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The Research Director
Transport, Housing and Local Government Committee
Parliament House
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RE: SUBMISSION - BUILDING SERVICES AUTHORITY

We are a market leader in the renovation industry with construction jobs performed predominantly within the greater Brisbane area. In 7 years of business, we have constructed over 2000 jobs valued at over 28 million dollars.

During this time we have had dealings with the BSA in relation to (1) purported breaches of the DBC Act, (2) customer complaints regarding defective work, (3) assisting a customer to apply to the BSA for remedy of defective work done by another builder, (4) licensing requirements.

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

The very procedure the BSA now uses in dealing with customer complaints is totally unbalanced. When a complaint is received by the BSA, we the builder, are immediately sent a letter from the BSA along with a copy of the customers' complaint. We are then advised by the BSA to contact the customer within 28 days to sort the issues. Then if the issues are not resolved and the BSA is required to attend site, and if the BSA determines issues exist that need rectifying, the builder will automatically receive a direction to rectify. This direction is notated on our licence as well as being publicly displayed on the BSA website.

The above procedure is nothing short of black mail for the builder and does not matter whether the customers' complaint is legitimate or not. In our case, if a customer makes a complaint it is because (1) we are already at the point where the customers demands are unreasonable (note we try our best to fix all customers concerns); (2) we have advised them to make a complaint in the hope of resolution to finalise the contract.

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How can the consumer have confidence that the QBSA will resolve their issues, if they are not even attending site in the first instance, rather, forcing the builder to fix issues with the threat of a direction.

The QBSA is supposed to be the regulatory body. How can they effectively monitor building work if again they are not on site looking at these complaints?

We have also discovered over time that even if the QBSA attends site, we are always requested to fix something. It is fairly obvious that this done to appease the customer.

There is also definitely an inconsistency of the knowledge from one inspector to another and also their ability to correctly categorise defective workmanship.

The following is a recent example of this :-

2011 we received a BSA complaint regarding a job we constructed in 2006. We were contracted to build the framework of a timber deck, specifically, posts, bearers, joists and stairs. The owner was to do his own decking over the joists and handrail and council approval for the deck. We also constructed a council approved patio roof attached to the fascia of the existing residence. When the final inspection was done on the patio roof, the certifier informed the owner that the deck would not pass because of the gaps in the bearers, even though the deck approval was not part of the building permit for the patio roof.

The owners complaint noted 10 issues even though 8 of the 10 issues had already been addressed in 2006 prior to us finalising the contract. Apparently the BSA informed the owners to do this. When we attended site in 2011 to sort the issues out with the owners, we found they had still not laid any decking boards or installed any handrail nor had they done any timber treatments on the bearers and joists. Irrespective of this, we agreed with the owners that we would attend to the issues after the owners had returned from holidays. Unbeknown to us, the BSA attended site 1 day after the owners returned from holidays and then informed us that we would be receiving a direction to rectify the bearers and the leaks in the patio, which they classified as Cat 1 defects. We were further directed to provide structural engineering in relation to the connection of the posts to the bearers.

When we returned to site to replace the bearers we noted the new bearers fitted perfectly in the existing check outs. We then realised the old beams had shrunk over time predominantly from exposure to the elements and lack of treatment by the owners. The leaks in the roof were minor and due to deterioration in the foam between the patio receiver channel and the sheets. There was no possibility of water penetration into the residence and therefore should never have been classified as Cat 1 defect.

To add salt to the wound, when we requested engineering certificate for the post connection, the engineer said "there was nothing wrong with our connection and it conformed to the building code and that an engineers certificate was not necessary".

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Because of the above instance we now have a public direction on our licence that should never have been given because (a) we had already made agreement with the owner to fix their issues (b) the issues were a direct result of the owners lack of maintenance (c) the inability of the inspector to properly categorise the defect.

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.

From day one of our business, we always believed the role of the QBSA was to regulate the building industry and provide remedy for defective workmanship for the consumer. What we recently found is there is a double standard in the way the QBSA deals with defective work. That is one rule for builders like us who are trading and another rule for the BSA (when there is a claim from the home warranty insurance scheme) when the builder is not trading;

Our company (until recently) was unaware that there are two ways defective work is remedied by the BSA. That being, (1) by directing the builder or (2) a claim under the home warranty insurance scheme. We had always been under the belief that all residential construction work was covered for a period of 6 years and 6 months from date of completion.

Following advice from our company, a customer recently put a claim in for defective work. The QBSA initially rejected the claim because it classified the defects as contractual and Cat 2 defects, and outside the time frame for a claim. This astonished us because the problems were clearly structural issues that should have been Cat 1 defects. We were further surprised to learn they had rejected part of his claim on the basis that some of the building work had not been council approved.

Some months after the owner went to QCAT to get the decision reviewed, the BSA reviewed his claim, made a subsequent claim under the home warranty scheme but later rejected that too on the basis that he was outside the time frame for "when the defect first becomes evident" and also the fact that the builder was no longer trading had "prejudiced" the BSA is not be able to recover any monies.

The certifier who passed the defective work, has yet to be dealt with formally and it has now been 13 months since the customer made a complaint, and 13 months without at breach being shown on his licence. Even though the certifier has been found to be at fault there is still no recourse (accept civil action) by the customer in having the certifier pay to rectify the faults.

I had several issues with what transpired in this case.

Firstly, if the BSA does not fix defective work on non-council approved works, then why do we now have a direction on our licence (in relation to story above) which related to defective work non council approved works?

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Secondly, how can the consumer be provided remedy for defective work if the BSA can disallow claims by using the conditions of the home warranty scheme, and has been given absolute discretion in its determination of when a defect first becomes evident;

Thirdly, if the BSA is going to reject claims on the basis that they are prejudiced because they are unable to recover monies from the builder who is no longer trading, then what are consumers actually paying insurance premiums for?

I rang the BSA seeking clarification in relation to fixing non council approved work and was direct to [REDACTED]. [REDACTED] response was that they do not fix non council approved work because it is illegal work. I then questioned her further as to where in the Act or policy did it state defective works had to be council approved as I believed all residential work was covered. I then asked what happens in the scenario whereby we install a stud wall and gyprock to a house (this does not need council approval), she said she could not answer my questions and that I should write a letter to the legal department for clarification.

I then asked [REDACTED] why our company was directed to fix non council approved work that was built in 2006 – some 5 years earlier. I was basically ignored and told to discuss it with the case manager involved, which I did. This case manager also refused to answer my question and directed me to write a letter to legal once again.

In Regards to Builder Communication and Training:-

There is definitely an inadequate information process for builders. There needs to be a division set up to professionally handle inquiries such as mine without the need to be directed to the legal department.

The BSA also needs to provide more in-house training for builders particularly in regards to their obligations under the QBSA Act and the DBC Act. This should become a mandatory process when a builder first gets their licence. This would go someway to producing better informed builders and better compliance with regulations.

Unfortunately at present, the builder receives a couple of booklets that I am sure most builders don't even bother to read. The BSA then perform audits for compliance, there is no consultation if breaches are found, there is just instant breach notices sent to the builder. If you want to dispute the notice your only recourse is to go the QCAT to have the matter reviewed. This is often a lengthy and costly exercise for both parties.

I totally agree with the audit process, but believe it is unfair to audit someone if they have never been properly informed in the first instance.

Speaking from past experience, we have personally had a dealing with the compliance division regarding breaches of the DBC Act. During that time, the BSA had limited or no consultation with us after purportedly finding two breaches, then automatically sent us breach notices to be paid.

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One breach notice stated we failed to pay the insurance premium within 5 days of the contract being signed. After reading the legislation that was stated on the breach notice, I discovered the Act did not contain any time frame for payment of premium, except that it had to be paid "as soon as practical after signing of the contract". When I rang the BSA to query this I was told it was a policy of the QBSA. But upon further query no-one could direct me to where the 5 days was actually written in policy.

I felt incredibly frustrated because I was unable to discuss the matter with anyone. Moreover I was deeply concerned the breach would take away points off our licence. I was left with no choice but to take the matter to QCAT for review. During the mediation process, BSA conceded on this breach.

I was at a loss as to why it had to get to that. There needs to be better consultation between the BSA and the builder. Just sending out breach notices to builders for non compliance is not the way to educate them. If the builder has initial training on the regulations and then still breaches then there is no defence to the breach is there.

Most builders I speak to just pay the fines because they do not have the resources or time to take it to QCAT for review.

Or maybe the BSA likes it this way because it is a money making venture for them?

In Regards to Consumer Communication:-

Consumers need to be educated further in relation to their rights relating to defective work. Like myself, I am sure most consumers have no idea that there is a time limit on a claim for defective work. Most consumers believe they are covered for 6 years and 6 months.

The consumer also needs to be informed immediately when a builder goes into bankruptcy or has its licence revoked. This is important particularly in relation to the consumers being made aware of the time frame conditions in the Home Warranty Insurance Policy that would be enacted if the consumer had to make a claim.

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The Effectiveness of the Queensland Home Warranty Scheme and its protections.

It has become apparent to me that the Queensland Home Warranty Scheme has shortfalls, particularly when a consumer is claiming remedy for defective work when a builder is no longer trading.

The main problem is policy condition No. 4.4 and 4.5. These conditions are worded in such a manner that:-

- (1) give ultimate power to the QBSA to decide whether a defect is category 1 or category 2;
- (2) gives ultimate power to the QBSA in deciding whether a claim is accepted or rejected, based on its own determination of time frames;
- (3) section 4.4 and 4.5 actually conflict with each other;
- (4) section 4.5 conflicts with the intention of S3 of the QBSA Act – to provide remedy for defective work;
- (5) there is no independent body that is able to adjudicate when a claim is rejected on time frames.

In the past 12 months, we have had two customers contract with us to extend onto existing work that had been built by another company. Upon attending site, we discovered at both sites, that the existing structures had not been built to engineering standards. We advised both customers to make a complaint to the BSA. Both discovered the builder no longer existed, both had their claims rejected because according to the BSA, the customers did not claim within 3 months of the defect becoming evident.

The problem with the above cases is that there is no remedy for them. The builder no longer exists and the claim was rejected under the home warranty scheme even though they have substantial evidence to prove the work was defective and down right dangerous. The fact is the BSA are basing their decisions from a commercial point of view rather than what is fair to the consumer.

How is this fair on the consumer, they have done everything right, paid the insurance premium, used a BSA licensed contractor, used a BSA licensed certifier who passed both structures, then rejected on the determination of a representative of the BSA. And then find going to QCAT was a waste of time and money because it does not have the authority to override the time frame determination made by BSA, even if there is circumstances that it would be reasonable to accept a claim based on the defective work.

And given the comments made by a QCAT member personally to myself, they are also frustrated that more and more customers like ours, are not provided any protection or remedy.

The policy conditions need to be reviewed or furthermore QCAT (or some other independent body) need powers to be able to review the time frame findings of the BSA, reviewing all the facts of the case and being able to make a decision based on reasonable outcome for the consumer and instead of a commercial decision for the BSA.

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