

COVER STORY



In limbo ... Charlie Tran is stuck in a caravan because his home is unsafe (see box p6). Photo: Edwina Pickles

God's sake, a \$2 item in Coles is afforded better consumer protection than what we've got for people's homes. That's why we're so angry about it."

The scheme is also bad news for small-to-medium builders, says Dwyer, the national president of lobby group the Builders Collective Association.

For years, after a claim nearly ruined his business, he has been lobbying state and federal governments to ditch the mandatory scheme, as the Tasmanian Government did earlier this year.

Builders of residential premises under three storeys must obtain home warranty insurance before they begin a project. For a home costing \$230,000, the insurance costs about \$3000 for a policy in NSW and slightly less in Victoria, Dwyer says. (Vero claims the average premium is less.) This cost is typically passed on to the consumer.

Based on the average cost of the insurance and the number of building permits issued, Dwyer estimates the insurers are raking in about \$358 million a year nationally. In order to get the mandatory insurance, builders must sign a deed of indemnity and often get a bank guarantee as well.

"The builder himself becomes the underwriter of the insurance through the indemnity or bank guarantee," Dwyer says. "We have to undertake to repay to the insurer within 28 days of demand any claim plus all costs to the insurer. It's a bit like having car insurance and having to pay for any accident you have."

From figures provided to the inquiry by the chairman of the Home Building Warranty Scheme Board, it has been calculated that in NSW insurers are paying out a mere 7 per cent of revenue in claims. Vero disputes this. Repanellis says Vero's loss ratio is in line with the accepted premium-to-claim ratio for most consumer protection insurance (about 65 to 80 per cent) but she did not give Money exact figures.

"There's a lot of misinformation out there," she says. "If it was such a profitable business, why were we the only insurer who stayed in the market when HIH collapsed? You'd think all the other insurance companies would drive right in if it was really so profitable."

The present Victorian and NSW schemes came into force after the 2001 collapse of HIH insurance, then the majority provider of home building warranty insurance. When that was followed by the September 11 terrorist attack, the insurance industry contracted and it was harder to obtain insurance.

Under pressure from builders and insurers, in 2002 the Victoria and NSW governments agreed to change the home building warranty legislation to make it

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QLD LEADS THE WAY

Consumer advocates and builders want a Queensland-style home building insurance scheme to be implemented nationally.

There, the government underwrites home warranty risk and the Building Services Authority regulates it.

The insurance is mandatory and there's a binding, low-cost dispute resolution system where a builder's licence may be at risk if he doesn't rectify defects. Queensland company Real Property Constructions suffered a Beechwood-style collapse in February this year, leaving 233 uncompleted homes.

Under Queensland's "first resort" scheme, the responsible minister, Rob Swarten, reported that all complaints received by the authority had been assessed and 70 per cent had been finalised - all within three months.

Ian Jennings, general manager of the authority, says: "You're covered for defects, subsidence and non-completion up to \$400,000. It works because of the integrated model. You need dispute resolution, a licensing regime, the ability to get rid of a builder, plus you've got to have the insurance. It all comes as a package."

In the event of a dispute with a builder, the Queensland consumer has a clear, simple set of steps to take to have it remedied.

"For example, the house is finished but the roof is leaking," Jennings says. "They've got to raise it first with the builder." If the builder doesn't fix it, the consumer can lodge a complaint with the authority, which will inspect the site with both the consumer and the builder present and determine whether the work complies with the building code and Australian standards. If not, the builder must fix it and, if he refuses, a formal demerit goes on the public register against his licence. Then the insurance kicks in and the authority supplies a rectifying builder to fix the defects then recover costs from the original builder.

"If a house isn't finished," Jennings says, "and a consumer legally terminates a contract because the builder's not performing, then we apply the insurance contract and finish their home. In NSW and Victoria, they'll only pay 20 per cent of the contract price; we will finish their home and then recover from the builder. The consumers' problem has been fixed."

However, the Housing Industry Association, which represents builders, trade contractors, manufacturers and suppliers but also benefits from commissions as the home warranty insurance broker, dismisses the Queensland approach as expensive and unmanageable.

"Queensland's scheme is more expensive than [that of] any other state," it says in its submission to the inquiry.

Jennings disputes this. "It doesn't cost the government," he says. "We're self-funded. All our current liabilities are funded for the next 6½ years. Our revenue comes from licence fees and insurance premiums. The regulatory business is funded through licensing income and the insurance business is funded through payment of premiums."

The authority's premiums vary according to contract size. The insurance premium for a \$200,000 contract is \$1580. **KM**

insurance gathered to hear the submissions. Irene Onorati, who has dedicated years of her life to lobbying on this issue, spoke first.

"The lives of many honest families have been shattered," she told the committee. "We've had enough, we need a new system." There were murmurs of "hear, hear" from the gallery. Onorati has spoken at many of the previous government inquiries into the area. "I'm getting very angry now," she told the Herald later.

"All these cases were in the NSW parliamentary inquiry in 2006, and tell me, what did that get us?"

Submissions to the Senate inquiry suggested a deliberate policy by the insurers, particularly Vero, of dragging out litigation to minimise payouts and force inadequate settlements on claimants - "litigation for harassment", as Senator Christine Milne summarised it. (Vero has not attended the hearings yet but Vero spokeswoman Sue

Repanellis says the insurer has not ruled out appearing at a later date.)

Brody says, "You can't claim the legal costs on the insurance at the end of the day, so most consumers get advice and rationally decide not to proceed and don't claim on insurance and are just left out of pocket."

There are horror stories of those who refused to give up, such as Rob Siebert, who is \$70,000 worse off after following all the processes necessary to claim on his insurance after his builder refused to remedy defects in his Lismore home.

"From a consumer perspective, it's hopeless," says a Victorian builder and lobbyist, Phil Dwyer.

"It's crucifying people. It's not only the cost and the legal costs but the frustration and the never-ending litigation. One thing rolls into another and it goes on for years. That's why a lot of this hasn't come to a head, because the consumers are only coming out the other end now as broken people. For

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