

Flawed foundations

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"last resort", shortening the period of cover and limiting maximum payouts.

Then the Federal Government changed the corporations regulations to effectively convert home building warranty insurance from a retail to a wholesale product, stripping out consumer protection requirements and oversight by APRA.

That is why the exact figures on premiums taken compared with commissions and payouts made are not publicly available.

"What is of interest in this whole situation is how the regulations came to be put there in the first place," Cusack says.

"It's not an oversight; it's a carefully crafted set of words that's devastating in its impact, removing the scheme of any accountability. It removed it from any independent authority looking at consumer complaints.

"To me that's why it has been allowed to run rampant for so long."

However, the NSW Office of Fair Trading defends the scheme against charges of being "junk insurance".

"It's very valuable insurance," says spokesman Graham Humphreys. "It is a last resort scheme... If a claim is declined [people] have appeal rights to the tribunal and to courts. So a person

does get a chance to have their claim fully assessed. At least there is this form of insurance... If the builder was to go bankrupt, imagine a situation where there was no insurance. These people would be essentially out of pocket."

Humphreys says that 1250 claims had been settled in NSW as at December 2007 under the scheme but figures about any difference between the payouts and the actual costs incurred in each case were not available.

"We'd like people to make a judgment on the scheme after Beechwood," he says. "We're right in the middle of a process here. If people have criticisms, we'd need to evaluate that at the appropriate time. We'd point to the 1250 cases where the scheme has worked."

Repanellis says: "The problem arises when builders refuse to come back and fix defects, when people are paying the biggest amount of money most of them ever do in their lives. It's the one side of this argument that people seem to forget.

"Insurance companies need to be profitable and it's not [as has been suggested] 'obscene' profit. You have to be profitable so you can pay out claims such as Beechwood's collapse. You're looking at millions of dollars here."



Renovation nightmare... after 15 years, Prokopios and Kalipso Frantzis are still fighting to have their house repaired.
Photo: Natalie Boag

THE VICTIMS WHO LOST THOUSANDS

For the past 20 years Irene Onorati has fought for the rights of consumers and the victims of shoddy building and bureaucratic indifference. She's spoken at every hearing into the lack of consumer protection. And she's still fighting.

Onorati's volunteer lobby group, the Building Action Review Group, has helped hundreds of consumers left with nowhere else to turn. Here is a small sample of those let down by the scheme.

Yasmin Fahri is a single mother who contracted a builder for \$160,000 worth of renovations on her Sydney home in 2005. The builder was licensed by the NSW Office of Fair Trading. Fahri paid \$68,500 for work that was defective, incomplete and could not be certified. The dispute escalated and, after receiving threats from the builder, Fahri took out an Apprehended Personal Violence Order against him. She paid for mandatory home building warranty insurance but never received the certificate from her builder. In any case, it is useless to her as it only applies when the builder dies, disappears or becomes insolvent.

Fair Trading has no power to force the builder to rectify defects but disqualified him for one year. Meanwhile, Fahri, who can't afford a lawyer, faces a demolition order from her local council. It has cost her \$450,820 - more than three times the original contract - and the dispute continues.

"I compare it to a form of torture," she says. "Your builder can take your life savings and have a holiday in Greece! This should not happen in Australia."

In 1993, Redfern pensioners Prokopios and Kalipso Frantzis signed a contract to extend their home. The first builder abandoned the job and left them without a working toilet or hot water for more than three months. Statutory insurance applied at the time and was quickly invoked. But then successive rectifying builders only made the defects worse. In each case the Frantzis family relied on the Fair Trading assessments and used licensed builders. When defects reappeared after the third builder's work in 2001, the insurer, Royal Sun Alliance (now Vero), denied liability, saying it was Fair Trading's responsibility. The botched jobs have together cost them \$226,898.

In 2005, Fair Trading's home building service approved demolition and reconstruction but only to a value of \$100,000, when the repairs would cost significantly more. This year, the minister, Linda Burney, offered \$167,000 for the cost of demolishing and rebuilding the defective works. It's not enough for the job and the family is still trying to get Fair Trading to fix their house.

Then there's Cabramatta man Minh "Charlie" Tran. More than six years ago, dodgy building work left him with a house

beset by structural problems, sinking on one side. He now lives in a caravan on his property, with mortgage repayments of \$4200 a month, and faces orders from the Land and Environment Court to repair the building under threat of contempt of court or jail.

In 2006, it would have cost \$450,000 to fix. Desperate and out of money to pay his lawyer, Tran went to mediation but refused Vero's offer of \$75,000 (Vero spokeswoman Sue Repanellis disputes this amount and says their offer was "far in excess of \$75,000").

There was no written agreement. Vero took him to the Supreme Court to try to force him to accept the offer. The case was dismissed. The insurer is appealing. "I did nothing wrong," Tran says. "I've lost five years of my life and \$300,000. And instead of paying me \$200,000 [then the full amount under the policy], Vero spent \$1 million dollars taking me to court. The only thing I suspect is that, if they pay me, there may be another thousand people behind me."

The NSW opposition spokeswoman for fair trading, Catherine Cusack, says: "The revelation of Mr Tran's case is that the insurers are bullying people to accept inadequate payment and saying, 'If not, we'll take you to court.'"

"It's deliberate and predatory. I find it difficult to believe that such a thing can happen but it's real. I've spoken to these people and I've seen their documents. The victims can't reconcile themselves to the injustice of their situation.

"In Australia you'd think there would be consumer protection to curb this behaviour but there is none in relation to home warranty."

Onorati agrees: "They're trying to force people to go into mediation when they have no more money to continue in court. The smallest building repair ends up the biggest nightmare of your life and destroys completely your health and financial livelihood. The whole system needs fixing." **KM**



Fierce... Irene Onorati wants protection for consumers against dodgy builders.

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What a difference G'day makes



After many long distance phone calls John Barton and his wife Brenda decided to emigrate to Australia to join his brother, Chris. Tens of thousands of Brits have become Australian citizens in recent years and it's not hard to understand why; clear blue skies, BBQ, cheaper cost of living and affordable property. John joined his brother's IT consultancy in Sydney. Keen to be close to the city they bought a 3 bedroom house in Darlington.

John's brother, Chris, used foreign exchange specialist, CaxtonFX when he emigrated the previous year and recommended them to John. By the time John was ready to move Caxton had opened their new Australian office. "Caxton set up a rate alert for me so I could try and achieve my target rate. We kept in regular contact and when I was ready Caxton gave me a superb rate of exchange. The fact that they have a London and Australian office to tie everything up was just great - first class service!"



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