

Please find attached a submission for the Parliamentary Committee in relation to

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

The submission includes (5) five documents.

1. Preface
2. Rationale
3. Proposed alternative model
4. A case study (real account of one complaint as yet not resolved)
5. Correspondence from Member for Redlands, Peter Dowling MP



Submission made by

Mr & Mrs Tucker



Hand Delivered by Member for Redlands. Peter Dowling MP

Preface

The intricacies and nuances of the behaviour of major stakeholders in the building industry demand greater (than usual) sophistication in analysis; and unwavering critique if they are to be fully appreciated, unraveled and evaluated. Entrenched social interests (for example: unions, law firms, financial institutions or even tribunals) not only perpetuate great harms- whether financially or otherwise¹...; but also obscure and conceal the very nature of the harm production². Those same stakeholders are well placed to resist and deter the justice process generally³

Within this context, continued reference is therefore made in this report to the **social processes** underpinning the making of “victims” of such harm production and the manner in which the status of “victim” carries certain connotations and policy implications.

While the notion of “victim” in its conventional sense is conceptualized as:

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions (of a conventional criminal kind)...including those laws proscribing criminal abuse of power⁴

a more meaningful perspective may be observed in the statistics that just over 6 in every 100 persons were victims of wrongs against property and those statistics **do not** include white-collar, corporate or entrepreneurial wrongs, which in many ways are more serious because the sums involved are staggeringly high – far higher than amounts of money stolen during conventional crimes- and the human suffering extended over far more prolonged periods with significant community suffering (for example asbestos issues flood issues even Medicare or pharmaceutical issues).

Because these events (non-conventional harm) are rarely perceived by the general public of special interest to them personally (except in the case of events such as preventable harm/deaths and environmental disasters), they tend to be largely ignored in terms of policy correction or adaptation. This report is therefore designed with due analysis to suggest ways that may minimize that harm production.

RATIONALE

(For proposed alternative model)

The problems in housing or housing construction are generally framed by problems of disadvantage and surveys display an imbalance accordingly. Drawing attention to the different moral judgments applied to a powerful industry such as building than to those (judgments) applied to an individual consumer, is a central aspect of the state's role (for example by a parliamentary committee).

Therefore shifts to informal systems of justice without exorbitant costs and inbuilt intimidations which disempower the individual consumer is a compelling argument for a parliamentary committee to address. This would be even more so for matters involving a quantum lacking sufficient gravity to impose a formal system which may produce an escalation in conflict over time.

While Section 3 and Section 4 of the QCAT Act proscribe objects and functions endeavouring to overcome such problems; for example:

- *S3(b) to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick;*
- *S4(c) ensure proceedings are conducted in an informal way that minimizes costs to parties, and is as quick as is consistent with achieving justice;*

the case study presented demonstrates a need for an alternative model, where appropriate, that is functional rather than one that aspires.

For a comprehensive analysis, a formal report with impact statement would assist. In this regard, attached is a preface of a report currently underway.

W. Tucker
16 September 2012

PROPOSED ALERNATIVE MODEL

1. FRAMEWORK:

- All issues up to a certain quantum threshold (whether contractual or technical) to be determined **summarily** at the QBSA, not QCAT, by a non-partisan adjudicator. Both quantum (eg: \$50,000) and adjudicator being a matter for determination by a parliamentary committee with due consideration to the gravity¹, and type of matter; eg:
 - Contractual:- legal profession
 - Technical:- builder
 - General:- paralegal
- As the expense and conflicts associated with formal legal processes can be intimidating and disempowering², the method of determination therefore, is to try to minimize reliance upon formal adjudication by an initial **summary** informal mediation process, the failure of which leads to a **summary** verdict by the adjudicator with documented outcome and with the absence of legal representation provided the opportunity is given for either party to commence proceedings in the general court system. The time factor for the whole process should be limited to say 28 days.

2. COSTS:

- A nominal amount (eg: \$50/hr) to be provided by the QBSA to both parties for the purpose of meeting their expenses²
- Action in the QBSA must be initiated before the matter of costs is addressed
- This amount must be waived with respect to any party launching an appeal against an unfavorable verdict.

3. FUNCTIONALITY:

- Parties to contractual disputes must demonstrate evidence consistent with legislation³
- Parties disputing a stage payment such as “practical completion” must demonstrate “substantial injustice” in order to avoid a verdict from an adjudicator directing a QBSA inspector to the site for final resolution.⁴
- Issues that are essentially of a cosmetic nature may not be presented as an issue for determination before an adjudicator unless the matter is limited to no more than a set amount (eg: \$5,000)
- Unrelated issues must be separately dealt with by an appropriate adjudicator (eg: contractual v technical)
- Issues must be based on written contracts consistent with the Domestic Building Contracts Act.⁵

1: Rationale; 2: Rationale; 3: A Case Study; 4: A Case Study; 5: A Case

A CASE STUDY

(Grounds for implementing proposed model)

1. 15 June 2008: W & J Tucker entered into a written preliminary agreement with [REDACTED] to arrange for plans to be drawn and then approved by Council.
2. 23 November 2008: W&J Tucker entered into an MBA contract with [REDACTED] to construct a house in the Redlands Shire
3. 9 December 2008: Redlands Council granted a development permit
4. 29 July 2009: All stages of payment with the exception of "practical completion" had been met. [REDACTED] sent Practical Completion Notice plus invoice to both financing institution and W&J Tucker
5. 3,4&6 August 2009: W&J Tucker responded in writing to the effect that significant items of work were required before practical completion payment could be made
6. 11 August 2009: [REDACTED] withdrew the Practical Completion Notice and substituted a Suspension of Works with Notice of Breach alleging an indoor spar bath purchased by W& J Tucker from Bunnings did not comply with Australian standards
7. 27 August 2009: W&J Tucker commenced action in the QBSA, claiming [REDACTED] had demanded completion payment before practical completion. Acknowledgement by the QBSA was sent 9 September 2009 with confirmation that the QBSA were investigating the matter
8. 17 September 2009: Solicitors for W&J Tucker forwarded Notice of Termination within 10 days to [REDACTED]
9. 29 September 2009: Solicitors for W&J Tucker advised [REDACTED] that possession of the property would take place on 30 September 2009
10. 20 November 2009: [REDACTED] commenced action in QCAT for the practical completion payment
11. 20 November 2009 to 6 January 2012: parties attended three compulsory conferences, four direction hearings and a trial
12. 22 January 2010: QBSA issued [REDACTED] with notice of two offences under the Domestic Building Contracts Act, ie:
 - S67(2) Demanding completion payment before practical completion

- **S61(1) Entering into a contract containing PC items and provisional sums without setting these items out in a separate schedule**

13. 6 January 2012 QCAT ordered:

- (a) [REDACTED]'s claim is dismissed
- (b) W&J Tuckers' counter-claim is dismissed
- (c) [REDACTED] file and serve submissions on costs by 13 January 2012
- (d) W&J Tucker file and serve submission on costs by 27 January 2012

14. 15 March 2012: [REDACTED] filed leave to appeal

15. 13 August 2012: QCAT heard Appeal – awaiting decision

Summary:

- **The matter is still ongoing.**
- **Three compulsory conferences (ADR's) and at least five direction hearings have been attended at QCAT from 20 November 2009 to date without resolution and with significant variations in the recommendations of conference members.**
- **The practical completion amount claimed by [REDACTED] was \$25,000**
- **The legal costs for W&J Tucker exceed \$25,000**
- **Significant physical, emotional (by intimidation) and additional financial strain has been incurred over an anomalous period of time notwithstanding the fact that W Tucker lectures in Justice Administration Studies and adheres strictly to the letter of the law.**

Peter Dowling MP

MEMBER FOR REDLANDS

Submission 39



26 July 2012

Mr and Mrs William Tucker


Dear Mr and Mrs Tucker

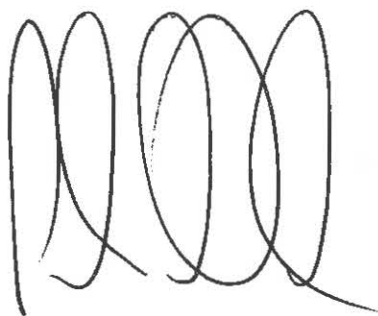
Thank you for the copies of your communications with the Premier and the Attorney General and Minister for Justice regarding the issues you have been experiencing with the BSA and QCAT.

I understand your frustration regarding the BSA/QCAT process, I would have thought that after 5 mediation meetings, 5 direction hearings, a 3 day trial and now an appeal trial a result could have been achieved. My understanding of the process is that QCAT was meant to increase the community's access to justice, I consider that this process dragged out over 3 years to date is unsatisfactory.

My office has been in touch with the office of the Attorney General and Minister for Justice, Hon Jarrod Bleijie who has advised they are preparing a response. I have asked to receive a copy of that response.

Thank you for writing to me about this matter if I can be of any further assistance please do not hesitate to contact my office.

Kind Regards



Peter Dowling MP
Member for Redlands
*Chairman, Health and
Community Services Committee*

CC: Hon Jarrod Bleijie Attorney General and
Minister for Justice.

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