

Productivity Commission Presentation  
Wednesday 21<sup>st</sup> March 2007. 9.30 am

## **HISTORY**

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

Many of these have specifically excluded Warranty Insurance, 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 for licensing is to have Warranty Insurance eligibility, a factor that can't be excluded.

The most significant inquiry was the Percy Allen Inquiry in 2002 that stated the Building Industry and consumer protection was in crisis, and is a community problem however its recommendations were not heeded, and in fact the Ministerial Council of Consumer Affairs chose to ignore it, and instead adopted the 10 Point Plan<sup>1</sup> (attachment 1) which came into being through the Governments of Victoria and New South Wales inviting the insurers to make a market. In fact the arrangements surrounding the implementation of the 10 Point Plan have and are being questioned from a probity point of view.

This was followed by the Grellman Inquiry that chose to ignore the facts and any detractors, and so incensed the legitimate industry that some 20 organisations commissioned their own review of Grellmans inquiry and found it an irresponsible document. This review<sup>2</sup> (attachment 2) was conducted by Dr Peter Tyler.

The selected industry managers (HIA and Vero) and regulators (NSW & Vic Governments) have continued to band aid the problems, and have ignored the fundamental fact that the current regime of consumer protection is flawed.

The Builders Collective submission to the Productivity Commission when inquiring into Reform of Building Regulation back in June 2004<sup>3</sup> (attachment 3) remains applicable and forms part of this submission today.

The Australian Consumers Association summed up the situation accurately in CHOICE magazine<sup>4</sup> (attachment 4) 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 and significantly reduce consumer protection to such an extent that the insurance policy they now provide offers the consumer no comfort in the event of a failed project outside the 3 triggers of death, insolvency or disappearance and even then with the insurers qualifications any value has to be questioned.

In fact the ASIC website as attached<sup>5</sup> (attachment 5) demonstrates questionable behaviour by most of the early providers of this product.

A press conference held by the originators of Last Resort Warranty on the 29<sup>th</sup> of September 2003 in Armadale celebrated the value of this product for both the consumer, builder, and the building industry as the attached Rehome transcript<sup>6</sup> (attachment 6) demonstrates HIA, Vero and Victorian and NSW Governments presented the product.

When a consumer is faced with a building dispute he is faced with costly civil action over a protracted period, sometimes many years, and generally without an acceptable outcome while the 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.

The Insurers sit on the sidelines, claim commercial in Confidence and collect an estimated national premium take of some \$350 million annually and over the past 5 years that has amounted to some \$1.75 Billion.

The building industry and its consumers are receiving little or no benefit from this warranty. In fact in a recent submission by the Office of the Small business Commissioner to the VCEC Inquiry he cited the unfair market practices of the insurers for his interest while supporting the position of consumer Affairs victoria who suggested to the same inquiry that 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. In Victoria owner builder permits are running at 42% down from 52%, after the building commission 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.

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 new Attorney General/Deputy Premier Mr Kons appears to be addressing the issues in a professional and forthright manner and is on the record as a clear supporter of the Queensland model.

The only supporters of the current regime are those that benefit financially from it, and to that end they suppress and threaten any detractors of the current regime. In the case of Vero they have continually threatened the BCA with legal threats through their Lawyers Minter Ellison as attached<sup>7</sup> (attachment 7), even to the extent of demanding withdrawal and modification of a submission to the VCEC public inquiry, only when this matter was raised in the Victorian Parliament did this conduct cease.

HIA on the other hand have continually threatened and undertaken various methods to suppress all including the BCA by attempting to defame, remove membership and instigate litigation in the Federal and Supreme Courts of the ACT, however these methods are not confined only to the Builders Collective as even their own Office holders are not immune as the attached letter<sup>8</sup> (attachment 8) will show. Even consumers are subject to this conduct as the letters<sup>9</sup> (attachment 9) to a Tasmanian consumer will demonstrate.

The BCA has recently lodged a significant complaint with the Victorian Ombudsman that targets some 6 segments that are of grave concern and the covering letter is attached<sup>10</sup> (attachment 10). The detail of these segments can be made available to this inquiry if requested.

Housing affordability has been the subject of debate recently with claims the reason behind the problem is because of land shortage or Government charges and a raft of other claims, however no one including the HIA has been prepared to consider the increase of 71% in the cost of building as presented in the attached documents<sup>11</sup> (attachment 11) and explanations. The

Building Commission trumpet record levels of building, but it is misleading as they refer only to the dollar value, as permits are way down in the last two years to a level dating back to the late nineties, yet the cost of a building permit has increased from \$62,000 to \$106,000.

In yesterdays Australian Financial Review<sup>12</sup> the immediate past National President of the HIA, Mr Bob Day called for the scrapping of Builders Warranty Insurance stating “**The cost is out of all proportion to the benefit**” and “**It should never have been introduced**”.

### **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 Inquiry has a terms of reference that allows a holistic approach to the matter of Consumer Protection which is exactly what is required. I urge this inquiry to research the Queensland BSA regime of Industry Management and Consumer Protection as their industry is of similar size to NSW and also Victoria. It is transparent, accountable, cost effective. It adjudicates for and is fair to both parties and delivers genuine & timely first resort protection to consumers.

Contrary to rumour and innuendo put forward by the HIA and Insurers, this long established industry scheme is totally self funding, provides no impost on taxpayers and no private vested interest companies are involved.

Its benefits will satisfy all criteria for Consumer Protection within any of our States building industries.

We ask the Productivity Commission to adopt decisive leadership and direction in the matter of Consumer Protection for the building industry which will in turn provide legitimate and effective Consumer Protection, Industry Management, security of payment, warranty insurance, licensing and Dispute Resolution issues be managed in a cohesive, transparent, accountable manner.

This is consumer protection and this is the outcome Australia deserves and we ask this inquiry to adopt an immediate position in regard to this warranty Insurance in light of the obvious failure of the product as this farce has existed for far too long.