

Submission  
No 2

## INQUIRY INTO UNFAIR TERMS IN CONSUMER CONTRACTS

**Organisation:**

**Name:** Mr D Nurcombe

**Telephone:**

**Date Received:** 18/09/2006

---

13. 9. 06

HON. CHRISTINE ROBERTSON MLC  
 COMMITTEE CHAIR  
 LEGISLATIVE COUNCIL

RECEIVED

18 SEP 2006

LAW &amp; JUSTICE

DEAR MADAM,

I AM RESPONDING TO THE INQUIRY  
 INTO UNFAIR TERMS IN CONSUMER CONTRACTS.  
 I OFFER COMMENTS RELATED TO THE SWIMMING  
 POOL CONTRACTS FOR RESIDENTIAL USE.

ALTHOUGH I AM NOW RETIRED I WAS  
 EMPLOYED IN THE POOL INDUSTRY FOR OVER  
 THIRTY YEARS AND HELD MANAGEMENT POSITIONS.

I LIST THE FOLLOWING CONTRACTS WHICH  
 ARE MAINLY USED BY BUILDERS AND COMPANIES.  
 THESE CONTRACTS ARE AVAILABLE FROM THE  
 RELEVANT ASSOCIATION.

- (A) SWIMMING POOL ASSOCIATION - SPASA
- (B) MASTER BUILDERS ASSOCIATION - MBA
- (C) DEPARTMENT OF FAIR TRADING - DFT.

THE TWO ASSOCIATIONS ABOVE HAVE  
 SET OUT TO COVER THEIR MEMBERS.

I AM NOT SURE HOW OR WHO WOULD BENEFIT  
 FROM THE FAIR TRADING CONTRACT!

IT WOULD BE WRONG TO CLAIM UNFAIR  
 TERMS STRICTLY IN THE MEANING, BUT IT  
 IS A FACT DISPUTES ARISE IN MANY INSTANCES.  
 BECAUSE CONTRACTS MAY NOT BE FULLY EXPLAINED  
 TO THE CONSUMER. WHAT DOES THIS MEAN?  
 COMPANIES COULD DO BETTER - YES.

CONTRACTS ARE VERY COMPLEX LEGAL

DOCUMENTS, ALL WRITTEN MEANING SHOULD BE KNOWN TO AT LEAST THE SALESMAN AND ANY OTHER NUMBER OF EMPLOYEES OF A COMPANY.

HOW MANY PEOPLE HAVE SIGNED OR FULLY UNDERSTAND AN INTRICATE DOCUMENT?

IS THIS UNFAIR? TO THE CONSUMER,

THE COMPANIES AND ASSOCIATIONS HAVE HAD MANY YEARS TO COVER EVERY PROBLEM WHICH MAY EXIST IN BUILDING A POOL.

THE COMPANY SETS ALL THE RULES, CONSUMERS MAKE THEIR CHOICE OF BUILDER IN REALITY THE ONLY POINT OF STRENGTH IS BEFORE THE CONTRACT IS SIGNED, THAT IS SHORT LIVED, THE DEPOSIT IS PAID. ALL PAYMENTS ARE BROKEN UP UNTIL COMPLETION.

IS THIS UNFAIR? IT MAY BE HARSH!

I AM NOT SURE IF THERE STILL IS A COOLING OFF PERIOD AFTER SIGNING A CONTRACT I THINK IT SHOULD BE !!

WHAT ARE THE MAIN PROBLEMS IN CONSTRUCTION?

NO SUPERVISOR ON SITE AT EACH STAGE, EXCAVATION (TOO MANY TO LIST) WEATHER, PAYMENT OF TIP FEES TILES, PAVERS, DELAY IN COMPLETION OF POOL.

HOWEVER COMMUNICATION IS THE RECIPE AT ALL TIMES BETWEEN CUSTOMER AND COMPANY.

BOTH ASSOCIATION CONTRACTS HAVE PROVISIONS FOR COMPENSATION TO THEIR CUSTOMERS FOR VARIOUS REASONS UNTIL THE POOL IS COMPLETED. GENERALLY BY WAY OF CREDIT. IN MOST CASES OF COMPENSATION THE BUILDER COMES OFF BEST.

AS AN EXAMPLE IF THE POOL IS NOT THE DEPTH AS PER CONTRACT. TO CORRECT THIS THE COMPENSATION CREDIT TO THE CUSTOMER WOULD ONLY BE A FRACTION OF THE COST TO THE BUILDER TO RECTIFY THE PROBLEM.

IS THIS UNFAIR? YES!!

THIS IS ONE AREA WHICH MUST BE MADE EQUAL TO 'CRIME'.

WHAT ABOUT AN INCREASE IN THE PRICE OF A POOL AFTER IT HAS BEEN APPROVED BY COUNCIL! BEFORE ANY WORK HAS BEEN DONE.

IS THIS UNFAIR?? HOW?

POOL ADVERTISED FOR SALE AT A PRICE, CONTRACT SIGNED. PASSED BY COUNCIL. SITE RE-VISITED CHANGES TO POOL SIZE, DEPTH, ADD SOLAR AND SO ON. ALL LEGAL. PRICE INCREASED \$\$\$\$.

IN MY OPINION SOME OF THE CHANGES NOW IMPLEMENTED HAVE ADDED COSTS TO THE CUSTOMER AND MORE WORRY TO THE BUILDERS.

THE COMPANIES AND CUSTOMERS IN SYDNEY HAVE A REAL PROBLEM IN FINDING TIP SITES, FREE OR BY COST.

I THINK THE SCHEDULE OF PAYMENTS SHOULD HAVE SIX STAGES OF PAYMENTS WITH AN INCREASE AT HANDOVER (COMPLETION).

I FEEL ONE CONTRACT WOULD BE DIFFICULT TO COVER ABOVE GROUND POOLS INGROUND POOL - VINYL LINER, FIBERGLASS POOLS, CONCRETE POOLS, + SPAS.

FINALLY ON NUMEROUS OCCASIONS  
CUSTOMERS HAVE BEEN VERY DIFFICULT  
TO WORK WITH. SLOW IN PAYMENTS  
COMPANIES HAVE BEEN MORE LENIENT  
IN THIS REGARD THAN CUSTOMERS ARE  
WITH A PROBLEM.

IS THIS UNFAIR? YES BUT GOOD PR!

ALL MY COMMENTS ON CONTRACTS  
RELATE TO THE TWO (SPASA) AND (MBA).  
ASSOCIATIONS WHO COVER EVERYTHING.  
FAIR TRADING MAY BE IN PLAIN ENGLISH  
BUT THAT DOES NOT MAKE IT GOOD.

YOURS FAITHFULLY  
MR. D. NURCOMBE

