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Council Committees Office
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Parliament House
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Submission: Last Resort Builders Warranty Insurance

The terms of reference for this inquiry speak to the core issues facing the Victorian Building industry in relation to last resort Builders Warranty Insurance being:

- The effectiveness of the scheme in providing
  - necessary consumer protection
  - appropriate consumer protection
  - necessary industry management;
  - appropriate industry management;
- The role of government agencies in their effectiveness in
  - managing Victoria’s registered builders under the current scheme;
  - representing Victoria’s registered builders under the current scheme;
- Any possible alternatives to the current Builders Warranty Insurance Scheme in Victoria; and
  - Any related matters.

This submission will look at each point in turn and seek to briefly explain these from my perspective as an active industry participant who has been an active public advocate for builders and consumers over the last decade.

I would also ask to give verbal evidence to the committee so that I can expand and if necessary be questioned and cross examined on any of the points I raise. Everything I say can be substantiated by documentary evidence and I look forward to the opportunity to present this evidence in person.

1) My Background

I have been a registered domestic builder for over 20 years and have experienced varying incarnations of the builder registration process and Warranty schemes over that time.

In response to the Privatisation of Builders Warranty in the Late 1990’s I was appalled at how poorly builders were now being treated by the insurance industry and began to become involved in the HIA as an advocate for other builders who were also being victimised and harassed by insurance companies.
On the day after insurer HIH collapsed in March 2001, HIA Insurance doubled our premiums for Warranty Insurance and tightened ever more onerous eligibility criteria. I then began to use my role in the HIA in an attempt to replace this clear oppression with some basic justice.

Over the ensuing years I held various roles in the HIA including being elected the Branch Chair of the Mornington Peninsula Branch of the HIA and held that role for about 4 years, ably representing around 900 local builders and tradespeople.

In addition, I was also on the Branch Chair Committee that was responsible for liaison with all Victorian Branches.

Unfortunately it was clear very early that the HIA executive had no real interest in crossing swords with the insurance industry or Government over any matter being critical of Last Resort Builders Warranty. This was incredibly frustrating for myself, my members and other Branch Chairs as it became increasingly clear to all of us that the HIA had gotten into bed with the insurance industry and was using our membership as a means to stream business to their preferred insurer.

This was achieved by ‘advising’ all members through HIA Insurance Services that Vero was the best and only option available to members when at the same time the former Victorian President was not insured by Vero but had cover with Reward Insurance – an insurer that we had never heard of. Clearly, the hoi-polloi of the HIA had access to information and schemes that were denied other members and the reality was that the Reward Insurance product was much fairer to builders but the HIA withheld this information from members, I believe for their own financial gain.

Further investigation revealed that the company whose logo appeared on every Builders Warranty Certificate issued by HIA was HOW (Home Owners Warranty). A company search as attached to this submission, will show that this was not and insurance company nor insurance broker but a private company whose directors included the then National Executive Director of HIA Dr Ron Silberberg and whose sole shareholder was HIA. It is still unclear what role HOW had in administering Last Resort Warranty as the HIA have never been asked to explain how they profited from this product using HOW, HIA Insurance Services and other associated entities.

Bit by bit we began to see that our own Association was in fact colluding with the insurers for their own financial gain and our businesses, the ones HIA were supposed to be supporting, were suffering as a result. Far from being a ‘member representative’ organisation on this issue they were self interested only. For example, HIA stood mute as hundreds of members – ourselves included, were forced to stump up Bank Guarantees merely to continue to trade. None of us had ever had a claim against us but these insurer demands were not negotiable and were causing significant stress and loss of profit to us. The HIA – our association, stood idle on the sidelines.

In fact, every time the matter was raised by local members any where in Australia, the HIA hierarchy tended to respond by suggesting that the particular member was the only person to actually complain or have a problem with the system. This was a blatant lie, every member I spoke with hated last resort privatised Warranty but most were intimidated by HIA into just ‘going along’ with it and the feeling that they may be victimised by the insurer if they spoke out was very real. This was achieved because
the insurer can simply turn our business off if they choose to by applying a ‘review’ of our business and simply setting the financial bar so high that we could never meet it. These financial ‘controls’ that the insurer uses are arbitrary and completely without any accountability to Government agency or structure – the insurers have carte blanche to do as they please and with the HIA securely captured then they exploited that advantage enormously.

According to ASIC, Builders Warranty remains to this day is the only ‘wholesale’ insurance product that is devoid of any scrutiny by anyone, anywhere at any time.

Unfortunately, the HIA, who we expected to go into bat for us and scrutinise the product on our behalf, have instead morphed from an industry representative Trade Association into a self interested professional lobby group whose goals and charter appear to be designed to serve their own executive, largely at the expense of their so called ‘members’.

This is clearly evidenced by the way their members concerns under the last resort Builders Warranty regime have collectively been ignored for the last decade.

2) **Effectiveness of the scheme**

   a) **Consumer Protection**

   The reality is that if the scheme was effective then this inquiry would probably not exist. Just the same, in evaluating the effectiveness of the scheme then it is important to consider the views of the key stakeholders in the scheme, which are Builders and their clients.

   It is relevant to consider that every dollar of income generated by the Building Industry is actually generated by contracts between Builders and their Clients, meaning that these contracts and the contractual relationship between these parties IS the building industry. The dollars generated from these contracts fund all the Suppliers, Trades, Lawyers, Accountants, Insurance Companies, Trade Associations and even the Building Commission.

   While these other entities are often counted as ‘key’ stakeholders, the stark reality is that they are not key stakeholders – Builders and their clients are the key stakeholders and these other entities merely exist to serve those stakeholders in a manner that must be cost effective, efficient and relevant.

   The reality is that the Tasmanian and NSW Government have both seen through the façade of Last Resort Builders Warranty and have both opted to dump the product all together and for no other reason than it simply does not deliver a benefit to key stakeholders – that is, the scheme has yet to prove its effectiveness as a satisfactory consumer protection mechanism for the building industry.

   From over 30 various Government inquiries neither the HIA nor the Insurance industry have ever been able to provide any evidence whatsoever that Last Resort Builders Warranty has been able to provide any measurable benefit to the industry. Both of these entities have consistently
championed the scheme which is hardly surprising as both of these entities are the single biggest financial beneficiaries of the scheme.

Unlike the fully transparent and accountable Queensland model, the Victorian scheme represents a black hole where bucket loads of money is sucked in, and very little ever escapes.

**b) Industry Management**

One of the key aims of a consumer protection regime is to protect consumers from shonky or unviable building contractors. By extension then it is clear that the scheme is designed to manage the industry in a responsible and transparent manner for the benefit of key stakeholders being consumers and all professional and responsible builders.

The reality is far from this ideal. The Building Commission have been consistently willing to support the product while not being able to publicly provide one single shred of evidence that shonky builders are being weeded out of the system or that consumers are being protected.

In my view, the Building Commission have unfortunately been led into the flawed philosophy that a private for-profit business can deliver effective consumer protection and industry management. The mathematical reality is that the level of quality industry management is directly proportional to the quality and quantity of consumer protection delivered. That is, if consumers are not properly protected then how is it that the industry is being managed? Under the privatised last resort system, insurers have a financial incentive and shareholder responsibility to REDUCE the amount of consumer protection they deliver so that they can deliver a profit to their directors and shareholders.

To believe that such a privatised system would ever be effective could, at a stretch, be forgiven while Australia was in the grip of the Insurance crisis of 2001 however to persist with the scheme in the face of overwhelming evidence of its failure beyond 2010 will simply be irresponsible.

This overwhelming evidence I refer to is in the figures produced by the NSW Government over the last few years showing an abysmal 7% claims/loss ratio since 2002 and the recent evidence from the Victorian Essential Services Commission that show a claims/loss ratio that is even worse. Add to this the sad list of consumer victims at VCAT who drag themselves through the legal process for years only to realise at the end that the insurers have no intention of paying and that as soon as they win their VCAT case, the insurers appeal to the supreme court, effectively burying the claim for all time under a mountain of litigation. This is not consumer ‘protection’ but consumer ‘rejection’ and as such our management of the building industry has significantly failed.

In a well managed industry, this brand of consumer protection is neither necessary nor appropriate.
3) Government Agencies

In normal circumstances there are specific State and Federal agencies and Commissions that are there to protect the community from nefarious operators that choose to exploit the community for their own financial gain. The fact that the insurance industry has their own Federal Ombudsman speaks volumes as to the track record of that industry.

As was revealed in the 2008 Senate Inquiry, there was a key regulation change to ASIC rules in late 2001 which effectively dealt immunity to Builders Warranty Insurance providers so that they would not be accountable to ASIC, APRA nor the ACCC or any similar State Authority for any conduct they engage in that may harm builders or consumers. Who authorised this regulation change and why has been the subject of much furious letter writing from the offices of former Government Ministers with everyone denying any responsibility for such an incredible gift handed to the insurance industry. Just the same the fact remains that the gift was made, and the sadder fact remains is that the gift also remains to this day – a simple one sentence of regulatory jargon that would take 30 seconds to rewrite but to date has not occurred.

On this basis it is not surprising that the Building Commission has been impotent to fight the abuses perpetrated on the building industry by the insurers because they would naturally take advice from the likes of APRA and the ACCC before instigating any action of their own, and since the insurers have immunity, the result is that nothing happens – consumers and builders have nowhere to go but to sit and wait for Parliament to listen. In short, the agencies normally given the responsibility to listen have been forced, by regulation, to ignore builders and in the process these agencies are failing builders – one of the two key stakeholders in this industry.

4) Alternatives

In 2005 I met with various bureaucrats and the then Minister John Lenders to discuss this very issue.

At that time, and still today, the best alternative in the world was successfully operating in Queensland under the auspices of the Queensland Building Services Authority (QBSA).

Queensland was the only Australian State to resist the insurance industry lobby and refuse to privatise consumer protection in the late 1990’s. The Queensland Government has continually suffered attack and ridicule for this action by both the HIA and the Insurance Industry who to this day continue to attempt to peddle privatised last resort insurance to the Queensland Government. Wisely, they have steadfastly refused these solicitations.

At the 2008 Senate Inquiry the QBSA articulated very clearly why their system is better. Without labouring the points here, the clear points of difference to the Victorian scheme are that,

- It is a first resort scheme
- There are no private vested interests attempting to profit from consumer losses
- The QBSA answers to Parliament (ie: the people)
- It is self funded by the industry without any drain on taxpayers
The QBSA has the ability to step in quickly to halt trading of a failing building business
All claims and premium data is fully transparent and published every year in an annual report
These reports are fully audited by the Auditor General
The QBSA scheme is wholly supported by consumers and builders – including the Master Builders Association
It has a published track record of delivering fast, cost effective and genuine consumer protection in the event of a builder failure – even very large ones
Shonky builders are quickly forced out of the industry
The dollar value of consumer protection per claim is double that of the last resort scheme
The QBSA scheme also covers subsidence
It encompasses a security of payment regime for trade contractors
It works.

To summarise the QBSA has the documentary evidence to prove that their scheme works – ie: Government does not need to rely on professional spin doctors from the insurance industry nor professional lobbyists from HIA to tell them it works even though they have no data to support it, anyone can see it for themselves from the annual reports.

One if the key advantages and reasons for the QBSA success is that the vested interests that pervade the Victorian scheme, Insurers and HIA, are unable to make any profit from the publicly administered QBSA. This allows Government to be able to make objective decisions on the schemes administration without being constrained by the dubious claims in Victoria of 'commercial in-confidence' whenever Government has previously requested claims and premium data to be publicly available.

5) Conclusion

i) Remove the current flawed model of privatised Last Resort Builders Warranty. Next, work with the other States to urgently implement a National Scheme based on the successful QBSA model. Economies of scale will provide an even more effective system nationally than what could be managed on a State by State basis.

ii) Establish a Royal Commission to investigate the money trail from all Premiums issued under the privatised system since 1997 to determine how much of the total premium pool has actually been paid to consumers in order to recommend:

(1) The amount of adequate restitution to consumers who have suffered financial loss as a result of the scheme

(2) The amount of adequate restitution to builders who may have been illegally forced to pay insurer claims costs and who have lost business as a result of insurer intransigence

(3) Criminal charges should any fraud, deception or illegal activity be determined during the establishment, administration and marketing of the Last resort scheme