

**Supplementary
Submission**

No 2b

INQUIRY INTO OPERATIONS OF THE HOME BUILDING SERVICE

Organisation:

Name: Mr Chris Fitzgerald

Telephone:

Date Received: 14/11/2006

Subject:

Summary

This submission has been kept partially confidential by resolution of the Committee.

Mr Chris Fitzgerald

Tuesday, 14 November 2006

General Purpose Standing Committee No. 4
Parliament House
Macquarie Street
Sydney NSW 2000
FAX 9230-3416

Parliamentary Inquiry into Operations of the Home Building Service

Dear Sir / Madam,

This comment is in addition to my previous submissions and concerns my dealings with
Their licence [redacted], expired in August 2005.

Should you require further documentation I am quite willing to provide it. You are most welcome to look over the Fair Trading Tribunal files BU 2000/2082 and have my permission.

It has to date been a seven year ordeal for me and the end is not in sight although [redacted] have escaped the law. It started in August 1998 when I submitted plans to Blacktown Council to build my first home. Over the years what should have been a very straight forward matter has been made unnecessarily complex.

Although Fair Trading and the Tribunals had been involved, [redacted] was never fined or punished. As the consumer, I never broke the law, yet have been sued by [redacted], been forced to pay their legal fees as well as face \$44,000 to rectify [redacted] work.

There has been no protection for me as the consumer, yet all along, [redacted]'s blatant breaches of the Home Building Act have been excused. The statute of limitations is now up, and the only recourse I have is a Supreme Court appeal based on an error of law. This would cost a further \$15,000.

I believe the Minister should be fighting this, since proceedings in the Penrith Local Court (in 2002) have totally undermined the Home Building Act.

I was struggling to meet costs to build the house to start with.

No consumer is prepared for legal fees as well as costs for remedial works on top of their building costs. The builder enjoys protection because the consumer is already financially stretched.

Legal advice and representation is very expensive and is not a tax deductible business expense for the consumer. It is for the licence-holder.

The Building Issues

Cost

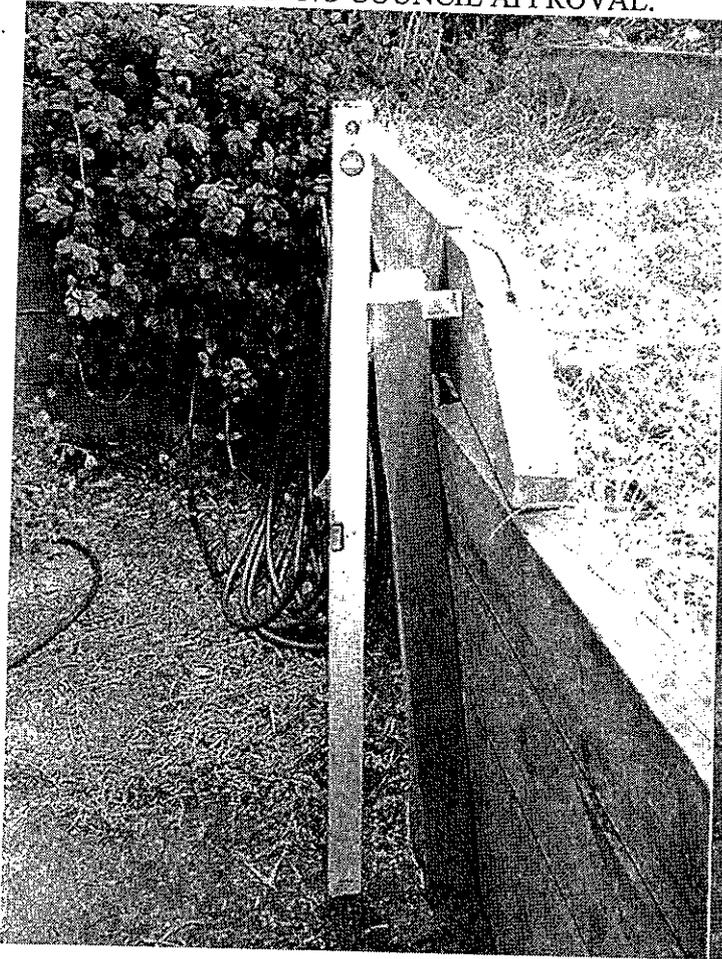
In 1999, I had paid off my land and had \$60,000 in savings. I expected to borrow only \$50-\$60,000 to build a nice home. It would have built a very nice 23 square Beechwood home.

[redacted] advised a cost of \$90,400 when plans were submitted to Council. Five days before commencing work, they hit me with a list of exclusions I estimate to cost a further \$60,000.

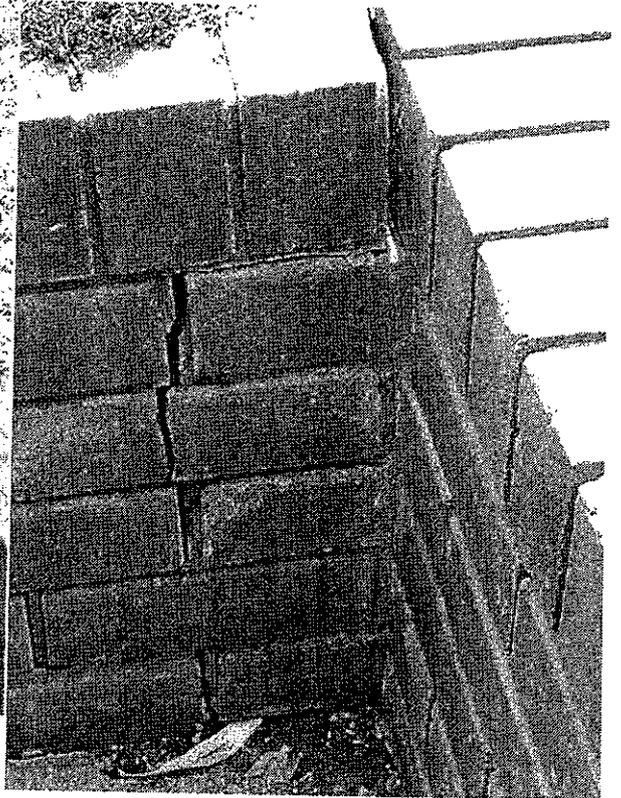


Retaining Wall and unconscionable conduct

excavated my site on Monday 22 March 1999 –there was no contract, no Home Warranty Insurance and as I later learned –NO COUNCIL APPROVAL.



They excavated a metre deep, less than half a metre from my neighbour's brick fence creating safety issues. I now could end up liable if my neighbour's brickwall fails further.



On the first day of construction, _____ phoned me at work advising it would cost \$1,920 to erect a retaining wall.

After the wall was erected. I was asked to write a cheque for _____ I now know . _____ were not licenced to erect retaining walls. Again, there was no contract and no Insurance in place –all managed by _____

Several years ago, sections of the 21.6metre retaining wall started leaning and council has refused approval which prevents me ever getting a Certificate of Occupancy, and hence, insurance. It has been costed at \$18,000 to replace this retaining wall.

Contract (Attachment A)

The contract remained unsigned and hence, legally unenforceable. It was drawn up 9 days after work commenced and fails to meet obligations of disclosure. I was not handed a copy until 6 weeks after work commenced, but didn't sign having become wary. Foremost in my mind, they had not confirmed costing.

Home Warranty Insurance (Attachment B)

As a Consumer I was not aware of this requirement until after the second Fair Trading Tribunal in July 2000. **The insurance was not forthcoming until October 2005 –after more than 6 years!**

Numerous complaints through Fair Trading and the Minister failed to obtain a copy. Tribunal Hearings and Court hearings also failed to deliver it to me. I was firmly convinced it did not exist until a year ago. When finally “recovered”, the policy was issued by the failed HIH company.

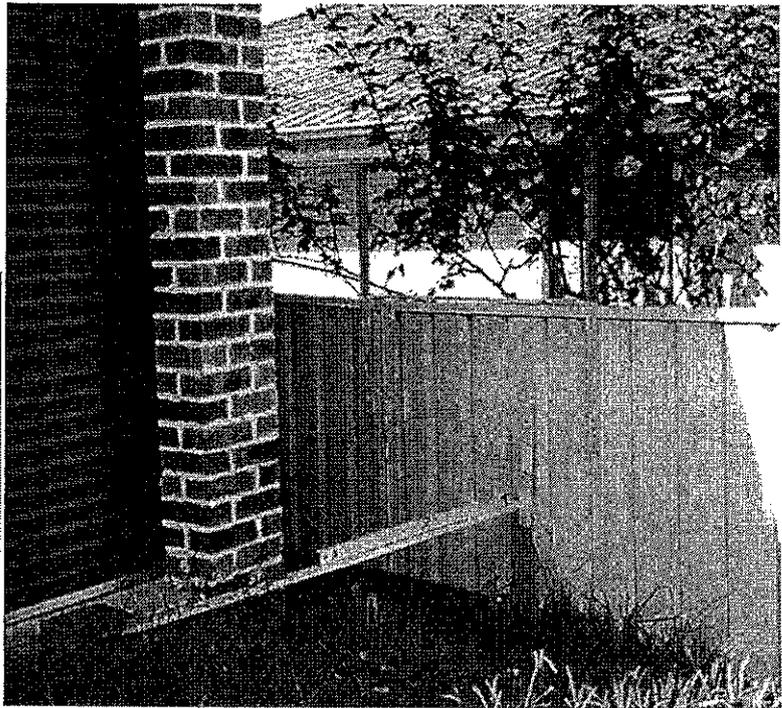
The one page policy had no details on it, and does not comply with the Home Building Act in that it does not have my name or address on it. Apparently Fair Trading allowed this type of policy although it is not in accordance with the Home Building Act.

Council Conditions

- had ignored many of Council’s requirements.
- They commenced work without Council approval.
- They breached Council’s tree preservation order.
- Never had a sign or toilet on the site.
- They failed to have the retaining walls designed by an engineer.
- Council’s inspection reports were with-held from me by _____ so I didn’t know what was going on.

Slab (Floor) Level

_____ also raised the level of the slab by 600mm more than shown on the plans. This created the need for piercing at a cost of over \$2,000 and made the drive through garage useless.



It will cost over \$20,000 to adjust the back yard to what it should have been, based on the plans. Costly because the sewer main runs through the back yard and has to be excavated and concrete encased to protect it.

I terminated _____ in July 1999. As they had never provided proper costing, I had never signed their contract.

The Fair Trading Tribunal (2000) File BU 2000/2082

Fair Trading immediately referred me to the Tribunal under the pretence it would be *informal, timely, and inexpensive*.

Being overcommitted financially, I was not able to afford Legal advice.

It was very soon apparent, that I was the amateur against the licenced "expert".

The roles had been reversed with me having to prove everything the builder had failed to detail in the contract.

In hind-sight, I was the only one who didn't know the law.

The unsigned contract and failure to provide Home Warranty Insurance were before the Tribunal but were never documented or reported on by the Tribunal. Recordings of the Hearings were incomplete, leaving me with no way to prove what was dealt with in Tribunal.

I was also disgusted at the contradictions and lies in written statements provided by [redacted] Although I complained in writing (Attachment C), nothing was done.

The Tribunal, instead of upholding the law had us reach an agreement (Attachment D) which was issued as a fairly standard Notice of Order, where neither party owed the other any money.

[redacted] went on to sue me in breach of this "order" which the Tribunal has refused to uphold (Attachment E). This "order" and the Tribunal Hearings proved a meaningless waste of time and tax payer money.

Parramatta Civil Court (2001)

I had been personal friends with the Directors of [redacted] and had loaned them \$4,000 in 1995.

The Tribunal advised this loan was not in its jurisdiction and it was excluded on the Notice of Order.

I commenced action to recover the loan only weeks before the statute of limitations would have wiped the debt. The Court upheld my claim since the money had never been loaned to [redacted].

Office of Fair Trading – Home Building Service? (2002)

I'm not sure if the Home Building Service was in Operation when I complained to the Minister in 2002.

Attached is a series of letters which highlight the protection the builder has received, either intentional or unintentional, from Fair Trading:-

(Attachment F) A formal caution was issued for non-completion of a contract and non supply of Home Warranty Insurance.

(Attachment G) The formal caution(s) were never marked on the [redacted] licence.

(Attachment H) 2 years later, the Minister advised the formal caution was only issued based on information I provided.

(Attachment I, J) Other letters I received before the "formal caution" was issued indicated to me that my complaint was being fully investigated!

(Attachment K) Under Freedom of Information, I got a copy of the Formal Caution.

It is notable that the licence holder was told of their liability, but my letter (Attachment F) did not tell me of my consumer rights. I believe this highlights that Fair Trading has a serious conflict of interest.

Fair Trading doesn't appear to represent both, the consumer and the licence-holder with impartiality.

Penrith Civil Court (2002)

[redacted] engaged a solicitor and successfully sued me for their management fee (Attachment L).

Again, I was unable to afford legal advice or representation.

This action breached the Tribunal's Notice of Order and enforced an unsigned contract which was unenforceable under the Home Building Act.

Despite the fact I provided the magistrate with a copy of the Act, he persisted and handed down judgement contrary to the Home Building Act. In the absence of details for the Tribunal's Order, I had no way to defend myself and no hope of appeal. Although I notified the Tribunal well before this court hearing (in at least May 2002), they remained completely unsympathetic and unhelpful.

Consumer, Trader and Tenancy Tribunal (2005)

In December 2004 I attempted to lodge a residential building complaint at the Parramatta Office of Fair Trading. I was **not allowed** to do this and instead forced to lodge another application to the CTTT. Whilst I was forced to get legal representation, it was of no use. Whilst [redacted] solicitor defended that the matter had been fully heard in the Penrith Court, my solicitor's counter argument was never heard. The member made Orders against me but also stated he was **not convinced** my actions were frivolous of vexatious. Again, there was a failure with the recording equipment. Not having broken the law, my legal fees were \$3,800 and I was ordered to pay theirs -another \$1,958.

Home Building Service 2005

Whilst Tribunal proceedings progressed through 2005, I had written yet another complaint through my Local Member to the Fair trading Minister. In June 2005 a Fair Trading Building Inspector came and inspected the work done by [redacted]. After his inspection I received a letter from the Minister stating he saw no problem with the work done by [redacted] (Attachment M).

I then complained about his "assessment" and a breach of his Code of Conduct on 29 September 2005. On the 24 October, emails I had sent the Inspector were deleted without reading them:-

Date: Yesterday

	Not read: [redacted]	Mon 24/10/2005 5:07 PM
	Not read: [redacted]	Mon 24/10/2005 5:07 PM
	Not read: [redacted]	Mon 24/10/2005 5:07 PM
	-Photo Sheets (attached)	Mon 24/10/2005 5:07 PM

In a letter dated 23 December 2005 (Attachment N), the Minister offered the more qualified answer that I had been unable to provide evidence of who built the retaining wall. The matter of the floor level remained totally ignored. To date, Fair Trading has not recovered the deleted e-mails which made clear who built the retaining wall **and** who managed it. The Minister referred my September complaint to the ICAC who cleared the Inspector, not knowing my e-mails had been deleted. I again complained through my Local Member, providing copies of my emails and some attachments.

Home Building Service 2006

A few weeks ago, on 30 October 2006, I was visited by another Home Building Service Inspector looking into the behaviour of the previous Inspector. It is yet to be confirmed in writing, but he advised [redacted] and the contractor who built the retaining wall could not be prosecuted as more than 7 years had passed. He advised [redacted] had acted unconscionably concerning the retaining wall and that the contractor had not been licenced to erect the wall -also working without a contract or insurance. I would still maintain the wall was built under [redacted] management and control. If the previous Inspector had acted on the information I provided, [redacted] and their contractor would have been prosecuted within the 7 years!

In Conclusion

Firstly, apologies for the length and complexity of this letter.

Whilst I do only in part cover the actions of the Home Building Service, I think it is also important to detail what I have been put through and yet, still failed to obtain a "Fair" go.

After my experience, I have to wonder how often licence holders get away with ripping off the consumer right under the nose of the minister for Fair Trading.

I have really not had a good experience of Fair Trading or the Home building Service.

I believe there is effectively no consumer protection and have lost confidence in the system.

I cannot come to terms with the behaviour of Fair Trading, the Minister or the Home Building Service.

The Home Building Service acts as a Mediator between the Consumer and the Licence holder. It may prosecute a licence holder, but relatively paltry amounts compared to the costs of damage they do. Even a Rectification Order has no teeth and can be ignored with minor consequence.

Meanwhile, the consumer must accept substandard work because they:-

- ❖ have a mortgage over their heads
- ❖ face costly delays during which they must pay rent
- ❖ bear cost of repairs for faulty work
- ❖ face unexpected legal fees which can easily exceed the cost of the house they are building.

The delays caused me meant I have had to pay GST on my first home and I was made ineligible for the First Home Owners' Grant. I have faced penalties all through, yet the builder just walks away.

Licence holders have no deterrent for doing dodgy building work.

It is time they faced personal liability for their actions, perhaps even facing criminal charges.

Once licence-holders operate outside the law and the Home Building Act, they should be deemed to be operating without a licence.

Fair Trading should also be more "up front" with Consumers –not with-holding information as they did with me.

I sincerely hope your Inquiry puts an end to this regime of consumer abuse.

Thank you for taking the time to look into this and for your efforts on behalf of Consumers like myself.

Sincerely,

Chris Fitzgerald