

Submission by [REDACTED]

**Transport, Housing and Local Government Committee
Inquiry into the Operation and Performance of the
Queensland Building Services Authority**

September 2012

Summary

My experience with the BSA indicates that the dispute system has fundamental inconsistencies and needs restructuring.

My experience with BSA is that some officers lack balance in relation to contractors and consumers and require further training.

My experience with BSA indicates that some officers were not prepared to abide by the rule of law and openly conveyed to me and others that they disagreed with the court ruling and proceeded on that basis.

My experience with the BSA is that I have not been afforded procedural fairness nor have I been given an opportunity to set my record straight.

My experience with the BSA is that the dispute process has been open to interference (political or other) without affording me an opportunity to clear my name.

The disputes system is open to abuse by owner

Background:

I am a small [REDACTED] builder who mainly carries out renovation work on older buildings. Many of these buildings are subject to dry-rot, water and termite damage. Further, on older building there is often owner-built defective work from previous owners. We used a cost-plus contract on these occasions in accordance with Section 55 of the Domestic Building Contracts Act (The Act) for this type of building work.

In 2007 I entered into a Cost-Plus contract to renovate a home with owners called [REDACTED]. This involved carrying out renovation on a building more than 20 years old. The owners were also themselves carrying out other unlicensed building work on the home (in excess \$11,000).

As Christmas neared the [REDACTED] asked us to accelerate work so they could be in the home for Christmas and advised us they would pay us and other contractors before Christmas.

We carried out to [REDACTED]' instructions and worked right up to Christmas Eve and made a claim for approximately \$80,000 for work completed to date.

On asking for payment we were informed that no payment will be made, and the [REDACTED] unlawfully terminated the contract, leaving many contractors and suppliers unpaid.

Correct notices of breach were served on the [REDACTED] and the matter proceeded to CCT (now Qcat) in February 2008.

The Dispute Process:

After an unsuccessful mediation, a number of direction hearings, many expensive 'expert' reports and a full hearing, the matter was finally decided in my (the builder's) favour after almost 3 years of litigation in July 2011. For the most part, I represented myself at the hearings, with some help in drafting the pleadings from HIA.

While this matter was being decided the [REDACTED] complained to the BSA and made a number of unsubstantiated claims in relation to my building work, which I was not given an opportunity to respond and of which I was not informed. I only found out about these complaints much later.

The [REDACTED] apparently then sent a bikie gang to warn me off – Mr [REDACTED] was a prominent member of a well-known [REDACTED] bikie club. A group of bikies unlawfully entered my property to terrorise my family and my neighbours by closing off the street, then then left a threatening message for me. The message was clearly that I should withdraw from the case against the [REDACTED]. (The matter was reported by me to the police, and appropriate warnings were given by Police to the [REDACTED])

The [REDACTED] then applied for an CTT Internal Review which required me to provide a written response and incur more legal costs. The [REDACTED] application was dismissed.

The [REDACTED] then applied for a Miscellaneous Circumstances Order, to which I was required to give a further response and incurred further costs. The [REDACTED] application was again dismissed.

The [REDACTED] then went to Appeal, which required a further legal response. The [REDACTED] appeal was dismissed.

Mr [REDACTED] then declared bankruptcy to avoid making the payment ordered by CCT. Mrs [REDACTED] continued to complain to the BSA.

I have lost count of the many occasions that the [REDACTED] applications were adjourned, or they did not appear, were not ready, attempted to have previously decided matters reheard, or did not follow CCT directions, all of which led to excessive legal costs for the court and myself. A perusal of the CCT/QCAT files will substantiate all of the above claims.

It has now been 4 years since we did the work and we still have not received payment. In my view the system is being abused.

Post CCT (Qcat) BSA Action

Mid 2011 the BSA served a Notice under the Act requiring me to provide copies of all my contacts going back 3 years. As a small builder without administration backup, I did my best to provide the BSA with the documents they required.

I met with BSA in their [REDACTED] Office and enquired why I was being investigated. I was not given a reason, however with the help of my HIA representative it was indicated that the [REDACTED] were behind the complaint. I pointed out that the CCT had ruled in my favour and was told that the BSA did not accept the correctness of that ruling.

The BSA copied the contact documents I presented, and asked some questions in general terms about my contracting practices, which I answered in detail. I heard nothing more.

Some months later I was again demanded to produce those same contract documents, allegedly because they were not photocopied correctly by the BSA.

I presented those contract documents to the BSA again at the [REDACTED] office and have not heard of or seen my contract documents since. It has been almost 9 months since the BSA investigation began and I am still none the wiser as to what offence I am supposed to have committed.

I am like any builder or contractor concerned that I may have done something wrong and I continue to wait wondering if my licence and livelihood is at risk.

General Information

I have no demerit points on my licence

I have had no issues with the BSA until the [REDACTED] matter.

I am concerned the BSA has recorded untrue comments on my file and holds an untrue view of my suitability to be a builder as a result of untrue statements to the BSA by Mr & Mrs [REDACTED]

I attempted to obtain through FOI a copy of my BSA file so I could correct the record; however, a large majority of the pages supplied have the BSA comments blanked out.

I am happy to provide the Review with my [REDACTED] file.

I would recommend the Review seek an unaltered copy of the BSA file on this matter.

Conclusion

I am concerned that by coming forward I will be targeted.

There is a clear written record that the Review can investigate and see how dysfunctional the dispute process can sometimes be.

I feel I am being targeted because some BSA officers have formed a different view to the that of the court, although it was the court that had an opportunity to hear all the submissions and see all the witnesses. This was evident from my meeting with the BSA over this matter. The BSA officer we spoke to made it clear that the BSA did not accept the CCT decision on how the law applied to cost plus contracts.

Four years to settle a building dispute is excessive and the costs end up being more than the claim, which in any case has not been paid.

Until the [REDACTED] case, I have never had an issue with the BSA and find the staff in the [REDACTED] Office to be fair, balances and experienced.

I understand one of the purposes of the BSA is to protect consumers, however in my experience the BSA have too many conflicting and competing loyalties under the current legislation which clearly interferes with their capacity to deliver compliance in a fair balanced manner.

As a small business I like many others struggle with the excessive red tape heaped on us by the current legislation.

I am happy to discuss further any matter raised in my submission to the Review.

[REDACTED]

[REDACTED]