To: The Research Director
Transport, Housing and Local Govt Committee
Parliament House
George Street, Brisbane Qld 4000

From: Mr & Mrs Conway
[redacted]

RE: SUBMISSION REGARDING THE QUEENSLAND BUILDING SERVICES AUTHORITY.

Our recent dealings with both the QBSA and QCAT, has left us in no doubt that:-

(1) there is no remedy for defective work if a builder is no longer trading;

(2) the Home Warranty Insurance Policy conditions give the BSA ultimate discretion in determining when a defect first became evident;

(3) the QBSA does not act in the interest of the customer, moreover they act in the interests of profitability of the scheme;

(4) the QBSA make determinations outside of their own policy;

(5) the Home Warranty Scheme does not function in the spirit in which the QBSA Act is intended;

(6) the QBSA and its representatives actions and interpretations have at most times been ad-hoc, bullying, unprofessional and deceptive, leading us with no choice to but to seek tribunal action that was not necessary;

[redacted]

This is our story:-

February 2006, we contracted with a QBSA registered builder, [redacted], to build a council approved insulated patio roof and glass enclosure. A certificate of insurance from the QBSA was received for the total value of the contract $20,000. And council approval was gained by the builder.

June 2006, both the roof and glass were installed;

July 2006, the final inspection was performed by QBSA registered private certifier, [redacted];

December 2006, during the first heavy rain storm since construction, the room had significant water penetration and also the roof started to move away from the glass panels. We contacted the builder and he came to site in January 2007 to do some silicone work and informed us the movement in the roof was normal.

January 2007 subsequent storms the room still leaked, but not as bad as the first time. We attempted to get the builder to come back, but he ignored our phone calls. At the time, we were unaware that could make a complaint to the QBSA.

August 2011 we contracted with another builder [redacted] to extend the insulated roof. When [redacted] attended site he informed us the roof and glass enclosure had not been built to [redacted] standards, and that he could not do any extension until it was fixed. [redacted] informed us about the QBSA and advised us to make a complaint.

We made two formal complaints:-

(1) regarding the conduct of the certifier;

(2) regarding defective building work – specifically that :-

(a) the roof material used was not the same as noted on the council approved plans;
(b) the roof did not have enough fall on it and this was allowing water penetration into the enclosure;
© the roof and enclosure were not built to the manufacturers engineering standards.

After we lodged the complaint with the QBSA requested a copy of the council approved plans and final certificate. It was then we discovered the following:-

(1) the glass enclosure had not been put on the building permit;
(2) the roof material noted on the building permit did not match what was actually supplied and used;
(3) the engineering for the building permit was incorrect;
(4) the building permit specifically stated "Patio not to be enclosed", yet the roof had an enclosure built at the same time as the roof;

[redacted]

(5) a final certificate 21 was issued by the certifier, even though the enclosure was attached at the time of final inspection;
(6) that the builder was no longer trading.

September 2011 QBSA attended site to do an inspection subsequent to our complaint. We were verbally advised at that time by the inspector, [redacted], that the enclosure would not be considered as part of the claim because it was not part of the council approved plans, even though the enclosure was on the contract and the BSA insurance was for the total amount of the contract.

We subsequently received a letter advising that the BSA was unable to direct the builder to rectify because the complaint was outside the time frame of 6 years and 3 months. This decision was based on the accompanying inspection report that listed Complaint 1 – as contractual and Complaint 2 as a category 2 defect. The complaint regarding the enclosure was not considered.

We disagreed with this decision because:-
(a) all the contracted works should have been considered as part of the claim, and these works were not built to engineering standards;
(b) the faults should have been a Cat 1 defect by definition of the BSA Board definitions for Defective Building Work and Category 1 Defects;

Upon receiving the letter we spoke with both [redacted] and [redacted] asking why the issue of the structural defects was listed as a category 2 defect. They both stated that because the enclosure was not council approved, it would not be considered in the claim for defective work, and so disregarding the enclosure attached to the roof, believed the insulated roof alone did in fact meet engineering standards.

How they could interpret construction engineering by disregarding something that actually exists, did not make sense to me!

We were also advised by [redacted] that we should lodge a further complaint against the certifier and that if we could get approval for the enclosure they would consider a claim for it.

October 2011, lodged a claim with QCAT [redacted] to have the decision of 14/9/11 reviewed.

November 2011, received a letter from BSA advising they had directed the builder to rectify. This direction was done even though the BSA knew the builder was bankrupt and he no longer had a licence. The direction itself only requested the builder put a new gutter on the roof, apparently they now classified Complaint 2 of the Report as Category 1 defect. The direction did not however, direct the builder to fix any of the engineering issues.

[redacted]

December 2011, received a letter from BSA that the direction to the builder was rescinded and the complaint would be considered under the home warranty scheme. When I contacted [redacted] what exactly they were going to do, he informed me it would be to replace the gutter. I told him unless the structural issues were addressed not to bother any further until the tribunal hears the matter.

January 2012, BSA contacted me requested a site visit to do a scope of works. Again I asked exactly what for and again was told they were not going to consider the enclosure as part of the claim, and so declined their attendance.

Contacted the BSA licencing division in relation to the complaint aginst the certifier. Was directed to [redacted] in the first instance but he was not very forthcoming at first, basically I was told he was very busy. When I explained to him about the upcoming QCAT hearing and how important it was to have his decision regarding the certifier, he said he would try and look at our claim as soon as possible.

February 2012, QCAT hearing. At this time the BSA advised the member that the original decision in September 2011 had been rescinded and that the BSA were wanting to do a scope of works for a claim under the home warranty scheme. At this time, the member suggested we allow this to happen, which we did, but gave us the option to continue with the hearing if we did not agree with their second decision.

[redacted] and [redacted] from BSA attended site. [redacted] was an extremely rude man who stated as I quote "I don't give a rats arss about your issues, if you think you are getting a pay out think again, we are not a government run body we are a private concern".

We have to say this statement took us by surprise and made us feel very angry. It was never our intention to get a payout, but to get the work fixed to engineering standards so that it did not collapse around us.

March 2012, as expected, received a letter from the BSA advising the claim under the home warranty insurance scheme had been rejected because:-
(1) as per the conditions of the scheme, we did not make a complaint within 3 months of the defect first becoming evident;
(2) because the builder was no longer able to be direct the BSA was unable to issue any direction or seek recoveries.

We proceeded to QCAT directions hearing on 8/3/12 and advised the member we would be requesting a review of the BSA decision 1/3/12 as we did not agree.

We also engaged [redacted], the engineer who is the engineer for [redacted], to inspect and prepare a report for the Tribunal regarding our works. The engineer confirmed our complaint, that the structure had not been built to manufacturers engineering and furthermore that in its current state, the structure would likely collapse. His recommendations were that the structure be deconstructed and re-constructed.

[redacted]

April 2012 had an onsite visit from [redacted] At this visit we spoke at length about the certification issues as well as the problem with the insurance division disregarding the enclosure as part of the claim, and interpreting the engineering without the enclosure.

He has subsequently informed us that he has determined that the building work does not meet the approved plans nor the engineering standards and also that the certifier has acted improperly by passing the structure.

[redacted] also advised us that he had been in conversations with [redacted] and [redacted]s [redacted] regarding their determination of the work. They refused to agree that the enclosure did form part of the building work and therefore needed to be taken into account in the claim. He told us (off the record), the discussion became quite heated with [redacted] who repeatedly "had a go" at [redacted] for trying to undermine their authority.

We received QBSA statement of Reasons as required by QCAT. This was received 1 week later than was directed by QCAT.

Upon reading the documents we noted a few discrepancies in some documents that were lodged by the BSA.

Of most particular concern was that the Initial Report prepared by [redacted]n. Documents appeared to have been doctored on April 2012, now showed 3 complaints not 2. It also showed Complaint 2 as a category 1 not Category 2 defect. The third complaint dealt with the enclosure issue which they classified as Cat 2 defect. And crucial measurements of roof spanning etc were changed.

As mentioned above, the BSA main reasons for not allowing the claim was on the basis that:-

(1) because the room leaked in 2007 we should have made complaint then. Therefore under the Home Warranty Insurance conditions because it was outside the 3 months from becoming evident, we were outside the time frame for a claim;

(2) because the builder was no longer trading (bankrupt) the BSA was prejudiced? because it was no longer able to recover monies from the builder.

May 2012 attended a QCAT compulsory conference. The BSA at this meeting agreed we had defective work, but relied on clause of the policy in time frames for making a claim. They refused to accept our argument that August 2011 was the first time the structural issues became evident to us, referring back to January 2007 as the date they believe they became evident, even though at that time it was only water leaks. They further rejected our argument that we believed they have the right to accept our claim by wording of the policy condition where it states "Within further time as BSA may allow". They also refused to accept the enclosure as part of the claim and stood by their interpretation of the engineering. Asked whether they had ever contacted [redacted], they said no and that they did not have to because the builder was bankrupt. They also rejected our argument that the builder was not able to be directed to fix the work, even though we produced evidence that the both the nominee and

[redacted]

direct of [redacted] were currently working in a similar business called [redacted] and had been the whole time since the [redacted] went into liquidation. The BSA stated under the legislation they were only able to direct the contract company, [redacted], and not the nominee or director to fix the work.

The member who presided that day, advised us that if we proceeded to trial we would most certainly not win because the BSA had the right , Black and White in law, to reject out claim because of the time frame, even though we could clearly prove that we have defective workmanship. She also went on say that we were part of a category of customers for whom the Home Warranty Insurance Scheme does not recognise even though is wrong.

August 2012, the owner of [redacted] contacted [redacted] from [redacted] requesting they assist in the reconstruct of our patio. [redacted] advised he knew nothing of our complaint to the BSA and was surprised.

September 2012, still have no formal outcome from complaint against the certifier. Have verbally been advised they cannot order any rectification of the work by the certifier, only breach him. They further advised that to seek compensation for the defective work we would need to do a civil suit against the certifier.
This is not an option for us as we do not have the money and the stress of the past 12 months has already been enough for both of us.

To Conclude:-

Our biggest issues that we had with this claim:-

(1) there is no remedy for defective work when the builder is no longer trading.

As we have now found out, when the contracted builder or company is no longer trading a claim for defective work is assessed under the home warranty insurance scheme. It is at this point, the consumer has no protection or remedy. The BSA will at all times seek to disallow claims by use of the section 2.5 of policy conditions "time limit for making a claim". Most consumers would not read the conditions contained in the insurance booklet nor is this very important clause brought to anyone's attention.

The BSA further claim that by the Act, they are limited to making claims on the person who entered into the contract. I fully understand the law regarding limited liability in relation to companies, but what I do not understand is how in our case, the BSA could not have made directions to both the director and nominee of the contracted company, as both these persons were continuing to trade and build with another company, [redacted] even after [redacted] went into liquidation and up until May 2012 when finally their licences were revoked.

[redacted]

If the BSA is truly limited by the Act, then it needs to be changed to allow the BSA to enforce directions, when clearly the builder of the project has the resources to be able to rectify work.

(2) the Home Warranty Insurance Policy conditions give the BSA ultimate discretion in determining when a defect first became evident .

In our case, the BSA refused to accept our claim that the first time the structural issues became evident was August 2011 and not 2007 when the enclosure was leaking. Even though in 2007, we had no reason to believe that it had not been built to engineering standards, particularly given it had received final certification by a BSA licensed certifier. Furthermore, given the chain of events that transpired after our claim of August 2011, it is highly unlikely that the BSA would have recognised the leaks as anything other than Cat 2 defect, resulting in a second claim in 2011 anyway.

There is no avenue to have any determination by the BSA on time frame reviewed. QCAT are also bound by the policy conditions even though there may be other pertinent information that would allow some other time frame.

Changes are needed to the Act to allow QCAT or some other independent body, to be able to review all of the facts of the case, so that there is a fairer balance between what the BSA determines against fairness to the customer.

(3) the QBSA does not act in the interest of the customer, moreover they act in the interests of profitability of the scheme;

We believe in our case, after the BSA came to site a second time to do the scope of works under the home warranty scheme, they realised what cost would be involved to rebuild the works to engineering standards, ultimately resulting in their use of the time limit provision to their benefit.

Furthermore, this is clearly evident in the Statement of Reasons presented to QCAT in March, whereby they state " because the builder was no longer trading (bankrupt) the BSA was prejudiced? because it was no longer able to recover monies from the builder.

Clearly the profitability of the fund is more important that providing remedy for defective work.

We were also left no doubt about this given the comments made by [redacted] onsite.

(4) the QBSA make determinations outside of their own policy;

One of the biggest issues with our claim was that the BSA decided from the outset that because our glass enclosure had not been council approved they would not consider it as part of the claim.

[redacted]

From our reading of both QBSA Act and Home Warranty Insurance Policy conditions we could not find any reference to the construction having to be council approved.

The Act specifically defines residential construction works, and to our understanding the works performed under the contract with [redacted] all met this definition. The contract did call for our glass enclosure to be council approved but this was not done by the builder at the time.

We believe the BSA was incorrect in its determination to disregard the enclosure as part of the claim and cannot find any reasoning in policy behind this decision.

Apart from the time frame issue, the issue of the glass enclosure being part of the claim for defective work was an important one. The methodology of the BSA in disregarded the glass enclosure when interpreting the engineering was totally incorrect.

(5) the Home Warranty Insurance Scheme does not function in the spirit of S3 (b) of QBSA Act "to provide remedies for defective building work".

If the BSA is going to use the time limits for making a claim to disallow claims for defective work, then how is this ever going to provide remedies for defective work.

(6) the QBSA and its representatives actions and interpretations have at most times been ad-hoc, bullying, unprofessional and deceptive, leading us with no choice to but to seek tribunal action that was not necessary;

The adhoc and conflicting way the whole claim was handled. From the start our claim was rejected on the basis that our issues were a Cat 2 defect Sept 11; which then changed to Cat 1 defect Nov11; which then led to [redacted] being directed to fix Nov 11; then this direction being rescinded Dec 11; then a claim under the home warranty insurance scheme was enacted Dec 11.

Clearly it was visible from the intial claim that (a) the leaks were present in 2007 and (b) the builder was in liquidation.

Why was the claim not assessed at the start as a possible home warranty claim , given that the builder was clearly no longer trading?

Why did we have to waste our time and resources going to QCAT to have the original decision reviewed when it was subsequently rescinded by the BSA?

Why did we have to waste everyone's time going through the process of a scope of works in February 2012 when it was clear the BSA believed we were outside the time frame for a claim?

BSA representatives engaged in deceptive conduct by changing documents that were lodged with QCAT in April 2012.

[redacted]