

## Submission to Parliamentary Inquiry into the Operation and Performance of the Queensland Building Services Authority

### Transport, Housing and Local Government Committee

Relevant to:

- Whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers;
- 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;
- whether the current licensing requirements of the QBSA are adequate and that there is sufficient auditing processes to maintain proper standards;
- Examining opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.

Particular keywords: pool building

Our contract with a reputable pool building company ( [REDACTED] ) who had been in active business for over 15 years at the time of contract with no adverse history according to the Queensland Building Services Authority (QBSA) website, has completely wrecked six years of our life. The building works were to construct a pool and retaining walls for \$178,000 in 2006. The pool company did not engage an engineer in the construction of our works, despite this being stipulated in the drawings which formed part of the contract. The pool company did not adhere to the approval conditions of the certifier. The pool leaked (one thousand litres a week). A retaining wall built as part of the project has had and still does have evidence of structural failure. The pool remains uncertified despite our efforts to have this resolved. The inadequacy of the regulatory system (both Queensland Civil Administrative Tribunal (QCAT), previously Commercial and Consumer Tribunal, (CCT), and the QBSA) is appalling and requires investigation and reform. The relevant legislation which exists in Queensland was ignored by the pool company and certainly not enforced by the relevant regulatory bodies.

When we first made contact with the QBSA in May 2007 to report that the pool company had ceased work and the existing work was defective we were told that we had a contractual dispute with the pool company and the QBSA could not assist us. We were advised to consider dispute resolution through the CCT. We proceeded through CCT which was replaced by QCAT and at the end of 2011 had a Member of QCAT, a human rights lawyer oversee the final proceedings, initially over four days then on the papers. It was the Member's first case in building law at QCAT and we have made a complaint about the administrative process of QCAT with the response pending. The decision of the Member, which was the proposed solution of the pool company, was incompatible with local government legislation and the structures which the pool company had built. This impractical decision reflects the inappropriate appointment of the Member at QCAT however we decided not to appeal the decision as we wished the QBSA to discipline the pool company. This wish was based wholly and solely on a concern for the public of Queensland, who might contract, as we had done, with the pool company with the goal that no one should

suffer the extraordinary financial and personal cost of a poorly conducted building project, the consequences of lack of certification, building defects and dispute resolution through QCAT. Words cannot describe what we have been through. We are two professional competent people who give to the community both as volunteers and as professionals who have had numerous sleepless nights, had to reschedule patient care because these miscreant builders continue to function.

During our dispute we updated and engaged the QBSA on the progress of our dispute. At no stage did they indicate that they would not proceed with investigation and disciplinary action against the builder when our contractual dispute was resolved. Throughout our six years at the Tribunal we were advised that disciplinary action was the domain of the QBSA and our claim related to practical issues and monetary claim for damages.

Following the resolution of our contractual dispute and our decision to pay the rectification costs ourselves we notified the QBSA of our complaints which are as follows:

1. Breach of Section 70 Building Act
2. Breach of section 140 Building Act
3. Breaches of Domestic Building Contracts Act.

We were told that despite the breach of section 70 of Building Act which was acknowledged by the Member hearing the case against the certifier ( [REDACTED] ) the QBSA did not have the resources to prioritise action against the builder and that the builder has “no history”. In contrast to certifiers, builders do not have the complaints made against them and the decision of the QBSA (e.g. insufficient data, not guilty, guilty and reprimand) recorded in the public domain of the QBSA website. The QBSA charter states “where necessary [the QBSA shall] prosecute persons not complying with the law” In this case the QBSA has already examined the evidence and decided that the builders have breached the Building Act as this was the argument for prosecuting the certifier Chandra (involved in the same building project). This evidence was re examined by CCT when [REDACTED] appealed QBSA decision. CCT upheld the QBSA decision. However despite establishing that the builder had breached section 70 of the Building Act the QBSA has made no contact with the builder in attempt to establish why this breach occurred. We requested a meeting with the QBSA and this was ignored until we asked our State member, [REDACTED] to intervene. At that meeting we were told that the QBSA has not the time or funds to investigate. It seems to us that the QBSA is not acting in a way that is consistent with its charter.

Our experience is that there is a culture of apathy in enforcing appropriate standards of building services. Our undertaking of one residential building project (building a pool in our back yard) has clearly exposed the inability of the QBSA to enforce adequate building standards for consumers. The certifier had over 20 previous complaints and warnings but was still comfortable and able to deliver an unprofessional service. The QBSA has made no attempt to question or audit the builder who selected the certifier for their works on a regular basis. The QBSA has developed a culture of its own unprofessional behaviour that is of a standard that is clearly less than its charter and not in accordance with the spirit of the legislation governing it.

During a meeting with [REDACTED], General Manager of the QBSA, coordinated by our then State member [REDACTED], Mr [REDACTED] informed us (several witnesses, names available on request) that [REDACTED] had installed his pool. We identified that as a significant duality. We


suggest to Parliament that if that pool was installed at a price below market value on objective valuation it could be considered a bribe and a serious compromise to the objectivity of the QBSA and its officers.

It is clear to us that the QBSA has failed to protect the public from this pool company and failed to educate the pool company of appropriate process (ie no audit or education or attempt at rehabilitation of building practice has taken place to our knowledge.). We consider that Queensland laws are not effected or implemented by the relevent authorities. The QBSA has informed us that that to date investigation of this breach has not been undertaken. As a result of having to wait for QCAT proceedings to be completed the BSA says that the time limit for prosecuting for breaches of the DBC Act has been exceeded but action under the QBSA Act is still available. It would appear that appropriate investigation is limited because the QBSA was not allowed to begin investigation earlier because of section 83, QBSA Act.

We are left with an extraordinary mess and no one is able to help us. We have spent an enormous amount of time and money taking our case to QCAT which the QBSA indicated was the only way forward. [REDACTED] has a director who is a lawyer and is well known to the Tribunal. Luckless consumers such as ourselves, even though we employed a lawyer for advice simply could not get justice or the works we contracted to have built. We are left only with “internet anarchy” with all its attendant risks, and consumer groups to inform and protect our fellow Queenslanders. This is hardly a great system. We hope “Can do” can do something for pool builders of the future.

#### Recommendations

1. That the restriction on the powers of the QBSA to investigate a builder (section 83 QBSA Act) whilst there is a contractual dispute before the Tribunal be removed
2. That the QBSA make available on the builder’s licence search section of the QBSA website all complaints about a builder investigated by the QBSA with the decision of the QBSA ( e.g dismissed, guilty, recommended actions, warning issued, removal of licence) . This would then be similar to that for certifiers.
3. That the SPASA contract is replaced by a QBSA pool building contract and the QBSA “quasi” endorsement of the SPASA contract is removed.
4. That there be an Australian Standard developed on acceptable leakage rates for newly constructed swimming pools and spas.
5. That the QBSA change their consumer information on building contracts, including pool building contracts to include the following points:
  - The consumer needs to be aware of the engaged certifier. This should be documented on the contract
  - SPASA is not a recommended mediation body for disputes (Office of Fair Trading doesn’t allow SPASA mediation in NSW)
  - That consumers need to have all plans, specification and conditions of approval in their possession before building work commences.



*C. v. Bach*

Russell and Clare Bach

[REDACTED]

[REDACTED]