

**Submission
No 39**

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

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General Purpose Standing Committee No 2 Home Building Inquiry

The powerpoint presentation, the booklet of photos and my verbal address to Parliament 2.11.07 is to be included in this submission.

A) The builder licensing system,

What are the guidelines for deciding if someone is a fit & proper person to hold a license?

How does an illiterate person get a license?

My builder did & Fair Trading records obtained under Freedom of Information (FOI) show he is illiterate. He held this license for over 27 years despite numerous complaints. If he didn't have a license I wouldn't have used him. How can an illiterate builder read and understand let alone comply with the Australian building standards, building plans and council conditions?

Fair Trading told me that he was a good builder and that I should have no problems using him and that he had a license for a long time. The policing of licenses requires much greater diligence. It appears anyone can get a licence and it is up to the consumer to prove they shouldn't have it, at the consumer's detriment financially, physically and emotionally.

B) Home warranty insurance, What is the point of having insurance if no one can make a claim?

What does Statutory Warranties Mean to the Person on the Street?

What protection did Home warranty insurance provide me after the builder lost his licence?

I lodged my claim and begged Fair Trading for their assistance in getting help and having the house fixed, all to no avail. The insurer Vero fought me at every turn claiming I didn't want their help when their court applications/affidavits clearly state otherwise and I wasn't under the last resort scheme.

The insurer can claim their legal expenses as a tax deduction but the consumer uses after tax dollars with no deduction. There is no insurance of any worth to the consumer in this state, consumers don't want the insurance money they want their house to be fixed to a safe standard that complies with the Australian Building Code.

Yes there is insurance and the insurance companies make a lot of money, but the consumer is left to fight the giants, in claiming any redress at a time when most consumers are fighting to stay within a budget.

What do the words "Statutory Warranties mean", what dictionary do I use to find the meaning that insurance companies are allowed to run with; as far as I have experience Home warranty insurance is not worth the paper its written on, its nothing but a con or fraud perpetrated on innocent and naive consumers with the full sanction of Fair Trading.

The trio of Fair Trading representatives stated in Parliament on the 2.11.07 that the insurance companies are monitored by APRA, well the monitoring only extends to their capital adequacy (financial ratios), not to the handling or mishandling of insurance claims.

C) Resolution of Complaints,

How is going to the CTTT any form of resolution?

The only resolution I received was, your complaint had been added to our database and for anything else go to the CTTT.

After 3months wait and letters cc'd to members of Parliament, an inspector was out sent to investigate my complaint. My builder lost his license for work done on my house, Fair Trading recovered their costs prosecuting the builder and I was left low and wet, my roof is caving the floor is sagging and it leaks when it rains.

During this 3month wait for Fair Trading to inspect the builder initiated proceedings against me in the CTTT for the balance of his money, claiming I kicked him out. He finally admitted this to be a lie in the CTTT, so why do I have bills totaling \$200,000 and a house that is unfit to live in, this does not include rectification costs.

D) The exercise of disciplinary powers,

Shouldn't the enforcement of discipline act as a deterrent to builders?

Why do some builders escape disciplinary action?

Why are some sanctions not listed on Fair Trading website?

Shouldn't the punishment fit the crime?

In my case the builder did have disciplinary action taken against him but it did me no good. I am still living in a house reminiscent of third world conditions, no walls or kitchen or safe entrance or exit to the house. The case was heard in the CTTT and I was awarded just over \$24000. Yes Fair Trading took this builder's license and walked away and left me to fight the builder and insurer at my own cost all this after he lost his license. Where is the consumer protection as stated on the letterhead of the many letters written to me?

The builder lost his license for 5years but had a full and comprehensive investigation been carried out instead of the quick half done job, it would have been for a longer time and my fight in the CTTT would have gone better and been much cheaper for me to try an win justice.

Many times I phoned and asked for someone to examine the piers and footings under my house this is still not done to-date. Investigators ask you to show them what is wrong; you are the consumer and hired a licensed builder because you didn't have the skills so why are Fair Trading inspectors asking the consumer what is wrong, why are they not doing a comprehensive forensic investigation and protecting consumers.

Why is Fair Trading so slow in exercising disciplinary action when they can hand licences out to persons who are illiterate and have to have an interpreter in the CTTT as they don't understand English, all this at the taxpayers expense and what does the consumer get, "your added to the database", hardly fair.

E) The enforcement of relevant legislation,

When and How is the Home Building Act enforced?

Does anyone enforce the HBA?

What government section is responsible for the enforcement of the Home Building Act?

There is little to no enforcement of any building legislation or regulations by Fair Trading or the CTTT.

The Home Building Act (HBA) Part 2C Statutory Warranties 18B:

(a) that work will be performed in a proper & workman like manner;
judge for yourselves the photos speak of the job done (power-point presentation and photo booklet as shown in Parliament on 2.11.07). This builder took me to the CTTT for the balance of his money after doing this type of job, there is no safe entrance or exit into the house photos of front and back stairs, with missing treads.

(b) a warranty that all materials supplied by the builder...will be suitable for the purpose...those materials will be new.

BHP Steel stated in the letter the 10th July 2002, "We...recommend the existing piers be removed and replaced with the correct length uni-piers, fixed together with the correct type & number of fasteners for structural reasons.

The builder's expert witness Andrew Daniels stated in the CTTT under oath that builders regularly use 10% of second hand materials to cut down on cost, yet the Home Building Act (HBA) clearly states that new material is to be used unless otherwise written in contract. Who is going to enforce the HBA, the good fairy? The member reiterated the expert witness in his findings. Don't members have to uphold the legislation or do they always rely on and believe builders expert witnesses, as my expert witnesses were dismissed out of hand.

(c) a warranty that the work will ...comply with this and any other law.

Who is going to enforce it, certainly not Fair Trading or the CTTT. My house doesn't comply and will never comply, as I don't have the money to pay for it to be repaired as I will be working to service the loan to pay the builders costs.

(d) A warranty that the work will be done with due diligence...within a reasonable time.

My builder "worked" on my house for 6mths for a 2^{1/2} room extension, during this time he vandalised every room and well as undermined the structural integrity of the house, and Fair Trading and the CTTT (an arm of Fair Trading) expect me to repair at my expense.

What is the point of having legislation if it is not upheld by Fair Trading & the CTTT?

Fair Trading is more concerned with providing jobs (shielding bad builders) in NSW than protecting building consumers as evident by their letter to me dated 4.10.02.

G) Other relevant matters,

Why are building consumers treated as second class citizens?

As you can see from the pictures of my house, the builder must be laughing, he has done this appalling work, destroying the structural integrity of the original house, did sub-standard building work on the new section, taken me to court, lied in many affidavits to the CTTT and I have to pay his costs. It certainly pays to be a builder in NSW.

My advice to any building consumer is don't I repeat don't use a licensed builder as you have no protection. You are better protected in this state by using an unlicensed builder as they cannot take you to court and there is no insurance that works when you need it.

Why are there different classes of Building consumers in this state?

Why do some consumers get special attention?

Why does Fair Trading send out engineers to investigate some residential buildings and other consumers don't have a comprehensive inspection carried out, let alone an engineer.

Why does Fair Trading pay the costs of some consumers after they have sold their house back to the builder and others get "you have been added to our database" treatment.

Why did Fair Trading make a payout to , after they lost their case in the CTTT and were ordered to pay the builders costs. Why isn't this offered to me and the other consumers that presented their plight in Parliament. Why did Fair Trading send out and pay engineers for these consumers and not do a full forensic investigation on my house, I'm still waiting to have the piers/footing inspected, despite numerous requests. Will this ever be done?

Why does Fair Trading make ex gratia payments to some consumers and not others?

The licensing system and statutory warranties are a farce, if it wasn't so serious it would be funny. It certainly belongs in a Monty Python skit.

What happens when the hearings are protracted and household members suffer injury as in my case. You're left low and wet and to pay for the medical treatment along with all the other bills associate with the case, all caused by a licensed builder and a system that doesn't work.

Fair Trading is more concerned about builders than consumers, it is fraught with irregularities and improprieties. Fair Trading has failed to uphold The Home Building Act, the Fair Trading Act and their Code of Conduct. Why isn't Fair Trading Code on Conduct on their website, possibly because they know they are in breach of it?

The breakup of families at anytime is a sad thing, but when it's caused by a bad builder and a system that isn't working its deplorable and anyone with the remotest bit of conscience or compassion can see the injustice of the system and how it has effected my family. My elderly mother had to move out due to the state of the house in which she was a prisoner as she couldn't get in or out unaided as neither entrances are safe or functional. And the injuries I suffered when I fell through the floor required extensive treatment that I'm still receiving after 2years, (photo of floor with hole submitted).

Why is the CTTT not under scrutiny?

Why are they allowed to completely disregard the HBA and Australian Building Code, it is an arm of Fair Trading. What does informal, inexpensive and expeditious mean?

The CTTT claims to be inexpensive, informal and expeditious, well after being dragged through the CTTT for five (5) years, with bills totaling \$200,000 and both sides using Barristers I can testify this to be a complete and utter fabrication of the truth.

Why should the builder be given the opportunity to take a consumer to the CTTT when he lost his license for that job? Why are cases protracted for 5years? What is the percentage of cases where the consumer wins and was their win enough to rectify the house completely? From the many cases presented at Parliament on Friday 2.11.07 it would appear that the CTTT is anything but informal inexpensive and expeditious. Why are these deceits allowed to be perpetrated on innocent consumers?

Why doesn't the CTTT uphold the HBA and the Australian Building Code, Why is it never challenged (an public inquiry) as to any of the decisions it makes? Why do consumers have to be locked into this system? Consumers would be better treated in the normal court system, at least they would know that any decision reached could be challenged and they would know it would be expensive. There would be no deception as is the case now. The CTTT powers are

too liberal and it is unaccountable to anyone. Decisions are reached leaving out the most relevant materials that may throw the builder in a bad light; decisions that wouldn't be tolerated in any other court. As evidenced by the Supreme court ruling in the Ether case.

Conclaves are a complete waste of time and money, they are expensive and nothing of any good comes from them, they are a waste of taxpayers' funds. The consumer is ripped off twice, firstly when they have their own costs to pay and a day's work missed at a loss of income and then again as the taxpayer. Why are building consultants not scrutinised and have to be registered before they can partake in any conclave. My builder used a building consultant that could not be found in any phone book, but this consultant was given more weight than my consultant and engineer by the CTTT member. We had several conclaves but the builder maintained he did nothing wrong and I made it up. He must be laughing all the way to the bank, while I have to pay him for the privilege for living in an unsafe house that he destroyed with government sanction.

The CTTT is fraught with irregularities and improprieties and an inquiry needs to be held into its operations and handling, to address the inappropriate bias shown to consumers.

If the Parliament was serious in finding out what consumers know, they could send out a questionnaire, to be filled in by consumers at the end of the CTTT hearing after the decision is handed down, getting detailed costs, the time taken and what legislation was applied. Then after a period of time a further questionnaire asking how much money was awarded to cover rectification costs and how much the consumer is out of pocket, for the consumer will always be out of pocket; how is this protection?

Can Fair Trading be relied upon to give Parliament full honest disclosure. Minister Aqualina of Fair Trading on 25.10.02, stated that my builder had no complaints against his name, this is a lie. When the Minister heard this he stated that is what Fair Trading staff told him, all this before a video camera and several hundred people.

I never wanted to enter the legal system all I wanted was an extension to my home; but was forced by the builder's action initiated while I waited for Fair Trading to commence their investigation. I waited for Fair Trading to do a comprehensive forensic investigation and I'm still waiting for this to happen. The case was protracted for five years, when I was led to believe it would be expeditious. I suffered great expense; when the system is portrayed as inexpensive, it certainly is for builders. Builders can offset all the legal/expert costs against their taxation, this luxury is not afforded to consumers.

The personal injury my mother and myself suffered has never been adequately addressed by Fair Trading or the CTTT. Will I ever be compensated for the injury I sustained when the floor gave way and I fell?

I would like an adequate answer to all the questions I have posed, as would all my family and friends. These questions need to be answered before more innocent building consumers are destroyed and broken by a system designed to protect bad builders.

Please think very carefully about building consumers in this state; the present system is not working. There is adequate legislation in place but no-one has the backbone to enforce it. If you have any query about how the system is not working I extend an open invitation for the committee to view my house.

Thankyou, for giving me the opportunity to address this committee.