



SPECIAL PRESIDENTS REPORT – 13 MAY 2008

Housing Indemnity Insurance – Meeting with Minister David Llewellyn

Fellow Members,

A delegation from the Executive Committee (Danilo Yali, Steve Vaughan, Gabriel Barns and me) met with Minister David Llewellyn on Wed 30 April 2008 to discuss the government's intention to amend the Housing Indemnity Insurance Scheme (HII) legislation to make mandatory HII voluntary.

The AIBS position is that we are supportive of amendments to the HII Scheme providing that consumer protection is not diminished and our members are not incurring potential additional risk to litigation because of the proposed changes to the legislation. We also highly recommend that the HII changes are implemented together with the introduction of the proposed new disputes resolution process.

The outcome of the meeting was:

1. The government intends to initiate changes to the HII at a time of its choosing.
2. The government see the HII issue as being separate to the new dispute resolution process.
3. The government anticipate that it will be between 12 months and 2 years after the changes to HII are introduced before the new disputes resolution process will be introduced.
4. Essentially the Minister rejected our recommendation to introduce both the changes to HII and the disputes resolution at the same time.
5. MBA share similar concerns to AIBS and a copy of an article in the most recent MBA journal was provided to the Minister to support this statement.
6. It was revealed that Consumer Affairs and Fair Trading was not consulted in relation to the HII changes either.
7. It was acknowledged that consultation was not industry wide.

8. The Minister supported our view that an 'Industry Council' should be formed to review all proposed legislation changes prior to initiating the consultation process and making formal changes and to advise government on industry issues.
9. There was acknowledgement that there is a cost to defend any litigation claim whether frivolous or valid and that a negligent practitioner would run a high risk of litigation even under current legislation.

It is my personal view that banks and other lending institutions may be reluctant to lend monies where the owner does not opt to have HII.

Recommendations

It is recommended that each building surveying member, regardless of whether Council employed or private, look at ways of minimising their risk to litigation. Some of the options you may wish to consider, but not limited to, are:

- Do nothing (could leave you open to wearing additional unforeseen and budgeted costs to defend potential litigation claims whether legitimate or frivolous).
- Apply a surcharge where the owner opts not to take HII due to the potential for increased litigation claims.
- Increase fees across the board to cover for the yet to be determined extra risk of litigation, if any.
- Have engineers conduct the footings and slab inspections.
- Change the way you conduct your own footing and slab inspections, such as requiring that you to be present during concrete pours and requesting slump tests and compression tests where deemed necessary. There will obviously be an increased inspection fee if this option is exercised.

Only time will tell if the government's decision to remove the mandatory requirement for HII will have any detrimental effect on consumer protection and/or cause an increased risk of litigation on those practitioners required to maintain Professional Indemnity Insurance under the Building Act 2000. We will continue to monitor the situation and actively pursue all avenues to have the HII changes and the new building disputes resolution commenced at the same time in the interest of consumer and member protection.



Steve Bramich
President
Tasmanian Chapter

13 May 2008