To Legislative Council Standing Committee on Finance and Public Administration

To the Chair
The Hon Gordon Rich-Phillips MLC

Dear Mr Gordon Rich-Phillips MLC

My response to the terms of reference. I can summarise briefly as

1] The current arrangements are ineffective and inappropriate at multiple levels. At best they can be described as a failed experiment but more appropriately a post HIH fraud foisted on govt's and consumers alike in a time of crisis

2] Structural reform is required with CAV regaining full ministerial control as was the case till privatisation in the mid 90's.

Currently some government functions re regulation of the building industry have been outsourced to the insurers with no tender process. There is no binding contract or performance objective/bench marks and non-existent or at best minimal regulatory oversight/accountability. Certainly any oversight is totally inadequate and there is no binding obligation on the insurers to respond or comply. They, the insurers are the final arbiters in deciding to comply or not.

Thus the insurers conduct their business on the premise that they are not accountable to the public or the government as their first and foremost legal obligation under corporate law is correctly to the corporation and its stakeholders.

Car, household insurance is an annual repeat consumer business so customer care/relations is a factor in enhancing repeatability with cost savings and increased profitability every time a policy is renewed.

With BWI to some extent, the builder after he meets the eligibility criteria has the same renewal characteristics as for car insurance. Let's hope there are no crashes. Yet the ultimate beneficiary of a BW is an orphan customer, no repeat business and more often than not no other policies with that insurer. So were is the commercial incentive to retain and expand that business re that consumer. None. In fact there is every structural incentive to screw the homeowner as the insurers primary obligation is to other stakeholders under the corporate act, ie shareholders, yearly profits, dividend paid etc.

This one of premium for BWI the insurers would like us to believe is not only cheap and affordable but also in the order of the cost of annual, car, house and contents.
insurance. Yet the BWI premium cost is also comparable to the QBSA which is 1st resort with substantial greater benefits

The consumer victims of builder, death, disappearances and insolvency are a necessary irrelevance to the insurers other statutory obligations and the DDI builder is now a liability, not repeat business [bad business, failed business, cut it lose cut the loses]]

A clear structural conflict of interest, consumer protection is irrelevant to the insurers other obligations, which correctly take legal precedence

In effect we have similar issue to Telstra and the national broadband network. Shareholders and other corporate stakeholders have legal pre-eminence.

Outsourced mandatory consumer protection, is a for profit business. In my view consumer protection principles are in conflict with the insurers primary obligations, the corporation act, directors and managements fiduciary duties and obligations to other stakeholders.

Simply put at every level there is a conflict of interest between a for profit business and consumer protection being in the same stable operating with in a single corporate entity.

As with Telstra structural separation is required, including total separation from related govt functions like the Building Commission. The building commission function is not consumer protection it is about technical standards and there enforcement. At best it is a expert witness.

Take consumer insurance complaint procedures, Originally they were limited to internal company review. Then a further review mechanism was introduced, with complaints referred to the Insurance Council of Aust. The ICA review function grew and the conflict of interest was just to obvious and the Insurance Ombudsman was created. an independent body.

Yet, unlike insurance were building and consumers are concerned, since the mid 90's the process has been effectively reversed. Subsequent events, like HIH, support the view that the privatisation policy and its consequences were not considered or appreciated at the time of privatisation.

Take builders eligibility. This is a government function if broader government policies re housing are to be met.

Simply put, you have a recession, building industry contracts, government stimulates building industry to create demand and jobs, BWI insurers tighten eligibility criteria on self interest commercial grounds, thus reducing number of working builders, thus negating govt stimulus as less houses are built not more and jobs are lost.

Builders eligibility determined by for profit private corporations is a nonsense as is for profit consumer protection.
There is not a brave enough minister as Sir Humphrey's put in Yes Minister to say to the insurers, broaden eligibility to accommodate our stimulus goals. In any case to do so would be to do it with no legal foundation and risk legal action against the govt by the insurers.

The implications of the 90's privatisation policy were not thought thru. I recall it as an ideological rush to the head, egged on by the HIA and others as a good idea.

3) Qld model, 1st resort, only true tried and tested model currently in existence. No need to re invent the wheels with coupon clipping benefits for vested interest, inflating costs to provide a profit as a existing proven non profit model already exists.

4) Yes the exclusion of vested for profit commercial interests from government roles as is the case currently in the building commission. were they have effectively captured the regulator. A specific e.g being that in the past 5 years the HIA have recruited from the building commission, 2 chief executive director's, Victoria division.

This is reminiscent of the 80's when the Local Govt Department was captured by the HIA/MBA and had ministerial responsibility not Consumer Affairs. Then deputy directors local government retired at 55 and parachuted into HIA/MBA sponsored jobs for the boys.

One such caper got a run in Hansard, the DG involved took a MBA sponsored overseas holiday before his retirement.

That is the regulatory regime be so structured that it excludes policy capture by the regulated industry and that industry involvement on technical issues also be strictly curtailed and limited to issues were the policy has already been pre determined in transparent public forums eg energy efficient housing.

Take the issue of 5 star /6 star energy efficient house ratings. HIA response, same tune every time with changed housing standards being proposed.

No evidence/no costings provided but unaffordable. Always unsubstantiated inflated extra cost of say $20000 to $40000 per house. The good news story is that some renegade builder is then reported in the media as building to the new standard and the actual cost per house on average a fraction of HIA's inflated prices, say in the order of $5000.

A ABC 4 Corners programme 2/3 years ago touched on this characteristic of HIA modus operandi. HIA declined to defend the allegation.

In my view the committee should recommend that the building commission be subject to ministerial control.

Currently it is a law unto its self and some builders would say it is out of control. Take the case of Mr Ron O'Neill, Ombudsmans police investigation on Mr O'Neill's behalf recommending criminal charges arising from issues re a building contract. A judicial victory against Vero in the supreme court of Vic. VCAT adjudication.
involving BC, with suppression orders. Tribunal hearings within BC involving Mr O'Neill

Victimisation of Mr O'Neill or BC consumer protection practises?

Mr O'Neill should be prevailed upon to give evidence and his suppressed submissions to the senate in 08 should be part of this inquiries remit

That Treasury be excluded from consumer affairs policy matters now and in the future. It has no function in any oversight of the CAV ministers role in setting consumer protection policies. The introduction of the Qld system in any case would eliminate Treasury's current function as I understand it, which is limited to the regulations that approve the BW policy coverage parameters for consumer and the insurance sellers right to participate in the market

That industry interface with the future regulator, a shrunk BC under ministerial control, be it licencing, technical issues or consumer protection, be at all times transparent and accountable and exclude the HIA/MBA and related services from all internal BC policy positions. That is not the case now

The BC should be prevailed upon to detail to the committee all position within its organisational structure that are tenured or temporary positions held by non staff. Details should include the position, its purpose, its occupant and the basis/reason for appointment

That the HIA and MBA and related organisations be required to be formally classified as lobbyists in all there interface with government

I have previously covered many of the issues in submissions to the Productivity Commission and the Senate Economics Committee inquiry and in personal emails to the committees members since late 05, some more comprehensively than others

My general approach is to endeavour to ensure as comprehensively as possible the presentation of the issues to the committee so in my written material I also include areas or issues the committee may wish to investigate as part of their inquiry.

My overarching purpose by raising the issues is to hopefully provide the evidence and establish that the gold standard Rolls Royce solution is the Qld model and that it is affordable at a acceptable premium price to consumers.

The QBSA is financially sound and established model that meets consumer expectations and in addition is the only model that also provides some benefits to builders ie, security of payment

No other existing model or untested model proposed can match the Qld model at the same price. Any claims that they can should be rejected if not accompanied by a detailed business plan, fully coasted against a detailed comparative analysis with the Qld scheme.
Not one alternative to the Qld model in existence or propose address's the issue of builder security of payment. It is a long standing recognised issue in the industry, that was at one time on the HIA/MBA agenda and often raised by them in discussions that I was involve in when I was a member of the Victorian Consumer Affairs Committee.

But now I suspect that this is a non issue with HIA/MBA as commissions from BWI is preferable to no income from the Qld model.

Mr Dwyer can give evidence on HIA shenanigans in white anting the Qld model and seeking its replacement with the current arrangements in Vic.

Daniel Smiths conference paper of Oct 04 argues that 1st and last resort comparisons must be invalid, except in chalk and cheese terms of premiums paid at various price points. There is no other valid comparison. The benefits payable in a claim under last resort are substantial less and a claimant has very restricted right of access, if accepted at all in terms of outcomes. Reference, the Financial Ombudsmans Services annual reports and the Vic/n Essential Services Commission report.

E.g., Beechwood [NSW] and RCP [Qld]

Qld all houses completed in 6 months from date of collapse. Beechwood maybe Dec 09, 18 months from time of collapse.

The problem is obtaining valid price points for 1st and last resort. The insurers prefer to quote discounted or average figures, which are not valid for comparison purposes. The QBSA post HIH did publish in there annual report comparative figure but stopped when the comparison turned into a nonsense exercise.

Mr Smiths conference paper on the issue of first resort or last resort is well known in terms of policy discussion/development by officers in CAV and NSW OFT. The committee may care to raise Mr Smith's paper with CAV when they give evidence.

Mr Smith conference paper in my view is essential reading and the starting point for the committees deliberations. In my view Mr Smith should be requested to assist the committee as appropriate.

In my introductory email I urged that NSW OFT and QBSA be invited to give evidence.

It is also my view that Choice also be invited give evidence on behalf of consumers in particular on the question of alternatives to the current arrangements.

Any Victorian reforms proposed must consider the current federal consumer protection agenda that seeks national uniformity. That should not mean that Victoria should join a race to the bottom. The committee should join the race to the top. The Qld model.

About 02, ACCC and ASIC had there oversight ability several curtailed re financial products re consumers. It is my view that the committee should consider seeking written submissions on the issue from ASIC/ACCC on there restricted powers in this.
area of consumer protection. These exemptions I suspect are not an issue with the Qld model.

Maybe the QBSA can be prevailed upon to comment on this issue.

That is the exclusion of financial products [insurance] from the oversight of ASIC/ACCC and whether Victoria can reclaim coverage of this area of consumer protection if the C/wealth does not act to re-instate full coverage of financial products in the legislation administered by ASIC/ACCC.

The senate economics committee in a recent inquiry received consumer submissions that supported the re-instatement of financial services ASIC/ACCC powers. The committee took the view that with regards to insurance this would better be dealt with in any review of the insurance act.

On the issue of national uniformity re BWI as sought by Canberra, there is the private insurer approach. The race to the bottom for profits by restricting/reducing consumer benefits or Qld who I understand are immovable in defence of there model and have incrementally over the years refined and expanded the benefits for consumers and builders alike.

Qld should be the national model and it is in my view within the terms of reference allow the committee to so recommend as the ultimate objective, A Victorian transitional model based on Tasmanian exiting mandatory BWI in preference to a voluntary option, will confirm that the market is artificially created. There is no market for JUNK insurance, as Choice has called it.

In Tasmania that market failure was demonstrated by the insurers response. They all in unison exited the market 30/6/08. I wonder if on the face of it that is characteristic of cartel behaviour or a commercial statement. It is unclear if as at 30/6/08 there had been any successful claims in Tasmania. The prevailing belief is zilch claims paid.

The adoption of the voluntary option may be irrelevant in any case as we have clear market failure for this mandatory product in NSW. The committee should not in my view entertain the NSW rescue package underwritten by the NSW govt.

To propose as NSW does a hybrid model, in the NSW OFT Newsletter of 18/11/09 discussed in my email to the committee of 18/11/09, does not address the fundamental issues, consumer expectations which are 1st resort.

It is speculated in the media that the last 2 major insurers Suncorps [Vero]/QBE are likely to exit the market, soon. Certainly only one can expect to be the operator for the NSW hybrid model, in my view.

It can be argued that the proposed NSW hybrid model is a transitional arrangement that is a precursor to the remaining insurers exiting the market. If so, or so it proves it is a disingenuous exit strategy that may never be implemented as the contract arrangements with the NSW state could prove to be unacceptable to the insurers. Thus only re-inforcing the argument that we have market failure.
It is my view that potentially the NSW hybrid model successful tenderer could be at risk of ICAC having the potential to investigate, if the need arises, depending on the facts.

Vero did submit a submission about 04 to the Vic govt to restrict transparency and accountability by amending Vic legislation/regulation. The proposal was to impose further commercial confidentiality and further curtail access to FOI and judicial review.

Vero kindly posted this submission on their web site and they should be prevailed upon to produce it and all the records re their discussions on the issue with the Vic govt and give evidence on why they required that degree of additional secrecy.

Dr Silberberg in an article as early as about April 04, floated the idea that the current arrangements should be voluntary not mandatory. He has repeated that view on behalf of the HIA since. Recently to the senate inquiry. To me it seems like a throw away line to deflect criticism and that there is no intention of acting on or implementing a voluntary regime as that would eliminate a income stream from HIA owned insurance brokerage. In any case the evidence is that the market would collapse if it was voluntary.

The HIA [Vic] in 1969 introduced a 1st resort voluntary scheme which was in 71 legislated and implemented in the 69 format.

The 69 voluntary scheme was a overnight sensation in that all the industry shonks used it as a marketing ploy and it soon ran into financial difficulty. Solution govt rescue.

The 71 legislation, mandated coverage and the MBA also entered the business as a separate entity. Both structured with massive conflicts of interest, but very profitable for some members. The HIA Ceo was also Ceo of the HIA entity. The HIA publicly argued there was no conflict of interest in this arrangement.

In the 80's due to financial mismanagement of both schemes the govt had to step in, restructure/amalgamate the HIA/MBA entities and create the HGF, at no cost to govt funds.

The NSW hybrid proposal has the Premier in the media release 8/11/09 saying that "the new home warranty insurance (HWI) scheme would be Government-underwritten and capitalised and funded by premiums.'

It is interesting to note that Dr Silberberg's corporate memory goes back to about 79/80, as this year is his 30th year with the HIA and he started his career in the Vic office. Then moved on about 10 years later to establish the national office which was a move strongly championed by the Vic branch.

So will the HIA float again to this inquiry its support for voluntary arrangement and will it this time follow up that statement by stating unequivocally that such an arrangement should be implemented asap and the committee should recommend accordingly in its report.
In my view this is a question that requires an answer and the HIA should be required to provide a written answer posted on the inquiry's web site. Clearly stating, yes or no.

It is my view that the HIA modus operandi confuses the public benefit/interest and consumer protection with its own commercial objectives. A gross but profitable conflict of interest when it is clipping the coupon as commission on insurance policies sold.

The MBA, same same as the HIA.

Why should consumers fund in part the HIA? Imagine the outcry if every time I went to Woolies to buy groceries, Woolies passed on an undisclosed margin to the union covering retail workers.

So can the HIA be prevailed upon to include in their written submission to the committee without claiming confidentiality a comprehensive, without exception, explanation of all the financial benefits the HIA derive from the sale of the mandatory insurance product. It is unclear if any senior HIA management benefit via directorships or other arrangements from the current insurance arrangements, but such benefits should also be declared. E.g. all Dr Silberbergs directorships/outside HIA positions, be it representing HIA or other reasons.

It is my view that the major unstated HIA objection to the Qld model is that it excludes them from the inner sanctum and there is no financial coupon clipping.

The HGF in its last legislative incarnation introduced a independent chair, now Chief Justice of Victoria and a nominee of the director of consumer affairs to the board plus other internal reforms.

That and the HIA sharing the board with rivals MBA, I consider were prime incentives for HIA preferring the privatised insurance model introduced by the Kennett govt. The Vic govt and NSW privatised on the basis that the policies be 1st resort.

At the time of privatisation the NSW scheme was in surplus. An admitted $53 million and I believe Vic also had surplus funds available to that required to run off requirements. That is consumer funds for govt appropriation by the back door.

From the MBA perspective the majority of HGF staff were aligned with or had HIA backgrounds and they were effectively not equal [as per board representation], but a minority as per their m/ship in Vic. The odd couple, co-joined in a relationship, riven by historic rivalry.

I was also informed but I have no confirmation that when the HGF was formed by amalgamating the separate and financially failing predecessors owned and managed by the HIA and MBA that somehow HIA was able to slip thru a ongoing payment to itself of $30000 per annum, which on discovery was terminated.
True or not my view is that the HIA in particular and the MBA to a lesser extent interest in consumer protection is based on the premise does the business plan allows capture or influential involvement and is there a quid in it in terms of a income stream

The difference is the HIA is now national organisation while the MBA is regional . There are 4 or 5 separate regional based MBA's in NSW . All being independent organisations loosely federated with each other and interstate MBA's

Mr Michael Stokes, has given evidence to the Productivity Commission and the Senate on BWI, Mr Stokes's was employed in a senior position in the HGF in its run of phase .His previous submissions to PC/Senate should be part of this inquiry and Mr Stokes should be asked to give evidence on the finances of HGF, prior to HIH collapse .

The HGF annual reports from the date the run off commenced to HIH collapse should be available either as separately tabled documents in parliament or as part of CAV's annual reports to parliament

Up till, about 2 years ago CAV was responsible for the HGF run off administration as a separate entity. Post HIH, that entity got lumbered with the HIH rescue package, which muddies things a bit.

But the HGF as a corporate entity, from the date of establishment was also required to table its annual report in parliament and therefore there is a complete record of its operations as a first resort scheme available readily to the committee to consider as part of the evidence in any discussion ,comparing 1st resort with last resort

Neither the NSW/Vic govt's in there post HIH policy development re BWI has taken a evidenced approach to policy development by examining the 1st resort record held within there own archives

As a generalisation , the committee may care to look selectively at the public record of relevant submissions to the Productivity Commission and the Senate economic committee as part of their inquiry in particular if that organisation or person is to give evidence to the committee in public

Yours Andris Blums

20/11/09

P.S

The HIA claims now a days the HGF was a govt run body in recent submissions to various inquiries .

The truth is it was a public company limited by guarantee as is the HIA/MBA .The HGF was a joint venture company solely and equally owned by the HIA/MBA . The HIA/MBA applied to the Vic government for approval as a approved guarantor under legislation to operate the legislative mandated Victorian 1st resort scheme of consumer protection in the domestic building industry . The result , the HGF .
The Vic legislation provided for competitors to enter the market with government approval. None ever did.

The current Qld system excludes, as it should, the HIA/MBA from its operations and management. That is a mandatory principle in the establishment of any future first resort body in Vic and nationally.