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### **Submission to Parliamentary Committees – Inquiry into the Operation & Performance of the Building Services Authority (QBSA)**

I have now lodged my 4<sup>th</sup> claim with the BSA against the same building contractor in relation to defective work at a complex that I am chairperson for and were we (my husband and I) own a townhouse.

The first two (2) claims were lodged in July 2010 and the last two (2) claims were lodged in May and July 2012.

I will attempt to address the following terms of reference based on my experience with the BSA:

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

I found during my dealings with the QBSA that they do not achieve a balance between the interests of building contractors and consumers. In the four (4) claims that I have presented to the QBSA there are numerous examples of bias for the building contractor including:

- inconsistent findings
- findings that have no technical reference and are not clear and transparent and;
- show poor skill by the BSA Inspector in researching known defect

Some examples are listed to support my comments above:

#### **2010 Claims ([REDACTED])**

– Building Contractor is given numerous extensions of time to comply with Requests to Rectify. A Request to Rectify was issued to building contractor in December 2011 to be completed by January 2011 (usual 28 days provided). However the Building contractor provided numerous excuses to the BSA, which was accepted and hence the BSA extended the Request to Rectify period. The BSA was aware that their request was made over a Christmas period so if there was never any intention for the BSA to enforce the 28 day rectification period, why issue the Request to Rectify. The building contractor was eventually given until August 2011 to rectify defective work, causing eight (8) months of disruptions to owners and tenants.

#### **2012 Claims ([REDACTED])**

– Building Contractor is again given an extension of time to comply with Direction to Rectify. BSA Inspector accepted building contractors verbal statement that the owner did not provide adequate access, however emails were provided from the

owner to myself, as chairperson, and then presented to the BSA that the owner had emailed the building contractor and awaited his advice as to when the building contractors 'tiler' would be available. BSA did not change their stance and allowed building contractor an extension of time to rectify.

Why does the BSA bother with issuing a Directive to Rectify defective work within 28 days, if the BSA has no intention to enforce this Directive, or continue to give extensions. This is why building contractors continue to drag the whole rectification process which causes further hardship to owners and hence eventually leads homeowners not to bother with present or future claims. Is this the BSA's intention to limit claims?

#### **2010 Claim ( [REDACTED] )**

- Building Contractor was requested to rectify consequential damage to internal walls from water ingress caused by defective construction work (i.e. stormwater downpipes were dispersing stormwater to foundations of complex). BSA Report states that consequential damage was to be rectified after the foundations had dried out (as pre instruction from Structural Engineer engaged by building contractor). However, the BSA has not enforced the BSA Report/Recommendations and has not directed the building contractor to rectify the consequential damage, to date. BSA Resolution Manager has advised the case has now been closed by another BSA Resolution Manager and this issue should now be addressed by lodging an **additional** BSA Claim. This is the run around that homeowners have to deal with. Is this a ploy by the BSA to limit claims against building contractors?

#### **2012 Claim ( [REDACTED] )**

Two (2) BSA Resolution Managers that were on site during 2010 claims noticed a cracked tile across a hallway caused by movement at the complex. Both the BSA Resolution Managers advised that this crack was a Category 1 defect and should be presented to the BSA if any future claims are presented (which there were). This defect was presented to the BSA in May 2012 claim of items however the BSA inspector found this item was not a defect. So I asked "was it" or "was it not" a defect? The BSA Inspector was advised of the comments from the two (2) BSA Resolution Managers however this information was ignored.

In the cases below I list areas of inconsistency decision making by the BSA and also bias for the builder. In the cases below, the building contractor was not asked to rectify consequential damage caused by defective construction works however he was asked to rectify consequential damage to the same complex in 2010, caused by again defective construction work.

#### **2012 Claim ( [REDACTED] )**

External cracking from defective construction work by building contractor in 2010 (stormwater drains dispersing stormwater directly to foundations of building) has caused excessive ground movement causing external walls to crack and internal walls to crack and recent further investigation into incomplete sealing of externals joins, has allowed water ingress causing paint to bubble and slide down walls. All

consequential damage caused from defective construction work by the building contractor.

Sealants around windows were inadequate allowing water ingress into townhouse and causing paint to bubble and slide down walls, delamination of walls, internal cracking and mould to form on internal walls. All consequential damage caused from defective construction work by the building contractor.

Water ingress from either roof or box gutter causes water ingress into firewall between two (2) townhouses. Result is one (1) townhouse has extensive delamination of garage wall, mould, timber rot from water ingress. The other townhouse abutting the townhouse above has mould occurring inside a WC (water closet). Small children reside in this home. All consequential damage caused from defective construction work by the building contractor.

In all the three cases above lodged with the BSA in 2012 the building contractor has not been made liable to rectify consequential damage. However in 2010 the building contractor was made liable to rectify consequential damage by the BSA. The BSA's findings are not consistent and not transparent nor justified by the BSA inspector.

In 2010 when I presented my issues relating to the stormwater downpipes dispersing next to the foundations of the building causing ground movement/shrinkage. It took numerous emails to the BSA referencing the BSA's own technical information sheets, Building Codes of Australia and Australian Standards before the BSA would finally agree that water dispersing next to the foundations of a building was a Category 1 defect. The building contractor then proceeded to change **all** stormwater downpipes at the complex instead of the one (1) that was defective, and then I had to again email the BSA referencing the BSA's own technical information sheets, Building Codes of Australia and Australian Standards before the BSA finally requested the building contractor to rectify **all** stormwater downpipes surrounding the complex to the required standards.

This is another example of the run around the homeowner has to go through to get defective work rectified to the BCA and AS and then again to have damages caused by the building contractor returned to their original status. The whole process is exhausting, time consuming and frustrating.

Is this BSA policy, so that claims will be dropped by homeowners?

#### **2010 Claim ( [REDACTED] )**

Termite Reticulation system – it was found that the termite reticulation system at the complex was not installed correctly by the original installer ( who was unlicensed by the time the BSA claim was lodged). On a visual inspection by the BSA the inspector advised the system appeared 'compliant'. When the termite system was inspected by the owner of the product, Cureall, it was found that the system was in fact not installed as per the installation guidelines. This was presented to the BSA you requested the building contractor to have the termite system tested. Cureall was engaged by the building contractor to test the termite system. The report from Cureall advised the system was not working in 3 areas of the perimeter of the complex. As Cureall's quote to rectify the defective system was too expensive the building contractor engaged another termite installer to rectify the defective termite

system. However as the termite installer selected by the builder did not have the licence to rectify the existing termite system, the building contractor approved the termite installer to install **two (2) different additional termite systems** without any consultation with the body corporate or owners. Therefore the complex is now supposedly protected by four (4) different termite systems that interconnect around the perimeter of the building, including a visual inspection zone adding further expense to the body corporate and owners. (1 reticulation system, 2 chemical barriers and visual zones)

### **2010 Claim ( [REDACTED] )**

Owners presented to the BSA water damage to skirting boards, carpet, architraves from water leak in bathroom. Owner suggests to BSA that perhaps water is leaking from shower recess. This is not investigated by BSA nor building contractor. Building Contractor is requested by BSA to rectify consequential damage, which is carried out. As townhouse is rented and there have been numerous disruptions to tenants, owner again requests the BSA to direct building contractor to investigate possible shower leak. Property is vacant for just over 12 months due to water ingress and damage to other rooms from defective construction work and therefore concerns were raised with BSA's request that owner should wait until property is again rented so that shower could run the shower to see if further water damage occurs. Property is rented out and within the month, tenants (working for Hutchinson Builders) advise that shower recess is leaking. Two (2) BSA Resolution managers attend townhouse and test shower recess and it is found that the shower recess has not been adequately sealed and is classed as defective. BSA directs building contractor to rectify. If the original BSA inspector/s (as we had at least 2 BSA building inspectors view our claims) had taken the time to properly inspect the possible issues or request the building contractor to test the shower recess, inconvenience to the owner and tenants could have been avoided.

### **2012 Claims (numerous under same address of 2010 claims)**

During the BSA Inspectors inspection of Complaint Items lodged with the BSA in May 2012, the BSA Inspector constantly referred to QCAT and if we were not happy with the findings by the BSA, then we could take our concerns to QCAT. He did not speak of the Resolution Process in that a Resolution Manager or Technical Officer was available to have discussion with, if we so wished. It was only because I had previous dealings with the BSA that I was aware that these other avenues existed and areas that could assist with a non-biased, enabling a fair assessment and outcome.

The BSA Inspector advised that references mentioned under each Complaint Item were not taken any notice of by the BSA Inspector as the references were only generalisation of provisionals within the Building Code of Australia. In relation to one Complaint Item, the BSA Inspector did not know what the technical reference I had referred to was. (He obviously hadn't read what I had presented before the inspection on site.)

The BSA Investigator ran through additional complaint items that were provided to the BSA however the building contractor advised he did not receive a copy (even though there was evidence that he was sent them). When the building contractor had left the inspection site after the original 21 complaint items were discussed the BSA Inspector advised he was prepared to go over the additional complaint items (off the record) to see if they were worthy of even being lodged. After the BSA Inspector had gone through the additional items and had advised that none of the

items were defects, I still insisted that these items be lodged by me so that the issues were recorded. Is this another BSA policy to limit the number of claims against building contractors for possible defective work?

The BSA Inspector dismissed many complaints without reference to any BCA, AS or the national construction code. In the majority of complaint items lodged he found limited defects and has provided no technical reference to justify his findings. This prevents homeowners from understanding how the BSA Inspector has made his assessment. This is inconsistent with a BSA Report presented to us in 2010 by a BSA Inspector who placed BCA captions in his Inspection Reports to explain his assessment.

The BSA Inspector advised during an inspection on site that :

- a building contractor does not have to make a building water tight;
- a building contractor does not have to make a building vermin proof;
- a building contractor does not have to install drainage to properties to disperse water around the courtyards;
- a building contractor does not have to rectify consequential damage;
- he would not go over additional claim items without building contractor being present as this is not allowed, but continued to do so, in the event he could change my mind from lodging these additional items;
- If we did not provide access to the building contractor the BSA Inspector would close the case, even though the owner was awaiting a reply from the building contractor (an example of a bullying tactic from the BSA inspector) – The BSA inspector was very keen to close the case as quickly as possible without hearing or accepting all the facts.

The BSA Inspector has accused the owner of a property that his courtyard was constantly saturated with ponding water due to the fact that the owner has installed further aggy pipe/drainage to drain away excess water – it is obvious that once the aggy pipe/drainage was installed by the owner the ground dried up somewhat.

The BSA Inspector accused the owner of changing the lay of the land. When I disputed this the BSA Inspector refused to accept my comments. The BSA Inspector accepted the building contractor comments that he did not install the gully pit at the back of the property however drainage plans show that it was part of the building approval.

Again I wonder why it is that the BSA accepts the word of a building contractor however he expects the homeowner to provide evidence to dispute the building contractors statements.

Every time a defective item is lodged with the BSA, we as homeowners are required to provide evidence referencing the Building Code of Australia and the Australian Standards how the defect does not comply, or if the building contractor has not complied with rectification work, or we have to justify if the building contractor has taken adequate measure to acquire access to rectify. However the building contractor at no stage is requested to present any of the above, any documentation or evidence to support his comments/claims/arguments.

I have felt intimidated at a recent site inspection by the BSA Inspector who is presently managing my open case as I was present at a site meeting alone without technical representation. The BSA Inspector demanded I delete a photo of him which I took on site as he was measuring a crack in a wall however he hadn't made

any comment to me when I had taken a photo of him less than 2 minutes earlier. It was obvious he was expressing his authority, in the presence of a BSA trainee as well as the building contractor.

The BSA Inspector has demanded I provide access to the property with less than 24 hours notice however the BSA can take upto 6-8 weeks to inspect your property for defects when it suits them.

Mr Jennings stated on page 18 *"I have been to many (building disputes) over my time – the sooner you get to solving it, the quicker it goes away"*. This is exactly how it is within the BSA. They try to push you through to close the case as quickly as possible.

In the original claims lodged in 2010 I could just email any additional claim items directly to the Resolution Manager, however the BSA inspector I am presently dealing with in 2012 requests that I lodge a complete claim with any new additional claim items. Obviously another inconsistency and example of dragging things out to make the whole process complicated and to limit claims.

At a recent inspection on site the BSA Inspector made a *gentleman's agreement* with the building contractor to fix a hole in the wall (that wasn't considered a defect by the BSA Inspector). The building contractor was heard saying he would do so as long as there wasn't a directive or a mark against his name. If this isn't a clear case of collusion/bias I don't know what is.

The soil at this complex has a H Classification (Highly Reactive). We have continually pursued the building contractor for the soil test certificate. When the BSA questioned the building contractor in 2010, at no time was a certificate supplied to the BSA. The BSA just took the building contractors word. To this date, we still do not have this documentation from the building contractor.

I made a call to the BSA informally to question what action can be taken against a Private Certifier and I was told that we could lodge a complaint against a Private Certifier however they probably would only get a slap on the wrist.

The building contractor that we have lodged numerous complaints against was provided a DA (Development Approval) by the Brisbane City Council, which outlined the Scope of Works which the building contractor must comply with. The building contractor has signed a 'Planning Compliance Statement' that confirms that he has complied with the requirements of any :

- Development Approval
- Applicable Local Planning Instrument
- Lawful Local Law
- Local Plan
- Landscaping
- Operational Works
- Local Authority Relaxations
- Local Authority build over sewers/build over storm water
- Small lot code including privacy screening
- Etc...

On further investigation by myself, I found the building contractor had not complied with the DA (Development Approval). When I contacted the private certified they

advised me that they accept the 'Planning Compliance Statement' from the building contractor that he has complied with the above.

When I called the Brisbane City Council, we were advised that as owners we were now obliged to make the property comply with any non-compliant issues. When I pushed the issue eventually I received a letter that the non-compliant issues were now compliant.

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

The building contractor we have had dealings with the purchase of the property outlined above has now closed his original licence number which he built this complex under and which lists his infringement notices, however he now has a new licence number that does not cross reference to his original licence. So any unsuspecting owner/investor will engage this builder without having the opportunity to know his previous building history. I thought that one of the purposes of the BSA was to enable a homeowner to investigate a builder and their licence and whether the builder had a history of any defective work/infringement notices. This would ensure that the homeowner could do due diligence when considering engaging a building contractor.

I have read the Public Briefing dated 27<sup>th</sup> August 2012 and make the following comments:

Mr Temby's comment that *"We believe that contractors, consumers and other people involved in building disputes want their day in court"*. This is incorrect. All homeowners want is an organisation they can go to for a fair and equitable resolution to their problem. They don't any further financial hardship nor do they care to waste large amounts of time.

Homeowners seek a concise and transparent assessment backed up with referencing to the BCA (Building Code of Australia), AS (Australian Standards), the National Construction Code and installation manuals.

I believe the Private Certification phase of a building should be returned to the Council as it is the council that sets out the Scope of Works outlined in the DA (Development Application). This way all documentation is returned to a central point enabling homeowners access when required. During my investigations into the complex and the building contractor I found that limited documentation was lodged with the Brisbane City Council. I had to contact the hydraulic engineer myself to get copies of the plumbing plans. I believe council still do not have a copy.

Mr Cuthbert on page 10 states *"For every builder that the media highlights – dodgy builders, shonky builder – I can find an equal number of trade contractors and consumers that fit the same bill"*. I believe the present BSA's licence check does not adequately present the true history of a builder and therefore it is impossible to gauge how many *dodgy/shonky* building contractors are working out there. The homeowner needs a true and correct search site that lists all builders that have been struck off the BSA's records as well as all infringement notices as well as any defective work requests. We need to protect homeowners more.

Homeowners should be provided free of charge access to the Building Codes of Australia, Australian Standards, the National Construction Code and any other reference to help them investigate whether a defect is exactly that. This could possibly reduce claims as well as clarify to homeowners the BSA findings. This information should be made available via the BSA website. This will also allow a fair level playing ground.

I dispute Mr Jennings comments that *"Most consumers are more concerned about the taps the fittings or the features rather than the structural elements of the house"*. I believe all homeowners care for their home and their families health and well being and I doubt any family would risk the structural integrity of their home or chose the structural integrity of their home over a fixture or fitting. I would like to know where Mr Jennings can justify such a comment. He belittles homeowners with this statement and their intellect.

I believe all defects Category 1 and Category 2 defects should incur a demerit point loss and fine. I believe fines should be greatly increased as this would deter building contractors, private certifiers and engineers from carrying out non-compliant workmanship. In the case of where a contractor (i.e. engineer) certified defective work he should be fined \$60,000 not \$6,000 and this amount should not be taxable (he is unable to claim this as an expense under his yearly tax claim)

A building contractor should be struck of the BSA system for life and not for a temporary period of time when they fail to comply to directives.

All correspondence between myself and the BSA and building contractor is in writing and therefore I do have a substantial amount of paperwork relating to my above claims. This information is available to you at any time.

Yours sincerely



21<sup>st</sup> September 2012