

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE
TRIBUNALS IN NSW**

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Partially Confidential

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Summary

In summary, my situation is to do with a poor/ridiculous decision made by the CTTT in July 2008 in regards to defective building work in my new home. The decision by the CTTT has had major ramifications in that I cannot obtain an Occupancy Certificate for my new home even though I have been living in the home since it was completed in July 2006. I am in effect a “squatter” in my own home.

This ongoing saga should have been resolved in July 2008 but the CTTT instead of helping to resolve this unfortunate situation have only made matters far worse. The CTTT's poor decision has resulted in the use of solicitors, Home Warranty Insurer (Vero Insurance), my Local Member (Ray Williams), the previous Minister for Fair Trading (Virginia Judge) and now the new Minister for Fair Trading (Anthony Roberts).

My disappointment with CTTT's decision in July 2008 is based on the following:

- 1) The CTTT Member was negligent/incompetent in that they allowed the Builder to present and rely on evidence that was determined to be “not admissible” – that is to say such evidence is junk and had a major bearing on the outcome of the case. The CTTT member should have known this (i.e. what type of documentation is classed as “admissible” evidence versus “not admissible” evidence,
- 2) The CTTT Member gave a greater weight to the “not admissible” that the Builder used rather than expert witness reports that I presented in the hearing which raises some serious questions regarding what is the point of the home owner getting defects reports (often at considerable expense) if they are overlooked by the CTTT,
- 3) Failure by the CTTT Member to follow court procedure in regards to exchange of pre-hearing documentation,
- 4) The decision was against the weight of evidence that I presented to the court, and
- 5) The Builder failed to rectify the defects and this was noted in my supporting documentation submitted to the CTTT which the CTTT overlooked.

The majority of the defects in the house are not in dispute. They have been there since taking ownership of the house and have been assessed by numerous building inspectors. What is now in dispute is the refusal by the Minister for Fair Trading (Anthony Roberts) to grant an “ex-gratia” payment of \$44,075.07 (which comprises my legal costs and the cost to have rectified those defects that the CTTT wrongly decided as not defective in July 2008).

In December 2010, I contacted my Local Member (Ray Williams) who forwarded a letter to the previous Minister for Fair Trading (Virginia Judge) seeking an “ex-gratia” payment for the above sum of money. Despite initial verbal assurances from Virginia Judge's office that they would reply to Ray Williams's request they never wrote back. In reality, the previous Minister did not want to know about this case and the NSW state election was a convenient way of not having to respond.

Ray William's office followed up with new Minister for Fair Trading (Anthony Roberts) and did receive a reply from him in early May. While the new Minister did acknowledge my disappointment with what has happened so far, he has declined my request for an "ex-gratia" payment. Minister Robert's claims I have not met the criteria to receive an "ex-gratia" payment. However, I feel this is certainly not the case and I can easily prove otherwise. Minister Robert's like his predecessor I feel does not want to know about this case and is also trying to not have to admit any fault on the part of the OFT.

For an ex gratia payment to be granted it must firstly be approved by the Minister and the request sent to NSW Treasury Department for them to raise a cheque for payment. Such a payment would then be on the records of the NSW Treasury Department and available for others to see. Without stating the obvious, no Minister wants to have to authorise an "ex gratia" payment as this is an admission of failure by his/her department.

I do not believe that my unpleasant dealings with the CTTT are an isolated occurrence. From conversations with building inspectors and legal people over the last 5 years who have had numerous dealings with the CTTT in regards to building disputes, I feel there are probably many other people who have been on the receiving end of incorrect/ridiculous decisions by the CTTT and have decided to not to pursue the CTTT an further and have unfortunately decided to live with the defects or have had to pay to have the defects rectified at their own cost. In my case I have fought on and have significant evidence to prove the CTTT were wrong and negligent in the way they handled my case.

I am prepared to attend the review committee hearings and discuss with the review panel members about my situation and answer any questions they might have.

On the following pages I have listed the following:

- Section 1: Recommendations to improve the CTTT in regards to residential building disputes, and
- Section 2: History which sets out in chronological order the background in this case from the commencement of construction in 2005 to present.

STEVEN MILLS

Section 1: Recommendations

The following should be implemented to help improve the performance of the CTTT in regards to the handling of residential building disputes:

- 1) The CTTT should have a dedicated team of Members allocated to adjudicate over residential building disputes. This is because the rectification of most building defects are costly and the impact upon the consumer of a wrong decision being made can be significant. Also it would help to ensure a greater level of consistency in regards to decisions.
- 2) CTTT Members who adjudicate building disputes should be people who have a good understanding of the Building Code of Australia and other relevant building standards. Preferably these people should be from the Building industry and also have some legal background.
- 3) All appeals and/or requests for a rehearing should be reviewed by a separate team of people – not the same CTTT Members who adjudicate within the CTTT chambers. Requests for appeals and rehearings should be taken very seriously and at present are not taken seriously by the CTTT. Consumers should also given a written reason why their request has been approved or declined. At present the CTTT is unwilling to give reasons/feedback why they have decided to decline a consumer's request for an appeal or rehearing.
- 4) Where it has been found that a CTTT Member has made an error that person should face disciplinary action where it has been determined that their error was severe (such in my case).
- 5) CTTT Members must understand the difference between “admissible evidence” and “not admissible” evidence.
- 6) CTTT need to provide clear explanations when they hand down decisions as to why they overlook key evidence such as expert witness reports. What is the point of them if they are not considered.
- 7) Any Home Warranty Insurance Scheme should be a scheme of first resort – not a scheme of last resort as it was for about the last 9 years in NSW. This was a disgrace and consumers groups have been saying this for a long time and nothing was done about it by the previous State Government and who changed the scheme of “first resort” to that of “last resort” and in the process took sold out the consumer of NSW.
- 8) Builders/contractors' who fail to comply with CTTT orders should lose their license immediate and not be allowed to set up another business and join another organisation in a senior role.