

7th May 2008.

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

Dear Mr Dawson

RE: Australia's Mandatory Last Resort Home Warranty Insurance Scheme

HISTORY

Since Privatisation 10 years ago we have seen over 30 reviews and inquiries into Consumer Protection in the building industry.

Most if not all of these have specifically excluded Warranty Insurance or had such restrictive terms of reference the outcomes achieved met the requirements to maintain the status quo, such as the recent Review of Licensing in NSW and the VCEC Inquiry in Victoria, and yet to be able to build in any State the very first criteria that a builder must satisfy to obtain licensing is to have Warranty Insurance eligibility, so this factor can't be excluded.

The most significant inquiry was the Percy Allen Inquiry released in late June 2002 that stated the Building Industry and consumer protection was in crisis, however its recommendations were not heeded. In fact the Ministerial Council of Consumer Affairs ignored its findings as they had adopted and implemented the 10 Point Plan starting in April and finalised it on the 1st July 2002. The arrangements surrounding the implementation of the 10 Point Plan have and are being questioned from a probity point of view.

The selected industry managers and regulators of the nation have continued to provide lip service and apply minor band aid solutions to the problems, and have ignored the fundamental fact that the current regime of consumer protection is fundamentally flawed.

The Australian Consumers Association summed up the situation accurately in CHOICE magazine in August 2004 and stated this Regime "Makes a Mockery of Consumer Protection" a position again reinforced in January 2007 by Indira Naidoo of Choice on the 7.30 Report when she referred to these policies as JUNK INSURANCE.

Warranty Insurance – How it doesn't work.

Particularly since the criminal collapse of HIH compounded further by the disaster of 9/11 we have seen the Insurance Industry better their position, they even achieved having the building industry pay for the HIH collapse impacts on consumers through levies placed on our future building permits. They significantly reduced consumer protection to only 3 triggers, which are death, insolvency or disappearance of the builder, and even then with the insurers further qualifications a claim may not eventuate.

The Consumer

When a consumer is faced with a building dispute his only recourse is with costly civil action over a protracted period, sometimes many years, and generally without an acceptable outcome. The experience now is a consumer is far better off financially to walk away from the problem when it first arises, as to pursue what is believed to be a warranty insurance policy that is to protect the consumer from a failure is far from the truth.

The Builder

A Builder suffers the same fate and cannot achieve resolution to a dispute, and what may start as a small problem escalates to a very significant problem with the involvement of many, all avoiding responsibility and tribunals fail dismally in their endeavours.

The Insurer

The Insurers sit on the sidelines, claim commercial in Confidence and collect an estimated national premium take of some \$350 million annually. While the NSW Government maintain they are providing data information, Daniel Smith of the Institute of Actuaries maintains the information does not provide any meaningful or verifiable claims and premium data.

When it comes to claims facts the insurance industry again hide behind the veil of CIC, however late last year an ASIC press release detailing the charges and announcing the sentencing of one of the directors relating to the failed Homesafe Equities in Victoria shows a minimal claims ratio.

As these claims have been managed by the State Government Victorian Managed Insurance Authority it is a given that this appalling claims ratio would be standard across the industry.

Consumer Affairs Vic.

The insurance premium take is significantly large and the building industry and its consumers are receiving little or no benefit from its being. In fact in a recent submission by Consumer Affairs Victoria suggested consumer protection would be enhanced by the removal of the requirement of warranty insurance as it would remove the barrier for entry to a compliant industry.

All States except Qld are suffering from a non compliant industry and an enormous increase in owner builder activity. (Qld owner builders under 5%) In Victoria owner builder permits are running at 42% down from 52%, after making it more difficult to obtain one of these permits. These figures are obtained from the Building Commission website, and CAV state more than half the building industry is non-compliant. These facts are repeated in all States and the official figure in NSW in December 2007 show of the 34,000 registered builders only 14,000 hold insurance eligibility.

The Office of the Small Business Commissioner in Victoria cites their interest in warranty because of the unfair market practices of the insurer (Vero) while at the same time supporting Consumer Affairs Victoria view.

Anticompetitive environment

These facts create an anti competitive environment for those builders that wish to operate in the compliant industry as to maintain that compliance on an annual basis generates significant costs together with the insurance policy cost on each individual project, whereas with over half of the industry working outside this compliance that has no costs in this area the compliant builder just cannot compete.

Skills shortages and Apprentices

A compliant builder's tenure in the industry is on an annual basis due to insurance eligibility, giving the insurer ability to withdraw insurance and or restrict the annual turnover of the business. The non compliant builder is not even in the position to employ an apprentice.

Clearly employing an apprentice is a long term commitment for a builder and while the Builders Warranty Regime applies, the greater majority of small builders who traditionally employ apprentices will not make that commitment therefore compromising apprentices and the skills shortages situation.

Tasmania's decision

Tasmania's upheaval in the building industry with the criminal charges laid against the Deputy Premier in relation to their failed licensing system further highlight the failure of the current regime, however the Government appears to be addressing the issues in a professional and forthright manner and in early April 2008 decided to completely remove builders warranty insurance from their industry. The basis for this decision was that it delivers no benefit to Tasmania's consumers or builders, and while the Government is on the record as a clear supporter of the Queensland model its market is not sufficiently large enough to adopt that scheme and have instead decided to rely on the statutory warranties within the building act (now available through the removal of BWI) coupled with mandatory building contracts, and compulsory binding adjudication in a timely manner. Their belief is that these arrangements will better protect their consumers, and hopefully a national approach will be taken based on the Queensland model that they would embrace.

CONCLUSION – The need for action.

The building industry is a key economy driver, its **Consumers** and **Builders** derive every cent of income for the industry, and accordingly these two entities are the **primary industry stakeholders**.

This Senate Inquiry has a wide reaching terms of reference that will allow a holistic approach to the matter of Consumer Protection which is exactly what is required.

It will also allow the Senate to inquire into the role of those that have demonstrated a virtual obsession in maintaining the status quo and what and how their actions and decisions have impacted on those that may have had a contrary view and if required to recommend a Royal Commission into their activities to establish who has benefited from the flow of premiums.

We ask the Senate to represent the tens of thousands small building businesses across the nation and provide the leadership and direction to implement a national uniform scheme of consumer protection based on the Queensland model as this is consumer protection and the outcome Australia deserves.

Yours Faithfully

Phil Dwyer

