

Inquiry into the Operation and Performance of the Queensland Building Services Authority

Parliamentary Submission by Mark Beilby and Catherine McGrath

[REDACTED]
[REDACTED]
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Via email to: thlgc@parliament.qld.gov.au

To the members of the Parliamentary Committee and to others to whom it may concern,

May we present to you our experience in our dealings as a consumer with Building Service Australia (Queensland) (QBSA) to date.

When my wife, Catherine Mary McGrath and myself, Mark Beilby entered into a contract for an extension to our house in May 2008 with our builder, [REDACTED] we placed our faith in the Building Services Authority, Queensland (QBSA) licensing system and insurance scheme so that we were assured that if anything went wrong with the builder or the building we would be protected. We did not realise we would be in a battle that would encompass us with a government department that is still ongoing today.

In a clause in the Master Builders contract [REDACTED] clause 10.1a that we signed with our builder, [REDACTED] on 30 April 2008 states that;

The Builder will carry out the Works in;

- (i) an appropriate and skilful way,
- (ii) With reasonable care and skill,
- (iii) In accordance to the plans and specifications,
- (iv) In accordance with all relevant laws and legal requirements including, for example, the Building Act 1975.

It is assumed that all building works will comply with all the relevant laws and legal requirements as specified in our contract as being bound by the contract.

It was further assumed that the role of the QBSA was to ensure that all buildings constructed in the state of Queensland conformed to all relevant laws and legal requirements including the Building Code of Australia (BCA) and applicable Australian Standards.

Our experience with the QBSA is anything but what we originally assumed. What follows is a summation of a very complex and drawn out interaction with the QBSA that commenced in May 2009 is continuing to this day. It is presented in chronological order. What followed and is still continuing is not what we as a member of the general public would think is possible from a Government agency in a modern western democratic society.

The following is a brief introduction of our experience with the QBSA that is outlined in detail below. This is followed by a detailed account of our experience to date.

1: The QBSA while requesting (rightfully) a copy of the signed contract between the builder and the consumer, ignore contractual conditions, especially those that relate relevant laws, building acts etc.

In doing so;

2: The QBSA ignores all expert findings that are presented by the consumer.

3: QBSA will call their own "experts" even when those experts' reports knowingly present reports that consist of grave errors.

4: QBSA will make assessments without investigations of all the facts.

5: QBSA building inspectors knowingly submitted misleading reports to QCAT which he admitted in QCAT.

6: QBSA inspector continually attempted to get us to close the case and take it to QCAT and stating that he would give evidence in QCAT for the builder even though the inspector involved had already admitted under questioning previously in QCAT that he has presented misleading information to the court.

7: QBSA building inspectors repeatedly attempted to closes cases which had category 1 defects without rectification.

8: QBSA building inspector made false statements in writing on QBSA stationary against us to close a case in a manner to deny us access of appeal in QCAT.

9: QBSA inspector made false statements to both QBSA management and consumer regarding rectification measures proposed by builder (The QBSA general manager eventually acknowledged that the defects existed).

10: The outcome of a QBSA internal investigation despite overwhelming documented and recorded evidence presenting a pattern of continual and repeated dishonesty finds the behaviour not misconduct but mere "incompetence" or "negligence".

11: No action was taken or reported upon regarding the input of the senior building inspectors even though the said building inspector full supported the actions and statements of the junior building inspector.

12: The QBSA present an amateurish one and a half page document to surmise an investigation that took over a year, with no reference to facts or reasoning.

13: QBSA refuse to correct a typo in scope of works to change the word "not" to "note" so as to read ; "*Note all rectification work to be in accordance to Building Code of Australia...*". Instead the QBSA refuse to withdraw a document for tender that states "*Not all rectification work to be in accordance to Building Code of Australia...*" The public perception of the QBSA is to uphold adherence to building rules and regulations yet actively participate in presenting documents in the form of "scope of works" that state the opposite.

14: Offered cash settlement for monies to be paid into bank account of our choice with no conditions by the general manager of the QBSA. This would leave the dwelling with existing category 1 defects.

All statements / allegations in this submission can be backed up by documentation in the form of emails, QBSA correspondence and reports and voice recordings unless otherwise stated and are available to the enquiry upon request. All documentation or voice recordings are referenced by date.

Below is a detailed account of our experience to date with the QBSA presented in chronological order.

1 QBSA and Certifier Complaint

Initial complaint to QBSA regarding the private certifier who certified our house in the knowledge that the dwelling held major defects that threatened the structural integrity of the dwelling.

May 2009

- 1.1 My Wife and I approached our builder [REDACTED] for the driveway appeared to not conform to the required specifications. The driveway had been constructed as part of an overall extension to our house as defined on the plans by our architects [REDACTED].
- 1.2 We raised the issue of non compliance to the certifier, [REDACTED] on 26 May 2009 the informing [REDACTED] that the builder had not constructed the driveway according to the engineering specifications, nor to the appropriate building codes. I.E. there was no water proofing, termite protection and the driveway did not conform to the slope as defined BCA Volume 2 Part 3.1.2.3 Surface Water Drainage.
- 1.3 [REDACTED] responded on 15 July 2009 by stating that the works performed "were outside of the scope of the plans" and therefore not the concern of his office. This [REDACTED] stated despite the driveway being on page 2 of 16 the plans submitted to [REDACTED] to which [REDACTED] was employed as a certifier. Page 2 of 16 of the submitted plans was stamped with an approval by [REDACTED] on 20 May 2009.
- 1.4 [REDACTED] despite our objections certified the Works undertaken by [REDACTED].
- 1.5 We lodged a complaint against [REDACTED] with the QBSA on 10 July 2009 alleging that;

The certifier, [REDACTED], knowingly and willingly granted a final inspection certificate to our property at [REDACTED] while there existed a catagory one defect. The defect exists through the direvway not being built to the specifications laid out in the plans and specifications approved by [REDACTED] and signed by both the owners, Mark Beilby and Cathernine McGrath and the builder [REDACTED].
- 1.6 In an initial response from the QBSA requested additional information in a letter dated 31 July 2009 which we provided.

April 2010

- 1.7 On 30 April 2010 (nine months after we lodged our initial complaint) the QBSA wrote back to us stating that our complaint against [REDACTED] had been dismissed because;

Pursuant to s21 of the Building Act 1975 (Qld), building work is declared to be self-assessable for the integrated planning act 1997 (Qld), it is prescribed under a regulation and complies generally with the BCA and QDC.

Pursuant to Schedule 1, number 7 of the Building Regulation 2006 (Qld), prescribed building work is building work that consists of alterations to an existing building, if they do not change the buildings floor area or height and does not affect a structural component or fire safety system of a building.

The new concrete driveway constructed along an existing dwelling does not change the dwelling floor area or height and does not affect any structural component or the fire safety system of the building. Therefore the building is a self assessable development.

- 1.8 The QBSA was aware from the copies of the approved plans (by [REDACTED]), submitted to the QBSA, and an independent report and submitted by us from an independent expert, [REDACTED] Accredited Private Certifier [REDACTED] Registered Builder (Medium Rise), Building Inspector [REDACTED], dated 29 June 2009. The report of [REDACTED] directly contradicted the findings of the QBSA, a report that was submitted with our complaint against [REDACTED] that;

- (a) The driveway was part of an extension and defined on the plans and approved by the certifier [REDACTED].
- (b) The driveway was constructed by the builder [REDACTED] as part of the renovation being undertaken.
- (c) The driveway in question runs parallel to the vast majority of the modified and extended home.
- (d) The existing dwelling only existed in the form of one bedroom at the front of the dwelling. The all surrounding areas to the east and south of this bedroom were extensively modified or additions added to which the driveway runs adjacent to.
- (e) The report we submitted from a separate accredited certifier engaged by us stated that the driveway did not conform to the BCA due to an insufficient gradient.
- (f) That the structural integrity of the building had been compromised due to the lack of installation of a termite barrier between the driveway and the wall of the dwelling.
- (g) That the driveway installed ensured that the required 75 mm visul inspection zones was not supplied.
- (h) That no waterproofing had been provided between the driveway and the house and water was entering the swelling.
- (i) The driveway formed part of a greater part of the concrete slab under the house which greatly increased the floor area of the dwelling.

Summation of Section 1

- 1.9 How such a finding as a "self assessable" development can encompass such complex building requirements is unfathomable. The onus was taken away from the QBSA, the builder, the certifier etc and shifted directly by any means on to the owner.
- 1.10 While we did not know it this was the first instance where reports compiled by an independent expert submitted by the consumer were ignored. More examples of this behaviour will be demonstrated.
- 1.11 The QBSA reported on data supplied by the certifier only. No "independent" on site investigation was carried out by the QBSA to verify certifiers or consumers claim.

2 QBSA and QCAT

June 2009

- 2.1 The builder, [REDACTED], took us to QCAT for the final payment of outstanding monies owed which we had placed in trust with the [REDACTED], a sum of approximately \$5000 remaining out of a total value of \$320,00 approx..
- 2.2 We were forced to engage a solicitor in which we counter sued the builder [REDACTED] for the rectification of the defective driveway, waterproofing, termite protection etc. At the end of the first voluntary conference in QCAT we had a solicitor's bill of over \$10,000 (ten thousand dollars). From that time on we represented ourselves in QCAT.
- 2.3 The builder [REDACTED] agreed to make good the driveway and an "Order" was issued 4 September 2009. In the Order were a set of very specific specifications that would ensure that the driveway would meet the requirements laid down in BCA Volume 2 Part 3.1.2.3 Surface Water Drainage. The engineering specifications were also listed in detail and in consultation of the builder's engineer, [REDACTED]. The Works were undertaken with the supervision of the engineer [REDACTED].
- 2.4 However the rectification Works undertaken by the builder [REDACTED] did not rectify the many of the issues and in fact made some worse. We took these allegations back to QCAT on 10 March 2010 where in a compulsory conference. It was suggested by the sitting member to which both parties agreed that:

A Queensland Building Services Authority (QBSA) inspector is to be appointed as an assessor to carry out an inspection of the works conducted by the applicant [REDACTED] pursuant to the order of the Tribunal of 4 September 2009 and provide a report as to whether to works have been carried out by the applicant in accordance with the terms of that order ("the order").

April 2010

- 2.5 On 27 April 2010 two QBSA inspectors arrived at our home to inspect the driveway, these being [REDACTED], [REDACTED], and his supervisor, [REDACTED].
- 2.6 On the arrival of the QBSA building inspectors I gave them a copy of the specifications as referenced by the "order" of 4 September 2009. The specifications related to strength of concrete, slump, mesh, depth and gradient. We also gave the inspectors photographs and a list of the areas of concern as they related to specifications as of the "order of 4 September 2009.
- 2.7 [REDACTED] ordered [REDACTED] to photograph the areas of concern and then left. [REDACTED] left shortly afterwards after photographing the areas of dispute.
- 2.8 [REDACTED] phoned and asked permission to return which he did the next day. He took additional measurements and did a flow test to test the gradient by pouring water on the drive. [REDACTED] photographed this. I pointed out to [REDACTED] that the area he tested was not under dispute and I moved the hose another point on the driveway and the water promptly flowed towards the house. [REDACTED] photographed this as well.

- 2.9 My wife and I received a copy of the report dated 27 May 2010, dated one month after the site visit. In the report compiled by [REDACTED] under the supervision of [REDACTED], NO reference was made to the defective areas as it related to the driveway, depth, gradient, nor the indicated slump (the concrete had set before the concreters could finish the drive) .
- 2.10 I phoned [REDACTED] and asked him why he had written the report to make it appear that the driveway conformed to the "order" of 4 September 2009, and he responded to the tune of "my report is my report". He stated that he was given guidance from his supervisor [REDACTED] and his report had been approved by his supervisor [REDACTED].
- 2.11 We raised our concern about the report to QCAT and [REDACTED] was ordered to attend the compulsory conference in QCAT on 31 August 2010.
- 2.12 During this conference [REDACTED] was asked 4 to 5 time by the sitting member if the driveway conformed to the "order" of 4 September 2010. For the first 3 or 4 times questioned [REDACTED] would not answer. Finally when asked for a final time "does the driveway conform to the "order"? [REDACTED] responded, "NO". [REDACTED] then asked if he could leave and he was dismissed.
- 2.13 This was the first solid indication of mis-information, deception, mis-truths emanating from QBSA building inspectors that we encountered, it got a lot worse and far more blatant. We could not believe that a public official would knowingly and willingly construct and submit a misleading report to the courts. A fact acknowledge by the officer, [REDACTED], under questioning in the compulsory conference.**
- 2.14 The action of [REDACTED] in submitting a misleading report to QCAT left us in a legal disadvantage as we had not researched what could happen if the finding was in our favour as it turned out to be. For we were then told by the sitting member after [REDACTED] had left that QCAT has no authority to enforce an Order and the member gave us instructions to accept what the builder, [REDACTED] offered. This was a complete shock, how could not a court enforce its own Orders, what was the point of them? So we took what the builder offered as suggested by the sitting member which has left us with a non rectified driveway.
- 2.15 I found out 2 days later when speaking to a clerk at QCAT that all we needed to do was to get a certified copy of the "order", and walk it over to the magistrate's court to have it enforced. Why the sitting member did not tell us that at the time raises other questions beyond this enquiry.
- 2.16 This however was not the end of the QBSA encounter, it was only starting.

Summation of Section 2

- 2.17 QBSA inspector, [REDACTED] by his own admission presented a report to QCAT that did not comply with the QCAT request and presented misleading information.
- 2.18 The QBSA inspector wrote the report under the full supervision of the senior building inspector [REDACTED]
- 2.19 The actions of the QBSA inspector left us at a legal disadvantage to the builder.
- 2.20 We were left with a driveway that does not comply to in BCA Volume 2 Part 3.1.2.3 Surface Water Drainage or to the specifications outlines originally in QCAT.

3 QBSA Defect Claim 1

February 2011

- 3.1 With the closure of the QCAT claim brought against us by the builder [REDACTED], the defect claim that we had lodged with the QBSA in May / June of 2009 could now be actioned. I phoned the QBSA and requested that given the circumstances of the report submitted by [REDACTED] under the supervision of [REDACTED], that these two building inspectors NOT be reassigned to our case. This was refused and [REDACTED] and [REDACTED] were assigned to investigate the defects we had listed. At this point my wife and I decided it was prudent to record all conversations we had with QBSA building inspectors.
- 3.2 [REDACTED] and [REDACTED] undertook an inspection as defined in our "Complaint Form" on 24 February 2011.
- 3.3 Our defect claims covered two major areas which the QBSA pursued. Others were excluded by [REDACTED] even though they did not comply as stated in [REDACTED] own report.
- 3.4 The two major (category 1) defects had been that investigation continued were;
- (j) Storm water drainage regarding their connection, gradient and depth which was feeding water under the dwelling.
 - (k) Floorboards which had not been fastened correctly and were coming loose.

Storm Water Drainage

March 2011

- 3.5 The QBSA on 14 March 2011 commissioned [REDACTED] to inspect the storm water drainage system.
- 3.6 On 25 March 2011 an "Items to Rectify" was ordered to the builder, [REDACTED] in which it stated that;
- 3.7 1: The installation of the subsoil drainage system is not in accordance with the BCA Volume 2-2008 Section 3 Acceptable Construction Part 3.1.2 Drainage resulting in water ponding under the dwelling.
- 3.8 2: The installation of the Storm water system is not in accordance with AS 3500 2003 Plumbing Drainage /Stormwater Drainage, resulting in non-compliance with the standard.
- 3.9 The builder, [REDACTED], replaced the plumbing on the southern, eastern and northern sides of the dwelling but did not undertake repairs on the western side of the dwelling. A number of camera inspections of the plumbing on the western side of the house had shown that the drainage system had slumped in the middle and was holding water and debris causing the drain to block periodically.
- 3.10 The QBSA inspector [REDACTED] started to insist that the western side was not included in the "Item to Rectify", even though no specific exclusion was mentioned. The drainage system was under the lower half of the driveway. Numerous visits and numerous heated exchanges followed.

June 2011

- 3.11 On 9 June 2011 [REDACTED] presented himself to our property for an inspection of the storm water rectification works. I enquired as to where was the plumber and [REDACTED] responded there was none. [REDACTED] then continued and stated that at the gate before entering the property that he was "going to pass" the storm water rectification. Sadly this was not recorded, but all conversations from that point on were.
- 3.12 In the recording I can be heard continually objecting to [REDACTED]. At 1 minute 43 seconds into the recording [REDACTED] can be heard saying "*the BSA is not going to be doing anything about the storm water through here*". [REDACTED] then states "*it does comply to AS3500*" and that "*it has adequate fall*". [REDACTED] continued stating at 6 minutes, 33 seconds into the recorded conversation stated; "*that when you get your report and you send it to us well just close it as we have adequate evidence to indicate to us that its fine and you can appeal that in QCAT*".
- 3.13 A number of points are to be seen in this conversation.
- 3.14 AS 3500 2003 Plumbing Drainage /Stormwater Drainage states in Table 3.2 that a drainage pipe of 100mm requires a minimum gradient of 1%. A gradient of 1% would ensure that no water could be held. Yet [REDACTED] states that the drainage system complies to AS3500 2003.
- 3.15 [REDACTED] as a QBSA building inspector will pass Works that do not conform to the BCA or applicable Australian Standards even though from the QBSA initiated inspection stated otherwise. This was show in the report undertaken [REDACTED] constructed under the supervision of [REDACTED] for QCAT as referenced above.
- 3.16 [REDACTED] states that any report from a competent authority initiated by us, will be ignored by the QBSA and close the case anyway.
- 3.17 **Note:** The contract we signed with our builder states that it In accordance with all relevant laws and legal requirements including, for example, the Building Act 1975.
- 3.18 The QBSA inspector [REDACTED] is not only attempting to pass works that do not comply to the applicable Australian Standards but is also attempting to breach the contractual obligations of the builder [REDACTED].
- 3.19 On 15 June 2011, I received a letter from [REDACTED] on QBSA letterhead dated 14 June 2011 stating;

I refer to the site inspection of 9 June 2011, when *you* [italics added for emphasis] advised that the contractor has attended to all items listed in letter dated 25 March 2011.

No further action will be taken by BSA and your complaint will now be closed.
Thank you for using theBSA's Resolution Services Process.

Yours Faithfully,

[REDACTED]

Resolution Services Building Inspector.

- 3.20 As the recording clearly shows, at NO point did I advice that the contractor had attended all or any items. It is not my place to do so. It was up to the QBSA to determine such facts.
- 3.21 [REDACTED] acting as a public official in writing the letter dated 9 June 2011 now puts in writing a known falsehood stating that I (Mark Beilby) had advised him that all work has been completed.
- 3.22 NO such statement was ever made or even implied as the recordings show.**
- 3.23 Furthermore by [REDACTED] stating that I had stated that the works had been completed denied us the right to appeal in QCAT for how can one in theory appeal oneself?
- 3.24 To see a public official lie in such a way so as to not only closes a case but done in such a way to deny access to appeal in court is criminal.**
- 3.25 It was at this stage that my wife and I had had enough and wrote to the then Minister Simon Finn MP. This letter was dated 17 June 2011.
- 3.26 After writing to the then minister the Right Honourable Simon Finn MP we were contacted by another QBSA building inspector, [REDACTED].
- 3.27 On 11 July 2011 another QBSA building inspector ordered another drainage inspection by [REDACTED]. The inspection occurred on 13 July 2011. The subsequent report states that;
- 3.28 "The drain is holding water through a section approximately 205 meters -3 meters back from the point at the end of the concrete driveway... The DVD will indicate that the lens of the camera head is just covered at the deepest section of the belly. This would suggest at the worst the drain is holding 25 -30mm of water".
- 3.29 The finding of [REDACTED] shows that the drainage system in question did not conform to AS 3500 2003 Plumbing Drainage /Stormwater Drainage as stipulated in the original QBSA "Item to Rectify" notice referenced above.
- 3.30 The QBSA then agreed to fix the storm water drainage system in question, works that have still not been undertaken. The reasons for this will be listed shortly for it brings us to another point in the ongoing saga with the QBSA. But I will return now to the second major (Category 1) defect referenced above.

Summation of Section 3

- 3.31 Two separate inspections carried out by the QBSA showed that the storm water system did not comply to the applicable building code.
- 3.32 The QBSA inspector [REDACTED] attempted to pass a drainage system which he knew did not comply to the relative building code.
- 3.33 The QBSA inspector [REDACTED], made a false claim on QBSA letter head stating that I had made a statement that works had been "attended to", a fact that can verified in voice recordings of the day. I did not make such a claim. And under what authority could I even make such a claim as I have no qualifications to assess plumbing work.
- 3.34 The QBSA inspector stated that he would discard any report that we commissioned and would promptly close the case.
- 3.35 With the QBSA building inspector [REDACTED] stating that the QBSA would ignore our report a pattern started to appear to previous QBSA actions we had encountered as presented in section 1 above "QBSA and Certifier Complaint", especially section 1.7 and 1.10. This would not be the last example of this behaviour by the QBSA.
- 3.36 The QBSA eventually agreed to rectify the drainage system but this work has still not been done for the QBSA will not present an altered signed the Scope of Works with a corrected a typographical error an error that changes the meaning of a sentence from "wont comply" to "will comply" to building code of Australia. This history to this typographical error is outlined in Section 5 below.

4 QBSA defect Claim 2

Flooring

- 4.1 As with the inspection of the drainage system the inspection of the flooring was undertaken by [REDACTED] and [REDACTED] who undertook the inspection as defined in our "Complaint Form" on 24 February 2011.

March 2011

- 4.2 On 25 March 2011 an "Items to Rectify" was given to the builder, [REDACTED] stating.

Installation of the timber flooring is not in accordance with AS1884.2 – 2006. Residential timber framing construction Section 5 Flooring and decking resulting in the timber floor coming away from the plywood underfloor sheeting.

- 4.3 The builder was instructed to complete within 28 days that the;
- 4.4 The builder, [REDACTED] instead of abiding by AS1884.2 -2006 as instructed by the QBSA put forward his own fixing solution and that was to screw the floor boards from underneath.
- 4.5 The builder, [REDACTED] engaged his expert, a [REDACTED] to validate his proposed method of fixing.
- 4.6 [REDACTED] advised the builder [REDACTED] that;

Dear [REDACTED], Your suggested tightening of the loose boards by screwing from underneath into the plywood would seem the best way and is regularly used to re-secure floor boards that have lifted off the structure beneath. This presumes the plywood is still well fixed as you have advised Two screws spaced every 450mm where the boards have lifted should hold. This method is unobtrusive and gives better fixing than a series of top nails Regards [REDACTED]

- 4.7 The QBSA inspector [REDACTED] supported the solution presented by the builder [REDACTED] and the builders "expert" [REDACTED].
- 4.8 The floor area in question is very large extending over 5 to 6 rooms. In areas the sub floor is inaccessible due to a ceiling being in place. In others changes in joist directions, bearer location etc make it all but impossible to accurately locate the screws into each floor board as proposed by the builder [REDACTED].
- 4.9 The proposed method of fixing held the potential to alter the form of the house.
- 4.10 In numerous occasions I asked the QBSA inspector [REDACTED] how he could verify the location of the screws so that they could be verified as conforming to the fixing specification as laid out in AS1884.2 -2006.
- 4.11 The BSA inspector [REDACTED] responded "*That is the sixty four million dollar question*" (recorded).

June 2011

- 4.12 In another section of the house where the sub floor was not accessible I asked the BSA inspector [REDACTED] on 9 June 2011 how the builder was going to get to the floor boards from underneath (to screw them)? [REDACTED] responded "Well he [the builder [REDACTED]] is not going to... his correspondence says he's going to be fastening from the top".
- 4.13 What we were to later found out is that under an FOI (RTI) request to the QBSA in a letter dated 30 August 2011, there was no such correspondence from the builder, [REDACTED].
- 4.14 The builder asked repeatedly for extensions in time to complete the work which was granted by the QBSA. [REDACTED] stated the QBSA would not issue a "Direction to Rectify".
- 4.15 During a number of meetings with [REDACTED], [REDACTED] repeatedly suggested that we close the case with the QBSA and take the case to QCAT.
- 4.16 Having been to QCAT already and with the statements made to us by the QBSA regarding how they would present themselves in court we were not will to take this action for:
- (i) The huge financial burden it would place upon us.
 - (ii) It held the very real potential of denying us access to QBSA insurance.
- 4.17 At this stage we had totally lost faith in the QBSA. We did not know what was truthful or what was not. Yet it was to continue.
- 4.18 At no point could [REDACTED] state a method of confirming that the method of fixing as proposed by the builder would conform to AS18842 – 2006 yet [REDACTED] perused this very unorthodox method of fixing floorboards to timber joists.
- 4.19 With our complaint to the minister making its way to the manager of the QBSA desk (refer section 3.5 above), a new QBSA building inspector was assigned to our case, a [REDACTED].
- 4.20 In our first meeting with [REDACTED] on 20 June 2011, [REDACTED] taped the floor with his feet and stated "I can even get experts to say there is nothing wrong with this floor here but I'm not going down that path for we have already issued orders" (recorded).
- 4.21 With this comment It can be seen again that the QBSA, now in general does not require homes to comply to the Building Code of Australia or applicable Australian Standards. The QBSA appears to have access "experts" who will write what the QBSA wants.
- 4.22 As I soon found out from [REDACTED] is that one of the "experts" that the QBSA engage is [REDACTED] as referred to in section 4.5 to 4.7 above.
- 4.23 When the builder, [REDACTED] approached [REDACTED] regarding a method of fixing (section 4.5 above), it was not the first time I had heard of him. The Builder, [REDACTED] had had [REDACTED] inspect an area of the floor in our dwelling before.
- 4.24 There had been issues with the flooring in the kitchen and the builder, [REDACTED] engaged a "specialist", a [REDACTED]. [REDACTED] was supposedly a specialist in timber flooring.

- 4.25 [REDACTED] submitted a report to the builder of which we were given a copy. In the report by [REDACTED] dated 15 June 2009, [REDACTED] made reference to width of timber floor boards where it became necessary to nail them from the top. In the report [REDACTED] stated in paragraph 3b; "secrete nailing of boards up to 135mm is allowed for flooring over 135mm top fixing to with two or three nails into the underlying joists is preferred. The flooring in question is 152mm wide". [REDACTED] states at the beginning of his report in paragraph 1 that "There is no official published Australia Standard on the laying of timber floors".
- 4.26 A number of critical errors can be seen in this report from [REDACTED] dated 15 June 2009.
- 4.27 Contrary to [REDACTED] report AS1884.2 -2006 does not allow secrete nailing of boards over 85mm, not the 135mm stated by [REDACTED] (refer section 5.5.2.2 of AS1884.2-2006).
- 4.28 Of even greater concern is the statement by [REDACTED] where he states there is no official published Australian standard on the laying of floors. AS1884.2 -2006 is exactly that. And the standard as originally referenced by the QBSA (refer section 4.2 above) is dated 2006. The date of [REDACTED] report is dated 2009. This particular standard as it stood had been in place for a good three years before [REDACTED].
- 4.29 This was the example of the standard of "expert" engaged by the QBSA.
- 4.30 I had spoken to [REDACTED], one of the principle contributors to AS1884.2 -2006 to seek expert advice, but realised it was of no use as had been shown above, any expert that the public gets will be discarded and the QBSA will get an "expert" to "pass" works that they wish as the transcript from the recording above (Section 4.20) highlights.

July 2011

- 4.31 Many heated discussions ensued, one of which included [REDACTED] and [REDACTED], where they both [REDACTED] and [REDACTED] refused to investigate if the plywood was "well fixed" as defined in the email of [REDACTED] (refer Section 4.6). All they had to do was look up for they were on site in the garage with the floor in question directly above them.
- 4.32 With the ministerial initiating an investigation into the actions of the building inspectors [REDACTED] and [REDACTED] the QBSA in July 2011 finally issued a "Direction to Rectify" notice to the builder [REDACTED]. We were given a copy of this notice at our dwelling by the General Manager of the QBSA in the company of [REDACTED]. This finally gave us access to the QBSA insurance as required. The general manager of the QBSA also agreed on this day to rectify the drainage under the driveway and to check for termite protection in the laundry adjacent the driveway.
- 4.33 The builder's record was changed to indicate that a "Directions to Rectify" notice had been issued. It was subsequently removed from the builder's record at the request from [REDACTED] and done by [REDACTED] according to [REDACTED]. The reason given by [REDACTED] for the removal of notices issued to the builder was that the builder had declared himself bankrupt. This after many requests to delays rectification works.

Summation of Section 4

- 4.34 The QBSA inspector [REDACTED] supported a method of fixing that could not be confirmed to comply to AS1884.2 -2006 yet [REDACTED] supported the method of fixing.
- 4.35 [REDACTED] lied to either us, the General Manager of the QBSA or the FOI officer of the QBSA. The correspondence in question (Section 4.12) either exists or it doesn't. Both cannot be true.
- 4.36 The QBSA had access to "experts" who would pass works regardless of the work complying to the BCA or applicable Australian Standards.
- 4.37 The QBSA eventually agree to rectify the defect.

5 QBSA Scope of Works

November 2011- February 2012

- 5.1 It took from June 2011 through to November 2011 to start to come to an acceptable Scope of Works to cover the drainage. But negotiations continued through February 2012 to get an acceptable Scope of Works for the storm water drainage and flooring as presented in "QBSA Defect Claim 1" and "QBSA Defect Claim 2" above.
- 5.2 The QBSA building inspector [REDACTED] was the person assigned by the General Manager, [REDACTED] to author the Scopes of Works.
- 5.3 During this period we noted what appeared to be a spelling mistake where in each of the three Scope of Works it read; "**Not all rectification work to be done in accordance to the building code of Australia and any manufacturers recommendations**". We queried this and were informed that the word "not" was a typo and should be "note". Corrections were made to the Scopes of Works so that they now read "**Note all rectification work to be done in accordance to the building code of Australia and any manufacturers [sic] recommendations**".
- 5.4 In relation to the storm water system, the changing in the wording of these two sentences makes a substantial change to the standards that the "works" being undertaken were to comply to AS3500 2003 as required.
- 5.5 For the fastening of the floor boards we had agreed with the general manager and [REDACTED] that if the newly proposed method of fixing (now being to nailed into the plywood subfloor) did could not comply with AS1884.2 -2006 then the applicable Scope of Works would be modified to include additional framing and a ceiling pout in to hide the additional framing that would be needed.

March 2012

- 5.6 Tenders were called in March 2012 from two builders by the QBSA.

April 2012

- 5.7 We requested copies of the signed Scopes of works and we were given copies of the signed Scopes of Works in April.
- 5.8 We found that for the Scope of Works for the driveway the wording had not been changed and the two tendering builders had signed a Scope of Works stating that the works undertaken that (*Not all rectification work to be done in accordance to the building code of Australia and any manufacturers recommendations*).
- 5.9 This was not acceptable to us and we requested that the typo be rectified and that the modified Scope of Works be signed off by the two tendering builders. The general manger of the QBSA agreed to this change.

June 2012

- 5.10 We met with the two tendering builders on 15 June 2012 and 19 June 2012 to discuss the floor sanding. In both meeting we found that these two builders approach the QBSA and said the proposed method of fixing the floor could not comply with AS1884.2 -2006.

- 5.11 Both builders independently contacted the QBSA and told us that they had been instructed not to raise the issue and just submit their tenders.
- 5.12 We met with the General Manager [REDACTED] and the QBSA building inspector on 28 June 2012 and an additional Scope of Works was agreed upon for the additional framing required.
- 5.13 We raised the issue again regarding the "spelling error" in the Scope of Works regarding the drainage system and again [REDACTED] agreed to have it changed.

July 2012

- 5.14 I sent an email to the general manager of the QBSA and [REDACTED], the author of the Scope of Works requesting a copy of the changed Scope of Works, which we were sent a copy of the document but it was blank and not signed by any party. Since it was not signed by either builder it held no value.

September 2012

- 5.15 We have as yet not received a signed copy of the amended Scope of Works stating that the works undertaken will **"Note all rectification work to be done in accordance to the building code of Australia and any manufacturer's recommendations"**.
- 5.16 One of the tendering builders, [REDACTED], supplied by the QBSA; when we asked to view samples of his work, [REDACTED] stated that he will not show us samples of his works regarding floor sanding unless we specifically exclude the other tendering builder.
- 5.17 The builder in question was asked by us to put that request in writing but he refused.
- 5.18 Things just go from bad to worse. This is close to stand over tactics and by a builder the QBSA deal with on a regular basis a provided rectification work given the conversations we have had regarding this particular builder in general with the QBSA.
- 5.19 We raise this newly developed issue with the builder, [REDACTED], with the General Manager of the QBSA, [REDACTED].
- 5.20 On 3 September 2012 we were offered a cash settlement of \$74,787.10 by the General Manager [REDACTED] instead of have the dwelling fixed.
- 5.21 My wife and I being concerned about why a simple change to a document is taking so long and now being offered cash settlement we went to our local State MP the right honourable Saxon Rice MP.
- 5.22 Saxon Rice asked if it was proper to offer cash settlement which we responded "we don't know".
- 5.23 My wife sent [REDACTED] an email on 12 September requesting clarification as to whether there were any conditions attached to the cash settlement.
- 5.24 On 11 September (same day) [REDACTED] responded; "The term cash settlement means that the funds will be provided to you by way of deposit into a nominated bank account".

- 5.25 It appears there are no conditions and we can take the cash without having the house repaired. This would leave the house with the defects, and with the full knowledge of the QBSA.
- 5.26 We still do not have a signed amended Scope of Works that ensure that repairs undertaken WILL conform to the building code of Australia and any manufacturers recommendations instead of NOT all repairs will comply to the building code of Australia and any manufacturers recommendations.
- 5.27 All my wife and I want is the house we contracted into and that is that the Works undertaken will be done in;
- (i) an appropriate and skilful way,
 - (ii) With reasonable care and skill,
 - (iii) In accordance to the plans and specifications,
 - (iv) In accordance with all relevant laws and legal requirements including, for example, the Building Act 1975.
- 5.28 You have to ask what is so hard about that? Why is the QBSA putting both my wife and I through this totally unnecessary hell? We have met with nothing but lies and deceit from day one in our dealing with the QBSA. These are not the actions that we the public, the consumer, come to expect from a government regulator.
- 5.29 They cannot even change a simple typo, on single letter, the letter "e" unless of course the QBSA do not intend to have the works comply to the Building Code of Australia and any manufacturers recommendations.
- 5.30 In our experience to date with the QBSA we do not think that the QBSA holds the Building Code of Australia or Australian Standards in any regard at all, and will discard these requirements at the request of a builder or for their own benefit. The behaviour of the QBSA has been consistent in all or dealing with all QBSA inspectors assigned to our case as the above history highlights as multiple examples of this behaviour has been shown..

Summation of Section 5

- 5.31 We have attempted to have the typographical error changed from late 2011.
- 5.32 We enlisted help from our local MP, Ms Saxon Rice MP to the General Manager of the QBSA to have the typographical error changed and signed by the tendering builders.
- 5.33 QBSA refuse to have revised Scope of Works so that it reads, "Note all rectification work will be done in accordance with the Building Code of Australia and any manufacturer's recommendations" and signed by tendering builders.
- 5.34 Instead we are left with a document signed by the tendering builders that reads, "Not all rectification work will be done in accordance with the Building Code of Australia and any manufacturer's recommendations".
- 5.35 The change in spelling totally changes the specifications of the works to be undertaken.
- 5.36 One tendering builder will not present examples of his work unless we exclude the other tendering builder.
- 5.37 We are offered a cash payout by the General Manager of the QBSA

6 QBSA Internal Investigation Results

June 2011

- 6.1 On receipt of the letter from the Building Inspector, [REDACTED] on 25 March 2011 (refer section 3.19 above), a letter that falsely claiming the "[I] advised that the contractor has attended to all items listed in letter dated 25 March 2011", I wrote to the then Minister the right Honourable Simon Finn MP to complain about the actions of the two building inspectors [REDACTED] and his supervisor, [REDACTED] on 17 June 2011.
- 6.2 In our complaint we listed three examples of well documented examples of deliberate lies, mistruths and deception undertaken by [REDACTED] under the direct supervision of [REDACTED]. The three examples were as listed above but surmised here;
- (i) Constructed a report ordered by QCAT that deliberately excluded data that would have shown the driveway not to conform in all the specifications listed in the QCAT order dated 4 September 2009.
 - (ii) Supported a fixing solution that could not be verified to conform to AS1884.2 – 2006 even though that had been ordered by the QBSA and to which the builder was contractually and legally bound. This included false statements about correspondence from the builder regarding the fixing solution.
 - (iii) Made a false statement against myself to close a case and deny us access to the courts for appeal.

August 2011

- 6.3 In late August the General Manager of QBSA [REDACTED] accompanied by building Inspector, [REDACTED] visited our house where [REDACTED] informed us that due to the nature of our complaint to the minister that he was obliged to pass the complaint onto the Crime and Misconduct Commission (CMC).
- 6.4 [REDACTED] then stated that the Crime and Misconduct commission had ordered the QBSA to undertake an internal investigation of our complaint.
- 6.5 [REDACTED] presented my wife and I the "Terms of Reference" as it related to the three allegations to review BSA legislation, policies and procedures in a letter dated 24 August 2011.
- 6.6 The person appointed to undertake the investigation was [REDACTED].
- 6.7 After [REDACTED] and [REDACTED] left our premises I phoned the CMC and voiced my concern into the QBSA being put in charge of investigating themselves, and made the statement is akin to the "police investigating the police" and that the outcome of the investigation in this case is a forgone conclusion and that the QBSA, despite overwhelming evidence to the contrary, will find no instance of misconduct has occurred.
- 6.8 The CMC stated that they would make note of my concern.
- 6.9 My wife and I first met with [REDACTED] on 26 September 2011.

- 6.10 A number of meetings followed and much detail was requested by [REDACTED].
- 6.11 My wife and I were concerned in the direction [REDACTED] was taking for the case was simple yet he covered areas that appeared to be way outside our complaint.
- 6.12 We raised the issue a number of times that he was not focusing on the complaint and requested in writing a number of times our concern in the direction his line of enquiry was going and requested his "supplementary statement" that he had promised in an email on 16 September 2011. We asked for this supplementary statement a number of times over the coming months yet was refused.

June 2012

- 6.13 After a number of enquiries into what was happening with the investigation we finally received a reply from the General Manager of the QBSA, [REDACTED] which had the response that we were expecting but not what should have been the outcome given the evidence presented.
- 6.14 The two page brief dated 20 June 2012 outlying the findings of an investigation that had taken a whole year is amateurish at best, presenting no detail into how the findings were come by. The findings are as follows;

Allegation 1) [REDACTED] states that "the evidence, if accepted, is sufficient to find that in his report to QCAT in 2010 [REDACTED] deliberately omitted reference to a number of matters relating to the driveway specifically raised by the owners as being defective and in respect of which he was required to report. It is not clear whether he did this to deceive QCAT, or because in his opinion the driveway was structurally sound notwithstanding the owner's concerns in which case those concerns could be ignored, or for some other reason. Accordingly [REDACTED] committed official misconduct in this instance".

[REDACTED] states "the evidence is not sufficient to support a finding of official misconduct committed by [REDACTED] and "instead, on the balance of probabilities, it is open to find [REDACTED] was negligent or incompetent in producing his report".

Allegation 2) [REDACTED] states "there is no basis to make a finding of official misconduct against [REDACTED] for any matter relating to the driveway pipe".

[REDACTED] agrees and states "the evidence is not sufficient to support a finding that [REDACTED] committed official misconduct or breached the Code of Conduct".

Allegation 3) [REDACTED] states "a finding of official misconduct or Code of Conduct breach would not be justified.

[REDACTED] states "I would concur with the conclusions of [REDACTED] that the evidence is not sufficient to find [REDACTED] committed official misconduct or breach of the Code of Conduct".

- 6.15 The QLD Ombudsman's office states that it is necessary to record all findings of fact and your reasoning for them. Please refer to;

http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Agency_Resources/Good%20Decision-Making%20Guide.pdf

6.16 In the letter of findings from the General Manager, [REDACTED], of the QBSA regarding the investigation that took almost a year to conclude did not list any findings in fact nor any reasoning for the findings as shown above. Given the conclusive evidence presented it is hard to see how the findings by [REDACTED] and [REDACTED] could be justified.

6.17 As mentioned we have requested these findings and facts for the reasoning both directly in correspondence to [REDACTED] and via our state MP, who has also lodged the request to [REDACTED], general Manager of the QBSA and yet have not received a response through either avenue of enquiry.

6.18 The evidence presented to the investigation presented the following.

6.19 Regarding the evidence for allegation 1:

- (i) The structure of the report is very deliberate.
- (ii) On the first site visit [REDACTED] under the instruction of [REDACTED] documented the areas that did not conform to the specifications as defined in the QCAT order of 4 September 2009.
- (iii) The actions of [REDACTED] undertaking of a second site visit to gather data that showed areas of the driveway of show did conform and that this was the only data entered into the report present an indication to the reports deliberate nature.
- (iv) The report was structured under the direct supervision of a senior building inspector [REDACTED].
- (v) [REDACTED] stated numerous times to both us both that he fully sported the contents of the said report.
- (vi) [REDACTED] was very aware of the stipulation made by QCAT which were VERY specific (as engineering documents are stipulating slump, depth, mesh, gradient etc).
- (vii) No mention was made of the areas as it related to slump, depth, nor where the gradient fed water under the house as opposed to the requirements specified in the BCA as reflected in the QCAT "order".
- (viii) No reference is made to the input of [REDACTED].

6.20 By mere inference if a finding of negligent or incompetents was found against [REDACTED], as was the case when overruled by [REDACTED], then what does that say about the Senior Building Inspector [REDACTED]?

6.21 [REDACTED] was only an employee of the QBSA for [REDACTED] when he first visited our dwelling. [REDACTED] was accompanied and was under the direct supervisor of [REDACTED] a Senior Building Inspector of the QBSA. What was [REDACTED] role in guiding [REDACTED]?

- (i) [REDACTED] stated he was under the direct supervision of [REDACTED] in structuring the report.
- (ii) [REDACTED] stated he fully supported the content and the structure of the report of [REDACTED] stating it fully addressed the criteria specified by QCAT.

6.22 However, given the experience of [REDACTED] and the very precise nature of the report raises questions into the heart of the culture of the QBSA.

6.23 This was part of the "Terms of Reference" dated 24 August 2011 dictated by the General Manager of the QBSA, [REDACTED], which states "The process involves" (in part);

- (i) Review of BSA legislation, policies and procedures.

- (ii) Conduct interviews with [REDACTED] and any other relevant person.

6.24 [REDACTED] was referenced continually in interviews as he appeared pivotal to what was happening from our perspective in the interactions between [REDACTED], the QBSA and ourselves.

6.25 Was this line of enquiry followed by [REDACTED]? We do not know. We refer you to section 6.15 above.

6.26 Regarding the evidence for allegation 2:

- (i) In the voice recording taken on the day of the meeting between the QBSA building inspector [REDACTED] and ourselves (9 June 2011), it can be clearly heard over and over again the argument between with myself, Mark Beilby stating sections of the pipe do not conform to the specified AS3500 2003.
- (ii) A no point can either of us be heard stating to [REDACTED] that "the contractor has attended to the items listed..." or words even close to such an insinuation.
- (iii) When first interviewed by [REDACTED] and upon hearing the voice recording in the presence of us both I ask him; "does this sound like I am in agreement with the works that have been undertaken"/ To which he responded "no". This was not recorded but there are two witnesses.
- (iv) The letter on QBSA letter head clearly states "when [I] advised that the contractor attended to the items listed in the letter dated 25 March 2001.
- (v) The recordings show that this was not the case.

6.27 Two pieces of evidence were presented in this case:

- (i) A letter from [REDACTED] stating that one thing was said to which he closed the case.
- (ii) A voice recording of the actual conversation was also presented to which the exact opposite is being heard spoken.

6.28 Given that such a proven untruth and that it was found by [REDACTED] and [REDACTED] that this behaviour is not misconduct or in breach of the QBSA Code of Conduct; it begs the question at what point is behaviour in the QBSA become unacceptable and in breach of their own Code of Conduct? It is simply unbelievable such a finding.

6.29 Given that the letter presented by [REDACTED] dated 14 June 2011 in essence denied us the right to appeal in QCAT, for how can you appeal yourself? We were denied access to appeal. We would need to prove to QCAT that the statement made by [REDACTED] in his letter was in fact false before a claim could be made.

6.30 The letter of [REDACTED] in question dated 14 June 2011 raises other questions, if a "Request to Rectify" or "Direction to Rectify" has been ordered against a builder by the QBSA, how can a layperson present to the QBSA that the works have been attended to and please close the case? Is this the level of the so called "experts" that the QBSA call upon?

6.31 *The QBSA has since agreed to fix this issue, but other complications have arisen.*

6.32 Regarding the evidence for allegation 3:

- 6.33 The building inspector [REDACTED] submitted to the builder a "Request to Rectify" the flooring for it did not comply to AS1884.2 – 2006.
- 6.34 The builder [REDACTED] put forward a fixing solution of screwing the floor boards down from underneath instead of nailing from the top as specified in AS1884.2 – 2006.
- 6.35 The nail pattern in AS1884.2 – 2006 is very specific and simple.
- 6.36 To locate the exact position of the floorboards from underneath is next to impossible, a fact admitted by both [REDACTED] and a subsequent building inspector [REDACTED].
- 6.37 [REDACTED] could not present a means to verify that the proposed method could conform to AS1884.2 – 2006.
- 6.38 The location of the screw coming up from underneath would present issues with the function of the house if the floors were ever needed to be sanded again as the screws could not be "punched down". And if screws did present to the surface would introduce a category 1 defect for they would present a potential health risk, i.e. tetanus etc if the skin was to be broken.
- 6.39 [REDACTED] also stated that he had "correspondence" from the builder that the floor boards in bedroom 3 would be top nailed, nailed from the top as is normal and is the prescribed method in AS1884.2 – 2006.
- 6.40 [REDACTED] stated to the General Manager of the QBSA when asked to produce this correspondence said he could not find it (in writing from [REDACTED]).
- 6.41 An FOI (RTI) request to identify this "correspondence, and when asked by the QBSA RTI officer [REDACTED] stated to the QBSA RTI officer that the correspondence did not exist.
- 6.42 Again we see a repeated behaviour of untruths, the so called "correspondence" either exists or it does not. Without the fact being verified with the builder in question, [REDACTED] has either lied to us or to his General Manager and RTI officer or visa versa. Both statements cannot be true.
- 6.43 As to supporting a fixing solution that cannot be verified to conform to the applicable standards and presents a irreversible and irreparable solution that potential jeopardises the expected function of a dwelling and presents a potential for a health hazard as acceptable behaviour by [REDACTED] and [REDACTED] presents a disturbing finding that goes against the fundamental principles of the BCA and Australian building standards.
- 6.44 *The QBSA has since agreed to fix this issue, but other complications have arisen.***

Summation of QBSA Internal Investigation Results

6.45 Each instance as reported above highlights that the repeated behaviour of [REDACTED] shows was an ongoing and consistent behaviour in being untruthful. Each allegation supports the other two in this fashion. Yet [REDACTED] and [REDACTED] either found otherwise or more alarmingly it can be interpreted that the behaviour of [REDACTED] is the behaviour that is correct for the QBSA.

6.46 How this complies with the QBSA Code of Conduct as it relates to;

- (i) Integrity and Impartiality
- (ii) Promotion of the Public Good
- (iii) Accountability and Transparency
- (iv) Commitment to the system of Government

In our dealings with the QBSA we cannot point to a single where the QBSA presented any of the above listed attributes as highlighted in the examples presented above.

6.47 In the QBSA Code of Conduct it stipulates that a member of QBSA staff should test their decision making process by asking the following questions;

- (i) What does the law require me to do?
- (ii) Is there any official misconduct, fraud or corruption involved?
- (iii) Is the decision consistent with policy directions and administrative procedures?
- (iv) Will my actions be fair and honest toward others?
- (v) Is there any perceived, real or potential conflict of interest in this situation?
- (vi) What obligation might I be put under, or expectations raised?
- (vii) Does this situation compromise me in terms of my obligations to my employer?
- (viii) Who will be adversely affected? ¹

At no point can we point to a single example of such a decision making process being undertaken, in fact the extensive and irrefutable evidence proved. So again how did [REDACTED] and [REDACTED] come to their findings?

6.48 We wrote to the General Manager of the QBSA, [REDACTED] at the request of the CMC to seek clarification on the findings of the investigation on 24 June 2012 and as stipulated by the Ombudsman.

6.49 We have sought a response from [REDACTED] via our local state MP [REDACTED] who wrote to [REDACTED] on 6 September 2012 who wrote;

Finally, [REDACTED] advised me that they requested the CMC to review the conduct of [REDACTED] and [REDACTED]. I understand that an investigation was undertaken and you responded to [REDACTED] on 20 June 2012. [REDACTED] have requested further information regarding the detail of the investigation. That is, they would appreciate further explanation about the detail of the report that arrived at the findings you advised.

6.50 We have not heard back from [REDACTED].

6.51 We will be seeking an appeal directly with the CMC regarding the findings of the internal investigation.

¹ <http://www.bsa.qld.gov.au/SiteCollectionDocuments/Policies%20External/CODE%20OF%20CONDUCT%20External.pdf>

7 Final Summation

- 7.1 The argument presented above is not about when things go right or go wrong.
- 7.2 In most cases, as is the case when people insure their homes, contents cars etc, a claim is seldom made, for the event that occurs is a rarity. In the case of the QBSA, most buildings are completed according to plans specifications and abide by the BCA and relevant by laws etc or are perceived to be. In such instances the insurer, in this case the QBSA simple takes the money, and both the clients and the builders are happy.
- 7.3 It is not an argument about builders not getting paid. For to gain access to QBSA insurance you have to account for ever last cent paid to the builder. The "Works" must be completed (unless the builder goes bankrupt during the building process). The QBSA ensure that the builder is payed out before the QBSA will action a claim by the consumer. If there are any outstanding moneys owing to the builder and an insurance claim is eventually successful, then the builder is paid out first, no matter how defective the dwelling may be.
- 7.4 As this submission highlights, the argument presented here do not include aspects of the dwellings that are correct, any argument presenting a good record here is not of the QBSA's doing but of the builder involved.
- 7.5 The builder in our experience will not lose out financially when dealing with the QBSA. The builder will be guaranteed payment by due to the QBSA process of making a claim.
- 7.6 It when things go wrong and a builder does not abide by the legal obligations, i.e. abiding by the BCA, Australian Standards etc, the QBSA's involvement comes into question for the QBSA inspectors approve works that do not comply to contractual and or legal requirements i.e. the BCA.
- 7.7 Our submission highlights what happens when things do go wrong and the QBSA are engaged, and the process that the consumer goes through to gain access to insurance that they thought that they had purchased.
- 7.8 All consumers expect that builders are obliged to abide by the legal frameworks set down by local, state and federal legislation of which consumers expect the BCA and the numerous Australian Standards are adhered to. These code and regulations are designed to protect properties and lives.
- 7.9 The QBSA instead of checking that the dwelling does indeed conform to the plans, specifications, BCA, applicable standards etc; appear to take a course that is bent on protecting the financial interests of the builders and themselves at the expense of the consumer.
- 7.10 Consumers will normally burrow close to their maximum borrowing capacity so do not have the available funds for a costly legal battle with the builder. An event made even harder when the QBSA will find "experts" to present to the courts to protect the builder.
- 7.11 In the course of our dealings with the QBSA we have had QBSA inspectors lie repeatedly to us. Present knowingly misleading evidence to the courts. Make false statements so as to deny us a right of appeal in the courts. All of the accusations presented have been and still are fully cohobated by an extensive document trail and large set of voice recordings.

- 7.12 Given the finding of [REDACTED] and [REDACTED], the above examples it appears that such behaviour is indeed acceptable and is not even in breach of the QBSA Code of Conduct.
- 7.13 If the evidence that can be presented to the parliamentary panel upon request, then no amount of evidence will ever prove a wrong doing in the QBSA. The evidence that we have presented goes beyond reasonable doubt, there is no doubt at all. This sets a very dangerous precedent to the building industry.
- 7.14 If consumers do not have faith the industry watchdog then they will not build.
- 7.15 Builders who know that the QBSA will support them under almost any conditions presents a very real danger to both life and property as shortcuts are deemed acceptable.
- 7.16 Consumers should not be put through the experience we are still going through with any government department or statutory authority. If we had not experienced this we would not have believed it possible in a developed western democracy.
- 7.17 The BSA does not take into account the contract conditions signed between the two parties when it is against the builder.
- 7.18 The QBSA does not take into account the BCA and Australian Standards when it is against the builder.
- 7.19 In the end it is not the builder that the consumer needs protecting from, it is the QBSA.
- 7.20 As stated in the introduction and presented here again our experience to date with the QBSA ;
- (i) The QBSA while requesting a copy of the signed contract between the builder and the consumer, ignore contractual conditions, especially those that relate relevant laws, building acts etc.
 - (ii) The QBSA ignores all expert findings presented by the consumer.
 - (iii) QBSA will call their own experts even when those experts' reports knowingly consist of grave errors.
 - (iv) QBSA will make assessments without investigations.
 - (v) QBSA building inspectors knowingly submitted misleading reports to QCAT.
 - (vi) QBSA inspector continually attempted to get us to close the case and take it to QCAT and stating that he would give evidence in QCAT for the builder. This he said after he had admitted under questioning in QCAT that works undertaken did not comply to a QCAT "order" even though the report he submitted under order by QCAT indicated that the said works did comply.
 - (vii) QBSA building inspectors repeatedly attempted to closes cases which had category 1 defects without rectification.
 - (viii) QBSA building inspector made false statements in writing on QBSA stationary against a consumer to close a case in a manner to deny the consumer access of appeal in QCAT.
 - (ix) QBSA inspector made false statements to both QBSA management and consumer regarding rectification measures proposed by builder (The QBSA general manager eventually acknowledged that the defects existed).
 - (x) The outcome of a QBSA internal investigation despite overwhelming documented and recorded evidence presenting a pattern of continual and repeated dishonesty finds the behaviour not misconduct but mere "incompetence" or "negligence".

- (xi) No action was taken or reported upon regarding the input of the senior building inspectors even though the said building inspector full supported the actions and statements of the junior building inspector.
- (xii) The QBSA present an amateurish one and a half page document to surmise an investigation that took over a year, with no reference to reasoning or to findings in law or reference to facts or evidence.
- (xiii) QBSA refuse to correct a typo in scope of works to change the word "not" to "note" so as to read ; "*Note all rectification work to be in accordance to Building Code of Australia...*". Instead the QBSA refuse to withdraw a document for tender that states "*Not all rectification work to be in accordance to Building Code of Australia...*" The public perception of the QBSA is to uphold adherence to building rules and regulations yet actively participate in presenting documents in the form of "scope of works" that state the opposite.
- (xiv) Offered cash settlement for monies to be paid into bank account of our choice with no conditions by the general manager of the QBSA. This would leave the dwelling with existing category 1 defects.

7.21 To date we are still waiting for tendering builders to submit signed Scope of Works stating the Works to be undertaken will comply to the Building code of Australia instead of the signed documents stating that the Works won't comply to the Building Code of Australia or manufacturers recommendations.

7.22 With the demand of one of the tendering builders stating that he will not show us examples of his work we have requested that the Works go back to tender afresh with the Scopes of Works stating that Works will comply to the Building Code of Australia. [REDACTED] and [REDACTED] both stated in meeting that it is ok to go back to tendering process. Instead we have been offered an unconditional cash payout.

7.23 Our experience with the QBSA has totally destroyed our faith in the system that we thought was there to protect consumers, instead our experience has presented us with a system that to us is far from honest, treats consumers with contempt, lacks transparency and is accountable to no one.

7.24 We have lost all faith in the building industry due to our experience we will never engage a builder again outside of having other defects in our home rectified. We pass on our experience to any and every one we meet. In doing so have found we are not alone in our experience. Here we cannot comment but hopefully a pattern of behaviour from the QBSA will emerge and the parliamentary enquiry will put in measures to ensure that what has happened to is prevented from ever happening again.

7.25 The stress and anguish in dealing with the QBSA inspectors in this case was beyond what persons should be subjected to.

Thanking You.

Mark Beilby & Catherine McGrath.