

Deborah Brown

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17th September, 2012.

Dear Transport, Housing and Local Government Committee,

Thank you for this opportunity to contribute to this Enquiry. First and foremost you should know that the QBSA are regarded as 'toothless tigers, a joke' in the industry.

The problem is not that there is not enough or too much regulation the problem is that the **regulations and legislation are not working and not effectively enforced, there is no accountability of the builders**. Not by QBSA, QCAT or Master builders. Builders use regulations and legislation as a door stop not as a point of reference. The time frames allow for issues to stretch into years, this is **TOTALLY UNACCEPTABLE**.

It is just **accepted** that builders do not do the provide documentation etc. nor keep records as required to fulfil their legislative and regulatory obligations. If this is accepted practise then all the changes in the world to regulations etc. won't make ONE BIT of difference because they are not enforced. The problem is that the **regulations and legislation are not effectively enforced, there is no accountability**. There is NO ATTEMPT by the Builder to set in place correct procedure because they KNOW it is accepted by BSA and QCAT and Master Builders that Builder's will not provide the correct documentation and whatever they do provide will be GOOD ENOUGH.

And the comment which is in court transcripts, of our builder stating (of us raising the issue that we believe our 18m x 3.6m deck and other BAL 29 fire regulations had not been meet) that we 'are making a mountain out of a mole hole' clearly demonstrates they have NO regard to legislative requirements and to fulfil their obligation to them or their contract.

There has been NO ACCOUNTABILITY for the failings of my builder. NOT ONE BODY (BSA, QCAT, Master Builders) has asked the builder **WHY** THEY HAVE FAILED TO COMPLY TO REGULATIONS AND LEGISLATION and provide me with a reconciled bill? IN 2 YEARS NOONE HAS ASKED THAT QUESTION and NOONE HAS MADE THEM PROVIDE A RECONCILIATION??? It is just accepted, close enough is good enough.

There are failings in the legislative requirements and how BSA responds to this legislation and regulations. Explain how legislation states you have 1 year to submit a complaint against the builder but the QBSA will only accept a complaint within 9 months? Anyone who submits to the QBSA within the 12 months as per legislation but outside the QBSA's 9 months, the QBSA will not honour that legislation? How does this happen and who makes these decisions to dismiss the legislation? I along with I'm sure countless others have been denied our right to justice under legislation by the QBSA. (refer attached letter 110711_BSA_NOF_Letter). The law and BSA should provide for the SAME time constraints, if a complaint is submitted within 1 year to the BSA it should be investigated. In addition, the one year should not be

from signing of contract, it should be 1 year from Practical Completion. For reasons that should be obvious to you, if not contact me and I will explain them to you.

Why the QBSA cannot get involved if there is an outstanding sum? It's a catch 22, either side won't pay money because there is a dispute and the QBSA won't get involved because of the dispute? If legislation has been broken QBSA should be involved and enforcing the legislation, payment or no payment, the law is the law. In our case it was the failure of the builder to comply with legislation that the final sum was not paid (Paid in full into the Master Builder Trust). We simply wanted the documentation as we are entitled to under legislation to enable us to clearly SEE what the builder was claiming for. The builder did not provide this, QBSA did not make them provide this, we did not pay. We still have never been provided with a reconciliation, 2 years and no help later from the QBSA and having been and still going through QCAT, no reconciliation, no warranties, no completed defects. We are entitled by law and yet our governing bodies have not made the builder fulfil their obligations under that law. Would you pay if you were not provided with correct documentation? Would a single line suffice for you as justification of payment? (refer: 101222_NC_Final invoice to contract price), this is all we received in the first instance for final claim. The builder spat his words at me and said in 20 years he has never been asked to provide documentation, well, for 20 years the builder has not fulfilled his obligations under the law to provide these documents and the QBSA has let him get away with it.

Legislation is referenced in Building Contracts, when this legislation is not fulfilled then this becomes a contractual issue and the QBSA will NOT act on any contractual issues. In effect QBSA can never act on legislation because it is a contractual issue? So we should agree to build with no contact and then go to the BSA citing the legislation in a dispute, and then the BSA will act, is that right?

Why is the Builder given 6 months to complete the defects before BSA will act? The Builder has been paid, in FULL and a Practical Completion handed to client. WHY should a client wait 6 months before they are even able to begin to resolve the issue with the BSA. The builder has been paid in FULL they should FINISH THE WORK THEY HAVE BEEN PAID IN FULL FOR. Legislation has to be CHANGED to protect the interests of the Home owner, the builder is already onto his next house to be bothered to come back to fix defects. Why should a home owner who has paid in GOOD FAITH and according to Legislation have to fight for months, years or just give up and loose out completely because the system will not make the Builder fulfil their obligations. **Legislation should be changed and should state that if defects are not complete with 6 weeks of practical completion the builder will be fined \$1000 for each day defects are outstanding and points will be placed against their license. This would solve or at the very least dramatically decrease this issue of builders not completing defects in a timely manner over night as long as QBSA ENFORCED IT.** Let the builders cry all they want, they do what they are obligated by law to do and they will not have an issue, simple. We were without hot water for 8 months, we have doors that still do not lock properly and bulging floor boards that have been nailed, on a floating floor system (APPROVED BY BSA AS HAVING RECTIFIED THE DEFECT!!!) almost 2 years after completion. I had the plumber come and fix the hot water MYSELF so we could have hot water because it had become too cold to try and wait to have this resolved and wait for the builder to fix it. This is TOTALLY UNACCEPTABLE.

Applying to the QBSA after the horse has bolted is an absolute farce. A home owner or builder should be able to book a QBSA representative (pay a fee if need be) for them to be

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on site for Practical Completion and sign off the building with all documents and warranties etc exchanged or if BSA representative is not at Practical Completion and a home owner is not satisfied that they have been provided with the documentation by the builder they should be able to Email the QBSA and ask the QBSA to contact the builder and ask the builder to provide all the documentation in a scanned Emailed document to the QBSA. The QBSA can then review this Email and easily contact the builder to advise that they are missing whatever from the information that should be provided. The QBSA should give the builder 1 week to provide the missing documents and again if **the builder fails to comply they will be fined \$1000 for each day the outstanding information and points placed against their license. They need to be held accountable.**

In the above proposal the sum of fines collected from non-compliance of Builders should be divided half to the QBSA for expenses and half to the home owner as compensation.

BSA's assessment of defects. It is absolutely ridiculous to judge if a defect is considered a defect if you stand 1.5 – 1.8m back and can't see it. A defect is a defect. If the builder has not taken the time nor care to finish work properly it's a Defect however far away you stand.

BSA advised me it was at the **QBSA's discretion if a case proceeds** given the facts (Refer 110728_BSA reply no assistance). We were denied assistance by the QBSA. We provided QBSA with full documentation of the dispute and defects which I believe they have scanned and have on record. **I would have thought the following having, not been not been complied to by the builder would have provided reason enough:**

1. Builder demanding payment having **NOT:**

- Issued a reconciliation with final payment and documentation (**nor ever issued one**).
- Issued a list of PC sums and PS items separate to Variations in relation to the contract sum.

PC sums and PS items were not reconciled in the Final Payment received by us it was a single line stating 'Progress Claim 6' and the exact final payment sum only. (Refer 101222_NC_Final invoice to contract price).

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- Provided adjustments in Contract sum given in final Invoice for PC and PS items.
- Explained why there were two A/C wiring Variations, Variation 15 @ \$500 and Variation 22 @ \$1,060. Variation 15 was omitted and we were recharge over twice the price in Variation 22.
- Provided credits for PC and PS items in contract sum separate to the variations that were agreed were owed.
- Provided defects list from practical completion walk-around signed by both parties. (**no defects list was ever provided by the builder**)
- Given all the keys, they kept our keys for 18months and NOONE (BSA, QCAT nor Master Builders) made them give them back.

2. The builder **failed to comply** with the legislation and regulations having:

- Not provided a site toilet.
- Issued 2 Final Claim invoices on the same date but with different variations amounts?
- Issued Practical completion for the client to sign, 3 weeks after final claim invoice was issued. (110118_Email_Practical completion)
- Not provided supporting documentation for Variations when claiming for them.
- Claiming Variations for items that were not installed in the house.
- Issued variations 6 weeks after the completion of the dwelling.
- Claimed for variations that had not been signed nor agreed.
- Charging more on variations than the documented agreed price for these items.
- No date for slab inspections, no documentation for any stages inspections.
- No warranties documentation.
- No Termite Barrier control Certification
- The builder still has not even given us most of the warranties. The broken locks of the glass sliding doors, I cannot even attempt to have them fixed because I have no idea who manufactured them and have no warranties? And from all accounts we will have to do it ourselves because NOONE is making the builder do it, not QBSA nor QCAT (after 2 years), we now have **to apply to the supreme Court to attempt to get someone (anyone) to get the builder to fulfil their contractual and legislative obligations** to come and fix the defective locks!!!. It was found as a fault by BSA but no one is making them fix it.
- The builder put it to QCAT that they were 'installers' of our kit home and we project managing the build, which in no capacity we ever acted as project manager.
- The builder also blamed the kit supplier for supplying (we believe) the wrong material for the deck, were fully aware of the fire code requirements for that deck and then matched the wrong materials for a deck extension which was a variation. But absolve themselves of any responsibility.
- It was then the Certifiers fault that the building was certified without having met fire code (we believe) and not the builder for having not constructed it to code (we believe).

The comment from QCAT Member that the documentation the builder provided was 'as good as you could expect'. There is no expectation that documents provided would meet legislation and it falls well short of requirements, this is the low standard we have because it's

just accepted that the builders will not produce these documents by QBSA and clearly QCAT who is where QBSA advise us to take any matter further.

QCAT directed BSA to assess the outstanding defects of which the builder said he had completed 85%. QCAT concluded a large number of the 85% were not complete that the builder claimed had been. The Builder advised they will take legal action against from the outset trying the bullying, heavy handed approach rather than providing us what he is required to by law. The builder suspended work until further notice (clause 16 of contract - 'substantial breach') part was through the build because tiles were not on site even though NO directive or advice was given to the client when the tiles were to be delivered to site on a specific date and further stated the contract had been extended by 10 days for deck extension. This heavy handed approach was unnecessary and again demonstrates the bullying tactics the builders use. The BSA advised me two days extension for the extended deck was reasonable. The builder sent letters from their legal representative threatening to charge us for late payment even though they had not provided us documentation for payment required under legislation and further said that they would claim part ownership of our property.

We are unable to resolve the final sum because the builder would not engage us and no authority would help us make them give us the information to enable us to pay the final claim because the QBSA deemed it to be contractual so the advice that the QBSA gave was to seek legal advice but the sum outstanding would pale in significance to the bill we would have for seeking a resolution in the courts. We knew, I can read the legislation that we had a right to this information but we had to seek legal advice spending thousands of dollars because the QBSA did nothing. Then we had to go through QCAT for financial reasons and at the end of the day QCAT CAN NOT ENFORCE THEIR DECISION SO WE ARE BACK TO SQUARE ONE, STARTING THE PROCESS ALL OVER AGAIN.

The outstanding sum was deposited by the client and held in Trust at the Master Builders. A without prejudice meeting was held with the builder and client at Master Builders which was a complete farce that had **The Master Builders Representative filling out the release form for the client to sign the full disputed sum to the builder even though there was not reconciliation, it was conceded there were items the builder had to credit back to the client and variations had been claimed that had not been approved by the client etc. etc.?** Any item that was questionable went in the favour of the builder. There was no attempt from the builder to compromise, nor was a compromise sort from the Master Builders representative to the builder. The builder who was at the meeting was not the builder the client had 99% of the dealings with throughout the build of the house. I had faith that it would be fair meeting however the Master Builders placed their member's interests first above all else.

I sent a letter to the QBSA requesting confirmation of our conversation that NC the Builder would not attend mediation, I did not receive a response from them.

We spent \$2500('discounted' from \$5500) on a solicitor that tried to come to a commercial agreement through the builders solicitor because we did not know how much we owed the builder because he did not provide us with a reconciliation. So we were in effect paying to make the builder give us proper bill let alone then seeing if there were any disputed items in that bill. The result was that the builder was willing to take a settlement but on the condition they do not have to fix any of the defects. Effectively they would give us the money we thought we were owed but not fix the defects. So my faith in the legal system has gone. We then spent a further \$2000 in legal bills to get advice from a solicitor for our submission to QCAT.

The QBSA did not advise me that they were unable to assist due to the outstanding contract sum. If I had been advised in my many months of discussions with them I could have taken alternate action then rather than believing the BSA would allow me to have this issue dealt with by them.

What is the point of having a Building Authority that cannot enforce the contractual legislation that the authority serves? If the law clearly states a requirement of the builder (or client) why isn't the QBSA allowed to enforce that contractual legislative requirement on the builder (or client).

The BSA have allowed the 'industry standard' benchmark to fall to such a mediocre level that overall standard of building and finish is LOW, and that's where the current benchmark for the industry lies.

The following and attached clearly demonstrates the worthlessness of the current QBSA system:

- Defects look ok from 1.8 mts
- During a defects inspection scratches on the aluminium sliding glass door threshold were considered acceptable to the QBSA. Photographs submitted to the BSA clearly show the builder made no attempt during construction to protect the surfaces, again the QBSA setting the standard by dismissing this and sending a clear message to the builder that not protecting finishes was OK, no problem at all.
- BSA passed a nailed down floating floor system in a dispute even though the owner said it doesn't look right, the owner picked up after the inspection the floor had been nailed. There were a number with nicks out of the tops of them and still laid. This was also perfectly acceptable to the BSA. It is my understanding now that the QBSA has 'passed' this defects I have a nailed floating floor system that I cannot make the builder fix because even if I did apply though QBSA this floor system is not covered by them. See what a complete joke this is?
- BSA during a defects inspection inspected a door, the door was removed and defect fixed but when the door was put back on its hinges it wouldn't close I said, but now the door won't close, apparently that didn't matter so we were left with a door that was closing 10 minutes before to a door that didn't close?! Scrapped on the tiles and wouldn't shut, brilliant. Thanks BSA.
- BSA deemed that the hole 10m long and .6m wide and .5m deep above plumbing pipe that was never backfilled properly was a perfectly acceptable way to leave the site? It remains unfilled and full of the tree branches I placed there to stop the erosion. This is the good standard the industry is working to and accepted by the BSA.
- Instead of a handrail uprights being all levelled and the handrail secured on top the builder simply cut chunks out of the timber balustrade to suit the height of the uprights which was all different so all different chunks cut out of the timber handrail, this was acceptable to the BSA. Makes for a beautiful detail.
- Because owners have to wait for the builder to miss the deadline of the 7 months from PC then we forfeit the right to have the defects work completed by the builder by

QBSA and essentially have to wait to this is finalised in QCAT to have defects fully complete house. Issues Including operational doors, if someone burns in my house because the doors do not operate and they can't escape then who is responsible? The system allows this to drag on without resolution for years with the current legislation.

I Submitted a claim against certifier (for we believe passing a deck in a fire zone with a non-compliant timber and other fire code violations) SIX months later we are still awaiting a decision.

Who in the QBSA is investigating the builders, old builders. While they appear to be objective they will naturally think what impact it will have on the builder. Yes, the door thresholds were all scratched and bent but that will mean replacing them and that's a huge job, we won't make the builder replace them. That is not acceptable, the builder should have thought about that when they did not take the time and care to protect those threshold during construction. They should have been replaced and I should have not been told by the QBSA they will get scratch in time anyway. So the builder now knows he doesn't have to be careful because nothing will happen if he is not.

Because of QBSA failure, I have been through QCAT, I was not award costs, so for us to have to have the builder do what they should have done in the first instance by legislation we have been left with thousands in legal bills trying to get the builder to do what he should have by LAW in the first instance and for which NO AUTHORITY have made them fulfil legislative obligation nor served any punishment. Is it little wonder builders are a law unto themselves and the courts and the QBSA are FULL of such disputes because the builder knows 9 of 10 times NOTHING WILL HAPPEN and as with the situation just describe there will be no recourse whatsoever. Pretty good odds for not following the law and no recourse so why would they do the right thing? As I keep saying, Builders are laughing their heads off at the system.

One thing that I can say as a positive for the BSA is the service at the counter at its centres was good and when you get **an experience advisor** on the telephone then this service is of help. I was misled on a few occasions by staff missing fundamental information out but overall the system is helpful. However, what would be MORE helpful is to have a body to provide legal advice, I know the lawyers will jump up and down but if the legal advice is straight out compliance or non-compliance with the regulations and legislations surely those who write the legislation can say actions are a breach of law or not? If the builder has not fulfilled their obligations under the law surely government regulators are able to point out the pieces of regulations or legislation that the builder (or client) is in breach of and enforce it or what is the point of their (QBSA) existence as the Authority is actually no Authority AT ALL.

Although it was not a QBSA decision I thought I would tell you this just to give you a laugh at how ridiculous the whole system is, QCAT directed us to pay the builder's accommodation (\$2500) to return to site to complete defects that they had still not completed 16 months after completion. And as always they did what the builder did what they wanted to do, they haven't completed the defects, so 2 years on I'm still trying to get the builder to finish a building I have paid for in FULL 2 years ago and now I have to go to the supreme court to get them to do it because QCAT can't enforce jack ####, so that was a COMPLETE WASTE OF MY TIME.

We spent thousands of dollars in legal bills in addition to the almost 2 years in QCAT (and counting), not on a complicated contractual building case, but trying to have the builder

provide us with the documentation to enable us to pay their bill and for them to complete defects, all of which they are obliged to do by legislation and regulations and we have had NOTHING FROM THE GOVERNMENT AGENCIES SET UP TO ASSIST US and the builder knows he can get away with it because ALL HE HAS HAD TO DO IS WAS WHAT HE SHOULD HAVE DONE IN THE FIRST PLACE WITH NO REPCUSSIONS FOR NOT HAVING(AND STILL NOT HAVING) DONE SO. SO WHERE IS THE DISINCENTIVE???? THERE IS NONE. THEY DO WHAT THEY WANT, FULL STOP.

There is another system you need to have an enquiry for. What a JOKE AND COMPLETE WASTE OF TIME AND TAX PAYERS MONEY QCAT IS.

Clearly the whole system is failing, BSA, QCAT and Master Builders, it is a complete JOKE.

I have to finish with, I have no faith that any of what I have taken the time write to you about will see the light of day or make one bit of difference and further I have no confidence that if the QBSA do find fault with the Certifier that they will assist me in having the builder return to make my house meet fire codes. I live in hope.

Regards

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NB. As I have said previously they wonder why people going through similar situations to ours (and much, much worse) jump of bridges and put bullets in their heads. Yes, this is extreme language but what you don't realise those of you who find this a little difficult to listen to is the decisions you make, and the in-action and the broken processes lead people to this despair. That's why I am writing to you, change HAS TO COME.

Attached documents:

1204_BSA_QCAT_Report

101222_NC_Email_Final invoice to contract price

101222_NC_Final invoice to contract price.

110118_Email_Practical completion

110711_BSA_NOF_Letter

BSA ENQUIRY Submission 17 Sept 2012 Deborah Brown

110728_BSA reply no assistance