

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 4

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

At Sydney on Friday, 17 November 2006

The Committee met at 9.30 a.m.

Uncorrected proof

PRESENT

The Hon. Jenny Gardiner (Chair)

The Hon. Jan Burnswoods
The Hon. Dr A. Chesterfield-Evans
The Hon. G. Donnelly
The Hon. Kayee Griffin
Ms Sylvia Hale
The Hon. J.F. Ryan

JANA MAGAN, Member, Building Action Review Committee, 120 Riverside Road, Chipping Norton, sworn,

IRENE ONORATI, President, Building Action Review Group, PO Box 503 Drummoyne 2047, sworn,

LYDIA CHAKOUCH, Store Manager, Secretary, Building Action Review Group, 2/47 Grove Avenue, Narwee, sworn,

GERARD JOHN NICOL, IT Consultant, Member, Building Action Review Group, PO Box 266, Leichhardt, affirmed,

SALVATORE RUSSO, Solicitor, Russo and Partners, solicitors, PO Box 10, Galston 2159, sworn,

WITNESS A: (Name suppressed) Student, sworn and examined:

CHAIR: Mr Nicol, you are appearing as a representative and member of BARG?

Mr NICOL: Yes.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr NICOL: Yes I am.

CHAIR: If any of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Mr Russo, are you appearing before the Committee as an individual or a representative of the group?

Mr RUSSO: I am the honorary solicitor for the Building Action Review Group.

CHAIR: Are you familiar with the terms of the reference for the inquiry?

Mr RUSSO: Yes I am.

CHAIR: Mrs Onorati, are you conversant with the terms of reference of this inquiry?

Mrs ONORATI: Yes I am.

CHAIR: Ms Chakouch, are you conversant with the terms of reference of this inquiry?

Ms CHAKOUCH: Yes I am.

CHAIR: Do you have an occupation?

WITNESS A: I am a student and I work part-time.

CHAIR: In what capacity are you appearing before the Committee?

WITNESS A: I am reading a letter on my behalf to show my support to my mother.

CHAIR: Are you conversant with the terms of reference of the inquiry?

WITNESS A: Yes.

CHAIR: Ms Magan, are you conversant with the terms of reference of the inquiry?

Ms MAGAN: I am.

CHAIR: Would one of you wish to make a brief opening statement?

Mrs ONORATI: Madam Chair, Honourable Members of the Committee, thank you for the opportunity to address the inquiry on behalf of BARG members and also for building consumers at large. I believe I don't need to introduce BARG as it is well-known as a voice of building consumers since 1988. My name is Irene Onorati. I am 73 years old. I have been BARG's President for 18 years as a result of a fatal building tragedy. *Onorati v Phillips* is the principle used by courts and tribunals to date to condemn many innocent consumers. This was our case, the case that has transformed and ruined utterly our lives. My husband Joe has passed away, destroyed by the anger, pain and stress and died with bitterness and injustice. And I, well if you didn't know yet, you know it now, the reason for my dedication is to assist building consumers in strife.

I will try to be brief to allow time for questions, but from my brevity please do not underestimate the depth, the scope and the gravity of these issues. I will touch lightly on each issue. Let me start by asking is consumer protection adequate? Can consumers be confident and rely on the licence, recognising that builders are experts? Let's see. The terms of reference at point A, the licensing system. The Office of Fair Trading and Home Building Services are the regulatory authority in New South Wales and have powers to licence and discipline builders and protect consumers. These powers are designated to minimise risk and prevent losses to consumers, but do they? Consumers are advised for their protection to check out the builders licence through ringing the Office of Fair Trading or visit the Home Building Service web site licence check. How reliable is the information provided by these sources? Let's examine. On 28 August 2006 at the Budget Estimates Committee the Commissioner of Fair Trading, Ms Lyn Baker, advised that only 10 percent of all licence applications are checked.

In 2005 the Independent Commission Against Corruption investigation established a syndicate for which building licence documents, fake qualifications, references, 29 fraudulent diplomas for structural engineers alone had been issued. Mystery how a fake carpentry certificate was found, et cetera. I am sure you all heard about this, but there is more. BARG members obtained copies of licence applications files and discovered commonalities and strategies used by builders. For example, misrepresentation. I have in my submission three examples and I refer you to my submission where it is detailed how builders misrepresented that a company or partnership were the holders of a construction licence knowing it was not the case. There is irrefutable evidence to prove that, letterheads, contracts, et cetera, displaying their own individual licences representing the particular company had that licence. The fact that they used their own licence number is evidence that they made representations, knowing that companies were not the holders of that licence. This conduct is a breach of section 23 of the Home Building Act. Further, multiple entities in my submission are exemplified, not appropriate trade qualifications or no qualifications at all. Renewal licence application: After 12 months the licence was expired. Application for the licence, making incorrect statements referring to renewal and quoting the expired licence number that was expired for 12 months.

Senior members of the building industry gave evidence to the inquiry. At page 15 of BARG's submission I have an attachment of what the building industry is saying about licences. I will not read it, I will just refer you to. Last but not least, the web site is deficient. Mr Le Compte, the former general manager of the Home Building Service recognised the deficiency in the web side that needed to correct the problems. Mr Steven Newton advised us at a quarterly meeting that revising the web site would cost thousands. Furthermore, what is discouraging and heartbreaking is that after BARG submitted such evidence to the Home Building Service quarterly meetings there was little or no action at all.

I conclude this section by asking the Committee is the Office of Fair Trading Home Building Service properly discharging its statutory duties to protect consumers under the Act 1989? Are consumers receiving their entitlement under the Home Building Act 1989? As I wish not to stem the flow, I go to items C and D of the terms of reference, leaving the home warranty insurance for last. C resolution of complaints. Most consumers, when concerned with building defects, ring the Office of Fair Trading. BARG members have stated that they have received unclear advice when they ring Office of Fair Trading where to take their dispute. In many instances consumers report the Office of Fair Trading refer them to the tribunal.

Consumers' naivety does not assist as there are two separate processes set in place: One, the Home Building Service, and on the other hand the Tribunal. This only confuses and harms the position further. The Home Building Service advises consumers it does not investigate structural matters. This is a ludicrous statement as all complaints are triggered by the same contract. The Office of Fair Trading referred them therefore to the consumer tribunal, the CTTT. Having said that, the Office of Fair Trading has an obligation to commence investigation on compliance matters. This seems to be an intermittent obligation open for discretion, as again we will mention Mr Le Compte's statement that not all complaints are investigated due to insufficient funds and the number of inspectors.

The two processes of dispute resolution are distinct and separate and work along different timeframes. A, the home building dispute resolution on page 48 of the submission, and I will read from this, the home building dispute resolution, a new statutory regime for dealing with the home building dispute commenced 01 July 2003. Home Building Service team of inspectors will make a site inspection and try to assist the parties to a building dispute to reach a mediated settlement. Where agreement cannot be reached, the inspector has the power to issue a rectification order with which the builder must comply by the date set. If the builder does not comply with the rectification order the Home Building Service can start investigation and prosecution. This early intervention, if successful, can prevent the matter to proceed to the Tribunal. Unfortunately there are several problems. One, the consumer is not aware of this process. Two, the rectification order cannot be enforced if the builder has lodged a claim to the Tribunal and three, consumers have advised BARG that not always the Home Building Service inspector has tried to mediate and/or issue a rectification order.

The second process, the Consumer Trader and Tenancy Tribunal: Is it a simple non-legalistic alternative? Consumers and builders as well will answer definitely not. BARG members' case studies will demonstrate that the tribunal is taking years to resolve and costing tens of thousands of dollars. This is hardly a determination which is expeditious and inexpensive. Today BARG members' case studies raise great concern not only for the legalistic functioning but for protracted delay. It takes in many cases over two years to resolve matters. The cost is prohibitive and unaffordable. Has the CTTT or the tribunal performance audit been carried out within the three years as the Campbell inquiry recommendation? BARG is unaware of whether this audit has been carried out or not. We request the Committee to assess and consider this serious anomaly and non-compliance with the regulatory provisions by the Home Building Service and the CTTT. The tribunal judgment must assess defective works in accordance with the prescribed Environmental Planning and Assessment Act, councils condition of consent, Building Code of Australia and Australian Standards. Consumers pay in full the contract price to the builder and should not be made to accept an inferior product which does not comply with the prescribed regulatory provisions. I can mention names, but you will find it in my submission, of the consumers who have gone through this atrocious system. The consumers are too exhausted and financially destroyed to appeal the CTTT decision, and there are many cases. Only this last week I received three new cases, one who is working for the Department of Commerce and he has lodged a submission.

We conclude with a statement by the former fair trading minister, the Hon. John Watkins when the CTTT was enacted. He said these alterations will enhance for the better the powers and the operation of the new super tribunal. As a result the efficiencies, incompetence and delays in the current tribunal will disappear. This was an admission, but have they indeed? I cannot see it. I wish

they did.

D is the exercise of the disciplinary powers. I know we do not have much time but I will make the points I would like to address. First of all I would like to say that the building investigation branch of the Office of Fair Trading Home Building Service is responsible for the enforcement of the Home Building Act which includes disciplining and prosecuting licence for breaches and non-compliance of the Act. The points I want to draw your attention to is qualifications of inspectors. This is a critical and vital issue. What are the Home Building Service inspection qualifications and expertise? How can an inspector without engineering qualifications assess building structural inadequacies and/or determine an engineer's plans and report?

I have got something to put before you. The evidence by an Office of Fair Trading HBS inspector was provided to BARG by a member. Refer to page three from the Office of Fair Trading building inspector report dated 12 July 2005. The inspector's name is Mr Donald van Kipner, which states, "during my inspection of the alleged defects raised in the Frasca report, there are some items mentioned by Mr Frasca that are not considered defective" and I will repeat this, "they are not considered defective or beyond the qualification of myself". How could he? At least he was honest enough to put this in writing. He is not considering them defective because it is beyond his qualification. For goodness sake, what are we talking about, not peanuts. I am sorry, I cannot help getting excited.

The consideration of building problems was the second issue, or defective works said by the Office of Fair Trading Home Building Service. The local council and the tribunal and insurance are not consistent. The varying terms used in assessment of the qualifications of the inspectors, like we have seen a minute ago, create a very subjective basis on which to attempt to identify a serious legitimate status of defective construction. This is a recipe for dispute. Sorry, I am getting angry.

This is a fundamental issue that complicates the process for consumers in working out the building problems and of course the success of their legal action or proceedings in the Tribunal or courts, and I have few cases here. Again I will not mention names, as I was told.

I want to continue, there is something else I want to say on this topic about reports, expert reports. It is clear from many consumers that contact BARG that HBS - Home Building Service - ask the consumer, which ones are they, show them to us? So the consumer starts to get reports from building experts. When the reports are submitted to the Home Building Service, they criticize the consultant or engineer. They say, "Your consultant is bias, he is not independent. Further, please refer to BARG' quarterly meeting of 23 May 2006 at page 10 and BARG members stated, Mr Burns call Mr Frasca "The Demolition Man" and that I should not put too much weight into Frasca's report. To hear such comments from an officer of the Office of Fair Trading is quite unacceptable, and I hope you agree with me.

The end result is after the consumers have spent \$10,000, \$20,000 and even \$30,000 in cases on expert reports, the Home Building Service inspector appointed to go and inspect the defects, comes up with his own report, often minimizing the defective work and in some cases, completely absolving the builder and determining there is no evidence of defective work. The Council opinion, of course, varies as well as the insurance. BARG members' case studies evidence indicates that policing is strictly not always taking place or the complaints are not treated with the vigour they deserve. We request the Committee to accept and consider the degree and leniency of disciplinary action, prosecution and penalties imposed by the Home Building Service. The examples provided in BARG's submissions are detailing the delay and leniency and emphasise the inconsistency of the penalties.

Now, I don't know if I have the time, and I am in your good hands to quote the examples. Some of the examples are terrifying.

CHAIR: We might be able to ask you that specifically when we get to questions.

Mrs ONORATI: Thank you Madam Chair. Can I continue with the next point?

CHAIR: Yes, sure, but can you keep it quick because obviously the longer you go, the less time we have got to ask you questions.

Mrs ONORATI: Okay, I have two more and I will be very brief. Although my submission is very detailed, I will try and be very brief. We have done exercise of discipline, so only one, the home owners' warranty, which is very simple, I can do it in once sentence if you want me to. Since 1971 the Parliament established the insurance provision to protect consumers for loss in the event of a builder carrying out defective work or becoming insolvent. Insurance was provided by the Government until May 1997. The Home Building Act 1989 s106 prescribes the functions of the Director General to monitor the operation of insurance provided for the purpose of the Act.

To date we have seen many amendments of this Act authorising and indicating strengthening of consumer protection. It is with the greatest concern that the recent amendments affecting the home owners' warranty insurance have flagged excessively and extensively consumer's life. There has never been such regression in building insurance. Consumers and builders are outraged. The problems identified today are of such a magnitude and urgency that immediate action is required. I can mention a bit more if you like and I can say that from the insurance perspective that reforms have been successful. They reflect the reforms that insurers lobbied for but I ask the honourable members of the Committee to consider the history of the inquiries, the statistics of the amendments of the Act and the implementation of the recommendations. I will not go into particular ones. It is evident that privatisation of insurance is a big failure.

It is imperative to reiterate for the Committee to carefully assess and consider all BARG's contemporary correspondence and the minutes of meetings with the Home Building Service and the Scheme Board chairperson. The above documentary evidence speaks for itself, all the evidence I have given and consumers and builders are united and are calling for the Government to adopt a scheme similar to the Building Service Authority in Queensland.

Before I go, I want to say that consumers need very much the Home Building Service. It is unfortunate what has happened and I have a sentence to make you laugh. When the Campbell inquiry recommended a new organization, it was to be completely independent from Fair Trading. They had their reasons but unfortunately I think we are here today because the implementation of that recommendation has not been implemented appropriately. They have the Home Building Service under the umbrella of the Office of Fair Trading and what I say that is funny is they put Dracula to look after the Blood Bank. That was the culture that used to be there before and is repeating itself. We want the Home Building Service. We want it to be independent and to enforce strenuously the Home Building Act. That is what we want. We need them. We need them urgently, yesterday. We need them now. I have got a lot of people with building disputes and I cannot cope, there are too many people ringing me all the time. Thank you very much for listening.

CHAIR: Mr Russo, do you have a brief opening statement?

Mr RUSSO: I think what I would like to do is just go straight into what I was going to say to the Committee rather than an opening statement, if that is the way that you would like to go to.

CHAIR: That means questions.

Mr RUSSO: I see, well yes, I would like to make a brief opening statement. Irene has raised the issue that we need the Office of Home Building. There is no question that an independent body is required to be able to monitor and police the legislation. There is also no question that after years of lobbying, predominantly by Irene and other groups, that we now have a Home Building Act which has the legislative capacity to be able to properly deal with the building industry in the State.

The problem we have now is that the policing of that legislation has not occurred and that is where the difficulty that we see in the way that the Office of Home Building continues to operate. At

the same time what we find is that, and I have some documents that I want to tender that Irene and I discussed this morning. I have made copies and I will submit them later on. We suggest that the Committee take a look at the letter of 29 May 2003 written to the then general manager of the Home Building Service. In that letter there were ten complaints. We say that the way that this Committee should view and review the Office of Home Building is to cause an audit of those ten complaints.

You will see in that when you review that order the problems, because some of those complaints have not been dealt with. That is three years ago. Some of those complaints were resolved in circumstances where the consumers had to accept very small amounts of money because their health and their circumstances could not allow them to continue. This is the key we see in being able to make an assessment of how well the Office has developed its expertise to deal with difficult complaints. Although I must say, even with not difficult complaints, there seems to also be deficiencies.

There also seems to be a difficulty, I think, in terms of, as Irene as put it, the quality of the inspectors and their capacity to deal with differing extremes of defects and problems in buildings. People are under qualified who go out. The assessments are made and what happens is that the consumer has an expert, the Office of Home Building has an expert and the builder has an expert. What happens then is there is such a variance of opinion that nothing gets done. The early intervention scheme seems to work to a certain extent but at the same time, there are circumstances where even that system does not work either. We have situations where, in terms of the actual prosecutions that occur, both in terms of the Courts and in terms of disciplinary action, the quality of the Council and the legal counsel that are used - and BARG has minutes of one particular prosecution which shows an extraordinary failure, in our view, to use competent people to undertake prosecutions. All of this results in delay. All of it relates in an extraordinary level of hardship on consumers who spend years in unfinished homes, in homes with defects that cause some houses to ultimately be demolished.

The other issue is the way in which fines, sanctions and penalties are administered. When one looks at the quantum with which most of the people who have been prosecuted are living, you will see that there is not a real deterrent at all for a lot of them, and what you find is that the monetary amounts are very small and a lot of people pay them, and of course, the other issue is there is an inconsistency between different types of prosecutions almost for identical types of problems. More importantly, and we think that the real issue here is that this Government has to put a lot more money into the Office of Home Building. It has attempted, in our view, to run an organization very much on a shoe string in circumstances where the volume of complaints, the volume of material, particularly in building cases, that has to be processed, is enormous and the difficulty that we find is that there does not seem to be the capacity for the Office of Home Building to deal with the volume that it has.

The last point I want to raise is this, and I did raise the issue of difficult cases before, and I do not want you to be misled in any shape or form to say that it is only difficult cases which do not get proper attention. It is also the simple ones. The policing of the legislation is critical and in every item that Irene has raised, most of the problems are ongoing and continuing in the industry because there are insufficient resources to be able to police the legislation. No one is saying that we have to have a zero tolerance. No one is saying that we have to be 100 per cent perfect, but the current scenario that we have does not even get close, and the consumers that this woman has looked after and attempts to assist on an ongoing basis are people who are in severe crisis, who have attempted to try and find some way of obtaining assistance. The Office of Home Building should be that body, and it is not. People cannot rely on the Office of Home Building to assist them.

Irene and I were discussing this morning the situation of the motor vehicle industry. If I have a problem with a motor vehicle repairer, there are very few cases that either go to the Tribunal or are in Courts and why, because the industry is very heavily policed. Why can it not be the same for the building industry? Why do consumers have to spend hundreds of thousands of dollars on building reports, experts reports, litigation and lawyers in order to be able to buy something that works, something that they were contracted to build and something that can be easily monitored if there was a proper system in place?

The last thing that we find, particularly in the culture of some of the inspectors, and I think we have to be clear that there are some very, very good people in the Office of Home Building who have assisted consumers and who do an enormous amount for them, but there are also those that really do not care. One of the problems that we have is there appears to be a mentality and culture where close enough is good enough and so there does not seem to be a strict policy where inspectors are insisting on strict compliance with the Home Building Act or with the Local Government Act with consent conditions, so that what happens is we get buildings which are repaired to 80 percent or 90 percent and the culture is well, it is not going to fall down so that is good enough. That is not what the legislation is all about and that is not whether the role of the Office of Home Building is about. That is really my opening statement.

CHAIR: Did you wish to read your letter now?

WITNESS A: I am 14 years old. My mother has been fighting for our house for the past four years of our lives. I am sure that you remember growing up with your parents or even raising your own children and realise four years is a very long and important time. The past four years of my life is not running as smoothly as others because of the building issue and the problem of not being able to resolve it quickly. I have got into many arguments with my mother, telling her to quit. I am not the only one. My grandparents, uncles and aunts have got into at least one argument with her over our home but in the end she continues to fight for it, hoping to get justice. In the end all we can do is support her through the hard times. Four years later still no result, still no justice. My mother has taken out more loans than she can pay back and because of this we have not been going to movies, holidays and any family places since I was 10 years old. I even got my own job as soon as I was 14 and nine months just so that I could buy things like clothes, music and all the other things I want.

The amount of paperwork next to this computer I am typing on is absolutely astonishing. Would you like to know why? All the paperwork next to our computer that probably spreads for about a metre and is probably about three quarters of a metre tall is about our building case and other people's cases. How many people have to suffer before action is taken and the matter is resolved? Will everyone have to spend a quarter of their family lives trying to fight bad builders who in some way or another have built their house badly? Will they have to take out loans they can't afford to pay back? Why can't the Office of Fair Trading listen to their cries for help and actually deal with the issue, or maybe stop the bad builders before they actually build a house. That only seems logical and will only make our lives easier and make their lives easier and they won't have to ignore the cries for help any more. No-one will be crying. Please stop them from ignoring us any longer so that my mother can finish this fight before I become an adult myself and I can enjoy the last few years of my childhood, and my sister.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can you live in your house all right?

WITNESS A: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Could you just forget about it and live in the house?

WITNESS A: No, because there will be the reminder that it is always there, the problem. Just last week, because of the building defects, there was a sewage flood in our front yard and it is always there.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you have actual problems living there?

WITNESS A: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is not okay, with a crack in the wall?

WITNESS A: No, because there is other damage.

Ms SYLVIA HALE: What sorts of problems are you encountering with the house?

Ms CHAKOUCH: There is water coming from the ceilings from one of the bathrooms into the kitchen downstairs, because the waterproofing has not been completed properly. There is rotted timber floor boards in the second level because the water proofing has failed from the two bathrooms. When it does rain and it rains heavily over a period, which we have not had for a while, the garage would flood continuously and you would be knee deep in water.

The Hon. ARTHUR CHESTERFIELD-EVANS: Knee deep?

Ms CHAKOUCH: Knee deep, and they have seen me sweep it out, just to get the water out of the garage. The garage slab has sunk. That is just a few issues. Because it is four strata townhouses, the units behind have suffered flooding to their living rooms and lounge rooms as well. The storm water has not been appropriately placed to accommodate for all the flooding of the backyards. We have footings and slabs which have not been built in accordance. They are below the minimum standards of the Building Code of Australia.

Ms SYLVIA HALE: How old are these townhouses?

Ms CHAKOUCH: Only seven years old.

Ms SYLVIA HALE: You obviously are complaining or pursuing the matter. What about the owners of the other townhouses?

Ms CHAKOUCH: Yes.

Ms SYLVIA HALE: They are equally--

Ms CHAKOUCH: They are equally upset, equally angry that they have paid for something that they did not get. They have paid for something that is not even certified and has not been for seven years.

Ms SYLVIA HALE: What has been your experience with home building?

Ms CHAKOUCH: Would you like me to read what I have to say?

Ms SYLVIA HALE: Whatever is the briefest.

Ms CHAKOUCH: It is not very long. Seven years ago I believed that I had purchased our perfect dream home for my two daughters and myself, the Australian dream actually. Our townhouse had just been completed, one in a strata complex of four. I was happy to look forward to living happily with my daughters. That did not happen, otherwise I would not be here today. I had no idea that a brand new home could cause so much anguish and suffering. It was not only my home. Three other homes were purchased. The other three home owners who purchased the other three townhouses in the complex have all suffered unnecessarily.

Why should we pay hundred of thousands of dollars for brand new homes and not get what we paid for, and this is the issue, to add insult to injury, to have to spend thousands more to prove to government authorities and councils and the insurers that our homes are defective and the work has not been carried out appropriately. This is disgraceful and this is not consumer protection. The

outcome resulted in serious steps that are beyond the means of myself as a single mum with two girls, or an elderly pensioner who has a heart condition, and his wife passed away just two years ago while all this was happening.

Our Australian dream has turned into our worst nightmare. The homes are defective with structural, storm water and fire rating non-compliances. They do not meet the requirements of the Building Code of Australia, the Australian Standards and even council conditions of consent, and they are not certified. Why? Because the Office of Fair Trading issued a builder with a licence and did not check thoroughly in assessing to ensure that he was capable of constructing complex residential building works.

The Office of Fair Trading, the Tribunal and the council insurers have caused us great financial burden and mental stress and anguish. The injustice is so demonstrable. We live in homes that are uncertified and defective. We have not only lost a lot of money, but it has also caused us to lose trust and confidence in this Government and its authorities who are meant to protect us. Our builder had three licences, one which was surrendered in 1976. He applied for a second licence for cottages and alterations in 1982. This licence was held for 11 years and eight other consumers lodged complaints against defective work. This licence was not renewed in 1993 and remained expired for 12 months. In 1994 he applied once again for a licence but he did not provide the correct information. He asked for a renewal by quoting an expired licence and added a new trade, for concrete pools. A new licence was issued by the Office of Fair Trading and again on this new licence four complaints were lodged. This was prior to the construction of our four townhouses in 1998.

How did we get this information? We applied under FOI from the Office of Fair Trading for the original licence application from our builder in 1994. We were not provided with all the documents. There were no documents identifying that the builder had the skills, the qualifications or the practical experience for residential building work. We recently received a letter from the Minister for Fair Trading herself in relation to the qualifications of our builder. I would now like to read an extract of the Minister's letter.

"Due to the age and condition of the records of that time further details are not legible and it is unclear as to what qualifications your builder held in order to obtain the partnership licence".

When I discovered that there was defective work to my unit in December 2002 I asked the builder to fix it. He refused and told me "Go ahead, go to the Fair Trading. You won't win". I lodged my complaint to the Department of Fair Trading, believing they would look after me. I was so wrong. OFT did not investigate the licensed builder's action nor inspect the defective work. Instead they advised me to go to the CTTT. It was not until a year later after strata lodged their complaint through the Home Building Service that our matter was finally investigated. That was the four owners plus the body corporate itself as well.

38 months later, in December 2005, the Home Building Service made their decision after protracted delay, two incomplete inspectors' reports and two reviews regarding disciplinary action. The HBS disqualified the contractor and its supervisor for two years. You may think this is an adequate penalty and it probably is to a builder who is actually licensed, but the contractor and the supervisor did not renew their licences. The contractor's licence expired in September '04 and the supervisor's in September '05. HBS disqualified in December 2005. The HBS penalised this contractor and the supervisor for defective work to four townhouses and common property by disqualifying their licences, although the licences were already expired and had been for one year. Where is the justice in that and where is the sense and logic? How do you justify this kind of disciplinary action?

I understand clearly the comment made by the builder to me in 2002 "Go ahead, go to the Fair Trading. You won't win". Our pain continues though with the home owners warranty insurance. Home owners warranty is a farce. It protects no-one but the directors and the shareholders of the

insurance company. It certainly does not protect the rights of the consumers. We are another last resort to insurance and we had seven years to lodge a claim against all defective work by our builder but that is not always the case. Not all the defective work is accepted or covered as the insurer minimises and trivialises the defects. The insurers have the power and resources to cause protracted delay to court systems, causing consumers exorbitant financial expenses, mental stress and trauma and bleeds them dry of hope, confidence and their spirit, causing both health and relationship problems.

I have been unable to devote my time as a mother to my daughters as I have had to work to make repayments and bills. They have had to manage on their own. As you heard, my daughter at 14 had to go to work so she could buy herself the things that I cannot afford to buy her. There is no possible way that a pensioner, like the owner of unit 4, or the owner of unit 1, who has a young child, or myself, a single mum earning no more than \$40,000 can afford to pursue a claim and pay for lawyers and barristers and experts, which we had five in total over a two and a half year dispute. We are forced to come to their terms no matter how unfair they are. In the end we are left in such a desperate state both emotionally and financially that we cannot take it any more. We are literally forced to take it or leave it, as it was in our case.

Ms SYLVIA HALE: Am I to take it because the building has not been certified, you are unable to sell?

Ms CHAKOUC: Yes.

Ms SYLVIA HALE: Can I ask you, if you take into account what you paid for the unit and the amount that you subsequently spent on legal expenses, can you give the Committee some estimate of those costs?

Ms CHAKOUC: As an individual lot holder?

Ms SYLVIA HALE: Yes, if you can do it for yourself.

Ms CHAKOUC: As a current value of the property or when I purchased it?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The difference is what you lost, isn't it?

Ms CHAKOUC: Yes, it is what I have lost, so close to half a million probably.

Ms SYLVIA HALE: So you presumably took out a loan to buy the house, then you have taken out subsequent loans to pursue the matter through the CTTT or whatever?

Ms CHAKOUC: I have taken out a loan, not to buy my house, I own my house. I have taken out a loan to pay for bills for fighting the dispute. I normally never would have taken out a loan. I have never ever had a loan until this very point now in my life.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can you sell a house that is not certified for anything?

Ms CHAKOUC: Not that I believe so, no.

Mr RUSSO: I think if there was a conveyance on a house that did not have a certificate of occupation, there is no question it can be conveyed, the question is whether or not the subsequent purchaser then can occupy it. So there is an issue as to whether or not in fact the solicitor who did the conveyance would then be negligent in not ensuring that the house was actually occupiable.

Mrs ONORATI: The question was, as I understand, if I may answer, is if she can sell this house. Isn't that what the question is? She cannot sell the house. She can sell it for peanuts. If the

house is worth half a million, she can sell it for \$50,000. There will be twenty people buying it, especially builders, to patch it up and sell it again.

The Hon. JAN BURNSWOODS: To clarify this, can you tell us how much you paid for it? It is a comparative thing.

Ms CHAKOUC: That was seven years ago, so it would have been about 285, 290 with the legals and everything, probably.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Now if it were sold it would be sold for the land value, would it?

Ms CHAKOUC: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So that if somebody bought it for the land value and said it is okay, I can live in it, they would be living in it illegally, Mr Russo?

Mr RUSSO: Technically speaking. I can indicate to you that in Lydia's matter, one of the owners actually sold one of the units and failed to disclose the defects, failed to disclose the dispute, failed to disclose all of those things to the incoming purchaser, who was an Asian fellow and of course, he does not have the resources to do anything against the solicitor and now he is stuck in a situation where he owns a house which is effectively defective.

The Hon. JAN BURNSWOODS: When was that approximately?

Ms CHAKOUC: When he purchased, it was 2004 - 2003/2004.

The Hon. JAN BURNSWOODS: And what did he pay for it?

Ms CHAKOUC: Over \$400,000.

Ms SYLVIA HALE: Almost half a million.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That was because he did not know what he was doing?

Ms CHAKOUC: Well, his English is non-existent, he barely gets a few words out. He had no idea.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is he happy now?

Ms CHAKOUC: No.

Mrs ONORATI: He has got a claim.

Mr RUSSO: This whole idea of occupation certificates is not just isolated to Lydia.

Mrs ONORATI: That is what I was trying to say. It is not only in Lydia's case, I have actually written this, that the Council has issued orders to move out of their own house because it is not safe, the structural defects and the cracks have gotten so big and I will be mentioning this name - can I mention the people today - Charlie Trent, Alex LaBont and the Haberfields. They are three people that have a lot of problems. The cracks you can put your fingers through now, when it started it was just a little crack and when the dispute started, but after so many years where people have spent hundreds and thousands disputing it, the people have to move out urgently because the Council says it is unsafe.

The other case I mentioned to you earlier, the gentleman that works for the Department of

Commerce - and he is an engineer he told me - he lost the case in the Tribunal but Council has now told him that he cannot get an occupation certificate if he fixes the house as the member of the Tribunal told him. I can sit here and give you so many examples, visual and documentary evidence that it is all - it is not just the Home Building Service, it is not just the licence. We hit the licence because it is at the beginning. We believe that if the licence is good, a lot can be avoided.

CHAIR: Mr Nicol, have you got some experiences you want to recount to the Committee?

Mr NICOL: Yes, I do. I have a statement prepared but I will do it off the cuff for brevity. I employed a builder in 2004 to do some renovations on my home. The builder did what I would have to call a really terrible job on the renovations that he did and over the last two years I have been fighting the builder concurrently in the CTTT and also lodging complaints with the Office of Fair Trading. The Office of Fair Trading just this last September, fined the builder in my case twelve times the average fine for a builder. So I do not think there would be any dispute within the Office of Fair Trading that I am a victim of a bad builder. Of the builders they fine, my builder was fined twelve times more than the average.

Despite the fact that my builder has been fined, I have spent \$70,000 in the CTTT fighting the builder. I just do not have the resources to fight that builder anymore. Basically the builder's law firm has just been wearing us down until we ran out of money. We literally have no money left. We have taken the money out of our kid's dollarmite accounts, we have returned Christmas presents and birthday presents to get the money back so that we can continue fighting. We just cannot continue fighting anymore. Only two weeks ago we settled with the builder on terms that we have to repair our house ourselves, on terms where we have absolutely no recourse to any insurance at all. My home has a demolition order on it from Leichhardt Council. I am going to have to pay to basically get around that.

The system, I think, has seriously let our family down on so many fronts that it is hard to almost explain them in a five minute time frame. When we went to the Office of Fair Trading initially, we did not have a legal dispute. We had receipts from the builder for the work to show that it had been done. The Office of Fair Trading came out and they identified ten pages of defects, but then when the builder refused to repair them - unless he was paid additional money to repair the defects - the Home Building Service said there was nothing more that we could do. This was a complete waste of time. Take your complaint to the CTTT. We went to the CTTT and we spent eighteen months and \$70,000 in the CTTT. Half the time we were in the CTTT we were unrepresented because we knew that the minute we got representation we would lose, because at best in the CTTT, you only get two thirds. If you are lucky you get your expenses back, and we knew that in the CTTT the builder would drag this out for years and hundreds of thousands of dollars. It was our only recourse and we went into it almost knowing that we had no chance, irrespective of how good our case was, and that was the case, because we pursued it and we ran out of money.

Now the reason it went on for so long was because the CTTT let it go on for so long. Although we originally were sent to the CTTT because Fair Trading refused to help us, believe it or not, the builder raised a strike out motion in the CTTT that went for nine months and cost my family \$25,000. That strike out motion challenged the jurisdiction of the CTTT to hear my matter based on the fact that I had to take my complaint to the Office of Fair Trading. Believe it or not, that is what happened I had a letter from the Minister saying that I should be in the CTTT. The CTTT themselves told me I should be in the CTTT but the minute a solicitor lodges a strike out motion in the CTTT the CTTT will allow it to continue.

What they do is they warn the other side, they will say, this seems pretty tenuous and if you lose this strike out motion it could have dire effects on your case. I won the strike out motion, the builder did not prove that the CTTT had no jurisdiction, but the Member on the day chose not to award me costs. He just deferred the costs to costs in the cause. I basically blew the money that I had budgeted to actually take my case to a final hearing on a strike out motion, which had no prospect of getting up. The Minister herself had said that the Fair Trading would not get involved in the matter. The Member who set the hearing down said that it was tenuous, it did not succeed, but I got no costs.

Basically the CTTT themselves seriously let me down, and the reason is because lawyers - and that is what the CTTT is, a lawyers' club - the minute you get a lawyer, you have no voice. When I went to the directions hearing before the strike out motion was put down, I pleaded with the Member, don't let this go ahead. "This will not get up and I don't care whether I get costs in the end, it just shouldn't go ahead. This is a waste of time" and you know what he said to me, he said, "Mr Nicol, you're legally represented and you should treat the Tribunal like this is your wife." Basically, you are not going to win by speaking up. Now, for people of my generation and when I went through school, I was told not to even refer to women as ladies. It was offensive. If my wife had been there, I dread to think what would have happened in that instance.

The Members in the CTTT are not from my generation. When I would go to a hearing I was in a group of people who did not grow up with the internet, did not know about these things and unfortunately this problem is only going to get worse. In the end basically what I am left with is a \$70,000 debt which I have to maintain. That was not cash that I had, I had to borrow that. When I went to the CTTT - what you have got to understand when you go to the CTTT is the builder has an inherent advantage over you. The reason is, they are normally a proprietary limited company. Proprietary limited companies can pay for their legal expenses pre-tax. They get the GST on their legal expenses back and any debt they incur, they can roll over to the next year.

When I am in the CTTT, I have to pay for my legal expenses after they are taxed, so effectively, I have to earn twice as much as the builder just to be on parity with him for my legal expenses. Now when I get to the end, and I potentially win if I have a great case, the builder can then liquidate and I get none of my expenses back. In my case, all I can do is go into personal bankruptcy, which would have dire affects to anything in the future. Really, the builders cannot lose. It cost me twice as much to fight them. When you are normally fighting a builder in the CTTT, he is trying to get money from you. Money is defined. We all know we are talking about Australian dollars and he wants this much of it.

When you go to the CTTT you have got a toilet that will not flush and you have got a slab that is sinking and you have got a hundred different things that are all inter-related to one another that the builder can basically draw a line through one by one, until in the end, it is not even worth fighting anymore.

Ms SYLVIA HALE: Can I just ask him one or two questions?

The Hon. GREG DONNELLY: We have got questions too.

CHAIR: We have got to give Ms Magan a go.

Ms MAGAN: My name is Jana Magan. I am here today on behalf of my mother, a widow of three, Mrs Kalavati Magan and she is sitting right there. My father, the late Mr Magan, who is of ethnic origin where English is not their first language, it is their second language. I am here today to tell you the suffering caused by a licensed builder and the failure of the Office of Fair Trading complying with the HBA in protecting consumers. My parents worked extremely hard to build our dream home, the fruit of their hard labour of many years of working in this country. My father, a labourer, with limited English skills believed as an Australian citizen of more than twenty years, that he would be protected under the laws that govern our country, but something went wrong. We are victims because laws were not complied with, and more importantly, the relevant authorities turn a blind eye and do not enforce them. What are the laws for if not to enforce? They are worthless. My parents inspected an exhibition home in Casula. They selected one, the Millenium. We believed the licensed builder would build for us a home, exactly like the one we saw.

At the time I was only 13. My brother and sister were just 12 and nine. Looking back it may seem quite naive, but we were very excited to move into our new home. My father became ill due to the stress involved in building the home. The misery of watching my father's worries escalate due to the poor workmanship of the builder was to such an extent that he needed to be hospitalised and a year later he died. His last words to me were "Jana, there is a lot of problems with the house. Help

your mother, your brother and sister. It is your responsibility now". I was 14, still at school and inexperienced. I am now 20 years old, entangled in a mess caused directly by the incompetent licensed builder and by the failure of the regulatory statutory authorities. I have put my education on hold indefinitely to fight for this system. My brother and sister, who are younger than me, are supporting me. I am unemployed. What is in store for me God only knows. My family is completely ruined. We have had our childhood robbed. I personally hold liable the Office of Fair Trading who gave Provincial Homes the weapon, a licence with which to single handedly ruin our innocent family.

The current licensing system is completely flawed and inefficient. Provincial Homes, as we later discovered, had paid four statutory insurance claims. This means not one but four other families have been caught victims of the same builder before us. The Office of Fair Trading Home Building Service continues not to comply with the Home Building Act and not to send back to school the builder to learn how to build. The Office of Fair Trading failed to use their disciplinary powers effectively, risking the public at large and must be held accountable for their blatant disregard for our safety. How many more families have been caught? We do not know. In the safety and interest of the public at large this builder should be prosecuted.

I lodged an application under the FOI Act requesting access to a copy of the licence application file and the four statutory insurance claims of my builder. On 13 March 2006 the Office of Fair Trading replied asking for \$1,380. An advance deposit of the \$690 was sought before 27 March 2006 before they would process my application further. They estimated that the time that it would take to complete my application would be 46 hours. This is appalling as the department is fully aware that people in our position are in financial difficulty. This is an obvious attempt by the department to deter consumers from obtaining these documents. It is to restrict our freedom to information. We could not gain access to these vital documents as we cannot afford these fees. My mother is a widow with three children. Where exactly was she meant to get this money from within two weeks? From an organisation claiming to protect the interests of consumers, the Office of Fair Trading charging \$30 an hour is ludicrous. My mother is forced to clean hotel rooms and only receives \$13 an hour. How can the Office of Fair Trading justify charging \$30 an hour?

What is left of our house is heartbreaking. You cannot even call it a home. Today Provincial Homes have not obtained a satisfactory final occupation certificate and has not complied with the law. I lodged my complaint with the Office of Fair Trading in February 2006. After eight months and 11 reports to prove the defects, despite the following documentary and visual evidence, firstly a licence given to incompetent man, secondly the Office of Fair Trading does not take seriously complaints made against substandard builders. Office of Fair Trading have further protected my complaint by sending an unqualified inspector. Numerous requests have been made to Mr Griffin and Mr Newton and Mr Riley to ascertain whether Mr Stubbs, our inspector, has any structural engineering qualifications. A response was not provided.

CHAIR: Are you able to finish up shortly because we have to ask questions.

Ms MAGAN: Yes. No dispute resolution or rectification order was issued. On the contrary, on 14 September I received a letter from the Office of Fair Trading advising that the principal building inspector concluded from his inspection of the premises that there was no evidence of defective work. On 20 September we requested our engineer to assess the decision of the department and comment on the statement. Our engineer stated, "the statement by the Office of Fair Trading in their letter dated 14 September 2006 that there is no evidence of defective work is incorrect. We are prepared to meet any structural consultant on site to demonstrate the areas of structural inadequacy and the non-compliance with the DA plan, BCA and AS".

Is the home owners warranty insurance a safety net like the government is claiming? On 10 October we received a letter from Vero providing a list of items accepted as part of our amended claim. There is only five out of a total of 135. On 3 March 2002 Mr Phillips, a building consultant

that we commissioned, fell down our driveway and seriously hurt himself. He was hospitalised. We have been advised that he has received substantial compensation. It is to be noted that after the accident of Mr Phillips an independent building consultant was commissioned by home owners warranty insurance to inspect and assess the driveway to determine the accuracy of that claim.

On 26 July 2002 LAC Building Consultants provided a copy of their report and in summary the consultants have said that the driveway is too steep to provide safe access to persons using it. The surface appears likely to have contributed to the slip. In my opinion the construction of the drive has sloping areas which are greater than allowed by council regulations and is dangerous. The conditions generated by the design and construction created a condition where it is almost inevitable that an accident would occur at some time involving a person using the driveway for access to and from the house.

Mrs ONORATI: If I may, there is an important issue just happened two days ago. I told Jana to check on the web site the licence of these people and she found out that she forgot to mention that.

Ms MAGAN: I was just about to.

Mrs ONORATI: Okay, that he had special conditions on his licence which was expiring and they renew it. The special condition was that he could not build from October 2006, over 12,000 or actually it says he had no home owners warranty insurance which means that he can't build over 12,000. I told Mrs Magan, Jana's mother, to go to the exhibition home to see if they are still exhibiting that house because if he has no insurance that is logic. You understand now, seeing all these cases, why I do what I do. I have better things. I have a sick terminal daughter. I have three granddaughters and I am not well myself. I have very bad eyes and I put in drops, but I am doing it because of what you hear. It is like someone knocking at my door who is hungry and I have to give them a piece of bread. I want you to understand that I don't hate anybody. I go out to help these people in my capacity.

This lady went to the exhibition home, because I thought go and have a look, he must have shut down or change his name. She went. She can give evidence herself under oath. She is here. Provincial Homes is still exhibiting the same house there. She asked for a quote. You have got the documents.

Ms MAGAN: They have given me them.

Mrs ONORATI: They are in her submission. They show gold licence number, gold licence still. Gold licence has been wiped off years ago, winning awards, the housing industry award winner and he is still selling the house, gave a quote to Mrs Magan. I am sorry, I don't know. Please help me to understand. I am not an over-intelligent person but please, I don't understand that. I would like someone to explain that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So he is actually still selling the house?

CHAIR: Order.

The Hon. GREG DONNELLY: What is going on here?

The Hon. JOHN RYAN: The lady held it up and invited me to have a look at it.

The Hon. JAN BURNSWOODS: If it is tabled or passed around we will need a resolution.

CHAIR: Are you happy to have the document tabled?

Ms MAGAN: Yes.

The Hon. JAN BURNSWOODS: In the submissions and in the evidence this morning we have heard some very sad stories and we are obviously able to look at those and go over your evidence. I would like at this stage to ask some questions about the Building Action Review Group itself and how you operate. Who is your secretary?

Mrs ONORATI: Lydia Chakouch.

The Hon. JAN BURNSWOODS: I know you are the president.

Mrs ONORATI: They are volunteers

The Hon. JAN BURNSWOODS: Can you tell me how many members the group has? Maybe the secretary can tell me. I am not sure how you do it. Can you tell me how many members the group has?

Mrs ONORATI: I have the list.

Ms CHAKOUCH: Around about 50. 40 to 50 members, off the top of our heads.

The Hon. JAN BURNSWOODS: You have been incorporated since 1990?

Mrs ONORATI: That's correct, yes.

The Hon. JAN BURNSWOODS: That means you put in returns as a company, tax returns?

Mrs ONORATI: No.

The Hon. JAN BURNSWOODS: Hang on, Mrs Onorati, I am asking the secretary.

Ms CHAKOUCH: I don't know about that. I just do the letter typing. As I am a volunteer I have no knowledge.

The Hon. JAN BURNSWOODS: Perhaps the solicitor can tell us.

Mr RUSSO: Annual returns are lodged.

Mrs ONORATI: We are a non-profit organisation. What sort of annual returns can we lodge?

The Hon. JAN BURNSWOODS: You have told us in your submission that you were incorporated in 1990.

Mrs ONORATI: We did.

The Hon. JAN BURNSWOODS: I am trying to get straight, as I said--

Mrs ONORATI: If you will allow me I will answer.

The Hon. JAN BURNSWOODS: Please do not debate the question. It was a question, do you lodge company returns? Perhaps the solicitor should answer.

Mr RUSSO: Perhaps I should indicate to you that Irene has run this organisation on a

complete shoestring. She has no funding from anybody. What happens is in terms of consumers that come to her--

The Hon. JAN BURNSWOODS: I have not asked about that.

Mr RUSSO: You asked about the membership.

The Hon. JAN BURNSWOODS: I have been told you have 45 or 50 members.

Mr RUSSO: I was just explaining the membership.

The Hon. JOHN RYAN: Madam Chair, the Member said the solicitor could answer.

The Hon. JAN BURNSWOODS: So you have 45 members.

CHAIR: Order. Mr Russo has the floor.

Mr RUSSO: What happens is as consumers come to Irene they join the association, not all of them.

The Hon. JAN BURNSWOODS: Do they pay a fee?

Mr RUSSO: I think they pay \$40 or \$50.

The Hon. JAN BURNSWOODS: As a joining fee, and then there is an annual membership fee, is there?

Mr RUSSO: No.

The Hon. JAN BURNSWOODS: So that is a \$40 or \$50 joining fee then.

Mrs ONORATI: If I answer, I do not think anyone knows as much as I do unfortunately. I operate from home. Not everyone pays a membership. I do not do it for money. I have no profit, therefore there is a membership but I do not even ask. The Committee sometimes screams murder: Why don't you tell them bring your money for the membership?

The Hon. JAN BURNSWOODS: When you actually act on behalf of someone, given what you then do--

Mrs ONORATI: Correction, I don't act.

The Hon. JAN BURNSWOODS: When BARG acts on behalf of someone with a building problem, do you actually then get a fee from them for doing the work?

Mrs ONORATI: No. The correction here, madam, is I do not act, I assist. There is a big difference between acting and assisting.

The Hon. JAN BURNSWOODS: When you assist people.

Mrs ONORATI: No, I do not. You can ask them yourself.

The Hon. JAN BURNSWOODS: You normally, I understand, recommend that people go and talk to a consultant called Mr Albert Frasca.

Mrs ONORATI: No, not always, no.

The Hon. JAN BURNSWOODS: What percentage of times would you refer people to Mr Frasca, if not always?

Mrs ONORATI: What happens, if I can answer your question.

Mr RUSSO: Listen to the question.

Mrs ONORATI: I heard the question.

The Hon. JAN BURNSWOODS: Do you normally refer them to Mr Frasca?

Mrs ONORATI: No, not normally.

The Hon. JAN BURNSWOODS: What percentage of time?

Mrs ONORATI: There is no percentage of time.

The Hon. JAN BURNSWOODS: What percentage of cases do you refer to Mr Frasca?

Mr NICOL: I can in fact say I was given information not to go to Mr Frasca, based on the fact that when this demolition man thing went around, Irene told me this. I chose not to go to him based on that.

The Hon. JAN BURNSWOODS: When was that?

Mr NICOL: 18 months ago.

The Hon. JAN BURNSWOODS: Has there been a more recent change? Anyway, how many people who come to BARG would have been referred to Frasca?

Mrs ONORATI: If I may, Lydia just counted with her fingers five.

Ms CHAKOUCH: I had five different experts.

The Hon. JAN BURNSWOODS: I am having great trouble here. This is not an answer to my question.

The Hon. JOHN RYAN: Because they are not fitting up to your questions.

The Hon. JAN BURNSWOODS: This is not an answer to the question.

Mrs ONORATI: Because you do not let me answer.

The Hon. JOHN RYAN: Your attempt to fit them up is not working.

Mrs ONORATI: You are trying to get other people to give you the answer that I cannot.

The Hon. GREG DONNELLY: We are trying to ask questions in our time.

The Hon. JAN BURNSWOODS: I am sorry, I did not ask anyone else to answer.

Mrs ONORATI: Please. Can I hear the question again and I will answer? I am quite capable of answering questions.

CHAIR: Order.

Mrs ONORATI: I speak five languages and I am very highly educated.

The Hon. JAN BURNSWOODS: What percentage of people have you advised to go to Mr Frasca?

Mrs ONORATI: I have never counted percentage, it depends. I have to go through my books to give you an answer. It depends on the circumstances. What I advise people to do, if you allow me to say is, to go and get copy of their DA. I do not believe when a person comes and tells me my house is falling down, I say please, we have to get the documents from the council and check up if the house has been approved. They get the copy and come to see me and we go through together. No money is spent. No hours. I do not look at the watch. When we go through the documents like, for example, in the case of Lydia--

The Hon. JAN BURNSWOODS: I am sorry, we are getting a long way from the question

Ms SYLVIA HALE: It is totally relevant.

The Hon. JOHN RYAN: With great respect Madam Chair, if I might take a point order. I am not sure this has anything to do with our terms of reference.

Mrs ONORATI: When you have four or five engineers and they have not looked at the papers of the Council. When she got the papers from the Council--

The Hon. JAN BURNSWOODS: Could you tell me again how much Mr Frasca normally charges for a consultation.

Mrs ONORATI: I haven't got a clue. I am not talking about charges.

The Hon. JAN BURNSWOODS: Don't your members talk to you about this, given the problems that people have so eloquently put, don't your members talk about how much the whole process costs?

The Hon. JOHN RYAN: Madam Chair, I don't think this line of questioning has anything to do with our terms of reference. Which one of our terms of reference has this got to do with?

Mrs ONORATI: Sometimes they do, sometimes they don't. I am not interested in that. All I am interested in is achieving to find out whether the house is structurally constructed.

The Hon. JAN BURNSWOODS: My information is that Mr Frasca costs between \$11,000 and \$17,000 and some people would say that is a lot of money for people with a building problem to pay. In addition to that, it seems from looking at the submissions and the detail, that his reports almost always or usually recommend the total demolition of a property. Would that be true?

Mrs ONORATI: Not always. In the case of someone who is not here, Chamahl, which is in the letters which Mr Russo is going to hand up, was partly demolition. In the case of Rob - whatever his surname is here - he had a different engineer and he recommended demolition. We have other engineers like Mr Michael Cantali who also recommends demolition.

The Hon. JAN BURNSWOODS: The demolition or partial or complete is a very drastic and expensive operation and recommendation. Do you suggest that people actually consult other people to see if there are less drastic possibilities?

Mrs ONORATI: Yes we do, we do, because I don't want the house to be demolished. I am the first to say, is there another way, but if you are a doctor or if you are any other professional - let's take a doctor - and you have cancer in your hand, what does he do, he tell you patch it up or he chops

it off? Frasca, he should be here to answer your questions madam.

The Hon. JaAN BURNSWOODS: Is he a member of BARG?

Mrs ONORATI: No, no.

The Hon. JAN BURNSWOODS: Perhaps if we have an extra hearing we might call Mr Frasca.

Mrs ONORATI: Please do, I will be very happy, because it is nothing to do with me.

Mr RUSSO: Can I just say something about Mr Frasca. One of the things that I think is misconceived is the whole idea of this concept of demolition. In my opening I said to you that one of the real problems that we experience is this culture of close enough is good enough, and what happens is a lot of the work which is undertaken on residential construction tries to patch up the work to the point where the home can actually be lived in and continue to be lived in. It may not fix the fundamental problem, so as in four or five years time, or six years' time, you may still have some very serious structural or engineering problems.

One of the things that happens is that in terms of engineers - and unfortunately Mr Frasca is one of those - he is very thorough and what he does is, he goes back to the original plans and he determines whether or not there has been compliance. This is where we say the Office of Home Building, in providing engineering detail, should be in a position to be able to offer the consumer the ability to be able to meet that challenge and say whether or not the engineering detail is right or wrong. The consumer should not have to go and spend \$17,000 on a Frasca report, because the Office of Home Building should have the expertise available to it when the consumer goes there with its complaint to be able to determine whether or not the engineering material is sufficient.

The Hon. JAN BURNSWOODS: Given what you are saying about the Home Building Service then, have you ever taken these complaints about them to, for instance, the Ombudsman?

Mr RUSSO: No.

The Hon. JAN BURNSWOODS: You are suggesting that the Home Building Service is less than--

The Hon. JOHN RYAN: I would not got here Jan. I have got a great report from the New South Wales Ombudsman.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It was in our papers.

The Hon. JAN BURNSWOODS: Have you lodged a complaint with the Ombudsman about the performance of the HBS?

Mr RUSSO: What we do in a pro-active attempt to try and help the Office of Home Building, is - what happened was, we instituted a process of quarterly meetings, whereby what happened--

The Hon. JAN BURNSWOODS: With whom?

Mr RUSSO: With the Office of Home Building, where we try to liaise with them and bring these sorts of matters to their attention so that we could re-focus their attention on the pressing matters that we felt were coming up in the industry or with complaints which we believed were not being properly dealt with.

The Hon. JAN BURNSWOODS: If you are telling us today how dissatisfied you are, it seems an obvious question to ask you where else have you been?

Mr RUSSO: There has probably been about four or five enquiries that we have been to where submissions have been--

The Hon. JAN BURNSWOODS: I asked you whether you would think, for instance, the Ombudsman would have carriage of these matters.

Mr RUSSO: We have been to the Minister.

The Hon. JAN BURNSWOODS: But you have not been to the Ombudsman?

Mrs ONORATI: I have been.

Mr RUSSO: Irene has been.

The Hon. JAN BURNSWOODS: In relation to your complaints--

Mrs ONORATI: And then--

The Hon. JAN BURNSWOODS: Sorry, but Mr Russo, the organization has not? Why not?

Mrs ONORATI: We went many years ago.

Mr RUSSO: Why not?

The Hon. JAN BURNSWOODS: Yes. Given the Ombudsman's legal oversight role in relation to the Office?

Mr RUSSO: The position is, I think in terms of BARG, Irene has always tried to work with the Office of Home Building, tried to work with Fair Trading.

Mrs ONORATI: To resolve.

Mr RUSSO: To resolve issues. Her resources are limited. If she embarks on a confrontational approach--

The Hon. JAN BURNSWOODS: No, no I am not suggesting by any means a confrontational approach. That is why I am asking you if BARG has been to the Ombudsman.

Mr RUSSO: No, I don't think it has.

The Hon. JAN BURNSWOODS: Which is very different from confrontational.

The Hon. GREG DONNELLY: I have got a question that I would like to direct to Mrs Onorati. The nature of these particular matters that we have just discussed today and which you have given evidence on go to issues of some significant cost in regards to the people affected. I am just wondering, in terms of your discussion with the people that come along to BARG seeking your advice and counsel in regard to a path forward to deal with these complaints that they have and issues that they have, do you advise them that they should obtain some legal advice in regard to the issues?

Mrs ONORATI: Yes, what I advise is - first of all I don't give advice. What I do is I assist the people to build up the documentary file by getting the evidence necessary, as I said earlier, from the Council. When they have all the attachments - the people, why don't you ask them, they will tell you.

The Hon. GREG DONNELLY: On the issue of the legal advice that you recommend people get, do you direct them to any particular solicitor or barrister?

Mrs ONORATI: No.

The Hon. GREG DONNELLY: There is no particular firm that you direct them to?

Mrs ONORATI: No. But if I may, to answer through the chair, I have here two people that can answer the question of Ms Burnswood about Frasca and demolition.

The Hon. JAN BURNSWOODS: As I said, it may well be that in a future hearing we may benefit from Mr Frasca's presence.

Mrs ONORATI: Mr Tran can you get up.

The Hon. JOHN RYAN: No he cannot.

Mrs ONORATI: But these people now with Council, what I am trying to say is this, Frasca has asked for demolition in the case of Charlie. After Charlie, nobody believe him. Now he has got an eviction notice from the Council to move out of his house. Another gentleman here today, Alex Lebon, he never had Frasca, he had two other engineers, they said demolition. After his file was returned, that is what happened. He moved last weekend. Council told him to move out. It is not Frasca.

The Hon. GREG DONNELLY: With this advice that you give these people, do you advise them that they should get some particular independent expert advice in regard to issues?

Mrs ONORATI: I--

The Hon. GREG DONNELLY: If the answer is yes, where do you direct them to go?

Mrs ONORATI: I direct them to go about structural matters to structural engineers. As a matter of fact--

The Hon. GREG DONNELLY: Do you have a list of structural engineers that you invite them to go to?

Mrs ONORATI: Yes, there is Frasca, Cantali and also Clarke.

The Hon. GREG DONNELLY: So you have three firms to direct them to?

Mrs ONORATI: No, I don't direct them, they ask me, "Do you know any good engineers?" I said, "I don't but don't go back to--"

The Hon. GREG DONNELLY: What about lawyers, do you direct them to any particular firms?

CHAIR: Time has expired. Mrs Onorati, have you got other information from those people that you would like to present which has not yet been presented and the Clerk has advised me that you are happy to submit that. Would you like to do that?

The Hon. JAN BURNSWOODS: Do we need to do this on notice?

Mrs ONORATI: The people are here to answer the questions directly. This is what I am saying.

CHAIR: If you have got further information, you can present it. Have you got some documents Mr Russo?

Mr RUSSO: Yes, I would like to put in this letter of 29 May 2003, which I spoke about in

my opening submission, so as the Committee may request the files for each of these items, and I would also like to put in a letter of 25 October 2004 which lists another group of people which the Office of Home Building were asked to look into and in respect of those people, to monitor the way in which the Office of Home Building has intervened, acted and the type of resolution that has actually been reached in some of them, because I think that once you look at these individual cases you will be--

Mrs ONORATI: Look at the ones today, the ones that cannot live in their house.

CHAIR: Order, order. Mrs Onorati, have the individuals involved in those cases given consent for the information to be provided?

Mr RUSSO: I am quite certain. Some of those people are actually all here, but all I can say that is a letter that we have submitted. If we need to get the consent, that will be obtained and forwarded to the Committee.

Mrs ONORATI: I want Madam Chair, to ask questions to these people here today.

Mr RUSSO: Irene, don't worry about it.

Mrs ONORATI: I am offended.

The Hon. JOHN RYAN: I would not be offended. If it was somebody other than those two asking the questions, I might be offended, but I would not.

CHAIR: Order.

The Hon. JAN BURNSWOODS: How do you allow your colleague to go on like that.

Ms SYLVIA HALE: Your behaviour has been despicable.

The Hon. JOHN RYAN: You are a disgrace.

CHAIR: Finally, I just want to advise you there may be some questions on notice which you may be asked to answer.

Mr RUSSO: We are very happy to answer them.

The Hon. JOHN RYAN: Madam Chair, I did not get the opportunity to ask any questions but can I say that in reference to some earlier questioning by other Members, I just want to put on the record that I have known Mrs Onorati for nearly a decade now. I have found her to be nothing other than a person of the utmost integrity. She is a good amateur and a sound amateur and has never claimed to be anything else other than a person who advocates fairly for people who she sees to be disadvantaged. Any suggestion that she is a tout and an inappropriate tout for some sort of other professionals and possibly even makes profit from referring to other people, is outrageous and I know to be untrue.

The Hon. JAN BURNSWOODS: Madam Chair, given that Mr Ryan has directed those comments to I think myself and Mr Donnelly, can I point out to everyone that no question was raised at all about Mrs Onorati's integrity or anything else.

The Hon. JOHN RYAN: You could have fooled us.

The Hon. JAN BURNSWOODS: The hysteria from John Ryan is probably more connected to his pre-selection issues tomorrow than anything else.

CHAIR: Order, order, order.

(The witnesses withdrew)

(Short adjournment)

GRAHAM WOLFE, Executive Director, Housing Industry Association 4 Byfield Street, North Ryde, affirmed and examined:

STUART MATTHEW COLLINS, Assistant Director Business Compliance, Housing Industry Association, 4 Byfield Street, North Ryde, sworn and examined:

CHAIR: Mr Wolfe, are you familiar with the terms of reference of the inquiry?

Mr WOLFE: Yes.

CHAIR: Mr Collins, are you conversant with the terms of reference of the inquiry?

Mr COLLINS: Yes.

CHAIR: If either of you consider at any stage that certain evidence which you give or documents you wish to tender be seen only by Members of the Committee, please make us aware of that fact and the Committee will consider your request. Do either of you have a brief opening statement?

Mr WOLFE: I do. Thank you for providing the Housing Industry Association with the opportunity to address the Committee on your inquiry into the Home Building Services of the Office of Fair Trading. I appreciate firstly that the matters within the terms of reference are extremely broad. Importantly, many of them impact on the day to day operations of tens of thousands of residential building projects and almost as many small businesses. The housing industry makes a significant contribution to the New South Wales economy by generating more than \$15 billion worth of residential building work each year and providing employment for over 150,000 people. Small businesses comprise 85 percent of the industry. Mums and dads as well as larger companies and organisations make up the residential construction industry. Importantly, almost 65 percent of residential building work is undertaken outside the Sydney metropolitan area.

The Housing Industry Association represents about 44,000 members nationally and 15,000 members in New South Wales. Our members include builders, trade contractors, manufacturers and suppliers, professional service providers, business partners and development businesses large and small and between them construct over 90 percent of the nation's housing stock. HIA appreciates that the home is often the single most important purchase of a family in Australia and that given the complexities of construction and in the interests of consumer protection the process of building a home requires checks and balances. HIA acknowledges the role of the home building services in this regard. However, it must be noted that despite the complexity of the building process and the delays that inevitably occur due to regulations, whether material availability and contract variations consumers are generally happy with the work that the industry delivers and have registered very few complaints given the volume of work completed in New South Wales. HIA therefore argues that while the home building service has a valuable role to play, it is clear that the industry enjoys a strong consumer satisfaction, irrespective of whether it operates in states with high or low levels of regulation.

In terms of the terms of reference under the building licensing system, HIA recognises that licensing could be justified in cases of significant financial and health and safety risks. Accepting that the primary aim of licensing is to provide consumer protection, HIA maintains licensing should be limited to contractors who contract directly with consumers. HIA has made particular reference in our submission to the subject of continuing professional development, CPD and, for example, HIA contends that owner-builders must assume the same level of responsibility as a licensed builder in that regard.

Home warranty insurance: HIA acknowledges that mandatory home warranty insurance has been put in place by governments to protect consumers against financial losses caused by building insolvency, death or disappearance, and where there is a need for rectification of defective work. HIA acknowledges that since the unsettling times post the collapse of HIH that the home market has now settled down. In early 2005 HIA raised a number of suggestions to revise home warranty in New South Wales and indeed throughout Australia, and opened up for discussion and debate a number of recommendations. Key elements of the proposal included a completion guarantee and a rectification guarantee and I would be happy to elaborate on those issues during the course of the discussions.

Complaints resolution: HIA supports dispute resolution processes that provide an alternative to costly and protracted litigation. On this basis HIA principally supports the role of the home building services on-site inspection service and argues that the system should be available to the builder as well as the consumer. The Housing Industry Association also appreciates the role of the tribunal but argues that consumers should be required to formally communicate with the builder or contractor as a first step in the dispute resolution process, rather than going directly to CTTT. HIA also argues that trivial and unfounded complaints and claims should carry a penalty and therefore a penalty ought to be lodged with each complaint.

In terms of exercising disciplinary powers, the revoking or suspending of a licence is an extremely serious matter. It has the potential to take away someone's livelihood. This inquiry should consider carefully the consequences of removing a person's capacity to earn an income in their chosen trade. HIA's submission to the inquiry also includes information on industry skills and training which we believe are critical issues for our industry and its ability to continue to provide affordable and quality product to the consumers. That is the conclusion of my introduction to the inquiry.

CHAIR: Mr Collins, do you any opening statement?

Mr COLLINS: No.

The Hon. JOHN RYAN: The Housing Industry Association used to have some relationship with the provision of home warranty insurance. Does the Housing Industry Association still do that?

Mr WOLFE: The Housing Industry Association has had a relationship with the insurers through the provision of insurance, not through the underwriting but through the brokerage of insurance. We do have a direct relationship because of our association with AON risk insurers in the creation of the Housing Industry Association or the HIA insurance scheme, and in that insurance scheme we are part shareholders involved in the board of that insurance brokerage.

The Hon. JOHN RYAN: What amount of HIA's income comes from insurance?

Mr WOLFE: I do not have that information available to me.

The Hon. JOHN RYAN: Is it a trivial amount or a significant part?

Mr WOLFE: It is not a trivial amount. In terms of percentage I could not give you the number. I presume by trivial you mean a few thousand dollars.

Ms SYLVIA HALE: Could you provide the Committee with that information?

Mr WOLFE: That information is a matter of a national amount, in other words HIA is a national organisation. We provide through the brokerage insurance to most jurisdictions and the insurance income that we receive is not limited just to warranty insurance. It includes a range of other insurances, such as general construction insurance and vehicle insurance and business protection insurance and many other insurance products.

The Hon. JOHN RYAN: To some extent HIA has a conflict of interest in discussing the home warranty insurance scheme because you are providers of home warranty insurance inasmuch as you represent builders but you are also involved in the provision of home warranty insurance as well, are you not?

Mr WOLFE: That could probably also therefore be said in respect of having a position on whether or not contracts, residential contracts, should be written in particular ways because we do provide residential contracts to builders and consumers. Most of the products that we provide are closely aligned with the industry that we operate in and therefore you could argue that we have a conflict of interest in that regard.

The Hon. JOHN RYAN: You are unlikely to make recommendations about home warranty insurance that are likely in any way to suggest that that product would be less profitable than it currently it is, are you?

Mr WOLFE: The proposals that we put to the Government in New South Wales and also governments around Australia in early 2005, made a number of suggestions that would in fact reduce the amount of insurance that would be required by home owners. It would make the insurance more a voluntary project and therefore that would have an impact on revenue in the same way that you are suggesting. Therefore HIA has shown that we take the interests of the industry and the interests of our members and the interests of consumers into account when we make recommendations and suggestions.

The Hon. JOHN RYAN: Are you able to report to the Committee any information with regard to home warranty insurance in terms of the amount of premium collected and the amount of claims made?

Mr WOLFE: I am not privy to that information about how much income is collected through the underwriters collectively around Australia or in particular in New South Wales. I do not have that information.

The Hon. JOHN RYAN: Can you advise the Committee where we might obtain information like that?

Mr WOLFE: I am aware the Government has been in negotiations with insurers to provide information on a periodic basis and I believe that insurers have commenced providing that information of more recent days.

The Hon. JOHN RYAN: Are you aware of what information has been provided?

Mr WOLFE: I have not personally seen the information, no.

The Hon. JOHN RYAN: Is HIA aware of the information provided?

Mr WOLFE: It may be, but I am sorry, I cannot answer that question.

The Hon. JOHN RYAN: You have said that the removal of licence requires some level of

care and I do not disagree with that. There has been evidence given to the Committee that it appears to be very easy to get a home building licence in New South Wales and there does not appear to be due attention given to issues such as criminal record and the level of expertise that people have. Would you care to make any comment in response to whether or not you think that the issuing of home licences is carried out efficiently for the benefit of consumers in New South Wales?

Mr WOLFE: There are a number of criteria that a builder or a person must achieve before they are issued with a builders licence. One of those is competency, so that competency may be based on a formal qualification, or in past days on an assessment of their skills. Surely a builder should be able to demonstrate a level of competency to do the work that they want to carry out.

The Hon. JOHN RYAN: Are you confident that the licences in New South Wales are only give to people who have that appropriate level of competence?

Mr WOLFE: That is a very difficult question for me to answer, given the thousands of builder licences that are issued. The process and the protocols involved in issuing a licence require the competencies to be assessed and the qualifications to be shown. I can only presume that the analysis and assessment in issuing a licence duly undertakes the credentials of the builder to do the work.

The Hon. JOHN RYAN: You are an operator in the industry. Surely you would have some idea as to whether you think that the licensing scheme is adequate. The only reason for coming here to make a submission, I imagine, is not to tell us that the building industry is an important part of our economy. You would have some expertise as to whether or not the home building licensing scheme in New South Wales is working or not. Do you think that it is sufficiently watertight so that only competent people get licences and that incompetent people are refused?

Mr WOLFE: In our submission we make reference to the fact that there are in the order of 70,000 to 80,000 residential building projects carried out in New South Wales. There are probably more with owner builders involved, where the owner builder engages a contractor to do a significant majority of the work. The amount of building work carried out in New South Wales is large; \$15 billion worth of building work. We contend that the number of defects and number of complaints in New South Wales is relatively small. We also indicated that based on a similar system in Victoria, that research with consumers who had undertaken residential building work in the previous 12 months indicated that the level of satisfaction was very significant and in the high nineties.

The Hon. JOHN RYAN: You made submissions to the Committee with regard to penalising people for making trivial complaints. Have you any information to give to the Committee as to the extent to which people make trivial complaints?

Mr WOLFE: I can provide that information separately if the Committee wishes.

The Hon. JOHN RYAN: What sort of information would you be providing?

Mr WOLFE: We can give you examples of where builders have been involved in some complaints that have been withdrawn, or complaints that have been very small in nature and instances where the builder has indeed volunteered to do the work and has been declined access to do the work.

The Hon. JOHN RYAN: In what number of cases in terms of the number of complaints? Could it not be said, using the same logic you used to refer to the building industry generally, that the number of complaints that are made to the Department of Fair Trading and to the Consumer Tenancy and Trading Tribunal, the number of them that are vexatious and trivial is fairly small, therefore the need to have Draconian provisions to penalise people who make them is probably about as warranted as it might be to be tougher on licences? In order to make that submission you would be wanting to at least provide the Committee with some sort of idea as to how big this problem was before we

introduced Draconian provisions fining people for making complaints.

Mr WOLFE: The fact that there is a facility for people to make vexatious claims, or make claims and deny builders access to complete the work before that claim has been put into a Tribunal, I suggest that the facility exists. People actually go up that pathway and my members tell me that is not fair, there is an imbalance.

The Hon. JOHN RYAN: Are you aware that some people deny access to builders to complete work because the builders behave in a violent and improper fashion?

Mr WOLFE: I am not aware of any such cases.

The Hon. JOHN RYAN: I am aware of some and that could well explain why some people deny builders access.

Mr WOLFE: If that is the case it may explain some of the instances but it does not explain all the instances and we have instances where the builder has not been accused of violent behaviour, the builder has not been accused of antisocial behaviour, but the builder has nonetheless been declined access to complete the work that they are prepared to do.

The Hon. JOHN RYAN: The evidence that you would be proposing to give to the Committee is largely anecdotal and not statistical?

Mr WOLFE: We can give you examples which are not anecdotal. We can give you examples of fact.

The Hon. JOHN RYAN: But they will be individual examples. You have no way of relating those examples to determine if they are a common or frequent practice, or a substantial number or an insubstantial number, do you?

Mr WOLFE: We cannot give you a precise number of times this occurs.

The Hon. JOHN RYAN: Has HIA done any survey and does it have any view in regard to the capacity of the CTTT to expeditiously facilitate complaints? The Committee has had evidence that sometimes it can cost tens of thousands of dollars to both builders and consumers to prosecute issues in the Consumer Tenancy Tribunal. Does the HIA have any view as to whether the New South Wales CTTT is an efficient organisation that is processing these complaints in the best way possible?

Mr WOLFE: The Housing Industry Association has made observation in submissions to previous reviews. For example, we have indicated that in respect of claims of a larger quantum value, that the CTTT might not necessarily be the best jurisdiction to have those matters heard, that other jurisdictions may present an alternative and perhaps improved jurisdiction for claims, for example, about \$60,000 might be heard.

The Hon. JOHN RYAN: Do you have any evidence to the Committee that in its exercise of disciplinary powers that the Department of Fair Trading has been unfair or unreasonable to builders?

Mr WOLFE: Do we have examples where the OFT has been unfair to builders? We have some examples where OFT has declined to issue licences or has revoked licences on the premise that builders have not taken due course in remedying works and in those instances we have taken up those matters with the OFT and have had negotiations with them and there has been a suitable solution in the majority of those cases.

The Hon. JOHN RYAN: Do you believe that there are a significant number of examples of where the Department of Fair Trading has been unfair in the issuing or revocation of licences?

Mr WOLFE: The Department of Fair Trading has a task that involves tens of thousands of licences being renewed annually and audited or revisited from time to time. It is an enormous task. It could be argued that the OFT requires additional resources, inspectors that are better equipped with greater competencies in the industry. There are certainly some improvements that OFT can adjust in those areas.

One of the areas that HIA has observed and to create an industry that is seen by the public as being a good industry, an industry that provides good quality and affordable housing. Sometimes there are builders out there who do the wrong thing and in those instances the OFT should be in a position to move and take necessary action, including suspension or removal of licence.

The Hon. JOHN RYAN: It does not happen very often though, does it? Very rarely do builders ever have a licence revoked?

Mr WOLFE: It doesn't happen very often, no.

The Hon. JOHN RYAN: Would it concern you that it appears that the New South Wales Ombudsman in a private report has commented on the fact that OFT only checks the veracity of information provided by builders in licence applications of about 10 per cent of cases, and it appears that they do this on a random basis. Do you think that there is a case that issues such as criminal record checks, whether or not a licence has been previously issued or cancelled and information about breaches of complaints, that all of those things should be thoroughly checked before a person has a licence renewed?

Mr WOLFE: Are you suggesting that the OFT carries out about 10 per cent audits?

The Hon. JOHN RYAN: That is what the Ombudsman says, yes.

Mr WOLFE: That is probably not a bad figure.

The Hon. JOHN RYAN: No, not an audit, that is what happens when they actually get submitted, 90 per cent of applicants for licences do not have any of the documentation they submit to the Department of Fair Trading checked at all, 10 per cent of them have any of that documentation checked. I am not suggesting it is an audit, it appears to be a routine practice.

Ms SYLVIA HALE: Very inadequately, according to the Ombudsman's report.

The Hon. JOHN RYAN: Do you have any comment to make as to whether that appears to be an appropriate level of checking, given the phenomenal cost to builders to actually apply for licences in the first place.

Mr WOLFE: I am not aware of the report, but is the report in respect of renewal or first instance of licence?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Should it matter?

Ms SYLVIA HALE: In relation to someone who had three licences over a period of time and consistent failures to check the qualifications or suitability of that particular builder.

The Hon. JOHN RYAN: For example, I am just checking the issue as to whether the applicant had previously been a bankrupt, the statements made by the applicant are only checked on 10 per cent of cases.

Mr WOLFE: Again, that would refer to the first issue of a licence, not a renewal. In respect of the first issue of a licence, those sorts of checks and balances ought to be carried out. In respect of renewal of licences, that is an absolute.

The Hon. GREG DONNELLY: We are just trying to establish the timing issue here. We understand lunch is scheduled for 12.15 and the Government members have some questions, so we want to know the timing of things.

The Hon. JOHN RYAN: I am happy to complete my questions at this moment.

The Hon. JAN BURNSWOOD: You have actually had more than your time, that is why we were asking.

The Hon. JOHN RYAN: I did not ask any questions of the last witnesses. I am done.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Mr Wolfe, are you concerned about dodgy builders in your industry?

Mr WOLFE: We are.

The Hon. GREG DONNELLY: Point of order. We are attempting to establish this timing issue.

CHAIR: We will split the time half and half.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Sorry, you are concerned about dodgy builders?

Mr WOLFE: We are concerned one, that the industry has a good and proper name. We, therefore, do not condone people that bring the industry and the name of the industry and the nature of the work in our industry into disrepute.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Would you say that the building industry status has declined say compared to motor vehicle repairers over the last decade or so?

Mr WOLFE: I would not say that. I am aware that in the ten years previous to the last few that in terms of careers for young people that the industry has been seen as a dirty industry or an industry that you do not want to go into unless you are at the bottom of the academic list. That has changed a lot and people, I think parents, children and school advisers, recognise the industry as a bona fide industry, a sound industry, an industry where a good income be earned and that the industry does enjoy a very good regard in the community.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You think the industry's credibility is pretty good, do you?

Mr WOLFE: I think the industry's credibility is good and I go to the analysis by the Victorian Building Commission that was carried out last year that showed that the level of satisfaction in the quality of building work carried out by builders in the previous twelve months in an independent survey of over 300 people regionally and in metropolitan Melbourne showed that in the high nineties, about 97 to 98 per cent of those consumers were satisfied with the quality of the building work carried out.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do consumers ever come to you with problems with their builders?

Mr WOLFE: Consumers have in the past contacted HIA. We have a mechanism that allows consumers to raise issues with us about builders and we have a process that reviews those complaints.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Since I have been in Parliament I have been inundated by complaints. I was flabbergasted by the number of complaints and the degree

of documentation of those complaints and the idea that they are trivial is an absurd proposition in my understanding in what I have read. A lot of these consumers have had endless complaints about the same builder. Are you advocating that there be strong action taken against dodgy builders?

Mr WOLFE: Well, the information that you are referring to I am not privy to, but the information that you are referring to suggests that builders have had a number of complaints against them. That does not necessarily make them dodgy builders and I would be more than interested to have a look at some of that information but it might be that the communication levels between the consumer and the builder have broken down.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The builder has had endless fines and still simply manages to phoenix himself as another company. Surely, you would take an interest and the regulatory system would not allow this to happen, if you are concerned about the welfare and reputation of the industry?

Mr WOLFE: You have suggested that a number of complaints begets a dodgy builder and then you are suggesting that a dodgy builder begets a person that is creating phoenix companies. I do not hold that those three areas are linked. A person or a builder who has been involved in a number of jobs where there are complaints, those complaints should be looked at and looked at very solidly and if there are some serial offenders, then that should be taken into account. It does not necessarily make them a dodgy builder, and I do not like that work, dodgy builder, but having said that, there should be some mechanisms to ensure that that builder is brought into line.

The answer to your question about phoenix companies, we do not hold phoenix companies as a way for the industry to operate.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Of course not. What action have you taken to apprise yourself of the situation and to advocate for quality control in building?

Mr WOLFE: The Housing Industry Association has been a member of the Minister's Home Building Advisory Council for many years and through that process we make it very clear that HIA holds it so importantly that you cannot be a member of the Housing Industry Association unless you hold a licence in the jurisdiction that you operate. So we believe that a licence is very, very important. We hold that the licensing system needs to be very robust. It is very robust. It needs to be robust and it needs to be able to cull out those people in the industry that are undesirable.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you believe that the Office of Fair Trading is actually doing a good job in regulating building or not?

Mr WOLFE: I believe the Office of Fair Trading is doing a fair job, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You think they are doing a good job?

Mr WOLFE: They are.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The system works perfectly well?

Mr WOLFE: Well that is a long broad question to ask but there is always room for improvements.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You think in general it works quite well?

Mr WOLFE: In general it works quite well.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think the legislation is satisfactory?

Mr WOLFE: We have some issues with the legislation and we have put those issues on paper and I can make those issues available to the Committee if you wish. Those issues are not necessarily directly in relation to the questions that have been asked up to date but some of those issues are.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The legislation is working quite well as it is at present, is that the Housing Industry Association's position?

Mr WOLFE: Well I would like to hear whether there are specific parts of the legislation that you are asking that question in reference to. In a broad sense, the legislation is there to protect consumers and in that sense it is doing a fair job, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The legislation is working quite well?

Mr WOLFE: The legislation is working quite well, but having said that, there are some areas that can be improved and they can be improved in respect of both the consumer and the builder and in the interests of the industry.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And you have put in submissions as to those improvements?

Mr WOLFE: We have indeed over a period of time.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So the problem is not the legislation, it is the implementation and there are problems with the legislation, is that your position?

Mr WOLFE: We have noted some changes that would improve the legislation and in discussions with OFT we have noted some changes that would make the OFT's role far more robust.

The Hon. JOHN RYAN: Is that material you are referring to part of the submission to this Inquiry or elsewhere?

Mr WOLFE: It is part of submissions to reviews of the Home Building Act, the licensing system and also CPD.

The Hon. JOHN RYAN: If we do not have that, could you supply us with the information you are talking about?

Mr WOLFE: I will go back about two years. I can go back further if you wish but there have been progressive submissions from the Housing Industry Association to various inquiries and to the Government and OFT.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I would be happy to take the information. You have put about changes in the legislation and/or comments of how well it is implemented and works, which you obviously put out within the last two years?

Mr WOLFE: I gave an example with the CTTT, that in respect of works over a certain value, that perhaps the CTTT is not the best jurisdiction to have those matters heard.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Because of the lack of expertise in the CTTT is the problem?

Mr WOLFE: That is one of the concerns we raised.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Certainly that is always a problem in

the legal system, isn't it?

Mr WOLFE: And another concern is the time frame to get a decision. In that regard other jurisdictions might be able to assist.

Ms SYLVIA HALE: You said that you did receive complaints about builders. What do you do with those complaints?

Mr WOLFE: As a member organization if we receive a complaint about a member, we will investigate that complaint. It would normally involve writing to the member and asking for their explanation, and based on that explanation we can then bring together a group of people to have a look at the issues raised and the explanation given and work out what, if any, action needs to be taken.

Ms SYLVIA HALE: When you say you bring a group of people together, does that involve the complainant as well as the builder?

Mr WOLFE: It does not include the complainant or the builder, it involves independent people and may involve presentations or reference to the complainant or the builder.

Ms SYLVIA HALE: If as a result of that you conclude there is unsatisfactory performance on the part of the builder, what do you then do?

Mr WOLFE: There are a number of ways we can deal with that. One is to convince the builder that the action or complaint or the issue that has been complained about should be redressed; that the builder's membership with HIA be taken into consideration.

Ms SYLVIA HALE: If they fail to comply with that recommendation?

Mr WOLFE: There are issues to take into account with respect of complaints. If the complaint is still a matter being considered through OFT or the CTTT or in fact a higher jurisdiction, we are not in a position to judge whether or not the validity of the complaint is justified, so we need to take that into account.

Ms SYLVIA HALE: How many members do you have in New South Wales?

Mr WOLFE: We have about 15,000 members, all of them are builder members. They are builders, contractors and manufacturers.

Ms SYLVIA HALE: Of that 15,000, in how many cases have you asked them to surrender their membership of the HIA?

Mr WOLFE: I do not have that information.

Ms SYLVIA HALE: But you would be able to supply it?

Mr WOLFE: I could probably supply it.

Ms SYLVIA HALE: Would it be a rare occurrence or a common occurrence?

Mr WOLFE: Infrequent.

Ms SYLVIA HALE: Can you recall any instances over the last year or two?

Mr WOLFE: Unfortunately I have not been with the organization for that period of time, so I cannot say.

Ms SYLVIA HALE: Presumably to take out insurance via HIA a builder has to be a

member of your association?

Mr WOLFE: No.

Ms SYLVIA HALE: What requirements are there for someone to take out insurance with you?

Mr WOLFE: HIA does not issue insurance. HIA is not an underwriter of insurance. HIA, through its relationship with AON, is an insurance broker.

Ms SYLVIA HALE: What does that mean?

Mr WOLFE: The best analogy that I can give you is when you buy cereal you do not go straight to Sanitarium, you buy it from the supermarket. That supermarket provides any number of brands of cereal. As a broker we are the supermarket. We provide any number of brands of warranty insurance underwritten by different companies.

Ms SYLVIA HALE: Okay, so you sell insurance to people.

Mr WOLFE: We sell insurance on behalf of.

Ms SYLVIA HALE: You get a commission from it. What are the requirements for someone to get insurance from, if not yourselves, from the companies that you are acting as a broker for?

Mr WOLFE: This would depend on the underwriter insurer that is providing the policy. It varies from underwriter to underwriter.

Ms SYLVIA HALE: What would be the minimum requirements?

Mr WOLFE: I am not privy to the entire breadth of the warranty requirements for eligibility, which is what I presume you are talking about. It looks at the financial stability of a company. It looks at the question of whether or not they are making suitable profits, whether or not they have a suitable amount of equity in the company.

Ms SYLVIA HALE: It is really just looking at it from a financial perspective. Do you worry whether they have a builders licence, for example?

Mr WOLFE: The question of builders licences in respect of warranty insurance - there is a knowledge that you cannot get a licence unless you have one of two things, you have the competency which is determined through OFT and you have an eligibility for insurance through a warranty provider. The warranty provider looks at the financial operations of that builder.

Ms SYLVIA HALE: If at any stage when you offer, or one of the companies for which you act as a broker seeks to take out insurance, do you ever examine the contracts they issue to see whether there are any provisions that the company or the builder must comply with, for example EP&A Act, the Building Code of Australia, Australian Standards, or the conditions of consent applying to a particular project? Do you ever concern yourself with those?

Mr WOLFE: I must say that that part of the HIA Insurance Services is a separate operation. I'm not privy to the entire operation that is carried out there, but to my knowledge, the question of building compliance is looked at in terms of historical events, has that builder been involved in any complaints disputes, or had his licence revoked, or those issues that might upset the profitability and the financial stability of that company. In that regard there would be some reference, but it would not be significant.

The Hon. GREG DONNELLY: In regard to the issue of home warranty insurance you would obviously have some reasonable understanding of how it operates in New South Wales.

Mr WOLFE: I do.

The Hon. GREG DONNELLY: In terms of the position with respect to home warranty insurance in the State of Queensland, do you have at least a broad understanding of how it operates up Queensland?

Mr WOLFE: I was executive director for the Housing Industry Association in Queensland in 2003 for about 18 months.

The Hon. GREG DONNELLY: So you have a reasonable understanding in terms of making a comment about how the scheme operates in Queensland vis-a-vis home warranty insurance in New South Wales. Are you in a position to make some comments about the comparative operation of the two schemes?

Mr WOLFE: I am, and I have taken some interest in comments that suggest that the Queensland scheme is cheaper, easier and more efficient than it is in New South Wales.

The Hon. GREG DONNELLY: Would you like to elaborate on that, please?

Mr WOLFE: The QBSA, who oversee the warranty system and the entire consumer protection arrangement in Queensland, issue warranty. There is acceptance that the warranty premiums are far cheaper in Queensland than in New South Wales and indeed Victoria. You may or may not be aware of a recent increase in premiums that occurred on 29 September this year in the Queensland warranty system. Arising out of that, and not just because of that but arising out of that, in the main New South Wales premiums are cheaper than they are in Queensland and in many instances significantly cheaper. For a \$200,000 project, for example, the Queensland system is in the order of about \$1,400 and in New South Wales the average premium is below \$1,000.

The Hon. GREG DONNELLY: Is that before or after that increase you have just referred to?

Mr WOLFE: That is since the increase. Queensland has not always been cheaper.

The Hon. GREG DONNELLY: Yes.

Mr WOLFE: I can show you examples historically and I can show you examples now where the Queensland arrangement is in fact cheaper, but on average it is not.

The Hon. JOHN RYAN: How are they similar?

Mr DONNELLY: Hang on, it is my turn.

The Hon. JAN BURNSWOODS: You put a question on notice, Mr Ryan. These are our questions.

The Hon. GREG DONNELLY: I have further questions to ask.

The Hon. JOHN RYAN: I am sure you do, but are they similar. Are we comparing two things that are similar?

The Hon. GREG DONNELLY: Point of order.

The Hon. JAN BURNSWOODS: Madam Chair, can we ask our questions?

The Hon. JOHN RYAN: All right, fine, if you do not want to put on the record whether they are similar, that is fine, but it is relevant.

The Hon. JAN BURNSWOODS: Madam Chair, this is the time for our questions. Could you ask Mr Ryan if he will not interrupt.

The Hon. GREG DONNELLY: I didn't interfere with your time.

The Hon. JOHN RYAN: If the witness is happy not to have that issue canvassed, fine.

The Hon. JAN BURNSWOODS: You are always good at suggesting ulterior motives.

The Hon. JOHN RYAN: I am not at all.

The Hon. GREG DONNELLY: In regard to that part of the question I was quite happy with the answer. I didn't need little sir echo in the room.

In terms of the other comparative aspects between the New South Wales and the Queensland schemes, other than the issue of costs, which you have adequately dealt with, are there any other aspects of the comparison that you would like to take us to?

Mr WOLFE: It is not directly related to costs but the Queensland system has a one size fits all, in terms of premiums. In other words, builder A and builder B doing the same work will pay the same amount of money for the premium. There is no recognition about the financial stability or the rating of either of those builders. In New South Wales a lot of schemes recognise different ratings for different builders, depending on their stability financially and therefore the risk factor. In many instances a well rated builder is rewarded with a lower premium and a not so well rated builder will pay a slightly greater premium. In Queensland it is a flat scheme.

The QBSA system is very similar to the New South Wales system. There is a perception that the QBSA system is easier to gain or garnish warranty eligibility through. That is not the case. It is a very broad statement that it is easier, and although there may be some instances where it is easier, there are a lot of instances where it is not easier. It is too broad an issue or too much of a coverage to suggest that it is in fact easier to get insurance through Queensland than it is in New South Wales. That is not the case.

In terms of the dispute resolution process, the processes are very similar. If I go back to the question of easy, I do not necessarily hold that getting eligibility easy is the best answer. It depends on your definition of easy, I suppose, but in the days post HIH, if we take ourselves back a few years, we would see that the issue of warranty certificates in the days of HIH was extremely easy and extremely cheap, and that did not necessarily make a good system, so I am not advocating the cheapest system and the easiest system for eligibility. In fact the role that warranty insurers play in maintaining an industry that is well equipped and financially stable should not be underwritten.

In fact, if you have a look at the level of building activity that we see at the moment in New South Wales, which is about 25 to 30 percent lower than it has been in previous years, we are not seeing the level of insolvencies that we have seen in past cycles. The level of insolvency is in fact very low. When you have people moving out of the industry, that is usually due to the fact that they are aging, the activity is down, now is a good time to leave the industry. It is more a voluntary move from the industry rather than insolvency. The major reason for that is the fact that the financial stability of builders in New South Wales has been vetted and checked by insurers and that has provided us with a very solid environment.

The Hon. GREG DONNELLY: In looking at an industry, and your industry in particular, that is obviously in the HIA's judgment a good situation where there is that stability and that sense of integrity there?

Mr WOLFE: It does our industry and it does our organisation and it does our members no good with reports that there are builders collapsing and leaving incomplete work, or defective work, and consumers being left in a quandary. We are not hearing that, as we may have heard in previous cycles. In fact, our indications are that the level of builders going out of business at the moment, even with a lower level of activity is very small.

The Hon. JAN BURNSWOODS: Mr Wolfe, I assume that you are aware that in fact all applications for licences in New South Wales are assessed for qualification requirements. I think some misleading or confusing information was given to you before. The 10 percent figure applies to checks for criminal records, 10 percent of which are randomly checked. Do you have any comments on the 100 percent check for qualifications and general fitness?

Mr WOLFE: The Housing Industry Association and in fact the industry itself, in my view, holds that a person who applies for a licence shows cause that they have the qualifications and competencies to do the work which the licence allows them to do. I think the industry, my members, and our organisation would be surprised if that level of assessment was not carried out. More recently, because concerns about assessments of a person's competency outside a formal qualification became a concern, that avenue was taken away. We do not necessarily agree with that but the decision was made that that was open to some manoeuvring so that a person who was not completely competent in the area might nonetheless gain a qualification. The process probably could have been tightened but because of that, the opportunity was taken away so you can no longer be assessed for competencies. To get a licence you need to show that you have the necessary qualifications.

We could argue that the training system, or the education system, or some other system is letting us down, but the person nonetheless has been through a formal qualification which has gone through all the bells and whistles and has been vetted by the training industry and has participated and completed and passed and has the qualifications and that then allows that person, subject to eligibility, to get a licence.

I guess you can draw analogies with getting a driver's licence. In fact getting a driver's licence is probably a little easier than getting a builder's licence in terms of the process you have to go through and the qualifications you need to gain. With a driver's licence you have driven for so many hours, supposedly under some conditions, but then you are allowed to go out by yourself and drive. A builder has been through four years, at least four years of competency based training and experience development before they are given a licence to build for a consumer.

The Hon. JAN BURNSWOODS: You mentioned before that your association has made submissions to a number of different inquiries over the years. Have you had a chance to look at the recent report from Ms Irene Moss, entitled A Review of Licensing in the New South Wales Home Building Industry and do you have any comments to make?

Mr WOLFE: I have not seen that report. I understand that the final report is not available yet. I have not read that report.

The Hon. JAN BURNSWOODS: You had an input into the draft and the interim report?

Mr WOLFE: We did, and we made a number of recommendations to that licensing regime and a lot of it related to the question of how far do you licence and should licensing be based on risk, or should everybody have a licence because they are doing work. We recognise that indeed some bodies in the industry believe there needs to be a licence because of their own interests that there be a

licence. We address issues of compulsory professional development, continuing professional development, and raise issues and concerns about the mandatory nature of that and the almost arbitrary nature in which continued development is achieved, and have also raised questions about how we might better keep our industry advanced and aware of changes in the industry, changes in standards and codes and changes in materials and compatibility of materials, and how we might go about doing that, rather than a one size fits all training regime.

The Hon. JOHN RYAN: Can I ask the question I asked earlier, when you were comparing the two together, is the Queensland system of insurance similar in terms of the amount of cover and the last resort aspect of the insurance?

Mr WOLFE: We do provide some information in our submission along those lines. We provided a bit of a comparison between the various costs and coverage in the jurisdictions. Are you talking about the cost or are you talking about the coverage?

The Hon. JOHN RYAN: You compared the two products in terms of their premiums. Are we talking about two products that are similar in their coverage?

Mr WOLFE: They are similar and in fact in some instances the insurance coverage in New South Wales goes a little bit further and in others in Queensland it goes a bit further, but that is the nature of the legislation and the warranty product that does meet the requirements of the particular legislation that exists.

(The witnesses withdrew)

(Luncheon adjournment)

PETER LEE MCCLELLAND, State President, Construction Forestry Mining & Energy Union, Construction and General Division, 12 Railway Street Lidcombe, sworn and examined:

CHAIR: Are you familiar with the terms of reference before the Inquiry?

Mr McCLELLAND: Yes, I have seen the terms.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that and the Committee will consider your request. Would you like to commence with making a brief opening statement?

Mr McCLELLAND: Yes, thank you. My union made a submission in 2005 to the Review of Licensing in the New South Wales home and building industry, that inquiry being chaired by Mrs Irene Moss. The submission itself was put together by a person we engaged at the time to research and to bring forward recommendations to the union. I was hoping that that individual would be with me this morning but at late notice I was advised that that is not possible. Therefore, I have got to admit that I am not across all the detail that is contained in the submission that we made in August 2005 but I do bring to this Inquiry experience as a construction worker, being a tradesman who has spent his entire life working in the construction industry as such and in later years as a trade union official within that industry. In the submission that we made in August 2005, was a number of recommendations that are situated on page 4 and I might just speak briefly to some of those recommendations.

Firstly, it is our view that licensing for the construction industry should not just take in the home building sector, but also the industry in its entirety, other than perhaps the civil construction, but all building construction. The problems associated with the licensing regime as we see it at the moment is that there has been an artificial barrier put up between the commercial sector as such and the home building and people who work in the industry work in both areas and they bring to both areas a common view and approach to the industry. Additionally, you see a lot more developments today that have mixed usage. You have a project that has a commercial carpark in it, shops and offices and then home unit development on top of it. It is my understanding that licensing is not required at the present time in respect to the retail shops or the office developments or for that matter, the carparks under which the home units are and that it does not seem logical to us that that should be the approach. I would like to indicate that this division is creating a lot of confusion in the industry and also within the Department of Fair Trading.

I do have a document here which I would like to bring to people's attention. It is a letter to Ms Noreen Hay, MP, Member for Wollongong from the honourable Minister, Dianne Beamer.

CHAIR: Would you like to table that?

Mr McCLELLAND: Yes. This particular letter relates to a project in Wollongong. The project cost \$40 million, it is six storeys. It has ten retail shops, one floor of office space, carpark and four storeys of home units. If you have a look at this particular correspondence you will see that the site was visited by an officer of the Department of Fair Trading and in the third paragraph a Mr Kosseris of Belmorgan Property Development Pty Limited advised that the work was at a commercial stage only.

If you then go to the next paragraph, it says in part, "I am advised that Fair Trading have informed Mr Kosseris that the work may still be residential as it is part of the residential component." That to me would indicate any confusion there. "It is my understanding that Mr Kosseris has agreed to meet Fair Trading officers to provide the relevant documentation and has stated that work will cease until a licensed builder can be employed to recommence the project." I do not have with me a copy of the Illawarra Mercury dated 17 August 2006 in which it was reported that in fact work did not cease, it continued. The work that was being performed was work that was associated with the construction of the home units and I just raise that as being part of the confusion which has existed in the industry because of this situation where the licensing regime only applies in respect to home unit

development.

This particular builder has built multi million dollar projects for several years within this State and did not have a contractor's licence. However, this was the first time that they had moved into a project that had home unit development associated with it. Again, just illustrating the confusion that it is creating. In respect to the licensing issue categories, we believe that they should be rationalised and simplified, and there are comments in the submission leading on from that.

One of the important issues we see for consumer protection and ensuring quality product outcome, is that the threshold value of \$1,000 should be removed. Increasingly we are becoming aware of situations where a person, a home owner, for example, may be renovating a bathroom and that the contractor, in order to get under the threshold value of \$1,000 would in fact arrange for the purchase of equipment to be invoiced or made by the consumer, home owner and would therefore simply, after that, invoice for later content associated with perhaps the installation of a shower screen, then move on to other areas of work and use a similar process in order to keep under that threshold value. I do not believe that that is in the interests of either the consumers or the industry as a whole.

Additionally, with respect to point 4 of the recommendations contained in the submission, we believe that the task of the compliance officers of the Department of Fair Trading would be made far more easier by, where practicable of course, that records of contractor's details should be available on site, that those details should be readily accessible by authorised representatives or inspectors, etcetera, to check compliance with licensing and Fair Trading compliance officers should have the right to stop particular work from proceeding if they establish a breach. I am advised that that is not the situation at the present time, and within the construction industry it is renowned for having the ability to be able to bury its mistakes by a variety of methods and they are undetectable until a number of years go past where you have all sorts of problems arising as a consequence of the shoddy work that has been hidden or covered over.

With regard to owner builders, we believe that they should be required to engage a licensed building contractor to oversee the building work and the work should also be carried out by licensed contractors. Eventually that product will be sold to some other consumer and it is my view, having worked in the industry for 35 years, that very few owner-builders homes are ever actually fully completed.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Owner-builders?

Mr McCLELLAND: Very rarely actually finally completed and people later purchase those properties and purchase the poor workmanship that is associated with the building's original construction. Finally, we are very supportive of a skill card system for the industry that has a photo ID. Often in the construction industry you might have a principal - sorry if I could just go back a moment, one of the other things is in respect to the records that are kept on site, and this is important. Often a principal contractor, the builder, will let a subcontract, ensure that the subcontractor has everything in place, only to later find out that that subcontractor has further sublet the work, unbeknownst to the builder, and without any of the necessary qualifications et cetera. It is all about, quite frankly, the cheapest price for the works performed. There should be some mechanism established whereby contractors who receive contracts from builders have an onus, an obligation, placed upon them, to advise the builder if they sublet the work and also supply the necessary information related to qualifications and insurance matters, et cetera.

We are very supportive of the compulsory CPD. However, some of the information that we have received from contractors is that they would like to see within that program more emphasis placed on the successful management of their business, that is bookkeeping, and the essential business skills, rather than it often being used as an advertising platform for some of the suppliers of the industry for their product.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: CPD?

Mr McCLELLAND: Continuing professional development. We often get complaints from contractors saying they have to do this and get the points and maintain the licence and all it is, is an advertisement for some supplier.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Like doctors and drug companies?

Mr McCLELLAND: Yes. In conclusion, I'm sorry that I was unable to get the person that researched the work associated with the submission here today. He would have been able to go into far more detail than I have been able to, but if there are any questions that are put to me that I cannot answer, I will definitely undertake to find the answer out and come back.

CHAIR: Thank you very much, Mr McClelland, for that. As you pointed out, your submission is the union's. We have a copy of the union submission to the review of licensing in the New South Wales home building industry and in your summary in the document you say "research undertaken by the CMFEU to prepare the submission has uncovered an outdated licensing and regulatory system in crisis. There is a need to make radical change to ensure that the New South Wales community continues to benefit from a well regulated construction industry that can move forward through the challenging years ahead" and your submission was dated 31 August 2005. As we know, that inquiry report has not yet appeared from the Cabinet Office. Is there any information that you have that indicates that the radical changes that you think are necessary are under way?

Mr McCLELLAND: That are under way at the present time?

CHAIR: Has there been any significant improvement since August 2005?

Mr McCLELLAND: No, I have not seen any improvements since that date. Sorry, thinking back, from memory, it is my view that the compliance officers from the Department of Fair Trading have been far more active in the last 12 months than was previously the case and, for example, I think this Committee would be aware that there was a number of builders caught not having licences et cetera who had been building home units over a number of years. I think it is probably after August of last year. That would be the only observation I have.

CHAIR: The confusion that you referred to in those mixed useage buildings, whilst it is as you say quite common now for, say, home unit buildings to have commercial premises underneath and a car park is usually always provided underneath, it seems that has been a pattern for quite a long time now, so have you seen any attempt by the regulatory authorities to address that in the past, or is it something that keeps being confused and not dealt with?

Mr McCLELLAND: There has been no attempt. The confusion, I think, is right across the industry. The workforce, employers within the industry, and I think the letter that I submitted also indicates that there is some confusion on the part of the Department of Fair Trading when it uses the words "I am advised that Fair Trading informed Mr Kosseris that the work may still" - it is just not definite.

CHAIR: How can you really tell where it stops being residential and is commercial? It might be a stairway between the two.

Mr McCLELLAND: That is our argument. It is almost impossible to do. Additionally, if you are doing a block of units and it had a car park underneath or a retail shop, you may well have, prior to pouring the slab, the steel fixer who lays the steel, does not lay it correctly. It is too close to the outer skin of the concrete and as a consequence of that, or the edges are subject to moisture, it starts to rust and you then end up with the concrete cancer and the concrete expanding as a consequence of the steel rusting and the rest of the home units are above that work. It must impact upon it. It has got to. That is why we are saying it would be in the industry's long-term interests and

the consumers of this State if there was not this barrier put between residential construction and other forms of construction.

CHAIR: Apart from this case down at Wollongong which you have given us information about, do you know of other projects where this has been a problem?

Mr McCLELLAND: I can supply details of that. I have got to say that while this is an important issue to our union, it is not an area that we would focus on to the degree that perhaps other participants in the industry would. Our main focus is industrial issues such as wages and conditions, OH&S, et cetera. We are also very conscious that the industry has to have a quality product in order to have people have confidence in it, to invest in it, and thereby maintain jobs, et cetera. I could perhaps supply to the inquiry more projects where there has been this problem.

CHAIR: If I could ask you then on notice to do that, that would be appreciated.

The Hon. JOHN RYAN: When you refer to records being kept on site, do you mean all builders keeping records on what sort of building? Do you just mean larger sites?

Mr McCLELLAND: Where it is practicable. Where, for example, you have a single cottage being constructed it would not be practicable. More and more people are moving to medium and high density dwellings and in those particular projects there definitely is the capacity to be able to keep records on site so that compliance officers would be able to go there and actually ascertain from the records very readily who has the contract and copies of the licence, et cetera, and insurance papers, details kept on file, rather than have them be unsure of what the situation is. Often in our industry you do not have the owner of the company or a senior management person actually located on the site. It is often simply the workforce and they do not have the knowledge in regard to what are the requirements under the Act.

The Hon. JOHN RYAN: You referred earlier in your verbal submission to a \$1,000 threshold. What threshold occurs at \$1,000? Is that where you have to have a licence?

Mr McCLELLAND: That is right, a contractor's licence.

The Hon. JOHN RYAN: One of the reasons the department might argue there is a need for something under 1,000 is that there are occasionally people who do odd jobs. This might sound somewhat sexist but there is a company called Hire a Hubby, where you might have someone do a small brick job, or something like that, they would argue that for something reasonably trivial you do not necessarily need a builder's licence. That might be why the department has a threshold. Do you think that every person who does anything of that nature needs to have a licence?

Mr McCLELLAND: You can develop an argument about just about anything. What I see is where there may have been some merit in that, it has been abused. I think it is in the interests of a consumer not to have a handyman, a jack of all trades, come in and perform work which the home owner might think is insignificant because of their lack of knowledge, but is of some importance and will only create a problem in the future. For example, in the kitchen industry, doors not being properly fixed. You have the situation where you can now buy a kitchen from Bunnings in a flat pack and you then organise for a handyman, rather than a tradesperson, to come in and fix it and that might look like a good kitchen for a time period but you are buying yourself problems. This whole issue of getting the consumer to purchase the material, that is also designed in the mind of the contractor to also continue to engage in the black economy.

CHAIR: Mr McClelland, have you had the opportunity to participate in the development of Ms Moss' final report? Have you seen a draft report?

Mr McCLELLAND: No I have not.

The Hon. JOHN RYAN: When you mentioned that skill card or identity card, was that outlined in our submission? I have not read your submission. Have you outlined that proposal somewhere for us?

Mr McCLELLAND: Yes, on detail it is on page 6.

The Hon. JOHN RYAN: I am happy to read the rest of it.

Mr McCLELLAND: I make mention that such system exists in Queensland and elsewhere.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I became aware sometime ago of some very sub-standard building in the high rise industry in central Sydney, often related to the same builder, where there was no fire compliance, so there was no final certification and I asked a question in the House for a list of those buildings and shortly after that the builder sued Sydney County Council for not certifying his buildings, which seemed to me some sort of a ploy. Is the union aware that these buildings are not up to standard and what does the union do in that situation?

Mr McCLELLAND: There are many projects that have been built that we have real concerns about with respect to quality, as do the workers on the projects. One building in the recent period I would draw attention to was in Parramatta being built by Estate Constructions where the whole facade has to be removed because of shoddy work. One would say that is the problem of the builder and will be replaced but often that sort of shoddy work, as I said before, can be buried on a job. It is easy to see in facades and so forth but there are many instances where shoddy work can be buried and is buried.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably if all steel reinforcement work is embedded in concrete and if there is a wrong gauge or too close to the surface or if it is even not there, presumably in the short term it is quite invisible?

Mr McCLELLAND: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And indeed when in high rises the walls do not reach the ceilings and there are these extra cornices, which I gather is outside the fire certification, the builder would know, can the union do anything about these situations? Do they work hand in glove with the inspectors or are they not game to say anything or what is the story?

Mr McCLELLAND: We have got very limited capacity, we do not have the authority. We do from time to time advise the Department of Fair Trading.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You tip them off?

Mr McCLELLAND: We tip them off but I have got to say that this is not one of the main focuses in the union official's employment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably it would not add to their popularity much?

Mr McCLELLAND: No it does not. The last thing that a builder would want is some question put over the quality of a project by having compliance inspectors from the Department of Fair Trading going on their site. I am sure they would prefer not to have it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is some pressure on the members, the workers obviously and the union, even if they were aware - presumably in these cases they are aware that the gauges of steel are wrong or the walls do not meet the ceiling or whatever, there is some pressure on them not to report the situation.

Mr McCLELLAND: Absolutely. You also have the situation where workers within the

industry are on piece rates, they get paid for the metreage of gyprock that they can put up. It is in the worker's economic interest to put that up as fast as is possible. Again, in respect to bricklaying, rather than put the brick ties in in sufficient numbers because it requires a brick tie to be picked up, put in between the brickwork, then clouted onto the timber and that is not always done to the sufficient quantity that it should be. That is because a lot of the workforce in the industry are paid on the number of bricks or the metreage of gyprock that they put up or the tiles that they lay.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When you have contacted the Department of Fair Trading, have you found that they are diligent in acting against shoddy work or against contractors or sub-contractors who are not registered or licensed?

Mr McCLELLAND: Yes, we have found them to be quite diligent, the respond when we contact them, but often there is, even amongst our officials, this confusion about what is commercial and what is a huge loophole and unfortunately from time to time some of our officers have contacted the Department of Fair Trading and unfortunately it has been commercial work, for the reasons that I outlined and I have had to apologise to those compliance inspectors for wasting their time.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably if the work is not shoddy it is not a problem. If the work is shoddy, whether they are licensed or not is unsatisfactory, isn't it?

Mr McCLELLAND: Absolutely.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There are two questions, is the person licensed or not and is the work shoddy or not. If the person is not licensed but the work is not shoddy, presumably then you would be apologising. If the work were shoddy, you would not have to apologise for anything, would you?

Mr McCLELLAND: Well, again, it is a question of whether the Department of Fair Trading compliance officer can do anything about it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If it is a commercial building and it is shoddy and they are not licensed, they cannot do anything and you apologise for even mentioning it to them?

Mr McCLELLAND: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is the degree of regulation that bad, is it?

Mr McCLELLAND: Yes.

Ms SYLVIA HALE: Are you saying even if it is in the public interest presumably to report poor workmanship, that there is virtually no one to whom it can be reported, if the builder is not licensed?

Mr McCLELLAND: If the contractor is working on a commercial project, offices, carpark, etcetera, then there is no requirement for the person carrying out that work to have a licence.

Ms SYLVIA HALE: There is nowhere that anyone can go and say, look it is not just a question of people who are working on the building but people passing by, who assumes the risk in those cases, is it the builder who ultimately assumes the risk if it falls down?

Mr McCLELLAND: Until such time as he passes it onto whoever purchases it, yes.

Ms SYLVIA HALE: Looking at page 10 and 11 of your report, and I understand that you did not put it together yourself, but your report in the second last paragraph on page 10 and the last paragraph is quite scathing of the Department's preparedness to issue licences. It says, "unqualified

individuals are still being awarded licences based on phoney licence testing and accreditation scheme.” Would you like to expand on that further?

Over the page it is talking about trade contractor qualifications and saying how the Office of Fair Trading in fact is recommending that courses be undertaken that no longer exist or are obsolete. Do you have anything further to add to any of those?

Mr McCLELLAND: No, I have got nothing further to add to that. I can make further inquiries and come back to you.

Ms SYLVIA HALE: I find it interesting that the Housing Industry Association and yourselves seem to be singing from the same song sheet when it comes to CPD, because they also doubt the value of it and in fact say in their submission that the scheme has never been reviewed and whether it is of any value is to be doubted.

One of the things the Housing Industry Association says in its submission is that now is the time since HIH has settled down, to lighten the compliance load on builders. How it suggests doing this is by a rectification guarantee for five years rather than six or six and a half or seven years, be limited to major structural failures in a new home or extension. Do you have any comment on that time period?

Mr McCLELLAND: No, I would not be qualified to comment on that unfortunately. It is beyond my expertise.

Ms SYLVIA HALE: They also recommend that a consumer be able to waive the requirement on builders and cabinet makers to provide warranty insurance.

Mr McCLELLAND: I think that would be a disaster. Sometimes perhaps people need to be protected from themselves and if they are in a situation where they can get a cheaper price on the basis that they forego their warranty, I think it is very foolish and it would only increase the likelihood of more shoddy work being performed in our industry. It would be a drive to the bottom.

Ms SYLVIA HALE: Just one final question, I am not sure if you are in a position to do this, but we have had submissions that the Queensland insurance scheme is far superior to that in New South Wales and in fact most other States. Do you have any knowledge of the advantages or otherwise of the Queensland scheme?

Mr McCLELLAND: Again, in answering that, we have not been focussed on the issue of insurance premiums or the way the schemes are run. I can only say that I have had people in the industry who have spoken quite well about the Queensland system. Again, it is not an area we are really focussed on.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you have much to do with small home building, because it seems in the report from the insurers that that is the cause of the greatest number of complaints. Would you say there is a greater problem with the regulation of small home building as opposed to large commercial jobs?

Mr McCLELLAND: We have very little involvement in what we see as the cottage industry, single home development, so I am really not in a position to comment on that, other than I also from time to time see the various current affair reports on builders working in the cottage industry and as a tradesperson in the industry I am quite concerned about some of the product outcomes in that area.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think it is better in your sector of the industry?

Mr McCLELLAND: Yes I do generally think it is better.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You would have more sophisticated buyers, would you?

Mr McCLELLAND: No, not really, I think there is more regulation in the commercial sector than applies in the cottage industry. The value of the contracts is larger, so therefore, I imagine, that the risk is larger. The home units themselves do not always readily show their defects. In the cottage industry you would be more likely to see the consequences of poor workmanship in a shorter time period than would be the case in medium and high density residential construction.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So in fact the suggested shortening of the warranty time might not be a good idea?

Mr McCLELLAND: I do not think it is in the interests of consumers, no.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is no home owner's warranty insurance on high rise, is that correct?

Mr McCLELLAND: That is my understanding.

The Hon. Dr Arthur CHESTERFIELD-EVANS: So the consumer has no redress?

Mr McCLELLAND: Can you put that question to me again?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is no home owner's warranty insurance on high rise buildings, so if you buy a high rise unit you have no home owner's warranty, is that correct?

Mr McCLELLAND: No, I understand they have still got to carry insurance.

Ms SYLVIA HALE: I thought they were not required to take it out unless it exceeded something like five or six storeys.

Mr McCLELLAND: Yes, sorry, you are right. There is a limit there.

Ms SYLVIA HALE: Three storeys, is it?

Mr McCLELLAND: Yes, which is, in my view, ridiculous. For most people the biggest purchase they make in their life is their residence and I would do not see the sense in saying that a person who purchases a residence that is four storeys high should somehow have better insurance and security about the quality of their purchase than someone who buys a residence that is three storeys. It does not make sense to me.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you are buying a unit on the 26th floor that is not covered is it? You are still quite vulnerable if there is dodgy building in a city high rise, for example.

Mr McCLELLAND: Again, my understanding, and we do not focus on the insurance aspect but my understanding is they are required to have insurance.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Who has insurance, the builder?

Mr McCLELLAND: The builder and the subcontractor, yes.

The Hon. GREG DONNELLY: Mr McClelland, this is a general question directed to you as an official of the union who has obviously been around for some time in the building and

construction industry of New South Wales, have you observed any relationship between the quality of a job and the outcome of the quality of a job and rates paid to employees?

Mr McCLELLAND: Absolutely, but not just in respect of rates paid, it is also non-compliance with just about everything else associated, such as disregard for OH&S, workers compensation fraud, non-compliance with the requirements of the building industry long service leave provisions, disregard for the superannuation guarantee levy, and all of these things come together with certain individuals within the industry who are simply after a fast buck with no commitment to the industry or to its workforce. The building industry is an industry that does require, in my view, a whole of government approach and in the submission we make reference to issues such as OH&S, training, workers comp, et cetera, because they usually all go together.

Ms SYLVIA HALE: You are saying that if you fail to comply with those statutory requirements then your licence should be withdrawn?

Mr McCLELLAND: Absolutely. We have found that if you have total disregard for some of these regulatory requirements then that usually flows on and that is the way you look at the world and disregard everything.

The Hon. GREG DONNELLY: On this issue of regulation, and I appreciate the answer you have given as part of a culture not just an individual issue, does the union have a view about the High Court's upholding of the work choices legislation earlier this week that that is going to have a particular impact on the wages and working conditions of building workers?

Mr McCLELLAND: Absolutely, and I can see that that will flow through to the end product and impact in an adverse way upon the industry in the long term. Because of the industrial relations laws nationally, there is already a drive to the bottom by contractors in order to secure contracts and the workforce itself is being somewhat demoralised. They are seeing their conditions slashed, their rates of pay and OH&S standards disregarded and when you are working in an environment like that, it is fairly difficult to maintain a high level of pride in your workmanship.

The Hon. GREG DONNELLY: On that very issue you earlier made reference to the cottage industry, as you described it, as being perhaps one that suffers from even modest regulation or little regulation compared with the bigger commercial projects. Is it your view that that part of the industry is going to be very much at the pointy end of experiencing the impact of work choices?

Mr McCLELLAND: The cottage industry has absolutely no regulation in it at all. There is no regard for any awards. They essentially do not apply and it operates purely on what some might describe as market forces and those forces are between labour, industry and the builders.

The Hon. JAN BURNSWOODS: Just going back to the discussion before about the differences and the links between commercial and residential and the points you were making about those, what is your understanding about if the Office of Fair Trading inspectors find that there is some bad work and they find that that is commercial rather than residential? What is your understanding of what the Office of Fair Trading then does with that evidence of that funding?

Mr McCLELLAND: From my experience the officer will bring it to the attention of the builder and perhaps the contractor, but I understand that they are limited in what they can actually do.

The Hon. JAN BURNSWOODS: What about the role of local government, of councils, and their certifying role?

Mr McCLELLAND: I am sorry, I cannot comment on that. I have no involvement with inspectors, council inspectors or building inspectors from the council.

The Hon. JAN BURNSWOODS: It is my understanding that as part of their role in certifying building work and so on that certainly councils get notified by OFT if shoddy work or suspicious work is found on commercial buildings, so there is in fact a mechanism there.

Mr McCLELLAND: No, I am not familiar with that.

The Hon. JAN BURNSWOODS: We can investigate that separately from the union.

Ms SYLVIA HALE: I notice on page 18 of your submission, Mr McClelland, that you say that the Home Building Act should provide for the ability of the Office of Fair Trading compliance inspectors to prohibit work proceeding where there is a breach of the Home Building Act. At the moment if there is a breach there is no power to step in and suspend work.

Mr McCLELLAND: That is what I have been advised. Again, I did not research this but I have been advised by officers of the Department of Fair Trading that that is the situation, that they do not have the ability to actually issue a prohibition against work proceeding.

Ms SYLVIA HALE: That is really the ultimate sanction for a builder. That is a critical omission, it seems to me, from the Act, in that case.

Mr McCLELLAND: Yes.

Ms SYLVIA HALE: Does that apply to commercial work?

Mr McCLELLAND: In terms of commercial work, the only prohibition that I am aware of that any authority has is that of WorkCover in relation to OH&S.

Ms SYLVIA HALE: But not in relation to other matters?

Mr McCLELLAND: No.

(The witness withdrew)

(Short adjournment)

CAROLYN ANN CONNOR, General Manager Policy, Insurance Council of Australia, 3/56 Pitt Street, Sydney, and

ALLAN JOHN HANSELL, Government Relations Manager, Insurance Council of Australia, 3/56 Pitt Street, Sydney, sworn and examined:

CHAIR: Are you conversant with the terms of reference before the Inquiry Ms Connor?

Ms CONNOR: Yes I am.

CHAIR: Are you conversant with the terms of the Inquiry?

Mr HANSELL: I am.

CHAIR: For both of you, if you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by Committee, please indicate that fact and the Committee will consider your request. You have made a statement which we have, thank you for that. Do you have any opening statement you would like to make?

Ms CONNOR: Yes I do. Thank you for the opportunity to give evidence to the Committee today. The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent about 90 per cent of the total premium income written by private general insurers in Australia. Before I begin my opening remarks, I would like to point out that the Insurance Council as an industry body does not collect information about the operations of our member companies. Our comments today are really limited to general background and the information that is in our submission. I would also like to emphasise that home warranty insurance is a very specific class of insurance and very specialised class of insurance. As such, we may not be in a position to respond to some questions about the detailed operations of insurers or the scheme. We do understand however that one of our members has offered to address the Committee at some point in time.

Home warranty insurance is effectively a third party policy, although builders arrange the insurance policy, the actual beneficiary of the policy is the consumer of the residential building services and it is the consumer that ultimately makes the claim against the insurer in relation to an event covered by the policy. We are aware of approximately twenty government inquiries that have taken place into home warranty insurance across Australia. Each of these inquiries has re-affirmed the consumer protection value of home warranty insurance.

The New South Wales scheme, as you would be aware, was privatised in 1997. At that time there were up to five insurers underwriting in the market. The March 2001 collapse of HIH Insurance had a severe impact on the capacity of insurance in the market in a number of classes of insurance and one of those classes was home warranty insurance. At the time of collapse it was estimated that HIH had between 30 and 40 per cent of the market share of home warranty insurance. Following the collapse there were a number of reviews of home warranty insurance here in New South Wales and across Australia and the New South Wales government implemented a range of amendments to the scheme. In our view these amendments can be credited with restoring the scheme to stability and competition in the market.

Under the current scheme the primary responsibility for ensuring that the building work is completed to an acceptable level of insurance lies with the builder. The New South Wales government has brought in a range of measures to protect the interests of home owners and of builders, including providing assistance and enforcing contracts and seeking compensation on behalf of home owners. The home warranty insurance provides protection once all other avenues have been exhausted, where the builder has become insolvent, has died or cannot be found - we use the term 'disappeared'.

The home warranty insurance is required for work on home buildings over a value of

\$12,000. The minimum level of sum insured for such insurance is \$200,000 and that covers the financial loss to a home owner as a result of defective or incomplete work. The period of coverage is for six years on structural defects and two years on non-structural defects and twelve months for incomplete work. There is an industry deed that has been brought in that governs the relationship between the Government and insurers, market practice guidelines have been developed and agreement with insurers, as well as claims handling guidelines. A scheme board exists to advise the Minister on the type of insurance that exists, who are the insurers, the conditions of approval for insurers, the operation of the scheme and any other matters.

As I mentioned earlier, we believe that the scheme reforms in 2002 have had a significant impact on and improved the scheme significantly. From our view, the results of the reforms have been stability and competition returned to the market. Following the collapse of HIH there were two insurers in the market, today there are seven insurers providing this class of business in New South Wales. Customer service levels and turnaround times have improved significantly. In the Grelman Inquiry in 2003 the most significant concern that was raised was to increase the turnaround and getting approval for insurance. Today insurer's report turnaround times as low as 48 hours for what we call a clean application, which means there is no additional information required and there have been very few builder complaints about the availability of insurance.

Premiums have also eased since the reforms and whilst the Insurance Council does not collect information about premiums rates, insurers have indicated that the premiums have reduced as much as 10 to 15 per cent per annum and claims are being paid. Again, we do not have specific information on claims but insurers are reporting they are being paid. In talking about claims, I think it is very important to understand the nature of home warranty insurance as well. Home warranty is what we call a long tail class of insurance. A policy that is purchased today will provide continuous cover for up to six years after the completion of construction. What that means is that claims can be reported as late as seven or eight years after the policy date and some claims can still be developing ten to twelve years later. Insurers have to hold reserves for those long term claims.

It is important to note insurers estimate that in the current scheme only about 40 per cent of the anticipated claims, it is two years since the mid-2002 reforms, have been reported. The scheme actuaries estimate that less than half the claims attributed to the first year of the scheme have been received by insurers. So it is just to put it a little bit into context we are hoping.

In conclusion, we think that the scheme is working very well and is providing benefits to consumers. There is a very constructive and co-operative relationship between the Office of Fair Trading, the Scheme Board and insurers, and there are ongoing discussions regarding the scheme design elements and operations, and these lead to continuous improvements. From that perspective I will note to the Committee that the Minister of Commerce, John Della Bosca, today announced some changes to the scheme design, which will increase the minimum level of cover available to home owners from \$200,000 to \$300,000 and the scheme re-designs are also announced of the removal of a \$500 excess provision on claims. From our perspective, home warranty insurance is part of an integrated package of consumer protection. We think the system is working quite well.

CHAIR: Mr Hansell, do you have anything to add to that?

Mr HANSELL: No.

The Hon. JOHN RYAN: Are you familiar with claims being made, I think by a group called Archibuild in Victoria, where they say by virtue of the nature of the home warranty insurance scheme, that it is a scheme of last resort and there were so many other things required to be exhausted that there have virtually been almost no claims made at all against the scheme in Victoria and in the absence of there being any information about claims in New South Wales, are you able to give any sort of indication as to whether claims are being paid at all?

Ms CONNOR: I cannot speak to specifics but I can tell you that the insurers have told us that the claims have been paid and I can take the question back to the insurers if you like, but the insurers have told us that they have received anticipated claims. In terms of the question of the last

resort versus first resort that you eluded to in your question, to a certain degree it sort of makes sense in today's day and age of personal responsibility that the first recourse should be to the builder and have the builder fix any defects, address any work that has not been completed. We think that is reasonable in that situation. The insurance is there as part of a package of consumer protections and it is the back stop. If the builder cannot meet its obligations, then the insurance is there as a back stop.

The Hon. JOHN RYAN: I understand that that would be fair, except for the fact that often the issue is not so much that the builder cannot meet their obligations but simply will not meet their obligations and uses enormous opportunities to simply muck around and obfuscate and there appears to be within the available system enormous opportunities for a builder to obfuscate for months before they meet a particular requirement and similarly, there are other issues, such as the behaviour of builders that can sometimes make it very difficult for a consumer to allow them back on the premises. The result then is, unlike for example, say a motor vehicle accident or something or other which can be quickly resolved by finding someone else to do the work or something of that nature, there are aspects of the nature of the home warranty insurance scheme that make it very difficult for these things to be resolved.

Is it not possible to have an insurance product that perhaps whilst it might be of last resort, the issues which are defined as a last resort should include a category of claim which indicates a claim which simply cannot be resolved within a reasonable period of time? A claim might be made and then the insurer can make some sort of claim against the builder. At the moment it is death, disappearance or a bankruptcy and they appear to be such extreme situations that the consumer is in a position where when you say exhaust, the word 'exhaust' could not better describe the circumstance the consumer has to go through, and given that they are often dealing with accommodation in which they wish to live, that appears to be almost too extreme and that any options to perhaps provide another category of claim which might not necessarily be at that end.

Mr HANSELL: That is the first time I have heard a suggestion of that type but just off the top of my head, I suppose I would be concerned that a change in the nature that you have described would actually promote moral hazard, so rather than actually fixing the problem that you have described, you would actually see more builders showing that sort of behaviour because they know at the end of the day that the insurers would be there to pick up the tab.

The Hon. JOHN RYAN: But do you not understand the frustration of some consumers. They think they have bought a product which protects them and essentially as long as a builder - and in some instances I have certainly seen buildings which everyone accepts have not been properly constructed, that the builder seems to have so much assistance by which they may string out the issue, that it can be years before a claim is made and it would be far preferable to have the matter resolved much more quickly.

Ms CONNOR: My understanding is that there are some differences between Victoria and New South Wales in terms of the assistance that is available through the Government for home owners in seeking redress from the builders, that the New South Wales scheme has a number of protocols in place to help consumers in going after the builders to seek redress.

The Hon. JOHN RYAN: Yes, but that is entirely up to whether or not the local Department of Fair Trading does that. There appears to be no product available to a consumer where they can take insurance against the disastrous outcome of having chosen a really bad builder and some people seem to do that, and have told this Committee that they have been tens of thousands of dollars in debt, particularly for legal expenses and as I understand it, the insurance scheme that we have at the moment does not cover even those expenses, so they exhaust even more money than they have in the sum insured for the construction of the building on the legal expenses. Is it not possible to design a product that might cover at least consumers for the legal costs of pursuing the builder?

Ms CONNOR: We can take back to insurers some questions and some thoughts on scheme re-design. We have not, as the Insurance Council, had specific deliberations on the particular issue but we are aware that the insurers would be quite concerned about the moral hazard potential associated with going directly to a first resort scheme.

The Hon. JOHN RYAN: I put to you that some of the cases that this Committee has seen, the value of the last resort insurance scheme is of such limited value to consumers that making them compulsorily purchase the insurance is, in some instances, cruel. They can purchase a product that they can almost logically conclude they will never claim on and the insurance industry has the wonderful advantage that this form of insurance is compulsory and yet from the perspective of the consumer, they take the view that the chances of ever making a claim on this is so remote they might actually want to make the choice as to whether they outlay \$1,500 and take the risk themselves.

Ms CONNOR: You have certainly raised a point that we can take back to the insurers. We do still feel however that there should be recourse first of all to the builder, to ensure that the builder takes responsibility for their action.

Mr HANSELL: And of course we also say that in the instances where there is a builder who has disappeared, or has died, or has become bankrupt, that there are people who have benefited from builders warranty insurance in those particular circumstances.

Ms SYLVIA HALE: Except that we have also received submissions and evidence that the insurance industry seems to be very much opposed to adequately compensating people. I think that we had an instance where they were prepared to agree to five instances of inferior work having been performed against the owner out of a list of something like 135.

The Hon. JOHN RYAN: Could I suggest another category of perhaps insurance, or at least one other area of making a claim? Perhaps consumers should be covered for the costs of a claim in the instance where a builder loses his licence. It seems to me to be phenomenal that of all of the things which a person can be insured for, if a builder lost their licence they cannot make a claim and they cannot get their builder to complete the work either, and certainly some of things that I have seen would be solved if the Department of Fair Trading removed the builder's licence that would take them from the industry altogether. That would obviously trigger a claim but it is not an event that happens very often. If that occurred at least the consumer would be able to go ahead and make an insurance claim and we all would regard that as a sort of catastrophe which could be reasonably covered by insurance.

Ms SYLVIA HALE: As I understand it at the moment the insurers are not interested so much in the competency of the builder and their level of qualification, as in their financial soundness, so that if there is a claim against the builder they can meet that claim rather than the insurance company having to meet it. Would that be correct?

Mr HANSELL: Insurers do not want to be in the space of being a quasi regulator. That is not our role. The insurers are interested in underwriting the business and that is why they are interested in the financials of the builder. The regulatory type issues, I think, sit quite fairly with the Government.

Ms SYLVIA HALE: Is that not one of the advantages of the Queensland scheme which, as you know, is a government statutory scheme, where they are an insurer of first resort. If there is defective work they settle the claim with the owner and then pursue the builder, but they are also responsible for the issuing and monitoring of licences and so they have a very real interest in making sure that only qualified people are actually licensed to build. What problems do you have with the Queensland scheme, if any?

Ms CONNOR: We have not recently at the insurance council level had deliberations around the specifics of the Queensland scheme. I would note that it is a government underwritten scheme and ultimately that would be a question for the New South Wales Government as to whether they wanted to take that risk on their books. Private insurers are willing to take this risk and the insurance council policy would be to support private sector provision of insurance products.

The Hon. GREG DONNELLY: It is the Government's turn, I think, for questions.

CHAIR: It is still the cross-bench.

Ms SYLVIA HALE: My understanding is that the Tasmanian Government is currently investigating implementing a scheme along Queensland lines. Are you aware of that at all?

Mr HANSELL: I am aware that some Members of that Parliament had put forward that scheme. I am not aware that there is proposal being actively considered by the government.

Ms SYLVIA HALE: I had heard that there was a ministerial team in Queensland investigating.

Mr HANSELL: That is not my understanding. The Tasmanian Government is, however, reviewing its arrangements.

Ms SYLVIA HALE: How big a proportion of home warranty insurance is that of the insurance industry in Australia, or specifically in New South Wales?

Ms CONNOR: It is a very small market. The Australian Prudential Regulation Authority is the primary owner of statistics on the general insurance industry and home warranty insurance is in the other category. It is that small.

Ms SYLVIA HALE: You say on page three of your submission that high rise developments over three storeys are exempt from the requirement for obtaining insurance. Given that many people live in high rise developments of four, five, six storeys or more, what is the rationale behind exempting them from the requirement that they be insured?

Ms CONNOR: I am not sure that we can actually answer that question. That was part of the scheme design.

Mr HANSELL: That was a decision made by the New South Wales Government. I am not familiar with insurer views on it but certainly when you are speaking to the Office of Fair Trading they might be able to inform you on that.

Ms SYLVIA HALE: It is certainly a provision that would be of huge benefit to large developers such as Multiplex, Meriton and Australand and whatever, would it not? It would be far more in their interests to have that exception than it would be in the interests of the possibly of resident of those units?

Mr HANSELL: I could not comment on that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If a person contracted with a builder, is there anything stopping the insurance industry offering a product that guaranteed if there was not compliance with that contract and specification you would guarantee that there would be compliance? That would mean that the job of ultimately supervising the builder would come to you. As I understand that is what happens in the motor vehicle industry, is it not, in a sense that the insurer has to approve the car repairer?

Mr HANSELL: It does authorise repairs in certain circumstances, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably if I were to contract with a builder--

Mr HANSELL: Sorry, there are also circumstances where they are not authorised and there are some issues that need to be sorted out over time but yes, I think you are correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If, for example, I were to come to you and say I am building a house and I want insurance to apply to the contract so that once I have got your insurance and the builder I do not have to worry about anything. That is what insurance is about, taking away the risk. Presumably you would say tell us who your builder is and we will decide your premium. I would come to you with a range of builders and you would say the insurance is this with this builder and this with this builder and then you would take an interest in certification and the consumer would not have to worry. Why is that product not on offer? This is not rocket science.

Ms CONNOR: There is a slight difference in the motor repair example in that the motor repair example is a claim and the insurer is taking responsibility for ensuring the claim is managed properly. It would be the same if you had a home building claim, the insurer could take responsibility for authorising that the claim is settled properly, or the repairs are done properly. I do not think there would be a restriction on insurers offering that product, the question would be whether there is a market and that would be a question for insurers to determine if they saw a market in that space.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In other words, either they have not thought of it or they have not thought that the market is sufficient. I suppose you have not seen the submission from Vero to this inquiry?

Ms CONNOR: No. I know that they were putting in a submission but I understood it was in camera

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is true. The essence of your submission is the system is working fine, is it not?

Ms CONNOR: That is what we have heard.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The experience we have in Parliament is that when you first get here you get huge numbers of people with terrible stories, particularly cottage building, not so much unit building, although we hear of people with problems with high rise buildings leaking and not being able to get their fire safety certificates and so on. It would seem to us that there is quite an unsatisfactory situation at the moment. Do you think that the people complaining are a tiny minority and that their complaints are unreasonable?

Ms CONNOR: I think that when we are talking about the system is working, it is working for insurers from an insurance perspective and that the reforms in 2002 have restored competition to the insurance market, have brought stability to the home warranty insurance market, availability of product. Premiums have come down to make products more affordable and claims are being settled and paid where there are legitimate claims according to the scheme design.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In essence you have the claims and at first you try to work it out between the builder and the buyer. Presumably if the builder has made a hash of some structural point and it is not fixable, if the builder is a bit dodgy there is not much use asking him to fix it in the first place, so you then go on to last resort where they are just getting money out of you to fix it whatever way possible, then the consumer is really the third party. The deal is between you and the builder, is that right? The home warranty insurance is between you and the builder, is that right?

Ms CONNOR: The home warranty insurance is purchased by the builder, but the claimant would ultimately be the home owner, so the insurer would deal with the home owner. How a claim is settled would depend on the insurer's policies and on the individual. Perhaps what I was alluding to before was in many home and contents type of claims the insurer will offer to manage the claim and

the building repairs on behalf of the claimant.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Given that the builder pays the premium and the buyer is the claimant, there is an inherent problem. You are trying to keep the premiums low to keep the builder as your customer, and you are not going to knock builders because they are your customers. The problem is the client. The buyer is not the person who pays the premium. Is that not an inherent problem?

Mr HANSELL: I do not think it is. Someone mentioned earlier the fact that the insurance is compulsory, so the insurers do not need to worry about that particular issue that you raised with the builder, because it is a consumer protection type of insurance and the ultimate beneficiary, as Carolyn mentioned earlier, is the home owner.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: They do not seem too happy.

Ms CONNOR: The third party claimant concept is not uncommon in a number of insurance products, compulsory third party insurance, liability products. Often the insurance exists to indemnify someone else for a loss by a third party, so that triangle is not uncommon in insurance practices.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If there is a dodgy builder giving rise to lots of claims, which would seem to be the case, do you ever intervene with the Office of Fair Trading and say, builder X is Phoenixing himself, doing thousands of contracts that are dodgy, and we are paying out or getting hassles all the time? Surely there must be builders that you lose a fortune on.

MR HANSELL: We, as insurance council, do not get that level of evidence. It may be that insurers working within the system get that sort of evidence and it may be that they report them to the Office of Fair Trading, but we cannot comment on that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In the sense that there is a Credit Reference Association for those who do not pay their bills, surely there must be a dodgy builders register which would benefit insurance companies, who could say: Look, if we got rid of this bloke we would save a motser.

Mr HANSELL: I would expect that there are arrangements with the Office of Fair Trading but once again you would have to ask either that question of the Office of Fair Trading or one of our members directly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It seems extraordinary that there would not be. It does seem extraordinary that people who are duded by builders fine, but there is a string of other people putting in complaints and obviously they would put in claims as well.

Ms CONNOR: As I understand, there are particular eligibility criteria that insurers use. Financial strength is one of those, existence of a licence is another one. There is a range of different eligibility criteria that insurers will get before they will offer the insurance.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Is there a differential premium based on that?

Ms CONNOR: I cannot speak about premium pricing mechanisms unfortunately. For trade practices reasons we just do not do that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You could make a general statement surely about the fact that there is a range of products and a range of premiums.

Ms CONNOR: Yes. Different insurers would have different pricing policies and that is as far as I can go unfortunately.

The Hon. KAYEE GRIFFIN: A lot of people are quite confused in relation to insurance about the period that the insurance goes for as in completion, presumably completion date and the period in which people are able to make a claim.

Ms CONNOR: I tried to point that out in my remarks, the insurance is continuous for up to six years after the completion of construction. At the completion of the work, over the next six years, claims are possible on structural work.

The Hon. KAYEE GRIFFIN: The completion of construction, does that relate to when the certificate of compliance is issued in terms of whether it is Council certified and things like that?

Ms CONNOR: I am sorry, I do not know that level of detail.

Mr HANSELL: We can take that on notice.

The Hon. KAYEE GRIFFIN: As you said before in your opening remarks, however that completion date is determined, if the person has to make a claim, it has to be within that six year period?

Ms CONNOR: Six years for structural defects, within two years for non-structural defects and twelve months for non-completion of work.

The Hon. KAYEE GRIFFIN: There are three different levels, three different time frames in relation to this?

Ms CONNOR: Yes.

The Hon. KAYEE GRIFFIN: I suppose the other question that perhaps can be asked is in relation to strata plans, particularly townhouses and so on, is, for instance if there is a completion date but a building does not sell for some time, the person who then purchases the property or purchases the townhouse or villa, do they only have a portion of that six years left? I would be happy if that could be taken on notice.

Ms CONNOR: Sure, we will do that.

The Hon. GREG DONNELLY: Could you tell the Committee about the changes to home warranty insurance since the collapse of HIH, give us an overview of the situation?

Ms CONNOR: In terms of competition in the market?

The Hon. GREG DONNELLY: Yes.

Ms CONNOR: At the time of the collapse or shortly after the collapse of HIH as I understand we ended up with a situation of having two competitors in the market, one of which had a very significant market share and as much as they tried to continue to service the market, there were significant problems around delays in terms of approvals for builders and that according to the Grelman Inquiry was really linked to them just not having the capacity to be able to service the market. Today there are seven competitors in the market. We understand that competition is driving premiums down and customer service levels are much higher. There is a Scheme Board which the insurers work with quite co-operatively in terms of looking at different scheme enhancements and the operations of the scheme. Insurers have also signed a deed with the Government, an industry Government deed, that puts obligations on both parties in the partnership and they have agreed to market practice guidelines and claims handling guidelines.

So I think that the industry is very competitive. I think customer service levels are up. Claims are being paid, from what we have been told. So we have a much more stable and secure market for home warranty insurance in New South Wales.

The Hon. KAYEE GRIFFIN: Given the feeling there is a long tail for a number of these issues, does that mean the companies that are involved in the insurance of this are required to look at re-insurance?

Ms CONNOR: I would not be aware of the particular insurers' practices but I would say that there is re-insurance involved in the factoring in of their operations. All of the insurers in New South Wales who are operating here are regulated by the Australian Central Regulation Authority. That Regulation Authority requires insurers to maintain reserves in capital requirements and risk management and supervises companies over the long term and makes sure they have adequate reserves for the long term nature of the product.

The Hon. KAYEE GRIFFIN: That would include the issue of re-insurance?

Ms CONNOR: Exactly.

The Hon. GREG DONNELLY: Are you aware that builders have experienced some difficulty in obtaining home warranty insurance in New South Wales?

Ms CONNOR: My understanding is that after the collapse of HIH there were concerns and those were probably the biggest concerns that were raised in the Grelman Inquiry, the availability of product. My understanding is that in the last year or two years there have been very few complaints from builders about availability of product.

The Hon. GREG DONNELLY: That is something that you had received feedback about as a peak body if there were issues?

Ms CONNOR: We would have. We also have heard that from the individual insurers and from the Office of Fair Trading.

The Hon. GREG DONNELLY: Among the products in the insurance industry, how does the assessment for insurance claims differ from other general claims? Can you give us some sense of the different in the way in which they are handled?

Ms CONNOR: The actual claims handling, once a legitimate claim is received by the insurer, I understand would be very similar to any other insurance product. Probably the difference would be that they have to go through the initial recourse with the builder before the insurance kicks in.

The Hon. GREG DONNELLY: So it is in fact that process leading up to it?

Ms CONNOR: But once an insurer receives a legitimate claim. Now my understanding is there are insurer practices to be more involved in advance to anticipate some claims, but once an insurer receives a claim, they have obligations to respond and handle the claim in the same way other insurance is operated.

Ms SYLVIA HALE: You say that there are now seven insurer in the market?

Ms CONNOR: Yes.

Ms SYLVIA HALE: Is the business spread equally amongst those insurers or does one insurer continue to dominate?

Ms CONNOR: Again, I do not have specific market share information but general

knowledge would tell me that there still is probably one larger player in the market. The other players have just recently entered the market with this new scheme design.

Ms SYLVIA HALE: One of the problems I understand that builders had in the past was that they were required to provide security and all sorts of undertakings. Are they no longer required to provide that?

Ms CONNOR: The announcement that the Minister made this morning highlighted that those practices are decreasing, that they are decreasing requirements for builders to provide guarantees and indemnities. The requirement for a builder to provide such indemnities though does provide some confidence that the builder will be there and continue to operate. So it actually does help address potential dodgy builder concept. I also understand that there are products available say for new builders, where they can buy the home warranty insurance on a project by project basis, which would mean they would not be required to hold capital.

Ms SYLVIA HALE: There have been allegations that some builders find it very difficult to obtain home warranty insurance, not because of the incompetence or financial instability, but because they might be at odds with some of the major industry associations. For example, I think there is a distant building group called the Builders Collective of Australia and they say that their members are outspoken about the current insurance regime, that they face retaliation because it is becoming increasingly difficult for them to obtain insurance. Is there any way, if insurance is denied a builder, and they presumably meet the criteria, of them being able to get that insurance?

Ms CONNOR: It is a competitive market. There are now seven players in the market and insurers are highly competitive so I would expect that if one insurer said no, there are other insurers available. Home warranty insurance is also subject to the general insurance code of practice which has recently been introduced, although there is some specific caveats based on the statutory nature of some elements of it, in that there is a requirement for the insurer to inform the client of why they will not offer the product and refer them to another product offer.

I guess what I could say is from what we have been told, there are very few complaints nowadays that builders cannot find product and it is a highly competitive market now.

Ms SYLVIA HALE: You say there is a requirement that they be told as to why they are not granted insurance?

Ms CONNOR: Yes.

Ms SYLVIA HALE: If they dispute those reasons is there any avenue for appeal?

Ms CONNOR: I imagine there would be. I am just sorry I do not have that information specifically in front of me.

Ms SYLVIA HALE: We had evidence earlier this afternoon of a great deal of confusion because you can have a project that is part commercial/part residential and then of course you have this problem, which part needs to be insured? Do the footings need to be insured, because immediately on top of them are the shops, but above them, of course, are the units. Do you know anything about this problem?

Ms CONNOR: That is not something that we have been made aware of but I can take it back to the insurers or suggest that you ask the particular insurers on that.

(The witnesses withdrew)

(The Committee adjourned at 3.35 pm)