

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON WEDNESDAY 30 AUGUST 2006.

Mr PHILIP DWYER, NATIONAL PRESIDENT, AND **Mr RUSSELL JOSEPH**, BUILDERS' COLLECTIVE OF AUSTRALIA INC., WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Harriss) - Thanks very much, gentlemen, for making your time available, and welcome. The deliberations of the committee today will be restricted to the matter of whether we have a good scheme operating in Tasmania. We will not be going to matters related to the service level agreement that you might be aware of, signed between the Minister, Bryan Green, and John White, one of the directors of the TCC, because the Director of Public Prosecutions is still undertaking his investigations and we have to be very careful that we do not prejudice anything which the DPP is doing at this stage so until he has reached his conclusions we will not be going, in any detail, to term of reference (1) of this committee, dealing with that service level agreement.

You have indicated in your written submission to us that you want to give some verbal evidence to the committee. We are in your hands. Proceed, and then we will ask you some questions.

Mr DWYER - If you do not mind I will read a short submission and Russell may follow me because we will take two aspects of it. I think that is the appropriate way and then we can answer questions. I will also be tabling some documents for you. I have a copy for each one of you. Can I refer to Minister Green? We have met with Minister Green in the past.

CHAIR - Certainly.

Mr DWYER - Accreditation is a consumer protection issue first and foremost. Major building work presents the single biggest financial commitment that most home owners ever make, hence related consumer protection mechanisms must be beyond all reproach. This extends to all financial arrangements made between the TCC and government.

The actions of former minister, Mr Bryan Green, have clearly brought the Government and the TCC into disrepute. The questionable financial arrangements first denied by Mr Green are the very sorts of shady business dealings that consumers are supposed to be protected from. The TCC were primarily interested in one single fact - that is, that an applicant for accreditation held eligibility for home indemnity insurance and for ease of presentation I will refer to it as builders warranty as it is generally known.

Builders warranty has been described in the national media as one of the five biggest consumer rip-offs currently in Australia. The Australian Consumers Association describes it as making a mockery of consumer protection. The TCC accreditation process is underpinned by this flawed product. Further to the current Tasmanian builders

warranty review I raised this with Bryan Green last year. But all he could manage was a savage diatribe against me personally and an attack on everything the Builders' Collective stood for. He had not understood that the review itself was a direct result of a Builders' Collective document submitted to former Attorney-General, Judy Jackson. I table a letter from Mrs Jackson to that effect.

Pre-election, Bryan Green was on the record trying to discredit the Builders' Collective, as well as our views that the TCC should be disbanded. Consequently, Bryan Green's actions in relation to the TCC showed a clear preference to financially assist well-connected colleagues, even while his own constituents -

CHAIR - Mr Dwyer, can I just intervene there, and I don't want to be in any way seeking to fetter your comments at this stage, but I did indicate by introduction that any of your evidence and any of our questions to you need to be very clearly staying away from the service level agreement signed by Bryan Green and John White because the Director of Public Prosecutions is conducting an investigation as to whether there is a case to answer for any criminal activity related to that document. I get the impression that what you were about to say related to a continuation of the engagement of TCC, and if my presumption is correct there then we would require you not to proceed in that area because this is a public hearing, it is on the public record and if it any way prejudices the DPP's considerations we will have acted inappropriately. Can you please keep that in mind as you proceed.

Mr DWYER - Thank you. I'll leave it out and make sure that we don't compromise anything.

CHAIR - If you wish to write to the committee after this deliberation today and set out those concerns of yours, that is your prerogative.

Mr DWYER - Thank you. It's only one or two paragraphs I'm referring to so it will be in this copy here which you can deal with as you see fit, and I will leave those ones out.

I'll just make one comment. Mr Green, by default, delegated to the insurance industry sole rights to manage and approve the most expensive builder accreditation in Australia and in the process has not only made the TCC irrelevant but woefully ineffective.

While we were in Tasmania last year we were also asked to assist a Ms Boxhall who was unable to get Vero Insurance to pay a legitimate claim for her incomplete project. That claim was against an accredited builder who had gone broke. His unqualified labourer partner was then asked to complete and/or rectify the work. As a HIA member he quickly obtained eligibility for warranty insurance and was accredited by the TCC. Of course he couldn't do the work and in a very short time the project folded once again and Vero Insurance still refused to settle the claim. The Builders' Collective then shone a media spotlight on the case and the insurer eventually paid the claim. The HIA had allowed a patently unsuitable person to gain warranty insurance eligibility and TCC accreditation, all to the clear detriment of this consumer.

There is a certain conflict of interest in consumer protection when the HIA Ltd, MBA, the TCC, insurance companies and insurance brokers are involved in consumer

protection management and administration. Mr Stuart Clues, HIA Executive Director, said on ABC *Stateline* on 4 August:

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

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

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

The MBA also has a \$1 million plus slush fund gleaned from warranty premiums by running their own scheme after the collapse of HIH and to date not one cent has been returned to consumers. Keep in mind that this occurred while consumers such as Janine Bransley were utterly fobbed off by the insurers and the MBA while trying to get her home fixed by her builder who was also the MBA Tasmanian president at the time.

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

Even though the TCC have builders warranty as their key criteria for builder accreditation, the TCC has not been able to assist one consumer to make a successful warranty claim. This is a disgraceful record that again shows the complete impotence of the TCC to assist consumers when it counts. In fact and according, again, to Mr Stuart Clues from the HIA on ABC *Stateline* on 11 August, the TCC has not deregistered one builder for shoddy workmanship. The only criteria is that a builder has warranty insurance eligibility which has virtually no relevance to a builder's qualification and experience.

Industry management and the removal of poor builders are vital for the successful operation of an accreditation scheme. It is the view of the Builders' Collective that the TCC and Bryan Green have failed their responsibility as industry managers.

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

Vested financial interest continues and will continue to compromise consumer protection policy as long as it is allowed to continue. The trade associations and insurers need to be removed immediately from any role in consumer protection. This is the case in Queensland where the Builders' Collective recommended that the Government adopt the current Queensland model as soon as possible. This holistic system is self funding,

profitable and no burden to the taxpayer while delivering affordable, first-resort consumer protection and genuine builder accreditation. It is a proven, workable system.

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

CHAIR - Thank you.

Mr JOSEPH - I was going to mainly address the issues under topic two of the terms of reference and to probably expand a bit more on the Queensland system that Phil just referred to. I will, again, read it just to make sure that I do not miss anything out.

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

Early this year as an HIA member and registered builder I asked for and was given the opportunity to make a presentation at the Victorian HIA annual general meeting. This presentation was designed to move the process of consumer protection reform forward within the HIA by making a formal presentation direct to the Victorian executive.

Subsequent to that presentation, the Victorian executive agreed to form a subcommittee to, in general terms, further investigate all valid alternative models for consumer protection mechanisms and to essentially weigh up these against the still current HIA national policy which is a voluntary scheme of warranty and removal of the accreditation link, so essentially that current policy is to provide a voluntary warranty insurance and to remove the link between accreditation and warranty eligibility. That subcommittee is yet to give a report.

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

Although the HIA, MBA and, for that matter, the Builders' Collective are ostensibly builder focused organisations, it has been the Builders' Collective that has by default become the pre-eminent consumer group representing the building industry in Australia. It is on this basis that the Builders' Collective are involved in this inquiry and I believe the Builders' Collective of Australia is uniquely positioned to represent a whole industry view as the Builders' Collective consists of and represents builders as well as consumers and unlike other trade associations, the Builders' Collective has not tainted its consumer protection credentials from selling warranty insurance.

My views to the HIA AGM earlier this year, in February, were that while the removal of the warranty and accreditation link is commendable, the option of voluntary warranty insurance as support, is pointless as it in fact has previously failed. Many years ago the

HIA tried to implement such a scheme but it was soon abandoned for a mandatory scheme because it was economically unviable and it would likely remain so now.

To use such a model further as the foundation for any accreditation scheme would surely be flawed and would not be in the long-term interests of Australian consumers, especially Tasmanians. In Victoria we have the same last-resort warranty insurance, however with a government-controlled accreditation, as we have heard, that is still ultimately only checking that a builder has eligibility to purchase warranty insurance. New South Wales are the same and Western Australia is very similar. Only in Queensland do we see a completely alternative model.

Remember that the whole purpose of this exercise of accreditation and warranty is to provide effective and affordable consumer protection. In Queensland all builders and subcontractors are accredited by the Building Services Authority which is directly answerable to the minister. It is not a private company. In addition, accreditation is more skills based and the warranty component is also not privately administered.

In Queensland the removal of private companies from providing both accreditation and warranty insurance has provided a consumer protection regime that is effective, affordable, self-funding and provides no impost to taxpayers. While the accreditation and warranty roles are independently funded - that is, one does not subsidise the other - they are both managed by the same authority providing seamless integration across the entire industry. There are no profit-driven brokers, trade associations or insurers that can exploit any systemic weakness in the Queensland system whatsoever. It is fully transparent, accountable and audited annually by the Auditor-General.

The ability of the Queensland system to manage the industry while at the same time delivering effective consumer protection is clearly evidenced by the fact that it is the only system in Australia that delivers genuine first-resort protection and at a price roughly half that currently charged by the major warranty insurance provider in Tasmania. That is, a consumer can make a claim against the warranty policy without the last-resort triggers of death, disappearance and insolvency. It genuinely covers defects.

These triggers have created enormous pain for thousands of Australian consumers and many here in Tasmania. Fundamentally if the builder will not fix the adjudicated defect then the accreditation arm of the QBSA can and does take action against that builder and will inevitably lead to suspension and/or deregistration. All this occurs while the defect or incomplete work is fixed and the home owner gets on with their life. There are hundreds of consumers in Victoria that have been slogging through the courts for years trying to get builders and/or insurers to complete their building projects. One of these consumers currently has lost us between \$4.5 million and \$7 million and evidence to this loss was presented to the court only three weeks ago. This is not consumer protection.

I will also speak for Tasmanian consumer, Janine Branston, later this morning and it is worth noting in conclusion that regardless of what the detractors of the Queensland system may say, if Tasmania had such a system in 1999 then her home would have been fixed within probably six months, the builder would have been disciplined and maybe even deregistered, and Janine Branston and her husband would not be under imminent threat of losing their home due to their inability to pay crippling legal costs. Again, this is not consumer protection.

Finally, the detractors of the Queensland BSA are not consumers or consumer groups but private companies represented by insurers, brokers, the HIA and the MBA, who all have a direct financial vested interest in providing consumer protection products to Tasmanian consumers. It is no surprise then that they are not fans of the Queensland-type system where they are completely shut out from accessing consumer funds. In relation to the TCC, the lesson to be learned from this experience is that private, profit driven companies have no place in the consumer protection chain of responsibility or administration. The Queensland BSA have proved that given the right tools, government can do its job far better and more cost-effectively than trying to outsource these core responsibilities to the private sector. Consequently, until this systemic profit-driven system is abolished, any reform of the TCC is at best a bandaid and at worst useless.

CHAIR - Thanks very much, Mr Joseph.

Mrs SMITH - If you could just give me a short precis of the Builders' Collective of Australia, the number of Australian builders you represent and specifically the number of Tasmanian builders. If I could just get a general overview of your incorporated company.

Mr DWYER - We are incorporated in Victoria. We are a national organisation. We do not have a membership regime like trade associations have. We don't sell anything. We are a lobby group to achieve a better result for our industry on behalf of the industry itself and the consumers that we service. So to put a number on how many we represent is extremely difficult. While we have a web site that enjoys an enormous amount of traffic, we don't have that membership regime that you are referring to. We believe we represent all builders, professionals and consumers in the building industry. In Tasmania we even had a rally in front of your Parliament some two years ago and there was a considerable number of builders there, and we have builders that are submitting to this inquiry such as John Fulton and John Ayling whom I think you met with yesterday.

So, to put numbers on it, we can't do that.

Mrs SMITH - Okay. Your written letter requesting to give a submission said:

'We have represented many Tasmanian builders who have been highly critical.'

Can you give me a number? Have you had 50, 100, 200? I understand what you're saying. Yours is a rolling sort of process where they come to you with issues and go away. You don't have a base membership, but you have said you have represented many Tasmanian builders. I am trying to get a face on half of the Tasmanian builders, or 25 per cent?

Mr DWYER - Well, again we don't have that membership regime. I can't present numbers to you, and I'm sure the other trade associations don't do that as well. However, we have a significant number of builders in Tasmania that have contacted us - professionals and so on - who agree with our principals. That is the point I am trying to make. We have had many consumers in Tasmania contact us. It's difficult to put numbers on it.

I believe, and I think Russell will elaborate on this, the amount of traffic that we have from around Australia - we are well known in every State in Australia - and we deal with governments and we've been trying to change this warranty since it first came in, since it first became privatised. Ever since then we have been trying to change because the warranty in insurance is the catalyst for all registration of builders. Whether it's in this State, Victoria, New South Wales, Western Australia, the criteria to get registration as a builder is to first obtain insurance eligibility. That is, we believe, a very flawed product because all the insurers are interested in is our individual ability to underwrite any insurance or any claim in the future. We must underwrite the insurers. So the insurers just play a management role, they have no risk at all. So we have this circumstance and that is why we have so many builders that are working outside of accreditation in Victoria. The Director of Consumer Affairs, Dr David Cousens, says more than half the registered builders in Victoria are working outside of accreditation. He also believes in a submission to the EC inquiry in Victoria that concluded in April that the removal of warranty insurance would in fact enhance consumer protection because it would bring the builders back into the compliant industry. So every State has a problem with this. It is not confined to Tasmania, it is every single State. In Victoria even the Office of the Small Business Commissioner states that his interest in this matter is the unfair market practices of the insurers. So there is a lot of criticism from a lot of areas and they are often government agencies, as in the two cases that I have just cited.

Mrs SMITH - You gave evidence about the Queensland system. It sounds quite interesting and the committee undoubtedly should have a look at that. You commented that the detractors, you believe, were private companies and you gave evidence on insurance companies et cetera. Can you direct us to a consumer organisation that would support your comments? A lot of our issues have been consumers.

Mr DWYER - *Choice* magazine. Home warranty insurance.

Mrs SMITH - Can you give me what edition number that is? I get *Choice* magazine.

Mr DWYER - August 2004. Home warranty insurance, cover you cannot rely on - four pages in this magazine. It referred to the Queensland model as well. The Australian Consumers Association believe that the very people that most need consumer protection in the building industry are those that would not get involved in a voluntary organisation. They believe that it needs to be mandatory. We as builders believe that it should be mandatory but we believe that it should be run by government, that it should be an adjudicated system not arbitration. Arbitration goes on for years and destroys people. It should be adjudicated by a single person to make a ruling against the builder or against the consumer if the consumer is a vexatious consumer. The biggest problem that we have with building in Australia is simply that we have a building contract between you as a consumer and me as a builder, for argument's sake. You are making probably the biggest expenditure of your lifetime in building a new home or a major renovation. It is your own home so it is very personal; it goes off the rails very quickly if it does go off the rails. Therefore it escalates very quickly so you have a breakdown between the builder and the consumer very quickly. The minute you go into litigation it just escalates. The legal arena take advantage of that situation and away it goes. What might have been a \$10 000 or \$20 000 problem could end up being a \$500 000 problem. That has been seen in Victoria. We have right at the moment Justice Morris in the tribunal of BPAC; 40 per cent of all conflict in the building list are consumers suing the insurance

companies trying to make their insurance work. We are getting around 1 000 complaints a year against builders. If we had an adjudication system where a person made a ruling and said to the builder, 'You need to fix that and fix it now. You have 21 days to do it', for argument's sake - this is similar to the Queensland scheme - if the builder chooses not to fix it and says, 'No, I do not agree and I am going to do whatever or do nothing', then the system will fix it. And then the authority pursues the builder. The builder may be suspended for three months or six months or he may be deregistered, depending on the severity of his conduct. We believe, as builders and responsible builders, that that sort of system is very, very acceptable. It is big money that these consumers spend. The contract that we have with the consumers must have a great deal of respect attached to it. We must ensure as builders that we honour that contract and deliver an acceptable project. In the case where an unacceptable project takes place we are treating consumers so badly at the moment that as an industry and as governments we ought all be ashamed of ourselves. We can do better. There is a proven system in Queensland, very much a proven system. It works extremely well - no private vested interest.

We have a difference. In Victoria, Tasmania and New South Wales we have the Housing Industry Association and it is easy to be critical of people but in this case I think it's very deserved. We had the situation for a couple of years where the Housing Industry Association with a duopoly with Vero Insurance or Royal Sun Alliance, as it was known then, had the only warranty insurance available. We had exceptions - two States. South Australia and Queensland. Queensland had their own system so they were fine. In South Australia the Government of the day said, 'Any builder who hasn't got warranty insurance eligibility we'll exempt until this crisis is over, whereas in Victoria and New South Wales governments decided, 'No, we will live with it'. Vero Insurance said, 'No, we can handle it' and so on. It put builders out of business everywhere. It is a disgraceful situation to happen. No industry deserves that.

Mrs SMITH - Are you suggesting there is very little marketplace reaction in insurance companies out there, that the builders are limited to where they can go to get insurance? You talked about HIA and Sun Alliance. Are you telling me there are no other insurance companies that want to enter the business?

Mr DWYER - No, there are others now.

I might just add that if we look at the warranty insurance providers over the last few years and if we look at the ASIC information, out of the six warranty providers up until May 2004, that's when Lumley came into the Victorian and New South Wales' markets, four of the six directors are in jail. There is a lot of integrity with these people and we are asking them to look after consumer protection? This is downloaded off the ASIC web site, each and every one of them - FAI, HIH, Dexter, BOW.

Regarding Dexter, that fellow has only gone to jail in the last couple of weeks. Then on top of that we have Reward Insurance. That is one of the providers here that weren't in the position to be able to provide insurance. They did not have APRA approval. So all this warranty insurance that people can't even access anyway comes with people who are just not, I believe, appropriate people to be providing consumer protection in such an important industry.

Mrs SMITH - If I could go back to your Queensland model.

Mr DWYER - Yes. I spent four days in Queensland, I might mention, researching this model.

Mrs SMITH - The Queensland model, if I interpret you correctly, says that if there is an issue between a builder and a consumer it goes to adjudication and the adjudicator says, 'Builder, you are wrong. Fix it' -

Mr DWYER - Correct.

Mrs SMITH - and if you don't you could lose your accreditation?

Mr DWYER - Broadly that is right.

Mrs SMITH - If the adjudicator says, 'Consumer, you are wrong - go away', you are saying in all instances that is it; there is no right of appeal process under law that we see in most things?

Mr DWYER - Yes, there is a right of appeal but we suggest that for small issues there shouldn't be a right of appeal, but where it is a major issue maybe they do have the right of appeal and maybe with a fee.

Mrs SMITH - So how do you make - if I might ask you to give me some advice because I am quite interested in this Queensland process - a judgment on a small issue? To a consumer building a \$150 000 house, \$20 000 is a large issue. To a multinational company building a \$10 million block of units or office blocks, maybe \$1 million is a small issue so who makes the judgment? I think that is probably the difficulty, what is small to one person is not small to another. So who sets the criteria?

Mr DWYER - If we take it on a national scale, and I am more conversant with Victoria and New South Wales than Tasmania because Tasmania is a smaller market, it is still just as relative and just as important but if we take the Victorian example, for argument's sake, that is an industry the same size as the Queensland industry so we can refer to that circumstance. Under the old government system in Victoria, the Housing Guarantee Fund Limited, the average claims were under \$10 000. That was average. We consider that a small claim is in the area of maybe up to \$10 000. It is always difficult because, as you say, people that spent a lot of money, \$150 000, \$200 000 on a house, \$5 000 becomes a lot of money when you have still got to do furnishings and so on and so forth so it is always very difficult to establish a cut-off point.

Mr JOSEPH - It is a bit arbitrary. The Queensland BSA produce an annual report which is quite a thick document and it details every aspect of the way they manage the industry and doubtless there are areas of the BSA that could be improved upon and that may be one of them, I am not particularly sure, but it is an exhaustive system which is thoroughly transparent so all that information is readily available.

Mrs SMITH - At the end of the day if the adjudicator says, 'Builder, go fix it,' the builder fixes it at his own cost -

Mr DWYER - Yes.

Mrs SMITH - and there is no insurance involvement?

Mr DWYER - Correct.

Mrs SMITH - So if it is a large fix, the builder still fixes it at his own cost -

Mr DWYER - Yes.

Mrs SMITH - and there is no insurance? Is that correct?

Mr DWYER - Yes.

Mrs SMITH - So a builder could virtually go out of business, accredited or not, if he is a shoddy builder because an adjudicator has said -

Mr JOSEPH - He can do and that is similar to what happens anyway in the other States. A builder can decide to fight it through the courts for a long time if they want to and if the builder is particularly large or well-heeled then they can drag on for a long, long time.

Mrs SMITH - In Queensland if a builder has to do a repair job on a home and it is estimated to be a \$50 000 repair and the builder says, 'I can't afford to do it. I'm going broke,' where is the consumer who it has been adjudicated has a right to have their property fixed?

Mr JOSEPH - The Queensland BSA will fix the property, that is what the insurance component of the levy paid for, and at no cost to the consumer.

Mrs SMITH - Who underwrites the BSA, the taxpayer of Queensland, or do they off-insure?

Mr JOSEPH - No, they do not. There is a pool of funds which they have. Again in the annual report it is very clear of the complete amount of claims. They have a value of the claims. They detail all of these insolvency or disappearance sort of issues. What they tend to find is that the insolvencies in Queensland are genuine insolvencies, they are not just builders walking away, because once a builder walks away from the BSA in that manner, it is likely that they will not work again.

Most builders will decide to rectify the fault. A \$50 000 claim is unusual in itself. As Phil said, in one report the average was \$5 000 and \$25 000 for non-completion so it is an unusual size.

Mr DWYER - In Queensland they do have a reinsurance arrangement for the warranty insurance side of it. The Queensland Government carries 25 per cent of that and three other insurers carry 75 per cent of it.

Mrs SMITH - The building industry as such, in what they are paying to the BSA, is carrying the liability, if there is any, after adjudication, to repair small claims if the builder walks away, so it is the industry itself looking after its name, I suppose one could say, and protecting itself.

Mr JOSEPH - The industry is fixing its own problems, yes.

Mr DWYER - The material that is available on the Queensland Building Services Authority web site tells you exactly how many claims there have been, how many claims have been submitted, how many have been adjudicated, how many have been paid out by insurance, how many builders go insolvent, etcetera, so everything is there. It's been suggested by detractors and insurers that there are lots of insolvencies. There are not a lot of insolvencies in the building industry. The ITSA is the only place where you can get accuracy in figures and there are very few insolvencies compared to what the insurers suggest that there are. However, even builders going broke or declaring bankruptcy doesn't mean to say they can automatically claim on the insurance, even though the three triggers of debt, insolvency and disappearance are supposed to be the criteria for a claim. In Victoria it has been the experience and it has been well documented in *Hansard* in Victoria that builders that declare bankruptcy -

Mr DWYER - Voluntary bankruptcy.

Mr JOSEPH - voluntary bankruptcy there is no claim because they are not technically insolvent.

Mrs SMITH - My last question, if I might go back to your organisation, if you do not have a membership base how do you fund your incorporated company? Is it a fee for service when you deal with issues on behalf of small and medium builders around the nation?

Mr DWYER - No, it's not. It's purely by donations of supporters, if you like. We don't have any membership regime or any fee for any service of any description. We are a voluntary organisation. We are all small, working builders. We have no vested interest in other than to get a better building industry. That is what we are desperately seeking, and have been for a number of years.

Mr JOSEPH - If I can comment, as a HIA member we rejoined the HIA probably seven years ago - my company - and that was because as warranty insurance premiums started to rise, it was a commercial decision to receive a member discount which would pay for our \$500-a-year fee, so we only had to write two or three policies a year and we had paid for our membership. So it was a commercial decision while we were writing seven policies a year that we were actually in front by joining the HIA. Regardless of their services or anything else, it was purely a commercial decision. Keep in mind that probably three or four years prior to that you could not buy warranty insurance through the Housing Guarantee Fund unless you were a member of the HIA or the MBA so they had a statutory requirement to be a member of these organisations purely to buy warranty insurance. That changed for a couple of years but then when premiums went up and HIA were giving member discounts it still became a commercial viability to rejoin the HIA as a member.

Mrs SMITH - You commented that it was a statutory requirement. Under which law?

Mr JOSEPH - It was in Victoria particularly, and I think it was in other States as well. Unless you were a member of the HIA or the MBA you could not be a registered builder and that was part of buying insurance.

Mr DWYER - When it was privatised in 1997 the trade-off was to sell warranty insurance, I believe. It was mandatory to be a member of a trade association before you could be registered.

Mr JOSEPH - You got this huge bank of membership which was built up as part of the statutory arrangements and the Builders' Collective, from my understanding, is a completely and utterly different arrangement. Nothing's ever been sold or administered to generate or have the need of that sort of membership regime.

Mrs SMITH - Have you ever investigated under the ACCC rules of National Competition Policy how you could make it mandatory to be a member of two specific organisations to get insurance and accreditation? Have you ever tested that in the legal arena?

Mr DWYER - We have. And we had to do it civilly because they are concerned about 53A of the Trade Practices Act where the ACCC lost a case to Boral some years ago and they are very hesitant to go down that path. But when the duopoly was there and so on that was the first place that we went to try to get a change in this arrangement that had been put together under the 10 point plan in Victoria. The 10 point plan in Victoria was a plan when it was made last resort between the New South Wales Government and the Victorian Government, the Housing Industry Association and the insurers, Vero Insurance. That was celebrated as a great benefit to consumers and wonderful for the building industry. That was back on 1 July 2002. You inherited that same principle of consumer protection in November 2003, I think it was.

Mr DEAN - In the first part of your reading of the brief that you did for us, you said that not one consumer, and I take it that you are talking about the TCC, has made a successful insurance claim or claim through TCC for their investigation. How many have been made, are you aware of the numbers that have been made?

Mr DWYER - No, I have not got accurate numbers. Meeting with Mr Ormerod and so on on the few occasions that we have, there seems to be quite a number and we have been directly involved in some of them. We do not have the numbers, though.

Mr DEAN - And with those where you have had direct involvement there has been no satisfactory conclusion?

Mr JOSEPH - Are we talking about warranty insurance claims?

Mr DEAN - Yes.

Mr JOSEPH - To common knowledge, there has only been one in Tasmania.

Mr DEAN - Over what period?

Mr JOSEPH - Since November 2003. There may have been other claims paid but they would have been from policies issued prior to that time. Once they have been last resort, as in death, disappearance, insolvency, the best information which I think is even from Mr Ormerod is one claim.

Mr DEAN - You also made a statement, and you will correct me if I am wrong, that there has been one builder removed from the register.

Mr DWYER - Yes, I am gleaning that information from Stuart Clues of HIA from the *Stateline* program on 4 August this year.

Mr DEAN - Are you aware of the number of complaints, again I guess your answer is as before, whereby there was evidence to suggest or support the removal of a builder from the register? Can you make any comment on that?

Mr DWYER - From other builders, yes.

Mr JOSEPH - It is more anecdotal but nothing substantial.

Mr DWYER - We are not qualified to lay claim to any circumstance relating to who should or should not be removed or whether they have or have not because we do not live in Tasmania. While we are quite conversant with the overall principle of the scheme, I do know that there are many builders in Tasmania who are working outside of compliance who will not pay the accreditation fees and will not put up their homes as security for insurers.

Mr DEAN - To your knowledge, what has happened in those situations?

Mr DWYER - Builders are working outside of compliance.

Ms FORREST - I am interested in the Queensland model and particularly the comments you made regarding accreditation. But I am sure that information is available on the web site as to how it actually works so I will investigate that further myself. How long has that Queensland model been in existence?

Mr DWYER - It has been there in its basic form for some 20-odd years. Certainly you can go back eight years and get annual reports to know exactly.

Ms FORREST - On this particular scheme?

Mr DWYER - Yes. They have eight years of annual reports on their web site.

Ms FORREST - Okay. You made a comment that half of Victorian builders work outside accreditation.

Mr DWYER - More than half.

Ms FORREST - Anecdotally I've heard evidence that it does occur in Tasmania as well. Can you tell me what the situation is in Queensland at the moment as far builders working outside accreditation under their scheme is concerned?

Mr DWYER - Yes, I can. In Queensland no builders work outside compliance, I believe. However, the owner-builder statistics are the area where they establish builders may be working outside. Historically over the last eight years it has been running at around about 2.5 to 3 per cent of permits that have been in the name of owner-builders. With

such a heated industry in Queensland in the last two years it has gone up to 4.7 per cent of owner-builder permits being issued.

Ms FORREST - Owner-builders is another big area that we do not have time to pursue at this stage.

Mr JOSEPH - But it is one of the key areas where a registered builder who does not want to comply can work outside of compliance and in Victoria it was 40 to 45 per cent and it is getting back up around that figure now, even though legislation was enacted to try to stop it last year.

Ms FORREST - It seems to have the same effect in Tasmania as well from what I have heard.

Mr JOSEPH - Yes. You would agree that that is the case, that the owner-builder situation is becoming a bigger problem?

Mr DWYER - Yes, and that's how a lot of the builders work outside of compliance because they talk you as a consumer into taking on the responsibility as an owner-builder and they'll just carry out the work as a subcontractor for you, if you like.

Ms FORREST - Yes. And that does not provide any protection -

Mr DWYER - No.

Ms FORREST - unless the owner-builder knows all about the insurance issue.

Mr DWYER - There is no contract, there is no anything.

Mr JOSEPH - The owner-builder takes responsibility for all the defects for subsequent owners and the builder just - that's it.

Mr DWYER - Insurance wise, that's *Choice* magazine's view of it.

Ms FORREST - So there is no other consumer organisation other than ACA, there is no specific consumer organisation looking at building protection for consumers?

Mr JOSEPH - There's a dearth of consumer organisations around Australia. The consumers are one person and it takes a very motivated person to create a consumer organisation. They might do one major building project and then they're gone.

There are three or four consumer groups in Victoria and New South Wales who are very vocal and active against warranty insurance in particular and I might speak a little bit about that with the next submission.

Ms FORREST - Thank you.

CHAIR - Gentlemen, you have indicated in response to questions by Mrs Smith that you don't have a membership base et cetera. Do you invite people to be a member, a

non-paying member, of your organisation? Do you have election of office bearers? How then do you set up your structure to represent the industry?

Mr DWYER - We have officer bearers from all around Australia in each State.

I am not just quite sure how best to express this membership thing to you.

Can I mention that we have a web site and most people come to us through the web site, I might add, but that web site receives an enormous amount of traffic and for an organisation that doesn't sell anything maybe you can explain to me how we might have anywhere between 45 000 and 100 000 hits a month on that web site? So somebody has an interest in what we are doing - a lot of people. We do have a significant e-mail list and so on because, as I say, we are voluntary.

Mr JOSEPH - I think, Phil, it would explain it better if it was termed as a supporter base rather than a member base.

CHAIR - That being the case, how are the office bearers elected?

Mr DWYER - Initially the Builders' Collective was formed by myself as a Victorian State-based organisation to try to change and get a better arrangement for builders' warranty insurance because I like many others almost went broke. Many did. This was when builders were in crisis some three years ago, two-and-a-half to three years ago, and we wanted change. We got together as builders and that expanded and went to the other States because the other States were in just as much trouble. So we, as builders, we believe as responsible builders in the industry, put together the Builders' Collective on a national basis. We hook up by telephones et cetera and we meet in other States as well.

CHAIR - But to my question, though, how are the office bearers elected? You have identified yourself here as the national president.

Mr DWYER - Yes. The committee, made up of all the different people around Australia, in meetings elect who are going to be office bearers and so on and that is how it is done.

CHAIR - Okay, that's fine, thank you.

Thanks, gentlemen, and thanks for that verbal presentation and the documents you will table as well.

THE WITNESSES WITHDREW.