

Chapter 7

Other matters

National Claims and Policies Database

7.1 The National Claims and Policies Database (NCPD) was a response to the crisis in availability of liability insurance which occurred in 2001-03. It was prompted by a recommendation of this committee's 2002 report on public liability and professional indemnity insurance. The committee suggested that better industry-wide information on risks and claims would help insurers to set fairer, more stable premiums in these small (in the case of professional indemnity) and long-tail portfolios.¹

7.2 The database was created at the request of government and is administered by the Australian Prudential Regulation Authority (APRA), using powers under the *Financial Sector (Collection of Data) Act 2001*. It is intended to give insurers information to help them assess risks and determine appropriate premiums. It covers public liability, product liability and professional indemnity. The first data collection occurred in early 2005 and included claims and policies data from 1 January 2003. All APRA-regulated insurers must comply (unregulated foreign insurers and discretionary mutual funds do not have to comply).

7.3 Summary reports on policies and claim development are freely available, with protocols to ensure confidentiality of individual insurers.² For each class, reports show the number of risks written and the gross premium, and the development of claims.³ More detailed reports with breakdowns by occupation and industry classification (for example) are available by subscription.⁴

7.4 On some points (particularly the development of claims), the database has more detailed information than the NSW Office of Fair Trading HWI reports.

7.5 APRA also publishes information on general insurance as a whole in its *Quarterly General Insurance Performance* and *Half Yearly General Insurance*

1 Senate Economics References Committee, *A Review of Public Liability and Professional Indemnity Insurance*, October 2002, p.78ff

2 APRA, *National Claims and Policies Database - explanatory notes*, 5 September 2007, p.5

3 'Risks written' is different from policies written as a policy may have more than one associated risk. APRA, *National Claims and Policies Database - explanatory notes*, 5 September 2007, p.6

4 See www.ncpd.apra.gov.au APRA intends that some non-APRA-regulated insurance providers, including Lloyd's Australia Ltd and state and territory insurers, will be included in future reports. *National Claims and Policies Database - Overview of Professional Indemnity and Public and Product Liability Insurance*, 5 September 2007, p.4

Bulletin. These reports contain profit-related information such as loss ratios and underwriting results, some of which is broken down by the major general insurance classes. Information on home warranty insurance is gathered, but is not reported separately, as it is a small part (possibly about 5 per cent) of the public and product liability class.⁵

7.6 The NCPD database is limited to professional indemnity and public and product liability insurance. Treasury advised that APRA undertook public consultations on the specifications of the NCPD in July/August 2003 and October to December 2003. Information was disseminated by media release and on APRA's website and submissions were invited. A number of submissions were received however only a small number of respondents commented on home warranty insurance. Of those, some strongly opposed including home warranty insurance in the database, and others queried its inclusion. Reasons for this included that home warranty insurance would require different specifications and that given the small number of insurers (in 2003) it would not be possible to publish information due to the confidentiality requirements that would apply.⁶

7.7 It appears that the Builders Collective of Australia was not aware of the consultation in 2003.⁷ Representative of Vero, the major HWI insurer, advised that Vero did not have input at that time. Vero had no objection to including HWI in the database now. They also commented that 'this highly volatile class needs greater consistency in the actuarial approach to predicting future claims costs'.⁸ This implies that the purpose of the database - to provide better industry-wide information on small and volatile classes - would be valid for HWI.

Effect of Corporations Regulation 7.1.12(2): retail vs wholesale clients

7.8 Corporations Regulation 7.1.12(2) exempts mandatory home warranty insurance from certain consumer protections in the *Corporations Act 2001*. Some submitters thought that this in some way removes HWI from oversight by APRA, ASIC or the ACCC which would otherwise exist. Some submitters also thought that the regulation was necessary, and was made deliberately, to implement the last resort

5 The 14 classes of general insurance reported in APRA's half-yearly reports are further described in the general insurance reporting instructions. Home warranty insurance, with gross premiums estimated at about \$85 million by HIA Insurance Services, is about 5 per cent of public and product liability with gross premiums of about \$1.9 billion in 2007. APRA, *Half Yearly General Insurance Bulletin*, December 2007, p.19. Mr D. Farrell (HIA Insurance Services), *Committee Hansard* 11 August 2008 (in camera), p.1

6 Department of the Treasury, additional information 29 July 2008, p.10. See also Ms V. Wilkinson (Treasury), *Committee Hansard* 13 June 2008, p.59-60

7 Builders Collective of Australia, correspondence 25 August 2008, p.6

8 Mr P. Jameson & Mr J. Nagle (Vero Insurance Ltd), *Committee Hansard* 20 June 2008 (in camera), p.7,12. Vero Insurance Ltd, correspondence 13 October 2008

changes to HWI in NSW and Victoria from 1 July 2002.⁹ Some also seemed to think that the regulation was necessary to enable insurers to demand bank guarantees or deeds of indemnity from builders.¹⁰

7.9 These claims have no basis. They misunderstand the law. In some cases the concern seems to arise from confusing APRA's role as prudential regulator with APRA's role collecting information for the National Claims and Policies Database, discussed above.

7.10 In fact Corporations Regulation 7.1.12(2) has no connection with and no effect on APRA's prudential regulation of insurers. It has no connection with APRA's information-gathering or with the National Claims and Policies Database. It has no effect on the general consumer protection powers of ASIC and the ACCC, or the States' power to make laws about home warranty insurance. It was not a prerequisite to the scheme changes which took place in NSW and Victoria from 1 July 2002. Details follow.

Description and context of Corporations Regulation 7.1.12(2)

7.11 Chapter 7 of the *Corporations Act 2001*, enacted in 2002, imposes requirements for the sake of consumer protection on providers of financial services and financial products such as general insurance contracts.¹¹ A distinction is made between 'retail clients' and 'wholesale clients'. Retail clients, but not wholesale clients, enjoy -

- access to an external dispute resolution scheme approved by the Australian Securities and Investments Commission (ASIC);
- compensation arrangements providing cover in case of misconduct by the licensee;
- the provider's obligation to provide a range of disclosure documents (financial services guide, statement of advice and/or product disclosure statement as relevant).¹²

7.12 A retail client includes the purchaser of six listed classes of insurance, including 'a home building insurance product (as defined in the regulations)' (s761G(5)(b)).¹³

9 For example, Housing Industry Association, submission 60, p.8. Builders Collective of Australia, submission 20, p.8-9: 'This action removed the BWI product from any form of consumer protection scrutiny by any authority including ACCC, APRA and of course ASIC as last resort BWI was now deemed a wholesale product'. Mr P. Dwyer (Builders Collective of Australia), *Committee Hansard* 10 April 2008, p.3: 'The 10 point plan... put in motion a change to the corporations regulation to allow this to come into play.'

10 Builders Collective of Australia, correspondence 27 June 2008, p.1

11 A 'financial product' includes a contract of insurance (with exceptions not relevant here): s764A

12 Treasury, additional information 29 July 2008, p.13

7.13 These provisions were inserted into the Corporations Act by the *Financial Services Reform Act 2001*, which came into force on 11 March 2002. This was part of a wide-ranging reform of regulation of financial services, which responded to recommendations of the 1997 Financial System Inquiry (the Wallis Committee). The aim of s761G was to make clear that an individual or small business purchaser of one of the listed classes of insurance is a retail client (except where another provision shows otherwise), and a purchaser of insurance not on the list is not a retail client. The listed classes follow the classes subject to 'standard cover' consumer protection provisions in the *Insurance Contracts Act 1984*.¹⁴

7.14 The Corporations Amendment Regulations 2001 (No.4) supported the Financial Services Reform Act, and were similarly wide-ranging (the regulations have 491 pages). Draft regulations were put out for public consultation in August and September 2001.¹⁵ The regulations came into force with the main amendments in the Financial Services Reform Act, on 11 March 2002.

7.15 The regulations further define the classes of insurance mentioned in s761G(5) of the Corporations Act, which determine the scope of 'retail client'. They list inclusions and exclusions. The exclusions generally follow the exclusions from the 'standard' cover' protections in the *Insurance Contracts Act 1984*: they exclude marine insurance and insurance for the purposes of a law (including a law of a State or Territory) relating to workers compensation or compulsory third party compensation.¹⁶ The exclusions also include (with no direct correlate in the Insurance Contracts Act) home warranty insurance mandated under state law, as follows:

Corporations Regulation 7.1.12

For subparagraph 761G (5) (b) (ii) of the [Corporations] Act, a home building insurance product is a contract that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of destruction of or damage to a home building.

A home building insurance product does not include insurance entered into, or proposed to be entered into, for the purposes of a law (including a law of

13 Providing the purchaser is an individual or small business as defined.

14 Financial Services Reform Bill 2001, explanatory memorandum, p.1,29-30. The listed classes are motor vehicle, home building, home contents, sickness and accident, consumer credit, travel, and personal and domestic property insurance, as defined in the regulations. The list can be added to by regulation. All but the last copy the classes subject to 'standard cover' consumer protection provisions in the Insurance Contracts Act. The 'standard cover' provisions have the effect that an insurance contract is assumed to have certain conditions relating to the events covered and the minimum cover, unless the insurer has clearly advised to the contrary. *Insurance Contracts Act 1984*, s32-37. *Insurance Contracts Regulations 1985*, reg 5ff.

15 Corporations Amendment Regulations 2001 (No.4), explanatory statement, p.3-4

16 The *Insurance Contracts Act 1984* as a whole, thus including the standard cover provisions, does not apply to insurance for the purposes of a law relating to workers compensation, or insurance for the purposes of a law relating to compensation for death or injury resulting from the use of a motor vehicle: s9.

a State or Territory) that relates to building or construction work in relation to a home building.

7.16 The result is that the purchaser of mandatory home warranty insurance is not a 'retail client', so the product disclosure and related provisions of the Corporations Act do not apply.¹⁷

7.17 The explanatory statement of the Corporations Regulations gave no clear reason for this particular exclusion. It only said:

The exclusions (some of which were based on section 9 of the Insurance Contracts Act) have generally been limited to marine insurance, workers' compensation insurance, compulsory third party insurance and, in the case of home building insurance, cover required under statute in respect of residential building works.¹⁸

7.18 Treasury advised that the exclusion was based on the view that if a state or territory law mandates certain insurance, the state or territory law should also be responsible for outlining what disclosure or other consumer protections should apply:

This exclusion is consistent with the treatment of other state mandated insurance products such as workers compensation and compulsory third party motor vehicle insurance. The reason for these exclusions is that, if a state or territory law mandates a certain type of insurance, in the Commonwealth's view, the state or territory law should also be responsible for outlining what disclosure and/or other consumer protection measures need to accompany the insurance. If the Commonwealth also regulates in this space, there is a risk of duplication and/or inconsistency between Commonwealth and state/territory based regulation which may well increase the overall regulatory burden and result in increased insurance costs.¹⁹

17 If the insurance is not mandatory ('entered into for the purposes of a law') the exclusion does not apply, and the purchaser would be a retail client providing some other tests are satisfied (the purchaser should be an individual or small business as defined, and the insurance should satisfy the definition of 'home building insurance product' in the regulation). It should be remembered that in this case the purchaser is the builder, not the homeowner. Department of the Treasury, additional information 29 July 2008, p.13

18 Corporations Amendment Regulations 2001 (No.4), explanatory statement, p.6

19 Ms V. Wilkinson (Department of the Treasury), *Committee Hansard* 13 June 2008, p.57-58. It is not clear that this was the original motivation for excluding certain state-mandated insurance from the *Insurance Contracts Act 1984*, which was the precursor of the present provision. The exclusion of workers compensation and compulsory third party insurance came about because the Act responded to recommendations of the Australian Law Reform Commission's report 20, *Insurance Contracts* (1982), and these classes were excluded from the ALRC's terms of reference. The reason for excluding them from the ALRC's terms of reference is not discussed in the ALRC report, however the explanatory memorandum of the Insurance Contracts Bill 1984 commented: 'They are both forms of compulsory liability insurance and so subject to different considerations such as whether they should be replaced by a principle of general accident compensation': p18.

7.19 Vero Insurance Ltd said:

There is no connection between the HWI 10 point plan and the FRS amendments to the Corporations Act to introduce product disclosure (to purchasers of general insurance) other than they occurred at approximately the same time. HWI was not defined as a retail product because, like workers compensation and motor compulsory third party insurance, it was mandated insurance the structure for which was already in place under the relevant state legislation.²⁰

7.20 Further: although the exclusion of mandatory HWI has no direct correlate in the 'standard cover' provisions of the Insurance Contracts Act, it is noteworthy that the 'home buildings' section of the standard cover provisions is clearly directed at loss or damage to a complete, inhabited dwelling from the usual causes (fire, theft, burst pipes etc).²¹ The intention in the Corporations Regulation may have been to duplicate the standard cover provisions, but to clarify an exclusion that arguably was already implied, to avoid doubt.

7.21 Further: the exclusion of mandatory HWI is consistent with the definition of 'home building insurance product' elsewhere in the regulation. A 'home building' does not include a building that is under construction by the insured (in this case, the builder) in the course of a construction business (regulation 7.1.12(4)). It appears the intention was to exclude professional builders, consistent with the underlying concept of 'retail client'.

7.22 The National Insurance Brokers' Association thought there would be little benefit in making home warranty insurance a 'retail' product:

Builders, the policyholders, regularly take out Home Warranty Insurance and as a result they generally have a sound knowledge of the product. There would be little or no benefit in designating Home Warranty Insurance to be a "retail" product under the Corporations Act. Designating Home Warranty Insurance to be "retail" would simply mean that builders were required to receive additional disclosure documents that would be no benefit to the vast majority of them. The additional costs involved would far exceed any potential benefits.²²

7.23 Treasury agreed that there is merit in providing better information for consumers about the nature of the product, but thought that 'the Corporations Act may not be the appropriate vehicle for achieving this.'²³ In this regard it should be remembered that the 'client' in this case is the builder who purchases the insurance, not the homeowner who is the beneficiary. The Corporations Act does not regulate the relationship between the insurer and a third party beneficiary or between the purchaser

20 Vero Insurance Ltd, correspondence 24 July 2008, p.11

21 Insurance Contracts Regulations 1985, reg. 11.

22 National Insurance Brokers Association, submission 127 p.4

23 Ms V. Wilkinson (Department of the Treasury), *Committee Hansard* 13 June 2008, p.58

(builder) and the third party beneficiary. Corporations Regulation 7.1.12(2) did nothing to change regulation of those relationships, as they were not regulated under the Corporations Act in any case. If the regulation was changed to make the builder purchasing home warranty insurance a 'retail client', this would not address the demand for better information for homeowners.

Committee comment

7.24 Corporations Regulation 7.1.12(2) relates only to the product disclosure and related provisions in Chapter 7 of the Corporations Act. It did not remove any consumer protections which previously existed, as it was part of a new scheme created by the *Financial Services Reform Act 2001*.

7.25 The exclusion of mandatory home warranty insurance from the product disclosure regime for retail clients was consistent with the precedent of the 'standard cover' provisions in the *Insurance Contracts Act 1984*. The definition of 'home building insurance product' shows an intention that professional builders should not be regarded as retail clients. The exclusion is consistent with the exclusion of other state-mandated insurance, on the grounds that if the state chooses to make insurance mandatory, it should be responsible for the disclosure regime.

7.26 The Corporations Act does not regulate the relationship between the insurer and a third party beneficiary - in this case, the homeowner. If the regulation was changed so that a small builder was a retail client, this would have no bearing on concerns about the improving information to homeowners about the product.

7.27 If small builders purchasing home warranty insurance were defined as retail clients, the most significant effect would be that they would have access to an external dispute resolution scheme approved by ASIC.²⁴ This could include complaints about refusal to insure (which was the main complaint made by builders in this inquiry).²⁵ However it appears that the present dispute resolution scheme intends to exclude liability insurance generally.²⁶ The possibility of including home warranty insurance would have to be considered in context of the policy on liability insurance generally. It would not be sound to include home warranty insurance alone as an ad hoc measure.

24 They would have to satisfy the other tests of 'retail client': relevantly they must be either an individual or a small business employing less than 20 people: *Corporations Act 2001*, s761G(5) & (12). For dispute resolution schemes: *Corporations Act 2001*, s912A. Treasury, additional information 29 July 2008, p.4

25 The scheme allows for 'non-claim' disputes which may include 'the failure to offer insurance or to only offer insurance on non-standard terms'. Financial Ombudsman Service, *General Insurance Terms of Reference*, 1 July 2008, clause 4.3

26 For small business applicants as defined public and product liability insurance is excluded. Compulsory third party motor vehicle and workers compensation is generally excluded. Financial Ombudsman Service, *General Insurance Terms of Reference*, 1 July 2008, clauses 1.2, 2.1

7.28 The relevant dispute resolution scheme is administered by the Financial Ombudsman Service Ltd. The Financial Ombudsman Service was created on 10 July 2008 as a merger of three former schemes: the Banking and Financial Services Ombudsman, the Financial Industry Complaints Service, and the Insurance Ombudsman Service. It is now reviewing the terms of reference of the three former bodies with the aim of developing a new single terms of reference by 2009.²⁷

Role of the Australian Prudential Regulation Authority (APRA)

7.29 APRA is the prudential regulator of the financial services industry. APRA regulates private insurers under the *Insurance Act 1973*. This includes insurers who provide home warranty insurance contracts. APRA collects information from insurers using powers under the *Financial Sector (Collection of Data) Act 2001*, and uses it to publish quarterly and half yearly statistical bulletins.

7.30 It has been suggested that APRA does not collect data on home warranty insurance.²⁸ This is wrong. APRA's data collection includes data on home warranty insurance, though it is not visible separately, as it is gathered and reported as part of the much larger class 'public and product liability'.²⁹

7.31 APRA separately collects information on public liability, product liability and professional indemnity insurance for the National Claims and Policies Database, as discussed above.

7.32 It has been suggested that Corporations Regulation 7.1.12(2) removes home warranty insurance from some APRA oversight which would otherwise apply and does apply to other classes of insurance. This is wrong. The regulation has no connection with and no effect on APRA's activities. Home warranty insurance has no special status in APRA's prudential regulation or data collection.³⁰

Role of the Australian Securities and Investments Commission (ASIC)

7.33 ASIC has general consumer protection powers in relation to financial services as defined in the ASIC Act. These control behaviour such as unconscionable conduct, misleading or deceptive conduct, bait advertising, pyramid selling and so on. They

27 The FOS board has done an initial public consultation, and plans to put out draft Terms of Reference for further stakeholder comment early in 2009. Financial Ombudsman Service, *Developing New Terms of Reference for the Financial Ombudsman Service*, 14 August 2008, p.4

28 Builders Collective of Australia, submission 119, p.1

29 Home warranty insurance appears to be about 5 per cent of the liability class: see footnote to paragraph 7.5.

30 The comment assumes that 'State insurance' within the meaning of the *Insurance Contracts Act 1984* and s51(xiv) of the Constitution means insurance issued by the state as insurer. This appears to be the case: see the High Court case *Attorney-General (Vic) v Andrews*, (2007) 233 ALR 389, which assumes that 'state insurance' has a meaning analogous to 'state banking'.

mirror provisions in the Trade Practices Act which the Australian Competition and Consumer Commission (ACCC) administers except in relation to financial services.³¹

7.34 This general consumer protection law applies to all contracts of insurance,³² and this is not affected by Corporations Regulation 7.1.12(2). There was no suggestion in this inquiry that home warranty insurers have offended against the general consumer protection law.

Corporations Regulation 7.1.12(2) and state laws

7.35 The states have general legislative power.³³ The Commonwealth has legislative power on the subjects listed in section 51 of the Constitution. If a state law and a Commonwealth law conflict, the Commonwealth law prevails to the extent of any inconsistency.

7.36 Corporations Regulation 7.1.12(2) relates only to the product disclosure and related provisions of the Commonwealth *Corporations Act 2001*. It has no connection with and no effect on the state laws which mandate home warranty insurance. It was not a prerequisite to implementing the last resort changes to HWI which NSW and Victoria made from 1 July 2002. This was done under state law using the states' general legislative power. The fact that the regulation was made about the same time was a coincidence. As explained above, the regulation was a small part of a wide-ranging reform of financial services law which had been under development for four years. It reflects precedents that go back to the *Insurance Contracts Act 1984*.

Claims of conflict of interest within the HIA

7.37 The Housing Industry Association Ltd (HIA) is Australia's largest builder organisation. It has over 40,000 members and revenue of \$88.5 million in 2007. It is a non-profit public company limited by guarantee. It has no shareholders and does not pay dividends to members. Revenue is used to provide services for members.³⁴

7.38 The HIA supports privatised last resort home warranty insurance (though in this inquiry it made some suggestions for reform, as discussed previously) and opposes suggestions to return to a Queensland-style government scheme.

7.39 Some submitters of the opposite view claimed or implied that the HIA has a conflict of interest in this matter, since (they believe) the HIA is acting contrary to its

31 *Australian Securities and Investments Commission Act 2001*, part 2. *Trade Practices Act 1974*, parts 4A & 5.

32 With a few exceptions that are not relevant here. *Australian Securities and Investments Commission Act*, s12BAA(7) & (8)

33 With a few exceptions noted in the Constitution, which are not relevant here.

34 Dr R. Silberberg (HIA), *Committee Hansard* 17 September 2008, p.1. Builders Collective of Australia, additional information 25 July 2008, p.3

members' interests, and suppressing internal dissent, for the sake of the income it gets from the insurance.³⁵

7.40 The HIA advised that 'revenue from activities associated with HWI accounts for about 3 per cent of HIA's gross revenue from all sources.'³⁶

7.41 The HIA is half owner of HIA Insurances Services Pty Ltd (HIAIS), an insurance broking business.³⁷ HIAIS is one of about 250 brokers in Australia who do home warranty business. HIAIS is the biggest of these, with about 40 per cent market share of the home warranty business. HIAIS also brokers other insurances for builders.³⁸

7.42 Mr Donovan of HIA Insurance Services said 'there is no compulsion, there is no necessity, for a HIA member to use HIA Insurance Services. Likewise, many clients of ours are not HIA members.'³⁹

7.43 In 2007 the HIA received \$2.35 million as its share of HIAIS profits attributable to home warranty insurance. This was 2.6 per cent of HIA revenue of \$88.5 million.⁴⁰ That percentage has been declining in recent years and is expected to continue declining.⁴¹ HIAIS also pays the HIA for office accommodation and marketing services on a commercial basis. HIAIS gave the committee confidentially recent figures for these payments. They are small in proportion to the licence fee payments and do not change the general conclusions about the HIA's income from HIAIS.⁴²

35 For example, Mr R. Joseph, *Committee Hansard* 10 April 2008, p.12

36 Housing Industry Association, submission 75, p.3.

37 The other half owner is Aon Risk Services. Aon is Australia's and the world's largest insurance broker. HIAIS operates as an authorised representative under the licence of Aon Risk Services. Mr D. Farrell (HIA Insurance Services), *Committee Hansard* 11 August 2008 (in camera), p.2-3

38 Mr D. Farrell (HIA Insurance Services Pty Ltd), *Committee Hansard* 11 August 2008 (in camera), p.2,9

39 Mr G. Donovan (HIA Insurance Services), *Committee Hansard* 11 August 2008, p.6

40 Dr R. Silberberg (HIA), *Committee Hansard* 17 September 2008, p.1. The total 'licence fee' from HIAIS to HIA, which represents the profit share, was about \$6 million, but this includes profit attributable to other lines of business. HIA Insurance Services Annual Report 2006.

41 HWI-related HIAIS profit share/HIA revenue (\$ million): 2005: 2.7/69.3=3.9%. 2006: 2.5/74.2=3.4%. 2007: 2.35/84.8= 2.8%. Dr R. Silberberg (HIA), *Committee Hansard* 17 September 2008, p.1. HIA annual reports. HIA Insurance Services, correspondence 27 October 2008.

42 Mr G. Donovan (HIA Insurance Services), *Committee Hansard* 11 August 2008 (in camera), p.23. HIAIS, correspondence 27 October 2008

7.44 The HIA advised that no HIA member or staffer has shares in HIAIS (HIAIS has no individual shareholders). Two HIA staff are directors of HIAIS, but they receive no payment for that.⁴³ HIAIS makes no loans to HIA or anyone within HIA.⁴⁴

7.45 On the suggestion that the HIA is prejudiced by a vested interest in the status quo, the HIA manager director Dr Silberberg said:

I am bemused by the observation that HIA has some conflict of interest which prejudices its objectivity in looking at this or any other matter. Our National Policy Congress took a decision to support voluntary home warranty. If we were solely guided by some sort of financial motive, why would HIA support a policy of voluntary home warranty in the states outside of Queensland?⁴⁵

7.46 As to whether the HIA is suppressing internal dissent: the HIA does not have a structure in which ordinary members can requisition a general meeting of the whole association (which is the default rule under s249D of the *Corporations Act 2001*). The HIA has a structure in which only certain regional and national office-bearers (and a few others ex-officio) are entitled to attend and vote at general meetings of the whole association.⁴⁶ The regional and national office-bearers are elected by outgoing committees, not directly by the members. The Articles of Association appear to envisage that grass roots involvement takes place at the branch level (to the extent allowed by the relevant regional executive committee), and members' views are then passed up to regional executive committees and taken by the regional office bearers to the national policy congress and general meetings of the whole association.⁴⁷

7.47 In provisions similar to s249D of the *Corporations Act*, ten per cent of those entitled to vote at a general meeting of the whole association can requisition a general meeting, and ten per cent of the members in a region can requisition a general meeting of the region.⁴⁸

43 Dr R. Silberberg (HIA), *Committee Hansard* 17 September 2008, p.1

44 Mr G. Donovan (HIA Insurance Services), *Committee Hansard* 11 August 2008 (in camera), p.24

45 Dr R. Silberberg (HIA), *Committee Hansard* 17 September 2008, p.11

46 Under s249D of the *Corporations Act 2001* a general meeting of a company may be requisitioned by at least 100 members *who are entitled to vote at the meeting*. The *Corporations Act* also has provisions about who is entitled to vote at a general meeting (s250E), but this is a replaceable rule - the Act allows a company's constitution to change the rule. Under the HIA's constitution (the Articles of Association) those entitled to vote at a general meeting of the whole association are limited to those entitled to attend and vote at the National Policy Congress; and those entitled to attend and vote at the National Policy Congress are limited to certain regional and national office bearers. HIA Articles of Association 31, 55(b)

47 HIA Articles of Association 28: a Regional Executive Committee may establish branches and pass by-laws for the administration of branches including for the election of office bearers of branches. There are nine HIA regions, mostly following state boundaries.

48 HIA Articles of Association 54-55.

7.48 Dr Silberberg of the HIA commented on the suggestion that the HIA does not properly represent its members:

We survey our members regularly and we have in excess of 40,000. We ask them what are the issues that occupy their minds, that keep them awake at night. Home warranty has dropped off the radar. For many builders it is a past issue... today 70 per cent of residential builders in New South Wales and Victoria are in the top-rated categories, so they enjoy the lowest premiums. Go back to 2001 when HIH collapsed: less than 10 per cent of builders were in the top categories as rated by Royal and Sun Alliance at that time, so there has been a significant shift by the industry.⁴⁹

Committee comment

7.49 On the evidence the HIA receives about 2.6 per cent of its income from its connection with brokering home warranty insurance. In recent years that figure has been declining. The Committee does not see evidence that the HIA's views on home warranty insurance is improperly influenced by that income. The HIA supports its views with various arguments. Whether or not one agrees with them, there is no reason to think its views are not held *bona fide*.

7.50 The Committee received evidence which shows there are hostile relationships between the HIA and some members and former members who disagree with the HIA's policy on home warranty insurance. The committee does not know the full context and did not question the HIA in detail on these complaints (since they are marginal to the policy issues which were the focus of the inquiry). The committee takes no view on whether the HIA's approach to these debates is reasonable. The Committee takes no view on whether the HIA's representative structure described above is effective at acting on the views of the membership.

Allegations about Senator Helen Coonan

7.51 During the inquiry allegations were made about the Hon. Senator Helen Coonan, former Minister for Revenue and Assistant Treasurer in the Howard government. The allegations are discussed in Appendix 4. The committee concluded that there was no reason to investigate the allegations against Senator Coonan nor any reason to refer the allegations to any other body.

49 Dr R. Silberberg (HIA), *Committee Hansard* 17 September 2008, p.7