

Dear Mr Fitzgerald

Reading the transcript one wonders whether the interaction of Messrs Simpson and Chamberlain of the HIA in cutting of the others responses at the knees had elements of a laurel and hardy routine.

I request that this submission be posted as a public submission on the web site.

I will also comment separately on the MBA verbal submission asap.

I make the following comments on the transcript.

I believe Mr Dywer has provided additional documentary evidence re HIA's involvement in the insurance business and that Mr Daniel Smith an actuary [03/96582306] at Taylor Fry is willing to assist in advising on the BWI figures posted NSW OFT ,website for 31/3/07 + 30/6/07 .[daniel.smith@taylorfry.com.au]

I am advise the figures for 30/9/07 + 31/12/07 will be posted soon on the NSW OFT site.

I am concerned with the promotion of ADR by the HIA as I see it is a attempt to re introduce the Scott v Avery form of arbitration under contract by a different guise .Arbitration in all its insidious forms was banned by the early 90' in NSW and Vic under domestic building contracts because of the abuses perpetrated by ex HIA/MBA state executive members who on retirement would become arbitrators as a superannuation benefit .

The decisions of these arbitrators as de facto supreme court judges could not effectively be appealed as there decisions were final and binding .Many of the arbitration decisions were outrageously biased judgements which then precluded the consumer from claiming under the provisions of the NSW Builders Service Corp and the Vic Housing Guarantee Fund .which they controlled in any case

There were many instances of abusive determinations by arbitrators in favour of the builder ,real life examples included ,no defect for brick work mortar ,consisting of 90% sand ,no lime ,10% cement . This was not an isolated example . These abuses and conflicts of interest are still current under contract in Tasmania were 80's style NSW/Vic arbitration is still practised and as was the case in the 80's on the mainland the industry's public rational is that it is cheap effective consumer protection .Ms Brandsden would dispute that rational based on her experience as detailed in her PC submissions.

I find it amusing that the HIA claims that the QLD inspectors are corrupt or potentially so by claiming they can abuse the system in the consumers favour . Is that not much more so when the binding experts are drawn from HIA ranks and have a private personal business incentive to say OK ,fix the sliding door but the 10% cement only brickwork mortar will bankrupt you ,mate so its not a defect .

Privatisation of the judicial function ,corrupts the process and the proof is in the HIA/MBA past and still current support of arbitration under contract in Tasmania

If a NSW OFT inspector was accused of favouring builders or consumers the proper course of redress is a referral to ICAC and such issues are referable to ICAC according to NSW OFT management in verbal evidence given to the NSW council committee inquiry into these issue 2/11/07 .

If a HIA associated expert working on the basis of fee for service determined 10% cement in brickwork mortar was not a defect the only redress is thru the courts if as with arbitration such recourse is not effectively barred .

As in NSW with ICAC the same applies also in QLD re QBSA inspectors ,they also can be referred to the crime commission for investigation

The HIA proposal does not provide any mechanism to investigate or prosecute abuses by the private practitioners who would ply there trade for hire under ADR . As with arbitration in the past the bias would be towards the builder , a colleague and source of repeat/other business

This proposal should be seen for what it is , to rort the system which as with arbitration in the past , the HIA on a fee basis providing back up admin services ,room hire etc to these privatised HIA foot soldiers to compensate HIA for revenue lost if BWI becomes voluntary

On the issue of voluntary Aust/wide ,it is a nonsense ,the market will collapse to a fraction of its mandatory size ,thus destroying the market and then there will be a mad scramble to fix the problem with another rort if HIA/MBA advise is as in the past ,since 1969 implemented

The only justification for going voluntary nationally is to re create a HIH type crisis again and to green mail the governments again into another rort that benefits the HIA and there associated vested interests without reference to consumers as occurred in 01/02

History also tells us that in 1969 the HIA Vic then the dominant HIA state branch [no national executive] introduce a voluntary consumer protection scheme which including arbitration under contract to avoid government intervention

Its interesting to note that the voluntary nature of the scheme lasted about 18 months ,it was un workable as all the shonks in the industry used it as a marketing tool and in 1971 the govt legislated at the behest of the HIA to rescue the voluntary scheme financially. Both the HIA and MBA then set up there own approved guarantors under the legislation which mirrored the HIA voluntary scheme

The 1971 legislation required that the govt approved guarantors take out back up catastrophic insurance approved by the govt .In fact the policies were more akin to an insurance bond as I understand it . These policies were never drawn on by either the HIA or MBA approved guarantor or later by the HGF and were in effect money for jam for the insurers

In fact in the case of the MBA Vic the policy was placed with a speciality insurer recently established by all the MBA chapters/branches in Aust. That is the insurer was 100% MBA owned and operated with MBA directors serving on the insurers board .I can not recall precisely but I suspect I am correct in saying that some MBA approved guarantor body directors also served concurrently on the MBA owned insurer located in Melb

There is a litany of documentation dating from the late 60's of conflict of interest by both the HIA and MBA ,passed of by them publicly as consumer protection when in fact its real intent was to defend the rorting and conflicts of interest in the structures set up by govts based on lobbying by HIA/MBA and accepted by govts as consumer protection measures when in fact the real purpose was to defend and extend the power and influence of HIA/MBA.

Any resultant consumer protection was a by product of the HIA/MBA business model and was purely tolerated as a necessary evil to appease public concerns . The Vic HIA approved guarantor body prior to its submergence in the HGF shared offices and staff with Vic HIA .

The HIA approved guarantors CEO M.K .Pinnock was also the Vic/n HIA executive director who publicly argued that holding both top positions did not constitute let alone raise conflict of interest issues

Its interesting to note that the QLD scheme also requires such a catastrophic events policy or insurance bond and the business has been and probably still is with Brisbane based Suncorps who now own Vero as of March 07 ,the HIA business associate .I think it is save to say that the QBSA like in Vic before have never had to invoked the insurance bond/policy issued by Suncorps and do not expect to even with this years major QLD builder failure ,costing the QBSA \$10 million

If a \$10 million plus failure occurred in Vic and Suncorps/Vero were the insurers then the state govt would pick up the bill ,that is providing a insurance bond to private insurers for FREE

For Suncorp's insuring a 1st resort scheme is profitable and its subsidiary Vero 's last resort PII, JUNK consumer protection is also profitable .only the quantum differentiates the insurance ,minuscule and obscenely large in terms of income and in terms of claims paid ,nil and minuscule

A voluntary scheme is a nonsense and I note that the HIA as a business enterprise should not be proposing such a nonsense as a consumer protection measure without a well researched business model /plan .If as I suspect no such business plan exists then clearly unless they are incompetent on this aspect of there submission their voluntary proposal is a nonsense in business and consumer protection terms .

Further in terms of premium cost versus consumer and builder benefits the QLD model wins hands down . Yet the HIA as always claims they are concerned to limit costs to consumers and without a shred of financial evidence or business plan claim BWI cost will balloon to unaffordable levels .This unsubstantiated claim in one form

or another has been doing the rounds like an urban myth since the late 60's with no evidence ever produced

On the issue of licencing, 1st resort works exactly the same as last resort Vero style ,restrictions are placed on the builder ,financially and/or technically to manage the potential claim risk .HIA m/ship does not as claimed reduce the risk .in fact in the 70's MBA members had a lower risk profile and the reasons were better use of arbitration by MBA members to avoid claims .

Even under the HGF , HIA members claims profile was the same or higher than MBA .the reason being that in some respects MBA m/ship was more selective and much smaller in number .Were as HIA was / is non selective and mass membership number driven .I suspect that is still the case to date , numbers driven to generate income .

There is no evidence that for the purposes of risk management HIA m/ship lowers the risk to consumers or the insurers .The fitness test and code of conduct Mr Simpson refers to has existed since at least the late 70's and like most motherhood marketing statements do not have enforceability provisions .The only known examples of enforcement are to stifle rank and file dissent to HIA policies by star chamber methods of questionable legality

Its interesting to note that in support of ADR the HIA is concerned about standards in defining and identifying defects and is re inventing the wheel by talking about a guide book of standards and definitions called ' a standard guide to tolerance '

As I recall such guide books exist overseas and here in Australia going back to at least the early 1980's ,for specific industry's in the domestic dwelling area ,such as foundations ,slabs and for the electrician, plumber, plaster ,painter etc much earlier .

In fact the HGF structural owned and operated by the HIA/MBA had such a guide book which was continuously updated to reflect changing technology and work practises

Yet the HIA would like us to believe by implication that no such guidelines /manuals exist and NSW OFT inspectors and QBSA technical staff operate in a vacuum peddling there own prejudices and technical ignorance in there decision making on what is and is not a defect

Are the HIA that ignorant as to the most basic aspects of the technical operations of the industry or is this in fact a deliberate attempt to mislead the commission and if so are there any sanctions applicable if it is determined to be the case

Mr Chamberlain's comments re premium cost are interesting . The QLD premiums are public .The insurers and HIA claim BWI premiums are lower in the order of just over \$700 on average , both in Vic and NSW .

The only evidence for this is the NSW OFT website figure for BWI premiums as at 31/3/07 ,which excludes all on costs both statutory and coupon clipping intermediaries .The Vic evidence is more scant. Mr Noel Pullen MLC in hansard

,Sept 05 attributing such a figure to Mr Paul Jameson of Vero who produced no substantive evidence

The only valid premium cost is that paid by the consumer including the builders margin of 10 to 15%, and all the evidence is that it starts in NSW at about \$3500 on a average contract value

Mr Simpson's comments about HIH are either based on ignorance or deliberately misleading ,he should well known that HIH operated a privatised 1st resort scheme ,that is a variation of the QBSA ,the NSW BSC and the Vic HGF prior to its failure .

HIH failure had nothing to do with the operations of there 1st resort scheme .HIH failure was caused by the injudicious take over of FIA insurance from Rodney Adler

the HGF was a privatised 1st resort that did not fail financially either .

the way i would distinguish the QBSA 1st resort scheme is that it is a govt legislated, corporatised entity run by professional managers with no conflict of interest or ulterior motive, fully transparent and accountable to the public via annual reports to parliament and the QLD crime and misconduct commission

Mr Simpson may care to explain under oath his claim that HIH's collapse effected competition .HIH at no time competed with Vero /HIA on the basis of offering a last resort scheme

The last resort scheme to my knowledge was 1st peddled in the early 90's by MBA Vic to the Tasmanian govt who wisely rejected the proposal . To my knowledge the last resort was resurrected post HIH collapse and if that is the historical case then Mr Simpson has either mislead the commission or doesn't have a proper grasp of the relevant facts or issues

It could be said that as with inter alia the issue of defect identification this failure to grasp even the simplest factual aspects of HIH's collapse beggars believe .Mr Simpson should be recalled and asked the simple question was Vero under a previous name the insurer the HIA was associated with and did that insurer run a identical for practical purposes 1st resort scheme to HIH prior to HIH's collapse and is it not a fact that only after HIH's collapse was the last resort scheme introduced

Mr Chamberlain only has to check the QBSA website for evidence that the QLD 1st resort scheme is superior to the privatised last resort favoured by HIA for its coupon clipping commission income stream swelling HIA financial coffers . Vero's rate cards category 3 clearly establish higher premiums, lower monetary coverage and no consumer protection or builder benefits as provided by the QLD scheme .

Who needs a Professional Indemnity policy [PII] ,which is what HIA and Vero are selling and have admitted so on the public record when a first resort option is operating successfully and profitably in QLD as a role model .

In the case of an architect he may pay \$10,000 p.a for PII and cover 50 supervised building projects but a builder pays \$3,000 plus for each project and without a volume discount would pay \$150,000 PII premium in 1 year on 50 projects

History shows us that some insurance ,for whatever reason is not suitable for private insurers . I recall that in Vic and also NSW? in the late 70' workers comp was privatised and in the 80's effectively nationalised by the states in the public interest.

The same occurred in Vic in the mid 70's with the establishment of the Motor Accident Board. The MAB took the health funds and the private insurers out of the equation

The profitability of worker comp or the MAB is effected by govt policy . The QLD policy re QBSA is that it be profitable and charges appropriate premiums .There is no financial or economic reason why that can not be the case in the other states . Plus of course there are also the substantial benefit accruing to consumers which are not covered by the HIA preferred JUNK insurance that they prefer to the QLD alternative as this model does not provide the HIA with a income stream or other benefits they should not be entitled to under a consumer protection system

Yours Andris Blums

20/3/08