

Submissions of Jolyon Ellis & Doris Grosskurth dated 20th September 2012.

To the Transport Housing and Local Government Committee Inquiry into the Operation and Performance of the QBSA

Extensive research before building a home in 2005/6, we also checked BSA records. We selected BSA registered Builder, [REDACTED]. We had no complaint regarding any building work except the **plumbing**. Its installation includes defective building work as defined by BSA Policy and poor workmanship still exists.

The BSA identified 13 BSA Cat 1 Defects and issued a "Request to Rectify". The Builder rectified a few easy and/or minor defects and then there was collusion between the BSA and Builder, the remaining Cat 1 Defects "disappeared into thin air" and the file was closed.

This forced us to CCT, then QCAT. Six years later we are still left with un-rectified BSA Defects, a plumbing system that has now failed due to the lack of this rectification, more defects identified by Experts and the prospect of now returning to QCAT – all because the BSA Dispute Resolution Dept has failed to function with professionalism, diligence and honesty.

We ask the Committee to note the BSA's "Ethics Principle 5: Economy and Efficiency". We estimate that the BSA/Governments cost to defend this shonky work will be in excess of \$100000; meantime we are spending thousands trying to get it rectified.

We believe hundreds of Queenslanders have suffered some or all of what we've experienced as victims of the BSA, to assist the Committee to make recommendations we provide a chronological overview to show the evident failings of the BSA. We retain comprehensive evidence as proof.

1. The BSA should perform as described in its publications and statements such as those made by Mr. Ian Jennings, General Manager, to the Committee on 27th August 2012.

This included statements that if building work fails to meet the Australian Standards or is not installed as per the Manufactures Installation Instructions then the Builder will be Directed to rectify – not once did Mr. Jennings use the words Requested to rectify. Mr. Jennings statements contradict our experience over the last 6 years

Mr. Ian Jennings portrayed to the Committee and Public that the operation of the BSA is near perfect. Others and we feel insulted by his statements because we've made Mr. Jennings fully aware that there have been substantial failings by the BSA to correctly follow their Statutory Duty, Rectification Policy and Code of Conduct. Therefore, we believe he mislead the Committee. Deliberately misleading a committee is Contempt of Parliament.

2. BSA fails to issue a Direction to Rectify

In 2006 we paid the Builder in full after receiving his assurance he would rectify the plumbing defects. Instead he walked off the uncompleted job, so we lodged a BSA Complaint.

[REDACTED], BSA Inspector, assisted by a Council Plumbing Inspector, identified 13 Cat 1 Defects and on 20th November 2006 informed the Builder to rectify within 21 days.

The Builder was also notified: *"This letter has been sent to allow you the opportunity to rectify the works prior to the issuing of a formal Direction by the Authority."*

The Builder rectified 3 of the 13 defects then refused to do more. According to [REDACTED] the Builders refusal will lead to an automatic Direction to rectify.

3. **Collusion - the BSA did not act impartially and failed to follow their own Policy**

BSA failed to reset timeframes after the 21 days expired.
For months we wrote to the Builder (copied to BSA) and [REDACTED] regarding the incomplete work, neither replied. We left messages for [REDACTED], he did not respond.
After 4 months [REDACTED] eventually informed us he would come for “a chat” on 3rd May 07. “The chat” turned into an unannounced full BSA Inspection: The collusion between [REDACTED] and the Builder was overwhelming as [REDACTED] attempted to persuade us that the evident Defects need not be rectified. We did not agree.
RTI confirms [REDACTED] failed to make any notes during or after the inspection.

4. **Further Collusion, Organized Activities and False Statements to close our file**

On the BSA Inspection of 30th May 07 [REDACTED] accompanied [REDACTED] a Senior BSA Building Inspector, who took charge in a robust, rude manner with much finger pointing. His intention was to bully us, we felt threatened, uncomfortable, embarrassed.

As both BSA Inspectors had no expertise in plumbing we had again invited [REDACTED], Technical Manager of [REDACTED] and an expert in the rectification of Water Hammer, our major defect – recognized as a destructive force.

[REDACTED], Senior Inspector, said he had not read our file, was not aware that [REDACTED] successfully rectified the En-suite shower, was dismissive of [REDACTED] expertise that the same method of rectification would fix the defective Spa and was also dismissive that Manufactures Installation Instructions had not been followed at the Spa and elsewhere.

[REDACTED] acknowledged that on 05th Dec 2006 he had again specifically instructed the Builder to rectify the Spa, yet he now witnesses much incomplete rectification.

Therefore, the BSA failed to correctly assess and evaluate the available evidence as required by their Code of Conduct. This includes a failure to:

- a) Consult with [REDACTED] and make use of his expertise in Plumbing rectification
- b) Make use of the Expert Report and the comprehensive advice provided, including inspecting the partial pipe work upgrade installed that had been so successful.
- c) Take note of the correspondence and obtain reasons why the Builder had not attempted rectification in certain areas.
- d) Provide reasons to us as to how evident BSA Cat 1 Defects would, without rectification, fail to exist or become “fit for purpose”.
- e) Take any notes or retain photos of this inspection.

[REDACTED] deemed that 7 Defects now failed to exist or became “fit for purpose”. 3 further defects in the roof were not re-checked, but he declared them “fit for purpose” anyway.

We believe that the Builders presence on the BSA’s “Tender Panel” to bid for BSA Insurance rectification work is a reason for the collusion to not implement the Rectification Policy.

07th June 2007 - To close the file the BSA sent us a letter, importantly it stated:

“That all works have been rectified to a satisfactory Industrial Standard”

“Item 1. found that the water hammer issue had been rectified”

“ addressed the water flow rate per minute matter as advised by the Pine Rivers Council”

We advise the Commission that these statements are false.

5. **BSA's false statements force us to the CCT and we are forced to commission an Independent Expert.**

██████ of ██████ inspects our property confirming BSA Defects are still evident. More defective and prohibited plumbing is identified.

6. **The BSA's mismanagement and lack of transparency requires FOI/RTI Searches:**

BSA received all our correspondence re Builders refusal to complete the rectification, but there is no documentation between the Builder and the BSA (except few pages re water tanks) and no records exist regarding phone calls between the BSA and Builder. The photographs taken on the 30th May 07 inspection have disappeared.

7. **BSA's failure to "Direct" prompts us to complain to the Regulating Body for Plumbers.**

We met the Manager of the Plumbing and Drainers Board (PDB)/Building Codes Queensland (BCQ) and complained that both the BSA and Local Council had failed to investigate our observations that a Final Inspection and a Compliance Assessment of both the Plumbers work and his "Drainage as constructed plan" was not conducted on 09th March 2006. We had advised both Council and the BSA we both saw the Council Inspector arrive. Moments later, a pipe the Plumber had just fitted burst (glue not set) could not be repaired and the water services remained off. Because there was no water the Inspector left soon after. Therefore the shonky plumbing work was not listed as defective till the BSA inspection of 14th Nov 2006 and later Expert inspections.

The Manager of the PDB/BCQ was most concerned; this led to a BCQ Inspection in Jan 2008.

8. **BSA Legal Officers disadvantage self-represented consumers at the Tribunal and do not act as a model litigant.** Some examples:

Minutes after the CCT Hearing started the BSA Legal Officer ambushed us with Council Officer affidavits that contained deliberately false and misleading evidence. BSA filed these affidavits as "*evidence directly related to the water hammer alleged by the Applicants and is relevant for the Tribunal*". Later in 2012 we discovered the Officers affidavits were not sworn and on one the Despondent, a Council Legal Officer, wrote his name purporting a signature. Furthermore, we were confronted with unannounced witnesses who we were unprepared to examine and are provided with Statements we have never seen.

Also received was a Memorandum of ██████ dated 31st May 2007 containing a statement "*there was no evidence of water hammer at the time of inspection*".

We advise the Commission that this is a false statement and we believe that ██████ wrote this to fit the BSA's agenda purporting defects had been rectified so as to close our file.

Since ██████'s evidence contradicted both the Council Inspector's and our Expert's evidence given to the CCT, the Member suggested a site visit.

We informed the Member the PDB/BCQ had inspected the property in January 08. To bring clarity to the contradictions above he Ordered the BCQ Report be produced to the Tribunal.

9. **Building Codes Queensland Report contradicts the BSA's reasons to close our file.**

Furthermore, regarding defects and Council Inspection procedures the BCQ Report states: "*This is a serious issue that should have been avoided*" - "*Of concern is that this was missed at the compliance assessment process stage and not picked up during any of the mandatory stages of inspection*"

10. Council now declines to act as BSA's Expert witness

Council Officer [REDACTED] also informed the BSA that Council Legal department advice is not to respond to the BCQ Report.

11. The BSA's Corruption of the Expert Plumbing Report that they commissioned.

In August 2008, for the first time the BSA commission a suitably qualified person to inspect. [REDACTED] of [REDACTED], who has been conducting BSA Plumbing Inspections for 10 years, is asked to provide a Report.

He is briefed in writing to follow BSA Rectification Policy and provided with a copy of the CCT Experts Reports Policy. He is instructed to follow the Policy which includes the statement *"The duty of an expert witness is to the Tribunal, not to the party retaining the expert"*

His findings confirmed that the "Request to Rectify" had not been complied with and like the BCQ Report, contradicted [REDACTED] and [REDACTED]'s earlier evidence to close our file.

[REDACTED], BSA Legal Officer, Memo "[REDACTED]" records [REDACTED] informing her the water hammer and other defects are faulty, unsatisfactory, does not comply with Australian Standards or Manufactures Recommendations and importantly, **not expensive to rectify**. [REDACTED] informs us *"we will be relying on our expert's report and it seems to me we might be changing our position in which case the matter can be resolved"* This never happened, instead:

[REDACTED], **by telephone only**, instructed [REDACTED] to "amend" his Report and re-write it with reference to Australian Standard AS3500 **only**, omitting all other relevant regulations, Manufactures Installation Requirements and his professional opinions.

[REDACTED] reluctantly provide a further 3 Reports over the next 4 months. [REDACTED] meanwhile, was at all times purporting to the Tribunal and us that [REDACTED] was still following her original brief.

The changes to [REDACTED]'s Original Report was the result of undue and incorrect influence brought to bear by the BSA's Legal Officer to influence the Expert witness to modify his original findings and opinions so as to unfavorably affect our Case, thus perverting the course of justice.

We report this corruption to the CCT; this results in affidavits being provided by:

- a) [REDACTED] was made to sign an affidavit concocted by the BSA and after realizing several errors in it he asked that it be corrected. The BSA has repeatedly prevented correction.
- b) [REDACTED]'s affidavit revealed to us that she had deceived and misled us.

We complain about this behavior to the BSA, we received no response. So we sort advice from the CMC and the Legal Services Commission (LSC). After viewing our evidence the latter advised they would investigate the Legal Officers providing [REDACTED] authorised LSC involvement. **So at no expense to the BSA an Independent Inquiry could have taken place.**

[REDACTED] General Manager, declines LSC involvement and hires costly external "BSA" Lawyers to conduct an Inquiry who refuse to reveal "BSA Terms of Reference/Brief" to us. We were shocked to learn from [REDACTED] that only minor "irregularities" had taken place. The Report was withheld from us, we obtained a Tribunal Order for it but the BSA Legal Dept advised the Tribunal that *"The dominant purpose of the Report is to provide legal advice to the Authority in relation to the Complaint"* – *"professional privilege therefore applies"*

We had been conned. Our Complaint regarding misconduct was never examined correctly. **The BSA spent many thousands of dollars to cover up their corruption and misconduct; later they will disregard their Experts truthful Report - more financial waste.**

12. BSA Manager writes a Report that is biased, it contains false and misleading information

During the inspection [REDACTED] purports that the un-rectified BSA Defects need rectification and confirms he will make a new list of all the other plumbing defects that have since been identified by plumbing Experts.

[REDACTED] asked the Builder if he would rectify 3 easy defects in the roof space and he agreed. When [REDACTED] asked the Builder to rectify other outstanding defects the Builder robustly refused and with the Plumber fabricated stories and gave misinformation as excuses. Because of the Builders refusal we requested [REDACTED] to Direct the Builder to rectify the QCAT items as per [REDACTED]'s instructions of 20th Nov 2006 but he would not.

[REDACTED] then wrote a Report that contained false and misleading information, in particular:

- a) *"No water hammer was detected when the kitchen tap was opened and closed"*
- b) *"Mr. Ellis stated that the only way he would allow the builder back to attend to any of this work was on Direction of the BSA or by order of the Tribunal"*

We advise the Commission these statements are false, we openly tape-recorded the inspection and the water hammer is evident, we can play it to the Commission.

13. QCAT Conference, BSA refuses to Direct Builder to rectify.

The presiding QCAT Member informed us all he had read all the evidence and that the Tribunal would rely upon the Expert Reports, not the BSA's non-Expert Report or Statements. The BSA's File Note of this meeting admits the Defects are un-rectified and that The Member states that the Tribunal would issue a Direction to rectify in our Case.

However, the BSA still refused to issue a Direction and wanted to re issue a Request to rectify as they did 4 years ago. The BSA would not assure us that if the Builder again refused to rectify, or not rectify all defects correctly, they would issue a Direction.

14. Multi-layered BSA organized activities start in order to disadvantage us at QCAT:

The Tribunal accepts the BSA's requested inclusion of statements from two BSA officers who have never viewed our plumbing.

The biased statements about our plumbing contain misleading information and incomplete evidence. There is a comprehensive lack of diligence to report the available facts. Their quotes from other Expert Reports are deliberately meant to mislead, because they do not use the Experts quote in full, only enough to give it another meaning.

But the BSA objected and sort to exclude the Plumbing Experts evidence.

The Tribunals Decision shows the Expert Reports of BCQ, the BSA's Expert Plumber [REDACTED] and 2 other Independent Expert Reports were not considered.

We believe that the BSA was responsible for the non-appearance of our witness.

We subpoenaed The BSA's Expert Plumber, his Report & opinions would be invaluable to the Tribunal and our Case. Assistance from the Tribunal for his attendance was not forthcoming.

BSA Officers provide the Tribunal with false and misleading information.

We ask the Commission to particularly note our concerns regarding this matter.

Kindly peruse the documents below obtained via RTI dated 15th November 2010 and a letter to [REDACTED], BSA Inspector, dated 08th March 2011.

We copied it to the General Manager so that he was fully aware of our frustration and distress. That he has not addressed these issues proves to us that there is no effective supervision from the top down, so a culture emerges that people can depart from standards and it has no consequence for them.

Note: At QCAT the BSA blocked questions as to why [REDACTED] had not informed us of his fabricated stories. We were disallowed to re-examine several witnesses after they had given false evidence in reply to questions put to them by the BSA Legal Officer.

At the QCAT Hearing [REDACTED], BSA Legal Officer, made a well-planned submission without notice, used legal skills to present this, and disadvantaged us by giving us no chance to reply in a proper and timely manner.

He incorrectly introduced the concept that our water supply cannot be or have the potential to be, polluted, so as to unfairly claim one method of rectification should not be relied on. It was un-ethical of the BSA to have withheld this incorrect information from us, denying us the opportunity to be able to respond with factual evidence at that time.

Furthermore, the Legal Officer incorrectly suggested our Expert was mistaken in his evidence about sludge, if the Legal Officer had been diligent he could have, like we did later, enlightened himself with even more factual reasons to show the correctness of our Expert.

We ask the Commission to note what Tribunal Members often quote:

The Authority is placed not only in a position of “defending” a decision made by it, but moreover, is under a parallel obligation to the Tribunal towards ensuring that the Tribunal has all necessary information and evidence before it to “stand in the shoes” of the Authority, as the Tribunal is required to do, in not only reviewing the Authority’s decision, but also making the appropriate decision in all of the circumstances. The Authority’s obligation in this regard remains the same whether or not such information/evidence is favourable or unfavourable to a determination as to whether the Authority’s decision should be confirmed.

A recent article on the David v Goliath battle at QCAT states: “There have been concerns voiced recently by the Deputy President of the Queensland Law Society Annette Bradfield, that the current situation has the potential to cause miscarriage of justice on a significant scale”

We ask the Commission to consider this matter; from our own experience we could assist the Commission, the QLS or others to implement safeguards.

15. RTI reveals the BSA frequently misleads Ministers via “Ministerial Briefs” – one example

[REDACTED] and [REDACTED] inform The Minister that the Collusion and Corruption that we have suffered from is “based on the refusal of the complainants to accept the opinions relating to the plumbing work which vary from their own”.

We ask the Commission to note that we have had no cause to question the Reports of, or the opinions of the following Experts, to name but a few:

- [REDACTED]
- [REDACTED]

- [REDACTED] (4 Reports to date)
- Building Codes Queensland on behalf of The Plumbers and Drainers Board
- **The BSA's Commissioned Expert Plumber, [REDACTED] – [REDACTED]**
- [REDACTED]
- Mr. Allan Archie, Lectures in Plumbing at TAFE in Sydney
- Mr. John Williamson, Technical Officer, Copper Development Council of Australia

All the information provided by the above Experts has been passed to the BSA who's Officers have lacked the competence, professionalism, diligence and honesty to implement it.

16. BCQ Officers highly critical of the BSA's lack of rectification of "shaggy work"

BCQ re-inspect in August 2010, despite the QCAT Decision they advise they will instruct the Plumber to rectify all defective work and will recommend the Plumber be Disciplined. Over the next months [REDACTED], BCQ Senior Investigator, assures us the Plumbing Industrial Council (PIC) Board Disciplinary Process is progressing normally.

10th June 2011

[REDACTED] of BCQ is going to attend our property soon to supervise the Plumber rectifying both the outstanding BSA defects **and** all those identified since.

17th June 2011

[REDACTED] unexpectedly informs us that the Plumber can now only be made to rectify those defects that were **not** before QCAT – we believe that there has been BSA intervention to stop the rectification.

12th August 2011

Plumbing Industrial Council writes *"The PIC has been unable to take disciplinary action against [REDACTED] due to the QCAT determination not to direct rectification of plumbing works"* The investigation and our file are now closed.

Effectively:

BCQ and the PIC has wanted to have all plumbing rectified and the Plumber disciplined.

In contrast:

The BSA has decided to "protect" the Builder (no contract with the Plumber?) from completing the rectification he was originally Requested to rectify – leaving us with shonky plumbing that has since failed causing a flood.

17. May 2012 – We lodge another BSA complaint to cover the plumbing failure caused by un-rectified defects, new defects and those defects that [REDACTED] said he would list.

18th July 2012 [REDACTED] attends, like the last 5 BSA Inspections and all previous BSA Inspectors he is not qualified to inspect our plumbing defects.

[REDACTED] again attended as an Expert and [REDACTED] was therefore compelled to inspect items, however, his views on rectification policy are in conflict with [REDACTED] statements to the Commission.

The Inspection lasted over 3 hours and [REDACTED] made no notes and declined evidence offered to him. He asked that [REDACTED] provided an Expert Report to him and informed us would then compile his own Report based on [REDACTED]'s findings.

██████ did not wait for ██████'s Report and closed the file – citing some new excuses such as “passage of time” “landscaping” and “Owner prevented access”, all without explanation.

Like the BSA Inspectors before, ██████ has failed to take into account the opinions of an independent professional qualified plumbing expert demonstrating that he has a different agenda to that of fairly assessing our complaint.

The BSA is deliberately defrauding the consumer of their rights to a minimum standard.

Documentation.

We firmly believe that proper documentation is essential to assist in the avoidance of disputes, and once again this is already reflected in BSA publications. However, there is no enforcement.

An example is our Builder, who is on the “BSA Tender Panel”:

- a) Refused to put **anything in writing**, including over \$20,000 worth of “Variations”
- b) Refused to give us a written “Completion/Handover” form
- c) In 6 years responded to our complaint by writing 1 letter on 12th December 2007 to inform us the plumbing was well and truly over the AS3500. (Plumbing Standards)

Conclusion.

Our complaint is about the failure of the BSA to exercise their Statutory and/or Administrative responsibilities and the lack of diligence and accountability of certain Officers.

██████, General Manager of the BSA, has failed to abide by or enforce The Public Records Act, The Public Sector Ethics Act, the Local Government Act, the Criminal Code of Queensland, the Plumbing and Drainage Act 2002, other relevant Building Regulations and the BSA Code of Conduct and he needs to be held accountable for this dereliction of duty.

We ask the Commission to review other important questions and issues:

-Firstly, in the context of the part played by the BSA and their actions in maneuvering themselves away from any responsibilities and obligations.

-Secondly, in the context of the actions, policing and decisions taken by the various legislative bodies involved in allowing the present position to develop as it has.

-Thirdly, we want the Commission and the Premier to be aware that the lack of integrity, diligence and accountability, that we alone have encountered. This has wasted many thousands of \$ of both our and public money, not to mention the emotional stress involved.

This issues need to be investigated and those Officers involved need to be held accountable.

Lastly: At present we are at a stalemate and we need help.

We respectfully ask the Commission for assistance so we can achieve that our plumbing will be rectified to the required standard.

Thank you for your kind attention, we look forward to being of assistance to the Committee if required

Yours sincerely, Jolyon Ellis and Doris Grosskurth
(Members of Homesure Consumers Association Inc)

Jolyon B. Ellis & Doris Grosskurth

[REDACTED]
[REDACTED]
Building Services Authority
P O Box 5099, Brisbane, Qld 4001
By Fax: 32359091

08th March 2011

BSA Ref: 3-4334-06

Dear [REDACTED],

Your False Statements and Our Remaining Defects

1.

Reference is taken to your letter of 18th February 2011, informing us, Quote: *"BSA is unable to locate a record of having received your letter dated 15th November 2010"*.

We are most concerned that you are again providing us with incorrect information and we would refer you to your duties and obligations within the BSA's Code of Conduct.

Not only do records show that the BSA received our faxed letter, but [REDACTED], BSA Customer Service Officer, personally advised you of its arrival and sent you a separate scanned image of it at 2:52 PM on 15th November 2010.

You did receive our letter of 15th November 2010 but did not want to explain the questions asked of you regarding the Builders refusal to complete the rectification of the **Cat 1 Defects** that you had requested of him in your letter of 20th November 2006, and why you did not follow this matter up in accordance with the BSA's Rectification Policy, particularly between December 2006 and 30th May 2007, and why you did not keep us informed.

Your lack of a diligent reply to our letter caused us to write reminders on 06th December 2010, 18th January 2011 and then on 16th February 2011, Item 1. We wrote: *"Your Code of Conduct states matters are dealt with in a Proactive way and will be resolved promptly. We expect receiving that level of service from you, promptly explaining your inaction and lack of follow up to our correspondence to you or copied to you."*

2.

Your incorrect statement above is not a single incident, we have experienced many such instances of false statements and a lack of diligence in your duties, and we bring to your attention some examples to which we expect your prompt explanation.

You are aware your Amended Statement dated 10th January 2008 includes many false and misleading statements, which we can expand on; today we address just a few.

Our letter of 15th November 2010 reminds you of the Builders refusal to rectify **Cat 1. Defects**, such as water hammer at the Spa.

Your collusion with [REDACTED] (BSA Inspector) and the Builder was a reason why this BSA **Cat 1 Defect** became “Fit for Purpose” on 30th May 2006, and [REDACTED] falsely stated in his memo of 31st May 2007 “there was no evidence of water hammer at the inspection”

Despite all 6 Expert Plumbers and Hydraulic Experts (including the BSA’s own Expert, [REDACTED]) confirming this **Cat 1 Defect**, [REDACTED]’s allegation remained the BSA’s reason of choice as to why no rectification took place from 30th May 2007 through to [REDACTED]’s inspection Report of 14th December 2009.

How can a **Cat 1 Defect**, without any attempt at investigation or rectification by the Builder suddenly become “Fit for Purpose”?

For years we attempted to receive from you, other employees of the BSA (including [REDACTED]) an explanation of how this **Cat 1 Defect** miraculously ‘disappeared’, why published BSA Rectification Policy were not followed and why the Builders persistent refusal to rectify **Cat 1 Defects**, ie the Spa, did not lead to a formal Direction

At the 18th May 2010 Tribunal Hearing, you admitted this **Cat 1 Defect** still existed and you informed us of the following reasons for not requesting the Builder to rectify the Spa, reasons never before mentioned to us, which are all false. You distorted the facts to suit yourself, covering up for your collusion and lack of follow up. We repeat what you said:

- a) That although the builder wanted to implement means of rectification of the water hammer, including soft operating taps and installing arrestors, we had refused both methods of rectification.
- b) That we had refused to reduce the water pressure to 350 Kpa as a method of rectifying water hammer.
- c) That the proposal offered in writing by Starion Industries to prove the Hansa Mixer/Diverter at the shower was free of defects (same model fitted at the Spa) was instead only about increasing pipe size in accordance with the Manufactures Installation Instructions.
- d) That Starion Industries increased pipe size (as recommended by the Manufacture) at the en-Suite Shower was a failure.
- e) That the reverse water hammer at the en-suite shower was rectified by the installation of a different showerhead, and not by the increase of pipe size.

Furthermore, when [REDACTED], BSA Legal Officer, at the Tribunal asked you to explain your Amended Statement paragraph 4.10 regarding how you on 30th May 2007 “addressed the water hammer” on that day you replied, Quote:

“Although the Builder wanted to implement measures of rectification which included reducing the water pressure to 350 Kpa and installing water hammer arrestors, the Owner refused both methods of rectification I was therefore satisfied with the outcome and had no intention of seeking a Direction.”

This statement brings to light that you have repeated to [REDACTED] the false statements you made to us above in a) and b) and additionally you have formed your decision not to issue a Direction for Rectification of this admitted **Cat. 1 Defect** based on your above incorrect statements.

You did not at the material time (between the BSA Inspections of 14th November 2006 and 30th May 2007) or thereafter inform us of your newly invented/adapted views a) – e), nor do they appear in your Amended Statement dated 10th January 2008.

Furthermore, they all contradict your Amended Statement, [REDACTED] Statement of 31st May 2007, correspondence between us and the Builder all copied to you, and the Experts Reports, nor were these views expressed to us via any other BSA employee.

Additionally, at the start of [REDACTED]'s Inspection of 11th November 2009 we put the question to you, how can a **Cat 1 Defect** at the Spa suddenly become Fit for Purpose without the Builder attempting any investigation or rectification, you remained silent, and you did you not mention the allegations a) – e) during the above inspection.

If you would have held these views, a) – e), beforehand it would have been your duty to inform us, and in particular:

Why did you not raise these issues on your Inspection of 03rd May 2007 when we demonstrated to you the difference between the en-Suite showerheads and the removal of Reverse Water Hammer and that the Hansa Diverters were faultless?

Why did you (or [REDACTED]) not raise these issues with [REDACTED], Technical Manager of [REDACTED] when he attended the BSA Inspection of 30th May 2007 and at which both he and we all witnessed the still existing Reverse Water Hammer, with [REDACTED], perhaps knowing he would never be held accountable, falsely writing “there was no evidence of water hammer at the inspection”?

Why did you falsely state in your letter of 07th June 2007 that “The reinspection of works on the 30th May 2007 found that the water hammer issue has been rectified” when you personally knew that the Builder had done no investigation or rectification at the Spa?

It is also within your knowledge, or should be because of the available evidence, that:

Changing a shower rose at the en-suite shower is irrelevant to whatever happens at the Spa where there is a permanently open spout and Water Hammer Arrestors upstream of the Hansa Mixer Diverter have no effect on the Reverse Water Hammer downstream of the Diverter when it is closed.

3.

The cause of this ongoing complaint is because you have not been diligent, why did you:

Not implement the published BSA Rectification Policy, your letter of 07th June 2007 only referred to an “Industrial Standard” (which in itself was not achieved as confirmed by all 10 Expert Reports provided to the BSA) instead of requiring the Builder to comply with the requirements of all relevant building regulations (Building Codes Australia, Australian Standards, Manufacturer Installation Instructions) in any work performed?

Not correctly follow up the rectification process, maintaining communication and re setting deadlines?

Not take all reasonable steps to obtain all relevant facts from all relevant experts, particularly the Manufactures Agent Starion Industries and us?

Colluded with the Builder sometime after the 05th December 2006 (so obvious at your Inspection of 03rd May 2007 onwards) contrary to the statutory obligations of the BSA?

Not abide by the BSA's Proactive Code of Conduct?

4.

Our Remaining Defects.

With reference to your letter of 18th February 2011 the defects you refer to are not new, they were identified in 2006/2007 and the contents of our e-mail of 16th February 2011 is relevant to the correct rectification of them, we require you to address all the issues contained therein and make sure all tank connections are flexible.

Additionally, [REDACTED] brought up the subject of whether any modeling or testing had been carried out by [REDACTED] concerning the insufficient overflow problems due to the large roof area. [REDACTED] was consulted to confirm the problem, it is the responsibility of the Builder to correctly size the overflows, please make sure he does so.

On 11th November 2010 the Builder agreed to rectify some minor items in the roof area, and you are aware that we objected to this being carried out during the Inspection. Since then neither you or the Builder has made any attempt to follow up this rectification.

Last but not least are all the other remaining Defects, all identified by the Experts, most mentioned in [REDACTED]'s letter of 01st September 2009, or identified by [REDACTED] at his Inspection. The Builder has consistently refused to rectify these remaining items.

We await your prompt and full explanation for your actions and expect the BSA's Rectification Policy to be implemented in full as per the BSA's publications.

Yours faithfully,

Copy: [REDACTED] General Manager [REDACTED]