



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
FINANCE AND PUBLIC ADMINISTRATION

13th Report to the Legislative Council

INQUIRY INTO BUILDERS WARRANTY INSURANCE

FINAL REPORT - OCTOBER 2010



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STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

Committee Members

Mr Gordon Rich-Phillips – Chairman

Member for South Eastern Metropolitan Region

Mr Matthew Viney – Deputy Chairman

Member for Eastern Victoria Region

Mr Greg Barber

Member for Northern Metropolitan Region

Ms Candy Broad (until 13 April 2010)

Member for Northern Victoria Region

Mr Peter Hall

Member for Eastern Victoria Region

Mr Matthew Guy

Member for Northern Metropolitan Region

Mr Peter Kavanagh

Member for Western Victoria Region

Mr Brian Tee (from 13 April 2010)

Member for Eastern Metropolitan Region

Committee Staff

Mr Richard Willis – Secretary to the Committee

Ms Susan Brent – Research Officer

Mr Anthony Walsh – Research Officer

Mr Sean Marshall – Research Assistant

Address all correspondence to –

Council Committee Office
Department of the Legislative Council
Parliament of Victoria
Spring Street
EAST MELBOURNE VIC 3002

Telephone: (03) 9651 8696
Facsimile: (03) 9651 6799

ESTABLISHMENT OF THE STANDING COMMITTEE

On 21 November 2007, the Legislative Council resolved to appoint a Standing Committee on Finance and Public Administration with a membership of seven Members. The Council's resolution came into operation on 1 April 2008 and the Committee's inaugural meeting was convened on 7 April 2008.

In accordance with the establishing resolution, the following Members were appointed to the Committee:

- Mr Greg Barber - Australian Greens,
- Ms Candy Broad - Australian Labor Party,
- Mr Peter Hall – Nationals,
- Mr Matthew Guy - Liberal Party,
- Mr Peter Kavanagh - Democratic Labor Party,
- Mr Gordon Rich-Phillips - Liberal Party, and
- Mr Matthew Viney - Australian Labor Party.

At its inaugural meeting the Committee elected Mr Rich-Phillips as Chairman, and Mr Viney as Deputy Chairman.

On 13 April 2010, Mr Brian Tee replaced Ms Candy Broad as a member on the Committee.

The establishing resolution provides the Committee with a wide range of powers. Some key features of the Standing Committee include:

- The Standing Committee exists until the Parliament is either prorogued or dissolved.
- Members of the Committee may be substituted by another Member from the same political party.
- The Committee has the power to inquire into any matter or thing relevant to its functions, which is either referred to it by resolution of the Legislative Council, or determined by the Committee.
- The power to appoint sub-committees to inquire into matters.

ACRONYMS AND DEFINITIONS

BACV	Building Advice and Conciliation Victoria, a service that provides free advice and assistance to resolve building disputes. The service is managed and delivered by the Building Commission and Consumer Affairs Victoria.
Builders warranty insurance	Builders warranty insurance compensates homeowners for non-completion or defects in home building work. It is also referred to as home warranty insurance or domestic building insurance.
Building Commission	The Building Commission is the statutory authority that oversees the building control system in Victoria.
Consumer Affairs Victoria	Consumer Affairs Victoria is Victoria's main consumer protection agency.
Domestic building insurance	A term also used to describe builders warranty insurance (see above).
ESC	The Essential Services Commission, the independent economic regulator of services such as electricity, gas and water in Victoria. It also provides advice to the Government on regulatory and other issues.
First resort insurance	First resort builders warranty insurance can be accessed by home owners in the case of incomplete or defective work even if the builder is still trading.
HGF	The Housing Guarantee Fund, the company which operated Victoria's builders warranty insurance scheme from 1984 to 1996.
HIA	The Housing Industry Association, a peak body representing the home building industry.
Home warranty insurance	A term also used to describe builders warranty insurance (see above).
Last resort insurance	Last resort builders warranty insurance can only be accessed by a home owner if the builder is unable to complete or rectify the work, for example because the builder has died, is insolvent or has disappeared. In other

cases, home owners have to resolve concerns about incomplete or defective work with the builder.

MBAV	Master Builders Association of Victoria, a peak body representing the building industry.
Owner builders	Owner builders are people who build or renovate a home on their own land, either using their own skills or by engaging subcontractors. They have different rights and responsibilities to homeowners who use a registered building practitioner.
QBSA	Queensland Building Services Authority, the statutory authority that administers building regulation and builders warranty insurance in Queensland.
VCAT	The Victorian Civil and Administrative Tribunal, a tribunal that deals with a range of disputes including disputes about domestic building.
VMIA	The Victorian Managed Insurance Authority, the statutory agency which administers Victoria's new builders warranty insurance scheme.

CHAPTER 1: INTRODUCTION

1.1 Terms of Reference

1. Pursuant to Legislative Council Sessional Order No. 22, the Standing Committee on Finance and Public Administration may inquire into any proposal, matter or thing that is relevant to its functions which is referred to it by resolution of the Council or determined by the Committee.
2. On 7 September 2009, the Standing Committee resolved to inquire into and report on:
 - the effectiveness of the current mandatory last resort Builders Warranty Insurance scheme in providing necessary and appropriate consumer protection;
 - the specific role of government agencies in their effectiveness in managing and representing Victoria's registered builders under the current Builders Warranty Insurance scheme;
 - any possible alternatives to the current Builders Warranty Insurance Scheme in Victoria; and
 - any related matters.

1.2 Receipt of Evidence

3. On 19 October 2009, the Committee advertised its terms of reference calling for written submissions in accordance with the requirements of the establishing resolution. The Committee also wrote to relevant organisations inviting written submissions.
4. At the close of submissions on 15 January 2010, a total of 43 written submissions were received. A list of submissions is provided in Appendix A. Several submitters requested an opportunity to appear at a public hearing to give further evidence.
5. The Committee received several submissions and correspondence in relation to defective building projects and complaints against various domestic builders. The Committee accepted the submissions as relevant contributions to its Inquiry, however it was not in a position to adjudicate complaints or investigate complaints against builders. The Committee's terms of reference related to the builders warranty insurance product, alternatives to that product and the role of government agencies in relation to that product.
6. Following receipt of written submissions, the Committee proceeded to take evidence in public hearings on 15 March 2010. Further public hearings were held on 8 April, 17 June and 27 July 2010. The hearings were designed to complement and expand on written submissions and to

provide a balance of views and evidence relevant to the Committee's terms of reference.

7. A full list of witnesses who appeared before the Committee is provided in Appendix B. Transcripts of public hearings, answers to questions taken on notice and copies of written submissions will be available from the Committee's website (below) until the end of the 56th Parliament, and thereafter by contacting the Parliament of Victoria:

www.parliament.vic.gov.au/standing-committee-on-finance-and-public-administration

1.3 Developments during the Inquiry

8. During the course of the Inquiry, the Victorian Government announced changes to the builders warranty insurance scheme in Victoria. These changes are outlined in chapter two.
9. Although the Government's announcement addressed some of the issues raised in written submissions and the Committee's public hearings to that point, the Committee decided to continue its Inquiry. The evidence suggested that although the Government's action had added welcome stability to Victoria's scheme, a number of the underlying issues raised by consumers and builders remained unresolved. In these circumstances, the Committee believed it was important to continue the Inquiry and report to the Parliament.
10. Accordingly, chapter two of this report provides background to builders warranty insurance in Victoria and the Government's recent changes. Chapters three and four describe the concerns expressed by consumers and builders about the former and new schemes. Chapter five examines possible alternative schemes and whether the Government should introduce further reform. Chapter six looks at the performance of the Victorian government agencies involved in the scheme and possible future arrangements.

CHAPTER 2: BUILDERS WARRANTY INSURANCE IN VICTORIA

11. This Inquiry was conducted during a period of change and uncertainty for builders warranty insurance in Victoria. During the course of the Inquiry, all but one of the insurance companies selling the product either left the market or announced plans to do so. In March 2010, the Victorian Government responded by announcing it would replace Victoria's privately-run scheme with a government scheme. Final details of these changes were still being implemented when this report was written.
12. This chapter provides a background to builders warranty insurance and the varied history of the scheme in Victoria, including details of the Government's recent changes to Victoria's scheme.

2.1 What is builders warranty insurance?

13. Builders warranty insurance compensates homeowners who find themselves with incomplete or defective homes or renovations. It effectively operates as a form of third party insurance. Builders take out the insurance policy, but it protects homeowners. Since it was introduced in the 1970s, it has become a standard consumer safeguard in the home building industry around Australia.
14. Builders warranty insurance schemes can take various forms. Some of the major variations are:
 - mandatory versus voluntary schemes – under some schemes, builders warranty insurance is mandatory and builders have to hold the insurance before they undertake significant home building work. Other schemes allow builders and consumers to decide for themselves whether to insure against the risk of incomplete or defective work.
 - government versus market schemes – some schemes have been underwritten and managed by government agencies. Others have relied on private insurance companies to provide insurance to builders and consumers and to manage claims.
 - 'last resort' versus 'first resort' schemes – schemes can vary considerably in terms of the coverage they provide. Under both first and last resort schemes, the consumer is required to try to resolve any problems directly with the builder in the first instance. Where the consumer is unsuccessful, then the schemes can become involved. Under 'last resort' schemes, the scheme only becomes involved in limited circumstances, usually because of the death, insolvency or disappearance of the builder. 'First resort' schemes, on the other hand, can assist consumers even when the builder is still trading.

2.2 Builders warranty insurance in Australia

15. Each state and territory in Australia has its own builders warranty insurance scheme. Figure 1 shows the schemes in place in each of the states and territories at the time this report was written.

Figure 1: Builders warranty insurance schemes in Australia

	Mandatory or voluntary	Government or market	Last resort or first resort
Victoria	Mandatory	Government	Last resort
New South Wales	Mandatory	Government	Last resort
Queensland	Mandatory	Government	First resort
Western Australia	Mandatory	Market	Last resort
South Australia	Mandatory	Market	Last resort
Tasmania	Voluntary	Market	N/A
Northern Territory ¹	Mandatory	Government	Last resort
ACT	Mandatory	Market	Last resort

16. As Figure 1 shows, mandatory schemes are more common than voluntary schemes in Australia. Tasmania is currently the only example of a voluntary scheme. Its Government made builders warranty insurance voluntary for builders and homeowners in July 2008 following industry and consumer criticism of its former scheme.²
17. Last resort schemes are also more popular in Australia. The only state with a first resort scheme at this time this Inquiry was conducted was Queensland. Under its scheme, consumers who cannot resolve problems with their builder can lodge a formal complaint with the Queensland Building Services Authority (QBSA). The QBSA can help resolve the dispute. It can also send an expert to conduct a site inspection which can result in a direction to the builder. If the builder refuses or is unable to rectify the problem, the consumer can lodge an insurance claim with the QBSA and the QBSA may take disciplinary action against the builder.
18. Over the past decade, most states and territories have used market rather than government schemes but, for reasons outlined later in this chapter, this consensus is changing. At the time this report was written,

¹ The Northern Territory Government has announced it will introduce legislation for a government-funded mandatory last resort scheme in October 2010. The Northern Territory currently has a limited government building certification scheme.

² Tasmania, *Parliamentary Debates*, House of Assembly, 27 May 2008 (Mr David Llewellyn MP, Minister for Justice).

half of the states and territories conduct government schemes and half have market schemes.

2.3 History of builders warranty insurance in Victoria

19. The Victorian Government's recently announced scheme is the latest in a series of schemes since the insurance was first introduced in the 1970s.³

2.3.1 1972-1984 - Industry schemes

20. The Housing Industry Association (HIA), one of the peak bodies representing builders, established Victoria's first builders warranty scheme in 1972. The scheme offered homeowners a basic completion and defects guarantee. In 1974, the HIA made the scheme mandatory for HIA members. The Master Builders Association Victoria (MBAV), the other peak body representing the industry, established a similar scheme for its members.

2.3.2 1984-1996 – The Housing Guarantee Fund Ltd

21. In 1984, the HIA and MBAV schemes merged to form the Housing Guarantee Fund Limited (the HGF). The HGF was a public company. Although it was not Government-owned, the Government appointed the chairperson and some of the other directors and, in 1987, it gave the arrangements a legislative basis.
22. The HGF scheme was similar in nature to a first resort scheme. It required builders to give homeowners a seven year guarantee for certain home building work with a price over \$3,000. According to the HGF's former Chief Executive officer, Mr Michael Stokes, homeowners could report problems to the HGF, which could send an inspector to assess the problem. The inspector could issue an instruction to the builder. If the builder refused to comply, the HGF could compensate the homeowner up to \$40,000 for loss or damage.⁴ HGF could then take steps to recover its costs from the builder.
23. The HGF was also responsible for registering builders in Victoria. It funded its operations through levies on builders.
24. Some witnesses were very critical of the HGF scheme. The Executive Director of the MBAV, Mr Brian Welch, was critical of the \$40,000 limit on compensation which, as noted below, was increased to \$100,000 and then \$200,000 under subsequent schemes. Mr Welch also noted that there were limits on the amount of work builders could undertake and that builders were required to provide a bank guarantee to the HGF which

³ See Victorian Government, *Submission No 36*, January 2010, p 5-6 for the history of builders warranty insurance in Victoria.

⁴ Michael Stokes, *Transcript of evidence*, 8 April 2010, p 14-15; Michael Stokes, *Submission No 12*, January 2010.

could be drawn down 'at a moment's notice' by the HGF if it felt the builder was not doing as it wanted as quickly as it wanted.⁵

2.3.3 1996-2002 – Mandatory market-based first resort scheme

25. In 1996, the Government replaced the HGF scheme with a privatised builders warranty insurance scheme managed by insurance companies.

26. The then Attorney-General advised the Parliament at the time that:

Many consumers have complained that HGF is bureaucratic and too slow to make decisions, that it is pro-builder and, on a more philosophical level, that there is an inherent conflict of interest in its multiple roles. At the same time some builders have also found HGF to be slow in its decision-making processes and have expressed concerns as to the qualifications of HGF inspectors and their ability to assess damages and facilitate dispute resolution.

Whatever the merits of these often-made assertions ..., the government is confident that both parties will benefit from greater private enterprise competition ...⁶

27. The new scheme operated as a first resort scheme with a minimum level of coverage of \$100,000.

2.3.4 2002-2010 - Market-based last resort scheme

28. In 2002, the Government was forced to change the scheme again in response to instability in the insurance market. In March 2001, one of the major providers of builders warranty insurance, HIH Insurance, collapsed. Other insurers announced plans to leave the market in response to the impact of the September 11 terrorist attacks on insurance markets globally.

29. The Victorian and New South Wales Governments both moved to narrower, last resort schemes under a '10 point plan' negotiated with the insurance industry. Victoria's new scheme:

- limited the requirement to take out builders warranty insurance to domestic building work with a contract price over \$12,000.
- limited the circumstances in which homeowners could claim against their policies to cases where their builder was dead, insolvent or missing, ie. a last resort scheme.
- reduced the claims period to two years for non-structural defects and six years for non-completion and structural defects.

⁵ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 12.

⁶ Victoria, *Parliamentary debates*, Legislative Assembly, 24 October 1995, p 695 (Mrs Jan Wade MP, Attorney-General).

- limited claims for non-completion to 20 per cent of the contract price. The level of cover available increased from \$100,000 to \$200,000.
 - excluded high rise multi-unit developments and major claims in excess of \$10 million from the scheme.
30. The scheme also included arrangements for owner-builders, being people who build or renovate on their own land using their own labour or subcontractors. Under these arrangements, owner-builders were required to take out builders warranty insurance to protect purchasers against defects if the work had a value over \$12,000 and the home was sold within six years.
31. At the same time, the Government announced a range of new 'front end' consumer protection measures to compensate for the reduced coverage offered by the new scheme. They included Building Advice and Conciliation Victoria (BACV), a free conciliation service designed to help homeowners resolve disputes with their builders, and tougher building audit and inspection functions.⁷
32. The 2002 scheme outlined above was the scheme in place at the start of the Committee's Inquiry and receipt of evidence.

2.4 Earlier inquiries into builders warranty insurance

33. This Inquiry was the latest in a series of national and state inquiries into mandatory last resort schemes.
34. In 2005, the Victorian Competition and Efficiency Commission (VCEC) considered Victoria's mandatory last resort scheme as part of its review of housing regulation. It concluded that there was a case for continuing the scheme subject to changes such as better information for consumers and changes to dispute resolution. It found the move to a last resort scheme had not led to a general loss of consumer protection in Victoria because other measures, such as new dispute resolution services, were providing an effective substitute. VCEC noted insurance companies would not offer first resort cover and found a government scheme would not deliver better outcomes. It also rejected a voluntary scheme.⁸
35. In 2008, the Senate Standing Committee on Economics conducted a national inquiry into mandatory last resort insurance schemes. The majority of the Committee found:

⁷ See Minister for Finance, Victoria, 'A Joint Release Between NSW & Victoria – Uniform Scheme to Provide Viable Home Warranty Insurance', Media release, 13 March 2002; Minister for Consumer Affairs and Minister for Finance, Victoria, 'New Consumer Protections for Home Buyers', Media release, 13 March 2002; Victorian Government, *Submission No 36*, January 2010, p 7-8.

⁸ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, Ch 7.

consumer complaints ... show that there are still problems with dispute resolution in domestic building. However the committee does not think that the correct response is to return to a first resort scheme ...

In the committee's view the better response is to improve the builder licensing and dispute resolution arrangements directly. The committee agrees with VCEC's comment: 'The key is the early identification of poor builder performance and linking this to registration ...'⁹

36. Other inquiries included a review by the Ministerial Council on Consumer Affairs in 2002 and the 2007-08 Productivity Commission inquiry into Australia's consumer policy framework.¹⁰
37. The Government's submission to this Inquiry argued earlier inquiries supported 'the fundamentals' of Victoria's scheme.¹¹ The inquiries did note evidence of problems with last resort schemes for consumers and builders, but they tended to recommend improvements to the schemes rather than radical change.
38. Following the tabling of the Senate Committee's report, the Ministerial Council on Consumer Affairs agreed to put builders warranty insurance back on its strategic agenda.¹² There had been no further public statements about this work at the time this report was drafted.

2.5 Victoria's new scheme

2.5.1 The collapse of the insurance market

39. In the course of this Inquiry, developments in the private insurance market once again threatened the viability of market-based builders warranty insurance schemes.
40. At the start of 2009 there were five insurance companies competing in the builders warranty insurance market – Vero, CGU, Lumley, QBE and Calliden.
41. In July 2009, just before this Inquiry commenced, CGU and Lumley announced they would stop offering the product.
42. The NSW Government responded to the departures by announcing it would start underwriting that state's mandatory last resort scheme from

⁹ Senate Standing Committee on Economics, Australian Parliament, *Australia's mandatory Last Resort Home Warranty Insurance scheme*, November 2008, p 45.

¹⁰ Professor Percy Allan, *National Review of Home Builders Warranty Insurance and Consumer Protection: Report prepared for the Ministerial Council on Consumer Affairs*, June 2002; Productivity Commission, *Review of Australia's Consumer Policy Framework: Volume 2*, May 2008, Ch 5.

¹¹ Victorian Government, *Submission No 36*, January 2010, p 9. See also Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 3.

¹² Ministerial Council on Consumer Affairs, *Joint Communiqué*, 8 May 2009.

1 July 2010. It stated the move was designed to protect its industry and homeowners amidst concerns other insurers would leave the market.¹³

43. In February 2010, the market leader Vero announced it would cease offering the product leaving only two companies, QBE and Calliden, offering warranty insurance to builders and homeowners.
44. The reason for these departures was not fully explained in public or evidence to the Committee. QBE, the only insurer to give evidence to the Inquiry, told the Committee 'the scuttlebutt around the market' pointed to poor profitability combined with other, non-financial problems:

Some of the organisations were making a loss for a prolonged period and probably could not see the opportunity to gain appropriate returns. There is a volatility in this product. It is a product that can appear to be profitable for a short term but then can have significantly large individual losses that really clean out the premium pool ...

I think also ... there is a degree of reputational risk in this product with insurers because there is a lot of criticism of the product at times ... That is a risk and a factor that insurers do tire of at times: the reputation is being questioned when they feel that that may be unfair.¹⁴

45. While some witnesses maintained the scheme was sound and sustainable,¹⁵ others questioned its viability and warned of severe consequences for the building industry. The Executive Director of the MBAV, Mr Brian Welch, reported they were starting to see the cost of insurance escalate by 300 per cent and 10 to 20 per cent of builders could be unable to get insurance. Mr Welch commented:

[w]e are getting calls coming into the organisation with increasing stridency and frequency. People are panicked now, wondering if they will have a business.¹⁶

2.5.2 The Government's March 2010 announcement

46. On 29 March 2010, the Government announced it would take over Victoria's builders warranty insurance scheme. The Minister for Finance wrote to the Committee informing it of the new arrangements and noting:

¹³ NSW Fair Trading, 'NSW Government steps in to protect the \$20 billion building industry', Media release, 8 November 2009.

¹⁴ QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 4, 6. See also Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 3; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 30-31, 36; Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 41; Michael Stokes, *Transcript of evidence*, 8 April 2010, p 12; Russell Joseph, *Transcript of evidence*, 17 June 2010, p 33.

¹⁵ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 24, 27-28, 33, 37; QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 2.

¹⁶ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 10. See also p 2, 6; Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 47.

The Government now considers that the benefits of competition from the private provision of insurance are outweighed by the uncertainty arising for consumers and builders from regular entry and exit of insurers during stages of the housing and insurance cycles.¹⁷

47. The Victorian Managed Insurance Authority (the VMIA), the statutory agency that provides risk management and insurance services to the Government, was given responsibility for administering the new scheme. The Minister for Finance issued a direction under the VMIA's Act to allow it to undertake this function, and introduced legislation in the Parliament to clarify any doubt about its powers.¹⁸ The Essential Services Commission (ESC), Victoria's independent economic regulator of services, was given responsibility for monitoring the VMIA's pricing.
48. The other aspects of Victoria's scheme remain unchanged. Insurance remains mandatory for domestic building work over \$12,000. It still covers both non-completion and defective work. It is still a last resort scheme under which homeowners can only claim where their builder is dead, insolvent or missing.
49. The Government's media release outlined transitional arrangements to ease the movement of builders to the new arrangements. It also stated that the Government would be 'discussing potential product enhancements with the VMIA, subject to the impact on premiums, to improve the level of protection offered to consumers.'¹⁹

2.5.3 Progress with the new scheme

50. Although the Government stated the VMIA would be available to provide insurance from 31 March 2010, evidence from the VMIA indicated the former market-based scheme continued to operate until May 2010.²⁰
51. The VMIA's Chief Executive Officer, Mr Steve Marshall, told the Committee they had negotiated an agreement with QBE under which QBE issues cover to builders but the VMIA underwrites the policies and accepts liability. This arrangement commenced on 31 May 2010 and runs until 30 June 2011, with a possibility of further extension. Mr Marshall advised that around 1,500 certificates had been issued as at the date of the hearing and the VMIA had started shifting around 7,000 builders from

¹⁷ Letter from the Minister for Finance to the Secretary, Standing Committee on Finance and Public Administration, 30 March 2010.

¹⁸ *Building Amendment Act 2010*. See Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 6 for the text of the minister's direction.

¹⁹ Minister for Finance, Victoria, 'Government to take over domestic building insurance', Media release, 29 March 2010.

²⁰ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 17.

other insurers to the new scheme.²¹ In separate evidence, QBE described itself as 'essentially an agent for the VMIA' under the arrangement.²²

52. A number of details of the new scheme were being settled at the time of the June 2010 hearing with the VMIA:

- the cost of premiums and other claims management arrangements – the Minister's direction to the VMIA allows it to determine underwriting terms and conditions having regard to commercial criteria. The VMIA told the Committee it was using QBE's rates structure and arrangements for the time being, but was reviewing the arrangements and getting actuarial advice.²³
- the Government's funding arrangements for the new scheme – the Minister for Finance has stated there will be a capital injection to the VMIA, but those arrangements had not been settled.²⁴
- the precise nature of the ESC's role under the arrangements.²⁵
- arrangements for reporting to the government and the public.²⁶
- any changes to the last resort nature of the scheme – the VMIA told the Committee its 'focus has been on an orderly transition' and any discussion about the 'potential product enhancements' flagged by the Government would be 'later this year at the earliest'.²⁷

53. The Department of Treasury and Finance and the VMIA advised there is still scope for private insurance companies to compete with QBE and the VMIA under the new scheme.²⁸ However, Calliden, the only other insurer in the Victorian market, announced its withdrawal on 16 June 2010,²⁹ effectively giving QBE and the VMIA a monopoly on the product.

54. The Government has not ruled out a return to a market-based scheme at some point in the future. The Minister for Finance told the Parliament's Public Accounts and Estimates Committee in May this year that:

At some stage in the future, if there was to be a critical mass of insurers willing to re-enter this market and provide viable and competitive product, then the Victorian government would be

²¹ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 16-17, 21; Victorian Managed Insurance Authority, Response to questions taken on notice, 2 July 2010.

²² QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 5.

²³ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 17.

²⁴ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 4.

²⁵ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 7; Essential Services Commission, *Transcript of evidence*, 8 April 2010, p 56.

²⁶ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 6-7.

²⁷ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 22.

²⁸ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 7; Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 19.

²⁹ Calliden Group, 'Calliden to undertake staged withdrawal from the Victorian Builders Warranty Insurance Market', Media Release, 16 June 2010.

*prepared to reconsider its position. But I think that is unlikely to happen in the foreseeable future ...*³⁰

³⁰ Minister for Finance, Public Accounts and Estimates Committee transcript of evidence, 14 May 2010, p T17.

CHAPTER 3: CONSUMER PERSPECTIVES

55. The terms of reference for this Inquiry required the Committee to consider the effectiveness of Victoria's builders warranty insurance scheme in providing necessary and appropriate consumer protection.
56. Earlier inquiries into last resort schemes received a series of consumer complaints about the schemes. During this Inquiry, the Committee heard from a variety of sources, including individual consumers. This chapter outlines the evidence for and against Victoria's scheme and considers the likely impact of the Government's reforms on consumer protection.

3.1 The importance of consumer protection in the home building industry

57. Building or renovating a home is possibly the largest investment most people ever make and may be a relatively risky transaction for many consumers. It is also a transaction most people enter once, or at least rarely. As a consequence, most enter the transaction with relatively little knowledge or experience of the process.
58. According to Government agencies, the majority of consumers have a trouble free experience. The Government's submission to the Inquiry noted that there were 82,000 domestic building permits issued in 2008-09 but only 2,200 formal written complaints to Consumer Affairs Victoria, Victoria's main consumer agency.³¹ The Building Commission, the main industry regulator, surveys consumers. It told the Committee that 77.6 per cent of building works were completed without any issues or concerns and 91 per cent of consumers were satisfied with their overall experience.³²
59. However, a sizeable minority of consumers do experience problems with home building, renovation and maintenance. In 2008, Consumer Affairs Victoria surveyed consumers about their experiences across 24 different markets. It reported that home building, renovation and maintenance was one of the most problematic markets in the survey, with 16 per cent of consumers in the market reporting some detriment.³³
60. The Consumers Collective of Australia, a voluntary group established to represent consumers in the building industry, told the Committee the scale of the problem was even greater. It argued the number of

³¹ Victorian Government, *Submission No 36*, January 2010, p 7.

³² Building Commission, *Transcript of evidence*, 8 April 2010, p 22. See also survey results in Building Commission, Victoria, *pulse° today*, Issue 63, June 2009.

³³ Consumer Affairs Victoria, *Consumer confidence and market experience study*, Research Paper No 16, July 2008, p 8. See also Building Commission, Victoria, *Dispute reduction research summary report*, 2005, p 5, which reported that 22 per cent of domestic and commercial building works gave rise to issues or concerns.

consumers badly impacted each year is more likely 20,000-30,000,³⁴ although the basis for its estimate was unclear.

61. The financial impact of such problems on consumers is high. The Building Commission estimated in 2005 that domestic building problems could cost consumers and builders anything from \$900 to almost \$180,000, depending on the extent of the dispute.³⁵ Consumer Affairs Victoria has estimated the annual value of consumer detriment in the home building, renovation and maintenance market at \$1.6 billion.³⁶
62. The Committee received evidence from individual homeowners who described in detail the problems with their homes, the steps they had taken to resolve them and the impact on the wellbeing of their families. Ms Christine Chua wrote in her submission, for example:

Building our home has turned into the proverbial nightmare, one which is far from over for my family ... The building experience has affected every aspect of our lives, and has immeasurably damaged our personal, physical and psychological health and the quality of our lives. The long term trauma and constant stress has resulted in illnesses and long term medical conditions for my family.

It is an incredibly traumatic, emotionally distressing and painfully inhospitable experience to live in a home which has been, for the last seven (7) years, a perennial 'battleground of defects and problems' that still needs to be fixed ...³⁷

Others described their experiences as 'devastating', a 'nightmare' or a 'complete disaster'.³⁸

63. The President of the Consumers Collective of Australia, Ms Anne Paten, told the Committee:

[t]he horror building story ... is something you can only appreciate if you have been through it ... It is the most horrendous experience, and what it does to your life, your relationship, your health is just unbelievable.³⁹

64. Consumer problems of this extent and consequence reinforce the need for strong consumer protection measures.

³⁴ Consumers Collective of Australia, *Submission No 43*, January 2010, p 9.

³⁵ Building Commission, Victoria, *Dispute reduction research summary report*, 2005, p 8-9.

³⁶ Consumer Affairs Victoria, *Consumer confidence and market experience study*, Research Paper No 16, July 2008, p 10. This estimate includes out of pocket expenses, the time spent trying to rectify problems and emotional costs.

³⁷ Christine Chua, *Submission No 28*, January 2010, p 6.

³⁸ Peter and Christine Webb, *Submission No 6*, December 2009, p 1; Kathy Frost, *Submission No 19*, January 2010, p 3; Janine Bransden and Chris Carlson, *Submission No 32*, January 2010, p 1; Steve Quinn, *Submission No 40*, January 2010, p 5.

³⁹ Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 43.

3.2 Victoria's current consumer protection framework

65. Builders warranty insurance is one part of a broader consumer protection framework designed to protect home owners against problems.
66. In addition to general consumer protections such as the *Fair Trading Act 1999*, Victoria also has a number of building industry-specific consumer safeguards. These measures, sometimes described as 'front end' protections, include:
- a registration system for builders – building practitioners in Victoria have to be registered with the Building Practitioners Board. They need to show they are appropriately qualified, of good character and are covered by appropriate insurance.
 - statutory warranties – every domestic building contract in Victoria carries implied warranties that work will be carried out in a proper and workmanlike manner, materials will be good and suitable for purpose etc.
 - consumer information and education – Consumer Affairs Victoria and the Building Commission both produce consumer information for home owners about building and renovating.
 - dispute resolution mechanisms – home owners who have a problem with their builder can seek advice or conciliation from Building Advice and Conciliation Victoria (BACV), a free service provided by Consumer Affairs Victoria and the Building Commission. They can also seek a determination from the Domestic Building List at the Victorian Civil and Administrative Tribunal (VCAT).⁴⁰
67. The role of builders warranty insurance in this framework narrowed when Victoria moved from a first resort to a last resort scheme. The Government's submission described the current last resort scheme as a 'safety net'⁴¹ within the framework. It is intended to protect consumers when the builder is no longer available to complete or rectify work.

3.3 Does Victoria's builder warranty insurance scheme protect consumers?

68. The Committee heard different opinions as to how effectively Victoria's builders warranty insurance scheme protects consumers during the Inquiry.
69. Many witnesses, particularly individual homeowners and builders, were critical, often scathing, of the former scheme. Descriptions included:

⁴⁰ See Victorian Government, *Submission No 36*, January 2010, p 6-7; *Building Act 1993* (Vic) Part 11; *Domestic Building Contracts Act 1995* (Vic) s 8.

⁴¹ Victorian Government, *Submission No 36*, January 2010, p 13.

*... a most disgraceful and discriminatory system ...*⁴²

*... based on unethical principles and worthless to the consumer.*⁴³

*... perhaps a fraud, and definitely a farce.*⁴⁴

*... a conceived web of deceit that has failed every principle of what it was to stand for, and has been nothing other than a blight thrust on our industry that has severely hurt those it was to support.*⁴⁵

*... worth less than the paper it was written on ...*⁴⁶

70. The former scheme was supported by the Government, insurers and some in the building industry. The Government's submission argued it provided 'robust protection of consumer rights, without unduly impacting on building costs and taxpayers.'⁴⁷ The Managing Director of Building Industry Solutions, Mr Lance Patison, observed that the scheme 'works pretty well, and with a little fine tuning, it could and should lead the world by example.'⁴⁸
71. Other witnesses called for better application of the scheme to owner builders, or the extension of mandatory insurance (although not necessarily last resort insurance) to allied trades such as painting and cabinet making.⁴⁹
72. The more detailed evidence to the Inquiry tended to focus on two issues – firstly, the role of insurance companies under the former scheme and secondly, the last resort nature of the scheme. Since the Government takeover of the scheme, the evidence regarding insurance companies no longer has the same currency. The following sections describe the range of evidence to the Committee relating to consumer protection, with a particular focus on the last resort scheme.

3.3.1 The role of insurance companies

73. Several witnesses criticised insurance companies' treatment of consumers under Victoria's former market-based arrangements. Specific complaints included that:

⁴² Glen Crest Homes, *Submission No 2*, November 2009, p 1.

⁴³ Rick and Photini Pelletier, *Submission No 11*, January 2010, p 4.

⁴⁴ Marina and Giorgio De Nola, *Submission No 22*, January 2010, p 1.

⁴⁵ Builders Collective of Australia, *Submission No 31*, January 2010, p 6.

⁴⁶ Jeanine Andrighetto, *Submission No 35*, January 2010, p 2.

⁴⁷ Victorian Government, *Submission No 36*, January 2010, p 9.

⁴⁸ Lance Patison, *Submission No 1*, November 2009, p 4. See also QBE Insurance (Australia) Ltd, *Submission No 15*, p 1; Housing Industry Association, *Submission No 26*, January 2010, p 16-17; QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 2.

⁴⁹ See, for example, Master Painters Association of Victoria and Tasmania, *Submission No 7*, January 2010; Cabinet Makers Association Inc, *Submission No 27*, January 2010; Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 3.

- insurance companies made it difficult for consumers to make claims, either by requiring consumers to prove their builder was dead, insolvent or missing or by dragging out the claims process.⁵⁰
 - insurance companies rejected a relatively high number of builders warranty insurance claims compared with other insurance claims.⁵¹
 - consumers received poor value for money from their insurance premiums because the probability of making a successful claim was so low. Some witnesses alleged insurance companies reaped excessive profits from the scheme. Builder MR Constructions (Vic) Pty Ltd described it as 'a black hole where bucket loads of money is sucked in, and very little ever escapes'.⁵²
74. More fundamentally, some evidence questioned whether the private market could be expected to deliver consumer protection. Several submitters noted that insurance companies are obliged to act in the interests of their shareholders. Rae Dalton, for example, observed that '[i]t is ludicrous to have a private company, whose whole objective is to produce a profit in control of a consumer protection product'.⁵³
75. Supporters of the former scheme argued that the market-run scheme did in fact offer benefits for consumers:
- competition amongst insurance companies kept premiums low for builders and consumers.⁵⁴
 - insurance companies helped regulate the industry by requiring builders to show they were financially stable, and by imposing financial conditions that maintained builders' solvency. Although this issue is controversial amongst builders (see chapter four), the Victorian Competition and Efficiency Commission (VCEC) made a similar point in its 2005 report. It noted insurers screen out builders with a high risk of failure, thereby reducing the average

⁵⁰ Glen Crest Homes, *Submission No 2*, November 2009, p 1; Rob Siebert, *Submission No 20*, January 2010, p 3-4; Marina and Giorgio De Nola, *Submission No 22*, January 2010, p 7; Consumers Collective of Australia, *Submission No 43*, January 2010, p 2; Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 44.

⁵¹ Builders Collective of Australia, *Submission No 5*, December 2009, p 1; Builders Collective of Australia, *Submission No 31*, January 2010, p 2.

⁵² MR Constructions (Vic) Pty Ltd, *Submission No 10*, January 2010, p 4. See also Glen Crest Homes, *Submission No 2*, November 2009, p 1; John S O'Loughlin, *Submission No 38*, January 2010; Consumers Collective of Australia, *Submission No 43*, January 2010, p 2-3; Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 44.

⁵³ Rae Dalton, *Submission No 39*, January 2010. See also Andris Blums, *Submission No 3*, November 2009, p 1; MR Constructions (Vic) Pty Ltd, *Submission No 10*, January 2010, p 4; Rob Siebert, *Submission No 20*, January 2010, p 24; Russell Joseph, *Transcript of evidence*, 17 June 2010, p 29.

⁵⁴ Master Builders Association of Victoria, *Submission No 4*, November 2009, p 3; Housing Industry Association, *Submission No 26*, January 2010, p 10, 14, 17; QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 2.

incidence of builder insolvency and leading to industry stability and consumer confidence.⁵⁵

76. The scheme's supporters also questioned claims that insurers were making large profits. QBE Insurance's Executive General Manager, Intermediary Distribution, Mr Colin Fagan, pointed to the number of insurance companies that had left the market:

*The insurance business is extremely mathematical, and I would probably argue it is extremely economically rational. When you see a number of insurers vacate a market, it would not be because they are making excess profits.*⁵⁶

77. Critics of Victoria's scheme attacked the credibility of some of these supporters, particularly the Housing Industry Association (HIA) and the Master Builders Association of Victoria (MBAV). These allegations are discussed in chapter four.

3.3.2 The last resort nature of the scheme

A warranty or a safety net?

78. As chapter two noted, Victoria's last resort builders warranty insurance scheme only allows consumers to make a claim on their builders warranty insurance in very limited circumstances, that is if their builder is dead, insolvent or has disappeared and cannot complete or rectify their work.
79. Both consumer and builder witnesses told the Committee that last resort schemes are too narrow to help consumers when problems arise. The Consumers Collective of Australia wrote that 'in 99 per cent of cases, the trigger is not triggered, and the builder just walks away, leaving the owner with no cover and having insurance is quite simply worthless!'⁵⁷ Builder Keith Hughes wrote that 'having to ask the customers for a large sum of money for this "Insurance" which does nothing to cover them is stupid.'⁵⁸
80. Others compared the scheme with the warranties that apply to other consumer goods. Mr Michael Stokes, the Chief Executive Officer of the former Housing Guarantee Fund Ltd, noted consumers have little difficulty making a claim for products such as cars and whitegoods if they are defective. He said that a home is typically the largest purchase a person

⁵⁵ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 203-204. See also QBE Insurance (Australia) Ltd, *Submission No 15*, p 2; Housing Industry Association, *Submission No 26*, January 2010, p 14-16; Lance Patison, *Submission No 1*, November 2009, p 4.

⁵⁶ QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 5. See also Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 12.

⁵⁷ Consumers Collective of Australia, *Submission No 43*, January 2010, p 21.

⁵⁸ Keith Hughes, *Submission No 9*, January 2010. See also Rick and Photini Pelletier, *Submission No 11*, January 2010, p 3; Wayne McStay, *Submission No 37*, January 2010; Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 44.

will ever make but 'unless the builder is dead, insolvent or disappeared (DID), there is virtually no protection for the consumer'.⁵⁹

81. The Committee also heard complaints that:

- last resort schemes can require consumers to go to considerable lengths in order to lodge a claim. One consumer told the Committee that he spent tens of thousands in legal costs to bankrupt his builder under New South Wales's last resort scheme before he could lodge a claim.⁶⁰
- the caps and exclusions that apply under the scheme disadvantage some consumers even when their builder is dead, broke or missing. For example, some submissions questioned why high rise buildings were excluded from the scheme.⁶¹

82. The supporters of Victoria's scheme suggested these arguments misunderstand the purpose of the scheme. They argued it is not intended to act as a warranty that compensates homeowners whenever problems arise. QBE Insurance reminded the Committee:

*It is not broad ranging cover. It is not one designed to cover all aspects of building. It is one element of a consumer protection framework – one at the back end – and one designed to protect builders and consumers in the event of the builders' death, disappearance or insolvency. We had the position that the product met that benchmark ...*⁶²

Consumer confusion

83. Regardless of the intended purpose of the scheme, it appears that at least some consumers fail to appreciate its limitations. As a result, they can go into the building process with false expectations of their levels of protection if problems arise.

84. The Inquiry received conflicting evidence relating to the adequacy of information for consumers about builders warranty insurance. The Building Commission advised it provides an information pack to homeowners when they grant a building permit, together with information on their website. According to the Commission's evidence, in 2008-09 it provided verbal advice to 12,500 building practitioners, industry stakeholders, government departments and consumers,

⁵⁹ Michael Stokes, *Submission No 12*, January 2010, p 3. See also Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 44.

⁶⁰ Rob Siebert, *Submission No 20*, January 2010, p 5-6. See also Builders Collective of Australia, *Submission No 5*, December 2009, p 2.

⁶¹ Glen Crest Homes, *Submission No 2*, November 2009, p 1; Builders Collective of Australia, *Submission No 31*, January 2010, p 9. See Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 5; Rob Siebert, *Submission No 20*, January 2010, p 5-6.

⁶² QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 2. See also QBE Insurance (Australia) Ltd, *Submission No 15*, p 1; Housing Industry Association, *Submission No 26*, January 2010, p 13-14; Victorian Government, *Submission No 36*, January 2010, p 3, 607, 13.

distributed 368,121 building information publications to industry and consumers and received 800,578 website visits.⁶³

85. Consumer Affairs Victoria also publishes a building and renovating guide for consumers which highlights the limitations of the scheme.⁶⁴
86. The Consumers Collective of Australia, however, reported that it was difficult for homeowners to obtain information and that homeowners do not receive a copy of the insurance policy until they sign a contract.⁶⁵
87. In any event, a number of individual consumers told the Inquiry they were not aware of the scheme's limitations until it was too late. For example, Ms Kathy Frost, whose family became involved in a dispute over renovations to their Flemington home, wrote in her submission:

*We thought that we had Warranty Insurance and we thought that we were covered if the builder turned out to be difficult and unwilling to fix the many problems. But like many owners we were naive and inexperienced. We found out the hard way that the Warranty Insurance has no value at all.*⁶⁶

88. Some industry witnesses argued confusion and lack of communication had led to criticisms of the scheme. QBE Insurance told the Committee, 'I do not think we have communicated well enough to the community exactly what this product is there for, what it covers and what are the different mechanisms for recourse for consumers ... It is confusion that is creating a lot of the criticism.'⁶⁷ Other witnesses suggested the use of the word 'warranty' in the name of the insurance was contributing to the problem.⁶⁸ This issue is discussed further in chapter five of this report.

Are dispute resolution measures an effective alternative?

89. Under last resort schemes, consumers and builders have to resolve concerns about incomplete or defective work themselves if the builder is still trading. As chapter two of this report noted, the Government introduced new 'front-end' measures to protect consumers when Victoria moved to a last resort scheme. These included a new dispute resolution service in the form of the BACV.

⁶³ Building Commission, Presentation to the Standing Committee on Finance and Public Administration, Inquiry into Builders Warranty Insurance, 8 April 2010.

⁶⁴ Building Commission, *Transcript of evidence*, 8 April 2010, p 21-22; Consumer Affairs Victoria, *Building and Renovating: A Guide for Consumers*, 2007, p 4, 33.

⁶⁵ Consumers Collective of Australia, *Submission No 43*, January 2010, p 2. See also Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 44.

⁶⁶ Kathy Frost, *Submission No 19*, January 2010, p 6. See also Marina and Giorgio De Nola, *Submission No 22*, January 2010, p 6; Jeanine Andrighetto, *Submission No 35*, January 2010, p 2. See also John S O'Loughlin, *Submission No 38*, January 2010; Glen Crest Homes, *Submission No 2*, November 2009, p 1; Building Ethics Australia, *Submission No 17*, p 5; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 36-37.

⁶⁷ QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 4.

⁶⁸ Building Ethics Australia, *Submission No 17*, January 2010, p 5; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 23, 33-34.

90. In its 2005 report, VCEC concluded that the move to a last resort scheme was not associated with a general loss of consumer protection because dispute resolution through the BACV was providing an effective substitute.⁶⁹ There was conflicting evidence to this Inquiry as to whether this remains the case.

Direct negotiations between consumers and builders

91. The Building Commission's last consumer survey found most consumers were able to resolve problems with their builder on their own. Of those consumers who experienced problems, two thirds concluded the issue through direct discussion with their builder.⁷⁰
92. However, some witnesses in this Inquiry reported that, for them, this process was difficult and frustrating. Effective dispute resolution requires goodwill on the part of both parties. A common theme in submissions from individual homeowners was that some builders are not willing to accept their responsibilities. They reported that their builders variously refused to acknowledge defects, did not answer telephone calls or emails or failed to deliver on promises to rectify work.⁷¹
93. Some homeowners suggested unprofessional builders are deliberately evasive in the hope that homeowners will 'give up'. Ms Christine Chua told the Committee:

*the builder views their legal responsibility to rectify defects as a 'game of odds'. A common practice in the case of a defective home is to 'wear down' the consumer by using evasive and unethical tactics, such as refusing to fix defects so the client will have [to] expend their emotional energy and time to fight for repairs to their home ... During this process, many consumers simply give up ...*⁷²

94. The Government's submission pointed out that, even under the former first resort schemes, builders were legally responsible for incomplete or defective work.⁷³ VCEC's 2005 report also noted that consumers have always been expected to try to resolve claims themselves in the first instance. However, it did acknowledge that first and last resort schemes differ in one important respect:

when a consumer lodged a claim where a builder was still available, the insurer pressured the builder to address the matter

⁶⁹ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 218.

⁷⁰ Building Commission, Victoria, *pulse° today*, Issue 63, June 2009.

⁷¹ Peter and Christine Webb, *Submission No 6*, December 2009, p 2; Maria and James Fernandez, *Submission No 8*, January 2010, p 3; Christine Chua, *Submission No 28*, January 2010, p 5; Rick and Photini Pelletier, *Submission No 11*, January 2010, p 3; Kathy Frost, *Submission No 19*, January 2010, p 2-3; Rob Siebert, *Submission No 20*, January 2010, p 2; Steve Quinn, *Submission No 40*, January 2010, p 2. See also Consumers Collective of Australia, *Submission No 43*, pp 33-36.

⁷² Christine Chua, *Submission No 28*, January 2010, p 1-2. See also Fay Brassington, *Submission No 18*, January 2010; Kathy Frost, *Submission No 19*, January 2010, p 1.

⁷³ Victorian Government, *Submission No 36*, January 2010, p 6.

... Current arrangements might thus be viewed as lessening consumers' 'bargaining power' to obtain redress.⁷⁴

BACV and VCAT

95. The Government funds BACV and VCAT to help homeowners who cannot resolve disputes with builders on their own. BACV offers free advice and conciliation, while VCAT offers conciliation and mediation and can make a determination in domestic building cases.
96. The Building Commission advised the Committee that only 1 per cent of domestic building permit matters go to VCAT.⁷⁵
97. The Director of Consumer Affairs Victoria, Dr Claire Noone, told the Committee that BACV received 2,231 complaints in 2008-09, of which 1,484 were assessed as capable of conciliation. Dr Noone reported that 80 per cent of the matters that were conciliated were successfully resolved.⁷⁶
98. Dr Noone also gave evidence of a number of new initiatives to improve consumer protection including on-site conciliation, mandatory conciliation and compliance orders listing defects, providing a time for rectification and providing for suspension of registration for breaches of the compliance order.⁷⁷
99. Dr Noone and the Building Commission both described BACV's new onsite conciliation initiative. Under this initiative, a technical expert from the Commission and a conciliator from BACV meet the homeowner and builder on the site and attempt to resolve the dispute on the spot. They reported that there had been 280 onsite conciliations since the initiative began in late 2008, with a 91 per cent success rate.⁷⁸ Consumer Affairs Victoria's recently tabled 2009-10 annual report shows that it almost doubled the number of disputes handled by the onsite conciliation process in 2009-10 and successfully resolved 94 per cent.⁷⁹
100. The individual homeowners who contributed to this Inquiry reported less positive experiences with these services. Reported problems include:
 - access to services – the President of the Consumers Collective, Ms Anne Paten, told the Committee she and many other consumers

⁷⁴ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 213-214.

⁷⁵ Building Commission, Presentation to the Standing Committee on Finance and Public Administration, Inquiry into Builders Warranty Insurance, 8 April 2010.

⁷⁶ Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 34.

⁷⁷ Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 35.

⁷⁸ Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 35, 37; Building Commission, *Transcript of evidence*, 8 April 2010, p 21, 28.

⁷⁹ Consumer Affairs Victoria, *Annual Report 2009-2010*, p 18.

had been unable to use the BACV's conciliation services. Ms Paten also disputed the Government's statistics on BACV.⁸⁰

- lack of powers in the case of BACV – one witness argued that schemes like BACV are 'toothless' because they cannot exert pressure on builders.⁸¹ Dr Noone told the Committee there are plans to give BACV power to issue compliance orders to builders.⁸²
- high costs in the case of VCAT – a number of homeowners said they decided against going to VCAT because of the cost involved. Ms Jeanine Andrighetto, for example, wrote:

*We went to the VCAT, only to find out that the VCAT process was very costly... We had already paid over \$1,000 in solicitors' fees and realised that this was just the beginning ...*⁸³

- delays in the case of VCAT – a number of homeowners noted the length of VCAT processes. Peter and Christine Webb, for example, told the Committee it had taken them almost two years and 10 months to obtain a ruling. They claimed that the legal system prolonged and complicated their dispute.⁸⁴

101. These criticisms found some support amongst insurers and industry figures. QBE Insurance referred in its submission to 'increasing sentiment that this first layer of consumer protection is becoming cost prohibitive and subject to undue delays.'⁸⁵ The HIA's Victorian Executive Director, Mr Gil King, told the Committee the current dispute resolution system was 'inadequate and not transparent either for the consumer or for the builder on a number of fronts.'⁸⁶

3.3.3 Data on the performance of Victoria's scheme

102. The Victorian Government, unlike the NSW Government, did not require insurers to report regularly on builders warranty insurance premiums and claims.

⁸⁰ Consumers Collective of Australia, *Submission No 43*, January 2010, p 7, 14; Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 49. See also Marina and Giorgio De Nola, *Submission No 22*, January 2010, p 3.

⁸¹ Michael Stokes, *Submission No 12*, January 2010, p 3.

⁸² Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 35-36. See also Victorian Government, *Submission No 36*, January 2010, p 10.

⁸³ Jeanine Andrighetto, *Submission No 35*, January 2010, p 4. See also Peter and Christine Webb, *Submission No 6*, December 2009, p 1-2; Rick and Photini Pelletier, *Submission No 11*, January 2010, p 3; Kathy Frost, *Submission No 19*, January 2010, p 3; Marina and Giorgio De Nola, *Submission No 22*, January 2010, p 6; Consumers Collective of Australia, *Submission No 43*, January 2010, p 11.

⁸⁴ Peter and Christine Webb, *Submission No 6*, December 2009, p 2, 3. See also Jeanine Andrighetto, *Submission No 35*, January 2010, p 4; Maria and James Fernandez, *Submission No 8*, January 2010, p 2-3.

⁸⁵ QBE Insurance (Australia) Ltd, *Submission No 15*, January 2010, p 2.

⁸⁶ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 25. See also Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 14; Mr Russell Joseph, *Transcript of evidence*, 17 June 2010, p 33; Lance Patison, *Submission No 1*, November 2009, p 4.

103. In 2009, the Victorian Government required the Essential Services Commission (ESC) to collect and report data about the scheme with a view to more effective performance monitoring. The ESC appeared before the Inquiry and outlined its findings:
- the average builder premium in July 2008 was \$684;
 - insurers collected a total of \$84 million in premiums, excluding charges, between December 2005 and June 2008; and
 - consumers reported 1,363 claims between 2002 and 2008. Insurers accepted 774 or 57 per cent of claims, rejected 429 or 31 per cent of claims. The remaining claims were still in process or in dispute. Insurers' total costs for these claims was estimated at \$25.5 million, including \$13.8 million paid directly to consumers.⁸⁷
104. The ESC itself cautioned the Committee on the accuracy of this data, noting that it had asked insurance companies to provide large amounts of historical data in a short space of time and that the data had not been independently audited. The ESC also highlighted the 'long tail' nature of builders warranty insurance, a point also made by QBE Insurance in its evidence. Indeed, some witnesses in the Inquiry queried some of the ESC's figures.⁸⁸
105. Data provided by other witnesses was highly variable. In the case of premiums, for example, the MBAV told the Committee that premiums for an average \$250,000 project ranged from \$1,271 to \$1,588 depending on the insurer. The HIA told the Committee the average premium nationally was \$700. Mr Stephen Bloch from building company Glenwill Homes advised they had been paying around \$1,600 per home. Simonds Homes told the Committee it had been paying \$500 per home.⁸⁹
106. The VMIA advised the Committee that, under the new scheme, its average premium was \$756 and it expected around only 1.2-1.3 per cent of policies to give rise to a claim.⁹⁰

⁸⁷ Essential Services Commission, *Transcript of evidence*, 8 April 2010, p 54-56. See Essential Services Commission, Victoria, *Performance of Victoria's domestic building insurance scheme*, October 2009. The Financial Services Ombudsman publishes some national data on builders warranty insurance under the insurance industry's General Insurance Code of Practice, but it is limited in nature.

⁸⁸ Essential Services Commission, *Transcript of evidence*, 8 April 2010, p 53-54; QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 3; Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 15; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 30.

⁸⁹ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 17; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 35; Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 4; Simonds Homes, *Transcript of evidence*, 17 June 2010, p 36. See also Ian Salmon, *Submission No 21*, January 2010; Builders Collective of Australia; *Transcript of evidence*, 15 March 2010, p 42; Russell Joseph, *Transcript of evidence*, 17 June 2010, p 33-34.

⁹⁰ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 21; Victorian Managed Insurance Authority, Response to questions on notice, 2 July 2010.

3.3.4 Will the Government's reforms improve consumer protection?

107. The recent reforms to Victoria's builders warranty insurance scheme are aimed at ensuring a stable scheme rather than enhancing consumer protection. The Department of Treasury and Finance told the Committee the 'overwhelming drivers' of its analysis had been 'very much what would provide continuity and stability in the market.'⁹¹
108. Nevertheless, the Committee invited witnesses at its later hearings to comment on whether the recent reforms would assist consumers. There was some support for the move to a government-run scheme. Indeed, the Committee notes that some of the evidence it had received prior to the announcement supported a government takeover.⁹²
109. However, witnesses generally argued there would be little progress while the last resort aspect of the scheme remained unchanged. Builder Russell Joseph told the Committee, 'it is the same dog, different haircut ... The VMIA move is ... a step in the right direction, but is fatally flawed because the product they are trying to tout is fatally flawed.'⁹³ The Consumers Collective described the announcement as 'no change at all. It is still a last resort scheme ... The only change is to who collects the loot.'⁹⁴
110. The Committee is concerned that there appears to have been limited consultation with consumer groups about the changes. The Consumers Collective complained that insurance companies and large building industry associations have been far too influential in the past, while consumers are 'just ignored.'⁹⁵ The Department of Treasury and Finance told the Committee that consultations preceding the Government announcement included Consumer Affairs Victoria but did not refer to other consumer interests. The VMIA told the Committee it had engaged in a wide consultation process although the level of consumer interest had been 'fairly low'.⁹⁶

3.4 The Committee's findings and recommendations

111. Victoria's last resort builders warranty insurance scheme is intended by its very nature to be limited. It is part of a much broader consumer protection regime that includes 'front end' measures aimed at preventing problems or resolving them quickly and cheaply if they do arise. As the Government noted, it is intended to act only as a 'safety net'.

⁹¹ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 8.

⁹² See, for example, Michael Stokes, *Submission No 12*, January 2010, p 4; Rob Siebert, *Submission No 20*, January 2010, p 24-25; Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 3, 7.

⁹³ Russell Joseph, *Transcript of evidence*, 17 June 2010, p 33-34.

⁹⁴ Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 44. See also Michael Stokes, *Transcript of evidence*, 8 April 2010, p 12; Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 3, 4.

⁹⁵ Consumers Collective of Australia, *Submission No 43*, January 2010, p 17, 19, 21; Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 46.

⁹⁶ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 3; Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 23.

112. The evidence before this Inquiry, although often conflicting, suggests that there is a minority of consumers for whom the current scheme, either on its own or as part of the broader regime, has not been an effective consumer protection measure.
113. The 'front-end' measures promoted by the Government, particularly BACV and VCAT, have not been able to help these consumers. Nor are they able to use the 'safety net' last resort scheme because their builders are still trading. These consumers find themselves falling through the gaps in the consumer protection framework.
114. The Committee does not wish to overestimate the scale of this problem. On all the evidence available, most homeowners enjoy a trouble-free building experience in Victoria, or are able to resolve problems with their builders relatively easily. However, for those who do experience problems, the financial and emotional consequences are significant.
115. It is clearly too early to assess the impact of the reforms announced by the Government. The Government's takeover of the scheme will obviously address the concerns expressed by consumers and others about the role of insurance companies.
116. However, the Government's reforms have not changed the last resort nature of the scheme, and the concerns expressed by witnesses about that aspect of the scheme remain.
117. The Committee is concerned that the Government has and is continuing to overlook these problems. It welcomes the action taken by the Government to stabilise the scheme. However, it is also important that policymakers remember the main purpose of builders warranty insurance – to protect consumers. As in the case of the 2002 reforms which led to Victoria's last resort scheme, the current reforms appear to be a reactive response to market conditions rather than a considered strategy to improve consumer rights. The Committee's recommendations relating to these issues are set out in chapter five.
118. The Committee believes that, in the future, there needs to be more transparency and accountability of Victoria's new scheme and its costs and benefits for consumers. The lack of data relating to the former market-based scheme makes it difficult to determine whether it was performing effectively and whether consumers were receiving value for money for a product they were forced, by law, to acquire.
119. The Committee would also encourage greater consultation with consumer interests in the future to ensure the Government's focus remains as much on homeowners as on regulatory and industry interests.

Finding 3.1

Evidence to the Inquiry, although often conflicting, suggests that there is a minority of consumers for whom Victoria's builders warranty insurance scheme, either on its own or as part of a broader regime, has not been an effective consumer protection measure.

Finding 3.2

Since 2002, Victorian Government policy on builders warranty insurance has developed primarily in reaction to market conditions. There was inadequate consultation with consumer interests and insufficient regard to the aim of the scheme – consumer protection.

Finding 3.3

It is too early to determine the impact of the Government's reforms to builders warranty insurance, but to date the reforms have not addressed consumer complaints about the last resort nature of the scheme.

Recommendation 3.1

The Government and the Victorian Managed Insurance Authority should, as a matter of priority, finalise arrangements for monitoring Victoria's new builders warranty insurance scheme and publishing information about premiums and claims.

Recommendation 3.2

The Government and the Victorian Managed Insurance Authority should continue to include relevant consumer associations in consultation processes surrounding Victoria's new builders warranty insurance scheme.

CHAPTER 4: INDUSTRY PERSPECTIVES

120. While the previous chapter examined evidence from the consumer's perspective, this chapter considers evidence from builders about their experiences with Victoria's builders warranty insurance scheme. Some of this evidence concerned the conduct of insurance companies under Victoria's former scheme. Other evidence raised issues that need to be considered as the Government finalises Victoria's new scheme.

4.1 Access to builders warranty insurance

121. Builders in Victoria cannot be registered and are unable to undertake domestic building work unless they are properly insured. Not surprisingly, access to insurance and the terms and conditions on which it is available is a matter of some concern in the industry.

4.1.1 Access under Victoria's former scheme

122. Under Victoria's former builders warranty insurance scheme, insurance companies assessed builders' financial stability before agreeing to cover them for future projects ('builder eligibility'). Mr David Turner from HIA Insurance Services, the Housing Industry Association's (HIA's) insurance broker, told the Committee that insurers used criteria such as net tangible worth, gross margins and profitability.⁹⁷

123. Insurers also used this process to determine the terms and conditions of their policies. Insurers might charge higher or lower premiums based on their assessment of builders' financial risk, put limits on builders' businesses such as caps on turnover or, in some cases, require builders to provide personal securities or indemnities. This latter practice appears to have been common in Victoria. The Essential Services Commission (ESC) reported that, in the June 2008 quarter, 44.5 per cent of builder eligibilities in Victoria involved some form of security or indemnity.⁹⁸

124. Some builders who gave evidence to the Inquiry expressed frustration with these practices. Mr Paul Wainwright from Wainwright Constructions Pty Ltd complained that his insurer increased his premiums regularly and, after he formed a trust company on the advice of his accountant, advised they may not insure him at all.⁹⁹ Mr Stephen Bloch, an employee of Glenvill Homes, told the Committee his company once employed 103-104

⁹⁷ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 28-29.

⁹⁸ Essential Services Commission, Victoria, *Performance of Victoria's domestic building insurance scheme*, October 2009, p 10.

⁹⁹ Wainwright Constructions Pty Ltd, *Submission No 41*, January 2010.

staff but now employed only 65, mostly because it could not get the level of insurance required to operate.¹⁰⁰

125. Other complaints included:

- the fact that the scheme effectively allowed private companies to determine whether builders could work. Builder Wayne McStay wrote in his submission, 'I ... do not know of any other trade or profession where an insurance company dictates as to whether or not you can work. No insurance[,] no registration, no work.'¹⁰¹
- the time and cost involved in going through the eligibility process.¹⁰²
- the annual nature of the insurance. The Committee heard builders take a risk when they invest in display homes, hire apprentices etc, because insurance is not guaranteed beyond 12 months.¹⁰³
- claims that insurance companies transfer risk back to builders through securities and indemnities. The Builders Collective told the Committee that the legality of this practice is being challenged in the courts.¹⁰⁴
- lack of transparency around insurers' decisions. Chief Financial Officer of Simonds Homes, Mr Paul Mahony, told the Committee 'there are no metrics out there to say that you have to have a working capital ratio of this or you have to have this, this and this to achieve a certain rate ... We just do not know.'¹⁰⁵ Builder Russell Joseph described the insurance companies' requirements as 'arbitrary and completely without any accountability.'¹⁰⁶
- intimidation. Mr Stephen Bloch told the Committee Glenvill Homes had been told by two insurance brokers that unless they 'pulled their heads in' and stopped criticising the scheme, the company's chances of getting insurance would be compromised.¹⁰⁷

126. Some witnesses argued there were good reasons for insurers to check builders' financial viability. The Building Commission, for example, advised that:

¹⁰⁰ Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 2. See also Glen Crest Homes, *Submission No 2*, November 2009, p 1; Sean Dwyer, *Submission No 13*, January 2010, p 2.

¹⁰¹ Wayne McStay, *Submission No 37*, January 2010. See also Andris Blums, *Submission No 3*, November 2009, p 2; Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 45 cf QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 8.

¹⁰² Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 45.

¹⁰³ Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 6; Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 41; Builders Collective of Australia, *Submission No 31*, January 2010, p 3.

¹⁰⁴ Builders Collective of Australia, *Submission No 31*, January 2010, p 3.

¹⁰⁵ Simonds Homes, *Transcript of evidence*, 17 June 2010, p 40-41.

¹⁰⁶ MR Constructions Pty Ltd, *Submission No 10*, January 2010, p 3.

¹⁰⁷ Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 2, 7.

*as part of consumer protection ... we want to make sure, as part of the registration process, that a builder has financial solidness to be able to operate and deliver what he or she is contracting with the public.*¹⁰⁸

127. The Committee received conflicting evidence in regards to how many builders have experienced problems under the scheme. QBE Insurance advised its premiums had remained consistent while it had been in the market and it had not heard of builders being denied cover with any frequency.¹⁰⁹ The HIA observed that its member surveys showed warranty insurance was not 'high on the radar.'¹¹⁰
128. The Committee's evidence from builders themselves ranged from resigned to hostile. Simonds Homes did not see a lot of value in the product but saw it as 'a necessary evil.'¹¹¹ Other builders advised they had discontinued domestic building work due to their frustrations with the scheme.¹¹²

4.1.2 Access under the Government's reforms

129. At the time this report was completed, there still existed only basic information as to how the Government will deal with issues regarding builders' access to insurance under the new Victorian Managed Insurance Authority (VMIA) run scheme.
130. The Minister for Finance's direction to the VMIA, outlined in chapter two, provides the VMIA with an 'absolute discretion' to determine underwriting terms and conditions having regard to 'commercial criteria'. It also provides for transitional arrangements for builders who had insurance with a private insurer in the 15 months prior to the Government's announcement.
131. The VMIA advised the Committee it was using QBE Insurance's underwriting methodologies for the time being under its agreement with QBE, but they were subject to review. It did confirm that there had been no declinatures at the time of its evidence on 17 June 2010.¹¹³

¹⁰⁸ Building Commission, *Transcript of evidence*, 8 April 2010, p 29. See also Senate Standing Committee on Economics, Australian Parliament, *Australia's mandatory Last Resort Home Warranty Insurance scheme*, November 2008, p 61; Housing Industry Association, *Submission No 26*, January 2010, p 14; QBE Insurance (Australia) Ltd, *Submission No 15*, January 2010, p 2, 8.

¹⁰⁹ QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 2, 8.

¹¹⁰ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 32. See also Senate Standing Committee on Economics, Australian Parliament, *Australia's mandatory Last Resort Home Warranty Insurance scheme*, November 2008, p 62, which concluded there was nothing to suggest a significant systemic problem.

¹¹¹ Simonds Homes, *Transcript of evidence*, 17 June 2010, p 40.

¹¹² Colin Neal, *Submission No 30*, January 2010; Keith Hughes, *Submission No 9*, January 2010. See also Sean Dwyer, *Submission No 13*, January 2010, p 2; Builders Collective of Australia, *Submission No 31*, January 2010, p 3.

¹¹³ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 17, 19.

132. The Government has given the ESC responsibility for monitoring the VMIA's pricing, however the details of its role were yet to be arranged at the time of the Inquiry's hearings.¹¹⁴

4.2 Compliance issues – owner builder activity

133. The Committee also heard claims that some businesses are avoiding insurance requirements altogether using Victoria's owner builders rules. As chapter two of this report noted, Victoria's building laws allow landowners to personally build or renovate on their own land, rather than using a registered builder. In this instance, the owner builder is only required to obtain builders warranty insurance if the work is valued over \$12,000 and he or she sells the home within six years.¹¹⁵
134. According to the Building Commission's industry information website, *pulse*, 23,700 building permits or 28.9 per cent of all building permits issued in Victoria in 2008-09 were issued to owner builders.¹¹⁶
135. The building industry associations attributed the high percentage of owner builders in Victoria to the state's relatively light regulation of owner builders compared with states such as Queensland.¹¹⁷
136. In 2005, the Victorian Competition and Efficiency Commission (VCEC) rejected claims that high owner builder numbers represent a compliance problem for Victoria's scheme. It pointed out that Victoria has historically had high levels of owner builder activity, including prior to the introduction of a last resort scheme in 2002.¹¹⁸
137. However, evidence highlighted concerns that unprofessional builders are using the laws as a loophole to avoid insurance requirements. Mr Stephen Bloch referred to the percentage of owner builder permits in Victoria as a 'ridiculous number' and argued that it did not match reality. He told the Committee:

*there is a subindustry of more disreputable, shonky and less-capable builders simply flying under the radar and making themselves available to and teeing up with owners, and thereby circumventing all the legal requirements associated with building ... we end up competing against businesses who do not comply.*¹¹⁹

¹¹⁴ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 7; Essential Services Commission, *Transcript of evidence*, 8 April 2010, p 56.

¹¹⁵ See *Building Act 1993* (Vic) ss 25B-25I, 137B-137D.

¹¹⁶ Building Commission, Victoria, 'Domestic building permits by status of builder', <www.pulse.buildingcommission.com.au>, accessed 18 May 2010.

¹¹⁷ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 11; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 29.

¹¹⁸ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 236-8.

¹¹⁹ Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 3. See also Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 4; Sean Dwyer, *Submission No 13*, January 2010, p 2; Keith Hughes, *Submission No 9*, January 2010, p 2; Builders Collective of Australia, *Submission No 31*, January 2010, p 3.

4.3 Coverage of allied trades

138. Further evidence was received with respect to the application of Victoria's builders warranty insurance scheme to allied trades.
139. Victoria's builders warranty insurance scheme does not apply to the entire spectrum of various trades that might take part in home building and renovation. Under Victorian law, 'domestic building work' is defined to specifically exclude some types of work.¹²⁰ Amongst the categories of excluded work is work performed under contracts that involve only one type of trade such as glazing, painting, plastering, tiling or insulating.
140. Evidence received from the Cabinet Makers Association Inc highlighted inconsistencies in the law which were causing problems for businesses in the kitchen and bathroom sector, and called for greater regulation of these businesses. It reported that the majority of people do not regard cabinet makers as builders and, as a consequence, 80 per cent of businesses in the marketplace are not registered. The Association believes this is creating market conflict and an uneven marketplace in the sector.¹²¹
141. The Master Painters Association of Victoria and Tasmania also wrote to the Committee proposing mandatory insurance for painting contractors performing work over a specified value.¹²²

4.4 The impact of the Government's reforms

142. The industry's response to the Government's recent reforms appears mixed at this early stage. The Master Builders Association of Victoria (MBAV) believed the new builders warranty insurance scheme should provide certainty for builders and ensure future consumer protection.¹²³ The VMIA advised it was engaging in a wide consultation process with key industry stakeholders and that feedback from the industry had been 'extremely positive'.¹²⁴
143. Individual builders were more cautious in their assessments. Simonds Homes believed it was 'too early to tell' what might change and they had not seen anything to say the situation would be better or worse.¹²⁵ Glenvill Homes employee Mr Stephen Bloch described the reforms as 'only half a step'. Mr Bloch warned that 'until and unless there are open criteria for obtaining warranty insurance, there are still going to be adverse implications for the building industry'.¹²⁶

¹²⁰ Minister for Planning, Domestic Building Insurance Ministerial Order, May 2003; *Domestic Building Contracts Act 1995* (Vic) ss 3, 5-6; *Domestic Building Contracts Regulations 2007* (Vic).

¹²¹ Cabinet Makers Association Inc, *Submission No 27*, January 2010.

¹²² Master Painters Association of Victoria and Tasmania, *Submission No 7*, January 2010.

¹²³ Master Builders Association of Victoria, 'Master Builders Welcomes Decisive Govt Action on Building Insurance', Media Release, 29 March 2010.

¹²⁴ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 16, 19.

¹²⁵ Simonds Homes, *Transcript of evidence*, 17 June 2010, p 39.

¹²⁶ Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 3.

144. Some builders criticised the Government for not changing the last resort nature of the scheme. Mr Russell Joseph from MR Constructions (Vic) Pty Ltd described the failure to adopt a first resort scheme as 'short-sighted'.¹²⁷ The Builders Collective of Australia, an interest group which has been campaigning for builders warranty insurance reform, wrote to the Committee after the Government's announcement to raise its concerns. Its President, Mr Phil Dwyer, argued the 'so-called new scheme' was 'in fact precisely the same as before and if anything more of an impost on builders.'¹²⁸

4.5 Divisions within the building industry

145. It was clear from the evidence to this Inquiry that there are deeply-felt divisions within the building industry about builders warranty insurance.
146. The two main building industry associations, the HIA and the MBAV, both supported the market-based mandatory last resort insurance in the past, although the MBAV reached the view that the scheme had become unviable during the Inquiry.
147. As chapter three of this report has already noted, critics within the industry attacked the credibility of the industry associations. A number of witnesses, including the Builders Collective of Australia, referred to the income the HIA and MBAV gain from insurance brokerage interests and told the Committee their views did not represent 'the grassroots views of builders'.¹²⁹
148. In evidence to the Committee the HIA and MBAV both outlined their financial interests in the scheme and rejected allegations they had not been acting in builders' interests.¹³⁰

4.6 The Committee's findings and recommendations

149. Many of the complaints from builders with respect to Victoria's builders warranty insurance scheme concerned the conduct of insurance companies, brokers and industry associations under the scheme prior to March 2010. While it is still early days, the Committee believes the move to a government-run scheme can be expected to resolve some of these concerns. However, the Committee's evidence does raise issues the Government should consider when implementing its new arrangements.

¹²⁷ Russell Joseph, *Transcript of evidence*, 17 June 2010, p 31, 33.

¹²⁸ Email from President of the Builders Collective of Australia to Secretary, Standing Committee on Finance and Public Administration, 14 August 2010.

¹²⁹ Russell Joseph, *Transcript of evidence*, 17 June 2010, p 32. See also Sean Dwyer, *Submission No 13*, January 2010, p 1; Ray Dohmen, *Submission No 14*, January 2010, p 1; M R Constructions Pty Ltd, *Submission No 10*, January 2010, p 2-3; Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 50-51; Andris Blums, *Transcript of evidence*, 15 March 2010, p 55; Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 2, 3.

¹³⁰ Housing Industry Association, *Submission No 26*, January 2010, p 16; Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 16; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 22-23, 33-34.

150. Firstly, the Committee believes the new scheme should include a higher level of transparency and accountability around underwriting criteria. The Committee agrees there are sound commercial, as well as consumer protection reasons, why builders' financial health should be a factor in access to insurance. The lack of transparency and accountability around these arrangements in the past has contributed to at least some builders' concerns. The Committee believes the VMIA should publish its underwriting criteria and premiums to avoid this situation in the future.
151. Secondly, the Committee believes the Government and VMIA need to consult more widely within the building industry about builders warranty insurance. The Committee did not consider the divisions in the industry over this issue in detail. The terms of reference for this Inquiry focus on builders warranty insurance policy, not internal building industry issues. Nevertheless, this evidence suggests it would be sensible for Government to continue to include smaller industry interests as well as the major industry associations in discussions.
152. This evidence also raises questions over the role of insurance brokers under the new scheme. The Committee appreciates the Government has attempted to ensure stability and continuity by preserving existing brokerage arrangements to date. However, the brokerage interests of the major building industry associations remain a matter of concern for some in the industry. The Committee received little evidence about the role that brokers will play in the future when the VMIA and QBE begin operating as an effective monopoly. The Government may wish to consider these matters further.
153. Finally, the Committee is concerned by the evidence received illustrating the potential loophole offered by Victoria's owner builder laws and the uncertainty faced by some allied trades about their position under the scheme. The Committee believes the Government should investigate these issues further, particularly whether owner builder rules need to be tightened.

Finding 4.1

There was insufficient transparency and accountability around underwriting criteria under Victoria's previous builders warranty insurance scheme.

Recommendation 4.1

The Government and the Victorian Managed Insurance Authority should, as a matter of priority, finalise and publish the Victorian Managed Insurance Authority's underwriting criteria for builders warranty insurance.

Recommendation 4.2

The Government and the Victorian Managed Insurance Authority should continue to include a broad range of building industry interests in consultation processes surrounding Victoria's new builders warranty insurance scheme.

Recommendation 4.3

The Government and the Victorian Managed Insurance Authority should review the role of insurance brokers under Victoria's new builders warranty insurance scheme.

Recommendation 4.4

The Government should conduct a review of owner builder laws and activity in Victoria. The review should consider whether the number of owner builder permits is a genuine reflection of owner builder activity in Victoria, whether owner builder laws are being used as a loophole to avoid builders warranty insurance and, if required, how Victorian law should be amended to address these issues.

Recommendation 4.5

The Government should review and, if required, clarify the application of Victoria's builders warranty insurance scheme to allied trades.

CHAPTER 5: ALTERNATIVE SCHEMES

154. The terms of reference for this Inquiry required consideration of any possible alternatives to Victoria's current builders warranty scheme.
155. This chapter examines the main options for change, ranging from improvements to the existing scheme through to possible new models in order to strengthen the building industry and to provide further protection to homeowners.

5.1 Could Victoria's existing scheme be improved?

5.1.1 Earlier inquiries

156. As chapter two noted, the recommendations of earlier inquiries into mandatory last resort builders warranty insurance tended to focus on ways to improve existing consumer protections for homeowners.
157. The Ministerial Council on Consumer Affairs's 2002 review concluded that:
- Essentially, governments will need to put less emphasis on insurance and give more attention to strengthening the regulatory framework for homebuilding if consumer, builder and insurer concerns are to be addressed. Making the building process more reliable and less acrimonious offers the only lasting solution.¹³¹*
158. It recommended a series of reforms including an industry 'watchtower' group, a centralised rating system for builders, timeframes for dispute resolution and new powers for investigators to order remedies on-site.
159. In its 2005 report, the Victorian Competition and Efficiency Commission (VCEC) recommended better-placed consumer information and changes to Building Advice and Conciliation Victoria (BACV).¹³²
160. The most recent inquiry by the Senate Standing Committee on Economics concluded that, rather than returning to older first resort schemes, a better solution would be to improve licensing and dispute resolution.¹³³

5.1.2 Existing initiatives

161. The Government advised the Committee it was already implementing or planning reforms in response to earlier inquiries. They included:

¹³¹ Professor Percy Allan, *National Review of Home Builders Warranty Insurance and Consumer Protection: Report prepared for the Ministerial Council on Consumer Affairs*, June 2002, p vii.

¹³² Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 201, 208.

¹³³ Senate Standing Committee on Economics, Australian Parliament, *Australia's mandatory Last Resort Home Warranty Insurance scheme*, 2008, p 45.

- on-site conciliation of building disputes by BACV.
- development of new voluntary model domestic building contracts.
- a proposal to give conciliators the power to issue compliance orders.
- strengthening the powers of the Building Practitioners Board to deal with builders who fail to meet their obligations.¹³⁴

5.1.3 Other options for reform

162. The Committee's evidence suggested areas for improvement under Victoria's last resort scheme, including re-naming the scheme and an improvement to the dispute resolution process.

Re-naming the scheme

163. Chapter three noted evidence that consumers may fail to appreciate and accept the limited nature of last resort builders warranty insurance until it is too late.

164. Some witnesses suggested the word 'warranty' could add to this confusion. The Executive Director of the Victorian Branch of the Housing Industry Association (HIA), Mr Gil King, told the Committee, '... people think they are getting a product they are not getting, and in our view that causes a large part of the disharmony that exists around warranty insurance.'¹³⁵

165. The Senate Standing Committee on Economics recommended changing the name of the insurance, a proposal that was also supported by some participants in this Inquiry. Building Ethics Australia, which provides insurance broking and other services to the industry, was one of those who supported a new name. Its submission argued that '[a]s builders warranty insurance is effectively a financial guarantee product, a name that reflects this would be strongly recommended.'¹³⁶

166. The Government already refers to the scheme as 'domestic building insurance' rather than warranty insurance, but the latter term remains common parlance in the wider community. The Building Commission told the Committee it had made a 'considerable effort' to correct the confusion but it was a continuing effort.¹³⁷

¹³⁴ Victorian Government, *Submission No 36*, January 2010, p 10.

¹³⁵ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 33-34. See also Building Ethics Australia, *Submission No 17*, January 2010, p 5; Building Commission, *Transcript of evidence*, 8 April 2010, p 20.

¹³⁶ Senate Standing Committee on Economics, Australian Parliament, *Australia's mandatory Last Resort Home Warranty Insurance scheme*, 2008, p 62; Building Ethics Australia, *Submission No 17*, January 2010, p 5. See also Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 24.

¹³⁷ Building Commission, *Transcript of evidence*, 8 April 2010, p 26. See also QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 4.

Better dispute resolution

167. Chapter three highlighted concerns from consumers and builders in regards to dispute resolution services.
168. In its submission, the HIA called on the Government to take 'a much more pro-active position' regarding introduction of 'a more robust and accessible dispute resolution process ...'¹³⁸ QBE Insurance also suggested the Government review the operation of BACV and the Victorian Civil and Administrative Tribunal (VCAT).¹³⁹
169. As noted earlier, the Government is currently implementing some reforms. The Building Commission and Consumer Affairs Victoria reported that BACV's new on-site conciliation service had a 91 per cent success rate in resolving disputes at the time of their April 2010 hearing.¹⁴⁰ The Committee is also aware that VCAT recently released a strategic plan outlining a number of internal reforms, including a performance benchmark for timely production of decisions and an effective complaints mechanism.¹⁴¹
170. The Committee's evidence did not specifically propose dispute resolution changes, instead noting a general need for action in this area.

Other suggestions

171. Other suggestions for reform included:
- a national standardised communication and education program for consumers.¹⁴²
 - removing the caps on compensation under the current scheme.¹⁴³
 - a 'completion guarantee' for consumers, which would see the insurer rather than the consumer become responsible for organising remedial work. As the Consumers Collective of Australia indicated, consumers often struggle to find a new builder to remedy existing defective homes.¹⁴⁴
 - expanding the circumstances in which homeowners can lodge a claim to include cases where the builder is unable to rectify

¹³⁸ Housing Industry Association, *Submission No 26*, January 2010, p 17. See also Rob Siebert, *Submission No 20*, January 2010, p 12-20.

¹³⁹ QBE Insurance (Australia) Ltd, *Submission No 15*, January 2010, p 2. See also Rob Siebert, *Submission No 20*, January 2010, p 12-20.

¹⁴⁰ Building Commission, *Transcript of evidence*, 8 April 2010, p 21; Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 35.

¹⁴¹ See Victorian Civil and Administrative Tribunal, *Transforming VCAT: Three Year Strategic Plan*, September 2010.

¹⁴² Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 24.

¹⁴³ Rob Siebert, *Submission No 20*, January 2010, p 8, p 20-22.

¹⁴⁴ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 24; Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 51.

problems because his or her registration has been cancelled.¹⁴⁵ The NSW Government introduced similar reforms to its last resort scheme in 2009.

5.2 Should Victoria adopt an alternative scheme?

172. The majority of the Committee's evidence called for more comprehensive changes to Victoria's last resort scheme. For example, builder Ian Salmon told the Committee 'this system should be scrapped immediately and ... a fairer system should be adopted that protects consumers from unethical builders but rewards honest hard working builders for their integrity.'¹⁴⁶ Many homeowners, such as Ms Christine Chua, also argued 'a reform of the present system is urgently needed'.¹⁴⁷
173. The following section examines the alternative schemes canvassed in evidence to the Inquiry.

5.2.1 A first resort scheme

174. As noted earlier, first resort schemes compensate homeowners for incomplete and defective building work regardless of whether the builder is still trading. Victoria has had first resort schemes in the past but, at present, Queensland is the only state in Australia with a first resort scheme.

Evidence in favour of a first resort scheme

175. While previous inquiries did not recommend that governments return to first resort schemes, the option received considerable support amongst participants in this Inquiry. Witnesses appeared attracted by the fact that such schemes could provide a warranty for domestic building that was as easily enforceable as warranties for other goods. The Consumers Collective of Australia argued:

*We desperately need genuine Home Warranty Insurance, so that owners (like consumers who purchase other products) can have a product of worth and make a claim under the warranty if builders build incomplete/defective buildings.*¹⁴⁸

176. There was strong support for a Queensland-style first resort scheme amongst witnesses. Mr Andris Blums, a long-time advocate for builders warranty insurance reform in Victoria, described it as the 'only true tried and tested model'.¹⁴⁹ Mr Phil Dwyer, President of the Builders Collective of

¹⁴⁵ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 24.

¹⁴⁶ Ian Salmon, *Submission No 21*, January 2010.

¹⁴⁷ Christine Chua, *Submission No 28*, January 2010, p 7.

¹⁴⁸ Consumers Collective of Australia, *Submission No 43*, January 2010, p 2. See also Michael Stokes, *Submission No 12*, January 2010, p 3; Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 4; Marina and Giorgio De Nola, *Submission No 12*, January 2010, p 7; Steve Quinn, *Submission No 40*, January 2010, p 5.

¹⁴⁹ Andris Blums, *Submission No 3*, November 2009, p 3.

Australia, believed the system works well and is able to satisfy both consumers and builders.¹⁵⁰

177. The Builders Collective of Australia's submission cited statistics suggesting that Queensland's first resort scheme offers greater benefits for consumers. It argued the QBSA approves more claims than the last resort schemes in Victoria and NSW, processes claims faster and returns a higher proportion of premiums to consumers in the form of payouts.¹⁵¹
178. Advocates for a first resort scheme also argued it would not necessarily involve additional costs for taxpayers. The Builders Collective of Australia further argued that the QBSA had been profitable in Queensland.¹⁵² Mr Michael Stokes pointed out that the Housing Guarantee Fund (HGF) was funded by levies on builders, 'never cost the State Government a cent' and returned money to the Government in 1997 and 2007.¹⁵³

Evidence against a first resort scheme

179. Not all evidence supported a first resort scheme. The main objection related to the cost of such schemes. The Government's submission, for example, argued that a Queensland-style model 'would likely increase costs for taxpayers, good builders and consumers' by preventing competition and increasing premiums.¹⁵⁴ Although at least one witness argued that premiums in Queensland are comparable to last resort states like Victoria and NSW,¹⁵⁵ another first resort supporter conceded that costs would be likely to be higher.¹⁵⁶
180. Other witnesses believed this was insufficient reason to reject a first resort scheme. Mr Michael Stokes told the Committee that when he was at the HGF '[t]here was not one consumer that we dealt with at the time that complained that they had to pay that fee [for coverage] in the first place, particularly when they were able to take advantage of it.'¹⁵⁷ The President of the Consumers Collective of Australia, Ms Anne Paten, also commented on the benefits of paying more to obtain first resort coverage:

¹⁵⁰ Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 47. See also Builders Collective of Australia, *Submission No 5*, December 2009, p 3; Builders Collective of Australia, *Submission No 31*, January 2010, p 8; MR Constructions Pty Ltd, *Submission No 10*, January 2010, p 5-6; Rob Siebert, *Submission No 20*, January 2010, p 6; Cabinet Makers Association, *Submission No 27*, January 2010, p 4; Janine Bransden and Chris Carlson, *Submission No 32*, January 2010, p 1, 6; Jeanine Andrighetto, *Submission No 35*, January 2010, p 4, 5; John S O'Loughlin, *Submission No 38*, January 2010; Consumers Collective of Australia, *Submission No 43*, January 2010, p 18; Russell Joseph, *Transcript of evidence*, 17 June 2010, p 31.

¹⁵¹ Builders Collective of Australia, *Submission No 5*, December 2009, p 2.

¹⁵² Builders Collective of Australia, *Submission No 5*, December 2009, p 2.

¹⁵³ Michael Stokes, *Submission No 12*, January 2010, p 2, 3.

¹⁵⁴ Victorian Government, *Submission No 36*, January 2010, p 13. See also Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 9; Housing Industry Association, *Submission No 26*, January 2010, p 10; Lance Patison, *Submission No 7*, November 2009, p 4; QBE Insurance (Australia) Ltd, *Transcript of evidence*, 27 July 2010, p 5.

¹⁵⁵ Andris Blums, *Submission No 3*, November 2009, p 2.

¹⁵⁶ Michael Stokes, *Transcript of evidence*, 8 April 2010, p 17.

¹⁵⁷ Michael Stokes, *Transcript of evidence*, 8 April 2010, p 13.

I can tell you any consumer would not mind paying out \$2,000, \$3,000 or \$5,000 if it meant, when their outlay was \$500,000 and the builder did not do the right thing, they would have somewhere to go.¹⁵⁸

181. When comparing Victoria's former last resort scheme against a first resort scheme, VCEC found:

the practical difference in consumer protection appears minor. Currently, if their builder is still available, consumers can seek recourse under the Domestic Building Contracts Act 1995 (Vic) for the rectification of defects or uncompleted works ... As The Age noted around the time of the changes:

Insurance companies have long expected home buyers to exhaust all avenues of appeal before claiming on their policies ... Effectively, first resort is little different to last resort except that it results in home buyers having false expectations around their insurance rights.¹⁵⁹

182. Accordingly, in relation to the move from a first to last resort scheme, VCEC concluded that it 'was not convinced that the move to "last resort" insurance has resulted in a general loss of consumer protection for events formerly covered under so-called "first resort" cover.'¹⁶⁰

183. Other concerns raised by witnesses about first resort schemes in this Inquiry were:

- the impact on builders – the Master Builders Association of Victoria (MBAV) claimed that insurers tended to settle claims more often under Victoria's former market-based first resort scheme and then sought to recoup the cost from builders. It argued this reduced the chances of resolving a dispute before lawyers became involved and resulted in higher building costs.¹⁶¹
- subsidies for riskier builders – under Queensland's scheme, all builders pay a standard premium based on project size, regardless of their risk profile. The Government's submission argued that a single premium structure, like that in Queensland, would lead to good builders subsidising bad builders.¹⁶² The HIA made a similar point. It argued that calculation of premiums based on risk acted as a price incentive for all builders to maintain a good record.¹⁶³

¹⁵⁸ Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 47.

¹⁵⁹ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 213-214.

¹⁶⁰ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 218.

¹⁶¹ Master Builders Association of Victoria, *Submission No 4*, November 2009, p 3-4.

¹⁶² Victorian Government, *Submission No 36*, January 2010, p 13.

¹⁶³ Housing Industry Association, *Submission No 26*, January 2010, p 15.

184. The Committee also notes that the QBSA has been the subject of recent review in Queensland, although the extent to which the Government is considering the QBSA's first resort scheme is not clear.¹⁶⁴

Comparative data about first and last resort schemes

185. The QBSA regularly publishes data on policies and claims under its first resort scheme. Some witnesses used this data to draw comparisons with Victoria's former market-run last resort scheme, arguing that the QBSA scheme processes claims faster than Victoria, accepts a higher proportion of claims and pays out more in compensation to consumers.¹⁶⁵

186. However, as chapter three noted, there is a lack of reliable and up-to-date data from Victoria that can be used for this purpose. Differences between the two schemes also make comparisons problematic. Queensland's scheme has been government-run since 1977, covers subsidence as well as non-completion and defects, is mandatory for work over \$3,300 and does not apply to owner builders.

187. The data that is available from QBSA annual reports and Victoria's Essential Services Commission suggests:¹⁶⁶

- consumers have more opportunity to lodge claims under the QBSA scheme, as would be expected given its broader coverage. Based on data from 2007-08, the most recent year for which Victorian data is available, insurers in Victoria wrote 55,656 policies or certificates and received 405 claims. This equates to around one claim for every 137 policies. The QBSA wrote 93,018 policies and received 1,750 claims, or one claim for every 53 policies.
- consumers may pay higher premiums under first resort schemes, although premiums are influenced by a range of factors and change over time. In June 2008, the average premium in Victoria was \$3.74 for every \$1,000 of project value for registered builders, and \$6.02 per \$1,000 for owner builders.¹⁶⁷ QBSA premiums in the 2008-09 financial year generally ranged from \$7.43 to \$8.32 per \$1,000 of project value.

¹⁶⁴ Queensland, *Parliamentary Debates*, 19 May 2010, p 1613-1614 (the Hon R E Schwarten MP, Minister for Public Works and Information and Communication Technology); 'Review for build authority', *Gold Coast Sun* (Queensland), 23 September 2010, p 30.

¹⁶⁵ See, for example, Builders Collective of Australia, *Submission No 3*, December 2009, p 2.

¹⁶⁶ Queensland Building Services Authority, *Annual Report 2008-09*, p 18, 44 (Note 3); Queensland Building Services Authority, *Annual Report 2007/08* p 16-17, 40 (Note 3); Queensland Building Services Authority, *Annual Report 2006-2007* p 15-16, 38 (Note 3); Queensland Building Services Authority, *Annual Report 2005-06*, p 7, 36 (Note 3); Queensland Building Services Authority, *Annual Report 2004-2005* p 22, 48 (Note 3); Queensland Building Services Authority, Insurance premium table effective 15 July 2008, www.bsa.qld.gov.au, accessed 9 July 2010; Essential Services Commission, Victoria, *Performance of Victoria's domestic building insurance scheme*, October 2009.

¹⁶⁷ As chapter two noted, owner builders are required to take out builders warranty insurance to protect the subsequent purchaser of their home if they carry out work with a value over \$12,000 and sell the home within 6 years.

- consumers are not necessarily more likely to have a claim approved under a first resort scheme. Between 2002 and 2008, insurers in Victoria approved 774 of 1,363 claims or 56.8 per cent of claims (some claims from this period were still being assessed). The QBSA no longer publishes its approval rates. However, the Housing Guarantee Fund reportedly approved only 51.5 per cent of claims over its 22 years of operation.¹⁶⁸
- there is insufficient data to judge the extent to which consumers receive value for money in terms of the proportion of premiums returned to consumers in compensation. Over the 2002-08 period, the QBSA collected \$304.2 million and paid out \$135.5 million, or 44.6 per cent of premiums collected. In Victoria, insurance companies' costs for claims between 2002 and 2008 have been estimated at \$25.5 million, however the amount insurers collected over the same period is not public.
- first resort schemes can run at a profit, but profitability depends on a range of factors. The QBSA's annual reports for the past five years show that its underwriting function has made a profit in some years and a loss in others.

This data is set out in greater detail in Appendix C of this report.

188. At this stage it is too early to tell how well Victoria's new scheme will compare with other first resort schemes. As chapter two noted, the VMIA's future underwriting arrangements are still being finalised. The VMIA advised the Committee its average premium since its arrangement with QBE commenced was \$756, although it is not clear if that is inclusive or exclusive of costs such as stamp duty. The VMIA indicated it expected 1.2-1.3 per cent of policies to give rise to a claim.¹⁶⁹

5.2.2 A voluntary scheme

189. A further option that attracted brief comment during the Inquiry was a voluntary builders warranty insurance scheme. As chapter two noted, voluntary schemes allow builders and homeowners to choose for themselves whether to take out builders warranty insurance.

Evidence in favour of a voluntary scheme

190. There was limited support for a voluntary scheme amongst participants in this Inquiry. Only one witness, national building company Home Australia, argued for a voluntary scheme. Its managing director noted that homeowners are now in a better position to protect themselves and:

¹⁶⁸ Housing Guarantee Fund Ltd, *2005 to 2006 Annual report*, 2006, p 5. The report states that the HGF received 68,400 claims between 1984 and 2006, of which 9,700 did not proceed, 23,500 were rejected, 18,870 were rectified by builders on the HGF's direction and 16,300 were paid.

¹⁶⁹ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 21; Victorian Managed Insurance Authority, Response to questions on notice, 2 July 2010.

*forcing people to buy a product that they neither want (consumer choice) nor need (some of the builders that are being insured against going broke have assets in the billions of dollars), is folly in this day and age.*¹⁷⁰

191. Two other witnesses argued, prior to the Government's reforms, that Victoria should adopt a voluntary scheme, but only as a precursor to the introduction of a Queensland-style first resort scheme.¹⁷¹

Evidence against a voluntary scheme

192. Earlier inquiries have not been in favour of voluntary builders warranty insurance schemes. In its 2005 report, VCEC concluded that consumers were not in a position to make properly informed decisions about insurance because of their relative lack of information about the building process and its risks. It argued they 'may not fully appreciate the value of an insured builder and, to that extent, may not be prepared to pay the extra cost.'¹⁷² It noted that a voluntary scheme might be 'possible and preferable in the long term' but other improvements, particularly to consumer information, needed to be bedded down first.¹⁷³
193. In 2008, the Senate Standing Committee on Economics concluded that it did not support a voluntary scheme as consumers may find themselves with no minimum level of protection in the event of a builder collapse.¹⁷⁴
194. The Standing Committee's evidence illustrated similar concerns. Mr Stephen Bloch from builder Glenvill Homes highlighted that most customers would be unlikely to take out builders warranty insurance if given a choice:

*If you were to ask any or a range of our customers whether they would prefer to spend \$1,500 on last resort insurance or whether they would be prefer to spend \$1,500 on upgraded benchtops in their kitchen, I think you would find that 99 per cent of them would not feel they needed last resort insurance.*¹⁷⁵

195. The Victorian Government's submission predicted a voluntary scheme might lead to:

only the strongest builders taking out insurance and only high-end consumers being protected. It would be ignored by the riskier

¹⁷⁰ Home Australia, *Submission No 23*, January 2010.

¹⁷¹ Builders Collective of Australia, *Transcript of evidence*, 15 March 2010, p 47; Andris Blums, *Transcript of evidence*, 15 March 2010, p 53, 56.

¹⁷² Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 198.

¹⁷³ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p 241.

¹⁷⁴ Senate Standing Committee on Economics, Australian Parliament, *Australia's mandatory Last Resort Home Warranty Insurance scheme*, November 2008, p 47.

¹⁷⁵ Stephen Bloch, *Transcript of evidence*, 8 April 2010, p 4.

*builders, leaving low-end and less informed consumers exposed. Effectively, it would reduce consumer protection.*¹⁷⁶

196. The MBAV expressed concern about the consequent impact on the building industry. Its Executive Director, Mr Brian Welch, told the Committee '[it] would not run for very long in Victoria before there was a heart-rending case, or dozens of them, paraded through the media ...'¹⁷⁷ The MBAV warned that the industry as a whole would be held responsible for the actions of a few less scrupulous builders in these circumstances.¹⁷⁸
197. The Committee was informed that insurance companies ceased offering builders warranty insurance in Tasmania following its move to a voluntary scheme and consumers can no longer access the product.¹⁷⁹

5.3 The Committee's findings and recommendations

198. As earlier chapters noted, the Government's recent reforms offer a solution to some of the problems reported under Victoria's market-based builders warranty insurance scheme. The Committee commends the move to create stability for builders and consumers. However, the general view in this Inquiry was that the reforms do not go far enough to address all of the concerns generated by last resort schemes.
199. The current reform process offers an opportunity for the Government to revisit the aims of builders warranty insurance. It offers an opportunity to consult broadly with homeowners and builders on the options available and to develop a fresh policy approach that addresses the interests of both consumers and industry.
200. Of all the options considered in this Inquiry, a first resort scheme was the one that attracted the most support. Under both first and last resort schemes, the consumer is required to try to resolve any problems directly with the builder in the first instance. Where the consumer is unsuccessful the schemes can become involved. Under last resort schemes, the scheme only becomes involved in limited circumstances, usually because of the death, insolvency or the disappearance of the builder. First resort schemes, on the other hand, can assist consumers even when the builder is still trading. However, this benefit does come at a cost. The Committee agrees that consumers are likely to face higher premiums under a first resort scheme.
201. There is not enough reliable public data available to enable the Committee to properly weigh the various costs and benefits, or to determine just how much builders and consumers would need to pay for a first resort scheme. The Government declined to make its own cost benefit analysis available.

¹⁷⁶ Victorian Government, *Submission No 36*, January 2010, p 14.

¹⁷⁷ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 4.

¹⁷⁸ Master Builders Association of Victoria, *Submission No 4*, November 2009, p 4.

¹⁷⁹ Andris Blums, *Submission No 3*, November 2009, p 6.

202. The Committee is also conscious that there are other criticisms of first resort schemes that need to be addressed in any analysis.
203. The Committee is satisfied, based on evidence to this Inquiry, that a voluntary scheme is not a viable option in Victoria at this stage. Although mandatory schemes impose costs on builders and consumers, a voluntary scheme would leave many consumers without any protection and could undermine confidence in the industry as a whole.
204. There is one further option the Government may wish to consider which was not directly raised in evidence to this Inquiry. Under this option, last resort insurance would continue to be mandatory as a base level of protection for all consumers, but consumers would have the option of upgrading to first resort protection if they wish. While governments may be reluctant to impose the cost of a first resort scheme on all consumers, evidence to this Inquiry suggests some consumers are willing to pay more for a greater level of protection. The Committee appreciates the private insurance industry has not offered this option in the past and is unlikely to at present. However, the Government may wish to consider the feasibility of this option under its new VMIA-run arrangements.
205. Should the Government decide to retain a last resort scheme in Victoria, the Committee believes there would be benefit in re-naming the scheme. This should make the limited circumstances in which consumers can lodge a claim clearer than it has been in the past.

Finding 5.1

First and last resort schemes both require consumers to try to resolve problems directly with builders in the first instance. If the consumer is unsuccessful, last resort schemes only become involved in limited circumstances such as the death, insolvency or disappearance of the builder, whereas first resort schemes can assist unsuccessful consumers even when the builder is still trading. However, there is insufficient data available to assess all of the costs and benefits of a first resort scheme in Victoria, including premium levels.

Finding 5.2

A voluntary builders warranty insurance scheme is not a viable option in Victoria at this stage.

Recommendation 5.1

The Government, in consultation with industry and consumers, should undertake and publish a comprehensive cost benefit analysis of:

- (a) a mandatory first resort builders warranty insurance scheme in Victoria. The analysis should include consideration of whether the Government could incorporate a risk-based approach to premiums into the scheme, together with incentives to resolve claims.

- (b) offering builders and consumers an option of upgrading from last resort to first resort insurance.

Recommendation 5.2

If the Government decides to retain a last resort scheme in Victoria, it should name the scheme the 'builders insolvency insurance' scheme.

CHAPTER 6: GOVERNMENT AGENCIES

206. Part of the Committee's terms of reference required an examination of the specific role of government agencies in their effectiveness in managing and representing Victoria's registered builders under the current builders warranty insurance scheme.
207. Responsibility for Victoria's scheme is currently spread across several government portfolios and agencies. This chapter describes the role of relevant agencies and considers whether changes to the scheme's administration would improve outcomes for consumers and the industry.

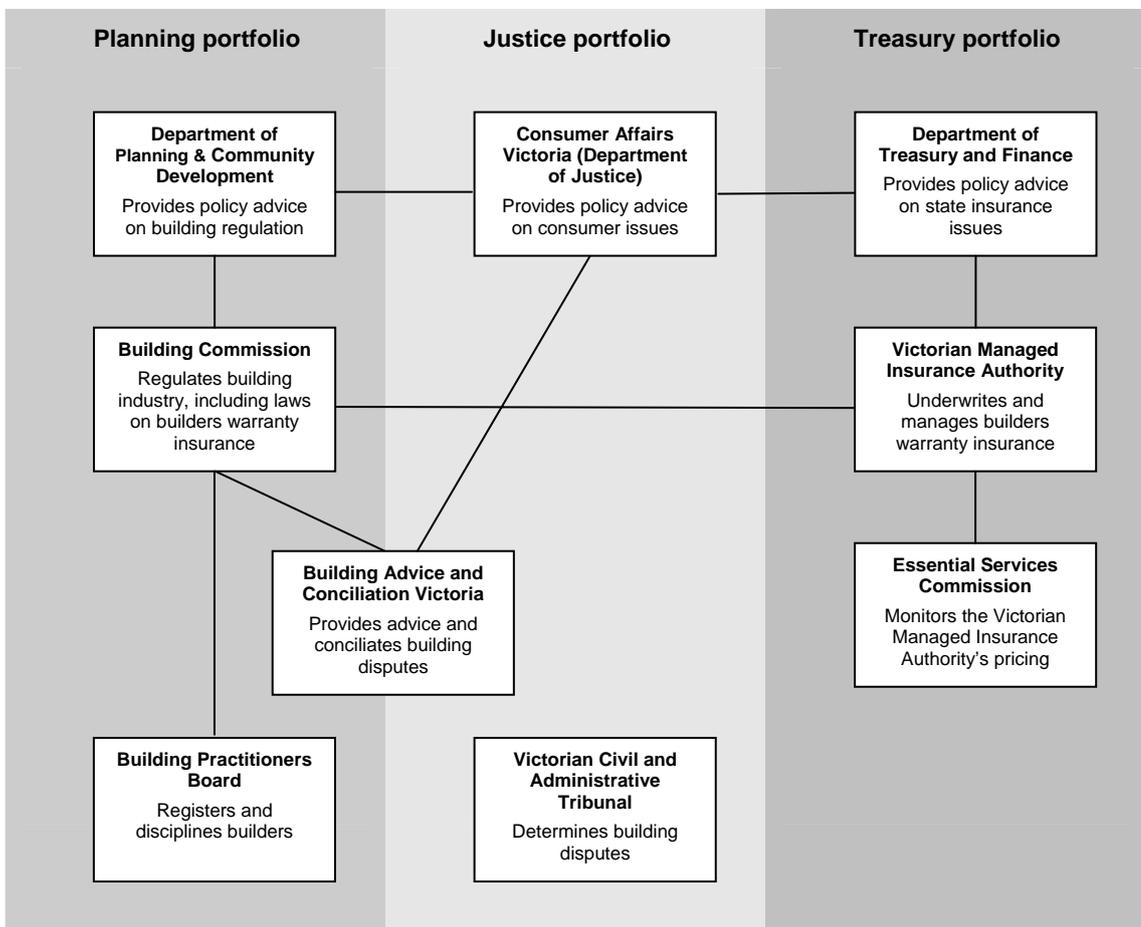
6.1 Agencies responsible for Victoria's scheme

208. Key government agencies responsible for Victoria's builders warranty insurance scheme are:
- Department of Treasury and Finance – responsible for Victorian Government insurance policy. The Department led the recent builders warranty insurance reform process in that capacity.
 - Building Commission – the statutory agency responsible for Victoria's building control system. It monitors and enforces compliance with building laws and disseminates information about building standards and regulation. The Commission administers the laws and orders that require builders to take out builders warranty insurance. It is part of the Planning portfolio and is responsible to the Minister for Planning.
 - Department of Planning and Community Development – responsible for the policy aspects of Victoria's building control system.
209. The Government's recent takeover of the scheme resulted in a further two agencies, the Victorian Managed Insurance Authority (VMIA) and the Essential Services Commission (ESC), becoming responsible for administering and monitoring the scheme respectively. Both agencies belong to the Treasury portfolio.
210. Further agencies with an interest in the building industry's broader consumer protection framework include:
- Consumer Affairs Victoria – the state's main consumer protection agency. It administers the *Domestic Building Contracts Act 1995*, which regulates building contracts and provides for statutory warranties of workmanship. The Act also deals with conciliation of building disputes and hearings by the Victorian Civil and Administrative Tribunal (VCAT). Consumer Affairs Victoria is part of the Department of Justice and is responsible to the Minister for Consumer Affairs.

- Building Advice and Conciliation Victoria (BACV) – as chapter three noted, the BACV offers free advice and conciliation services to domestic building consumers. It is jointly provided by the Building Commission and Consumer Affairs Victoria.
- VCAT – chapter three also noted that the Domestic Building List at VCAT has the power to determine domestic building disputes. VCAT is funded through the Justice portfolio.
- Building Practitioners Board – responsible for the registration and discipline of building practitioners in Victoria. The Board is supported by the Building Commission.

211. Figure 2 below depicts the different agencies involved in Victoria's system.

Figure 2: Responsibility for consumer protection in the building industry



6.2 How effective are government agencies?

212. The majority of the Committee's evidence focused on how effectively government agencies monitor the scheme, enforce builders' obligations and assist consumers. Key issues raised and outlined in the following section include accountability and transparency, enforcement, customer service and coordination.

6.2.1 Accountability and transparency

213. As chapters three and four noted, some witnesses were critical of levels of accountability and transparency under Victoria's former builders warranty insurance scheme. Although the scheme was administered by the private market, it was effectively a government-mandated scheme. The Government made the insurance mandatory for major domestic building work and a condition of builders' registration.
214. Some witnesses claimed the Government had done little to monitor the scheme and its impact on builders and consumers. As chapter three noted, the Victorian Government, unlike the NSW Government, had not required insurance companies to report on policies and claims until very recently. The Executive Director of the Master Builders Association of Victoria (MBAV), Mr Brian Welch, noted:

It is a single failing of this government that it has never made it a requirement ... that information is ... publicly available. We sit here and speculate about something which builders are forced to acquire as well as submitting to the requirements of insurance companies, and it would seem that the state government does not want to know much about it.

... there should have been appropriate scrutiny and reporting about claims and the losses with these insurance companies from the get-go.¹⁸⁰

215. The new Government-run scheme has its own accountability and transparency measures. The Government has already announced that the ESC will monitor the VMIA's pricing, while the VMIA advised it was putting in place 'a very strong internal review process' to ensure that builders and consumers have access to a robust review mechanism.¹⁸¹
216. The future of other accountability measures, however, was unclear at the time of the Inquiry. Several witnesses told the Committee that lack of independent appeal rights has caused concerns under the Housing Guarantee Fund (HGF) scheme, Victoria's last government-run scheme.¹⁸² VCAT is currently able to hear some disputes involving insurance claims,¹⁸³ but it is not clear whether the Government intends to preserve or expand its powers. The Department of Treasury and Finance advised that arrangements for reporting to the Government and the public were also 'being worked through at the moment'.¹⁸⁴

¹⁸⁰ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 3. The MBAV and Housing Industry Association both supported mandatory provision of information by insurers: Master Builders Association of Victoria, *Submission No 4*, January 2010, p 4-5; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 24, 30.

¹⁸¹ Victorian Managed Insurance Authority, *Transcript of evidence*, 17 June 2010, p 20.

¹⁸² Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 13; Michael Stokes, *Transcript of evidence*, 8 April 2010, p 12.

¹⁸³ See *Domestic Building Contracts Act 1995* (Vic) ss 59A-62.

¹⁸⁴ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 6-7.

6.2.2 Enforcement

217. Chapter two of this report noted that, when Victoria moved to a narrower last resort scheme in 2002, the Government introduced alternative 'front end' measures to assist consumers.
218. Together with the new BACV dispute resolution service, these measures included new regulatory and enforcement measures. The Government promised more stringent audit and inspection functions, a 'renewed commitment' to refer builders who defy court, tribunal or conciliation orders to the Building Practitioners Board, and 'enhanced cooperation' between Government, insurers and building associations 'to ensure dodgy builders do not continue to operate.'¹⁸⁵
219. However, one of the common complaints from homeowners during this Inquiry was that agencies are unable, or unwilling, to act against builders who breach their obligations to consumers. For example, in their written submission, Marina and Giorgio De Nola noted that a Building Commission inspector examined alleged defects in their home, but pursued the building surveyor rather than the builder.¹⁸⁶ Ms Jeanine Andrighetto's submission indicated that Consumer Affairs Victoria was aware of her builder's poor record but took no action.¹⁸⁷ Flemington homeowner Ms Kathy Frost wrote that her builder attended a Building Commission site inspection but treated the process as 'a bit of a joke' and suggested that Commission reports were irrelevant.¹⁸⁸
220. The Committee heard similar criticisms from industry figures. The Cabinet Makers Association, for example, advised it had warned Consumer Affairs Victoria over a particular business trading in breach of the law but action was only taken after the business collapsed.¹⁸⁹
221. The Building Commission and Consumer Affairs Victoria outlined their enforcement activities for the Committee. The Commission, for example, received 560 complaints in 2008-09, conducted 630 investigations, undertook 174 domestic building audits and 48 prosecutions.¹⁹⁰ While the Building Practitioners Board also inquired into 77 builders, the Building

¹⁸⁵ Minister for Consumer Affairs and Minister for Finance, Victoria, 'New consumer protections for home buyers', Media release, 13 March 2002.

¹⁸⁶ Marina and Giorgio De Nola, *Submission No 22*, January 2010, p 5.

¹⁸⁷ Jeanine Andrighetto, *Submission No 35*, January 2010, p 5.

¹⁸⁸ Kathy Frost, *Submission No 19*, January 2010, p 4. See also Peter and Christine Webb, *Submission No 6*, December 2009, p 3; Maria and James Fernandez, *Submission No 8*, January 2010, p 5; Rick and Photini Pelletier, *Submission No 11*, January 2010, p 3; Christine Chua, *Submission No 28*, January 2010, p 8; Steve Quinn, *Submission No 40*, January 2010, p 4; Consumers Collective of Australia, *Submission No 43*, January 2010, p 16; Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 44.

¹⁸⁹ Cabinet Makers Association Inc, *Submission No 27*, January 2010, p 5-6. See also Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 37; Lance Patison, *Submission No 1*, November 2009, p 3-4.

¹⁹⁰ Building Commission, *Transcript of evidence*, 8 April 2010, p 22, 28; Building Commission, Response to questions on notice, 3 June 2010.

Commission suggested the relatively small number of Board inquiries was due to the fact that Victoria has 'a fairly robust system in place'.¹⁹¹

222. The Government advised the Committee it planned to strengthen agencies' powers by giving BACV conciliators the power to issue compliance orders to builders, and allowing the Building Practitioners Board to take disciplinary action against builders who do not comply.¹⁹²

6.2.3 Customer service

223. The Committee also received a small number of complaints relating to agencies' responsiveness to consumers. For example, complaints were made that Building Commission staff routinely fail to answer telephones or return calls. There were further reports that agency case managers change regularly or are frequently unavailable.¹⁹³ The MBAV claimed that Consumer Affairs Victoria has occasionally held on to complaints longer than necessary before referring them to BACV.¹⁹⁴

224. Consumer Affairs Victoria provided information about BACV's performance indicators for handling consumer disputes. It said the average time for BACV processes is 60 or 90 days depending on whether a site inspection is required.¹⁹⁵ However, the Committee did not receive information about Consumer Affairs Victoria's or the Building Commission's own key performance indicators for responding to consumers.

6.2.4 Coordination

225. Witnesses also told the Committee that the division of functions between different agencies creates problems for consumers.

226. Ms Jeanine Andrighetto, for example, wrote in her submission:

*I question the powers of the Building Commission because when I asked them to help me they just referred me to another Government body – so I just kept going around and around and eventually worked out that no one would help me. It was very frustrating.*¹⁹⁶

227. Industry figures expressed similar concerns. The Executive Director of the Victorian branch of the Housing Industry Association (HIA), Mr Gil King, described the system as 'confounding for both the builder and the consumer'.¹⁹⁷ The Chief Executive Officer of Victoria's former HGF, Mr

¹⁹¹ Building Commission, *Transcript of evidence*, 8 April 2010, p 28. See also Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 34-35.

¹⁹² Victorian Government, *Submission No 36*, January 2010, p 10. See also Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 35.

¹⁹³ Rick and Photini Pelletier, *Submission No 11*, January 2010; p 3; Kathy Frost, *Submission No 19*, January 2010, p 4; Consumers Collective of Australia, *Submission No 43*, January 2010, p 6-7, 9.

¹⁹⁴ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 14.

¹⁹⁵ Consumer Affairs Victoria, Response to questions taken on notice.

¹⁹⁶ Jeanine Andrighetto, *Submission No 35*, January 2010, p 4. See also Rick and Photini Pelletier, *Submission No 11*, January 2010, p 3.

¹⁹⁷ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 36.

Michael Stokes, told the Committee it was 'totally fragmented. If you are a consumer, I think it is difficult to get anything done ...'¹⁹⁸ The MBAV described the Building Commission and Consumer Affairs Victoria as 'two warring camps'.¹⁹⁹

228. Government agencies argued steps had been taken to make the system easier for consumers. The Building Commission told the Committee that BACV, which it manages jointly with Consumer Affairs Victoria, provides a single contact point for consumers. It said the service 'has worked very cooperatively'.²⁰⁰

6.3 Options for reform

229. The Committee's evidence also suggested ways to address problems with the administration of Victoria's scheme, including the need for greater enforcement and the establishment of a 'one stop shop'.

6.3.1 Stronger enforcement

230. A number of homeowners called for a stronger and more proactive regulatory body to deal with builders who refuse to complete or rectify work.

231. For example, Peter and Christine Webb, sought the introduction of 'an independent umpire' with authority and expertise.²⁰¹ The President of the Consumers Collective of Australia, Ms Anne Paten, called for 'a proper regulatory body' that could enforce a genuine builders registration system:

*not registered on a piece of paper, registered so it means something, it means you are qualified and skilled, and if you do not do the right thing you lose it.*²⁰²

232. Other homeowners noted that regulators need to develop the resolve to use enforce powers they currently possess. Ms Jeanine Andrighetto told the Committee 'BACV, Consumer Affairs and [the] Building Commission all need to have some enforceable powers and then use them.'²⁰³

6.3.2 A one stop shop

233. Other witnesses suggested combining various regulatory, dispute resolution and insurance functions into a 'one stop shop' agency.

¹⁹⁸ Michael Stokes, *Transcript of evidence*, 8 April 2010, p 11.

¹⁹⁹ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 14. See also Michael Stokes, *Submission No 12*, January 2010, p 3; Lance Patison, *Submission No 1*, November 2009, p 3.

²⁰⁰ Building Commission, *Transcript of evidence*, 8 April 2010, p 21. See also Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 34.

²⁰¹ Peter and Christine Webb, *Submission No 6*, December 2009, p 5.

²⁰² Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 47. See also Consumers Collective of Australia, *Submission No 43*, January 2010, p 17.

²⁰³ Jeanine Andrighetto, *Submission No 35*, January 2010, p 4. See also Rick and Photini Pelletier, *Submission No 11*, January 2010; p 4; Christine Chua, *Submission No 28*, January 2010, p 8-9.

234. There are practical examples of this model in Australia. The Queensland Building Services Authority (QBSA) not only administers Queensland's builders warranty insurance scheme, but also runs the State's builders licensing scheme, a dispute resolution service, a compliance service which monitors and prosecutes builders and an information and advisory service. Victoria's former HGF also managed builders' registration as well as claims from consumers.²⁰⁴
235. Advocates for this model argued that it offers a simpler avenue for consumers and a more effective way of dealing with unprofessional builders. Mr Gil King from the HIA argued it would give:
- clarity and certainty to the consumer as to firstly where to go if they have a dispute and to deal with the one agency from the beginning to the end, and obviously then it also sends a clear message to builders, who may from time to time be recalcitrant, that they are dealing with the body that deals with their registration and their capacity to continue to work ...*²⁰⁵
236. Builder Keith Hughes told the Committee he had worked under a similar model in NSW and it had been 'very, very effective'. In his submission, Mr Hughes wrote, 'if it was your problem you had to fix it – if you did not the Board had someone else do the work and then they sent you the [i]nvoice and suspended your [i]licence to work.'²⁰⁶ Other witnesses commended the QBSA model.²⁰⁷
237. Some witnesses thought insurance functions should remain separate. The HIA argued that giving insurance and dispute resolution functions to the same agency would create a 'moral hazard'. This argument appeared to be that decisions by the agency in its dispute resolution capacity would affect potential insurance claims against the agency, and it might be influenced by the financial implications.²⁰⁸
238. As the Committee noted in chapter five, the QBSA is currently being reviewed in Queensland, although the extent to which the review is considering these issues is not clear.
239. There were also conflicting views about which agency should be chosen to undertake these responsibilities. Mr Andris Blums, a long time advocate for builders warranty insurance reform in Victoria, called for Consumer Affairs Victoria to take full responsibility for the scheme,²⁰⁹ while the key

²⁰⁴ Michael Stokes, *Transcript of evidence*, 8 April 2010, p 11.

²⁰⁵ Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 25.

²⁰⁶ Keith Hughes, *Submission No 9*, January 2010, p 1.

²⁰⁷ MR Constructions Pty Ltd, *Submission No 10*, January 2010, p 5-6; Jeanine Andrighetto, *Submission No 35*, January 2010, p 4; Russell Joseph, *Transcript of evidence*, 17 June 2010, p 34.

²⁰⁸ Housing Industry Association, *Submission No 26*, January 2010, p 7, 11; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 21. See also Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 14 which supported combining dispute resolution functions in one body.

²⁰⁹ Andris Blums, *Submission No 3*, November 2009, p 1, 4. See also Andris Blums, *Transcript of evidence*, 15 March 2010, p 56.

building associations favoured giving responsibility to the Building Commission or another regulator.²¹⁰

240. The Government does not support a 'one stop shop' model. The Department of Treasury and Finance agreed it offered 'simplicity' but warned it could lead to higher costs for consumers. The Government's submission indicated it did not believe a single body was necessary, 'as long as there are suitable feedback loops, clear accountabilities, and linkages between the different departments and agencies.'²¹¹

6.3.3 Linking complaints and discipline

241. Alternatively, some witnesses suggested improved coordination and communication between complaint handling/dispute resolution agencies and regulatory agencies could offer a way to improve the system.
242. A number of homeowners argued builders should be deregistered or penalised if they ignore their legal obligations to consumers. The Consumers Collective of Australia, for example, argued that builders' registration should be linked to compliance with their legal obligations.²¹²
243. Some industry figures proposed similar initiatives. The MBAV told the Committee, '[t]he thing that could be improved and should be improved is a better connection between a complaint being received from a consumer and its being investigated and dealt with ... Integral to that would have to be some sanction against builders ...'²¹³ Insurance broker Lance Patison suggested BACV and VCAT cases should be linked to Building Commission and Building Practitioners Board processes 'to ensure that the consumers are properly protected, that builders are properly accountable, and the system is suitably transparent.'²¹⁴
244. Past reviews also highlighted the need for better links between aspects of consumer protection systems. The 2005 Victorian Competition and Efficiency Commission report, for example, recommended improved integration between the Building Commission and Consumer Affairs Victoria through a formal agreement. It proposed the agreement address sharing of complaints data amongst other things.²¹⁵
245. Earlier in this chapter, the Committee has noted the Government's plans to allow BACV conciliators to issue compliance orders to builders, and to

²¹⁰ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 14; Housing Industry Association, *Transcript of evidence*, 15 March 2010, p 25.

²¹¹ Department of Treasury and Finance, *Transcript of evidence*, 17 June 2010, p 5; Victorian Government, *Submission No 36*, January 2010, p 7.

²¹² Consumers Collective of Australia, *Submission No 43*, January 2010, p 18. See also Christine and Peter Webb, *Submission No 6*, December 2009, p 3; Christine Chua, *Submission No 28*, January 2010, p 9.

²¹³ Master Builders Association of Victoria, *Transcript of evidence*, 15 March 2010, p 4.

²¹⁴ Lance Patison, *Submission No 1*, November 2009, p 3.

²¹⁵ Victorian Competition and Efficiency Commission, *Housing Regulation in Victoria: Building Better Outcomes: Final Report*, October 2005, p xxxviii-xxxix. See also Senate Standing Committee on Economics, Australian Parliament, *Australia's mandatory Last Resort Home Warranty Insurance scheme*, November 2008, p 43.

allow the Building Practitioners Board to take disciplinary action against builders who fail to comply.²¹⁶ This may lead to greater coordination of some aspects of Victoria's dispute resolution and disciplinary systems.

6.4 The Committee's findings and recommendations

246. Evidence suggests there have been cases of inadequate management of consumer and industry complaints about builders. The Committee is not in a position to determine whether these cases are symptomatic of a wider problem in regulatory agencies. However, they do undermine consumer and industry confidence in the scheme and create the impression that unprofessional builders can act with impunity in Victoria.
247. The Committee believes the Government needs to address these issues as part of its current reform process. Key areas for reform include accountability and transparency arrangements for Victoria's new builders warranty insurance scheme, enforcement priorities for regulators and key performance indicators for handling consumer complaints.
248. At a broader level, the Committee believes the fragmentation of policy and regulatory responsibilities across different agencies shares part of the blame for consumer and industry problems.
249. The Government encouraged the Committee to examine builders warranty insurance in the context of the broader consumer protection system during the Inquiry. However, the Government itself does not appear to monitor or manage the system in a holistic way. Individual agencies provided information about their own operations, but were unable to tell the Committee how many consumers were moving through different parts of the system or what happened to them. Consumers and industry bodies reported divisions between agencies and confusion on the part of the public. Once again, it is consumers who fall through the gaps.
250. The Committee believes the Government needs to streamline agency responsibilities for builders warranty insurance and the industry's other consumer protection measures. Any system that depends on the combined efforts of three ministerial portfolios, three departments and at least six different bodies is likely to experience problems. The Committee believes the Government should examine ways to reduce the number of agencies involved, including the possibility of a single agency, as well as options for improving communication between agencies.

Finding 6.1

Poor accountability and transparency measures, along with reports of enforcement inaction and poor handling of consumer complaints, are adding to concern about Victoria's builders warranty insurance scheme.

²¹⁶ Victorian Government, *Submission No 36*, January 2010, p 10; Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 35.

Finding 6.2

The Government's administration of Victoria's builders warranty insurance scheme, and consumer protection in the building industry generally, is fragmented and poorly coordinated.

Recommendation 6.1

The Government should review the enforcement policies of regulatory agencies in the building industry to ensure appropriate priority is given to enforcing builders' legal obligations.

Recommendation 6.2

Complaint handling agencies in the building industry should develop and publish key performance indicators for responding to complaints from consumers.

Recommendation 6.3

The Government should finalise and publish accountability and transparency measures for Victoria's new builders warranty insurance scheme. The arrangements should include regular collection and publication of data about policies, premiums and claims under the new scheme.

Recommendation 6.4

The Government should review options for streamlining the number of agencies involved in Victoria's builders warranty insurance scheme and consumer protection system for the building industry more generally. In particular, the Government should consider whether responsibility could be allocated to a single agency, and options for improving coordination and communication between complaint handling and regulatory agencies.

CHAPTER 7: OTHER ISSUES

251. Some of the evidence to the Inquiry raised broader issues about regulation and consumer protection in the building industry. These issues strayed beyond the terms of reference for the Inquiry and the Committee did not examine them in detail. However, the Committee believes they are worth noting for further consideration by the Government. As the President of the Consumers Collective, Ms Anne Paten, told the Committee: 'I think it is a better idea not to have disputes, and the best way not to have disputes is to make sure you clean up the industry.'²¹⁷

252. The wider issues raised by witnesses concerned:

- warranty insurance for allied trades – chapter four noted some uncertainty about the extent to which Victoria's builders warranty scheme affects allied trades. Two trade associations – the Cabinet Makers Association and the Master Painters Association of Victoria and Tasmania – argued that there should be mandatory insurance schemes for their trades.²¹⁸
- registration schemes for allied professions – a number of witnesses proposed registration or licensing requirements for other professions in the building industry, such as building consultants, site supervisors, property developers and subcontractors.²¹⁹
- inconsistent warranty periods – the Cabinet Makers Association pointed out that inconsistencies between the different types of warranty and insurance schemes in the building industry can be confusing. The implied statutory warranties in the *Domestic Building Act 1995* last for 10 years. Builders warranty insurance protects owners for six years in the case of structural defects and two years in the case of non-structural defects. Warranties on materials provided by industry suppliers are more limited again.²²⁰
- building contracts – some homeowners raised concerns about the standard contracts used by the building industry and called for a better balance between the rights of builders and consumers.²²¹ The Committee understands the Government is developing new

²¹⁷ Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 50.

²¹⁸ Master Painters Association of Victoria and Tasmania, *Submission No 7*, January 2010; Cabinet Makers Association, *Submission No 27*, January 2010.

²¹⁹ Glen Crest Homes, *Submission No 2*, November 2009, p 2; Rick and Photini Pelletier, *Submission No 11*, January 2010, p 4; Michael Stokes, *Submission No 12*, January 2010, p 6; Christine Chua, *Submission No 28*, January 2010, p 9; Jeanine Andrighetto, *Submission No 35*, January 2010, p 5; Consumers Collective of Australia, *Submission No 43*, January 2010, p 18, 27.

²²⁰ Cabinet Makers Association, *Submission No 27*, January 2010, p 7-9.

²²¹ Christine Chua, *Submission No 28*, January 2010, p 10-11; Christine and Peter Webb, *Submission No 6*, p 4; Consumers Collective of Australia, *Submission No 43*, January 2010, p 18.

voluntary model contracts,²²² and it may wish to consider the issues raised by homeowners in this context.

- public register of complaints and disciplinary action - some witnesses called for a public register of complaints and disciplinary action against builders that consumers can check when choosing a builder.²²³
- continuing professional development for builders – one industry witness pointed to lack of business acumen on the part of builders as a source of problems in the industry. It proposed mandatory courses for first year builders.²²⁴
- ‘licence hiring’ – some homeowners told the Committee their homes had been built by property developers who had paid registered builders to use their names on projects. These homeowners thought they were dealing with a registered builder and only discovered their mistake when problems arose. The President of the Consumers Collective of Australia said she was aware of several cases, including one builder who was paid \$60,000 by developers for use of his registration.²²⁵
- phoenix companies – some witnesses suggested there are still problems with phoenix companies, that is companies that go into insolvency to avoid their debts and then establish themselves as a new company, in the building industry.²²⁶
- the need for a new regulatory framework – some witnesses in the Inquiry set out plans for wide-ranging reform of building industry regulation.²²⁷

253. The Committee understands the Council of Australian Governments is currently working towards a national licensing system for building and building-related occupations. It encourages the Victorian Government to consider the broader issues raised by witnesses in this Inquiry as part of that project.

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²²² Victorian Government, *Submission No 36*, January 2010, p 10; Consumer Affairs Victoria, *Transcript of evidence*, 8 April 2010, p 40.

²²³ Jeanine Andrighetto, *Submission No 35*, January 2010, p 5; Rick and Photini Pelletier, *Submission No 11*, January 2010, p 4; Christine Chua, *Submission No 28*, January 2010, p 9; Consumers Collective of Australia, *Submission No 43*, p 18-19; Andris Blums, *Transcript of evidence*, 15 March 2010, p 54. Building Ethics Australia, *Submission No 17*, January 2010, p 4-5.

²²⁴ Consumers Collective of Australia, *Transcript of evidence*, 8 April 2010, p 48, 50; Jeanine Andrighetto, *Submission No 35*, January 2010, p 1; Steve Quinn, *Submission No 40*, January 2010, p 2.

²²⁵ QBE Insurance (Australia) Pty Ltd, *Submission No 15*, January 2010, p 2; Rob Siebert, *Submission No 20*, January 2010, p 9-10.

²²⁶ See Michael Stokes, *Submission No 12*, January 2010, p 4-7; Christine and Peter Webb, *Submission No 6*, December 2009, p 3-4; Consumers Collective of Australia, *Submission No 43*, January 2010, p 18-19.

APPENDIX A

WRITTEN SUBMISSIONS

1. Lance Patison, Building Industry Solutions Pty Ltd
2. Glen Crest Homes
3. Andris Blums
4. Master Builders Association of Victoria
5. Builders Collective of Australia
6. Peter and Christine Webb
7. Master Painters Association of Victoria and Tasmania
8. Maria and James Fernandez
9. Keith Hughes
10. Russell Joseph, M R Constructions (Vic) Pty Ltd
11. Rick and Photini Pelletier
12. Michael Stokes
13. Sean Dwyer
14. Ray Dohmen, R J Dohmen Constructions and Hi Point Homes
15. QBE Insurance (Australia) Ltd
16. Van Tarnanas, Elevation One Building Design
17. Building Ethics Australia
18. Fay Brassington
19. Kathy Frost
20. Rob Siebert
21. Ian Salmon, Salmon and Young Developments Pty Ltd
22. Marina and Giorgio De Nola
23. Bob Day, Home Australia
24. Philip Matthews
25. Daniel O'Farrell

26. Housing Industry Association
27. Cabinet Makers Association Inc
28. Christine Chua
29. Berryl Glasson
30. Colin Neal
31. Builders Collective of Australia
32. Janine Bransden and Chris Carlson
33. Peter Neil
34. Unimutual
35. Jeanine Andrighetto
36. Victorian Government
37. Wayne McStay
38. John S O'Loughlin, O'Loughlin Design Service Pty Ltd
39. Rae Dalton
40. Steve Quinn
41. Paul Wainwright, Wainwright Constructions Pty Ltd
42. Andrew Urie and Anne Paten
43. Consumers Collective of Australia

APPENDIX B

PUBLIC HEARINGS

Monday, 15 March 2010

Master Builders Association of Victoria

- Mr Brian Welch, Executive Director
- Mr Asher Judah, Policy and Communications Manager

Housing Industry Association

- Mr Shane Goodwin, Managing Director
- Mr Graham Wolfe, Chief Executive
- Mr Gil King, Executive Director, Victoria
- Mr David Turner, HIA Insurance Services

Builders Collective of Australia

- Mr Phil Dwyer, President

Mr Andris Blums

Thursday, 8 April 2010

Mr Stephen Bloch

Mr Michael Stokes

Building Commission

- Mr Jeff Norton, Director, Strategic Projects
- Mr Jeff Calderbank, Director, Industry and Regulatory Compliance

Consumer Affairs Victoria

- Dr Claire Noone, Director

Consumers Collective of Australia

- Ms Anne Paten, President

Essential Services Commission

- Mr David Heeps, Chief Executive Officer
- Ms Angelina Garces, Senior Regulatory Manager

Thursday, 17 June 2010

Department of Treasury and Finance

- Mr Vin Martin, Director, Competition and Regulation Policy
- Ms Chris Archer, Assistant Director, Insurance, OHS and Industry Policy

Victorian Managed Insurance Authority

- Mr Steve Marshall, Chief Executive Officer
- Mr Peter Ryan, General Manager, Insurance Services

Russell Joseph, M R Constructions (Vic) Pty Ltd

Simonds Homes

- Mr Paul McMahon, General Manager
- Mr Scott Mahony, Chief Financial Officer

Tuesday, 27 July 2010

QBE Insurance (Australia) Pty Ltd

- Mr Colin Fagen, Executive General Manager, Intermediary Distribution
- Mr Corey Nugent, National Product Manager, Builders Warranty

APPENDIX C

SELECTED DATA ON VICTORIAN AND QUEENSLAND SCHEMES

	Certificates/policies issued		Claims received		Claims approved	
	Vic	Qld	Vic	Qld	Vic	Qld
2008-09	-	78,300	-	1,359	-	2,514
2007-08	55,656	93,018	405	1,750	-	2,701
2006-07	52,091	93,166	232	1,342	-	2,240
2005-06	-	85,023	277	1,462	-	2,279
2004-05	-	82,065	179	1,194	-	1,984
2003-04	-	88,582	147	1,441	-	2,440
2002-03	-	72,799	123	1,360	-	2,339
Total 06-08	107,747	186,184	637	3,092	-	4,941
Total 02-08	-	514,653	1,363	8,549	774	13,983
	Premiums received (\$ m)		Amount paid to claimants (\$ m)		Scheme profit/loss (\$ m)	
	Vic	Qld*	Vic	Qld	Vic	Qld
2008-09	-	\$54.7	-	\$28.5	-	\$5.9
2007-08	\$29.8	\$72.9	-	\$32.4	-	-\$0.4
2006-07	\$30.2	\$64.0	-	\$26.1	-	\$6.1
2005-06	-	\$48.0	-	\$21.6	-	-\$4.7
2004-05	-	\$43.1	-	\$17.9	-	-\$2.5
2003-04	-	\$42.5	-	\$22.1	-	-\$4.2
2002-03	-	\$33.7	-	\$15.4	-	-\$1.8
Total 06-08	\$60.2	\$136.9	-	\$58.5	-	-
Total 02-08	-	\$304.2	\$13.8	\$135.5	-	-

Sources: Essential Services Commission, Victoria, *Performance of Victoria's domestic building insurance scheme*, October 2009; Queensland Building Services Authority (QBSA), *Annual Report 2008-09*, p 18, 44; QBSA, *Annual Report 2007/08* p 16-17, 40; QBSA, *Annual Report 2006-2007* p 15-16, 38; QBSA, *Annual Report 2005-06*, p 7, 36; QBSA, *Annual Report 2004-2005* p 22, 48; QBSA, *Annual Report 2003/2004*, p 24-25, 56; QBSA, *Annual Report 2003*, p 21-22, 44.

EXTRACTS OF PROCEEDINGS

The Committee divided on the following questions during consideration of this Report, with the result of the divisions detailed below. Questions agreed to without division are not recorded in these extracts. The Chairman of the Standing Committee can only vote when there is an equality of votes.

Meeting No. 53 — 4 October 2010

(At this meeting Mr M. Viney was substituted by Ms J. Huppert)

Mr Guy moved — That Chapters 1 to 7 (paragraphs 1 to 253), including all findings and recommendations, as amended, be adopted.

Question — That the motion be agreed to — put.

The Committee divided.

Ayes 4 Mr Barber Mr Guy Mr Hall Mr Kavanagh	Noes 2 Ms Huppert Mr Tee
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Question agreed to.

Mr Guy moved — That the draft report, as amended, be adopted as the Final Report of the Committee on its Inquiry into Builders Warranty Insurance.

Question — That the motion be agreed to — put.

The Committee divided.

Ayes 4 Mr Barber Mr Guy Mr Hall Mr Kavanagh	Noes 2 Ms Huppert Mr Tee
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Question agreed to.