



27 June 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam,

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

Thankyou for the opportunity to provide a submission to the Inquiry. Building Ethics Australia acts as an intermediary and also provides a quality assurance program to builders.

Introduction

The directors of Building Ethics Australia (BEA) are former builders. We have been motivated to contribute to this Inquiry as a result of reading a number of submissions that we strongly disagree with. The BEA program was developed as a result of the turmoil caused by the collapse of HIH in 2001. The collapse had a direct impact on our building businesses due to the changes to underwriting that the remaining insurers implemented. These changes resulted in restricted turnovers, limits on the value of any individual contract and significant limitations on the types of business structures a builder could operate under. Initially it was not the intention of the directors to form a business however it became clear that the program would not be implemented by anyone else.

From 2001 to 2004 the program was developed and presented to numerous insurers seeking their support. In 2004 Munich American Risk Partners decided to support builders accredited with BEA. Initially access was only available to Victorian builders, however as BEA proved itself, the insurer allowed NSW builders access in September 2005 and WA builders access in March 2006.

Overview of the Program

BEA assesses builders who apply on their financial viability, technical ability and reputation with clients. The financial assessment is not asset based and therefore allows builders the freedom to implement their financial and legal advisors advice, relating to tax planning and business structures, without concerns it may impact on their access to Warranty Insurance.

Profitability and solvency are a significant part of the assessment. Previous clients are contacted to ascertain whether the builder is reputable and treats his clients fairly.

Once a builder meets the requirements he must have a BEA inspection at each progress payment stage on all contracts. The BEA appointed inspector checks that the quality of the work meets industry standards using *The Guide to Standards and Tolerances (Produced in collaboration with the Victorian Building Commission, the Office of Fair Trading NSW, the Tasmanian Government and the ACT Government)* as a measure. The inspectors also give feedback to BEA if they feel progress claims are premature or excessive. Both the builder and homeowner sign a "Contract Addenda" stating no money will change hands except deposit prior to confirmation being received from BEA that the works have been inspected. This document is signed at contract signing stage, thus ensuring the homeowner is aware of BEA's involvement and the Warranty Insurer who will issue the policy.

Inspections are a two day maximum turnaround and enable BEA to have a comprehensive set of data on a builder without hindering the builder's cash flow. Early warning signs of financial difficulties have allowed measures to be put in place early. The inspections also enable any builder's oversights to be addressed before further works complicate any rectification. Early detection of poor work has also averted many disputes.

Advantages for Builders

Builders who are accredited with BEA are not required to expose any security to the insurer. There are no deeds of indemnity or bank guarantees they are not limited on how much work they can undertake based on assets, they can hold themselves out to their clients as builders who are prepared to have their work independently scrutinised before being paid. Inspections help oversights to be picked up averting costly repairs.

Advantages for Homeowners

The advantages for homeowners are obvious. They don't pay the builder without an independent inspection. They know when choosing a BEA builder that the builder has been checked, is constantly monitored and has chosen to be scrutinised. When an insurance claim has been made BEA have been able to expedite the process due to our records on the contract and inspector knowledge of the physical aspect of the building. BEA has also been able to keep the homeowners informed throughout the process.

Advantages for the Insurer

Because BEA is born out of the building industry we have been able to act as a conduit between the building industry and the insurer. This has enabled the insurer to receive a unique and comprehensive assessment of each builder they are insuring. As a result of the inspections they have a live snap shot of exactly how many contracts they have exposure to on any builder, and just as importantly whether the builder is progressing through each contract at an acceptable rate. With the obvious link between low profits and slow progress, early intervention reduces their exposure.

Conclusion

BEA have read a number of submissions and have been surprised by numerous claims that a builder must provide guarantees and have limits imposed on the amount of work they can carry out under a privatised warrant system. This is patently wrong as our program has demonstrated, BEA does not require any asset exposure and a builder is limited only by his ability; builders who are operating under these constraints do so by choice. Surprisingly a number of these claims have been made by builders who know of our existence. The fact that BEA exists demonstrates the advantage of a privatised system. A privatised system allows choice for builders and choice for consumers to decide on the level of protection they want when building. Builders who operate under BEA are effectively delivering a first resort system to their clients, by enabling access to an independent third party to assist with any issues in a neutral manner.

Our experience over a number of years has shown that if issues are dealt with early they can be resolved with minimal time and cost. By inspecting work as it progresses it enables common problems to be dealt with as they arise before hostilities begin. Our situation is unique as we are accessible to both the builder and home owner when a disagreement arises.

Wishing for an insurance policy that pays out simply because one party is not adhering to their obligations to a contract would be unprecedented in any industry. It would create an atmosphere where both parties feel they are not obliged to cooperate with each other.

BEA does not believe the current Warranty Insurance scheme is failing; however like any scheme it should be constantly improved. The trigger point for insolvency should be better defined to avoid the time and cost involved when a builder essentially stops trading but does not meet the insolvency criteria as per the Corporations Act. Regulatory authorities should be given more power to enforce compliance with the various building laws and take action against recalcitrant builders. This is a complex area as the actions should be carefully chosen to ensure sub contractors and other home owners are not unfairly impacted upon.

The enquiry has correctly identified a shortfall in consumer awareness of Warranty Insurance. BEA builders provide their prospective clients with a brochure outlining the level of protection they can enjoy. This ensures the home owner has a clear choice between a BEA builder and a builder offering only last resort protection. Additional consumer awareness programs by the regulatory authorities would be of great benefit to both builders and consumers.

If you have any questions or would like further information please contact us.

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