new builder however costed the completion of the building to be substantially more than the \$36250, and post the agreement, the insurance company, Home Owners Warranty, did not agree to pay the monies owed because the agreement that Peter Geeves had asked all parties to sign, apparently released the builder, Eddie Cook and his obligations to finish the building.
- We were informed by our legal representative, Bruce Crawford, that the way in which the agreement was signed and the wording of the agreement was fraudulent.
- Oddly when the agreement was forwarded to Bruce Crawford, the one page document had become 2 pages and additional information included without the consent of Donna and Cliff Cunningham and only initialled by Peter Geeves
- Subsequently a court case began against HIA and Peter Geeves
- The case was settled in 2002 to the amount of \$42 500; however, I would like to add that this amount covered only the costs of the home being finished but not our legal costs or any additional costs that needed to be covered, such as rent and mortgage interest that needed to be paid during this time.

One point I would like to stress is that during our case it was found that Home Owners Warranty was owned in total by the HIA and that the agreement was not drawn up by the HIA solicitors but by Faulds Associates being Peter Geeves personal solicitors. It was our opinion that the signing of the agreement was done so in a fraudulent manner to protect the Home Owners Warranty from having to pay for the completion of the building.

We have not yet recovered financially or emotionally from the toll in which the case and its stress took on us.

I hope this information is useful to your inquiry.  
Yours sincerely  
Cliff and Donna Cunningham

The Builders' Collective of Australia inc. Reg No: A0044153G  
*Representing the small to medium Builders of the nation*

8<sup>th</sup> April 2008

Dear Donna

As you may have already heard that on the 19<sup>th</sup> of March 2008 the Australian Senate announced plans to conduct their own Inquiry into Last Resort Mandatory Privatised Builders Warranty Insurance.

The motion put on the notice paper by Senator Christine Milne of the Greens for the inquiry was supported by all parties and will be undertaken immediately, and report by the end of May.

The full text of the motion is attached and I ask you to once again take some time again to contribute to this very important inquiry, **the most important one of all as it is not another State Inquiry or review.**

Submissions close on the 18<sup>th</sup> April so there is no time to waste. Address your submission to, Committee Secretary, Senate Economics Committee, Department of the Senate, PO Box 6100 Parliament House, Canberra ACT 2600, Australia, and email it to:  
[economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au),

I have included all your original material you sent to me and hope you will put in your submission as soon as possible and please keep in mind anything you say is covered by **Parliamentary Privilege** so you can say whatever you like without any fear whatsoever.

If you have any questions regarding this inquiry then please call me on the number below.

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](mailto:dwyerbld@bigpond.net.au) www.builderscollective.org.au  
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*No. 8 – 19 March 2008*

## **BUSINESS OF THE SENATE**

### **Notices of Motion**

*Notice given 13 February 2008*

#### **I Senator Milne: To Move-**

- (1) That the Senate notes:
  - a) the housing affordability crisis in Australia and the need for a national affordable housing agreement;
  - b) the need to upgrade Australia's building stock and strengthen building regulations to increase the energy efficiency of existing and new buildings, both residential and commercial;
  - c) the central role played by the Housing Industry Association in developing government policy;
  - d) the relationship between housing affordability and mandatory privatised last resort Builders Warranty Insurance particularly, the increasing number of complaints from builders and consumers concerning the failure of the last resort warranty insurance regime to provide consumer or builder protection;
  - e) the decision in March 2002 to remove all Commonwealth and State regulatory controls over last resort warranty insurance; and
  
- (2) That the following matter be referred to the Economics Committee for investigation and report by May 2008;  
Australia's mandatory Last Resort Home Warranty Insurance scheme, including:
  - a) the appropriateness and effectiveness of the current mandatory privatised last resort Builders Warranty Insurance scheme in providing appropriate consumer protection and industry management.;
  - b) the reasons for and consequences of the ministerial decisions relating to the removal of consumer protection provisions in respect of Corporations Regulation 7.1.12(2);
  - c) the ramifications for the future supply of this insurance product following the draft recommendation from the Productivity Commission report released in December 2007;
  - d) any potential reforms and their costs and benefits which may lead to appropriate consumer and builder protection and improved housing affordability; and
  - e) any related matters

*Notice of motion altered on 17 March 2008 pursuant to standing order 77.*

DONNA CUNNINGHAM

Effective from 1st January 1998

TASMANIA

## Residential Building Work Insurance Policy

(under Division 1, Part 3, Housing Indemnity Act 1992)

### The Cover

If (and only if) -

- the premium is paid
- a certificate of insurance is issued by us or the Agent and
- you, the insured, have complied strictly with all your obligations in this policy

then, subject to the terms of the policy, we, the insurers, will at our option make good or pay you your loss resulting from -

- non-completion of the building work because of the insolvency, death or disappearance of your builder or
- your inability to enforce or recover under a statutory warranty because of the insolvency, death or disappearance of your builder or
- a breach of a statutory warranty by your builder.

## Definitions

<i>The Agent:</i>	Our agent Parnell Cranston & Co Pty. Ltd. A.C.N. 008 079 712 and Aon Risk Services Australia Ltd. A.C.N. 000 434 720 through their sub-contractor HIA Insurance Services Pty Ltd A.C.N. 076 460 967 of 157 Campbell Street, Hobart 7000.
<i>We, our, us:</i>	The insurers listed at the end of this policy.
<i>You, your:</i>	The party named as the owner or the client in your application form together with (where the context admits) each party who subsequently purchases or otherwise acquires the building.
<i>The building:</i>	The building at the address given in your application form.  Or, if that building is divided into separate residences, the part of that building which is the residence given in your application form.
<i>Your builder:</i>	The party named as the builder in your application form.
<i>Building work:</i>	Building work (as defined in the Act) carried out or to be carried out on, or in respect of, the building by your builder.
<i>Your application form:</i>	The form signed by you (or a previous owner of the building) or your builder to apply for this insurance.
<i>Insolvent:</i>	Your builder is insolvent if your builder becomes - <ul style="list-style-type: none"> <li>• bankrupt (if a natural person)</li> <li>• subject to external administration under the Corporations Law (if a body corporate) or</li> <li>• subject to a composition or deed or scheme of arrangement with or for the benefit of creditors.</li> </ul>
<i>Disappearance:</i>	Your builder has disappeared if your builder cannot be found after due search and enquiry.
<i>Statutory warranty:</i>	Statutory warranty (as defined in the Act) in respect of the building work.
<i>The Act:</i>	Housing Indemnity Act 1992 as amended.
<i>Building Regulations:</i>	Building Regulations under the Local Government Act.

### Exceptions, Limits of Indemnity, Deductible

1. We have no liability to you whatsoever if you are also named as the builder in your application form.
2. We will not pay more than \$50,000.00 or an amount equal to the cost of the building work (whichever is less) for the aggregate amount of all claims under this policy.
3. (a) Subject to (b), in relation to a claim ("a non-completion claim") arising because your builder fails to complete the building work as a result of your builder's insolvency, death or disappearance, we will not pay any part of any payment made to your builder for the building work which exceeds the amount that payment ought to have been for there to have been no contravention of Section 20 of the Act.  
 (b) Provided that we will pay up to the first \$5,000.00 of the total of all such parts of all such payments made to your builder after the commencement of the building work.  
 (c) The exception in (a) does not apply to any payment made by you in good faith and in the reasonable belief that it was a genuine progress payment in respect of building work already performed.
4. Subject to clause 5, if at the time a claim arises your builder is insolvent or dead, or has disappeared, we will not pay -
  - any claim arising prior to the day twelve months after completion of the building work if it is worth less than \$100.00 or
  - any claim arising after that day if it is worth less than \$300.00
 but otherwise, subject to clause 5, you must pay the first \$500.00 of any other claim.
5. The franchises and excess referred to in clause 4 do not apply to non-completion claims.
6. We will not pay any claim unless it is made within 6 years after completion of the building work to which the claim relates.
7. We will not pay any claim unless it is made within 90 days from the time when the person who is first entitled to make that claim under this policy first becomes aware, or might reasonably have become aware, of some fact or circumstance giving rise to the claim.
8. If we pay a claim, we are subrogated to your rights against any other party in relation to the claim.  
 You must not exclude or limit your rights against any such party.  
 If you do, we will not pay a claim to the extent we can no longer recover from that other party because those rights are affected.
9. The cover provided by this policy does not extend to an interest in the building that is not your interest.

We will not be liable under this policy to anybody except you.

10. We will not pay any claim if you have failed to comply fully with the conditions in clauses 11, 12 and 13 below.

### Conditions

11. You must give us or the Agent any assistance or information required.
12. You must not make any admission, promise, compromise proposal or payment in relation to any claim or potential claim.
13. You must not make any attempt to rectify any building work which is or may be subject to a claim without our consent.

### Other Terms

14. We may conduct or take over any legal action in connection with any claim and compromise and settle it as we wish.

However, we must ensure that any claim you may have against another party and to which we are not subrogated is not adversely affected.

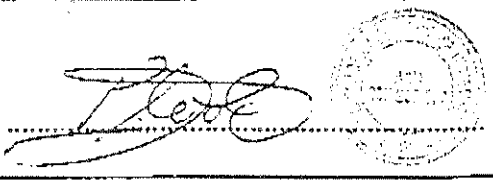
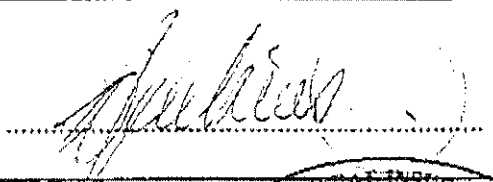


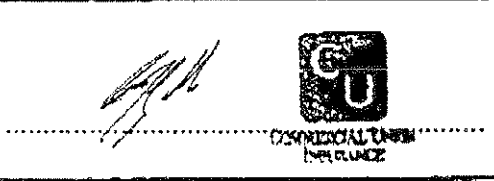
15. We may refuse to accept your application form.

You are not covered until we (or the Agent) have issued a written certificate of insurance.

This applies even though the premium must be paid to the Agent at the time of lodging your application form.

16. Claims are to be made in writing and delivered to the Agent.

## Insurers

Insurers	Proportion	Signature on behalf of Insurers
Royal & Sun Alliance Insurance Australia Limited A.C.N. 005 297 807	40.00%	
M.M.I. General Insurance Ltd A.C.N. 000 122 850	20.00%	
SGIC General Insurance Ltd. A.C.N. 069 065 158	15.00%	
Mercantile Mutual Insurance (Australia) Ltd. A.C.N. 000 456 799	12.50%	
Commercial Union Assurance Co of Australia Ltd. A.C.N. 004 478 371	12.50%	

1800 177374 -  
07 38442171  
1800 221727



Amended pursuant to an order of the Master dated 31 August 2000  
AMENDED STATEMENT OF CLAIM

In an action:

CLIFFORD HILTON CUNNINGHAM and DONNA MARGEURITE CUNNINGHAM  
Plaintiffs

HOUSING INDUSTRY ASSOCIATION LIMITED (ACN 004631752)

and PETER MAX GEEVES

Defendants

1. The Plaintiffs are the owners of Lot 63, Jillian Street, Kings Meadow in Tasmania ("the premises").
2. On 4 July 1997 the Plaintiffs entered into a contract with a Mr E. Cook ("the builder") to construct a dwelling at the premises ("the dwelling").
- 2A At all material times the Firstnamed Defendant was the ultimate holding company of and/or was the only shareholder in, and/or controlled the operation and management of, and had an interest in, Home Owners Warranty Ltd ACN 068 933 844.
- 2B At all material times the Plaintiffs were named as the owner in a Residential Building Work Insurance Policy number 7565(3) dated the 4th July 1997 and issued on the 11th August 1997 pursuant to the provisions of Division 1, Part 3 of the Housing Indemnity Act 1992 (hereinafter referred to as the insurance policy). The insurance policy was in respect of work to be undertaken by the builder in the construction of the dwelling. The Plaintiffs will refer to the said insurance policy at the trial of this matter for its full terms and effect.
- 2C It was a term inter alia of the insurance policy that the insurers referred to in the said policy (hereinafter referred to as the insurers) would at their option make good or pay to the Plaintiffs their loss resulting from:
  - (i) non-completion of the construction of the dwelling because of the insolvency, death or disappearance of the builder;
  - (ii) the Plaintiffs' inability to enforce or recover under a statutory warranty because of the insolvency, death or disappearance of the builder; and
  - (iii) a breach of a statutory warranty by the builder.

2D At all material times Home Owners Warranty Limited was acting as agent for and on behalf of the insurers.

3. Mr Cook:

(a) failed to complete the dwelling within the time stipulated in the contract;

(b) failed to construct the dwelling in accordance with the contract;

("the matters");

(c) was in breach of Statutory Warranties as defined in the Housing Indemnity Act 1992.

4. On 1 December 1997 the Second-Named Plaintiff contacted the Second-Named Defendant and in a conversation requested the assistance of the First-Named Defendant in relation to the matters.

5. During the course of the said conversation the Second-Named Defendant said the First-Named Defendant would help the Plaintiffs overcome the matters.

6. On 4 December 1997 at the premises:

(a) the Second-Named Defendant told the Plaintiffs that Housing Indemnity Insurance would rectify the matters;

(b) the Second-Named Defendant told the Plaintiffs that they would receive an indemnity of \$150 per week from the said insurance for every week during which the completion of the dwelling was overdue;

(c) the First-Named Plaintiff asked the Second-Named Defendant if the sum of \$36,260 still remaining to be paid under the contract would be sufficient to cover the work remaining to be done whereupon the Second-Named Defendant told the Plaintiffs that their Housing Indemnity Insurance would cover all work still to be done on the dwelling;

(d) the Second-Named Defendant told the Plaintiffs that the First-Named Defendant would get a builder to complete the dwelling as it was meant to be completed under the contract;

(e) The Second-Named Defendant advised the Plaintiffs not to go on employing the builder and to terminate the contract.

7. In a subsequent telephone conversation on 4 December 1997, the Second-Named Defendant again advised the First-Named Plaintiff to terminate the contract.

8. Later on 4 December 1997:

(a) the Second-Named Defendant and the Plaintiffs met at the premises;

(b) at the meeting:-

- (i) the Second-Named Defendant produced a one page agreement ("the agreement");
  - (ii) the Second-Named Defendant told the Plaintiffs that if they signed the agreement it would release the builder from the contract and enable a new builder to start work on the dwelling immediately;
  - (iii) the Second-Named Defendant told the Plaintiffs that the new builder had been instructed to complete the dwelling with the money that was left owing on the contract by the Plaintiffs to Mr Cook if he had completed the dwelling, that is \$36,260;
  - (iv) the Second-Named Defendant told the Plaintiffs that after the agreement was signed by the Plaintiffs, the materials stored at the premises for eventual inclusion as component parts of the dwelling would belong to the Plaintiffs;
  - (v) the Second-Named Defendant told the Plaintiffs that if they signed the agreement, building work would start on the dwelling on 8 December 1997;
  - (vi) the Second-Named Defendant told the Plaintiffs that if they signed the agreement they would be in occupation of the dwelling before Christmas 1997.
9. On 4 December 1997 the Second-Named Defendant procured and encouraged the Plaintiffs to sign the agreement ("the conduct").
10. In making the statement set out in paragraph 8(a)(iii) of this Statement of Claim the Defendants represented by implication that the new builder had agreed to and was willing to complete the dwelling at a price not in excess of \$36,260.
11. The Plaintiffs signed the agreement acting on the statements made by and the conduct of the Second-Named Defendant referred to in paragraphs 6, 8 and 9 of this Statement of Claim.
12. In making the statements referred to in paragraphs 6 and 8 and in undertaking the conduct referred to in paragraph 10 the Second-Named Defendant was acting within the actual or apparent scope of his authority as an employee of the First-Named Defendant.
13. The said statements were made and the conduct undertaken in trade or commerce within the meaning of s52(c) of the *Trade Practices Act 1974* and s14(1) of the *Fair Trading Act 1990* (Tas).
14. The said statements and conduct were.

- (a) misleading;
- (b) deceptive; and
- (c) likely to mislead or deceive the Plaintiffs;  
and did mislead and deceive the Plaintiffs.

#### PARTICULARS OF CONDUCT

The defendants engaged in conduct that is misleading or deceptive or is likely to be mislead or deceive in breach of the said sections in that they:-

- (a) falsely represented to the Plaintiffs that they could be relied on to assist the Plaintiffs in the resolution of the difficulties they were having in relation to the construction of the dwelling;
- (b) induced the Plaintiffs to sign the agreement with the builder thereby avoiding any claim the Plaintiffs may have had under their housing indemnity policy arising from the delay of the builder in constructing the dwelling and upon his failure to complete the dwelling;
- (c) falsely represented to the Plaintiffs that if they signed the agreement a new builder would be able to start work on the dwelling immediately;
- (d) falsely represented to the Plaintiffs that if they signed the agreement the new builder would be able to complete the dwelling with the sum left owing of \$36,260.00;
- (e) falsely represented to the Plaintiffs that the dwelling would be ready for occupation prior to Christmas 1997;
- (f) falsely represented to the Plaintiffs that the new builder would have the dwelling ready for occupation prior to Christmas 1997;
- (g) falsely represented that materials stored for eventual inclusion as component parts of the dwelling would belong to the Plaintiffs.
- (h) failed to advise the Plaintiffs of the matters set out in paragraphs 2A, 2C and 2D above;
- (i) failed to advise the Plaintiffs that the Firstnamed Defendant had a conflict of interest in purporting to advise what steps the Plaintiffs should take in resolution of the difficulties they were having in relation to the construction of the dwelling as referred to in paragraph 3 above;

(i) failed to advise the Plaintiffs to seek separate and independent advice in relation to the said difficulties.

14A Subsequent to the failures referred to in paragraph 3 above the Plaintiffs made a claim upon the insurance policy.

14B By letter dated the 15th May 1998 Home Owners Warranty Ltd aforesaid acting on behalf of the insurers advised that the Plaintiffs' claim upon the insurance policy was rejected by virtue of the Plaintiffs having entered into the agreement referred to in paragraph 8(i) above.

15. As a result of the defendant's conduct that was misleading or deceptive or was likely to be misleading or deceptive the Plaintiffs suffered damage, financial loss and inconvenience.

PARTICULARS OF DAMAGE

To be supplied.

AND THE PLAINTIFF CLAIMS:

Damages and costs to be taxed.

DATED the 16th day of March 1998  
5th September 2000

CRAWFORD & CRAWFORD

Per: 

Solicitors for the Plaintiffs

To: HOUSING INDUSTRY ASSOCIATION LIMITED  
And to: PETER MAX GEEVES



**CRAWFORD & CRAWFORD**  
BARRISTERS AND SOLICITORS

Our Ref: **BHC:LC**

Your Ref:

15 June 2000

Mr & Mrs C H Cunningham  
30 Jillian Street  
**KINGS MEADOWS TAS 7249**

Dear Cliff and Donna

The barrister Bill Griffiths has suggested some amendments to the Statement of Claim so as to refer to the fact that the Housing Industry Association is the owner of Home Owners Warranty, and referring to the Association's failure to advise you of its interest in minimising claims against Home Owners Warranty before having you sign the release.

I believe these amendments are helpful. I **enclose** a copy of them. I am forwarding them to the Association's solicitors. I will keep you informed as the matter progresses. I am still hopeful that the matter will be heard in the October sittings.

Yours sincerely  
**CRAWFORD & CRAWFORD**

**BRUCE H. CRAWFORD**

PARTNERS:  
BRUCE HUNTER CRAWFORD LL.M.  
KAREN CRAWFORD LL.B.

ASSOCIATES:  
REBECCA J. BROWN B.A. LL.B. (Hons.)

66 CAMERON STREET, LAUNCESTON  
TASMANIA

OFFICE ALSO AT EVANDALE  
TASMANIA

PO BOX 1899  
LAUNCESTON 7250  
DX 70177 LAUNCESTON  
PHONE (03) 6334 0000  
FAX (03) 6334 1019  
E-MAIL [crawford@vision.net.au](mailto:crawford@vision.net.au)

**CUNNINGHAM - HIA**

Add paragraph 2A as follows:

- 2A. At all material times the Firstnamed Defendant was the ultimate holding company of and/or was the only shareholder in, and/or controlled the operation and management of, and had an interest in, Home Owners Warranty Ltd ACN: 068 933 844.

Add paragraph 2B as follows:

- 2B. At all material times the Plaintiffs were named as the owner in a Residential Building Work Insurance Policy number 7565(3) dated the 4th July 1997 and issued on the 11th August 1997 pursuant to the provisions of Division 1, Part 3 of the Housing Indemnity Act 1992 (hereinafter referred to as the insurance policy). The insurance policy was in respect of work to be undertaken by the builder in the construction of the dwelling. The Plaintiffs will refer to the said insurance policy at the trial of this matter for its full terms and effect.

Add paragraph 2C as follows:

- 2C. It was a term inter alia of the insurance policy that the insurers referred to in the said policy (hereinafter referred to as the insurers) would at their option make good or pay to the Plaintiffs their loss resulting from:
- (i) non-completion of the construction of the dwelling because of the insolvency, death or disappearance of the builder;
  - (ii) the Plaintiffs' inability to enforce or recover under a statutory warranty because of the insolvency, death or disappearance of the builder;  
and
  - (ii) a breach of a statutory warranty by the builder.

Add paragraph 2D as follows:

2D. At all material times Home Owners Warranty Limited was acting as agent for and on behalf of the insurers.

Amend paragraph 3 by adding (c):

(c) Was in breach of Statutory Warranties as defined in the Housing Indemnity Act 1992.

Add at the end of paragraph 14 the following:

- (h) failed to advise the Plaintiffs of the matters set out in paragraphs 2A, 2C and 2D above;
- (i) failed to advise the Plaintiffs that the Firstnamed Defendant had a conflict of interest in purporting to advise what steps the Plaintiffs should take in the resolution of the difficulties they were having in relation to the construction of the dwelling as referred to in paragraph 3 above;
- (j) failed to advise the Plaintiffs to seek separate and independent advice in relation to the said difficulties.

Add new paragraph 14A and 14B:

14A. Subsequent to the failures referred to in paragraph 3 above the Plaintiffs made a claim upon the insurance policy.

14B. By letter dated the 15th May 1998 Home Owners Warranty Ltd aforesaid acting on behalf of the insurers advised that the Plaintiffs' claim upon the insurance policy was rejected by virtue of the Plaintiffs having entered into the agreement referred to in paragraph 8(i) above.



THIS DEED OF RELEASE is made the \_\_\_\_\_ day of \_\_\_\_\_ 2002.

**BETWEEN:** **CLIFFORD HILTON CUNNINGHAM & DONNA MARGEURITE CUNNINGHAM** both of 20 John Street, Oakbank in the state of South Australia (hereinafter with their executors, administrators and assigns called "the claimants") of the first part.

**AND:** **HOUSING INDUSTRY ASSOCIATION LTD (ACN 004 631 752)** having its registered office situate at 79 Constitution Avenue, Canberra, in the Australian Capital Territory (hereinafter with its administrators and permitted assigns called "the Association") of the second part.

**AND:** **PETER MAX GEEVES** formerly care of the Association, 309 Liverpool Street, Hobart in the state of Tasmania (hereinafter with his executors, administrators and assigns called "Geeves") of the third part.

**1. RECITALS**

- 1.1 At all material times a house was being constructed for the claimants at Lot 63, Jillian Street, Kings Meadows in Tasmania ("the premises").
- 1.2 At all material times the Association represented the interests of those builders who are members of the Association.
- 1.3 At all material times Geeves was employed by the Association.
- 1.4 On or about 4th July 1997 the claimants entered into a contract with a Mr Cook to construct the premises.
- 1.5 At all material times Mr Cook was a member of the Association.
- 1.6 The claimants allege that Mr Cook failed to complete the premises within the time he had contracted to do so, failed to construct the premises in accordance with that contract, and was in breach of warranties contained in the Housing Indemnity Act 1992 ("the complaints").
- 1.7 The claimants allege that on or about 1st December 1997 they contacted Geeves and requested his assistance and the assistance of the Association in relation to the complaints ("the request").
- 1.8 The claimants allege that on or about 4th December 1997 as a result of the request Geeves on behalf of the Association made certain representations relied upon by them, which representations were allegedly misleading, deceptive, and likely to mislead or deceive the claimants, as a result of which they suffered loss. The claimants subsequently issued proceeding number 73 of 1998 out of the Supreme Court of

*JD*  
*P. 11/6*

Tasmania ("the action") against both the Association and Geeves claiming damages with respect to these allegations ("the claim").

- 1.9 The Association and Geeves have both denied liability for the claim.
- 1.10 With a denial of liability and solely for the purpose of bringing the claim and all claims and disputes between the parties to an end and to avoid the cost and expense of litigation, the Association and Geeves have together agreed to pay to the claimants the sum of FORTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$42,500.00) for damages and agreed legal costs and disbursements, in consideration of which both the Association and Geeves or either of them are released from and indemnified against the claim and all claims and disputes the claimants or either of them have or but for these presents may have had against the Association and Geeves or either of them.

## 2. OPERATIVE PART

- 2.1 In consideration of the payment by the Association and Geeves of the sum of FORTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$42,500.00) for damages and agreed legal costs and disbursements, the claimants jointly and severally release the Association and Geeves from the claim, and any and all claims, demands, disputes, suits or proceedings in respect of or arising out of the complaints, the claim and the action to the intent that the Association and Geeves or either of them shall stand free and discharged from any liability whatsoever howsoever arising to the claimants. The claimants further agree to discontinue the action in consideration of the said payment, and the Association and Geeves agree not to seek costs following the discontinuance of the action.
- 2.2 The parties agree that this Deed of Release operates as an absolute bar to prosecution of the action or any other proceedings that the claimants are or but for this Deed of Release may have been entitled to institute against the Association and Geeves or either of them in respect of the claim and the complaints, and that the same may be pleaded as such.
- 2.3 The claimants hereby jointly and severally indemnify the Association and Geeves against liability in respect of any loss or damage arising out of or as a consequence of the claim and the complaints.

JB  
LBB  
TWJP

2.4 The parties agree that this Deed of Release is made with a denial of liability by the Association and Geeves and solely for the purpose of putting the claim and all claims and disputes between the parties to an end.

IN WITNESS whereof the claimants have hereunto set their hands and seals, and Geeves has hereunto set his hand and seal, and the Association has affixed its common seal the day and year of this Deed.

SIGNED SEALED & DELIVERED by )

CLIFFORD HILTON CUNNINGHAM & )

DONNA MARGEURITE CUNNINGHAM )

*[Handwritten signature]*  
*D. M. Cunningham.*

in the presence of: )

*W. Walsh JP.*

Witness (please sign)

.....  
TIMOTHY MICHAEL FRANKS WALSH  
Full name

.....  
94 MAIN RD BALHANNASSA SA 5112  
Address

.....  
POSTAL MANAGER  
Occupation  
.....  
122584  
ASPIRATOR SA

The COMMON SEAL of )

HOUSING INDUSTRY ASSOCIATION )

LIMITED (ACN 004 631 752) is affixed

Hereto in the presence of: )

.....  
Director

.....  
(Please print name)

.....  
Director/Secretary

.....  
(Please print name)

SIGNED SEALED & DELIVERED by )  
PETER MAX GEEVES )  
in the presence of: )

.....  
*Witness (please sign)*

.....  
*Full name*

.....  
*Address*

.....  
*Occupation*



HOUSING INDUSTRY ASSOCIATION LIMITED  
A.C.N. 004 631 732  
VICTORIA/TASMANIA DIVISION

153 Campbell Street, Hobart, Tasmania 7000  
PO Box 346, North Hobart, Tasmania 7002  
Fax: (002) 31 2910 Telephone: (002) 34 8922

FACSIMILE TRANSMISSION

TO:

Ms A. Hamilton

COMPANY:

ARCHER BUSHBY SOLICITORS

FAX NO:

02 63 216577

FROM:

PETER GEEVES  
DIRECTOR - TASMANIA

SUBJECT:

CUNNINGHAM - COOKE

DATE:

8/12/97

Number of pages (including this cover page)

MESSAGE:

As discussed copy of agreement between  
both parties re dwelling at 30 JILLIAN ST  
LANCASTON.

*Peter Geeves*

(If you do not receive all pages of this fax, or you receive it in error, please telephone (03) 62 348922.)

Don't miss out on the Top Homes Finals in November 1997

This Agreement is made the 4th day of December, 1997 between Cliff and Donna Cunningham of 61 Victoria Street, Youngtown (in this agreement called 'the Owners') and Eddie Cook of 57 Devon Hills Road, Devon Hills Road (in this agreement called 'the Builder') in these circumstances:

1. The Owners and the Builder entered into a contract on 4 July, 1997 by which the Builder agreed to build for the Owners building works at 30 Jillian Street in accordance with the contract documents.
2. The building works are partly completed but not fully completed.
3. The parties wish to abandon the contract without completing it.

Now by this Agreement the Owners and the Builder agree

1. The Owners hereby release the Builder from all his unfulfilled obligations under the contract, and accept liability for the payments referred to in paragraph 2. *ANNEXURE 'A'*
2. In exchange, the Builder releases the Owners from any further payments due from them under the contract, or which would fall due but for this Agreement save and except that
  - (a) ~~the Owners are to pay to the bricklayer Martin Jordan sub-contracted by the Builder all sums owing to him for work performed by him on the building works~~
  - (b) ~~the Owners are to pay the Builder a reasonable price for his labour and materials in supplying and installing the back door and two windows in a bedroom, under a variation to the contract.~~
3. That the Housing Indemnity insurers are to be given a copy of this Agreement, and that the Builder is to have no responsibility for works not yet carried out.

Signed by Cliff Cunningham  
in the presence of

*[Handwritten signature]*  
*[Handwritten signature]*

Signed by Donna Cunningham  
in the presence of

*[Handwritten signature]*  
*[Handwritten signature]*

Signed by Eddie Cook  
in the presence of

*[Handwritten signature]*  
*[Handwritten signature]*  
*[Handwritten signature]*

Annexure A

To the Agreement between Cliff and Donna Cunningham (owners) and Eddie Cook (builder).

1. The owner agrees to pay the bricklayer direct.
2. The owner to pay builder for backdoor and agreed variation on windows. Amount to be paid \$122.00.
3. Oregan for pergola has been paid for by builder and re-imbursed by owner and builder to deliver on site Friday 5/12/97.
4. Owner to pay painter direct (note that builder is to supply owner a written quote for painting work, both internal and external).
5. Owners to pay for finisher, quotation included sanding, two coats polyurethane and stain as required. Builder to supply written quotation to owners
6. Owners to re-imburse builder for account at Laminex Industries for skirting boards, architraves etc.
7. Owners to pay St. Leonards Plaster for supply and fix of all plaster in house (Note that builder to supply an invoice to owners).
8. Owner and builder to discuss builders costs for painting of architraves etc. Builder to be re-imbursed as agreed.
9. Builder to supply Home Owners Warranty with details of construction of house, including photographs for work done to Friday 5/12/97.