



Kim Booth MP
Member for Bass
Tasmanian Greens

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Parliament House
Canberra ACT 2600
Australia

Dear Sir / Madam

Please accept this letter and the attached documents as a brief submission to the Inquiry into Australia's Mandatory Last Resort Home Warranty Insurance Scheme (LRHWI).

Please also note that I would be more than happy to appear before the Senate Committee to give evidence and make an oral submission should the Committee feel that would be useful.

A handwritten signature in black ink, appearing to read 'Kim Booth', followed by a vertical line.

Kim Booth MP
Member for Bass
Greens Opposition spokesperson for Building Matters

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Inquiry into the Australia's Mandatory Last Resort Home Warranty Insurance Scheme

The comments herewith are submitted in relation to the ongoing crisis that surrounds Last Resort Home Warranty Insurance (LRHWI) described as 'junk insurance' by Choice's Indira Naidoo, which is referred to in my documentation as Home Owners Warranty (HOW)

I have been involved in this issue for many years and have experience both as a private citizen involved in the building business and also as an elected representative advocating for victims of the LRHWI crisis.

I will concentrate my comments in relation to the Committees first point (a) in the Terms of Reference, as this is the area that I can comment on with most authority.

a) the appropriateness and effectiveness of the current mandatory privatised Last Resort Builders Warranty Insurance scheme in providing appropriate consumer protection and industry management;

I believe that this compulsory, yet virtually worthless, Last Resort insurance, is an area of consumer regulation which not only does not deliver a net benefit to consumers but in fact could be argued, causes a net adverse impact on the builders who are forced to factor into their costs this 'junk' insurance and to the home owners, who, in the unfortunate case of having to make a claim, find that the insurance they paid thousands of dollars for, is worth almost nothing if the builder they have a complaint against hasn't died, disappeared or become insolvent.

The evidence that has been presented to me through dealing with constituents whose lives and financial security have been severely undermined if not destroyed by the complete failure of the HBWI system, supports the finding that the 'crisis' that has eased in the provision of insurance has now shifted to the many desperate home owners in all states of Australia bar Queensland that find themselves forced to live in defective, crumbling houses with no recourse to the compulsory insurance they assumed would save them from poor workmanship and unscrupulous behavior.

Prior to my becoming a parliamentarian in the House of Assembly in Tasmania I was involved in the building industry and observed first hand the calamitous impact of the collapse of HIH which resulted in many builders losing their livelihoods through an inability to gain insurance cover.

Unfortunately this situation appears to have been capitalized upon by the insurance industry and building industry groups such as the HIA, who filled the vacuum with a plan to create a compulsory home owners warranty system which they stood to benefit from through enormous profits via compulsory insurance, whilst delivering a scheme where effective cover for defective building work was virtually non-existent, with any consumer needing to be lucky enough for their builder to die, disappear or become insolvent, before any hope of a payout was forthcoming.

In one tragic case I have been involved in as a parliamentarian, the builder is very much alive and well (but has left the industry) and his legacy is a couple who in their late middle age, find themselves with a house that is seriously defective, enormous bills from attempting to seek redress through arbitration and the ex-builder now pursuing them through the courts for the last of their savings.

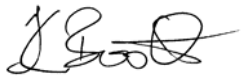
It is reprehensible that in a modern democracy the farce of LRHWI I should still continue as it does in most states of Australia.

In Tasmania I am pleased to say, after five years of lobbying, (see attached documents 1 – 8) the state government has seen fit to largely scrap the compulsory HOW system (see attached media release Jan 17 2008) however there is still further to go.

Compulsory LRHWI is a classic case of corporate capture of the regulatory system by those who benefit from the regime against the interests of consumers and building practitioners right across the industry, and as a result building prices have gone through the roof and consumer protection is virtually non-existent.

This issue requires considered, but urgent, attention to ensure that some measure of integrity is restored to the chain of responsibility and regulation that governs the home building industry.

This must happen as a matter of urgency both to better protect consumers, put the spotlight on the extraordinary profits being made by the insurance industry and industry bodies such as the HIA through and to weed out the few unscrupulous operators who are causing such immense pain to consumers.



Kim Booth MP

Document List attached in PDF form

- (1) Hansard Housing Indemnity Act 2003, Oct 28 2003**
- (2) Hansard Housing Indemnity Act 2003 In Committee part 1, Oct 28 2003**
- (3) Hansard Housing Indemnity Act 2003 In Committee part 2, Oct 29 2003**
- (4) Building Industry Public Meeting Motions July 7 2004**

- (5) Media Release, Greens Unite With Builders on Insurance, Dec 8 2005**
- (6) Media Release, Home Owners Warranty Exposed, April 15 2006**
- (7) Media Release, Owner Builders On The Rise Due To HOW, Jan 23 2007**
- (8) Media Release, HOW Reform Welcome, Jan 17 2008**

MEDIA RELEASE

For comment: KIM BOOTH 0428 132 112

Kim Booth MHA

Saturday, 15 APRIL 2006



NATIONAL TELEVISION EXPOSES COMPULSORY HOME OWNERS WARRANTY INSURANCE RIP OFF

Challenge To New Minister To Do The Right Thing And Adopt National Resolution Proposed By Builders Collective Of Australia.

The Tasmanian Greens today challenged new Attorney General Steve Kons to finally act and do the right thing by Housing Consumers and builders, who are both victims of an unworkable and virtually useless compulsory Home Owners Warranty scheme.

The issue was again highlighted last night on national television with This Day Tonight on Southern Cross exposing the failure of the Compulsory Home Owners Warranty schemes and in particular the plight of Janine Bransden and her husband Chris, who have been thrown into financial ruin as a result of building defects and the process consumers are forced into by government legislation.

The Bransden's complained about a leaking roof and a number of other defects in their new home but were forced into a compulsory process by government legislation, which six years later has cost them around \$200,000 in legal bills yet not a finger has been lifted to fix their house which still has the same leaking roof! (To fix the defective and leaking roof on day one would have cost around \$25,000!)

Greens Opposition spokesperson for Infrastructure, Kim Booth MHA said today that it was now an opportunity for the new Attorney General, Steve Kons, to show leadership and sanity by abolishing the governments compulsory Home Owners Warranty Scheme, which was in shambles.

"Minister Kons must immediately abolish Jackson's absurd and shambolic Compulsory Home Owners Warranty Scheme, Jacksons scheme has been a field day for lawyers and insurance



companies but crippled builders and ruined consumers, who thought they were protected” said Mr Booth.

“Minister Kons should adopt the Builders Collective of Australia’s National Resolution to Home Owners Warranty which gets the lawyers and private insurers off the consumers backs and delivers rapid disputes resolution and fairness to builders and consumers”

“I warned the government when Jackson introduced Labors scheme in 2003 that the system was a scam to channel money into the pockets of multi national insurance companies and that consumers were being ripped off whilst builders livelihoods were destroyed, however that all fell on Jacksons deaf ears” said Mr Booth

“When it became obvious that there were major problems, rather than actually doing anything about the governments compulsory but disastrous scheme, ex Minister Jackson sat back and ordered a review, which is now way overdue, and is only delaying the inevitable necessary changes”

“The challenge is there now for new Minister Kons to act decisively, show leadership and do the right thing for both Consumers and builders alike”

MEDIA RELEASE

For comment: Jeremy Ball Asst. Media Advisor 0439 338 301



Kim Booth MHA

Thursday, 8 DECEMBER 2005

BUILDERS AND GREENS UNITED IN CALL FOR INSURANCE CRISIS RESOLUTION

As National Situation Unravels Will Tassie Take The Lead?

The Tasmanian Greens today congratulated the Builders Collective and particularly their spokesperson Phil Dwyer for the mountain of work the organisation has done in an effort to rescue consumers and builders from the disaster that has become Home Owners Warranty (HOW) and the crisis of 'last resort insurance' that is enveloping the industry whilst providing no security for consumers nor builders.

Greens Opposition spokesperson for Infrastructure Kim Booth MHA commended Phil and the Builders Collective for their incredible efforts so far and joined with him in requesting that the Tasmanian government heed the support of the Tasmanian Department of Consumer Affairs, the Master Builders Associations of Victoria, NSW and Western Australia, Consumer Affairs Victoria, the Office of the Small Business Commissioner (who cite unfair market practices of the insurers against builders for their support of the resolution document), and seize the opportunity for Tasmania to take the lead in implementing the recommendations of the Builders Collective.

"This National Resolution on Warranty Insurance has been formulated by the Builders Collective examining the crisis nationwide and coming up with a solution that offers consumer protection, dispute resolution and an industry management model."

"It is clearly the way forward for the industry and for home owners." Mr Booth said.

"We commend the Tasmanian Department of Consumer Affairs for the interest and encouragement they have shown to Phil and his organisation and now we are looking to Ministers Green and Jackson to take on board the benefits and opportunities of this scheme and make Tasmania a nation wide leader in providing a pathway for other states to follow."

"Only one claim against mandatory builders warranty insurance has been settled in Tasmania over the last two years which highlights the issue that if customers are unable to make a successful claim then why is the insurance there in the first place?"

"Tasmania was one of the last states to adopt this sort of scheme in 2003 but I hope we'll be the first to breakthrough the insurance shackles and get a solution for customers and builders."

"In the spirit of cooperative politics I really hope that Ministers Green and Jackson seize this opportunity for leadership and embrace this researched, practical solution that will see Tasmania recognised nationwide as a place where commonsense has prevailed in the building insurance industry." Mr Booth said

Phil Dwyer from the Builders Collective is available for comment on 0414 699 905



Tasmania | Media Release
World's first Green party

SUCCESS ON HOME OWNERS WARRANTY INSURANCE – FINALLY!

Victory for Builders & Consumers

Kim Booth MP

Greens Shadow Building Industry Matters spokesperson

Thursday, 17 January 2008

The Tasmanian Greens congratulated the Attorney-General, Steve Kons, for the long overdue but major step forward in reform of the building industry with today's confirmation that the Tasmanian government will scrap the mandatory housing indemnity insurance scheme, and also paid tribute to the Builders Collective of Australia for the organisation's pivotal campaign that exposed the sham of last resort insurance.

Greens Shadow Building Industry Matters spokesperson Kim Booth MP said that there is further reform of the building industry needed and has called on Minister Kons to end the requirement of a certificate of insurance eligibility as a pre-requisite of builders accreditation, saying that helps insurance companies to capture those in the building industry, and has forced many builders out.

Mr Booth also said that today's announcement by the Minister is a significant victory for the Greens' community campaign, involving both builders and consumers, since the Tasmanian legislation was introduced in 2003 to end this last resort home owners warranty rort.

"The Greens congratulate Minister Kons on this long overdue but significant step towards affecting real reform of the building industry, and we also congratulate Phil Dwyer of the Builders Collective of Australia who has been pivotal in bringing about this reform by spearheading a national campaign to expose the sham of compulsory last resort home owners warranty insurance," Mr Booth said.

"Over the last four or so years, the Lennon Labor government repeatedly rejected my concerns that the compulsory last resort home owners warranty insurance drastically failed both Tasmanian consumers and builders and ignored my calls to scrap this home owners warranty, so it is very pleasing to see the Minister finally take this on board."

"I will still be scrutinising the detail of the proposed new statutory framework for the alternative disputes resolution program, and pursuing the other areas of reform still needed."

"For instance, Minister Kons urgently must end the requirement of a certificate of insurance eligibility as a pre-requisite of builders accreditation, as this is not only aiding the insurers to capture the building industry but is also an odious and unnecessary intrusion into the lives of builders that simply forces many out of the industry."

"Further there must be an end to the involvement of the insurance industry and trade associations in the regulation of the building industry as the home owners warranty debacle has shown that vested interests have

manipulated the regulatory regime to benefit themselves against the interests of both consumers and builders, which has resulted in building prices being driven through the roof.”

“Insurers, trade associates and lawyers should have no part in the new regulatory regime.”

“Regulations must be based on proper inspections of work linked to staged contract payments, and rapid dispute resolution processes, with final adjudication to settle disputes. Currently there is only a ‘lawyers’ picnic’ that sees the legal eagles feasting on the carcasses of the builder and consumers until all the money is gone.”

Mr Booth also said that today’s specific announcement by Mr Kons was welcome as over the last couple of days the ad hoc dribbling of partial information out into the public arena via different media outlets was beginning to cause confusion for those who could be affected by the changes.

“It is strange that until this afternoon the only details provided that were directly attributed to Minister Kons were those that appeared in the national newspaper, *Australian Financial Review*, rather than in the local counterparts, given that these reforms will affect Tasmanian families and Tasmanian builders.”¹

“So it is good that finally Minister Kons has come out and informed Tasmanians about how he intends to fix this disastrous scheme that the Greens, the Builders Collective and others have been campaigning to have abolished since its introduction in 2003.”

¹ The *Australian Financial Review*, Thursday 17 January 2008; pg 9.



MEDIA RELEASE

Kim Booth MHA

Tuesday, 23 January 2007

WORTHLESS LAST RESORT HOME OWNERS' WARRANTY

Reason for increase in owner builders in Tasmania

The Housing Industry Association (HIA) and Master Builders' Association (MBA) call for action over owner builders overlooks the real reason behind the increase in owner builders in Tasmania, the Tasmanian Greens said today.

Greens' spokesperson on the building industry, Kim Booth MHA, said many of the so-called bogus builders are in fact highly skilled building industry professionals, shut out of the 'legitimate' trade by the introduction of the compulsory, last-resort home owners warranty.

"To be an accredited builder, you are at the mercy of the insurance industry. It has the final word - no access to worthless last-resort insurance, no accreditation.

"It is estimated as many as 1000 builders have been thrown out of the industry - not due to any lack of skills and/or experience, but because they are unable to afford the high cost of insurance to achieve accreditation or are not prepared to place their life's assets on the line simply to get the tick for a worthless insurance policy.

"I warned that *The Building Act 2000* and last-resort home owners' warranty were looming disasters when first proclaimed by government and those fears have now come true. The government must urgently scrap this grievous policy blunder to allow legitimate builders back into the industry.

"The burgeoning number of owner builders can be sheeted home to the Lennon Government and its pro-insurance industry policy. The crisis in the building industry was entirely predictable as the regulations drawn up by faceless bureaucrats are unworkable.

"Not only are qualified builders paying a heavy price through loss of accreditation and livelihood, but aggrieved homeowners are discovering this insurance they are required to buy is virtually worthless - the builder has to be dead, insolvent or have disappeared before a claim can be made.

"Claims are limited to a maximum of \$200,000 and no legal costs are reimbursed, leaving the home owner facing financial devastation.

For comment: Cassy O'Connor - (Temporary) Assistant Media Adviser 0428 510 641

"The MBA and the HIA have made tens of millions of dollars over the years as commission agents and insurers. They should come clean over their own role in putting profit before fair and equitable industry practice, where skill and experience hold more value than an insurance voucher.

"The solution is to link accreditation to skills, not wallet size, abolish compulsory last-resort insurance, require a proper standard of inspection, link this to building contracts and bring in a rapid disputes resolution process.

"Trade associations need to also guarantee their own members' works before criticising owners builders en masse.

"Dodgy building work is certainly not only restricted to owner builders and it is high time that the government moved to appropriate regulation rather than the maze of red tape and over regulation it has created," Mr Booth said.



ATTACHMENT TO MEDIA STATEMENT BY KIM BOOTH MHA

Wednesday, 7 July 2004

Building Industry Meeting – Motions Passed

Meeting hosted by Kim Booth MHA, Henty House Launceston, Thursday 1 July 2004.

Motion 1

That this meeting of fifty people involved in the building industry:

1. Condemns the government over its failure to consult, and failure to provide a point of contact in the north of the State;
2. Expresses no confidence in the Tasmanian Compliance Corporation in its current form;
3. Condemns the process which will increase building costs to the consumer;
4. Believes any Insurance must be on a pro-rata basis;
5. Calls for no extra construction levy;
6. Condemns the system as being anti competitive, will cause restriction to trade and lacks transparency and procedural fairness; and
7. Condemns the system as preventing new players and young builders coming into the industry.

Motion 2

Further the meeting passed a second motion calling for:

1. Builders accreditation to be a skills based assessment on prior experience or TAFE course, trade certificate, or similar qualifications;
2. Accreditation not to be linked to insurance;
3. Home Owners Warranty be a matter of choice between client and builder;
4. Home Owners Warranty should not be underwritten by the builder;
5. Local Councils be required to employ qualified building surveyors and consumers to be given the option of Council, or qualified private building surveyors, to ensure compliance with the Building Code of Australia
6. State government to hold database of accredited builders with annual fee for registration a nominal amount, i.e. \$50.

TASMANIAN HOUSE OF ASSEMBLY HANSARD

Housing Indemnity Bill 2003 In Committee - Kim Booth MP

October 28 2003

HOUSING INDEMNITY AMENDMENT BILL 2003 (No. 76)

In Committee

Clauses 1 to 3 agreed to.

Clause 4 - (Interpretation)

Mr BOOTH - I think this is really just for a point of clarification. We are not proposing to amend this. The amendments I have given to you on that piece of paper are written somewhat illegibly. I will undertake to try to get them in a better form for you in future, Mr Chairman.

Mr Michael Hodgman - You must have one typewriter up there, haven't you?

Mr BOOTH - Well, actually our printer is not working at the moment. We were supplied with a whole lot of new printers and none of them are working, so we do actually have a problem at the moment. Just in terms of clarification in regard to that, Minister, I really do think that if you have a look at page 4 of your second reading speech you mention that this is nothing to do with doing anything for the insurance industry. I would point out that if you read that there it says without these amendments there is little likelihood that new insurers will be attracted, and there is also concern that existing insurers may in fact leave the market, and further, that the proposed amendments will facilitate insurance industry confidence in entering the Tasmanian market. So it is a pretty strong focus of this thing to actually make the insurance industry happy, and I think we would have to agree with that.

My reading of the act is that the \$50 000 in the principal act is now amended to \$200 000 and that is the maximum amount that an insurer will pay out on any one building project. Certainly under the old act that \$50 000 referred to the maximum that they would ever be liable for on any number of claims on a project, and I believe that that would then just simply follow through, meaning that \$200 000 would be the maximum that they would ever be liable for. So it is an indication that it is actually up to a threshold limit and the industry no longer has to carry liability. Could you clarify that?

Mrs JACKSON - Yes. On that last point, it is \$200 000, but I take it that would mean the total contract could be worth \$1 million if it is 20 per cent.

Mr BOOTH - I am just simply clarifying here for the record that the \$200 000 that will now be amended into the act as a new figure, substituting \$50 000, referring to the maximum payout that the insurance industry will ever pay in total on a building insurance policy.

Mrs JACKSON - Yes, that is correct.

Mr Booth - Right, thanks.

Mrs JACKSON - Just on your other issue about insurance. As I say, it is making them happy to the extent that we wish them to be in the market because if they are not in the market then people do not have the cover, and we do want people to have the cover. We want the cover to be available, otherwise these builders will not be able to build; you said that yourself. So we do want to encourage them, and it is the same principle that we have been grappling with here in this State and other States and federally for the last couple of years since the collapse of HIH.

In a sense the insurance industry is holding us to ransom; they are overseas companies, multinational companies in most cases - not always but in many cases. I understand we are a small market and they can really tell us that they do not really care whether we come on board or not. Similarly, the other companies say that to Tasmania, we are sort of at the end of the food chain, you might say, because it is happening around Australia. In many respects, because we are a small economy, a small number of people, we are just smaller people at the end of it. It is wrong, but what can you do about it, apart from having a national insurance scheme? You are held to ransom; you do not have to be very smart to work that out. We are doing this to give them some more security; we do it because we do want insurance here and we do want insurance to be offered to people.

You made a comment about people not having insurance and having a choice of whether they wanted insurance. Up to a point that is true, and of course for some sort of insurance you do carry your own risk, but you actually carry the risk yourself. If your house burns down and you are not insured, well, bad luck; if you have a car and you smash it up, well, bad luck, but with this type of insurance it is different in the sense that a person can always sue you at common law.

I once signed something to say that if I drowned while using a swimming pool I would not sue them.

Mr Booth - Well, you couldn't if you drowned.

Mrs JACKSON - That is what I said. Anyway, you know what I mean - if something happened to me, I would not sue them.

Mr Booth - If you half-drowned you wouldn't sue them.

[5.30 p.m.]

Mrs JACKSON - If I half-drowned I would not sue them or my estate would not sue them. But that was not legally binding. I could sign that but if it happened to me, if I half-drowned, I could easily change my mind and go and sue them. Obviously, if they did not have any insurance and they did not have any assets, I would not have got anything so therefore I would not have been protected. Just say we are talking about the swimming pool and I ended up in a wheelchair, or something, because I half-drowned and I had brain damage and I needed 24-hour care.

Mr Booth - We won't let Michael respond to that one, don't give Michael an opening there.

Mrs JACKSON - So then I need 24-hour care so I sue them to get that care. Say I did not have any money and they were not insured and they did not have any assets, I would not get anything. So I would not be protected.

It is all very well to say that some people don't care or might sign something to say we waive the provision that we can ever sue you, but if the house starts to fall down around their ears they might start to have second thoughts. The same applies if you nick off with

their \$160 000 or their \$100 000 and do not finish the house and they are left with another \$20 000 or \$30 000.

The other day we had a case of a couple in the HIH situation - it was a bit more involved than that but basically they had to get another builder to finish the house. It cost them \$20 000 or \$30 000 which they did not have, but of course they had to find and borrow and the guy had to take a redundancy to pay it. It was either that or lose the house.

You cannot say to people, do you want insurance or not? You can say it but it really does not mean anything, but it could mean at the end of the day that the consumer is at a severe disadvantage because if something goes wrong they can lose a lot of money, more money than they can afford to lose; that is the thing. If you can afford to lose money, well, that is a different issue but a lot of people cannot afford to lose the money. This was an older couple who will never be able to recoup that money even by working, so it is not a choice that you can make. It is like these doctors who are what they call 'going bareback', getting rid of all their assets. I was told the biggest growth in finance advice, seminars and workshops in the last few years has been advising people on how to asset-strip, how to get rid of all their assets.

Mr Booth - Make themselves a man of straw.

Mrs JACKSON - That is the most frequent demand by these professionals, doctors and lawyers, barristers in the New South Wales bar.

Mr Hidding - Don't pay taxes?

Mrs JACKSON - No, they do not pay taxes there either, some of them. Doing that is a real worry because that is disadvantaging people. If something happens, there is nothing there to sue and if they do not have any insurance and they do not have any assets you are back to the old days with the survival of the fittest really, aren't you? I think things break down; society as we know it breaks down. I would never accept that is the way to go.

Mr BOOTH - Thank you for that, Attorney. I will accept in good faith what you said earlier on during the course of the debate that you will be prepared to look at this at a later date. I presume from your body language that you are happy to have a discussion about this at some point in time and perhaps alter the thing if you can be convinced that in fact it does not achieve what this act is purporting to achieve. I will try to bring you some details in regard to some of the areas that I think are wrong.

Just in terms of that clarification you have provided, I recognise what you are saying about the insurance but there is some sort of misapprehension amongst people that somehow the insurance companies may be God or something and they are infallible and they will never go bankrupt. As you can see from the HIH collapse, the presumption that paying an insurance policy gave you any protection was found to be completely erroneous. The result of that of course is that a pipeline was created out of the country into America where these people were awarded various medals for having the biggest and most expensive parties in corporate history and stripped the company blind.

Mrs Jackson - Wristwatches.

Mr BOOTH - Yes, wristwatches worth \$100 000 or \$1 million or whatever did not do anything for the people who had insured their houses and subsequently suffered problems. So that is one point. Then the point was made by Michael Hodgman earlier on that perhaps they need to be vetted properly and I suppose the APRA vetting is as good as you can probably get.

Mrs Jackson - Well, they're going to improve, aren't they?

Mr BOOTH - Except that of course in the case of HIH they were APRA-approved, apparently.

Mr Hidding - That's right, and APRA have been exposed and they have amended the process.

Mr BOOTH - The other thing I would like to stress there is that you have to recognise that this industry now is probably more rigorously surveilled, particularly cottage work, than just about any other industry in that there is an inspection system that accompanies every building project. There certainly were shonky operators in the business and there still would be some. I am not saying that there are not or never will be, but what has changed since 1993 is the level of surveillance. The level of compliance requirement has massively improved, to the point now where I think the industry is so well regulated that the risk to the insurers, if you like, or the risk of faulty work being done is far lower, particularly for certain types of projects - particularly cottage work. I will make representations to you later on in regard to that and hopefully we can work through some of these amendments you may feel like supporting.

Mr HIDDING - Mr Chairman, as this clause will change the risk profile for the MBA-pooled insurance fund, I wonder if the minister could tell this House whether she has availed herself of any late risk profile of that fund, the level of premiums being held in that fund and whether indeed the fund is backed by the Government, as the minister has just said?

Mrs Jackson - I just told you that. I put that on the record.

Mr Sturges - Pay attention. She clarified that.

Mrs JACKSON - I clarified that in the second reading speech. In the MBA scheme, the deed excludes the Government from risk. It is based on claims history, the risk is low. There have been no claims to date and the director, Mr Ormerod, is on the claims panel. I will see if he has any other information about that. There was a \$500 000 fund that they put in to start it all and they are holding \$480 000 in premiums - so it is \$985 000.

Mr HIDDING - With that bit of information, considering that there is a growing pool of funds to address any risk, the longer this fund exists the longer the tail and the exposure to risk increases. That is what APRA is for. Self-insuring can be a very dangerous exercise and, if it wasn't, we would all be into it. The New Zealand company that you said was not good enough, I would wager, would be much better than the pooled insurance fund at the Master Builders Association.

Mr Booth - I don't know how you can say that.

Mr HIDDING - Well, it is an insurance company and this one isn't. The fact is you have a small MBA -

Mr Booth - So was HIH and every other insurer around the corporate world.

[5.45 p.m.]

Mr HIDDING - You keep making the point that APRA failed with HIH. Everybody knows that; that is history. The fact is that APRA was hauled over the coals -

Mr Booth - I don't think the MBA would be very happy to hear that comparison.

Mr HIDDING - many people lost their careers, and quite rightly so, and there are new arrangements for it. I want to place on the record that we do not accept that through the deed the Government is not in fact exposed to risk. Of course it is. If there was a massive default and the money was not in the bank, they would be down here marching on Parliament, saying, 'You allowed this to be set up; you pay', and the Government would in fact be paying.

Mr Booth - Forty-five thousand people marched for Aboriginal reconciliation and you ignored them. Since when have you been listening to people marching.

Mr HIDDING - You really do have a strange logic in thinking -

Mr Booth - Well, you were worried about them marching.

Mr HIDDING - stringing together thoughts on the run there, but I will not be diverted. Could the minister tell the House whether she has had the actuarial risk assessed in that pooled insurance fund as to whether it is sufficient at this point?

Mrs JACKSON - This is the third time, but I will say it again. Based on the claims history, which is what the risk is about and what you are insuring, the risk has been assessed as low. There have been no claims to date, and it has \$985 000 in the pool. And, all right, it has been going for one year -

Mr Hidding - It is \$485 000 and \$500 000 is there as sort of a promise: 'We will find it if it is needed'.

Mrs JACKSON - No, that is not right.

Mr Hidding - It is not money in the bank, Judy.

Mrs JACKSON - You are not right, you see. I wish you people would get your information. That \$500 000 is actually held in the Office of Consumer Affairs, so we have it in our hot little hands. There you go. That surprised you, didn't it?

Mr Hidding - Why don't you hold the premiums as well, then?

Mrs JACKSON - You did not even know we held that, so there you go. No, it is not our scheme; they hold the premiums, and I think the MBA is a very trustworthy organisation. I think they are managing this well. They believe they are managing it so well that they should keep managing it, but we have told them that is not going to be the case, and therefore it won't. I imagine that when this is enacted, the sum of the premiums will be transferred to the insurance company, although they will carry the risk for the tail, as you call it, which could be four or five years away. But we are hoping, and there have been talks with Reward, that they will come in here in a more vigorous way and they will provide the competition. We have had talks with those insurance companies, but the MBA I think stepped into the breach, so to speak, at a time when it was necessary that we have somebody. That was the problem.

Mr Booth - Well, yes, that is if you accept you had that in the insurance in the first place, then obviously it would create a body that could give the insurance. That's what has happened.

Mrs JACKSON - Say there was no insurance and a builder did go bust, and left people out of pocket. You are right, the Government would have pressure on them to make ex gratia payments. He is right. That is the way people seem to think these days. So there is no way we would let something like the housing industry operate without insurance. We would have every shonky dealer around the place down here if we did that. Actually, these shonky people are very interesting. They have a path, which I find interesting anyway, in that they seem to start off in New Zealand and then they go to Victoria, then they come to Tasmania, and when they leave Tasmania, they mostly go to Darwin. You know where they have been and you can trace the history of what they did in other places, and then you probably know where they are going. So I am sure if we did not have any insurance down here they would probably be coming here a bit more quickly on that route.

Clause 4 agreed to.

Clause 5 -
(Exclusion of certain building work).

Mr BOOTH - I think there are two people in this Chamber here at the moment who between them have lost over \$250 000 to the gentleman you are referring to as perhaps requiring a ticket to Darwin at the moment. But notwithstanding that, it does not alter my position in regard to the need or otherwise for insurance or other ways of doing it better.

Mr Llewellyn - I didn't quite get that.

Mr BOOTH - You did not get it?

Mr Llewellyn - No.

Mr BOOTH - You would have had to be here for the whole debate. You can't just stagger into this Chamber at about 5.46 p.m. and expect to catch up with a two-hour debate, Mr Llewellyn. It would be beyond your capacity, I am sure.

Mr Llewellyn - I was listening on the squawk box. I didn't get the bit about going to Darwin, that was the thing.

Mr DEPUTY CHAIRMAN - Order. Mr Booth has the call.

Mr BOOTH - The Attorney-General had some convoluted explanation of a criminal trail that starts in New Zealand, goes to Victoria, comes to Tasmania and ends up in Darwin -

Mr Llewellyn - Who were the two people in the Chamber who are going to Darwin?

Mr BOOTH - No, it is a person who has managed to rip two people in the Chamber off to over \$250 000 between us. We would not be able to afford to go to Darwin. I do not suppose there is much point in recording it for history. But the notorious non-complying builder in Tasmania unloaded me of a substantial amount of money and also Mr Hidding, the Leader of the Opposition. It is one of the commercial risks that you are exposed to in a free market, something that a lot of people do not understand unless they have been in that situation. You do carry risk as part of the responsibility of running a business.

Mr Llewellyn - Now I am fully informed.

Mr BOOTH - That is good. We can now move on to the amendment. Perhaps you will support me on the amendment now you have clicked into the discussion. This is to do

with an amendment that I would like the Government and the Opposition to consider. I think that it is a very reasonable and non-controversial amendment. I move -

That clause 5 be amended by leaving out '\$12 000' and inserting '\$25 000'.

The reason for that is that when this act was brought in -

Mrs Jackson - In 1992-93.

Mr BOOTH - CPI and inflation would have made \$5 000 into \$12 000 or probably more than that by now in terms of relative value. So it is hardly catching up with CPI and inflation. And as well as that, to do work of \$12 000 can be simply painting a house or sanding a floor and doing a bit of work in the bathroom or kitchen; it is very easy to build up \$12 000 worth of work as a builder. The insurance requirements are quite draconian. We talked about builders who are unable to make a start on building a house because they cannot get insurance from an insurance company because they have no financial records or no history in the industry. This particular provision means that those people can never make a start at any level to get into the industry. They are unable to build up a work history. They are unable to build up a business. They are unable to build up assets to put up as a surety for the insurance companies for the granting of a policy. I think you made the comment in the clause notes that in some cases, mainly for this minor work, the insurance premium that a builder has to pay for a job of \$6 000 or \$7 000 in some cases is 20 per cent of the value of the work. So all it does is jack up the price of the work that the client ultimately has to pay. The insurance company is given this extraordinary ability to force you to take out a premium that could be \$1 000 or \$500 per job. I really do think it is unprincipled. It is unfair. It does not really achieve anything that I can see. It is such a minor amount of money that that sort of event ought probably to be dealt with in the Small Claims Tribunal. You are not talking about earth-shattering amounts of money here to require somebody to have a premium. I suggest that anything up to \$25 000 ought to be falling under the same thing as what you are proposing there for \$12 000. It is not a substantial amount of money. There are provisions available, as I have said, through the courts to obtain payment for that. It is unlikely a builder is going to default for that. It is ridiculous.

We alluded earlier on to whitegoods, for example. In the case of somebody providing a kitchen or a new bathroom, very often they are paying insurance on a lot of the value of the work, because it has to include the whitegoods and it has to include the shower unit, bath, spa and all that sort of stuff. You are actually paying an insurance policy on a product that has already got product warranty anyway as a manufactured product. So you are getting this double whammy; you are buying goods that are already covered and then you have to wait to get the insurance cover to do the work, and then you are paying home owners warranty insurance on it as well.

I just think it is really unfair; it is obstructive and if one agrees that it is necessary to have insurance, it unnecessarily impedes the ability of the building industry, if you like, to operate. It is a noose around their neck and I think it would be very worthy to consider taking that up to \$25 000, Attorney, rather than \$12 000.

Mrs Jackson - Are you going to support this amendment?

Mr MICHAEL HODGMAN - I will get my contribution in before I am subjected to another unprovoked attack from the Attorney-General.

We have looked at the amendment and I understand where you are coming from, the member for Bass, but on balance we will not be supporting the amendment. We believe the proposal of \$12 000 is appropriate and we will be supporting the bill in that form.

Mr Booth - Perhaps you will have a wiser mind, Attorney.

Mrs JACKSON - No, we will not support it either. As I said somewhere in my second reading speech, there has been a national review on this matter and this is about getting some uniformity along with the other insurance bills; not that this is linked to them, but the trends that we are trying to get some sort of uniformity in this type of legislation. The national review recommended \$12 000, so this is in line with other States.

I do actually reject what you say, though, that \$25 000 or \$12 000 is not a lot. From where I sit it is a fair bit of money. I know someone who is having some work done at the moment and they are having just a little bit less than \$25 000 worth and they are getting weeks and weeks of quite substantial work. They are renovating a house.

Mr Booth - They're probably paying a \$1 000 insurance policy on it.

Mrs JACKSON - I do not know, but I am sure that if it were me I would be willing to pay something towards making sure it was completed properly and to a standard because I have had a couple of experiences, and maybe I have bad luck. I had one recently where I thought the person might have tried to do the right thing considering he knew who I was, but you should see it. I took photos of it it was so bad - a fence that someone built me. It was an absolute disgrace. He came back three times to fix it and it is still not a hundred per cent, but in the end -

Mr Llewellyn - You gave up.

Mrs JACKSON - I gave up. I just thought, 'If someone would do that to me, what are those people doing to other people?'

Mr Booth - I wouldn't go down that track!

Mrs JACKSON - He was pleasant and all that but he obviously did not have a clue how to build this fence.

Mr Booth - He probably didn't know who you were.

Mrs JACKSON - Well, I do not know whether he knew who it was but that is not really the point, although I think he did know who I was. Some years ago I had quite major works done in a house that I lived in and it was absolutely shocking workmanship. It had to be redone and I think then I did get the MBA to come and look at it as I did not know what to do. They came and looked and they said it was not any good - this was a number of years ago, but it does happen. I have had a lot of work done in the past by people I know and it has been very good but the two times I have got people I did not know I have had some really bad experiences. Now I cannot be the only person -

Mr Will Hodgman - Do you know any good ones?

Mrs JACKSON - Unfortunately, a very dear friend of mine, Joe Imlach, died recently and he was an excellent carpenter and builder and I was very sad -

Mr Booth - He probably died of stress after all this insurance stuff.

Mr Michael Hodgman - His brother died this week too.

Mrs JACKSON - I know, I saw that. He was a very dear friend, a very good person and a very good builder or carpenter, so apart from the fact that he died, which I am very sad about, I am also very sad because I feel a great loss in my life, not because he just died but because there is no-one to do these jobs any more.

The two experiences that I can personally think of where I did not know the people did not turn out very good experiences, so I just wonder how much of this is out there, that people do not get what they expect. I think there does need to be regulation and I do think there need to be standards and so forth, because a lot of people do think they know how to do something and put themselves up to be certain tradespeople but obviously are not. I might say the person who built this fence charged me \$48 an hour, and you should have seen it. I will bring you photos if you are interested because it was a disgrace.

Mr Will Hodgman - Back when?

Mrs JACKSON - This was only two months ago.

Mr Booth - You probably screwed him into the ground, the poor bugger.

Members laughing.

Mrs JACKSON - No, then I found out I was giving him twice as much as I should have been because I had not had a quote for years. I am just saying it just shows you that you can never be too careful about people out there. I think for \$12 000 you can get quite a bit of work done and for \$25 000 you can just about half rebuild the inside of a house.

Mr Booth - I'd like to see the house these days you can build for \$25 000.

Mrs JACKSON - Not including kitchens and carpets, I accept that, but for the actual structural work -

Mr Booth - Or a roof or a floor.

Mrs JACKSON - you can get quite a bit of work done for that sort of money. Move walls and put in walls -

Mr Rockliff - Lock-up stage, it is called.

Mrs JACKSON - Not a new house; I am talking about renovation.

Mr Booth - What - \$25 000 for lock-up stage? What planet have you been building on?

Mrs JACKSON - So I do not accept your amendment. I think \$12 000 for those works is quite adequate.

Mr Booth - How about half-way - about \$17 000?

Mrs JACKSON - This is not a bidding war here; we are not at auction. This is about trying also to get some uniform legislation and if someone lost \$12 000, I do not know where you come from, but to me that would be a lot of money to lose.

Mr Booth - That's 'Chicken Little' stuff; they're not going to lose \$12 000.

Mrs JACKSON - Chicken Little? I do not think it is 'Chicken Little' stuff at all. I think it is quite a substantial amount of money, so we are going to leave it at \$12 000.

Amendment negatived.

Clause 5 agreed to.

Clause 6 -
(Requirements of insurance policies)

Mr BOOTH - Mr Chairman, I move -

That clause 6 be amended by leaving out paragraph (c).

The reason I am moving to delete that paragraph is that it simply removes, under my reading of that particular clause, any useful purposes that the insurance policy may have.

Progress reported; Committee to sit again.

TASMANIAN HOUSE OF ASSEMBLY HANSARD

Kim Booth MHA debates Housing Indemnity Act 2003

Tuesday 28 October 2003

HOUSING INDEMNITY AMENDMENT BILL 2003 (No.76)

Second Reading

[3.54 p.m.]

Mr BOOTH (Bass) - Madam Deputy Speaker, in rising to speak on this legislation I have to point out that it is not my portfolio area. Mr McKim deals with justice issues, however he is not available at the moment - he is on another matter - and I have the handling of this bill because I happen to know a fair bit about it.

After hearing the two previous contributions I know it is going to be a rare thing in this Chamber that somebody gets up and talks about something they know about because obviously the people who have prepared this legislation would not have a clue. As far as the blind leading the blind is concerned I am surprised at the Liberal Party's obsequious support of this legislation because it is bad legislation -

Mr Hidding - Obsequious support? We have consulted, we have looked at it, and we have decided to support it.

Mr BOOTH - and during previous discussions about the home owners' warranty situation, Mr Hidding in fact - the Leader of the Opposition - has mouthed certain platitudes about the fact that it needs to be fixed, it is bad legislation and it is causing all sorts of problems.

Mr Hidding - Wait till you hear my contribution before you get into me about it.

Mr BOOTH - I will pre-empt your contribution because it is obviously going to follow what Mr Hodgman has had to say on the subject -

Mrs Jackson - He just followed what I said.

Mr BOOTH - He did follow what you said, I know; he read your second reading speech, Ms Jackson, to reinforce it for you.

The point is that I have a number of concerns about this bill. Some of them would reflect my party's view and some of them are personal through my experience in the building industry for many years.

As far as consultation with the building industry is concerned, I think you would find, if you did a straw poll around the building industry of builders swinging hammers as opposed to those who are making regulations or sitting in insurance offices collecting premiums from builders, that they would be totally opposed to this provision and the way the current act exists. Not that they would be opposed to some form of ability for home owners to have some insurance, but an insurance system that has been structured in this way does

nothing but protect the interests of the insurance companies - and I will explain why over time.

Some of the hysteria associated with home ownership and apparent home ownership risks to damage from poorly-built properties came about through a case that was taken to the High Court in the 1990s concerning a property that was built up in Launceston by a builder called Bryan. For those members of the House who are unaware of the history of this, the hysteria that was generated about the cost of the settlement to the High Court and the cost of the lawyers' bills and the court costs. It was nothing to do with the problem that house evidenced 25 years or so after it had been built. There was a crack in the foundations but at the time of its discovery the statute of limitations was six years where a person becomes aware or ought to become aware of damage for which they are able to make a claim. I think it was the third owner who discovered the damage and made a claim within that six-year period and extraordinarily enough, was able to take it through to the High Court and have a judgment ruled in her favour. But, as I said, most of the cost was to do with feeding lawyers, not to do with repairing the damage, which was a \$5 000 claim.

Had the builder, if you like, 25 years later accepted the third owner's claim that they did have a common law liability to fix it, then that repair would have been done for \$5 000 and that hysteria associated with the value of the claim would not have been able to be trotted out at every opportunity to whip people into submission regarding requiring insurance on their houses.

Of course, one of the things that this legislation does not address is this: it specifically shuts down the liability or the value of the insurance policy after six years, which means that the builders will still be liable for another 25 years or so anyway, because under common law they are indefinitely liable for any structural faults that arise as a result of their building. So it gives no protection to the builders beyond six years anyway. Furthermore, the way the policies are constructed gives no protection to the builder in the first instance, because all this legislation does is require a builder to take out a policy which ultimately the client pays for. But in the event of there being a claim it is not the insurance company that pays the claim, Madam Deputy Speaker, it is the builder, who is sued under the current system by the home owners' warranty, which stands between them and the affected party - the home owner - in the event of a claim which requires work to be done, which is usually by another builder at cost plus, and who is then sued by the insurer anyway. So in case people believe the myth that the home owners warranty somehow protects the builder, it does not protect the builder in any way, shape or form. All it does is actually extract a premium. As you have seen here in the briefing notes, that can be up to 20 per cent of the value of the work in the case of smaller modifications. It extracts a premium out of the client, who presumably has to borrow money and pays that back over the life of the loan, 30 years, for a policy that is essentially useless to the home owner.

I will explain why I believe generally they are useless. They are certainly useless as far as protecting the builder goes, because the builder ultimately has to pay it anyway and, as I said, beyond that six-year statute of limitations of the insurance company the builder is still liable anyway. But as a result of this HIH -

Mr Hidding - Say that again. How is the builder liable?

Mr BOOTH - Well, the Bryan case was brought 25 years after the builder built the house, but the builder was still -

Mr Hidding - The Rundle Government moved an amendment separate to the building bill that put a statute of limitations on it, so that is not right.

Mr BOOTH - No, it is not. Under common law you are still liable for six years -

Mrs Jackson - No, but under the statute -

Mr BOOTH - Well, I do not believe that is the case. If you can show me the statute I -

Mr Hidding - Well, it is legislation, we have passed it.

Mr BOOTH - Okay, what is the statute of limitations; how many years?

Mr Hidding - I will look it up.

Mrs Jackson - I think it's seven.

Mr BOOTH - I do not think so. If that is the case, if that has been changed since then I will stand corrected, but I -

Mrs Jackson - It hasn't changed for years - civil damages.

Mr Hidding - There was a cap on liability regarding the Bryan case.

Mrs Jackson - It's normally in this act as well, is it?

Mr BOOTH - The point in regard to this is that in any event, whether it is for six years or 25 years, it still does not give any protection to the builder. The builder is still subject to be sued.

Mrs Jackson - It is 10 years. We're all wrong.

Mr BOOTH - Ten years, is it? So for some reason the insurance industry collects a premium for something to protect them for six years, but then the builder, under your advice, is still liable for another four years unprotected by any policy. As I said, it is only Pyrrhic protection anyway because it is really only the consumer who is actually protected by that, with the insurer using the home owners warranty people to stand between them and the client.

Mrs Jackson - Why would you be protecting the builder?

Mr BOOTH - The point is - and I will continue on with this - in about 1998 I was involved in the building industry building quite a lot of cottages and cabins and things -

Mrs Jackson - Another little string to your bow?

Mr BOOTH - Well, it is not a little string to my bow, Mrs Jackson. It just happens that I spent the last 30 years involved in all sorts of activities, which included building and mechanical work and sawmilling and various things, which would be well known to the Government. If you ever wanted to look up the old web sites that I used to have you would find a lot of those buildings on display. In fact, we were a major builder. I happen to understand, because I was involved in that industry and was involved with a lot of different builders, that this is crummy legislation. It actually adds to the cost of the building without providing much protection - well, no protection - for the builder themselves.

Mrs Jackson - It is not meant for the builder.

Mr BOOTH - In fact in about 1998, when I was talking about insurance on buildings - and the buildings that we were building at that point in time were prefabricated kit houses - and precisely how would one determine the value of the work and what you would be insuring and so forth. The discussion I had with one of the principals of one of the insurance companies in Victoria in regard to it was that under the new regulations - which is the new BCA, for example, and the council surveillance and requirements for engineers' footings and stuff - they were not concerned about structural problems in houses any more. That was actually not regarded by them as being a risk. The risk they were concerned about was non-completion of a house, where a builder quoted \$100 000 to build a house, got halfway through it, blew all the clients' money, walked away, and they then had to bring in another builder essentially who worked on cost-plus rather than a competitive quoting situation, and it might cost another \$100 000 or \$200 000 to complete that house. That was what the insurance company were concerned about. As far as they were concerned, the risk that they bore was through non-completion. As I said, his words were that as far as structural stuff goes now it is not an issue because everything is so heavily controlled in terms of engineering specifications and so forth and overlaying layers of surveillance and scrutiny on a building project.

Mrs Jackson - Not always.

Mr BOOTH - I note that this bill conveniently, as if the plight of this insurance executive has been answered, and astonishingly removes any risk to the person who is carrying the insurance company in the event of the builder dying or disappearing or become insolvent, so suddenly an insurance policy that you have paid to a maximum value of \$200 000 worth of work becomes only 20 per cent of that, \$40 000, and yet the client paid a policy for up to \$200 000. But if the builder bolts or becomes insolvent and cannot be found the insurance company ultimately - if they are ever left holding the baby and that is very rare - will only be liable for 20 per cent of the amount the client has been paying. That is a crummy bit of skulduggery, to legislate to protect the insurance company as opposed to protecting the rights of the home owner, because the poor home owner is cast adrift. They do not get their house built, having borrowed the money to pay the policy in the first place - and let us not pretend that it is the builder who actually pays it because they have to add that on to the total project cost. It says in the notes that in some cases these policies can be up to 20 per cent of the value of building work, although obviously not on a \$200 000 property where the premium might only be a few thousand. Nonetheless, this home owner has borrowed money and paid a premium to take them up to \$200 000 worth of damage or uncompleted work, which they then find useless to claim off the builder. What is the insurance company doing in the equation; what are they providing? They are providing nothing.

It is still the builder who ultimately pays. Before, the home owners warranty provided for the insurer to bash up the builder and get the thing fixed and then get the money back off the builder. Now the insurance company does not even have to do that, so what are they doing for their money? Sitting back and collecting premiums on a business that is legislated by this Government and other governments around Australia who have no idea how the industry works, extracting premiums out of consumers, ostensibly to protect them but finding that the real risks have now been removed from the insurance company.

Mrs Jackson - That's not true; they are not the facts, I'm sorry.

Mr BOOTH - That is the facts.

Mrs Jackson - The claims peak at around four to five years from completion, not on builders going bust or failing to complete a building.

Mr BOOTH - Well, that might be the view that the insurers are feeding you and your advisers, but the reality out in the field, Attorney-General, is nothing like that.

Mrs Jackson - What do you mean, the reality? You know one or two people.

Mr BOOTH - The problem is that a lot of this stuff is being increasingly controlled by people who have no idea what they are talking about.

Mrs Jackson - Oh, come on.

Mr BOOTH - They have never worked in the industry; they would not have a clue how to run a small business -

Mrs Jackson - They're facts - you get figures and you put them together.

Mr BOOTH - or generate wealth like that. It is just simply not true.

Mr Hidding - They should give you a ring before they formulate legislation.

Mr BOOTH - As a result of the HIH collapse, thousands of builders around Australia went bankrupt and nobody was out there assisting them. It is only now that the insurance industry is in crisis and doctors are not able to operate that suddenly it has become a major issue for people, but the reality is that builders have been dealing with this so-called insurance crisis for some years now. As a result of HIH, as I said, thousands of builders went bankrupt, not because there was any problem with the quality of their work or because there were claims that came back against them as a result of shoddy work or because they had not finished projects, but simply because they were told by legislation - and therefore by the councils - that they were not able to build any more because they had unprotected risks.

In other words, there were building works that they had paid a premium on. The home owner had borrowed the money as part of the cost of the building project, a premium had been paid and the Federal Government or the legislation has failed to ensure that insurance companies were properly underwritten. I note the point made by Michael Hodgman in regard to requiring insurance companies to prove their capacity to underwrite these claims, which might be a good idea because the result of HIH, as I said, has cut a swathe across the Australian community and wiped out thousands of builders through no fault of their own, simply because they were not permitted to do any more work because they could not provide an insurance certificate. The reason they could not provide an insurance certificate is that the insurers, who in Tasmania had only one left standing, said, 'We're not prepared to give any Master Builders Association members insurance because we would then be picking up the possibility that an old job might come back to haunt them, they might go broke and be unable to finish the job that we have insured them on and we might have to pay out on a premium, so you can't work'.

Mrs Jackson - No, that's why the MBA asked for this change.

Mr BOOTH - Of course that is why, but didn't it come to your attention, or did you not draw the conclusion from that, that the whole set-up is just dodgy anyway because you are relying on some foreign insurance company to come back in and decide whether or not builders are going to be allowed to work in Australia simply because they are carrying now, through no fault of their own, an uninsured risk? Yes, the MBA were allowed to underwrite them after months and after thousands of builders around Australia, as I said, hung up their tools and went bankrupt.

Not only that, the builders themselves are under the scrutiny completely of the insurance company in regard to being able to access premium cover. The builders are forced to do all sorts of reports about their asset lists, customer lists, and all the work they have done over the years. It is a really draconian thing if you go in as a qualified builder and try to get insurance on a project you want to do. It is most repugnant in that you have to provide proof of your ability to fund any costs as a consequence of either a structural failure or your non-completion. If you cannot provide evidence of having in the vicinity of at least 10 per cent plus of the value of any projects you are going to carry out in the form of either liquid assets or some other fixed assets, an insurance company tells you to go away; they will not insure you. If you do not have a work history as a builder, if you do not have a project list in your pocket which says, 'Here's our experience, here's the work we've done', if you do have insurance for them, they are not likely to cover you for any new work you might want to do. Even if you do have insurance, unless you have sufficient runs on the board - if you are a new builder trying to start up without any capital funding - you cannot start; you cannot do any building work. It is not just building a house; we are talking here at the moment about the cut-off level being \$12 000 worth of work - which is nothing, when you consider that that sort of work includes painting a wall, sanding a floor, putting a carpet in, and fixing a few weatherboards around a house - \$12 000 is gone in a flash and you are prohibited by insurance companies -

Mrs Jackson - Not that quickly.

Mr BOOTH - Not that quickly? Have you had a quote on getting any work done lately? You try building a new kitchen or a new bathroom these days or putting a carpet down and doing a few renovations and see how quickly \$12 000 gets chewed up.

Mrs Jackson - Well, the carpet doesn't come into that.

Mr BOOTH - It does come into it; it is defined as part of building works - even the value of stoves; any fixtures like water cylinders are regarded as part of the total project cost and you have to pay insurance on it. It is an absolute disgrace.

Not only that, but once the insurance industry has graciously decided that they may allow you to actually start building as a builder - you have done an apprenticeship and then you go off with cap in hand and ask an insurance company, 'Am I allowed, please, to do some work? Can I work in this country?' and they say, 'No' - you have nowhere to go; there is no appeal. There is no government department you can go to and say, 'Can you help me start? Can you get me some insurance?'. They say, 'Go to the insurance company', and if your insurance company says no, that is it, you cannot build.

As well as that, once you actually start - and this is what I am getting to in terms of saying that the act is now redundant to a large degree - the requirements of the Building Code of Australia are so prescriptive that there is a bible that tells you how you have to build. It even goes to the pictures of a piece of strapping with nails in it of a certain size and the way you are supposed to belt them in. It is a document that is comprehensive; it is a performance-based standard that if you build to that Building Code of Australia then Australia-wide you are entitled to act as a building practitioner. If you want to vary from the Building Code of Australia then you have to get a certificate from an engineer that it is deemed to comply with it, so you cannot vary it. So how do you start building a house? As I said, if the insurance industry allows you to build, you go out, you go through a rigorous planning approval process through council, and part of the requirements of building now is a soil test. A soil test means that you pay a suitably qualified and, I might say, suitably insured soil tester who comes out and tests your soil. The information from that person

then goes off to an engineer who designs the footing, and guess what - he has to have personal indemnity insurance as well. So you have the soil tester with insurance, you have the engineer with insurance; the plans have to comply with the Building Code of Australia and, as I said, if they do not comply then you have to have a certificate from a suitably qualified engineer to say that they are deemed to comply with it. He has to have personal indemnity insurance as well, and the things that have to be covered in that are wind speed ratings and, in most cases now, cyclone rating, site suitability for it in terms of your soil assessments. In some cases they require you to have a geotechnical report of the site as well, which means that you have to have someone doing that who is also suitably qualified and also paying an insurance premium. So we are up to about five different people paying insurance premiums now. You have to have a footing inspection by a council, you have to have a framing inspection and you have to have a file inspection. And you cannot move into it unless you have a certificate of occupancy which requires a minimum standard, and then a certificate of completion before it is actually regarded as a house.

How many layers of surveillance, how many insurance policies are you going to make people pay before they can have the right to have a home? One of the problems with this whole industry now is that it has got to the point where working people are paying for the rest of their lives. If you take out a 30-year loan and there is a couple of thousand dollars worth of useless insurance policies attached to it, you have borrowed that money and you are paying it off for the next 30 years. I think it is really sad that this has become an institution that has developed its own momentum instead of being properly analysed and actually assessed as to whether, firstly, it achieves anything and, secondly, if there is another way.

Why should it be that a person who wants to get - I mean, \$12 000, I note you are moving it up to \$20 000 worth of building work done. If you can go down the road and sign up for a \$60 000, \$80 000 or a \$100 000 car without having to have any insurance whatsoever for that car - no insurance whatsoever.

Mrs Jackson - No, but the person who builds it's got insurance.

Mr BOOTH - What are you trying to protect here? People from breathing air, or something? You are going to have to have an insurance policy before you breathe air under this Government.

Mrs Jackson - What are you talking about?

Mr Hidding - Sue the manufacturer.

Mr BOOTH - What about if you drive it over the edge of a cliff or something? Are you saying that people have now become so incompetent that they are not able to assess whether somebody is capable of building them a kitchen? This is how stupid this regulation has got to the point -

Mrs Jackson - It's not, because a lot of people get builders - and I've had them myself - that don't do a proper job, and tell you that's as good as it's going to be, and it's not good enough.

Mr BOOTH - There are plenty of politicians who do not do a very good job either, and you are not required to have an insurance policy before you vote.

Mrs Jackson - That might be so, but that's not what this is about.

Mr BOOTH - It just seems an extraordinary provision -

Mrs Jackson - I think you've had a bad experience, or you sound as if you have.

Mr BOOTH - No. It is the consumers of Australia who are getting a bad decision made by legislation which is faulty; it is ill-conceived, it no longer is necessary in many cases, and it ought to be changed and it ought to be addressed so people have the option to be insured or to opt out if they want to. People ought, particularly on -

Mrs Jackson - Builders ought to be able to opt out?

Mr BOOTH - No, customers, of course. It is one of those things where you ought to be able to have the discretion if you decide that you want to build something, that you should be able to enter into a contract with that person because the whole point is that there is so much regulation in the building trade now that it is just not possible to build a non-complying building. It is just not possible, so you are forcing people to take out an insurance policy on an eventuality that is so unlikely, in many cases, that it is ridiculous.

The ultimate conclusion from this compulsory insurance of course for home owners warranty has meant that a lot of builders - as far as the consumers are concerned, and it is no laughing matter - have now felt so scared by the way the industry has gone and so burdened with the cost of having to get accounting done on their businesses to prove their viability for insurance companies and so forth. When I was in the sawmilling trade and providing people with house-lots of timber and regularly dealing with builders, they were saying, 'This is just such an overregulated industry now, we are so frightened of some aberrant claim coming through, particularly the way the old act was that the insurance company simply were able to get the works under dispute repaired and then just do a cost plus and sue the builder for the money' that they were adding to the cost of, say, a \$100 000 house, a normal profit margin plus another \$10 000 per house to put in the bank in the event of a claim. It is out of control in my view and the whole act needs a complete revamp. That simply ramps up the costs of the insurance.

The other thing that needs to be corrected - and I notice that neither Mr Hodgman nor the Attorney-General understand - is that under clause 4:

'4. Section 3 of the Principal Act is amended by omitting "\$50 000" from the definition of "the prescribed insurance cover" and substituting "\$200 000".

This increases the minimum cover on a **housing indemnity** policy from \$50 000 to \$200 000. What they are referred to there is not a minimum insurance. They are talking about a maximum payout claim by the insurance industry. So these pathetic policies that people were forced to take out on a \$200 000 or \$300 000 house - are you aware that an insurance company would never be liable for more than \$50 000 as a total payout under the old act? Under the current act, you are now amending it to \$200 000 but it appears that you are implying through what you have said in your second reading speech that somehow this is now a requirement for a minimum insurance going from \$50 000 to \$200 000. This increases the minimum cover from \$50 000 to \$200 000. That is incorrect. The maximum payout that the insurance industry will ever face is \$50 000 under the old act or \$200 000 under this one.

Mrs Jackson - No, \$200 000.

Mr BOOTH - Under your amended proposal it is \$200 000.

Mrs Jackson - Yes, that's right.

Mr BOOTH - But the point is that the policies are written so heavily weighted in favour of the insurance industry and they are extracting under the old unamended act a full policy and a full premium for a house worth \$200 000 or \$300 000 but they would never be liable for more than \$50 000 payout on that job and, not only that, if a building owner failed to notify the insurance company of a fault within - and I think it was either a six-week or three-month period of becoming aware or should be becoming aware of a fault in a house then they lost their insurance policy anyway, so they were thrown to the wolves.

I am not sure about the time of that, whether it was 30 days or three or six months but there was a cut-off period there in the old act where insurance was voided if you failed to notify the insurance company, so it is quite clear that it was only ever a pipeline for insurance companies to get their hands in the wallets of working people as far as I am concerned and it has not worked. The only thing that has worked is that it has driven a number of builders in some cases in fact sadly to suicide, this crisis of confidence in the industry, it has ramped up costs and delivered very little protection to consumers.

I will give you an example of how ridiculous this whole paranoia about insurance has become: at the moment there is a situation in New South Wales on the northern beaches of Sydney where an independent building certifier, which means that they are a qualified engineer and somebody who under the act is able to certify a house, forgot to pay their personal indemnity insurance, so they have been certifying houses as complying with the Building Code of Australia, they have been going through the rigour of the whole building process with people and certifying their houses as complying with the BCA. Guess what, they forgot to pay their personal indemnity insurance and they have not paid it for two years. The hysterical reaction in the press up there is that all these houses have been built and this bloke does not have insurance to cover his back, so they might have to be demolished because the guy did not have an insurance policy. How ridiculous is that?

There is no question that he has not carried out his job properly or that the houses do not comply. It is simply that he was not holding that extra layer of personal indemnity insurance which would cover him in the event of a failure of the builder to have properly followed the regulation in the event of his insurance policy either being triggered or not being triggered. If it was triggered then that person would sue the builder for it. How many court cases and how many layers of insurance are we going to have and when are we going to start analysing the cost to the economy of all these multiple insurances?

I will be attempting a couple of amendments in this bill. As I have said, there are many areas where I think that the whole thing is particularly deficient and does not deliver what it is supposed to deliver. However, I will be raising some amendments to try to make it a little bit more sensible in some of those areas.

As I go through the Attorney's second reading speech, she has no doubt noted some of my concerns already and may attempt to answer some of them although I realise this is a fairly fundamental position I have here in regard to the application of this act. You are saying that the amendments contained in this bill achieve two significant objectives.

The second part is:

'to improve the level of financial cover to home owners who suffer a loss arising from the death, disappearance or financial failure of the builder'.

How is that, Attorney, going to improve the level of financial cover, which you say is going to go up to \$200 000, but the clause notes go on to say that -

'in the event of the death, disappearance or financial failure of a builder that the pay-out is limited to a fifth of the insured amount'.

So what sort of dodgy insurance policy is that? You insure specifically for two things. One is the non-completion of the building and the second one is structural defect. We have already talked about structural defect not being an issue as far as the insurance people I have spoken to; they said it is a non-event in terms of the policy values.

Mrs Jackson - No, you are wrong. That is not right.

Mr BOOTH - Well, it would not be the first time, Mrs Jackson, that you have purported to tell people that they are wrong when you know nothing about the subject.

Mrs Jackson - My advice is that is not correct. All right?

Mr BOOTH - Well, you are the one who is interjecting from the Floor, making the comment and calling me wrong.

Mrs Jackson - You are saying that and I told you that the information is not correct.

Mr BOOTH - Well, I believe you are wrong on that. As I said, what sort of insurance policy is it that takes a premium from a person who is going to be building a home; one of those things they are covering, of course, is non-completion. They have a policy that enables them to claim up to \$200 000; the builder bolts and cannot be found so they only get \$40 000 cover. What a ridiculous situation!

Mrs Jackson - No, that's not -

Mr BOOTH - That is the case. Why does it say it limits the claim to one-fifth of the insured amount, then? That is precisely what it says.

Mrs Jackson - It is not. You sit down and I will explain.

Mr BOOTH - I can question you about that during the clauses but that is the effect of this particular clause and that is what I am saying: I do not believe that you have fully read it because it says quite specifically that in that event they limit it to one-fifth of the insured amount. I think your advisers are nodding in agreement, is that right? I do not want to misrepresent you there. Yes, thank you. So it is confirmed.

Mrs Jackson - No, it is not confirmed. Stop being so tricky.

Mr BOOTH - I am not being tricky. Okay, I will let you go and answer that one then.

Mrs JACKSON - I will answer you in the clause notes. All right?

Mr Booth - Okay, yes.

Mrs JACKSON - You obviously have a bad experience. That's all I can say.

Mr BOOTH - Bad experience?

Mrs Jackson - Yes, I believe you have.

Mr BOOTH - As I have said, when you get to the second page of the second reading speech, councils cannot approve building work without evidence the **housing indemnity** policy has been provided. I maintain that is a ridiculous and unnecessary provision. I think that people should be treated as adults and trusted to come to a contractual arrangement with somebody who is qualified to do work for them without the requirement of having to pay an insurance company to get in the middle between them and act as some thug if essentially he comes along late and sorts out a dispute. It is a ridiculous situation.

We then move on to the point that, should the owner-builder sell the building within six years of completion, the building worker **housing indemnity** policy must be provided to protect the subsequent owner from financial loss arising from faults which may occur in the building work up to six years. What a joke! What a stupid provision! You have somebody there who has elected to do it as an owner-builder, do their own contracting, avoid having to pay the policy - and they may have done it for many reasons. It may be that they do not require the policy or they may not be able to afford to borrow the money for a policy. But as I said previously, the building has been through this extraordinary layer of insured surveillance right through from the soil test to the final completion certificate, which goes to having a shower curtain hanging up and silicone around all your splash-backs and specified heights of splash-back. There are just extraordinary levels of surveillance to build a house. And for a house that exists in current form as a finished project where there is a completion certificate, to have to then go and pay an insurance company to insure a house which is obviously still there, with no reduction in premium I might add, is a rip-off. It is an absolute rip-off that you might go four years after having completed a house; they do not even go on the completion certificate inspection from a council. You have to pay for a qualified person like an architect or an engineer or someone else to come to your house to inspect it again after it has already been through, as I said, all those layers of surveillance through council, and pay a premium. And the premium, in my experience - and I may be wrong on this point, but certainly in my experience - is the same as if you had built the house. You might only have two more years to go before the thing has run out of its six-year statutory period. You do not get six years from then on. You just get to the end of the six-year period and you pay this ridiculous inspection fee for someone to come and re-inspect what has already been done and pay a premium as if the place were still at risk of non-completion, yet the thing is obviously there. So you do not even get a discount on your policy. It is an extraordinary provision and, as I said, it simply legalises the insurance industry dipping into your wallet.

Mr Hidding - I don't think you're right about that. At four-and-a-half years into a six-year period do you go in to get an owner-builder's indemnity cover for a year-and-a-half and you have to pay six years' worth?

Mr BOOTH - I believe that is the case. Certainly it was some years ago when I received one of those things. So I do have personal experience. As I said, I am prepared to accept on that point I may now be wrong. However, I will reiterate that as an owner of a totally finished, council-approved house that has gone through all of those layers of requirement of the BCA and so forth, if you want to sell it you have to pay an engineer with his own personal indemnity insurance again or an architect with personal indemnity insurance, or whatever, to come and inspect that house before you can get a home-owner certificate.

Mr Hidding - There's a good reason for that.

Mrs Jackson - That's an owner-builder you mean?

Mr BOOTH - Yes, as an owner-builder, if you want to quit it. But the point is that it has been -

Mr Hidding - He could build a new home every six months and move out. That's what was happening before. That's why they did it.

Mrs Jackson - That's what was happening here.

Mr BOOTH - Okay. There are two issues here. You can require the insurance to make it consistent with builders and certainly there could be a loophole with people building a house and moving on. That does happen. But why require, when I have already said that the major risk as far as the insurance industry is concerned is non-completion, a house that exists and that has gone through all the stages of inspection and compliance of regulation -

Mrs Jackson - But something might go wrong with it within six years and you have to claim on insurance.

Mr BOOTH - Something might not go wrong either, but the point is it actually exists as a house and therefore there is no risk of non-completion, so why should you pay that percentage of the premium that applies to the non-completion side of it? If you are then going to take an insurance policy, why do you have to get an insured architect or engineer to drive from halfway across the countryside to look at the building when you have already been through the whole council or private certification system which has given you a completion certificate? That means that the thing has had a soil test and engineer-designed footings, an engineer or a council inspector has done a foundation inspection, a hole inspection pre-pour, a framing inspection, a roofing inspection and a final completion certification inspection. It is not by this act that this was created but the industry itself, Mrs Jackson, creates this additional layer of absurd, overlying bureaucracy.

Mrs Jackson - I realise that.

Mr BOOTH - I am sure you would agree that a lot of this stuff is unnecessary.

Mrs Jackson - I think it is very important that people are protected in this. There have been a lot of examples of people who have missed out and that is why this legislation was brought in in the first place, because there were a lot of builders who were doing the wrong thing.

Mr BOOTH - I understand what you are saying, but what I am maintaining now is that that situation no longer exists because of the BCA requirements -

Mrs Jackson - We've got one here at the moment that has been floating around from State to State. He's been up to all sorts of tricks.

Mr BOOTH - I know whom you are referring to there. The point about it is that if the council is doing its job properly that ought to be the requirement for some form of insurance, that the actual building is inspected by somebody who knows what they are doing, not the position of an insurance policy, surely? Particularly in the case, as I said, of an owner-builder who has already built the house, why should you have to pay an insurance policy - and that premium is partially based on non-completion of the house when the house is patently finished.

Time expired.

Housing Indemnity Act 2003

In Committee

Clauses 1 to 3 agreed to.

Clause 4 - (Interpretation)

Mr BOOTH - I think this is really just for a point of clarification. We are not proposing to amend this. The amendments I have given to you on that piece of paper are written somewhat illegibly. I will undertake to try to get them in a better form for you in future, Mr Chairman.

Mr Michael Hodgman - You must have one typewriter up there, haven't you?

Mr BOOTH - Well, actually our printer is not working at the moment. We were supplied with a whole lot of new printers and none of them are working, so we do actually have a problem at the moment. Just in terms of clarification in regard to that, Minister, I really do think that if you have a look at page 4 of your second reading speech you mention that this is nothing to do with doing anything for the insurance industry. I would point out that if you read that there it says without these amendments there is little likelihood that new insurers will be attracted, and there is also concern that existing insurers may in fact leave the market, and further, that the proposed amendments will facilitate insurance industry confidence in entering the Tasmanian market. So it is a pretty strong focus of this thing to actually make the insurance industry happy, and I think we would have to agree with that.

My reading of the act is that the \$50 000 in the principal act is now amended to \$200 000 and that is the maximum amount that an insurer will pay out on any one building project. Certainly under the old act that \$50 000 referred to the maximum that they would ever be liable for on any number of claims on a project, and I believe that that would then just simply follow through, meaning that \$200 000 would be the maximum that they would ever be liable for. So it is an indication that it is actually up to a threshold limit and the industry no longer has to carry liability. Could you clarify that?

Mrs JACKSON - Yes. On that last point, it is \$200 000, but I take it that would mean the total contract could be worth \$1 million if it is 20 per cent.

Mr BOOTH - I am just simply clarifying here for the record that the \$200 000 that will now be amended into the act as a new figure, substituting \$50 000, referring to the maximum payout that the insurance industry will ever pay in total on a building insurance policy.

Mrs JACKSON - Yes, that is correct.

Mr Booth - Right, thanks.

Mrs JACKSON - Just on your other issue about insurance. As I say, it is making them happy to the extent that we wish them to be in the market because if they are not in the market then people do not have the cover, and we do want people to have the cover. We want the cover to be available, otherwise these builders will not be able to build; you said that yourself. So we do want to encourage them, and it is the same principle that we have been

grappling with here in this State and other States and federally for the last couple of years since the collapse of HIH.

In a sense the insurance industry is holding us to ransom; they are overseas companies, multinational companies in most cases - not always but in many cases. I understand we are a small market and they can really tell us that they do not really care whether we come on board or not. Similarly, the other companies say that to Tasmania, we are sort of at the end of the food chain, you might say, because it is happening around Australia. In many respects, because we are a small economy, a small number of people, we are just smaller people at the end of it. It is wrong, but what can you do about it, apart from having a national insurance scheme? You are held to ransom; you do not have to be very smart to work that out. We are doing this to give them some more security; we do it because we do want insurance here and we do want insurance to be offered to people.

You made a comment about people not having insurance and having a choice of whether they wanted insurance. Up to a point that is true, and of course for some sort of insurance you do carry your own risk, but you actually carry the risk yourself. If your house burns down and you are not insured, well, bad luck; if you have a car and you smash it up, well, bad luck, but with this type of insurance it is different in the sense that a person can always sue you at common law.

I once signed something to say that if I drowned while using a swimming pool I would not sue them.

Mr Booth - Well, you couldn't if you drowned.

Mrs JACKSON - That is what I said. Anyway, you know what I mean - if something happened to me, I would not sue them.

Mr Booth - If you half-drowned you wouldn't sue them.

[5.30 p.m.]

Mrs JACKSON - If I half-drowned I would not sue them or my estate would not sue them. But that was not legally binding. I could sign that but if it happened to me, if I half-drowned, I could easily change my mind and go and sue them. Obviously, if they did not have any insurance and they did not have any assets, I would not have got anything so therefore I would not have been protected. Just say we are talking about the swimming pool and I ended up in a wheelchair, or something, because I half-drowned and I had brain damage and I needed 24-hour care.

Mr Booth - We won't let Michael respond to that one, don't give Michael an opening there.

Mrs JACKSON - So then I need 24-hour care so I sue them to get that care. Say I did not have any money and they were not insured and they did not have any assets, I would not get anything. So I would not be protected.

It is all very well to say that some people don't care or might sign something to say we waive the provision that we can ever sue you, but if the house starts to fall down around their ears they might start to have second thoughts. The same applies if you nick off with their \$160 000 or their \$100 000 and do not finish the house and they are left with another \$20 000 or \$30 000.

The other day we had a case of a couple in the HIH situation - it was a bit more involved than that but basically they had to get another builder to finish the house. It cost them

\$20 000 or \$30 000 which they did not have, but of course they had to find and borrow and the guy had to take a redundancy to pay it. It was either that or lose the house.

You cannot say to people, do you want insurance or not? You can say it but it really does not mean anything, but it could mean at the end of the day that the consumer is at a severe disadvantage because if something goes wrong they can lose a lot of money, more money than they can afford to lose; that is the thing. If you can afford to lose money, well, that is a different issue but a lot of people cannot afford to lose the money. This was an older couple who will never be able to recoup that money even by working, so it is not a choice that you can make. It is like these doctors who are what they call 'going bareback', getting rid of all their assets. I was told the biggest growth in finance advice, seminars and workshops in the last few years has been advising people on how to asset-strip, how to get rid of all their assets.

Mr Booth - Make themselves a man of straw.

Mrs JACKSON - That is the most frequent demand by these professionals, doctors and lawyers, barristers in the New South Wales bar.

Mr Hidding - Don't pay taxes?

Mrs JACKSON - No, they do not pay taxes there either, some of them. Doing that is a real worry because that is disadvantaging people. If something happens, there is nothing there to sue and if they do not have any insurance and they do not have any assets you are back to the old days with the survival of the fittest really, aren't you? I think things break down; society as we know it breaks down. I would never accept that is the way to go.

Mr BOOTH - Thank you for that, Attorney. I will accept in good faith what you said earlier on during the course of the debate that you will be prepared to look at this at a later date. I presume from your body language that you are happy to have a discussion about this at some point in time and perhaps alter the thing if you can be convinced that in fact it does not achieve what this act is purporting to achieve. I will try to bring you some details in regard to some of the areas that I think are wrong.

Just in terms of that clarification you have provided, I recognise what you are saying about the insurance but there is some sort of misapprehension amongst people that somehow the insurance companies may be God or something and they are infallible and they will never go bankrupt. As you can see from the HIH collapse, the presumption that paying an insurance policy gave you any protection was found to be completely erroneous. The result of that of course is that a pipeline was created out of the country into America where these people were awarded various medals for having the biggest and most expensive parties in corporate history and stripped the company blind.

Mrs Jackson - Wristwatches.

Mr BOOTH - Yes, wristwatches worth \$100 000 or \$1 million or whatever did not do anything for the people who had insured their houses and subsequently suffered problems. So that is one point. Then the point was made by Michael Hodgman earlier on that perhaps they need to be vetted properly and I suppose the APRA vetting is as good as you can probably get.

Mrs Jackson - Well, they're going to improve, aren't they?

Mr BOOTH - Except that of course in the case of HIH they were APRA-approved, apparently.

Mr Hidding - That's right, and APRA have been exposed and they have amended the process.

Mr BOOTH - The other thing I would like to stress there is that you have to recognise that this industry now is probably more rigorously surveilled, particularly cottage work, than just about any other industry in that there is an inspection system that accompanies every building project. There certainly were shonky operators in the business and there still would be some. I am not saying that there are not or never will be, but what has changed since 1993 is the level of surveillance. The level of compliance requirement has massively improved, to the point now where I think the industry is so well regulated that the risk to the insurers, if you like, or the risk of faulty work being done is far lower, particularly for certain types of projects - particularly cottage work. I will make representations to you later on in regard to that and hopefully we can work through some of these amendments you may feel like supporting.

Mr HIDDING - Mr Chairman, as this clause will change the risk profile for the MBA-pooled insurance fund, I wonder if the minister could tell this House whether she has availed herself of any late risk profile of that fund, the level of premiums being held in that fund and whether indeed the fund is backed by the Government, as the minister has just said?

Mrs Jackson - I just told you that. I put that on the record.

Mr Sturges - Pay attention. She clarified that.

Mrs JACKSON - I clarified that in the second reading speech. In the MBA scheme, the deed excludes the Government from risk. It is based on claims history, the risk is low. There have been no claims to date and the director, Mr Ormerod, is on the claims panel. I will see if he has any other information about that. There was a \$500 000 fund that they put in to start it all and they are holding \$480 000 in premiums - so it is \$985 000.

Mr HIDDING - With that bit of information, considering that there is a growing pool of funds to address any risk, the longer this fund exists the longer the tail and the exposure to risk increases. That is what APRA is for. Self-insuring can be a very dangerous exercise and, if it wasn't, we would all be into it. The New Zealand company that you said was not good enough, I would wager, would be much better than the pooled insurance fund at the Master Builders Association.

Mr Booth - I don't know how you can say that.

Mr HIDDING - Well, it is an insurance company and this one isn't. The fact is you have a small MBA -

Mr Booth - So was HIH and every other insurer around the corporate world.

[5.45 p.m.]

Mr HIDDING - You keep making the point that APRA failed with HIH. Everybody knows that; that is history. The fact is that APRA was hauled over the coals -

Mr Booth - I don't think the MBA would be very happy to hear that comparison.

Mr HIDDING - many people lost their careers, and quite rightly so, and there are new arrangements for it. I want to place on the record that we do not accept that through the deed the Government is not in fact exposed to risk. Of course it is. If there was a massive default and the money was not in the bank, they would be down here marching on

Parliament, saying, 'You allowed this to be set up; you pay', and the Government would in fact be paying.

Mr Booth - Forty-five thousand people marched for Aboriginal reconciliation and you ignored them. Since when have you been listening to people marching.

Mr HIDDING - You really do have a strange logic in thinking -

Mr Booth - Well, you were worried about them marching.

Mr HIDDING - stringing together thoughts on the run there, but I will not be diverted. Could the minister tell the House whether she has had the actuarial risk assessed in that pooled insurance fund as to whether it is sufficient at this point?

Mrs JACKSON - This is the third time, but I will say it again. Based on the claims history, which is what the risk is about and what you are insuring, the risk has been assessed as low. There have been no claims to date, and it has \$985 000 in the pool. And, all right, it has been going for one year -

Mr Hidding - It is \$485 000 and \$500 000 is there as sort of a promise: 'We will find it if it is needed'.

Mrs JACKSON - No, that is not right.

Mr Hidding - It is not money in the bank, Judy.

Mrs JACKSON - You are not right, you see. I wish you people would get your information. That \$500 000 is actually held in the Office of Consumer Affairs, so we have it in our hot little hands. There you go. That surprised you, didn't it?

Mr Hidding - Why don't you hold the premiums as well, then?

Mrs JACKSON - You did not even know we held that, so there you go. No, it is not our scheme; they hold the premiums, and I think the MBA is a very trustworthy organisation. I think they are managing this well. They believe they are managing it so well that they should keep managing it, but we have told them that is not going to be the case, and therefore it won't. I imagine that when this is enacted, the sum of the premiums will be transferred to the insurance company, although they will carry the risk for the tail, as you call it, which could be four or five years away. But we are hoping, and there have been talks with Reward, that they will come in here in a more vigorous way and they will provide the competition. We have had talks with those insurance companies, but the MBA I think stepped into the breach, so to speak, at a time when it was necessary that we have somebody. That was the problem.

Mr Booth - Well, yes, that is if you accept you had that in the insurance in the first place, then obviously it would create a body that could give the insurance. That's what has happened.

Mrs JACKSON - Say there was no insurance and a builder did go bust, and left people out of pocket. You are right, the Government would have pressure on them to make ex gratia payments. He is right. That is the way people seem to think these days. So there is no way we would let something like the housing industry operate without insurance. We would have every shonky dealer around the place down here if we did that. Actually, these shonky people are very interesting. They have a path, which I find interesting anyway, in

that they seem to start off in New Zealand and then they go to Victoria, then they come to Tasmania, and when they leave Tasmania, they mostly go to Darwin. You know where they have been and you can trace the history of what they did in other places, and then you probably know where they are going. So I am sure if we did not have any insurance down here they would probably be coming here a bit more quickly on that route.

Clause 4 agreed to.

Clause 5 -
(Exclusion of certain building work).

Mr BOOTH - I think there are two people in this Chamber here at the moment who between them have lost over \$250 000 to the gentleman you are referring to as perhaps requiring a ticket to Darwin at the moment. But notwithstanding that, it does not alter my position in regard to the need or otherwise for insurance or other ways of doing it better.

Mr Llewellyn - I didn't quite get that.

Mr BOOTH - You did not get it?

Mr Llewellyn - No.

Mr BOOTH - You would have had to be here for the whole debate. You can't just stagger into this Chamber at about 5.46 p.m. and expect to catch up with a two-hour debate, Mr Llewellyn. It would be beyond your capacity, I am sure.

Mr Llewellyn - I was listening on the squawk box. I didn't get the bit about going to Darwin, that was the thing.

Mr DEPUTY CHAIRMAN - Order. Mr Booth has the call.

Mr BOOTH - The Attorney-General had some convoluted explanation of a criminal trail that starts in New Zealand, goes to Victoria, comes to Tasmania and ends up in Darwin -

Mr Llewellyn - Who were the two people in the Chamber who are going to Darwin?

Mr BOOTH - No, it is a person who has managed to rip two people in the Chamber off to over \$250 000 between us. We would not be able to afford to go to Darwin. I do not suppose there is much point in recording it for history. But the notorious non-complying builder in Tasmania unloaded me of a substantial amount of money and also Mr Hidding, the Leader of the Opposition. It is one of the commercial risks that you are exposed to in a free market, something that a lot of people do not understand unless they have been in that situation. You do carry risk as part of the responsibility of running a business.

Mr Llewellyn - Now I am fully informed.

Mr BOOTH - That is good. We can now move on to the amendment. Perhaps you will support me on the amendment now you have clicked into the discussion. This is to do with an amendment that I would like the Government and the Opposition to consider. I think that it is a very reasonable and non-controversial amendment. I move -

That clause 5 be amended by leaving out '\$12 000' and inserting '\$25 000'.

The reason for that is that when this act was brought in -

Mrs Jackson - In 1992-93.

Mr BOOTH - CPI and inflation would have made \$5 000 into \$12 000 or probably more than that by now in terms of relative value. So it is hardly catching up with CPI and inflation. And as well as that, to do work of \$12 000 can be simply painting a house or sanding a floor and doing a bit of work in the bathroom or kitchen; it is very easy to build up \$12 000 worth of work as a builder. The insurance requirements are quite draconian. We talked about builders who are unable to make a start on building a house because they cannot get insurance from an insurance company because they have no financial records or no history in the industry. This particular provision means that those people can never make a start at any level to get into the industry. They are unable to build up a work history. They are unable to build up a business. They are unable to build up assets to put up as a surety for the insurance companies for the granting of a policy. I think you made the comment in the clause notes that in some cases, mainly for this minor work, the insurance premium that a builder has to pay for a job of \$6 000 or \$7 000 in some cases is 20 per cent of the value of the work. So all it does is jack up the price of the work that the client ultimately has to pay. The insurance company is given this extraordinary ability to force you to take out a premium that could be \$1 000 or \$500 per job. I really do think it is unprincipled. It is unfair. It does not really achieve anything that I can see. It is such a minor amount of money that that sort of event ought probably to be dealt with in the Small Claims Tribunal. You are not talking about earth-shattering amounts of money here to require somebody to have a premium. I suggest that anything up to \$25 000 ought to be falling under the same thing as what you are proposing there for \$12 000. It is not a substantial amount of money. There are provisions available, as I have said, through the courts to obtain payment for that. It is unlikely a builder is going to default for that. It is ridiculous.

We alluded earlier on to whitegoods, for example. In the case of somebody providing a kitchen or a new bathroom, very often they are paying insurance on a lot of the value of the work, because it has to include the whitegoods and it has to include the shower unit, bath, spa and all that sort of stuff. You are actually paying an insurance policy on a product that has already got product warranty anyway as a manufactured product. So you are getting this double whammy; you are buying goods that are already covered and then you have to wait to get the insurance cover to do the work, and then you are paying home owners warranty insurance on it as well.

I just think it is really unfair; it is obstructive and if one agrees that it is necessary to have insurance, it unnecessarily impedes the ability of the building industry, if you like, to operate. It is a noose around their neck and I think it would be very worthy to consider taking that up to \$25 000, Attorney, rather than \$12 000.

Mrs Jackson - Are you going to support this amendment?

Mr MICHAEL HODGMAN - I will get my contribution in before I am subjected to another unprovoked attack from the Attorney-General.

We have looked at the amendment and I understand where you are coming from, the member for Bass, but on balance we will not be supporting the amendment. We believe the proposal of \$12 000 is appropriate and we will be supporting the bill in that form.

Mr Booth - Perhaps you will have a wiser mind, Attorney.

Mrs JACKSON - No, we will not support it either. As I said somewhere in my second reading speech, there has been a national review on this matter and this is about getting some

uniformity along with the other insurance bills; not that this is linked to them, but the trends that we are trying to get some sort of uniformity in this type of legislation. The national review recommended \$12 000, so this is in line with other States.

I do actually reject what you say, though, that \$25 000 or \$12 000 is not a lot. From where I sit it is a fair bit of money. I know someone who is having some work done at the moment and they are having just a little bit less than \$25 000 worth and they are getting weeks and weeks of quite substantial work. They are renovating a house.

Mr Booth - They're probably paying a \$1 000 insurance policy on it.

Mrs JACKSON - I do not know, but I am sure that if it were me I would be willing to pay something towards making sure it was completed properly and to a standard because I have had a couple of experiences, and maybe I have bad luck. I had one recently where I thought the person might have tried to do the right thing considering he knew who I was, but you should see it. I took photos of it it was so bad - a fence that someone built me. It was an absolute disgrace. He came back three times to fix it and it is still not a hundred per cent, but in the end -

Mr Llewellyn - You gave up.

Mrs JACKSON - I gave up. I just thought, 'If someone would do that to me, what are those people doing to other people?'

Mr Booth - I wouldn't go down that track!

Mrs JACKSON - He was pleasant and all that but he obviously did not have a clue how to build this fence.

Mr Booth - He probably didn't know who you were.

Mrs JACKSON - Well, I do not know whether he knew who it was but that is not really the point, although I think he did know who I was. Some years ago I had quite major works done in a house that I lived in and it was absolutely shocking workmanship. It had to be redone and I think then I did get the MBA to come and look at it as I did not know what to do. They came and looked and they said it was not any good - this was a number of years ago, but it does happen. I have had a lot of work done in the past by people I know and it has been very good but the two times I have got people I did not know I have had some really bad experiences. Now I cannot be the only person -

Mr Will Hodgman - Do you know any good ones?

Mrs JACKSON - Unfortunately, a very dear friend of mine, Joe Imlach, died recently and he was an excellent carpenter and builder and I was very sad -

Mr Booth - He probably died of stress after all this insurance stuff.

Mr Michael Hodgman - His brother died this week too.

Mrs JACKSON - I know, I saw that. He was a very dear friend, a very good person and a very good builder or carpenter, so apart from the fact that he died, which I am very sad about, I am also very sad because I feel a great loss in my life, not because he just died but because there is no-one to do these jobs any more.

The two experiences that I can personally think of where I did not know the people did not turn out very good experiences, so I just wonder how much of this is out there, that people do not get what they expect. I think there does need to be regulation and I do think there need to be standards and so forth, because a lot of people do think they know how to do something and put themselves up to be certain tradespeople but obviously are not. I might say the person who built this fence charged me \$48 an hour, and you should have seen it. I will bring you photos if you are interested because it was a disgrace.

Mr Will Hodgman - Back when?

Mrs JACKSON - This was only two months ago.

Mr Booth - You probably screwed him into the ground, the poor bugger.

Members laughing.

Mrs JACKSON - No, then I found out I was giving him twice as much as I should have been because I had not had a quote for years. I am just saying it just shows you that you can never be too careful about people out there. I think for \$12 000 you can get quite a bit of work done and for \$25 000 you can just about half rebuild the inside of a house.

Mr Booth - I'd like to see the house these days you can build for \$25 000.

Mrs JACKSON - Not including kitchens and carpets, I accept that, but for the actual structural work -

Mr Booth - Or a roof or a floor.

Mrs JACKSON - you can get quite a bit of work done for that sort of money. Move walls and put in walls -

Mr Rockliff - Lock-up stage, it is called.

Mrs JACKSON - Not a new house; I am talking about renovation.

Mr Booth - What - \$25 000 for lock-up stage? What planet have you been building on?

Mrs JACKSON - So I do not accept your amendment. I think \$12 000 for those works is quite adequate.

Mr Booth - How about half-way - about \$17 000?

Mrs JACKSON - This is not a bidding war here; we are not at auction. This is about trying also to get some uniform legislation and if someone lost \$12 000, I do not know where you come from, but to me that would be a lot of money to lose.

Mr Booth - That's 'Chicken Little' stuff; they're not going to lose \$12 000.

Mrs JACKSON - Chicken Little? I do not think it is 'Chicken Little' stuff at all. I think it is quite a substantial amount of money, so we are going to leave it at \$12 000.

Amendment negatived.

Clause 5 agreed to.

Clause 6 -
(Requirements of insurance policies)

Mr BOOTH - Mr Chairman, I move -

That clause 6 be amended by leaving out paragraph (c).

The reason I am moving to delete that paragraph is that it simply removes, under my reading of that particular clause, any useful purposes that the insurance policy may have.

Progress reported; Committee to sit again.

TASMANIAN HOUSE OF ASSEMBLY HANSARD

Kim Booth Housing Indemnity Act 2003 In Committee

Wednesday 29 October 2003

HOUSING INDEMNITY AMENDMENT BILL 2003 (No. 76)

In Committee

Resumed from 28 October 2003 (page 95)

[12.45 p.m.]

Mr BOOTH - Mr Chairman, I was on my feet when we ran out of time yesterday. For the record, I had just moved that clause 6(c)(2) be deleted. As I was saying, the reason that I was moving to delete that clause is simply that it removes, under my reading of that particular clause, any useful purposes that the insurance policy may have. The reason I say that is the specific phrase in subsection (2), 'If the builder has failed to complete the building work and after due search and enquiry cannot be found, the amount of insurance cover is not to exceed one-fifth of the contract price'. I need to seek clarification, Minister, in regard to that because my reading of that - and I think Mr Hodgman as a legal practitioner may agree here - the words 'the amount of insurance cover is not to exceed one-fifth of the contract price', quite clearly indicates to me that if the contract price was \$100 000, for example, the maximum amount that can be paid out is \$20 000. Would it be in order for you to clarify that, then I will continue?

Mrs JACKSON - Yes, that is right - for non-completion.

Mr BOOTH - The House needs to listen to this very carefully. I note that is in contradiction to the advice that you gave us yesterday in regard to that. I am not trying to make a point of that; I am just asking for clarification. Yesterday you indicated that it would be 20 per cent on top of the maximum insured amount.

Mrs JACKSON - What I said yesterday is right. It is 20 per cent over the contract price. It is also, I suppose, 20 per cent of the contract price but then it goes over the top. So if the contract price is \$100 000, as I said yesterday the \$100 000 still has to be paid by the client to complete, but there is another \$20 000 available from the insurance company on top of that, making \$120 000. Obviously if the person has paid, say, the \$120 000 but the builder has disappeared, someone else has to come in and finish the work. That can be up to a maximum of \$20 000 in the case of a \$100 000 contract. Obviously, in the case of a \$200 000 contract, it will be up to \$40 000.

Mr BOOTH - That is precisely the point. Let's consider building works at a \$100 000. You pay a premium based on the value of the contract. That money is ultimately paid for by the consumer, for whom the policy is taken out. One of the problems for the insurance industry with some of these cases where a builder has defaulted, bolted or gone bankrupt is that the cost of completion for a house has been misquoted or they have run into problems that they have not foreseen - such as rock in the foundations - or there has been some fraud perpetrated by the builders in that he has taken money for the building project either lawfully or unlawfully. The builder may have already

consumed \$100 000 and only be halfway through the house. That has typically happened in many cases.

As I said yesterday in regard to the liability and risks to the insurers, the industry has said to me personally that their risk as far as they are concerned is non-completion, not structural defect. So it seems to me that the major reason - at least you would say half the reason - for having the requirement of homeowner's warranty is to ensure completion so that the customer is protected in the event of a malfeasance or failure of the builder; that has effectively now been removed by this provision. It actually weakens the insurance that the client receives because out of a \$100 000 contract only \$20 000 will be paid out by the insurance company as a maximum, rather than the full cost that they have paid an insurance premium on. Why should it not be that? If, say, \$80 000 has been expended on the house and the cost of completion turns out to be another \$60 000, why should it be that the client then would be left \$20 000 short? They would pay the rest of the contract's \$20 000, the insurer would only pay \$20 000, which would bring the project up to \$120 000, thereby leaving a \$20 000 shortfall on a \$120 000 house. So it removes risk from the insurance industry and removes protection from the person who is supposed to be protected by the policy. That person, I remind the House, has paid a premium based on a \$100 000 contract. Why should the payout be limited to a fifth of the value of the contract? Why shouldn't the payout be on the basis of the risk of the persons insured, which is up to \$100 000? That is what the premium is based on.

If you go back to page four of your second reading speech, Minister, it is quite clear that the whole thrust of these amendments is all to do with giving better protection in the insurance industry and very little to the consumer - as can be seen by subsection (2). As I said, it actually removes the liability for the insurance company, it increases the risk to the insured and effectively in many ways it is a fraud on the consumer. They are paying a premium based on a \$100 000 policy but in this specific event, where the builder bolts, the cover is reduced to one-fifth of what they have been paying a policy on. So they receive a \$20 000 payment. They might have paid a \$1 500 premium on that. It is outrageous, and it is interesting that there is no amendment there in regard to a structural failure problem, for example. I may have slightly confused myself and the House there in regard to the current act now, which limits the payment, I think, to \$200 000 on any policy in any event. So in other words, although the policy is based on the value of the building works, the act effectively prescribes that only a certain amount of money will ever be paid out on any policy. It was \$60 000. It is now \$200 000. Is that correct?

Mrs Jackson - Yes.

Mr BOOTH - So therefore the assessed value of the premium must be based on the liability of the insurance company to maybe have to pay out \$200 000 as a maximum. In this case, in the case of a \$100 000 house, they would have to pay out only \$20 000. I would like you to think about that. I think there is a serious flaw in the way this has been written, and it has been written to protect the insurance company and to remove the protection from the home owner. That is what that is about, so I would urge you to vote for the removal of that subsection.

Mrs JACKSON - We are not going to support this amendment. What you say is correct in the sense that obviously when the insurance is given, the fact that it is 20 per cent of the total cost of the contract is taken into account in deciding the premium and the risk. If it was 100 per cent of the contract obviously the premium would be higher. This is for non-completion, and in the case of a person half-finishing the house, as I understand it, my knowledge of this is that you pay progress payments, so if you paid 100 per cent of the contract and you had only done 50 per cent of the house, you would be a mug, would you not? You cannot always protect every mug, but if you gave the builder \$100 000 and he had only half-finished your house, there is no insurance to cover that situation.

Mr Booth - But why would you reduce that, then? Why would you do it? I cannot understand why you would want to limit it.

Mrs JACKSON - I will just explain it. It has been written here for me, and it explains why we do not support this. The effect of the amendment you are suggesting, which would delete this clause altogether, would be to remove that 20 per cent limit on claims for incomplete works. This would leave open the opportunity for people to misuse the act and gain an unfair financial advantage from the insurer. So this is not about giving the insurer or anybody an unfair advantage. It is to protect, as much as possible, the consumer. This provision offers adequate protection for consumers while at the same time limiting the risk of insurance fraud. The following example should help to explain the effect of this provision.

A consumer enters into, say, a \$200 000 building work contract with a builder. The builder fails to complete the work because of death, disappearance or insolvency. A claim is made on the **housing indemnity** policy and the insurer arranges another builder to complete the building work. That is what happens. In this case the extent of the owner's liability will be the original contract price of \$200 000, which I have said before. The insurer will pay any shortfall up to 20 per cent of the value of the contract, which in the case of \$200 000 will be \$40 000, and unless - and this is where the problem arises and this is why we have to put this in there, and this is what has been happening when this has not been there - there is serious underquoting by the builder, the consumer will not suffer a loss. However, if the builder did seriously underquote, then the owner would be out of pocket and would have to pay more.

Sitting suspended from 1 p.m. to 2.30 p.m.

Mrs JACKSON - As I was saying, if the builder did seriously underquote and the cost to complete the building work exceeded 20 per cent of the contract price, the home owner would pay the difference. I think it was explained to you by Mr - I am going to get this name right -

Mr Hidding - No, you won't.

Mrs JACKSON - I will.

Mr Booth - It will come out all right in *Hansard*, Judy.

Mrs JACKSON - Mr Ormerod.

Mr Booth - It's not an oral record on *Hansard*, so it will come out all right however you say it.

Mrs JACKSON - I can say it when I am not in here. That is the thing that worries me.

The insurer should not be expected to underwrite losses arising from underquoting. As I have said before, there have been problems where people have underquoted and they have been in collusion with the builder and the consumer and then the builder obviously nicked off before he has finished the job and the insurer has had to pick up the cost to finish the job. I do not think that is fair or correct and evidently that was a problem.

We are certainly willing, I am sure, to keep a watch on this to make sure that it is working well. I know that the Office of Consumer Affairs is very good in this respect and they get people's complaints; some people do ring them and they get a lot of information. So if we see that there is a problem with this, we will look at fixing it up.

As you might have noticed in the past 12 months, there have probably been many amendments to consumer affairs legislation in this House totally in my portfolio area; aggregately it is more than 50 per cent. So there would be a piece of consumer legislation amended just about every few weeks when the House is sitting. Consumer legislation is a work in progress, let us say. It is a relatively new area of the law and there have been huge advances in it over the last 20-odd years. I think the first consumer legislation we had in this State was brought in in the early 1970s - in 1973, by Merv Everett - so it is only 30 years ago. It is fairly new law and, as I say, it is one of those areas we keep under constant review. So if there is a problem with this we are certainly willing to look at that.

Mr BOOTH - I will make only a very brief response to that. Thank you, Attorney, for your statement that you are prepared to have a look at the provisions of this act in a more fulsome way at a later date; I certainly welcome that.

There are a lot of areas of concern for the building industry in the act and I think if you had a broad consultation with the people who are swinging the hammers, you would identify quite quickly that the consumer protection is only part of this act. There are major problems created for the building industry and it is ramping up costs and causing considerable pain, particularly at entry level. I discussed that with your advisers over lunch and thank them for the advice. They have loaded me up with a weighty tome to read -

Mrs Jackson - That will keep you occupied for a while.

Mr BOOTH - I probably will not have a chance to read that before we finish off this bill but anyway, thank you for that and I will consult with you further at a later date.

Mr MICHAEL HODGMAN - For the record, Mr Chairman, the Opposition does not support the amendment simply because firstly it is the proposed amendment which was adopted in other States following the national review of 2002; and it is indemnity legislation which only relates to a situation where the builder dies, becomes insolvent or disappears, does a bolt. In other words, in all other cases, normal commercial remedies are available as would be available to any litigant in relation to breach of contract. Finally, if the amendment were passed, that is the deletion of paragraph (c), subsection (2) from the act, you could have a situation where there could be a windfall profit to the home owner at the expense of the insurer and it would contravene the fundamental principle of unjust enrichment, so, while not unsympathetic to where you are coming from, we will not support the amendment.

Clause 6 agreed to.

Clause 7 -
(Restrictions on payment under building work contracts)

Mr BOOTH - I have an amendment to clause 7 paragraph (b). I move -

That clause 7 paragraph (b) be amended by omitting '10%' and substituting '30%'.

I will be fairly brief about this. I have already made a fairly fulsome contribution to this bill but I think that in the case of building works of less than \$20 000 to give a builder a deposit of no more than 10 per cent is quite unfair, unreasonable and harsh on the building contractor. I would say the overwhelming majority of builders and building contractors are honest workers and to grant them only 10 per cent of a contract in that case - and, as we have already heard, in some cases the homeowners warranty policy is 20 per cent of the value of the work - is quite unfair. It is not fair that they have to take out a compulsory policy which might in fact be more than the 10 per cent deposit that they are allowed to collect. Very often it also requires them to get plans, documentation and engineering specifications drawn up and to go ahead and purchase materials means that on a \$20 000 job they would be lucky to be making a 10 per cent profit on that job at the end of the day. They are working people who have to find a substantial amount of money out of their own pockets before a start and I think that, if you are going to legislate for a deposit, on a contract of less than \$20 000 a deposit of up to 30 per cent would be a much more reasonable amount of money.

As I said, it would cover the cost of the insurance policy that is compulsory, the cost of plans and specifications, engineering and some of the materials. That is a reasonable provision and I think 10 per cent is unreasonable and unfair.

Mrs JACKSON - We will not be supporting this either. This is about protecting the consumer. Obviously there are other protections for the builder. If a builder could charge 30 per cent on any building works under \$20 000, once this bill is passed, they would not even have to have insurance under \$12 000. Assuming that the builder is charging a 30 per cent deposit on, say, a \$10 000 building work, they could charge \$3 000 and they could, in effect, walk away and not even start the job. They would not have had to have any insurance to start the job, so what is the consumer going to do then?

Mr Booth - They prosecute them.

Mrs JACKSON - Yes, but if he has nicked off and disappeared to Queensland or Darwin or wherever, by the time you had chased him you would probably do another \$3 000.

Mr Booth - I don't think many builders would bolt with a cheque for \$3 000.

Mrs JACKSON - Well, it has been known to happen. I take your point about their having to buy materials but most builders do not pay for those materials by cash.

Mr Booth - Increasingly they do now.

Mrs JACKSON - Well, they cannot have a very good credit rating. All the people I know have a relationship with the people they get their building materials from and they have 30 days at least.

Mr Hidding - I think that's probably true, Mr Booth.

Mrs JACKSON - Ten per cent is only for the contract extras, the things you have to pay for. The home owner's warranty, the engineer's certificate or the third party service providers are often charged separately from the contract, so they would be additional. But what we are talking about here is someone who starts work and before they start they ask for 10 per cent of the money which,

in my experience, is pretty unusual. I suppose if it is a large amount, \$12 000, then they might, but for normal jobs under that amount of money they would not. Ten per cent could be a \$1 000 deposit but in my experience it is not normal to ask for the money up-front on such a small job. I suppose if you are building a house it might be different. But I do not have any experience of that and it does not cover this area anyway, because they have the insurance and obviously if they walked away then that person would be able to recover the money. But it is for this amount of up to \$12 000 which could be \$1 200; you are suggesting it should be \$3 600.

Mr Booth - No, \$3 000 on \$10 000 instead of \$1 000.

Mrs JACKSON - That is quite a lot of money. Someone could just walk away with that and you might never see them again.

Mr Booth - The sky might fall in too, Judy.

Mrs JACKSON - It is a terrible thing to have to say but there are people around who are not all that honest and do take advantage of people. We hear about it all the time. I know the Office of Consumer Affairs gets constant complaints of people who are trying to take other people down, whether it is offering to paint their roof or their fence or whatever. There are people going around preying on people who are vulnerable. There always have been and I suppose there always will be.

Mr Hidding - Sometimes it's not even deliberate, the people are just incompetent.

Mrs JACKSON - There is that as well. People get themselves into a bit of trouble. They have a cheque in their pocket for \$3 600 and they think, I might go somewhere for a few weeks or months.

Mr MICHAEL HODGMAN - We will not be supporting the amendment.

Mr BOOTH - Thank you. Just in response to that, I think it is probably one of those things that we have a difference here in terms of our experience or ideological perspective on this. I would just like to make the point that I do think that would a reasonable amendment and I wonder how much intention there is to truly consider these things in a rational, fair way, rather than just to dig yourself into a ditch over them. It may well be that you could separate the home owner's warranty costs and the council application, engineering fees and so forth from the project, although I must say I have not seen that happen in my experience. The contracts that we used to do included all of the costs the building. I thought it was unlawful to separate them into a number of different tranches so that you might effectively be able to avoid the threshold figure for insurance, if one looked at it from that point of view. However, I was under the impression it had to contain all those things.

Of course there are criminals around, but it is the inconsistency of the consumer protection here and the same protection levies are not levied against every other person who carries out a service. It is quite strange that builders are so assailed with this fairly heavy-duty regulation. In many cases it is not only the cost of the engineering documentation and the home owner's warranty insurance and so forth, but a builder has to provide a lot of materials. It is increasingly the case that you are not granted credit from companies. It is becoming more of a cash or credit-card society. But supply companies are increasingly reluctant to provide credit, thanks to the activities of people like Mr Bissett and so forth, who have sent a couple of companies to the wall, owing suppliers hundreds of thousands, or millions of dollars. So the builder often has to buy a spa bath, a kitchen bench, pipe works, stainless steel sinks and so forth and they cost thousands and thousands of dollars.

I think it is reasonable that if a builder has to do that, and if it is not going to be within the realms of a level of deposit, there should be the possibility that the builder can insist on payment for those items immediately they are bought if the contract is for supply and install. You have to realise that

often on contracts of this size these builders are working for factory-floor wages, they are self-employed, and are not people who are well engaged in the ways of the corporate world. Often they have a ute, a hammer and a few tools - although it is a little bit more than just a few tools; they do actually have to get a kit up and have some experience - and, as I said, they are earning factory-floor wages. They find it very difficult to get any level of superannuation put away as a self-employed person. They do not have the ability to pay themselves sick leave and so forth, and I think that they are often at the bottom of the heap as far as income levels go. They are an unprotected worker effectively in that sense and if they do not have unions to protect them or industrial law to require them to get a minimum wage, they often quote on jobs and end up working for very little.

I think this is a punitive provision. It is unreasonable and it is judging builders by the same standards as crooks in the sense that the defence is that there are crooks around, so therefore consumers have to be protected from these people. I think it is unreasonable but anyway, I have said enough on this bill. No doubt the amendment will be defeated, but I look forward to working constructively with the minister at some point in time to bring in some amendments that will make this a more equitable system.

Amendment negatived.

Clause 7 agreed to and bill taken through the remaining stages.