

## **PUBLIC**

**THE HOUSE OF ASSEMBLY SELECT COMMITTEE ON THE COSTS OF HOUSING, BUILDING AND CONSTRUCTION IN TASMANIA MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON MONDAY 3 DECEMBER 2012.**

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**Ms ANN-MARIE JOHNSON** WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Hidding) - Thank you very much. We are pleased to hear your evidence today. Just before you begin giving your evidence I would like to ask whether you received and read the guide that was sent to you by the Committee Secretary?

**Ms JOHNSON** - I have, yes.

**CHAIR** - In spite of that I need to reiterate some important aspects of that document. Committee hearings are proceedings of parliament. This means that you receive the protection of parliamentary privilege. This is an important legal protection that allows individuals giving evidence to a parliamentary committee to speak with complete freedom without the fear of being sued or questioned in any court or place outside of parliament. It applies to ensure that parliament receives the very best information when conducting its inquiries. It is important to be aware that this protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the confines of these parliamentary proceedings.

Finally, this is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported. It is important that should you wish all or part of your evidence to be heard in private you must make this request and give an explanation prior to giving the relevant evidence. Do you understand all that?

**Ms JOHNSON** - I do, thank you.

**CHAIR** - Would you like now to make an opening statement before we question you on your very comprehensive submission?

**Ms JOHNSON** - Okay. We've been involved in a dispute regarding our house for seven years now. We had a builder build a house in good faith and the builder didn't meet a lot of the BCR requirements and subsequently went broke. We sought legal advice around it and we were told that the Housing Indemnity Act would kick in and protect us in this case. We weren't aware, and neither were our legal team, we don't believe, that there had been a deal done between the Master Builders Association and the state government. With the demise of HIH there were problems gaining insurance for builders, so Master Builders did a deal with the state government and essentially were allowed to act as insurers under this scheme.

**CHAIR** - You had an insurance policy with HIH, was it?

**Ms JOHNSON** - No. Our builder had an insurance policy with Master Builders because the builder -

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**CHAIR** - He was never with, he -

**Ms JOHNSON** - No.

**CHAIR** - The commencement of your construction job was after the HIH collapse.

**Ms JOHNSON** - Yes. It was just on that collapse period that this building firm became incorporated. Master Builders were given the authority to act as the insurer for this particular scheme. The scheme was always intended to be a protection for consumers and that is all. There were a lot of problems amongst the people within the building industry around this because there is an obvious conflict of interest here.

Master Builders were allowed to become the judge, the jury and the sentencer in this particular scheme. What was not embedded in it were basic consumer rights, so the consumer had nowhere to go. Common sense would tell you that if you have a dispute there is somewhere for you to go, someone who will help you. In this case all of those rights for consumers were completely removed. Master Builders had authority at every step of the way so they could implement it as they saw fit, even though there were rules and regulations around it.

**CHAIR** - The rules and regulations would have been in a document between, say, the government and the MBA?

**Ms JOHNSON** - That is right. In the rules and regulations, the really important ones I was concerned about, was that Master Builders were required to become accredited under the Australian Prudential Regulation Authority. They are not insurers; it is not their core business. I doubt very much whether they have the expertise to act in that capacity, so ultimately that did not happen. There were all sorts of issues around why it did not happen. They were also told that they had to restrict their insurance to cover builders who had already been HIH approved or approved by or covered by some other insurance.

**CHAIR** - Pre-qualified.

**Ms JOHNSON** - It was about due diligence; it was about making sure that builders were legitimate; that they had capacity financially - all of those sorts of things. This particular building company came into being at around the same time that HIH went down.

**CHAIR** - Who was it?

**Ms JOHNSON** - Prime Built. We are talking January 2001.

**CHAIR** - They came into being?

**Ms JOHNSON** - At around the time that HIH collapsed. I spent a lot of time researching this to try to find whether this particular organisation, this building company, did in fact have due diligence conducted on it.

**Mr BOOTH** - This is in regard to getting the -

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**Ms JOHNSON** - To be covered by Master Builders.

**Mr BOOTH** - to be covered, yes, okay.

**Ms JOHNSON** - To make sure that Master Builders were actually doing their utmost to protect consumers so that whoever they offered insurance to - because these builders could not operate without this insurance -

**CHAIR** - I was in the system then and my memory was that both the HIA and MBA - HIA got into it as well later - had agreed to not insure anybody who was not previously insured by Dexter or HIH.

**Ms JOHNSON** - Or HIH; and that was the requirement by the state government at the time. There were some issues. HIA - it is on record HIA actually wrote to the state government expressing their concern -

**Mr BOOTH** - HIA did?

**Ms JOHNSON** - HIA, that that was not actually happening, that Master Builders were providing insurance to builders who had not met that due diligence. It is our belief that in actual fact that insurance was offered to Prime Built and consequently when Prime Built went into liquidation the liquidators found that they had been trading insolvently for many of the years that they were in operation. There were two major areas there.

**Mr BOOTH** - When you say the liquidators found that, was there some sanction against them as a result of that? Were they taken to court for insolvent trading or was it just a fine?

**Ms JOHNSON** - I think again it was agreed that that was what was happening. They were deciding whether to take any action against the directors. Both directors have obviously gone bankrupt. I do not know what the latest is on that. I mean saying they will and actually doing it are two different things but certainly that capacity was there for them to do that.

**Mr BOOTH** - Some of this might be still on foot in that sense?

**Ms JOHNSON** - It still could be on foot, yes.

**CHAIR** - What you are saying is that they never had the capacity.

**Ms JOHNSON** - No.

**CHAIR** - Any due diligence would have shown that and they would not have been insured and they would not have done your job.

**Ms JOHNSON** - Yes.

**CHAIR** - You would not have been able to contract with them, would you?

**Ms JOHNSON** - No.

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**CHAIR** - Because you have to carry the insurance.

**Ms JOHNSON** - It is really important as a consumer to make the point that we conducted all the necessary investigations on this builder. We went and saw some of the work that they had done. The fact that they were affiliated to an accredited, and what we thought was a worthwhile, organisation for us says lots of things to anybody. There is a brand attached to the Master Builders Association just like there is a brand attached to the HIA. We had no reason to not have confidence in that brand. When we went to see Chris Atkins who was then the CEO of this organisation, Master Builders Association, -

**CHAIR** - Before we get into that to remind ourselves that what we are about is not to understand precisely what the builder did wrong with your property but so that we understand the nature of it, was it a general standard of completion that was not up to scratch or there were certain major issues?

**Ms JOHNSON** - There were major issues there.

**CHAIR** - Of construction or of finish?

**Ms JOHNSON** - No sub-floor ventilation, a major construction issue. No drainage off the slab, a major construction issue. These things were signed off on by the building surveyor.

**Mr BOOTH** - Who was the building surveyor?

**Ms JOHNSON** - Lee Tyers.

**Mr BOOTH** - Was he working privately or for a council?

**Ms JOHNSON** - Working privately; he has his own firm. That is another litigation that is out there for us.

**Mr BOOTH** - Our terms of reference are broad enough to take all that in, so maybe we might question you about that later. Before you go further, I am sorry, you might have already said it, but the point 1 in your submission where you talked about MBA Tasmania not having the necessary accreditation under an Australian Prudential Regulation Authority et cetera. Are you saying that is the case, then, they never had it?

**Ms JOHNSON** - No they never had it. In the end government withdrew, they terminated the agreement. That was four years later.

**CHAIR** - They would never have complied.

**Ms JOHNSON** - Exactly right.

**Mr BOOTH** - Have you any documentation in regard to that where you can prove that they never had that accreditation?

**Ms JOHNSON** - I made significant enquiries directly to APRA; I spoke to many people.

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**CHAIR** - *Hansard* will show we asked questions in the House why were they not.

**Ms JOHNSON** - I think the government was asking them to do something that they were not capable of doing. They are not an insurance company; they do not have the infrastructure or the expertise to meet those regulations; so why were they allowed to act as insurers?

**Mr BOOTH** - And sell insurance.

**Ms JOHNSON** - And sell insurance, supposedly in good faith. This was about protecting consumers; it was not about revenue raising; it was not about protecting builders.

**CHAIR** - You would have a good idea what MBA faces now and what their situation is. It is a matter of public record that they were here recently and told us the their insurance tail had all but been dealt with except for one case. Would you be that case?

**Ms JOHNSON** - I would.

**CHAIR** - Having established now that there were major structural defects that were in question, what were the options open to you at that stage? You knew the builder had indemnity insurance and therefore indemnified against any claim that you might make. Were there any other options?

**Ms JOHNSON** - No.

**CHAIR** - That was it?

**Ms JOHNSON** - That was it. That gets back to the point that I made earlier – that there were no consumer protections embedded in this agreement. That is another conversation. Our legal advisers had little knowledge of this, at the face of it, it is a normal insurance claim. Their advice was based on that: 'Ann-Marie and Phillip, this is a normal insurance claim. You have a right to claim on this.' This is the path that we followed.

**CHAIR** - There was a limit, wasn't there, as to what -

**Ms JOHNSON** - There is a \$200 000 limit.

**Mr BOOTH** - 20 per cent or \$200 000.

**Ms JOHNSON** - The damage to our house subsequently over that period of time is far greater than that. We had no capacity to mitigate our loss because we were constantly investing in legal action, putting \$5 000 into the trust fund of legal firms.

**Mr BOOTH** - It was a last resort policy, I presume?

**Ms JOHNSON** - It was. Our legal people as well are as puzzled by the attitude and approach of Master Builders Association.

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**CHAIR** - Let us talk about that. Somebody has become aware that there is a terrible problem, you walk into the MBA as the insurer, because that is who they were; you walk into MBA Insurance Inc. What did you say and what did they say?

**Ms JOHNSON** - Our first meeting was with Chris Atkins, who was the executive director or CEO of the Master Builders Association at the time. We went to him with our story. At that stage, Prime Build had gone into liquidation, as we all knew that they would; it was only a matter of time. We couldn't claim on the policy until that had actually happened.

**Mr BOOTH** - They obstructed you from making the claim?

**Ms JOHNSON** - Yes. Well, Chris Atkins told us to go away. That was the first meeting that we had with him; go away.

**CHAIR** - Why did he say that?

**Ms JOHNSON** - You don't have a claim to make.

**Mr BOOTH** - Because the builder hadn't died, disappeared or become insolvent?

**Ms JOHNSON** - No, the builder had become insolvent. The indemnity certificate was written out in Prime Build's name because they owned - it was a strata title area in West Hobart of five houses. In order for them to be able to build and get completion certificates, they had to do all of those things before they could strata title. They held the indemnity certificate but the legislation is very clear that we succeed to the owner's warranties; that is very clear.

**CHAIR** - Succeed to it, yes.

**Ms JOHNSON** - So we were absolutely flabbergasted. I had a conversation with Chris Atkins while I was there and asked him what sort of measures did the organisation put in place to make sure - because it was long known that Prime Build were doing what they were doing; they weren't paying contractors and all sorts of stuff was going on. We had to pay some of our contractors out of our own pockets in order to get jobs done on the house. We went and asked them what sort of checks and measures were in place. Essentially none. I asked him how many times he actually goes out; do you actually go out and have a chat to builders; do you have a look at their books; do you make sure that everything is above board? His response was, 'Well, we go and check one in five.' To my mind that leaves 80 per cent unchecked.

He essentially said go away; prove to us you've got a claim. Therein started the journey. We were forced into a position where we had to seek legal advice and support. Because the knowledge and understanding amongst the legal fraternity was limited in relation to this - it is so one-off and so unusual - it became a very expensive and long process which put us in a very tough spot for a very long period of time.

Finally, we had some success with a legal firm. We sat down and really worked out the nuts and bolts of it. It certainly wasn't commonly understood at all. They had to do a lot of research to get their minds around it but essentially it is an insurance policy. That's all it is. It's our insurance policy and we've been denied proper access to it.

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**CHAIR** - Was that resolved in the end? The fact that MBA were saying you don't hold insurance; Prime Build did and they are now gone. Is that what they were saying?

**Ms JOHNSON** - They changed their mind on it. Even recent correspondence says that they still don't think we have any right to make a claim on it. Then they sent out their assessor. Their assessor - can I mention names?

**CHAIR** - Yes.

**Ms JOHNSON** - Dick Bloomfield; he works for the Master Builders Association on a contract basis, from what I can gather. He was their man who went out and assessed our house. He came back with a report that provided some relief on some things. Things that weren't complete didn't even get a look in. Things that had been completed but were faulty did. He started to split the difference so that to my mind, something that's not complete, for instance, if you only put in half a stairwell, then you have a right to get the other half in. It became this silly conversation going backwards and forwards around what was covered. There was a big argument around quantum and it's still ongoing.

**Mr BOOTH** - Did he try to maintain that if the work had not been completed then you had no complaint?

**Ms JOHNSON** - No.

**Mr BOOTH** - But if it had been completed in a shoddy way, then you had a potential claim?

**Ms JOHNSON** - Yes.

**Mr BOOTH** - But your policy would have specified it was for completion of works, wasn't it?

**Ms JOHNSON** - Yes. The policy is informed by the Housing Indemnity Insurance Act. That's what informs it. It includes things like retaining walls, driveways and similar things. They said no, anything outside the footprint of the house wasn't covered. We are built on a hill in West Hobart so if you don't put in proper retaining walls, you are going to have all the soil come right down on top of you. They failed to recognise all of those important engineering components that went into building a house. A proper access of a driveway, they refused to acknowledge that that was part of it, so it just went on and on and on.

**Mr BOOTH** - Just to clarify that - did Mr Bloomfield ever disclose to you that he had a relationship with MBA at all?

**Ms JOHNSON** - No. We were told that he was the person that they used to come out and do these sorts of assessments. The panel was allowed to be set up and this for me is the best bit; I really cannot understand this.

**CHAIR** - Tell us about the panel. That was under the old legislation?

**Ms JOHNSON** - The panel was always designed to be at arm's length.

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**CHAIR** - Under the Housing Indemnity Act?

**Ms JOHNSON** - No. It was set up in the agreement between the state government and Master Builders. The panel consisted of one representative from Master Builders, one representative from Consumer Affairs, who invariably was Roy Ormerod, and one representative from the Insurance Council. I am figuring that Roy Ormerod was there to represent consumers. That is a fair presumption. It was designed to be at arm's length, so the Master Builders and us presented information to that panel and that panel then assessed the claim.

The panel, I might add, though, allowed for the rules to be constructed so that they were not required to conduct a hearing or receive submissions and they were not bound by the rules of evidence, natural justice or procedural fairness in investigating or reporting on a claim.

**Mr BOOTH** - That is actually the panel rules?

**Ms JOHNSON** - They are the panel rules.

**Mr BOOTH** - Have we been provided with them?

**Ms JOHNSON** - Yes. That is what we were up against to start with. It was about, 'Well, we will decide whether you have a claim to start with and if you are persistent and you keep on about it and you get legal representation we might listen to what you have to say, and then we will apply our assessment on that. Then we will say to you, "If you don't like it, well, what do you do?"'

**CHAIR** - You couldn't make a submission, even, to them?

**Ms JOHNSON** - We ended up getting a submission done by an independent body called BPSM. It cost us \$15 000 to get this done and we had an awful lot of trouble getting builders who would help us fairly assess our house and the damage because they were warned off by Master Builders. We had a couple who were affiliated with Master Builders.

**CHAIR** - How do you know they were warned off?

**Ms JOHNSON** - Because they told us.

**CHAIR** - To your face.

**Ms JOHNSON** - They withdrew. Yes, they did.

**CHAIR** - They said, 'I'm sorry, we cannot come and look at your house, we have been told.'

**Ms JOHNSON** - Yes, that's right. We had that as well. It took us a long time to get proper information together and go into battle, if you like, with this organisation. Even now, we still have a sense of disbelief that this has actually happened. There was no proper consideration to us as consumers that in this deal done between the state government and



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Master Builders all of our rights were removed. We had nowhere to go. I went to the Insurance Ombudsman, but it was out of their jurisdiction. I appealed to Roy Ormerod and the Department of Consumer Affairs to do what he could to help us and he put his hands up in the air. He was a representative on the panel and so was Dick Bloomfield, who was the Master Builders' man who went in and assessed our house on three occasions.

**Ms ARCHER** - Was he Insurance Council?

**Ms JOHNSON** - No, he was the Master Builders' representative.

**CHAIR** - Insurance Council would have been Brian Aherne, wasn't it?

**Ms JOHNSON** - It was Brian Aherne. The arm's length panel was not arm's length at all.

**CHAIR** - In terms of us unpicking this to overlay it on the current proposal before us from the government so that we can make sure that there is no other person ever before us again like your horrendous situation, what was the value of the claim for which you got a \$15 000 report at that stage?

**Ms JOHNSON** - For full rectification, including driveways and retaining walls, it was around \$250 000 to \$270 000. We have had a lot of builders since that time come in. We have had four quotes and they have all come in around that cost. We were losing money to start with, given that the maximum that we could get was \$200 000. Over time, of course, the house continued to deteriorate, so the cost has obviously gone up. We no longer live in the house. We cannot live there any longer, so we are renting and paying a mortgage.

**CHAIR** - This might seem a silly question, but did your contract with that builder include a driveway?

**Ms JOHNSON** - Yes.

**CHAIR** - Then they said it did not include a driveway.

**Ms JOHNSON** - They said that the housing indemnity scheme did not cover things like driveways and retaining walls even though -

**CHAIR** - It was part of the contract.

**Ms JOHNSON** - Yes, even though you needed to have all those things in place to be able to construct a house.

**CHAIR** - Because it is a steep block.

**Ms ARCHER** - And to access the house?

**Ms JOHNSON** - Access, that is right.

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**Mr BOOTH** - Ann-Marie, you have here in one of the documents you have submitted that it has cost - 'Mr Ormerod we have lost in excess of \$600'. Is that \$600 000?

**Ms JOHNSON** - Sorry, where was that?

**Mr BOOTH** - On the document, which is an email from you to Roy Ormerod - meeting with MBAT in confidence, 20 February.

**CHAIR** - 2012.

**Mr BOOTH** - Second last paragraph.

**Ms JOHNSON** - No, I did not bring that with me; I am sorry. Can you just refresh me?

**Mr BOOTH** - I will bring it up and show you. I just want to make sure of the records.

**Ms JOHNSON** - There is probably a zero dropped off there. Yes, sorry, there should have been an extra one there.

**Mr BOOTH** - \$600 000.

**Ms JOHNSON** - Yes. That in actual fact would be the true value of our home now.

**CHAIR** - \$600 000?

**Ms JOHNSON** - Yes.

**Mr BOOTH** - Is that including the land?

**Ms JOHNSON** - Yes, all in.

**CHAIR** - So a smart two-bedroom unit in Mount Stuart is \$500 000 or \$600 000 - is that the value of something?

**Ms JOHNSON** - No. This is a very smart four-bedroom music room home with some of the best views you could have. It is very stunning – well, it would have been very stunning. We are in a position now where we are just going to have to sell the house. We have the house on the market for what we can get. We do not know what that will be.

**CHAIR** - Why is the house unliveable? You lived in it for a while. Is it drainage?

**Ms JOHNSON** - We lived in it for seven years. The water ingress into the home is such that we have serious mould issues.

**CHAIR** - Goodness.

**Ms JOHNSON** - Yes, and as a result of that my asthma, which normally was just linked to sport has now become quite chronic so we bailed out. Mental health, physical health, those sorts of things, it just needed to happen.

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**Mr BOOTH** - Can you detail more of the issues to do with the building - the construction and what was defective in it, starting from the beginning?

**Ms JOHNSON** - I can. I am quite happy to supply a full report but essentially when the house was constructed there was no sub-floor ventilation. It is a two-storey house and it is also known to be quite a wet area because it sits in and there are houses above -

**Mr BOOTH** - It is dug into the bank, is it?

**Ms JOHNSON** - It is dug into the bank. There were particular considerations that needed to be brought into the equation when the house was constructed, the main one being drainage. There was no subfloor ventilation and that essentially means that the building can't breathe, so you can't get the flow through.

Then the slab that was laid had no connected drainage that would take the water away from the slab. Ultimately, that has meant that we have had water come up through the walls of the house, but also the roof was not properly laid. It is the wrong sort of roof for the type of house, so water runs in when it rains and sits and so we have had major water ingress through the top of the house as well. Ultimately, that is the major damage.

Lots of other things - the deck is considered unsafe; it has not been properly fastened and the correct materials were not used. Then there are lots and lots of other things associated with that - stairs are not the legal length or width; cupboards not adhered, not closing properly. We had a music room - my son is a musician - specially constructed for him and we paid for significant soundproofing to go in there and it was never put in. The house is not insulated.

I guess it is going to be that when it starts to be pulled down we will see just what else is missing as well. All of the render was not constructed according to proper standards, so all of the render will have to come off. We suspect strongly - and a couple of builders have said this to us again - that we will find that out when the house gets pulled down that the frame itself was not braced for wind. There are so many things. I think the document goes to 50-odd pages.

**Ms ARCHER** - They are major flaws, are they not?

**Ms JOHNSON** - They are major flaws, yes.

**CHAIR** - Generally, a raft of problems like that could only come from a building company in terrible financial stress. I mean, they could not be such nincompoops, could they? Is that what it was about - the fact that they had no money?

**Ms JOHNSON** - They took a lot of shortcuts, yes. I think it was incompetence, too. It was back in the days when everyone was becoming a builder; it was booming. People were just building and buying houses and they were great days back then.

**Mr BOOTH** - But you didn't just go to any builder, did you?

**Ms JOHNSON** - No, we didn't.

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**Mr BOOTH** - You went to the MBA, you have said to us here, because you thought it meant something, that they stood for something and you could depend on their work?

**Ms JOHNSON** - Their accreditation sealed it for us. Being a professional myself and being affiliated with a professional body when I was teaching - I am now in my own business, but I am a teacher - and I had to meet all sorts of benchmarks every year and satisfy my board that I was competent and that I remained competent. My understanding was that they were a professional organisation for that purpose, but I was wrong.

**Ms ARCHER** - Did you see any other testimonials from happy customers?

**Ms JOHNSON** - Yes, we went down to Kingston; they were building up some units down at Kingston and we went down and had a look at those and talked to a few people down there, and all of those sorts of things. We did what we could, based on the fact that it was our first experience ever and we did our checks - what we thought were our checks - and we relied on professionals all the way down through that building construction period, including the building inspector or surveyor who signed off without even being on site. He did not even come to inspect.

**CHAIR** - Before we get to that, then, because that is a separate issue of building surveyors - of great interest to this committee, incidentally - the MBA said go away, you don't have a case. Clearly, they have changed their mind over a period of time and they had their mind changed for them by your lawyers?

**Ms JOHNSON** - That's right.

**CHAIR** - They even had to be convinced that you had a case at all?

**Ms JOHNSON** - That's right.

**CHAIR** - Once they decided they had a case they sent in a consultant to have a look. What were the nature of the first offers for rectification?

**Ms JOHNSON** - They made an initial offer without having convened a panel, so they are operating outside of their own rules and regulations because the rules stated they needed to convene a panel to hear all claims. They made a one-off offer, without having consulted with the panel, of \$20 000. Upon acceptance of that we had to relinquish any further claim against them. Obviously, that was rejected. We continued to go back and forward. They wanted to send in their own builder. They had a couple of builders come and do some quotes.

**CHAIR** - To rectify it?

**Ms JOHNSON** - To rectify what they saw as them being responsible for, not what we were claiming, but what they saw. 'This is what we are going to cover you for and we are going to send our builders in. Our builders will come in and rectify it.' They sent a couple of builders in and they did some quotes. We weren't privy to it at all; we had no idea and no control over the process and in our view no confidence or faith in the process, either. They wanted to be able to come in, rectify the house and then sign off on that as well, even though the rectification would not have repaired the house and brought

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it up to the standard that it should have been. They would have left us with ongoing problems.

**CHAIR** - Any driveway?

**Ms JOHNSON** - No.

**CHAIR** - None of that was included?

**Ms JOHNSON** - No driveway, no retaining wall and no paths.

**CHAIR** - Just the structure -

**Ms JOHNSON** - Just those few things that Mr Bloomfield -

**CHAIR** - That was in the order of what sort of money would that have been?

**Ms JOHNSON** - We don't know. Further to that, they warned us that if we attempted to have any conversation with the builder, to direct the builder or to even ask what exactly that builder was doing, the builder would down tools, walk off the job and not return.

**CHAIR** - All right. What happened then?

**Ms JOHNSON** - Essentially, we hit a stalemate. We were not prepared to allow them to come in to rectify the building with some of the things. It would have left us open for ongoing litigation. Unless you rectify all of the house - the core problems, the roof problems of the house needed to be fixed, but they didn't even send anyone up to inspect the roof and yet the roof was a major cause of the water ingress. It wasn't in our best interests to allow them to come in and rectify the house on their terms. We refused that. Consequently we have been now, for the last two years or so, 18 months or so, since I have been with my new legal firm, we have been in the process of getting to mediation. For the last four weeks we have been involved in mediation and they have been intent, as they have right from the beginning of the process, to drive us down and to put us in the toughest possible situation that they possibly can. There has been no goodwill and there has been no integrity at all around their behaviour with us.

**CHAIR** - Do you think that they are out of money and could that be a problem?

**Ms JOHNSON** - I think they have made considerable money out of this whole process. If we do the maths, they've been collecting insurance premiums from their builders for a period of almost five years and they've paid out very small amounts in claims. Roy Ormerod from the consumer affairs knew this. He knew that they were paying out very small amounts.

**CHAIR** - You don't think they have a liquidity problem. So what do you think happens to the money if it's unclaimed? It must just go to the -

**Ms JOHNSON** - The money is there; it stays in their consolidated revenue.

**CHAIR** - Right.

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**Ms JOHNSON** - It's their money. There wasn't even any agreement around what would happen with that income from the premiums. The income was theirs. To their mind, it was always theirs.

**CHAIR** - Are you confident they have the money?

**Ms JOHNSON** - Absolutely.

**CHAIR** - I suppose that then put you into a very long term stand-off essentially, did it?

**Ms JOHNSON** - Well we are at a stand-off now.

**CHAIR** - You had to move out of the house and rent something that was livable. Could you tell us about the latest negotiations? I am aware that you were not able to come before us at the last appointment because you were in negotiations. Clearly, you are here now. Did it go nowhere?

**Ms JOHNSON** - It went nowhere. We placed a last offer on the table to them on Friday. They've just continued - they started at a very small amount. We were realistic from the beginning; this is what we needed, given that the house was going to cost around \$260 000 to rectify. We have spent around \$130 000 to \$140 000 just on legal fees. Their offers have just been outrageously small. They stuck with the idea that they were going to send their builder in. We said no; we are going to sell the house; we don't have the time; my husband is quite ill so we will sell. They agreed that they would put the path in; they would do the retaining wall; they'd send a qualified builder up to have a look at the roof and if that qualified builder said it needs replacing then they would. It was always, though, on their terms - their builder coming in to rectify our house.

**CHAIR** - You had no idea how far they would go?

**Ms JOHNSON** - No and, of course, we had no faith or trust at all in that process. So, we said it needs to be a cash offer because we don't have time to rectify the house. They came back with a very small cash offer and then we proceeded to negotiate. We dropped considerable money to a final offer but we need to be able to get on to sue Lee Tyers and we can't do that until we sort this issue out with Master Builders.

**CHAIR** - So, let's unravel that; it would appear you have an unresolvable issue; you're far too far apart; you've taken a big dive from what you need -

**Ms JOHNSON** - A very big dive.

**CHAIR** - on the basis that you are now constrained by time; you have other things happening in your life -

**Ms JOHNSON** - Mmm.

**CHAIR** - that don't allow you to consider anything but them rectifying.

**Ms JOHNSON** - Mmm.

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**CHAIR** - Just for the record, I know this is distressing to you because you've got lots of things happening; you've got a business.

**Ms JOHNSON** - Mmm.

**CHAIR** - Which most of us would be aware of; Mako Fish.

**Ms JOHNSON** - I hope so.

**CHAIR** - Certainly, when you're down on the waterfront and also in North Hobart.

**Ms JOHNSON** - Yes, about to go into a new site.

**CHAIR** - Yes.

**Ms JOHNSON** - That's exciting.

**CHAIR** - But this has all become mixed up in this.

**Ms JOHNSON** - Yes, of course, because our security, our house, is worth less than a third of its true value and the banks are quite nervous about it, as you can understand. This issue should have been sorted out a very a long time ago. Like us, they are quite incredulous that it's still ongoing. But at the end of the day, a bank is a bank, and they won't lend you money unless you've got the security.

**CHAIR** - So, you have new premises?

**Ms JOHNSON** - Yes.

**CHAIR** - If you can't get the finance to develop it, what happens to Mako Fish?

**Ms JOHNSON** - I don't know.

**CHAIR** - How many staff do you have?

**Ms JOHNSON** - I have 16 staff. This new development will increase staff to about 34.

**CHAIR** - Goodness; that would certainly be desirable in the Tasmanian context.

**Ms JOHNSON** - Yes, very much so; it's very exciting. It creates another problem. However, problems are to be solved.

**CHAIR** - They are. One of the other timing issues you have collapsing in on you at the same time is that you have a case against a building practitioner.

**Ms JOHNSON** - Yes.

**CHAIR** - The person who signed off the certificate of occupancy?

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**Ms JOHNSON** - Yes, we do. That case is against his professional indemnity insurance. It will be about quantum, of course. Until we sort the issue with Master Builders that quantum is going to be hard to determine. It appears now that we are going to have to litigate simultaneously.

**Ms ARCHER** - Has liability been admitted?

**Ms JOHNSON** - Yes, it has; well, I reported him to Workplace Standards. They found him guilty. He appealed that. His insurers or legal team suggested he appeal it by virtue of the fact that he signed off on it and he was not actually there and he thought for some reason or other that that would get him off. They upheld their initial decision and it is laughable. That will be about quantum, really. There is no issue there in terms of liability. Liability has been admitted.

**Mr BOOTH** - That will be the difference between your actual loss and what the MBA pay you out in the meantime?

**Ms JOHNSON** - Yes. We have loss around economic loss, loss of opportunity, we have pain and suffering so we have all of those things.

**CHAIR** - Is the MBA aware you have this separate deal happening against -

**Ms JOHNSON** - Yes, well they have used that as an excuse as to why they should pay out nothing, almost nothing.

**CHAIR** - Why they should pay less because the other guy is going to pay? It is a fight between two insurance companies.

**Ms JOHNSON** - Yes but obviously the other guy might say, 'Well, hang on a minute'.

**CHAIR** - Exactly.

**Ms JOHNSON** - Hang on, yes.

**CHAIR** - Why are we paying? Yes.

**Ms JOHNSON** - Why are we paying for what you have not properly done?

**CHAIR** - While these two insurers squabble -

**Ms JOHNSON** - Yes.

**CHAIR** - Both of them have admitted liability -

**Ms JOHNSON** - Yes.

**CHAIR** - There is a question as to the amount of liability that is in question. While the two of them squabble, you end up with nothing and a business opportunity passes by.



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**Ms JOHNSON** - Potentially. I am doing the best I can to make sure that that goes ahead, yes.

**Mr BOOTH** - Going back to Consumer Affairs and that email, I noticed an email about a year ago, I think it was, from Roy Ormerod.

**Ms JOHNSON** - Yes.

**Mr BOOTH** - February 2011, was it; 18 February 2011, a 'Dear Roy' email from you to him?

**Ms JOHNSON** - Yes.

**Mr BOOTH** - You are responding to an email he sent you saying that it was inappropriate for him to engage in any further dialogue with you. Did you get any advice from anybody, any of your legal people in regard to a representative from Justice, Consumer Affairs, sitting on the panel? That a conflict of interest had arisen?

**Ms JOHNSON** - To be honest with you, up until the recent legal team I have had I was actually one step ahead of them. I did most of the research on it. It was not something that would fit a normal understanding of how any sort of insurance ought to be treated and paid out.

If common sense would prevail, you would say, 'Yes this is the way it should have gone', but it clearly did not because the panel rules and the agreement between Master Builders and the state government allowed them to behave in this way without any accountability whatsoever. It was really up to us as consumers to take it up to them if we had the resources and the emotional capacity to hang in there. I would wager there is probably a lot of people out there that just have walked away, previous claims that they just could not follow through with.

**Mr BOOTH** - You almost have to go to the judicial review panel or something federally to challenge the standing of that panel.

**Ms JOHNSON** - No-one would touch it at all.

**Ms ARCHER** - There is no clause in that agreement for arbitration?

**Ms JOHNSON** - No.

**Ms ARCHER** - Or to bring something to finality?

**Ms JOHNSON** - No, there was nothing. It was really that Master Builders could treat it as they wanted to treat it.

**Mr BOOTH** - Not only that - the question I am interested in is the fact you have Consumer Affairs which presumably - and I do not want to put words in your mouth - but presumably you went to Consumer Affairs at some point in time saying, 'Hey, I have a problem,' so at what point in time were you told by Consumer Affairs that 'Actually we sit on that, we have a member who sits on the review panel?'

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**Ms JOHNSON** - We knew that they were represented on that panel but it was our view that they were representing us and we always had that view. I went to see Roy Ormerod on two occasions to discuss my case with him. At the first meeting he had no initial understanding and he didn't know who I was. At the second meeting he had made a phone call to Master Builders and spoken to their head and he must have said this is this case, this is this woman, so the second time I went to see him I had a totally different approach altogether. My view was that he was there to represent us and whether there was anything he could do to help us.

**Mr BOOTH** - That is the first time you met him? Is that right, that was your attitude the first time you met?

**Ms JOHNSON** - It certainly was. He, Mr Ormerod, revealed several concerns to me about how he believed the Master Builders were administering the scheme. Their low payout rate was what alerted him to the view that they were being less than professional and appropriate in how they dealt with claimants. However, when I questioned his role on the panel he started to close the door.

**Mr BOOTH** - That was after the second meeting?

**Ms JOHNSON** - Yes.

**Mr BOOTH** - What do you mean he started to close the door?

**Ms JOHNSON** - He didn't want to speak to me any more. He said that he went back and spoke to all of those responsible at Master Builders, the panel, and he was satisfied that Dick Bloomfield's presence on the panel wasn't a conflict of interest and that they had dealt with my claim fairly.

**CHAIR** - His email to you does say, however:

The matter now seems headed for the courts and as I may be party to the dispute it would be inappropriate for me to engage in any further dialogue with you.

**Ms JOHNSON** - That's right.

**CHAIR** - That is a fact, is it, that this is going to the courts now? It has to.

**Ms JOHNSON** - Yes.

**CHAIR** - You have no other options? You have admission of liability from the MBA, but poles apart in terms of reality and quantum. You have admission of liability from the building practitioner, from his insurance company, but they cannot decide on a liability until this other thing is solved. The only thing open to you now is to go to the Supreme Court and at your cost?

**Ms JOHNSON** - That's right.

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**CHAIR** - It's no wonder why at the end of the day people just fold their cards and go home, isn't it?

**Ms ARCHER** - This has been seven years?

**Ms JOHNSON** - Yes.

**CHAIR** - What are your lawyers saying now? Does the nature of your claim change now that if it is going to affect your business operations?

**Ms JOHNSON** - We had no other choice but to now go into the Supreme Court to a trial. We are already in the Supreme Court. We are already there.

**CHAIR** - So it goes on to a trial.

**Ms JOHNSON** - It will go on to a trial. It is mooted to be one of the biggest trials that we have had in this state.

**Mr BOOTH** - For building matters, you mean?

**Ms JOHNSON** - Yes. Also there is another issue involved here because we are questioning the way in which Master Builders have administered the scheme - their duty of care to us because we had every right to make a claim on that insurance.

**CHAIR** - Does the state government do you think have any liability for the way they set the scheme up?

**Ms JOHNSON** - I believe they had a duty of care to make sure that the scheme rules were fair and that consumers had somewhere to go, that Master Builders were not the be-all and end-all. They have all the cards in their hand; the Master Builders always have through this scheme and the rules that were set up allowed Master Builders to hold all the cards, every one of them. I believe there is a duty of care there on their part and further to that, I believe that they should have at the very least, when they knew that Master Builders were not administering this scheme fairly and to the benefit of consumers - because that is what it is there for, the benefit of consumers - they should have stepped in and done something. I gave Roy Ormerod ample opportunity to do that, to help us; he was our representative on that panel and he did nothing.

We are headed into a trial situation that potentially could be very big - three weeks of just legal argument around this.

**Mr BOOTH** - That will be to establish quantum.

**Ms JOHNSON** - It will also to establish - now that we've come this far - that what I want from this is accountability. I want to have the behaviour of Master Builders scrutinised in a public arena.

**Ms ARCHER** - It sounds like you have an admission of liability for the building works but you are pursuing a liability claim against other parties as well, which is probably unresolved. Is that correct?

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**Ms JOHNSON** - The other party is the building surveyor. Because Master Builders' payout is limited to \$200 000 and our loss is far greater than that, we then had recourse, through the building surveyor, to claim the difference.

**Ms ARCHER** - So is he the only defendant?

**Ms JOHNSON** - There are a couple of other possibilities in there at the moment.

**Ms ARCHER** - So you haven't brought in MBA or the state government, for example.

**Ms JOHNSON** - We haven't brought them in?

**Ms ARCHER** - As parties to the claim.

**Ms JOHNSON** - That's a separate claim. What will happen now is that both claims will be sorted together.

**Ms ARCHER** - Right, now I'm with you.

**CHAIR** - I'm pleased you're with it, because I'm not.

**Ms ARCHER** - I'll explain it later, Rene.

**CHAIR** - Which would show your sixteen years in law.

In terms of us learning anything from your case for what the new system should and shouldn't have, your evidence has been very much to the point and very useful for us. At the moment we are facing discussion over clear principles of this whole thing and your case shows that where it can go wrong, it will go wrong; obviously, not in every case, but if there is a market out there, there are going to be some very nasty situations. In your case, I am astonished that your plan showed a driveway and retaining walls and then later on somebody said you are not worthy of a driveway and retaining wall. Now the MBA is talking about retaining walls, are they?

**Ms JOHNSON** - That's right. It's all part of the way they've administered the scheme; that's the whole point. It's been adversarial; it's been problematic. They've been difficult. There's never been a moment in the last seven years where they have expressed any sympathy or empathy for the position that we are in. We were the enemy from day one. It was up to us to go through whatever process we could and to fund, through legal channels because that was the only pathway for us, the legal channels to help support us to see what should have been a simple insurance claim come to fruition. Instead, it's taken seven years, a lot of money and a lot of pain and agony and still we are in the same spot; we haven't moved much at all.

**Mr BOOTH** - Have you any comments on the role that trade associations such as the MBA and HIA should play in the regulatory regime? Do they have a place at all or should they -

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**Ms JOHNSON** - No. In my view, they don't. We have to remember what they are there for. I think they are not there to represent consumers. When you think about how this new system is going to be structured, I ask you to think very carefully about the fact you are dealing with people's homes. It's the single most important investment you will ever make.

**CHAIR** - Good point.

**Ms JOHNSON** - It is your home, where you hang your hat; the place where you go to be safe.

**CHAIR** - In this case, this was going to be your dream by the sound of it.

**Ms JOHNSON** - Yes. For anyone to have the capacity to take that from you in any way, shape or form is wrong at every level. The rights of the consumer need to be firmly embedded in any new system that you implement. It's my view they have no role. Why would they have a role? If you go into a contract, you go into a contract with the builder; you're not going into a contract with their professional organisation. They have capacities, strengths and contacts to really marginalise you and push you into a corner. There should be no possibility for that to ever happen.

I will say there was a ray of hope in the whole system in dealing with Workplace Standards on the eastern shore when I made my report on the building inspector, Lee Tyers. I found that they were utterly professional and very switched on. They held me at arm's length while they went through the investigation. I think they allowed the same fairness to the other parties. I was given the information when it was appropriate for me to receive the information. Ultimately the result was great but the process was really important too and they were very good at that, very good.

**CHAIR** - That is good advice, thank you for that. I do not have any more questions.

**Ms ARCHER** - No, very thorough.

**Mr BOOTH** - You have spoken about how a trade association should have no place in the regulatory regime et cetera. Have you any suggestions that you could articulate at the moment - if you have not it does not matter - but we are looking at designing or helping to design a system that works. My view is that there needs to be justice by sundown with these things - not inordinate delays et cetera.

Have you any comments on how you would feel safe entering into a building contract? What sort of basis that should be and what the disputes resolution process should be? Whether it be suggestions that it be a panel who go and have a look and make an adjudication rather than having to go through mediation and arbitration and all that sort of stuff, you just have a building dispute and some jurisdictions do have that, where a panel comes in and assesses the work, adjudicates on it and orders rectification or orders the consumer to go away, either way. Do you have a concept yourself?

**Ms JOHNSON** - I think always the best way to sort something is through a fair process of negotiation and bringing the relevant parties to the table without legal representation, obviously, to sort it. If that can't be done I think there needs to be a committee, a bit like

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the process I went through when I made my complaint about the building surveyor. That complaint triggered a process straight away. I was told what the process was and around how long it would take to implement.

The head of that organisation, Kerrie Crowder, who dealt with it. That was very comforting to know that she was looking at all of the evidence as it was presented to her and then they had a board or a panel or whatever you want to call it that overviewed all of that. Once everything was on the table; as information was gathered it was on the table. That is going to take more than a day obviously to do.

I think it is horses for courses. The bigger the issue the more attention I guess you have to pay to it and the greater the potential loss as well if it is not resolved and sorted. I think there probably ought to be levels of concern for people to tap into and say, 'Look this is what has been happening, this is what I have, it is BCA breaches here,' straightaway that is going to trigger a high level. You are going to have to say, 'Right, BCA breaches, we need to get into that,' so you are going to bring in a whole different level of expertise to deal with that.

I think always at the first instance, if possible sort it yourself, but there needs to be a process there for mediation that is conducted by people who know absolutely what it is about but also are really truly at arm's length, and that can give you that independence and fairness in the process. Whether that is through a government arm or body I do not know, but I feel confident that it can be done. That is my view.

**Mr BOOTH** - How quickly did you become aware in the building project, post signing the contract, that you had problems because you ended up with a house that was signed off on and given a completion slip, wasn't it?

**Ms JOHNSON** - Not until we got someone in to have a look at it because we were living in the house.

**Mr BOOTH** - At the point when you moved in you did not have a driveway?

**Ms JOHNSON** - The driveway was constructed because there were four other houses but it was not constructed to standard and it was in breach of the Hobart City Council permit. The Hobart City Council did not do anything about that. It was constructed in breach of the permit regulations and left.

**Mr BOOTH** - They passed it? They effectively signed off on it?

**Ms JOHNSON** - I do not think they even came and looked at it.

**Mr BOOTH** - Right. Therefore that did not raise a red flag to you, so you moved into the house with a completion certificate. As far as the council and the building inspector were concerned, or surveyor, it was 100 per cent compliant with all relevant regulations.

**Ms JOHNSON** - It had been passed, yes.

**Mr BOOTH** - Then you moved in and you started noticing what? Leaks, or rising damp or something?

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**Ms JOHNSON** - This was a little bit different. We moved in before the certificate of occupancy was granted. They had a temporary one, a certificate of completion, which is different to the occupancy. We had to move in because the builder kept shifting the finish line and we had nowhere to live. We had a three-month settlement on our other house and that went beyond that. We moved in with the guarantee that all was okay. The council would be out to do the sign-off - or the building inspector - and that is what happened over the next two or three weeks. It wasn't until we received that completion - we didn't even then pick up that the sub-floor ventilation hadn't been built. We didn't know, obviously, that the roof was leaking because we hadn't had any rain. It was the smaller things that weren't done that we were holding out on, so we ended up going into a legal arena against Prime Build and at the last minute it was agreed that they would rectify all of what they hadn't done. We bought in an independent assessor to assess what hadn't been done. It was then we discovered the BCA breaches, and only then.

**CHAIR** - Then shortly after Prime Build just fizzed out anyway.

**Ms JOHNSON** - Yes, that's right.

**CHAIR** - Prime Build had agreed to rectify it?

**Ms JOHNSON** - We were given the advice by our lawyers and it was the right advice because we have had it tested, based on a case in Victoria, that if we didn't settle the certificate of completion triggered the contract settlement, so we were in that spot. Our advice was settle or you will be evicted, but it is okay, there is an insurance indemnity. At that stage Prime Build weren't insolvent, but everybody knew it was just a matter of time before they became insolvent. That was our fallback - this indemnity insurance, which we were advised by our legal people would cover us for up to \$200 000. It would have gone very close to rectify that damage.

**CHAIR** - Okay. Thank you very much for your frank submission and for your written submission in the first place. There is a lot of material there. It is very professionally presented. Thank you for your attendance with us today.

**Ms JOHNSON** - Thank you for your time.

**THE WITNESS WITHDREW**