

The Research Director  
Transport, Housing and Local Government Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Sir / Madam

Please find following our response to the issues the committee should consider. Our response is based on our personal experience, discussions with other consumers and perusal of numerous CCT and QCAT cases.

1. Whether the performance of the QBSA achieves a balance between the interests of building contractors and consumers;

Response: We do not believe that the performance of the QBSA achieves a balance between the interests of building contractors and consumers. We believe that the BSA's practices demonstrate a bias in favour of building contractors.

The QBSA does not appear to monitor the quality of work performed by contractors. Rather the QBSA dumb down the expectations, as long as there is an absence of serious structural defects they think it's OK. This is consistently evident in transcripts and published decisions for QCAT and CCT cases, where independent experts markedly differ with the BSA approach. The BSA should ensure that contractors consistently provide workmanship that would be expected from a reasonably competent contractor.

The BSA takes a soft approach towards building contractors who fail to comply with the Domestic Building Contracts Act (DBCA). They are reluctant to issue penalties and even investigate non-compliance. They take occasional action (We say to publicly demonstrate some enforcement) but are inconsistent in their approach. This legislation was written to set the expectations for the conduct of domestic construction. Failure of the BSA to enforce these expectations has numerous consequences including

- leaves consumers vulnerable to what contractors term "usual practice" of non-compliance and the risks that poses to consumers
- leaves consumers unable to discern between honest contractors and those who flout the legislation when viewing licensee history displayed on the QBSA website
- contractors know they are likely to get away with non-compliance or at most receive a slap on the wrist with no true consequences thus reinforcing poor practices

Competent and honest contractors should welcome the monitoring of standards of workmanship and compliance with the DBCA as it should weed out poor quality licensees leaving more work for quality contractors.

2. Whether the QBSA could make further changes in order to reduce regulations to lower the cost of building a home;

Response: Reducing regulation to reduce the cost of building a home should not be considered. The level of regulation applied to domestic building contracts should be

determined on the basis of the need to ensure quality of workmanship, protection of parties involved in these contracts, and the safety of the sites during and after construction. Many factors influence the cost of building a home. Regulation is a small component of this.

3. 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;

Response: We believe that the QBSA provides minimal remedies for defective building work. There are too many "outs" or excuses (whether legislatively correct or not) used by the QBSA to not be involved. For example, we can't be involved in "contractual matters", we can't be involved while the contract is "afoot", once a proceeding is commenced at QCAT the BSA cannot be involved (however, the QBSA contacted us on the eve of our first hearing date at QCAT. We found this confusing and were never sure of their purpose. By that time we had spent thousands dollars and countless hours on preparation for the hearing). In addition, the QBSA set a very low standard for what they consider defective work.

4. the governance arrangements of and between the board and the general manager;

Response: We are not familiar with the detail of these arrangements so provide no opinion.

5. The effectiveness of the Queensland Home Warranty Scheme and its protections;

Response: Although we personally have been assisted by the Scheme (we are unable to comment further about my case unless given permission by the QBSA) we believe the scheme lets many consumers down. We believe that the standards applied by the QBSA in assessing claims in the scheme is very low. Even in the 6 month minor defects period, the BSA has no regard for the quality of work expected of a reasonably competent contractor. We also believe that the clauses in the various versions of the policy regarding lawful termination of the contract are unjustly interpreted by the BSA to avoid payment. In addition, the monetary limits to the insurance coverage are inadequate for the cost of building a home today. In addition, the BSA appear to decline many claims stating home owner maintenance to avoid payment.

6. whether the current licensing requirements of the QBSA are adequate and that there is sufficient auditing processes to maintain proper standards;

Response: We do not believe that there are sufficient auditing processes implemented to ensure the maintenance of proper standards in the domestic construction industry. There does not appear to be any process implemented by the QBSA to monitor the standards of workmanship of individual contractors or trade groups as a whole once a license is issued. As mentioned earlier, when the QBSA does become involved, its inspectors seem to have no regard for the quality of work expected of a reasonably competent contractor. As long as the work does not pose significant risk to safety and /or serious defects then the QBSA is satisfied. This failure to monitor proper standards of workmanship contributes to a decline in overall standards. As stated by the independent expert for the builder of our home during a QCAT hearing "That's what you see these days" ...."I didn't say it was good" ....

7. 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;

Response: We do not believe that industry groups should take a role in terms of licensing standards or procedures for their members. This would create a serious conflict of interest. The viability of “*Industry Groups*” is dependent on membership fees just as trade unions are dependent on membership fees. This conflict of interest would only serve to increase the risk of standards declining, it may also place financial impost on quality contractors feeling forced to join these associations. Other industries are licensed by independent bodies e.g. the Queensland College of Teachers addresses standards, not the Qld Teachers Union, allied health boards regulate practitioners (now national not state), not their respective professional associations.

8. Examining opportunities for reform of the Authority with a view to enhanced assistance for both industry and consumers.
  - A cultural shift within the BSA is vital. There needs to be an understanding that compliance with the DBCQ is not optional. A repeated soft approach only reinforces poor standards. We came across an email example of bias displayed by [REDACTED] through RTI| [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] said “..... **as noted at the training BSA is not there to beat into submission a Builder that is already struggling it would appear...**” issuing a fine or placing a penalty on a licensee’s record is not beating someone into submission. Furthermore in circumstances where the BSA for some reason believes the builder was “struggling” it would have been prudent to investigate the financial viability of the builder. The builder subsequently filed for bankruptcy when the QCAT decision was not in his favour. The debts declared in that process indicate he did not meet the financial requirements for his license at the time of [REDACTED] email (or possibly any time while he was licensed).
  - Licensee information available to consumers on BSA website is inadequate. We recommend
    - Annual allowable turnover should be disclosed
    - Complaints should be disclosed including the nature of the complaint.
    - Details of investigation (if any)
    - Outcome
  - Licensing of contractors should include quality control. This should be implemented at
    - Initial licencing,
    - Increase of Annual Allowable Turnover (AATO),
    - Randomly and
    - Following up complaints while contracts are still “afoot”
  - Consumer complaint management
    - BSA state they are unable to assist “contractual matters”. When complaints are made this is an ideal opportunity for the BSA to check on the quality of workmanship of the contractor to maintain a licence. This is a separate issue to whether the BSA is empowered to order rectification.
    - BSA unable to assist while the contract is afoot (s83(b)) – this again is an ideal opportunity for the QBSA to check on quality and performance for maintaining a licence

- BSA inspectors should be experts in building matters. Consumers are not therefore BSA inspectors have a duty of care to investigate beyond the items noted by a consumer.
- Examination of the options to separate the insurance scheme from licensing. An independent review of past insurance claim decisions by independent building experts may reveal deficiencies in the assessment process.
- Private Certifiers. A conflict of interest exists when a certifier is engaged by and paid by the building contractor. Private certifiers should only be engaged by the customer and the certifier should display a list of contractors or projects he/ she has certified in the last 24 months. This would assist consumers to choose a certifier that doesn't have a mutually beneficial relationship with the contractor.
- QCAT. The QCAT process is lengthy and expensive even for self-represented parties. The cost of engaging expert witnesses alone is extremely high. Some suggestions include -
  - Self-represented parties should be provided greater assistance to prepare their case, particularly if the other party is legally represented. The self-representation service excludes building disputes. Researching case law is extremely time consuming and a bit of pot luck stumbling across applicable cases when a party only has access to AustLII. This disadvantage caused by the inability to research as effectively as parties legally represented could be partially reduced by providing access to legal search engines at QCAT or other locations e.g. an arrangement could be established where TAFE or university libraries provide free access (equivalent to students) when a person has a QCAT case number.
  - Provision of security for assets of the parties while the process is ongoing should be mandatory. S82(4). The consumer should not have to request this (most consumers don't read the full Act). It seems that it is very easy for a contractor to file for bankruptcy when a decision is not in their favour. Furthermore, information available at the magistrate's court for consumers trying to enforce a QCAT decision should alert them to the risks of following the "step by step process" and warn them to obtain a writ on any real property at the start to protect their interests.
- Legal loopholes used by the BSA and contractors to catch consumers out need to be identified and the legislation improved to protect parties. One in particular is the complex interpretation of "lawful termination". This can impact on QCAT decisions and on BSA insurance coverage. Our situation with regard to "lawful termination" and our home warranty insurance was not tested. This term needs to be simplified with a set of clear compulsory provisions in all domestic building contracts. This could be legislated, as is the definition of practical completion.

- QBSA reluctance to fine offenders needs to change. A gently, gently approach is an inadequate deterrent. It also leaves consumers with misinformation about contractors when searching the licensee history.
- The proposal mentioned in the Courier mail months ago for QBSA involvement in dispute resolution is flawed if the QBSA stick to their narrow interpretation of defects. They would need to have a complete shake up of their culture. The concept of “it might not be what you asked for or wanted, but it’s not defective” has to change if they are to have involvement in dispute resolution. The QBSA personal would need to shift their expectations for involvement dispute resolution because if work is not the quality expected of a reasonably competent contractor, or not the product specified in the contract, or the dimensions in the contract etc then it is not good enough.

Sincerely

G & M Walker

## **Attachment – Summary of our situation**

Before selecting a builder we checked our builder's credentials on the BSA website - his record appeared clean.

The BSA website does not list a builder's annual allowable turnover so we were unaware that he did not have the financial resources to manage the cash flow of our contract, a risk to us and subbies.

The Builder breached his annual allowable turnover when he signed the contract to build our home.

We started to experience difficulties very early into the contract in 2009.

From February to July we made calls to the BSA 13... number and were repeatedly advised that they could not assist us while we were still in contract.

Poor quality workmanship was evident with all trades, there was no supervision of quality of workmanship or adherence to the plans by the builder.

The builder did not provide written variations prior to work being performed. Variations were only sent to us after he had ceased work and engaged a solicitor. They didn't reflect agreed variations.

The builder did not complete our home in accordance with the plans or the contract specifications.

The builder demanded the final payment when the works were not at practical completion and refused to complete the works.

The private certifier passed things incorrectly.

We made a complaint about the certifier's conduct. The BSA did not conduct a diligent investigation.

The BSA simply wrote to the certifier and asked him to respond. They took the certifier's word

without question on all matters. They did not visit the site. They did not seek clarification from us regarding the certifier's statements e.g. "the builder said the owners are responsible for the ...." ;

appropriate falls could not be achieved as the ground was rock-this was untrue, WE could dig a trench myself with a shovel and small crow bar; The certifier even stated he was concerned that the builder

got paid -this did not send alarm bells to the BSA. There was no natural justice allowing the complainant a right of reply to the certifier's response.

A certifier's main object should be to determine whether the work is compliant or not. A certifier should not be concerned about contractual disagreement over responsibility for the work, the certifier should not pass non-compliant work because the builder says is someone else's responsibility.

The paper investigation into the certifier took an excessive amount of time. When following up WE was advised that the delay was due in part to my providing further information. WE subsequently held off providing information of additional areas of noncompliant work foolishly thinking the BSA would come out and investigate.

The builder lodged a complaint with the Commercial and Consumer Tribunal.

We wrote to the BSA regarding defects and incomplete work. BSA response "tribunal action stops bsa..."

We submitted a notification of offence identifying numerous offences committed by the builder.

BSA again conducted a paper assessment but only of some offences.

BSA found the builder committed offences but took a soft approach, writing to the builder to say please don't do it again.

An RTWE revealed bias in communication from BSA [REDACTED] [REDACTED]. **WE made a complaint to former minister [REDACTED] regarding this. It was referred to [REDACTED] to investigate. It appears that all [REDACTED] did was provide my complaint to [REDACTED] to draft a response for him. It contained false information. When this was brought to [REDACTED] attention he advised they would investigate and get back to me. That was 2010 we still haven't heard.**