

PRIVATE AND CONFIDENTIAL

Mr G Dawson
Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By e-mail economics.sen@aph.gov.au

Dear Sir,

Re: Home Owners Warranty

State Government
- Housing Guarantee Fund Ltd (HGFL)
- Victorian Managed Insurance Authority (VMIA),
("Fund").

Victorian Civil and Administrative Tribunal ("VCAT") decision - November 2005.

DECISION: AWARD COMPENSATION AND COSTS TO

Following our telephone discussion on 17th April 2008, we wish to make a submission to the Senate Committee.

Our case appears clearly as a valid issue in terms of the Senate's legislative and general purpose Committee looking into the "Australia's Mandatory Last Resort Home Warranty Insurance Scheme". The Senate Committee should also note this is of serious nature and careful consideration is required that our case still has not been resolved with the 'Home Owners Warranty' problem.

Our Submission and our attachments can be made public, but it is requested our names, as private citizens are not released to the public.

Yours faithfully,

Re: **State Government**
- Housing Guarantee Fund Ltd (HGFL)
- Victorian Managed Insurance Authority (VMIA),
("Fund").

Victorian Civil and Administrative Tribunal ("VCAT") decision - November 2005.

DECISION: AWARD COMPENSATION AND COSTS TO HOME OWNER

We are advised to write to you, given our circumstances with the 'Home Owners Warranty' problem.

HOME OWNERS WARRANTY: The home owner is married with 3 children; her family live in a suburb of Melbourne. The children were 8, 7 & 5 years of age when we extended our family home with a further double story extension, but this instead ended with defective building works. Foundation movement has resulted in several problems including; one wall split open as it is resting on 2 separate foundations; gaps (in one section a small child can put their fist inside); air flows from the outside between these gaps. The Builder, now unregistered did not return to rectify.

THE HOUSING GUARANTEE FUND LTD ACCEPTED THE CLAIM: The Housing Guarantee Fund Ltd (Fund) in 2002 invited the owner to make a claim. The Fund accepted the claim. In their letter (enclosed) dated 16 January 2004 the Fund stated they would "reimburse the owners for costs incurred". Our Quantity Surveyor's report, in 2002 (estimate, \$39,969), was initially provided to the Fund. The Fund, however, failed to provide indemnity and the owner was left with no option but to take the matter to the Victorian Civil and Administrative Tribunal.

VCAT's DECISION

COMPENSATION: In November 2005, VCAT stated "The Fund had already accepted the claim and agreed to provide indemnity for the full cost..." but VCAT also noted "the Fund provided no indemnity". VCAT ordered the Fund pay compensation, \$39,231, to the owner and VCAT accepted our expert's "method of rectification"; the awarded sum is almost to the exact same amount as our "Quantity Surveyor's" estimate, \$39,969.

However, they still have not paid the full sum of \$39,231.

This was a simple case. However, the Fund argued against this case at VCAT making this case protracted and very difficult to present resulting in the owner incurring extensive legal and experts' costs.

COSTS: Despite the Fund's previous advices that they would reimburse our costs, they instead argued at VCAT they should not have to pay the owner's costs. Contrary to the Funds arguments, VCAT awarded costs to the owner and stated she is "entitled to the fruits of litigation".

The Fund has not to this day, paid the owner's costs.

VCAT ORDERS: The Fund refused to pay compensation awarded by VCAT. This went back to VCAT for a 2nd hearing and VCAT ordered compensation is to be paid to the owner. The Fund refused. The Fund instead demanded that a further document be signed (and this appears contrary to VCAT's orders and Ministerial guidelines).

THIS CASE SHOULD NEVER HAVE GONE TO TRIAL: Our legal advisers have raised the question to us why this went to trial; this was a simple case, the Fund accepted the claim. The only question was the 'quantum' (and this was also confirmed by VCAT).

A simple process of administrative procedures should have been implemented - allowing for an internal review of claim decisions by a senior panel of staff (and expert building consultants) and a right to appeal against an officer's decision within the Fund (i.e. these are basic internal controls that could handle a large number of claims). This would possibly avoid massive costs being incurred by both parties (prior to closing a file and advising that a claim must be lodged within 60 days) in a court of law.

This question has been put to the Minister and the Fund, but we have not received an answer nor received any reason.

MINISTER

We believe the Minister has a moral obligation (above legal obligations) to ensure the Fund fulfills their representations.

The owner has previously written to the responsible Victorian State Minister, Mr. T Holding MP. The Minister replied himself in his letter (see enclosed) dated 2nd August 2007 directing the owner now to the Victorian Managed Insurance Authority (Fund) who is taking over the matters of the Housing Guarantee Fund Ltd.

Despite the Fund's CEO, Mr. S Marshall, representations in his letter (see enclosed) dated 11 July 2007, that he is happy to provide reasons and make an 'offer' resulting in an 'amicable settlement', no **reasonable** offer has been received.

THE OWNER'S POSITION: One now has to look at the owner's position.

The owner being married with 3 children is living in defective building works.

The owner's costs in taking the Fund to Court are in excess of \$80,000, and to this day remains out of pocket. The Fund has not paid her costs.

Further, the owner cannot rectify the 'defective works' or complete the family home, given that the cost to rectify is now approximately \$100,000 (the cost to rectify with the legal and expert costs, when realised, will exceed \$180,000).

Why would anyone want to have any involvement with the Fund? They left the owner (and her family during this period of six (6) years), in a far worse position than before she contacted them.

The Fund should give back what was taken away from the owner.

The owner has done nothing wrong.

The owner should not be left 'out of pocket' at all.

At the time of writing this letter, we are requesting the Fund give back to the owner what was taken away from her; being her full costs (legal and expert costs) of \$80,000, plus interest from November 2005.



HOUSING GUARANTEE FUND LTD

ABN 98 006 258 233

Domestic Building (HIH) Indemnity Fund

16 January 2004

Matter No: 901984BCT

Omega Constructions Pty Ltd
40 Seventeenth Avenue
EDEN PARK VIC 3757

COPY

Dear Sir/Madam,

RE: PROPERTY - [REDACTED]
OWNER - [REDACTED]

We have been advised by the owners that the required rectification works have not been completed.

We now request that you return to the property to complete the outstanding item/s within 10 days or we will have no option but to proceed with the matter as a formal claim.

Should this eventuate, we would direct the owners to obtain quotations from other contractors, reimburse the owners for costs incurred and seek recovery from you following reimbursement.

Your advice as to the completion of works is requested.

A copy of this letter has been forwarded to the owners for their information.

Yours faithfully,

Brent Turner
Claims Administrator

Telephone - (03) 9660 6136
Facsimile - (03) 9660 6242

h1113APF/C413/BCT



Minister for Finance

Level 5, 1 Macarthur Street
Melbourne Victoria 3002
Telephone: (03) 9651 1700
Facsimile: (03) 9651 1979

2 - AUG 2007

Dear [REDACTED]

CLAIM FOR OUTSTANDING LEGAL COSTS

Thank you for your letter of 13 July 2007, regarding your claim for payment of outstanding legal costs.

I understand negotiations regarding this matter have been protracted and that you are seeking my assistance in resolving your claim. Whilst I appreciate your desire to resolve this issue, it is ultimately an operational matter for the Victorian Managed Insurance Authority (VMIA).

I therefore have asked the Chief Executive Officer of the VMIA, Mr Steve Marshall to personally contact you to discuss your claim.

I thank you for bringing this matter to my attention and hope it is satisfactorily resolved as soon as possible.

Yours sincerely

TIM HOLDING MP
Minister for Finance, Work Cover
and the Transport Accident Commission

cc. Mr Steve Marshall, Chief Executive Officer, Victorian Managed Insurance Authority



VICTORIAN MANAGED INSURANCE
AUTHORITY
Taking care of risks

STEVE MARSHALL
Chief Executive Officer
Telephone +61 3 9270 6700
Facsimile +61 3 9270 6910



VIC 3082

11 July 2007



Re: Claim for Outstanding Legal Costs

I refer to your letter to the Minister for Finance, dated 1 June 2007.

The Ministers Office has requested that I respond to your enquiry.

Whilst I am disappointed that both our legal representatives have been unable to resolve this matter before now, I am advised that an offer to resolve the outstanding costs on a lump sum basis will shortly be communicated to you through your legal representatives.

This offer is to be made in a genuine attempt to resolve your complaint, without either party having to incur the time and additional expenses associated with preparing a formal bill of costs, or having the Tribunal make an order for assessment of the costs on scale through a taxation process.

Whilst I would be happy to discuss the reasons as to why the costs have not been paid to date, I think it is more constructive and helpful to focus on resolving the matter in accordance with the Tribunal's decision.

I will personally monitor the progress of this matter and I trust an amicable settlement will be reached between our respective representatives.

Yours sincerely

Steve Marshall

Victorian Managed
Insurance Authority

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Melbourne Victoria 3000

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