



## **Inquiry into the Operation and Performance of the Building Services Authority**

### **Introduction**

The Builders Collective of Australia was founded in the wake of the greatest corporate failure in the nation's history, the criminal collapse of HIH insurance.

This collapse had particular catastrophic impacts on some 65% of the nation's builders as they had obtained their mandatory home warranty/indemnity insurance from HIH via Master Builders Association (MBA) as their broker.

These builders faced varying degrees of delay in obtaining the mandatory insurance, as the only option they had was to approach the only insurer left in the market place through their single and only broker.

The HIH collapse left the Housing Industry Association (HIA) as virtually the only place to purchase the mandatory insurance.<sup>1</sup>

The HIA, through their supposedly 'independent' broker HIA Insurance Services immediately doubled premiums and proceeded to increase eligibility criteria while at the same time plotting with Royal and Sun Alliance to slash cover by introducing the 'last resort' scheme less than 12 months later.

HIA have very poor form in every dealing they have had with mandatory builders warranty insurance and from then to now, remain the key vested interest and the only group who are now isolated in their support of this scheme.

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<sup>1</sup> Reward Insurance were also in the market however only held some 1% - 2% of the total market. Royal and Sun Alliance insurance with HIA as their only broker held a virtual monopoly of 92% according to the 2003 Grellman Report on page 15. Reward held the balance.

Consequently, there was total upheaval within our industry over the next few years with many building businesses failing as they were unable to obtain the warranty and were therefore unable to work.

Sadly we saw family units disintegrate due to the financial stresses and suicides as an escape from the mayhem.

This chaos spawned many groups seeking political relief/reform in all States where Last Resort Insurance was introduced and it was these groups that formed the basis of the Builders Collective of Australia (BCA).

Seeking alternatives the BCA visited Queensland in 2003 at the invitation of Mr Col Wright of the BSA who hosted what may be termed an information seminar on the complete structure and operation of the BSA. At the same time we researched and surveyed builders and consumers to understand the operation of the holistic Queensland regime of consumer protection and industry management.

From that time on the BCA has robustly supported the principles of the BSA and has closely monitored its operation and effectiveness when promoting this regime as an alternative to all States where Last Resort Warranty Insurance exists.

Even though there was chaos in our industry with the duopoly of HIA and Royal Sun Alliance (RSA), the desperate requests of members and other industry bodies for HIA to intervene to fix the problem fell on deaf ears. The HIA continued to advise Governments in line with their own corporate interest by spruiking that the system was working fine and it was only those who were financially unstable that were being vocal. This was misleading, deceptive and in fact, a lie.

The HIA role and the reasoning for their position will be expressed in more detail later in this submission.

## **Understanding the warranty jurisdictions**

The introduction of the HIA last resort model to New South Wales, Victoria, Western Australia, South Australia and Tasmania<sup>2</sup> has completely failed to deliver:

1. a reasonable consumer protection regime, and
2. a coordinated industry management regime

Both regimes have been founded on a last resort builder's warranty insurance scheme.

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<sup>2</sup> Four years ago the Tasmanian Government, on advice and assistance from the BCA completely removed last resort builders warranty without any detriment whatsoever to consumers and builders.

Consumer protection is supposed to be delivered through a last resort policy insuring against builder failure, builder inability to complete and/or defects. Also, the insurance also manages builder registration as this registration is conditional on a builder gaining insurance eligibility. Eligibility is based on an insurer's arbitrary criteria and once approved, the builder is 'eligible' to purchase the mandatory warranty insurance.

Our whole industry is being undermined by what we understand to be the worst insurance product to have ever been concocted and forced upon any developed democracy at anytime, anywhere.

This last resort scheme is costly, provides extraordinarily limited cover for consumers and has only managed to deliver a slew of controversy and virtually no claims<sup>3</sup>.

Unsurprisingly, Choice Magazine, one of our preeminent consumer organisations describes it as 'junk insurance' and of 'making a mockery of consumer protection'.<sup>4</sup>

Added to which the Productivity Commission in 2008 referred to it as a 'running sore' since its inception after it was introduced across Australia in the wake of the HIH collapse.

As a result, the last resort insurance scheme has seen a loss of consumer confidence in our industry nationally, and a perception that Governments are incapable of managing one of the most important industries in the States because they have abrogated their fundamental consumer protection mandate to 'for profit' private companies, trade associations, and brokers who have a financial interest and obligation to shareholders to keep things just as they are.

At the same time consumers and registered builders have paid an enormous price for this last resort regime that still, despite attempts to band aid it, fails to cause building defects to be promptly and efficiently rectified. Many builders and consumers have not and will never recover from its effects.

The HIA and the Insurers have recommended tweaks to this (their) system in the past and each tweak in any jurisdiction has failed to deliver any meaningful results because their basic scheme was always fundamentality flawed at inception.

Any attempts by Government or any public authority to assess meaningful claims and premium data<sup>5</sup> has been always met with the tired 'commercial in

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<sup>3</sup> Figures published by the Victorian Government in 2011 showed \$87.8 million in premiums and commissions collected from consumers and only \$108.5K (yes, one hundred and eight **thousand** dollars) paid in claims. Refer front page of the Age attached: "*Victorians fleeced on insurance*"

<sup>4</sup> Refer attached ACA article

confidence' argument that has restricted any proper auditing of the scheme. It operates in secret, delivering millions to vested interests with no accountability or results.

Therefore the premise that effective consumer protection can be delivered by gifting these sorts of secretive and litigious<sup>6</sup> profit driven entities with responsibility for the development, administration and funding of a fair, transparent and just consumer protection scheme is patently ludicrous.

It is akin to putting the fox in charge of the henhouse – stupid, unless of course you are the fox.

On the basis of the facts and the numbers, there has been a clear focus on profits first with benefits to consumers and the building industry second.

The vested interests of HIA, Insurers and brokers are still virtually the only entities to support their last resort schemes and why wouldn't they – the scheme has been very, very good to those who administer and deliver this product for their own benefit.

These have been the consistent messages from the Builders Collective of Australia since the HIH collapse in 2001 and now, over a decade later, the consumer detriment is both apparent, measurable and utterly appalling to any reasonable observer who is untainted by the vested financial interest others seek to derive from the continuation of a Government protected Last Resort Insurance scheme.

The eastern State Governments are all currently reviewing their Last Resort Warranty/Indemnity and now have the opportunity to effect wholesale change which in the eyes of the national building industry will see them as champions.

## **The facts**

Building or renovating a house is often one of the most expensive and emotionally charged experiences in a consumer's life.

Builders and consumers rightly expect that the building regulatory regime will protect both consumers and builders by enabling fair outcomes for all.

The industry expects arrangements to be in place to ensure minimum standards are set and met, qualifications for builders and other practitioners

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<sup>5</sup> The first figures available in Victoria (as quoted above) only became available a full year after the Government took over the management of the scheme from the private insurers

<sup>6</sup> Vero Insurance attempted in 2005 to force the BCA to retract verbal and written evidence given under privilege to the VCEC inquiry. The legal harassment and threats only ceased when the then opposition planning minister, now Premier Ted Baillieu, queried the Treasurer on two occasions during adjournment debates. See following links: [8 September 2005](#), [10 August 2005](#)

are obtained and maintained, compliance is monitored and enforced, dispute resolution is available to all parties and consumers and builders understand and comply with a standard contract fair to both consumer and builder.

Furthermore industry and consumers see this as a government responsibility to administer these functions to deliver consumer protection as a Government can operate as an honest broker with a degree of accountability and governance not possible from the private sector.

Consumers also look for protection in the event that a builder does not, or cannot, complete contracted work and that the builder returns to rectify defects during an agreed statutory 'warranty' period.

However after the HIH collapse the NSW and Victorian governments abrogated their responsibility of providing consumer protection and industry management to the private sector under the banner of the 10 point plan that was devised by HIA and Royal & Sun Alliance (RSA).

The 10 point plan introduced last resort insurance, the three triggers of death, disappearance and insolvency and was implemented by NSW and Victorian in harmony on the 1<sup>st</sup> July 2002.

### **The HIA evidence presented to the Public Briefing on 27.08.12**

Mr Temby, a director of HIA which is a private company refer attachment, has presented a view suggesting the BSA one stop shop approach is its fundamental problem together with its failure in handling dispute and resolution successfully.

He further suggests a specialist dispute and resolution division should be set up within QCAT and his view is based on his perceived 'successes' of the eastern States tribunals<sup>7</sup> under the Last Resort scheme.

Mr Temby believes the Victorian system works tolerably well as does WA and NSW yet each of these States have reviews/inquiries underway due to the failure of the systems and all have issues papers in the public domain with Victoria leading the way having posted their submissions recently.

[This is the Victorian Government website](#) where the reviews consultation paper can be found and it should be clearly noted this paper constantly refers to the BSA and a one stop shop as a solution and a similar approach applies

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<sup>7</sup> VCAT in Victoria, CTTT in NSW


[to the Western Australian issues paper at this link](#) where it is stated to the reader:

*“The Queensland home indemnity insurance scheme differs to that in Western Australia (and New South Wales, Victoria and South Australia) in that the scheme provides consumers with ‘first resort’ protection. Other unique elements of the Queensland scheme are that it includes no fault subsidence cover and is entirely administered and underwritten by the State Government”.*

[And yet again in the NSW issues paper](#) where the Advisory Council suggested that:

*“Queensland’s system of categorising defects be adopted in NSW. In Queensland, defects are divided into two categories: Category 1 (leaking roof, shower, health and safety issues, structural inadequacy etc); and Category2 (poor finishing detail, minor cracking of plasterboard, cornice etc)”*

In terms of the Victorian submissions it is fair to suggest there is an overwhelming view the Queensland regime is appropriate for Victoria and it is only those who derive a direct financial benefit from the current arrangements in Victoria that seek to ensure these same arrangements stay in place.

 The Law Institute of Victoria in their submission believes the Queensland system works well, and [Damien Cremean past Deputy Chair of VCAT](#) states:

*“1. VCAT is not, or is no longer, the effective dispute mechanism body in this area it was intended to be. Some of the cases it is handling are beyond the range of the competence of some or many of its members (those who sit in Domestic Building) and are suited only to be dealt with by the better resourced courts.”*

In light of these overwhelming facts it would appear Mr Temby of HIA is grossly misinformed or his presentation was/is meant to mislead in the most duplicitous of fashions.

Either way, this has been our experience over many of the enquires of the past decade where HIA have attempted to spruik up a system that has clearly failed the community.

## **Conclusion**

The Queensland BSA is an example of a whole of industry solution that has consistently performed well and delivered for consumers and builders.

This was achieved because the Queensland BSA has taken leadership and shown responsibility to control and administer an entire industry at no net cost to the taxpayer.

Add into this the utter transparency and public scrutiny they subject themselves to, and the end result is an industry model that enjoys overwhelming consumer and builder approval. This is a result that cannot be dismissed by its critics, as it is the 'holy grail' of regulatory control.

This is not to say that the system in Queensland cannot continue to improve, as it has consistently done over the years, however we respectfully suggest the Government keep the QBSA scheme and reject at all costs the self-serving last resort scheme as suggested by Mr Temby and HIA.

If there were to be any tweaking of the QBSA system we would simply recommend that the scope of dispute resolution be expanded to also include contractual disputes.

Our feedback is that recalcitrant builders can merely claim a 'contractual dispute' to the QBSA which has the consequence of sidelining and sidestepping the intent of the consumer protection system.

Queensland has a history of providing a system that works for consumers and the industry, the last resort States have a sad history of providing and then propping up a system that does not work.

Our main recommendation is that the QBSA keep their system and to not make the same mistakes as the other States.

Kind Regards

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