

The Builders' Collective of Australia inc. Reg No: A0044153G

Representing the small to medium Builders of the nation

Submission
To the
Productivity Commission
Inquiry into Reform of
Building Regulation
2004

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Introduction

The Builders Collective of Australia is an association first registered in May 2003 and represents only the interests of the small to medium builders of the Nation, and more specifically those builders from the States of Victoria, New South Wales and Western Australia who have been impacted on by the adverse and severe effects of the compulsory builder warranty scheme. This aspect is covered in your terms of reference under section **5.2 Reforming the Risk and Liability Landscape** and our total focus will be on this issue.

Our origins have come from the failure of the establishment Associations and the managers of the building Industry to represent and consider the small to medium builders in their deliberations with Government and the insurance Industry in the formation and implementation of the 10 point plan which came into effect on the first of July 2002 whereby the rights of the small to medium builder were assigned to the insurance industry who now decides who will build, when and to what level.

The Trade Associations and in particular the HIA see this compulsory scheme as a marketing tool to secure and retain membership and as the NSW Grellman inquiry points out, Royal & SunAlliance have 92% of the builders warranty in Australia, while HIA hold 93% of the available Builders to their membership, a very successful partnership founded on compulsion.

Grellman also stated that only 41% of NSW builders have insurance eligibility, which states some 59% have been culled from the industry through these insurance processes.

Builders/Home Warranty Insurance is the biggest single crisis to face our sector of the building industry in many decades and has the ability to see the demise of the small to medium builder.

Consumer Protection known as Home/Builders Warranty insurance has produced 20 various enquiries reports and reviews over the past decade and all can be found on our web site at www.builderscollective.org.au

If we refer to what is considered the most credible report, the June 2002 National Review of Home Builders Warranty Insurance and Consumer Protection, the report prepared for the Ministerial Council on Consumer Affairs and carried out by Professor Percy Allan & Associates Pty Ltd we find the first line of the executive Summary states and I quote:

Home builder warranty Insurance is in Crisis”

And the last sentence of the summary:

“For home builders, warranty is a community problem, not just an insurance crisis”

The NSW Minister for Commerce the Hon John Della Bosca in May 2003 announced a further inquiry into builders warranty to be chaired by Richard Grellman and the final report was released on the 22 November 2003 to the dismay and disgust of those whom this warranty insurance impacts on, and to that end 20 Industry stakeholders took the unprecedented action of commissioning their own Industry Response to the Grellman Inquiry that was carried out by Dr Peter Tyler and released in March 2004.

I believe it is more than appropriate to paste the opinions from the industry response of some of these stakeholders to form part of this submission, rather than write more words:

*The President of the **Royal Australian Institute of Architects**, NSW Chapter considers the Inquiry conclusions are "astonishing", and it is difficult to understand the logic that lies behind them.ⁱ The existing system is not working, although there has been some easing in the availability of HWI over the past two years. A builder who is licensed should be able to obtain insurance. Placing an arbitrary cap on the value of a project they can build is "outrageous", considering that the maximum claim is \$200,000. Architects and owners are precluded from engaging their preferred builder because insurers are reluctant to provide cover for architect-designed houses.*

***Building Designers Association of NSW** described the privatisation of HWI insurance as an "abject failure".ⁱⁱ There has been a notable decline in the number of builders available to provide competitive quotes. This in turn is damaging the livelihoods of building designers. One of the unintended consequences of the scheme is that incompetent builders are encouraged to enter into illegal covert arrangements with owner-builders, at the expense of reputable builders who are being driven out of the industry.*

*The **Australian Consumers' Association** dislikes the present HWI cover in NSW - and hence the Grellman Inquiry recommendations - because it is a last resort scheme that offers no real consumer protection. It is faux insurance. A typical building owner does not have the time or skills to pursue a builder to rectify faulty work. ACA favours the Queensland model. The old Building Services Corporation had its faults, and was perhaps too inclined to favour the builders, but it worked better than the present scheme. The BSC scheme should have been amended not disbanded.ⁱⁱⁱ*

There has been continuing and ongoing criticism of Builders Warranty by the media across the States of NSW and Victoria

*There has also been adverse **media** publicity following publication of the report.^{iv} In the financial press it was alleged that the NSW and Victorian governments 'have become captive to the major insurer, Royal & Sun Alliance and its insurance partner, the HIA.'^v Many of the published articles raise similar doubts to those expressed by some of the contractor associations, particularly MBA of NSW. It is clear that a sympathetic relationship has been established between certain contractor associations and a few senior journalists.^{vi} Conversely, the consumer viewpoint or the insurers' position have received scant attention in the media.*

Dr Tyler believes the Governments should be concerned about adopting the Grellman Report

The New South Wales Government should feel concerned about adopting a Report that is described by industry leaders and consumer representatives as an 'abject failure', 'seriously dysfunctional', 'faux insurance', 'astonishing', 'outrageous', and in daily press headlines such as 'This mess will ensure home owners suffer' or 'Building insurance still in need of repair.'

Who Benefits from the compulsory Builders Warranty and this is the opinion of Dr Tyler in the last paragraph of his report.

*The critical question that remains unanswered is: who benefits from mandatory last-resort home warranty insurance? Not the average consumer, who misunderstands the nature of the scheme, only to find it is often a callous deception when the time comes to claim. Certainly not the smaller builders who must pledge their personal assets, in addition to paying insurance premiums. Governments can reassure the electorate that they are protecting the consumers' interests. The major builders benefit from a reduction in competition through the elimination of smaller building firms who cannot gain adequate insurance cover. **The real beneficiaries are the insurers, who have an assured income stream with negligible risk, together with the insurance brokers who charge a generous commission to service them.***

A complaint lodged with the ACCC on the 11 April 2003 has failed to produce any positive action by the Commission, yet the small to medium builder who has spent considerable sums on legal advice that supports the view that the conduct of the dominant insurer is unconscionable, and breaches a number of the trade practices acts appears to have fallen on deaf ears, which allows the Governments of Victoria and New South Wales together with the HIA to continue to stonewall the small to medium builders of both States.

The Office of the Small Business Commissioner, Collins St Melbourne believes that both the Housing Industry Association and Vero Insurance have a case to answer, and to that end has requested they both take part in their mediation process to establish the circumstances for possible further action, however the HIA have declined and the mediation with Vero is listed for June 2004. These actions are endorsed and supported by the ACCC.

The outcome of these processes will determine if the legal challenge by the small to medium builders will continue and in what jurisdiction.

This *last resort* Consumer Protection known as Home/Builders Warranty Insurance being offered by the Governments of New South Wales and Victoria is devoid of any integrity as we know it.

For the Builder it is a farce and a deception as he must demonstrate he has the financial capacity to underwrite any potential future claim, otherwise he will not get insurance eligibility to renew his building licence, and further in the insurers erratic assessment opinion of the financial strength of the builder will determine what his annual turnover will be, and what size projects he will build.

The insurer's ability to assess a builder whether it is for eligibility or a profile change or just to issue an insurance certificate to obtain a permit to build does not fall into the category of commercial reality, and a builder often finds his business in limbo for extended periods, devoid of income.

For the Consumer his warranty is a cruel hoax, when faced with claiming he finds he can only pursue the builder privately through the civil arena over extended periods, and the only possible way to make a claim against this insurance policy is when the builder is dead, insolvent or absconds and these three circumstances also have conditions applied to the extent that not one claim against this insurance has been satisfied, this claim has not been challenged by the insurer or the Government.

The matter of this Consumer Protection begs the question of who benefits from its being, why are the builders of three levels and above excluded together with all the builders working outside the legislation, contract splitting and using other creative methods and operating as owner builders, leaving this warranty with the compliant builder who poses the least risk for the Consumer, who with the Builder are subsidising the insurance industry.

All opposition parties across both States now support a return to a Government run scheme based on the highly successful first resort Queensland whole of industry model.

The Accountancy Profession condemn this warranty and state it is commercially unrealistic, time consuming and beyond reasonable business expectations and is unnecessarily onerous on the small builder.

The collapse of HIH and the subsequent responses of the divided industry trade associations of which the Housing Industry Association saw and seized opportunity with Royal & SunAlliance and have since dominated the industry as a dual monopoly, whereas Master Builders Association was left floundering, losing membership as they had no underwriter to offer warranty and hold membership.

Governments took advantage of the division and chose the path of least resistance which has also seen the Insurance Industry hold them to ransom and all residential buildings of 3 levels and above have been removed from the warranty scheme totally. A further concession gained was any catastrophic events above 10 Million to be underwritten by the taxpayer.

The Victorian government also in May 2003 saw fit to exclude themselves from the warranty scheme due to their inability to access builders with the relevant insurance cover for their own projects.

Suffice to say the managers and regulators of our industry have failed miserably in providing a fair and equitable working environment for the small to medium builders of these States.

The impacts have been horrendous, without **social** or **moral** conscience, which has seen the ongoing demise of the small to medium builder businesses through being devoid of income brought about by the insurer's inability to assess applications in a timely or commercial manner and or to provide a sufficient level of cover to maintain a viable business.

This has also seen the consumer disadvantaged to the extent his choice of builder has been removed, and builder availability virtually non existent, therefore home affordability has increased particularly in the one off architect designed market by an estimated average of 35%.

The Governments now believe, or want to believe that due to the entry of GGU to the warranty market with their limited product, the criticism of the warranty scheme should go away. The product remains the same for both the consumer and the builder and accordingly is not an acceptable consumer warranty for our industry as it now applies only to a limited sector of the small to medium builders, and will therefore remain the focus of change by those responsible builders of the States of New South Wales, Victoria and Western Australia for the betterment of the industry as a whole.
