

09 September 2012

SUBMISSION TO;

**TRANSPORT, HOUSING AND LOCAL GOVERNMENT REVIEW
OF THE PERFORMANCE OF
THE QUEENSLAND BUILDING SERVICES AUTHORITY (BSA)**

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The Terms of Reference of the Committee are:

- Whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers;
- Whether the QBSA could make further changes in order to reduce regulations to lower the cost of building a home;
- The effectiveness of the QBSA to provide remedies for defective building work and to provide support, education and advice for both those who undertake building work and consumers;
- the governance arrangements of and between the board and the general manager;
- The effectiveness of the Queensland Home Warranty Scheme and its protections;
- whether the current licensing requirements of the QBSA are adequate and that there is sufficient auditing processes to maintain proper standards;
- The number of trades licensed by the QBSA and whether industry groups could take a greater role within QBSA in terms of licensing standards and procedures for their members; and
- Examining opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.

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SUMMARY

I am an Architect and Project Manager. As a Director in Private Practice I have been involved in commercial building contracts and construction for over 35 years. As a result of building defects and the default by a builder when extending my own house, in April 2007, I subsequently became involved and familiar with the BSA complaint procedure in the domestic building industry, their building inspectors, the General Manager of the BSA, lies and deceit on the part of the BSA, the Home Warranty Insurance Scheme, QCAT and the failure of the whole system particularly in so far as "self represented" consumers are concerned.

With regards to the above terms of reference, I can only comment on my observations and personal experiences in dealing with both the BSA and QCAT and suggest solutions to those related to the terms of reference.

However, in 35 years of professional practice, in seven different countries of the world, I have never come across such an obviously dictatorial, divisive, dishonest, unaccountable, lengthy, monopolistic, corrupt and wasteful system, that is designed to deny consumers natural justice, than the one operated by the BSA and QCAT in Queensland.

**To understand the problem, we first have to look at the role of the BSA.
It is to:**

- manage the State Government Home Warranty Insurance scheme and to comply with APRA's rules
- "fairly" assess consumers complaints about defective building work under the Home Warranty Insurance Scheme and to make payments for defective and incomplete work and to reclaim those payments from their licensees.
- assess the competence of and license builders and tradespeople in Qld
- represent the interests of builders and tradespeople
- improve standards in the building industry

Then we have to look at QCAT. What is their role?

As another State Government Agency, QCAT's role is, following a denial by the BSA of a consumers insurance claim, **"to review the decisions of the BSA"**.

This State controlled "system" which includes a number of diverse responsibilities, allows the General Manager of the BSA and his staff to manipulate the QBSA Act in whatever way they choose as they are only accountable to an occasional Board meeting and QCAT. There is no transparency, no independent arbitration or an Ombudsman that a consumer can appeal to and with all its differing obligations, the BSA has and does demonstrate a clear "conflict of interest" that favours their licensees.

For example:

- As managers of the Home Warranty Insurance Scheme, the BSA are in a unique position. Having licensed the builders and tradespeople in the first instance they then receive annual fees and insurance premiums from them, (which is the BSA's income) so they are obliged to protect them.

- Any claim upheld by the Home Warranty Insurance Scheme is an admission of failure by the BSA (the managers of the HWI scheme) to properly assess the licensees competence in the first place and to hold a licence.
- The BSA under the QBSA Act are then obliged to recover any money paid out by the Insurance Scheme from their offending licensee. In other words they could seriously financially damage, even bankrupt their licensee, so it is in the BSA's interest to minimise the damage and the insurance payout.
- By denying independent arbitration for consumers and by putting all decision making in the BSA and QCAT's hands (both State Government Agencies) the BSA does not have to carry out any "cost benefit analysis" of claims and can (and I would suggest does) deliberately select non legally represented consumers to contest and deny their justifiable insurance claims in order to maintain its required APRA payout percentage.
- In denying self represented consumers claims (self represent because they cannot afford to pay large legal fees) the BSA does not have to worry about what it costs them. The BSA can run up (and does) unlimited expense in contesting claims. As shown in their Annual report, in addition to their own "in house" legal team, they hire "top of town lawyers" and consultants (at over \$4m) to represent them in disputes and at QCAT, and use unlimited time of their own staff to contest a claim. These costs can be, and are, out all proportion to the cost of settling the claim. In this regard the BSA use their financial resources in the hope of "breaking" the consumer or by forcing them to withdraw. The General Manager claims that it usually takes 3-4 years to have a claim heard at QCAT! What an affront to consumers, is this equality?
- In addition of course, there are the cost incurred of a claim that are eventually heard at QCAT. The QCAT costs have to be met by taxpayers.
- The BSA is a very profitable organisation (it has accumulated over \$50million in assets) and it is easy to see why. Its income is derived from license fees and insurance premiums. Under "the system", it is compulsory for every builder and tradesperson working in Queensland to be licensed by the BSA and every licensee, carrying out work over \$3,000, has to pay BSA insurance – there is no competition, it is a State Government monopoly.

- Insurance companies normally invest the premiums received and payout claims from their investment income. BUT, the BSA is able to invest both the licence fees it receives and the insurance premiums and waste enormous sums of money in employing administrative staff (approximately 350) in fighting comparatively small claims – and “then is able to recover any money paid out, from its licensee”! WHY?

Is it any wonder that the BSA has over \$50million in assets whilst self represented consumers go broke and lose their livelihoods at the hands of the BSA whilst trying to have defective and incomplete work put right?

The BSA in carrying out their many different and conflicting roles have consistently denied natural justice to us, as well as many other consumers. The BSA have demonstrated a clear “conflict of interest”, have been dishonest and manipulative, and have used their power to engage in “misleading and deceptive conduct”.

QCAT in their role in “the system”, have shown to us and to many consumers that they are not Arbitrators and they are not independent, as claimed by the BSA in their annual report. QCAT are part of a State Government monopoly system and their role is to review the decisions of the BSA, that is all.

In reviewing the BSA's decisions, QCAT must “stand in the shoes of the Authority”. **How can this be Arbitration?** In reviewing their fellow State Government Agency's decision, they deny natural justice to consumers, fail to fairly assess a self represented consumer claim against the BSA as the BSA are legally represented and refuse to award costs and damages to successful self represented consumers, in accordance with the QBSA Act. These costs would of course be levied against their fellow State Government Agency, “so there is no chance!”

Our submission is just one of many submissions that illustrate the considerable financial and personal damage caused by both of these State Government agencies and their staff, who, due to their clear “**conflict of interest**” mis-manage, manipulate and abuse the system and the law.

IN OUR CASE

My wife and I are retirees and pensioners. Our project was to renovate our house in March 2008 and sell it in June 2008. This was to allow us to move to a quieter location and to be free of any mortgage.

Our contract with [REDACTED], a BSA Licensee, was due to commence on 01 March 2008 and be completed by 31 March 2008. Work actually commenced on 04 April 2008. I was in hospital at the time and could not monitor progress and my wife called in [REDACTED] to report to her. After 2 inspection reports by the [REDACTED] Inspector and five extensions of time to the builder, the work was still incomplete, and in **September 2008**, we lodged our complaint to the BSA. (the builder had no penalty points or adverse comments made about his previous performance on the BSA's online licence search)

In making our complaint, as pensioners we could not afford legal advice and apart from a short time, we were **self represented**.

Our complaint and insurance claim should have been resolved in **February 2009**. It should never have gone beyond that! The reason it did (and it went on for three years) was due, in the first instance, either to an incompetent BSA inspector, or, an inspector who had a different agenda to that of fairly assessing consumer complaints and building defects ([REDACTED] later confirmed that it was the latter). In addition, the we had to deal with the subsequent dishonesty, negligence and misrepresentations of members of the BSA, including those from the General Manager [REDACTED], [REDACTED], Senior Building Inspector and [REDACTED], Manager Legal Services.

As a result, we believe that we are entitled to the recompensed for the costs that we have had to incur and receive compensation to restore us to the position that we would have been in February 2009, but for the actions of the BSA. We have made several offers of settlement in this regard both to the BSA, QCAT, and the Minister of Public Building and Works, all of which have been rebuffed. Our claim is currently

with the Attorney General.

To justify our claim for costs and compensation, amongst other things, we have cited what the BSA said in writing to us on **09 February 2009**, that the builder **"was required"** to rectify the defects, and when he did not do so within the statutory 28 days, the BSA refused to put the matter to the insurance in accordance with the QBSA Act. Instead, the BSA excused their conduct by maintaining **"required"** meant that the builder was only **"requested"** to rectify the work, he was **not (required) compelled** to do it, so it was not a direction!

This definition of words, **"required v requested"**, was later admitted by the BSA as a "mistake" on their part in their standard letter, but they failed to do anything about it. (Information obtained under FOI) But their "mistake" had the effect of **prolonging the matter for three years, causing us immense financial damage**. Furthermore, in response to an independent [REDACTED] report that identified over **50 defective items** and items of unacceptable workmanship by the builder at the time we lodged our complaint; the BSA inspector had recorded just **5 defects** and failed to include any of the obvious structural defects. It then took this same inspector more than two years to admit, as a member of a Conclave of Experts, instructed by QCAT, that he had been wrong in his initial inspection in **2008**.

During those intermediate years and in addition to our other complaints against the BSA and QCAT that are all recorded in detail, [REDACTED], the General Manager of the BSA first informed our local member Mr Andrew Fraser in August 2009 that the BSA would carry out a structural integrity investigation on our property and then failed to do so. He informed his Minister Mr Schwarten, in April 2010 in a Ministerial Briefing Note; that our Builder, [REDACTED] had withdrawn their claim against the BSA that the BSA list of 5 defects was excessive. He also wrote to us saying that following receipt of the Conclave of Experts Report in on 30 April 2010, that he would issue a further Direction to Rectify to the builder, but failed to do so.

As a result of all of this dishonesty and failure by the BSA to act in accordance with the law and to deny us natural justice, in October 2010 we were advised to lodge a claim at QCAT, directly against the Builder for the rectification costs, costs and

damages.

The builder failed to lodge any defence to our claim at QCAT in the time allowed plus an extension of time and in January 2011 we lodged a claim for Default Judgement with QCAT in accordance with the QCAT Act. QCAT failed to even acknowledge receipt of this claim, or to process it.

After repeated requests to QCAT to deal with the default judgement application, QCAT, at a Compulsory Hearing, **six months later, in June 2011**, member, [REDACTED] of QCAT said, that [REDACTED] report to his Minister in April 2010 was incorrect and that [REDACTED] had not withdrawn their claim against the BSA.

As [REDACTED] did not attend this Hearing, [REDACTED] of QCAT said, that unless we withdrew our Default Judgement claim against [REDACTED] (who had by now cancelled their BSA license) and our claim against the BSA, as **the BSA now stated the work required complete demolition and rebuilding, she would** not allow our claim to be dealt with by the BSA Home Warranty Insurance Scheme. She said that we could then be faced with another three years before any settlement would be reached. Put under this pressure and duress by [REDACTED], we had no choice but to **accept what she said and at last, have the HWI (managed by the BSA), deal with the matter of the defective work.**

At the QCAT hearing, we then requested costs against the BSA in accordance with the QCAT Act. [REDACTED] of QCAT said that there was no point in us applying, as she would not award them. She said that we should accept the BSA's insurance offer on rectification and close the case. In addition QCAT have refused to pay the account for specialist services that **they commissioned without informing us and contrary to the QCAT Act have referred the account to us for payment.**

We believe that both the BSA and QCAT have broken the law and after three years of unnecessary delay, caused entirely by them, have shown a blatant **disregard both for the law and have denied us natural justice.**

Even after we accepted, under duress at QCAT, that the matter be put to the Insurance scheme, [REDACTED] Manager of the BSA legal department "breached

our written agreement" with the BSA to have a Quantity Surveyor appointed to value the required work and he threatened to "close the file" if we did not accept the BSA's offer - something he had no legal authority to do. [REDACTED], the Senior Building Inspector of the BSA, then manipulated the "scope of work" required and BSA tender procedures in order to get a low bid for the work that would not cover the full scope and cost of what had to be done. This enabled the BSA to claim only nominal amount back from their former licensee.

In spite of all of this, we have continued with our claim for costs, through QCAT, the Premier, the Attorney General, the Minister for Public Works and the CMC and we have had nothing but "buck passing", excuses and inactivity. The CMC excused [REDACTED] behaviour as "technically incorrect" and referred our claim to the Minister to deal with. The Minister said that he could not deal with it and passed the matter back to us and the CMC! So we are nowhere with that!

[REDACTED] has over 15 years experience in the Building Industry, he is the General Manager of the BSA that employs approximately 350 staff. He is not a novice; "technically incorrect" is not an acceptable reason for his behaviour.

I believe that all of the above clearly demonstrates that the BSA:

1. Had failed to fairly assess our claim, and by denying us access to the Home Warranty Insurance Scheme in February 2009, had demonstrated a conflict of interest in that their primary concern was both to protect their licensee and to limit payouts to consumers from the Insurance fund in accordance with APRA's rules
2. The BSA had clearly licensed a builder without due care, being more concerned about volume and annual fees and insurance premiums (income) than about standards in the building industry
3. The BSA had failed to take into account the opinions of professionally qualified building experts demonstrating that their inspectors were either unqualified

for their job or had a different agenda and were more like insurance assessors than building Inspectors.

4. **QCAT members, who are themselves lawyers, aided by “top of town” lawyers acting for the BSA against a self represented consumer, have demonstrated bias, favouring their legal colleagues and their fellow State Government Agency, and had denied us natural justice.**

In my opinion, the only defence to these claims that the BSA staff and QCAT can offer is that **the way “the system” is currently structured, with the lack of independent arbitration and the culture initiated by the General Manager** they have no choice but to operate in this way. But I cannot accept that **“this system” excuses** **the General Manager, from dishonest and misleading behaviour and for encouraging and promoting this culture within the BSA.**

There is no doubt that the “first right” Home Warranty Scheme is the best in Australia, but the operation of it must be transparent and changed to be fair and equitable to both the consumer and the BSA licensees.

CONCLUSION

Based upon my personal experience, I would like to suggest to the committee that they:

- **Immediately** ask the State Government to set up an independent Conclave of Experts to review and resolve all self represented consumer claims that have been outstanding with the BSA/QCAT for more than six months. All claimants and respondents should be self represented. There should not be any legal representation from anyone and all matters are to be resolved within three months.
- **Curtail** the power of the BSA so that a fairer, more equitable system of managing consumer complaints through independent assessment and arbitration is introduced.

- **Ensure** that “once and for all” any suggestion of “**conflict of interest**” by the **BSA is avoided by separating the insurance function (HWI) from the licensing function** so that a BSA building inspector is truly that and not an insurance assessor.
- **Introduce** a fair and equitable independent arbitration system for both consumers and licensees and not just another State Government agency.
- **Independent building professionals** assess applications for BSA licenses and not BSA staff
- **Gear** insurance premiums to experiences and track record of licensees.
- **A cost benefit analysis** is introduced for every consumer claim made on the HWI scheme, with the results of the expenditure cost and award (payment or cost to rectify, administration costs and consumers costs) made available to the public.
- **Recovery details** of all insurance payouts from licensees are made available to the public (were they recovered or not).
- **BSA inspectors** are held accountable for their actions and should appear personally (unrepresented) in any jurisdiction should any complaint be brought against them by self represented consumers
- **Consumers** should receive costs and compensation for any errors or misdemeanours of the BSA and QCAT
- **The General Manager of the BSA is replaced** and a new culture of responsibility and public service installed in the BSA

The above suggestions would go some way to help “keeping the BSA honest” and

QCAT fair in their decision making

In order to assist other consumers and to prevent the BSA acting in the way that they do, I have personally developed www.trustedtradieqld.com.au a website similar to those existing in other countries. The site is designed to have consumers regulate builders and tradespeople for themselves by means of a "star rating system". The following consumers "satisfaction survey" of the BSA Licensees performance, should be distributed through the BSA, Local Councils and the social media. The website also includes a forum for consumers' experiences with the BSA and their stories (some consumers have already uploaded onto the website).

I have proposed, both to the current Minister, Mr Bruce Flegg and the BSA, that they should support this website as a means of assessing performance of licensees and "improving standards in the building industry". This system would reduce the amount of defective and "shoddy workmanship" and make licensees more trustworthy. But the BSA maintain that the system they have is the best, in spite of over **5000 consumer complaints a year, that they and all of their licensees, are trustworthy!**

The current Minister of Public Building and Works, Mr Bruce Flegg has refused to consider my proposal, preferring instead to pass it over to this review committee for consideration.

NOTE:

A full chronology of the events relating to our complaint, relevant Sections of Acts and all other written material referred to in this submission, is available to the committee upon request.

Thank you for your consideration.

Mel and Heidi Wyeth.

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CONSUMERS ASSESSMENT

Satisfaction survey of BSA licensees

One minute of your time will help to improve the standards of builders and tradespersons operating in the Domestic Building Industry in Queensland.

1. Have you had an extension to your home or renovation work carried out on your home in the last two years Yes or No
2. Have you had a new house built for you in the last two Years Yes or No
(if no to 1. and 2. please go to question 12)
3. Did you search the builder or tradesperson using the BSA online search Yes or No
4. Was the BSA online search useful in telling you about the Licensees reputation Yes or No
5. Did you have a dispute with your builder or tradesperson Yes or No
6. If you had a dispute with your builder or tradesperson was it about

Defective work	Yes or No
Quality of workmanship	Yes or No
Money	Yes or No
Incomplete work	Yes or No
7. How would you rate your builder or tradespersons performance
 1. Poor
 2. Fair
 3. Average
 4. Good
 5. Very good
8. Do you know your builder or tradespersons licensee number Yes or No
If yes, what was the number
9. What was the builder or tradespersons name/trading name
10. In what suburb or town was the work carried out
11. Would you have liked to know more about your builder/ tradespersons reputation before you signed a contract? Yes or No
12. Do you intend to renovate, extend or build a home in the next two years Yes or No

OPTIONAL (please print)

Your name and address will not be disclosed

Name

Address

Comments:

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Thank you for answering this survey. Your answers will help to improve the standards in Queensland's Domestic Building Industry.

We will publish the results of this survey..