

**Submission**

**No 13**

## **INQUIRY INTO THE OPERATIONS OF THE HOME BUILDING SERVICE**

**Organisation:** Builders' Collective of Australia

**Name:** Mr Phil Dwyer

**Position:** National President

**Telephone:**

**Date Received:** 9/11/2006

---

**Subject:**

**Summary**

Ms Rebecca Main  
General Purpose Standing Committee No. 4  
Parliament House  
Macquarie St  
Sydney NSW 2000  
**By Email to [gpscno4@parliament.nsw.gov.au](mailto:gpscno4@parliament.nsw.gov.au)**

Dear Ms Main

Please find above 4 attachments as our submission to your inquiry, and I look forward to hearing from you.

Yours Faithfully

Phil Dwyer  
National President  
Builders Collective of Australia  
27 Advantage Road  
Highett Victoria 3190.  
Email: [Dwyerbld@bigpond.net.au](mailto:Dwyerbld@bigpond.net.au)

Thank you for giving me the opportunity to talk to you tonight.

First, I'd like to say that my priorities are:

- An Alternative Disputes Resolution system
- Homeowner's Warranty Insurance
- Planning, and
- Owner Builders

As you all know, I have an amendment to the *Building Act 2000* in Parliament. The amendment will empower the Director of Building Control to accredit building partitioners. Obviously, I will not talk about history leading up to this decision. It is more important to talk about the future of the building industry from my perspective as Minister responsible for Planning, the Building Act and the Housing Indemnity Act.

As a former Mayor, I have an interest in planning. Effective planning, means ensuring that building and construction activity is coordinated and that there are effective services that conform with straightforward, predetermined town and State planning objectives. It is important our planning system is based upon certainty and consistency. This is a priority of mine.

The Housing Indemnity Act commenced on 1 July 1993. It established mandatory housing indemnity insurance to protect

consumers should a builder not be able to complete building work or if defects developed up to six years after completion of the building work.

In 2003, the Housing Indemnity Act was amended to insurance of last resort. From that time housing indemnity policies were only offered to cover building owners if the builder died, disappeared or became insolvent.

The Housing Indemnity Act was to protect consumers from financial loss caused by a builder breaching a statutory warranty, regardless of whether or not the builder was still trading. Where builders did not rectify defects, insurers were expected to cover the loss. This placed the insurer in the position of complaint mediator if the builder was still trading. Insurers argued that this was not their role. It muddied their relationship with builders. Insurers also complained that insurance of first resort was not viable. They were losing too much money in claims.

Tasmania was the last state to move to last resort cover. Since that time there has been a lot of debate over whether last resort cover is worth the cost that insurers charge for this cover. Was housing indemnity a value for money option for home owners anymore?

The amendment did result in more insurers offering housing indemnity insurance. However, there is no evidence that the price of premiums has gone down, and many builders complain that housing indemnity insurers force them to lock up too much of their capital to gain access to insurance.

There also seems to be a large number of projects that are carried out by ‘owner builders’ in Tasmania. To what extent are the current owner-builder provisions being used to circumvent requirements for accreditation and insurance is a question I would like to see answered. I am sure that some builders present as owner-builders to avoid their legal responsibilities. I do not want to stop genuine owner-builders from building their own homes, but they should be made aware of the risks. People who buy these buildings should also be protected from any defects caused by bad building practices of owner builders.

The definitions of ‘owner-builder’ in the Housing Indemnity and Building Acts differ. There may be benefits in aligning the two definitions, and I note that in Victoria registered professional builders who build for themselves are categorised as owner builders.

There may be scope to have similar, 'refined', definitions in both Acts that limit the number of builders who 'illegitimately' represent as owner-builders in order to avoid regulation designed to protect consumers.

Another option is to develop a more effective means of monitoring owner builder activity. Under the current system of lodging building permits with local councils it is difficult to enforce the limit of 2 properties in 10 years for an owner-builder, permitted under the Building Act.

In Western Australia, owner builders are not permitted to sell within three years of obtaining their owner builder licence, without permission from the Minister for Consumer Affairs. In Victoria, owner-builders are prohibited from selling off the plan.

Workplace Standards Tasmania administers a scheme, where a person who wishes to undertake building work as an owner builder is required to register with the local council. The council then forwards details to the building licensing authority. This is meant to provide a reliable way of knowing whether an owner builder has exceeded the allowable number of projects.

In most other jurisdictions an owner-builder must demonstrate adequate skills to undertake the building work, including the

successful completion of a learning package prior to building. For example in Queensland, owner-builders must complete a compulsory package if the estimated value of building work exceeds \$11,000.

Many purchasers are not aware of the risks of buying a property that has been built or modified by an owner-builder and are unable to determine whether they require, or desire, insurance cover. We need to explore ways to ensure purchasers have prior knowledge of owner-built properties before they decide to buy.

A review of the Housing Indemnity Act has been started. Are owner builder projects genuine, or are builders using the owner builder provisions to avoid housing indemnity insurance and building accreditation. This must be investigated, and if a problem is found, I want the problem fixed.

Builders who talk homeowners into being owner builders and then carry out the building work themselves expose owners to considerable risk. What happens if the builder fails to deliver? Builders who hide behind owners are a blight on the industry and they must be weeded out.

As well as the owner builder issues, the review was also to explore ways of providing an affordable and fast dispute resolution system for homeowners and builders.

Court processes are a costly and risky way to have a dispute processed.

We need a fast and inexpensive dispute resolution process that is binding on all parties.

Other jurisdictions, particularly Queensland, NSW and Victoria have in place formal dispute resolution processes. We should learn from these states and introduce a model, which takes the best features of those states and introduce a model that suits our needs in Tasmania.

A mandatory dispute resolution process will also take away one of the main arguments insurers put for the move to last resort insurance. I would like to think that insurers would be prepared to once again offer first resort insurance so that consumers can claim if the builder refuses to accept the umpire's decision.

As you all know the *Building Act 2000* commenced on 1 July 2004. Building practitioners, who carry out building work that requires Council approval and is worth more than \$5,000, must

be accredited. Housing indemnity insurance is required as a condition of accreditation.

While many people have differing views on the future of housing indemnity insurance - such as whether it should remain mandatory and whether it should be linked to accreditation, all want the way we regulate housing indemnity insurance in Tasmania improved.

Mandatory housing indemnity insurance does at least ensure that the financial viability of a builder is assessed. An insurer will not offer cover to a failing builder. This has got to be good for consumers. However, there may be another way to achieve the same end.

The only Australian jurisdiction with a housing indemnity scheme of first resort cover is Queensland. The Queensland scheme provides protection against: non-completion of contract work; defective construction; and subsidence or settlement of foundations. This is government underwritten and administered, with compulsory licensing of building practitioners for building work in excess of \$3,300, automatically insuring those practitioners. Significant in this regime is a rigorous dispute resolution process and a demerit points system, which may lead to loss of licensing for the builder.

Last month I invited representatives from the Queensland Building Services Authority to come to Tasmania so that I could learn more about the Queensland model.

I have a real interest in seeing some real changes that will:

- stop the misuse of owner builder laws;
- offer cost effective dispute resolution; and
- ensure housing indemnity insurance offers a cover that people want for a price they can afford.

I expect a report on the review to be available to me shortly.

I look forward to your help in achieving a better model of regulation for building practitioners and homeowners.

## **Presentation**

*to the Tasmanian*

### **Legislative Council Select Committee**

*Regarding*

## **Accreditation of Building Practitioners and Administration of the Building Act 2000**

### *Terms of Reference*

- (1) *The accreditation of building practitioners, including in particular all details of the agreement entered into between the Tasmanian Compliance Corporation and the then Minister responsible, the Hon Bryan Green;*
- (2) *The optimum framework for the accreditation of building practitioners and administration of the Building Act 2000 including the appropriateness of all consequential costs imposed on builders.*

*And any other matters incidental thereto.*

### **1. Consumer Protection**

Accreditation is a consumer protection issue first and foremost. Major building work presents the single biggest financial commitment that home owners ever make, hence related consumer protection mechanisms must be beyond all reproach.

This extends to ALL financial arrangements made between the TCC and Government. The actions of former Minister Mr Bryan Green have clearly brought the Government and the TCC into disrepute.

The questionable financial arrangements, first denied by Mr Green, are the VERY sorts of shady business dealings that consumers are supposed to be protected **from**.

### **2. Minister Green**

The TCC were primarily interested in one single fact. That is, that an applicant for accreditation held eligibility for Home Indemnity, or Builders Warranty Insurance. Warranty Insurance has been described in the national media as one of the 5 biggest consumer rip-offs currently in Australia.

The Australian Consumers Association described it as making a 'mockery of consumer protection'. The TCC accreditation process is underpinned by this flawed product.

Further to the current Warranty Insurance review, I raised this with Bryan Green last year but all he could manage was a savage diatribe against me personally and an attack on everything that the Builders Collective stood for.

He had not understood that the review itself was as a direct result of a Builders Collective document submitted to former attorney General Judy Jackson and I table a letter from Ms Jackson to that effect.

Pre-election Bryan Green was on the record trying to discredit the Builders Collective as well as our views that the TCC should be disbanded.

Consequently, Bryan Greens actions in relation to the TCC showed a clear preference to financially assist well connected colleagues, even while his own constituents were hurting.

Bryan Greens role in this matter has been nothing short of reprehensible and it is our view that he is not a fit person to have any responsible role in Government, let alone in relation to consumer protection.

He has, by default, delegated to the insurance industry sole rights to manage and approve builder accreditation and in the process has not only made the TCC irrelevant, but woefully ineffective.

### **3. Trade Associations**

While we were in Tasmania last year, we were also asked to assist Shauna Lee-Boxhall who was unable to get Vero insurance to pay a legitimate claim for her incomplete project.

That claim was against an accredited builder that had gone broke. His unqualified labourer partner was then asked to complete and/or rectify the work.

As a HIA member, he quickly obtained eligibility for Warranty Insurance, and was accredited by the TCC. Of course, he couldn't do the work and in a very short time the project folded once again and Vero Insurance still refused to settle the claim.

The Builders Collective then shone a media spotlight on the case and the insurer eventually capitulated and paid the claim. The HIA had allowed a patently unsuitable person to gain Warranty Insurance eligibility and TCC accreditation – all to the clear detriment of this consumer.

There is a certain conflict of interest in consumer protection when the HIA Ltd, MBA, the TCC, Insurance Companies and Insurance Brokers are involved in consumer protection management and administration.

Mr Stuart Clues HIA Executive Director Tasmania said on ABC Stateline on 4<sup>th</sup> August 2006:

*“You can't have a situation where a private sector company that's profit driven is running government regulation. If the Government wants to administer regulation to improve the professionalism of our industry, then let the Government run it, is what we say.”*

HIA Ltd profits handsomely from selling Warranty Insurance, the consumer protection product underpinning TCC accreditation. Warranty Insurance is far more sinister, exploitative and expensive than the TCC accreditation and we look forward to him putting HIA money where his mouth is.

I table this chart showing the HIA Financial history in the years since Warranty Insurance has been made last resort and mandatory around Australia. The increase in profit and net equity is staggering for a supposedly not-for-profit company.

The MBA also have a \$1 million slush fund gleaned from Warranty Insurance premium since the collapse of HIH and to date not one cent has been returned to consumers.

Keep in mind that this occurred while consumers such as Janine Bransden were utterly fobbed off by the insurers and the MBA while trying to get her home fixed by her builder and former MBA Tasmania President.

Bryan Green stonewalled the truth of his financial arrangement with the TCC for weeks until he was forced to admit it. With such a disgraceful example set by the Minister then it is no wonder that the other vested interest private companies have such a low ethical bar to clear.

Even though the TCC have Warranty Insurance as their key criteria for builder accreditation the TCC has not been able to assist one consumer to make a successful Warranty Insurance claim.

This is a disgraceful record that again shows the complete impotence of the TCC to actually assist consumers when it counts.

#### **4. Builder Suspension**

In fact, and even according again to Mr Stuart Clues from the HIA on ABC Stateline on 11<sup>th</sup> August 2006 the TCC has not deregistered one builder for shoddy workmanship. The only criteria is that a builder has Warranty Insurance eligibility which has virtually no relevance to a builders qualification and experience.

Industry management and the removal of poor builders is vital for the successful operation of an accreditation scheme.

It is the view of the Builders Collective that the TCC and Bryan Green have failed their responsibility as industry managers.

#### **5. Conclusion**

The Government has a moral obligation and a political mandate to provide and manage consumer protection in Tasmania. The TCC has failed that role.

Vested financial interest continues and will continue to compromise Consumer Protection policy as long as it is allowed to continue. The trade associations and insurers need to be removed immediately from any role in consumer protection.

This is the case in Queensland and the Builders Collective recommend the Government adopt the current Queensland model as soon as possible. This system is self funding, profitable and no burden to the taxpayer while delivering first resort consumer protection and genuine builder accreditation.

It is a proven workable system.

We anticipate that this inquiry will be the impetus for change and the Builders Collective remain available to assist this reform process as required.

# **Presentation**

*to the Tasmanian*

## **Legislative Council Select Committee**

*Regarding*

### **Accreditation of Building Practitioners and Administration of the Building Act 2000**

#### *Terms of Reference*

- (1) *The accreditation of building practitioners, including in particular all details of the agreement entered into between the Tasmanian Compliance Corporation and the then Minister responsible, the Hon Bryan Green;*
- (2) *The optimum framework for the accreditation of building practitioners and administration of the Building Act 2000 including the appropriateness of all consequential costs imposed on builders.*

*And any other matters incidental thereto.*

Today I would like to give a brief presentation on the second criteria within the terms of reference, namely what I believe to be the optimum framework for the accreditation of building practitioners. Mr Dwyer has I believe adequately covered the first item.

Early this year, as a HIA member and registered builder I asked for and was kindly given the opportunity to make a presentation to the Victorian HIA Annual General Meeting. This presentation was designed to move the process of consumer protection reform forward within the HIA politburo by making a formal presentation direct to the Victorian Executive.

The Victorian Executive agreed to form a sub-committee to, in general terms, further investigate all valid alternative models for consumer protection mechanisms and to essentially weigh these against the still current HIA National Policy. Essentially that current policy is to provide a voluntary Warranty Insurance and to remove the link between accreditation and Warranty Eligibility.

The accreditation of building practitioners in every state, including Tasmania is the fundamental cornerstone of effective consumer protection. Accreditation acts as the gatekeeper and ensures consumer confidence and satisfaction with the built product our industry provides. Currently in Australia the 'two edged sword' of Accreditation and Warranty Insurance is used to manage and monitor consumer protection and is utilised in every State to varying degrees of success.

Although the HIA, MBA and for that matter the BCA are ostensibly builder focused organisations, it has been the BCA that has by default become the pre-eminent consumer group representing the Building Industry in Australia. It is on this basis that the BCA are involved in this inquiry and I believe the BCA is uniquely positioned to represent the builder view, as the BCA consists of builders as well as the consumer view because unlike the other Trade Associations, the BCA has not tainted its consumer

protection credentials by profiteering, or even being seen to be profiteering from selling Warranty Insurance.

My views to the HIA AGM earlier this year were that while the removal of the Warranty/Accreditation link is commendable, the option of voluntary warranty insurance to support it is pointless and has in fact previously failed. Many years ago the HIA tried to implement such a scheme but it was soon abandoned for a mandatory scheme anyway as it was economically unviable then and would remain so now.

To use such a model as the foundation for any accreditation scheme would surely be flawed and would not be in the long term interests of Australian consumers, especially Tasmanians. In Victoria we have the same last resort Warranty Insurance however with a Government controlled accreditation that is still ultimately only checking that a builder has eligibility to purchase Warranty Insurance. NSW is the same and WA is very similar. Only in Queensland do we see an alternative model.

Remember that the whole purpose of this exercise of Accreditation and Warranty is to provide effective and affordable consumer protection. In Queensland all builders and sub-contractors are accredited by the Building Services Authority which is directly answerable to the Minister – it is not a private company. In addition, accreditation is more skills based and the Warranty component is also not privately administered.

In Queensland, the removal of private companies from providing both Accreditation AND Warranty Insurance has provided a consumer protection regime that is effective, affordable and self funding providing no impost to taxpayers. While the accreditation and warranty roles are independently funded, that is one does not subsidise the other, they are both managed by the same authority providing seamless integration across the entire industry.

There are no profit driven brokers, Trade Associations or insurers that can exploit any systemic weakness in the Queensland system whatsoever. It is fully transparent, accountable and audited by the Auditor General on an annual basis.

The ability of the Queensland system to at the same time deliver effective consumer protection is clearly evidenced by the fact that it is the only system in Australia that delivers genuine first resort protection and at a price roughly half that currently charged by the major warranty provider in Tasmania. That is, a consumer can make a claim against the warranty policy without the last resort triggers of death, disappearance and insolvency.. These triggers have created enormous pain for thousands of Australian consumers and many here in Tasmania.

Fundamentally, if the builder will not fix the adjudicated defect then the accreditation arm of the QBSA can and does take action against that builder and will inevitably lead to suspension and/or deregistration. All this occurs while the defect or incomplete work is fixed and the home owner gets on with their life.

There are hundreds of consumers in Victoria that have been slogging through the courts for years trying to get builders and/or insurers to complete their building projects. One of these consumers currently has losses at between \$4.5 and \$7 million and evidence to this loss has been presented to the court only three weeks ago. This is not consumer protection.

I will also speak for Janine Bransden later this morning and it is worth noting in conclusion that regardless of what the detractors of the Queensland system may say, if Tasmania had such a system in 1999 then her home would have been fixed within 6 months, the builder would have been disciplined and maybe even deregistered and Janine Bransden and her husband would not be under imminent threat of losing their

home due to their inability to pay crippling legal debts. This is not consumer protection.

Finally, the detractors of the Queensland BSA are not consumers or consumer groups but private companies being insurers, brokers and the HIA who all have a direct financial vested interest in providing consumer protection products to Tasmanian consumers. It is no surprise then that they are not fans of a Queensland system where they are completely shut out from accessing consumer funds.

In relation to the TCC, the lesson to be learned from this experience is that private profit driven companies have no place in the consumer protection chain of responsibility or administration. The BSA have proved that given the right tools, Government can do its job far better and more cost effectively than trying to outsource these core responsibilities to the private sector

That private sector includes the HIA, the MBA, insurers and the TCC who all individually market, sell and profit from very poor consumer protection products and with no public accountability.

Consequently, until this systemic profit driven system is abolished, any reform of the TCC is at best a band aid, and at worst useless.

8 November 2006

General Purpose Standing Committee No. 4  
Parliament House  
Macquarie St  
Sydney NSW 2000

Via email: [gpscno4@parliament.nsw.gov.au](mailto:gpscno4@parliament.nsw.gov.au)

The Builders Collective of Australia has over the last few years been the pre-eminent group lobbying for reform to the operation of both the Home Building Service and its interstate counterparts and has consistently brought forward issues on behalf of builders and their consumers.

In particular we have focused on reform of privatised Builders Warranty Insurance and the on-flow of industry issues that this product has produced. These issues are precisely those that you have identified in the terms of reference, namely:

- a) The builder licensing system
- b) The Home Warranty Insurance Scheme
- c) The resolution of complaints
- d) The exercise of disciplinary powers
- e) The enforcement of relevant legislative and regulatory provisions
- f) The establishment of a Home Building Advice and Advocacy Centre.

The BCA recently made written and verbal submissions to the Upper House Select Committee in Tasmania and the main thrust of that submission (aside from the TCC) was to convince the inquiry that the Queensland model of Consumer Protection, Dispute Resolution and Industry management is the starting point from where all other states need to begin the reform process. This view was very well received by the committee members and I attach a transcript copy of our verbal submissions together with a transcript of a speech given to the Tasmanian HIA on the 28<sup>th</sup> October 2006 by the Attorney General and Deputy Premier Mr Steve Kons.

The Queensland system has been in operation for nearly 10 years and has succeeded in providing excellent outcomes while being no impost on taxpayers. This is clearly articulated on the QBSA website (<http://www.bsa.qld.gov.au/Home/Default.htm>) via detailed annual reports and the like, hence it may be superfluous for us to go into undue detail in this initial written submission.

In a nutshell, the Queensland model works. We would be speaking to that end as we make ourselves available for a verbal submission to your inquiry as we feel a verbal explanation and presentation would be more appropriate as we can then provide additional written material to support our views and to answer further questions that the committee may already have or would wish to raise consequential to our presentation.

Thank you for instigating this very timely inquiry and we look forward to making a positive input in the very near future.

Kind Regards,

Phil Dwyer  
National President  
Builders Collective of Australia