

Supplementary
Submission
No 34a

**INQUIRY INTO INQUIRY INTO THE OPERATIONS OF
THE HOME BUILDING SERVICE**

Name: Mr Minh Ai Tran

Date received: 7/11/2007

Partially Confidential

06/11/2007
Minh Ai Tran

The GENERAL PURPOSE STANDING COMMITTEES No. 2
PARLIAMENT HOUSE
MACQUARIE STREET
SYDNEY 2000

Re: Inquiry into the operations of the Home Building Service.

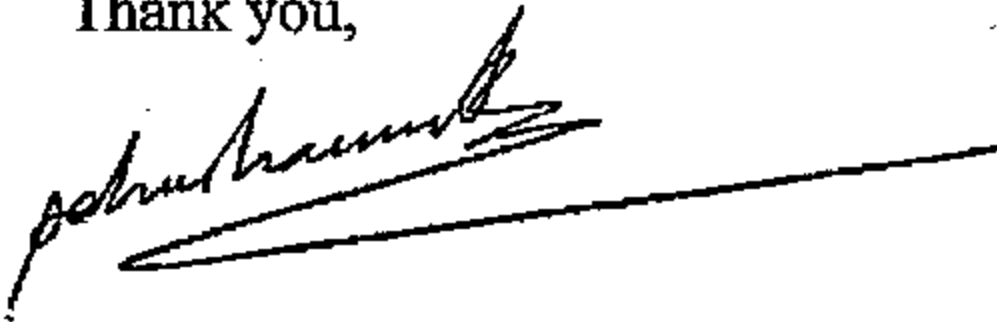
Dear Madame Chair and the honorable members of the committee.

Please find the enclose that contains:

- Submission to GPSC No. 4 dated 22/11/06
- Submission to GPSC No. 2 dated 02/11/07
- Petition with many Signatures dated 02/11/07
- Licenses of the builder and his company
- Licenses of the builder's son and "His" Company.

Please do something about this loop hole in the licensing system so that no one else will be suffered like we have suffered for the last five and half years.

Thank you,



Minh Ai TRAN

22/11/06
Minh Ai Tran

page 1 of 4

The Director
General Purpose Standing Committee No.4
Parliament House
Sydney NSW 2000.

Dear Madam,

I am writing to you to say that Department of Fair Trading with two of its arms, The CTTT and Office of Fair Trading have failed to protect home owners against bad builder and cause us to suffer extensively on both financial and emotional loss.

On 9/4/2002 I signed a contract with a licensed builder and trusted that he had the skill to build our house according to the BCA, AS and local authorities' requirements and was given the license accordingly.

This was not the case as omissions & defects have been found which cost more than \$400,000 to fix. I came to the Department of Fair Trading on 10/10/02 for advice and was referred to the CTTT and the CTTT had failed to resolve my case expeditiously.

The dispute with _____ concerning the construction of our house at the above address was brought before CTTT on 8/1/03 and 21/2/03. On both occasions, the conduct of the member hearing the case, _____ was bias and unprofessional.

ON 8/1/03, the hearing was conduct by _____ took no longer than fifteen minutes before we were order to pay _____ \$15,000 of the \$ 21,217.47 this company was claiming from us.

Prior to order my wife and me to pay 15,000.00, the member heard no evidence from me, and to my observation heard no evidence from my wife, did not sight the building contract made between the parties, and did not ask for any submissions from my wife. At the conclusion of the hearing I tried to make a submission but was stopped from doing so by the member.

On 21/2/03 a further hearing took place before the same member, _____ tendered to the tribunal an "extra contract", an electrician's account and a plumber's account. I was then asked to give evidence and I tendered a copy of the contract that the parties had entered on 9/4/02. The members ask me about having moved into the house. When I tried to explain why, by telling the tribunal more about having terminated the contract than I managed to say then,

the member would not let me do so.

Member _____, on Behalf of the CTTT, is to act in accordance with section 35 of the Consumer, Trader and Tenancy Tribunal Act 2001 ("The Act") and is also subject to the rules of procedural fairness by virtue of Section 28 (2) and 65 (3) (b) of the Act.

However, my wife was not called upon to give or present evidence or make submissions on both of the hearing in relation to the claim of _____ but we were order to "jointly and severally" pay _____ what they claimed. As such, member _____ did not comply with Section 28 (4) of the Act in respect to my wife, Thi Nguyen Phan.

Member _____ is obliged, as far as is practicable, to ensure that all relevant material is disclosed to him to enable him to determine all relevant facts in issue, under Section 28 (5) of the act;

Nevertheless, member _____ ordered us to pay _____ without hearing any evidence from us and without having seen the contract.

Evidence was given to the tribunal that we had a defence by way of set - off to the builder's claim due to alleged incomplete and defective works. In addition to the general law, clause 15.6 of the contract allows such a defence in relation to the builder claim.

Nevertheless, member _____ proceeded with and completed the hearing of the builder's claim and made orders therein without hearing our cross - application, this being adjourned for further hearing. By such action, member _____ denied us procedural fairness.

The tribunal, having complete the hearing of the builder's claim and made orders in respect thereto in favour of the builder, has failed to stay those orders until the determination of our cross claim. In doing so the tribunal denied us procedural fairness, particularly as the tribunal was aware that the builder had already taken step to enforce the tribunal's orders and intended to take further step (the sheriff has come to our house three times and put a lot of stress on our family, they told us that if we don't pay, they can sell our house because the builder had taken a caveat on our house.).

More than one _____, we were prevented by member _____ from giving evidence we wished to present in respect to our termination of the contract with the builder prior to entering into occupation of the property, which entry the member based his decision on to award monies to the builder. The termination had been mentioned in evidence and we wanted to give details thereof. Member _____ denied us the opportunity to do this. In doing so member _____ denied us procedural fairness, particularly as such evidence if accepted, would negated the effect of clause 28 of the contract upon which the member relied.

In deciding that it was not disputed that \$15,115 was owed by us to the builder, member _____ made an error of law by making a finding that was not supported by any evidence. The amount of \$15.115 was not disputed, but the liability to pay the amount was disputed.

In deciding that practical completion could be deemed to have occurred because of the

provision of clause 28.1 of the contract, member _____ made an error of law as he gave effect to a clause rendered void under section 18 G of the Home Building Act 1989.

Through out the hearing on 8/1/03 and 21/2/03, member _____ has made many more errors of law and those mentioned above were just the examples.

Having been denied procedural fairness and suffer from the member's error of law in handed down the wrong decisions, we have applied three times for rehearing but every time my application was denied by T Malone, E Massih and K Ryan with reasons like that our application was

"misconceive,"

"The tribunal has no jurisdiction to entertain a second rehearing application"

"The decision to grant or refuse a rehearing application is final and not subject to review of any kind."

These members have all agreed with member _____ that we were wrong and should be punished. The tribunal had written to the local court in support of the builder to enforce the orders.

Our only option was to appeal to the Supreme Court. We have considered this step since 21/02/03 only as our last resort if our applications for rehearing were not successful. For that, we have applied for the statement of reason for the decision on 24/2/03 and were told to wait a month (we found out later that the statement must be supplied in 7 days), one month later we rang up and were told that my application was lost and was told to come and lodge another one. We came to Liverpool registry and make another application on 8/4/03 and were told to wait again. Another month passed and we still received nothing so we applied again on 12/5/03. We finally received it by mail on 3/6/03 nearly 5 months after the first hearing date of 8/1/03. The staffs of CTTT in Liverpool have seriously acted against the Act to deny us justice. _____ did not follow Section 35, Section 28 and Section 65 of the CTTT Act nor Section 18G of the Home Building Act in hearing the case, "Paul" received our application and "lost" it, "Maria" took our other application and did nothing, "Elly" the supervisor told us that our case was not finish so there was no decision to give to us.

We were in extremely difficult financial situation, let alone to finance our appeal to the Supreme Court, so we had applied for legal assistance from the Office of Fair Trading. On 19/6/2003, D B O'Connor, the Commissioner of fair-trading wrote to decline my application. In effect, the letter stated that it is not **"in general interests of consumers or any class of consumers that legal assistance should be granted"** Tony Gray rang me in June to persuade me to withdraw my appeal in the Supreme Court because if we lose the case we will suffer. We are now 50,000 in dept because of the mistake of _____ and those members like D B O'Connor, Kay Ransome, Kathy Thane, T Malone, E Massih, K Ryan who did not take reasonable step to investigate our case so that a cheap, expeditious & informal step can be taken to resolve the dispute.

What has made us so furious is because of the mistake (Corruption?) of the CTTT we have been suffering extensive loss while the builder who started all the troubles has been paid back by the government under the Suitor Fund Act.

Furthermore, section 83 of the CTTT Act gives right to the members like to bully us because after all he won't be responsible for his decision.

We also asked Department of Fair Trading to investigate and disciplinary action against the builder in 2003 but the Home Building Service only started to investigate on the 13/9/2006 while at least two other home owners had suffered the same fate. Today our house has been condemned by Fairfield City council as unsafe and occupation certificate can not be issued unless the Building Code of Australia, Australian Standard and local authorities' requirements have been met.

This is consistent with the report of Mr. Alfred Frasca reported on 22/9/2003.

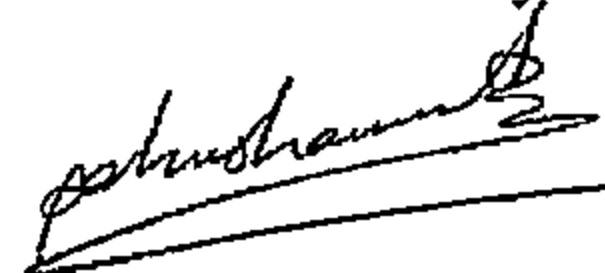
However, Mr. Paul Dangat, an officer from Home Building Service, in a telephone conversation with me on 23/10/06 insisted that it may take months or even years to take disciplinary action against the builder. In the mean time the builder had wind up his company, started another company, then transfer to his son and stay behind as a supervisor.

However, we note that his license and the company's license does not allow him to do work that require Home owner warranty i.e. .can not do contract work value more than \$12,000. Yet this new company and the one which built our house kept on building hundred of houses and according to Mr. Paul Dangat this is perfectly legal! How can Department of Fair Trading be called fair when it took only one and half month to punish innocent people like us when four years have passed but nothing happen to unskilled and unscrupulous builder like and

Due to this dispute my mother had a stroke when sheriff came and seized our belongings. My son had to give up study to go to work so that he can help me to pay for the legal cost of this dispute. My job is unstable due to time taken off for dispute, and now Fairfield City Council wants us to move out because the house is unsafe. We are now spending close to 300,000 to fight the builder now having back up by a multimillion dollar company (Vero) in court. The prospect of getting back where we were in 2002 is very remote

In conclusion, Department of Fair Trading with the CTTT and Home Building Service have failed to protect consumer by unprofessional conduct of the CTTT, bias and the delay of investigating and disciplinary action of the Home Building Service has proven that the objective of home building service according to the Home Building Act 1989 has not been met to ensure that the CTTT and Home Building Service are expeditious, inexpensive, its proceedings are efficient and effective and its decisions are fair". The fair trading tribunal has been anything but fair. It has not delivered inexpensive, expeditious and informal justice.

Yours Faithfully



MINH AI TRAN

01/11/2007
Minh Ai Tran

page ① of ④

The GENERAL PURPOSE STANDING COMMITTEES No. 2
PARLIAMENT HOUSE
MACQUARIE STREET
SYDNEY 2000

Re: Inquiry into the operations of the Home Building Service.

Dear Madame Chair and the honorable members of the committee.

I thank you for allowing me to address you in this inquiry.

My name is Minh Ai Tran of My Family and I would like to take this opportunity to tell you about our ordeal and suffering because the government statutory authority, department of FAIR TRADING in particular, has failed to enforce the law, allowing bad builders to operate to destroy many home owners and my family is one of many victims of this builder. It is impossible that our ordeal can be told in five minutes but I will try to compress as much as I can regarding the terms of the reference.

In December 2001 we went to the Department Of Fair Trading in Liverpool to enquire on License number 96289c which belongs to and we were told that there was no bad record being made against this license. With confidence we then engaged this licensed builder to build our house and signed a contract on the 09/04/2002 because we trusted that he had the skill to build our house according to the Building Code of Australia, Australian Standards and Local authorities' requirements and was given the license accordingly.

Little that we knew then was the director of this company who was also the nominated supervisor, was not qualified for contract that requires Home warranty Insurance ie work value more than \$12,000. Yet his company contracted to build our house for \$336115.

Construction began on our land on 11/04/2002 and we found so many defects and omissions, the work was not built according to council approved plan, Australian Standards, Building Code of Australia and local authority's requirements.

On 27/09/2002 the builder claimed the work was completed and demanded final payment. We disputed his claim and a meeting was set up on site. We demanded that the builder to complete our house according to the contract before we pay the final payment but the builder did not listen; he told us "What you see is what you get and don't try to be smart, keep paying me or I'll make life hell for you". Only two hours later, he took

out a summon against us at the local court in Campbelltown. Advice was then given to us by Department of Fair Trading that we should apply to have the matter to be heard at the Consumer Trader and Tenancy Tribunal.

What happened to us at the Consumer Trader and Tenancy Tribunal was a nightmare because at the hearing on 08/01/2003 and 21/02/03, without considering our evidences, judgment was given in favor of the builder and the order was given to the builder to give to the sheriff to cease all of our belongings. In addition, the builder also put a caveat on our house and was ready to sell it

At the same time, the CTTT had tried to deny us a chance for a re-hearing, they even tried to prevent us to appeal to the Supreme Court by withholding their reason for the unjust decisions so that the time allowed for us to appeal could not be met. However, we had eventually forced the Consumer Trader and Tenancy Tribunal to produce their unjust decisions and successfully appealed to the Supreme Court.

The Supreme Court ordered to set a side the Consumer Trader and Tenancy Tribunal's decisions so the builder's evidences & ours can be heard together. An order was also given to the builder to pay our cost of the appeal. Sadly, the builder was entitled to get all the money that he paid us under the Suitor Fund Act for he contested that it was not his fault that we had to appeal but it was the Department of Fair Trading & the Consumer Trader and Tenancy Tribunal's fault that we did. **As the result, we lost 30% of our cost and you the tax payer had to pay for the DFT & Consumer Trader and Tenancy Tribunal's mistake.**

It is noted that during our ordeal with the Consumer Trader and Tenancy Tribunal in 2003, I contacted, and wrote to my local member, the Honorable Reba Meagher, many times, to ask for help but I never received any response from her, she only had time for people like us when she was not the minister of Fair trading. We also wrote many complaint to the commissioner of the office of Fair Trading but no response nor investigation until September 2006 when my local member wrote to the then minister of Fair Trading, the Honorable Diane Beamer. Mr. Steven Griffin of the office of Fair trading took my case and started to investigate But Mr. Steven Griffin insisted that the protracted delay was not the Department of Fair Tracing's Fault but because the Consumer Trader and Tenancy Tribunal and the Office of Fair Trading are two separate Body.

I don't know what is the difference all I know that I contacted Department of Fair Trading for everything and I believe my complaint should be investigated long ago in 2003 not 2006 and so far not action has been taken.

On 13/09/06 and 1/11/06 Mr. Paul Dangate inspected by house and prepare a report for the purpose of disciplinary action against the builder. A further report was also commission by the Department of Commerce for the structural items, both of the reports show numerous defects that do not meet Building Code of Australia, Australian Standards and therefore proven that the builder is not fit to have the builder's license. It is

noted that these two reports mostly agree with mr Alfred Frasca's report that we included in our complaint to the Office of Fair Trading. However, the Department of Fair Trading refused to take any disciplinary action or place public warning against this builder, and allowed him to set up another company under his son's name and starts afresh again. Any one who are searching the record of this new company will not find anything that unable them to be aware of such an unfit builder who is now the nominated supervisor of this new company, they may sign a contract with this unfit builder and suffer like we do. I believe that there are atleast three other victims of this builder because the current licensing system and disciplinary processes do not work.

Why does it take the Consumer Trader and Tenancy Tribunal only 15 minutes to give wrong judgment against innocent people like us when it takes forever for Department of Fair Trading to take action against this unfit builder?

- Why give license to a company which build houses when the nominated supervisor is unqualified and have no skills
- How can this builder obtained Home Owner Warranty Insurance to build houses when the nominated supervisor is unqualified and have no skills

Although I have not written to the new Minister of Fair Trading, the Honorable Lynda Byrne, but I have asked these question for a long time with so many people that represent the Department of Fair Trading like the Honorable Reba Meagher, the Honorable Diane Beamer, Mr. Steven Griffin, Mr. Paul Dangate, Mr. Paul Burgess, Mr. Matt Witton, the answers were given that it was perfectly legal for such a builder to operate and it is bad luck that we had chosen the wrong one.

The last five and a half years has been our time in hell as the builder has said. We had suffered substantially financial, emotional and physical traumas. My mother had a stroke and paralysed on her left leg when the sheriff came to cease our belongings. My son had to give up study to look for work in order to help us to pay for the legal cost, in July last year, on the way looking for work, he had a hit and run accident that broke his left leg, all of his hip bones, the spinal was out of the socket and for two weeks, he did not feel anything from the waist down. My marriage broke down and I was force to take unpaid leave since 19 /06/07 due to time of work to prepare my case in court and due to stress and anxiety that rendered me unsafe to work as a postie riding motorbike We had spent 300K for our legal cost yet we still have not got a chance for a hearing because Vero Insurance has backed up the builder to deny our claim by using delaying tactics to stop the matter being heard in court. Vero's fear is that so many independent engineer reports on our house have stacked up against this insurance company, even Vero's own engineer, MR John Alden has admitted in his own report that was commissioned by Vero that Australia Standards 2780 has not been met on our house.

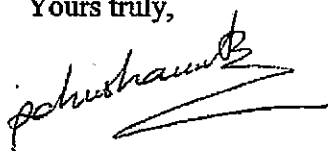
Worst of all we have been ordered to vacate our house by Fairfield City Council as the council had commissioned a report and found that the house is too dangerous to live in, Fairfield City Council also took us to the land and Environment Court and we had run out

of money to keep our court case going. We even had considered pack suicide once and the whole family was locked up in mental health unit at Liverpool hospital.

Please look at me now, do I look like a criminal that should be sued by four parties at once... the builder, the insurance company, my former solicitor, Fairfield City Council... these four parties now suing me for absolutely no fault of mine. What did we do to suffer this fate? Is there any hope for us against 4 Solicitors, 4 Senior Barristers and a Queen Council in four separate court case at District Court, Supreme Court and Land and Environment Court.

I strongly believe now that I did nothing wrong but I am now in this mess because the builder licensing & the disciplinary process and Home owner Warranty Insurance Scheme do not work.

Yours truly,

A handwritten signature in black ink, appearing to read 'Minh Ai Tran', with a long horizontal line underneath it.

Minh Ai Tran

02/11/2007

Minh Ai Tran & Family

Subject: Petition to government to take action against shoddy builders.

Dear friends and colleagues,

My name is Minh Ai Tran of the above address. My family & I would like to take this opportunity to tell you about our ordeal and suffering because the government statutory authority, Department of Fair Trading in particular, has failed to enforce the law, allowing shoddy builders to operate to destroy many home owners and my family is one of many victims of this builder.

In 2002, we signed a building contract with a licensed builder to build our house at the above address.

We saw that our house was not built according to council approved plan, so many defects and omissions were found and the builder's attitude was that nothing we could do to make him to comply with the contract. He told us: **"What you see is what you get and don't try to be smart, keep paying me or I'll make life hell for you"**.

We finally had a chance to delay the last payment of 15,000.00 as the contract permitted and a meeting was set up at the site. We demanded the builder to complete our house according to plan, requirements of relevant authorities, Australian standards and Building code of Australia.

Only 2 hours after the meeting, the builder had already taken out a summon against us and advice was given by DFT that we should applied to have the matter to be heard at the Consumer, Trader and Tenancy Tribunal (CTTT).

At the hearing, without considering our evidences, judgment was given in favor of the builder and the order was given to the builder to give to the sheriff to cease all of our belongings. In addition, the builder also put a caveat on our house and was ready to sell it. At the same time, the CTTT had tried to deny us a chance for a re-hearing, they even tried to prevent us to appeal to the Supreme Court by withholding their reason for the unjust decisions so that the time allowed for us to appeal could not be met. However, we had eventually forced the CTTT to produce their unjust decisions and successfully appealed to the Supreme Court.

The Supreme Court ordered to set a side the CTTT's decisions so the builder's evidences & ours can be heard together. An order was also given to the builder to pay our cost of the appeal. Sadly, the builder was entitled to get all the money that he paid us under the Suitor Fund Act for he contested that it was not his fault that we had to appeal but it was the DFT & the CTTT's fault that we did. **As the result, we lost 30% of our cost and you the tax payer had to paid for the DFT & CTTT's mistake.**

Five years has since passed, the builder is still operating and has set up another company with his son (the son was working as a bricklayer/supervisor on our house, even though he was only 17 years old & unlicensed at the time) now he is 22 years old, as a

director of and the supervisor is no one else but the same builder himself. Both father and son are not qualified to build anything more than 12,000 dollars yet they contracted to build house after house worth at least 20 times that limitation and DFT has refused to take any action against this builder even though they had inspected our house and found that the house was not built according to plans, the Building Code Of Australia & Australia standards.

The last five years has been our time in hell as the builder has said. We had suffered substantially financial, emotional and physical traumas. My mother had a stroke and paralysed on her left leg when the sheriff came to cease our belongings. My son had to give up study to look for work in order to help us to pay for the legal cost, in July last year, on the way looking for work, he had a hit and run accident that broke his left leg, all of his hip bones, the spinal was out of the socket and for two weeks, he did not feel anything from the waist down. We had spent 300K for our legal cost yet we still have not got a chance for a hearing because Vero Insurance has backed up the builder to deny our claim by using delaying tactics to stop the matter being heard in court. Vero's fear is that so many independent engineer reports on our house have stacked up against this insurance company, even Vero's own engineer, MR John Alden has admitted in his own report that was commissioned by Vero that Australia Standards 2780 has not been met on our house.

Worst of all we are now ordered to vacate our house by Fairfield City Council as the council had commissioned a report and found that the house is too dangerous to live in and we had run out of money to keep our court case going. We even had considered pack suicide once and the whole family was locked up in mental health unit at Liverpool hospital.

Please consider our suffering and if you believe in justice, please support my family by signing this petition so that the government and in particular the Department of Fair Trading, take notice to enforce the law on this builder as prescribed by the Home Building Act. We are more than happy to provide you with all the reports by our engineers, the builder's engineers, DFT's Reports, Fairfield city council's orders and related documents on request.

Finally, we thank you for your time to consider this petition.

Yours sincerely



Minh Ai Tran & Family.

Name	Address Or Phone No.	Comments
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