

19th May 2008

Committee Secretary,
Senate Economics Committee,
Department of the Senate,
PO Box 6100,
Parliament House, Canberra ACT 2600,
Australia. economics.sen@aph.gov.au,

Re: Senate Inquiry into Last Resort Mandatory Privatised Builders Warranty Insurance

Rejoice - The new Tasmanian Attorney General has abandoned mandatory last resort housing indemnity insurance in Tasmania – congratulations go out to him from ALL future Tasmanian consumers!

We have unfortunately been victims of the previous first resort insurance and have endured nine long years fighting to be heard on behalf of consumers. If required, we would be happy to present verbal evidence before the Senate in this inquiry, with any/all documentation.

We still to this day live in a defective home, with a defective leaking roof and a host of other defects.

Our own research reveals that had a system like the Queensland Building Services Authority been in place, our defects would have been rectified and we would now own our home, instead we will spend the next 30 years paying legal costs for the right to live in a defective house! First resort, last resort and the whole dispute resolution process is in dire need of a complete overhaul.

Chronology:

1. Residence construction 1999 by a builder who was the President of the MBA Tas.
2. Builder insists on full payment as per standard MBA contract (no retention clause)
3. Number of quality issues arise
4. We advised the MBA of a number of building defects that became apparent during the construction, and their advice was to let the builder complete the project before commenting (which in hindsight was very bad

advice). When we wrote to the National MBA to investigate the matter we received a response 'MBAT have been unable to locate the correspondence' (even though we sent the CEO, Wilhelm Harnisch, copies of ours and MBAT correspondence). As with all our dealings with the MBA – they close ranks for their members!

5. Owners then lodge claim with HIH Insurance for warranty under Housing Indemnity –HIH assessor inspects and documents over 40 defects
6. HIH cannot process claim until the MBA contract conditions are fulfilled (Arbitration clause)
7. Dispute lodged with MBA
8. HIH collapsed –insurance no longer available to process claim
9. Arbitration commenced March 2001:
 - Arbitrator awarded 85% of claims to Owners from July 2001 until August 2002.
 - By August of 2002 the builder had not rectified ANY of the **awarded defects**
 - Arbitration abandoned August 2002 – due to 'possible conflict of interest'
 - Owners legal, arbitrator and expert report costs in excess \$25,000
- 10.2nd Arbitration commenced with new Arbitrator September 2002 – brief to complete arbitration after 'written documentation' only in 2 days.
 - Arbitration completed February 2004
 - 2nd Arbitrator determines awards (other than a few minor items) to the builder. After hearing ALL the evidence provided in the 1st arbitration, and with an HIH assessors Scott Schedule of over 40 defects noting 'defects were the responsibility of the builder' plus an independent building report stating the house was defective - The question has to be asked – How can 2 arbitrators arrive at completely different conclusions?
- 11.2nd Arbitrators costs \$26,100.00 –owners total costs in excess of \$150,000.00 for following **due process**.
12. Builder was Registered (not withstanding this history)

Conclusion:

- Home Owners Warranty fails to provide solutions, especially when insurance is controlled by the building associations. (in our case the MBA issued a 'Master Policy' underwritten by HIH Insurance – our claim was

not recognised by the insurance company under the policy number provided by the MBA).

- Arbitration is a farce and fails to provide justice - how can arbitration be 'transparent' and 'independent' when arbitrators are nominated in the contracts by the respective building associations?
- The construction of our home, in many instances failed to meet the building codes/standards; the builder was in breach of contract, and yet the regulatory bodies do not seem to care?

This has been a nine year battle for us NOT to get our house fixed. We have a chronology of all the Government Departments we have contacted from 1999 during the building process until current time.

The 2nd arbitrator awarded 65% of the builder's costs to be paid by us, and currently we are facing taxation amounting to \$35,000. Dispute resolution costs incurred by builders are tax deductible against their businesses, costs incurred by consumers are not – this might provide some answers why it is in the builder's best interest to prolong this process as long as possible. Consumers are financially disadvantaged!

We trust our plight will be one of many that will encourage the Senate, the Building Industries and Consumers alike to consider ways in which we can develop a fair and just system for all stakeholders.

Yours Faithfully,

Janine Bransden & Chris Carlson