

Submission  
No 30

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

**Organisation:**

**Name:** Mrs Kalavati Magan

**Telephone:**

**Date received:** 17/11/2006

---

Please note the authors have retracted the request for confidentiality for this submission, however, it has been kept partially confidential by resolution of the Committee.

**S u b m i s s i o n t o t h e  
G e n e r a l P u r p o s e  
S t a n d i n g C o m m i t t e e  
N o . 4**

**I n t o t h e O p e r a t i o n s o f  
T h e H o m e B u i l d i n g  
S e r v i c e**

**B y : K a l a v a t i M a g a n**

**S u b m i s s i o n t o t h e  
G e n e r a l P u r p o s e S t a n d i n g  
C o m m i t t e e N o . 4**

**I n t o t h e O p e r a t i o n s o f  
t h e H o m e B u i l d i n g  
S e r v i c e**

**Personal Details:**

**Name:** Kalavati Magan

**Resides:**

**Ph/Fax:**

**Mob:**

**Email:**

**Licensed Builder:**

**Name:**

**Licence No:**

**Statutory Declaration:**

I, Kalavati Magan in the state of New South Wales of  
do not solemnly swear and sincerely declare the following statements are true  
and correct and I am happy to give further sworn evidence orally answering any  
questions the committee may ask.

*Sworn before me at Liverpool  
16/11/06*

*N. Burns J.P.*

1

*Kalavati Magan  
K. Magan*

## Summary: Building of BRAND NEW Project Home

My Husband and I inspected a flawless exhibition home in Casula.

On 15 April 1999, Licence No. \_\_\_\_\_ signed a building contract with Mr and Mrs Magan to build a two storey full brick dwelling for \$203, 616.

We blindly trusted this licensed builder to build for us the same house as the one exhibited to comply with all relevant laws.

On 25 January 1999 (P.H) drew and prepared architectural plans, engineering storm water plans and lodged D/A application to Liverpool City Council.

On 5 March 1999 Liverpool Council as the PCA approved plans and specifications.

On 25 January 2000 (P.H) issues progress claims certificate requesting final payment for final stage of works: Practical completion and advised us the home was completed.

After we moved in we noticed there were a lot of problems: water penetration through internal ceilings throughout the house, floor movement, broken roof tiles, cracks and much more. An independent building consultant Mr. Andrew Phillips was called to assess the building works.

After 6 years of suffering since signing a building contract with combined with my poor English skills and as we were unaware of our rights and entitlements; the stress, inconvenience, embarrassment; financial burden has overwhelmed us.

On 7 March 2002 Mr Phillips fell down seriously defective driveway and was hospitalised. We have been advised that he has received substantial compensation.

During this time we spoke with legal aid and numerous other people including our Local Parliament Member and trusted implicitly the advice provided.

My poor command of the English language meant that I relied solely on the information provided by these professionals.

Our Building consultant Mr. Phillips referred me to BARG.

It was only when I was advised to go see BARG in June 2005, in my hour of need that I was given a ray of hope.

BARG advised me that OFT was in existence to help me. I should put my trust in the system and lodge a complaint.

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

*[Handwritten mark]*

*Katiana Magan*

*2 2/2*

BARG explained to us that OFT is the 'regulatory authority' that resolves consumers complaints and that we should lodge a complaint.

I was not advised by anybody before to lodge a complaint against my Builder. I was not even aware that the OFT existed.

NB: To-date my home cannot be considered complete as the builder has not obtained a satisfactory final occupation certificate has been issued.

\*\*\*\*\*  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144821



# TERMS OF REFERENCE

## a) The Building Licensing System

I am ethnic widower with 3 young children with poor command of the English language. I trusted implicitly this licensed builder believing they had the appropriate qualifications, skills and experience to build our dream home.

After we moved in we noticed there were a lot of problems: water penetration through internal ceilings throughout the house, floor movement, broken roof tiles, cracks and much more. An independent building consultant Mr. Andrew Phillips was called to assess the building works.

When I was referred to BARG by our Building consultant Mr. Phillips in June 2005, I was advised to get a copy of our D/A file from Liverpool Council, I discovered that the building works were not appropriately certified I then commissioned a structural engineer Mr. Alfred Frasca to assess the building and report whether the house as constructed was complying with D/A Plans, Specifications BCA, AS.

BARG explained to me that I could in fact check the builder's record from the Licence Register on the Home Building Service website. This was all new to me; when I checked, we discovered that a total of **FOUR** statutory insurance claims were paid.

This means that at least four other families have been caught victims of this same builder before us as we found out now.

### "Number of statutory Insurance Claims Paid: 4"

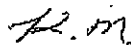
*"Approved by the Building Service Corporation/ Office of Fair Trading under the Comprehensive/ Special Insurance Scheme prescribed by the Home Building Act 1989."*

**Refer: Attachment 1 (Status of Licence Number Pg 2)**

I cannot understand how the company being just an entity was not penalised but not the actual 2 qualified supervisors (directors also) have no penalty shown in their individual licences.

It is evident from documentary and visual evidence that this licensed builder have not the adequate skills and qualifications required to build according to relevant legislations. He exhibits homes that look beautiful and are well built, but what he builds for people are "Lemons".

Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144821



The current licensing system is completely flawed and inefficient.

Why has the OFT did not discipline this builder?

It certainly means that he had carried out defective work for 4 other families!

I personally believe that the Office of Fair Trading is liable as they issued the weapon a Licence with which to single-handedly ruin our innocent family.

OFT does not comply with statutory functions when they allow such an offender who has breached and continues to breach the HBA without a deterrent to build defective homes.

NB: On 15/11/06 I checked Licence No. on the Licence Register of the Home Building Service and noticed that a special condition has been placed on the Renewal of Licence i.e.

***"ONLY FOR CONTRACTS NOT REQUIRING HOME WARRANTY INSURANCE FROM 14/10/2006 TO THE DATE OF THIS CERTIFICATE"***  
**Refer: Attachment 1 A**

*This means can only build up to the value of \$12,000 contracts.*

On 15/11/06 I went with my friend Mr S. Khilwati to at to check if are still exhibiting houses like ours.

I was able to see and inspect houses and asked for literatures and prices and I was given the following:

- a) Award Winning Builders – Brochures  
**Refer: Attachment 1 B**

- b) Lic. No which is the same Licence which states: -

***"CONDITIONS: ONLY FOR CONTRACTS NOT REQUIRING HOME WARRANTY INSURANCE FROM 14/10/2006 TO THE DATE OF THIS CERTIFICATE"***

How can build if they have a restriction of only for contracts not requiring HWI from 14/10/06?

Justice of the Peace  
In and for the State of New South Wales Australia  
New Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

Isn't **breaking the law? You must your most urgent attention and action is required as too many consequences can be caught even in a worse manner than us.**

### FOI Request

On **21/2/06** I lodged an application under the FOI Act requesting access for a copy of the original licence application file and a copy of P.H 4 statutory insurance claims details.

On **13/3/06** the OFT replied requesting **\$1380** as follows:-

*"An **advanced deposit** of \$690 is sought before 27/3/06... "Estimated time to complete application **46 hours**. Estimated total cost **\$1,380**"*

**Refer: Attachment 2**

I am a widower with 3 children – Where exactly do you expect us get this large amount of money within your 2 week deadline???

The builders are the criminals here. We have done nothing wrong. Our only mistake was believing that consumer protection is the utmost concern of Government.

This is an obvious attempt by the Department to deter consumers from obtaining these documents and to restrict our Freedom of Information.

**For an organization claiming to protect the interests of consumers the OFT/HBS charging \$30 per hr is ludicrous.**

My mother has been forced to clean hotel rooms and only receives \$13 per hour.

**How can the OFT/HBS justify charging \$30 per hour.**

I paid an application fee of \$30. What was this for?

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
48 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144821



## TERMS OF REFERENCE

### b) The Home Warranty Insurance Scheme

The Home Warranty Insurance is to protect consumers if the builder carries out defective work.

My insurance cover is **NOT** a Last Resort i.e. I believed I had 7 years cover for all defects from the date of completion. The Insurer treated our claim as a last resort.

On 13/4/99 a Home Owners Warranty Certificate of Insurance was issued to D &K Magan. Refer: Attachment 3

After we moved in we noticed there were a lot of problems: water penetration through internal ceilings throughout the house, floor movement, broken roof tiles, cracks and much more.

We were forced to commission an independent building consultant Mr. Andrew Phillips to assess the building works as the builder did not fix all of the problems and I was deeply concern about that water penetratation. As water was leaking inside and out.

Mr Phillips produced a defective work report dated 9/8/01.

On 11/9/01 I provided to \_\_\_\_\_ copy of defective work report.  
Refer: Attachment 4

On 10/10/01 a meeting was held between the builder, the building inspector, and I. The builder refused to rectify all problems outlined in the building inspection report.

On 24/0/02 I sought the assistance of South West Legal Center 'Legal Aid' were Fiona Allison (Solicitor on behalf of South West Legal Center) wrote a letter on our behalf to Home Owners Warranty stating:-

*"We have written to the builders, sending them a detailed and lengthy inspection report compiled by Phillips Building Consultants and Inspectors... The builder refused to rectify all problems outlined in the building inspection report. The problems that they choose to rectify have not been adequatly dealt with"*

Refer: Attachment 5

Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

*NTB*  
*LM*

On 24/0/02 I sought the assistance of 'Legal Aid' where Fiona Allison wrote another letter to us stating:-

*"I have today notified the insurance company, HIA Insurance, of your claim against. Pty Ltd. They advised that they will now notify the builder of the complaint and give the company 14 days to respond directly to you about the complaint. If they do not respond or, if they builder says he will fix the problem but does not satisfactorily do so you should contact the insurance company and let them know. "*

*"You have also asked about how to recoup the \$1400 you have spendt to pay the building inspector. The Builder owes you this money. You have a right to first write to him and ask him to pay it to you. If he does not do so within a certain time (14 Days usually), you can take him to court. You should lodge a small claim in the local court..."*

**Refer: Attachment 6**

On 24/0/02 Royal and SunAlliance responds to a telephone conversation with the writer on 21/01/02, in relation to the concerns you have expressed regarding alleged defective and/or incomplete work. They advised:-

*"If your builder has not contracted you within 14 days of receipt of this letter, please notify us in writing, quoting the above certificate number. We will then forward a claim form to you".*

**Refer: Attachment 7**

On 7/3/02 I lodged a How Owners Warranty Insurance Claim.

On 7/3/02 Mr Phillips fell down seriously defective driveway and was hospitalised. We have been advised that he has received substantial compensation.

On 3/7/02 following our Building Consultants advice I lodged a claim. Claim No N02/00364 form to Royal & Sun Alliance HOW attaching copy of Preliminary Defective and Incomplete Work Report by Phillips Building Consultants and Inspectors Pty Ltd .

It is to be noted after the accident of Mr Phillips an Independent Building Consultant was commissioned by Home Warranty Insurance to inspect and assess our Driveway to determine accuracy of our claim.

On 26/7/02 LAC Building Consultants provide a copy of their report. At page 2 point 1.0 Mr Scott Whitton from LAC Consultants stated: -

*"1.0 I inspected the scene of the accident on 25/3/02. Photographs were taken and are attached and referred to in this report. Measurements and levels were taken, and from these, two drawings were prepared, which shows the gradient of the drive, together with the maximum gradient allowed by the Liverpool Council*

.....  
Justica of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
48 Lucas Ave MOCREBANK NSW 2170  
Australia  
Registration No: 144821

8

development Control Plan. The Drawings are attached as Appendices "A" and "B".

And at his summary Page point 2.0- 2.1 Mr Scott Whitton:-

2.0 "The driveway is too steep to provide safe access for persons using it. The surface appears likely to have contributed to the slip. Once a slip, involving a person coming down the drive, then the combination of the gradient and the forward motion, would be difficult to arrest, and the slip could continue from the smooth finish of part of the surface, across the rougher finish, by virtue of the inertia in forward motion induced by the steepness of the slope and the persons body weight."

2.1 "In my opinion the construction of the drive in the sloping areas, which are greater than allowed by Council regulations, is dangerous. The conditions generated by the design and construction, created a condition, where it is almost inevitable that an accident would occur at some time, involving a person using the drive, for access to and from the house. Refer: Attachment 8

On 3/7/03 Royal Sunalliance provide Owner with Schedule. Stating: -

" *has been directed to contact you to arrange a date for the commencement of rectification Schedule.*" Refer: Attachment 9

How can Vero now exclude this serious defect?

On 8/3/04 Vero provides an amended Inspection Summary detailing the findings of this reinspection. Refer: Attachment 10

When I was referred to BARG by our Building consultant Mr. Phillips in June 2005, I was advised to get a copy of our D/A file from Liverpool Council, I discovered that the building works were not appropriately certified I then commissioned a structural engineer Mr. Alfred Frasca to assess the building and report whether the house as constructed was complying with D/A Plans, Specifications BCA, AS.

We lodged our amended claim to Vero on 6.6.06 attaching with it a very detailed and comprehensive appraisal report by Alfred Frasca.

On 4.7.06 , 6.7.06 and 12.9.06 28.7.06 requested 4 extensions of time over and beyond the 45 days as legislated. This made a total of 118 days for Vero to assess our very delayed claim for a further extension although our claim was based on the report attached. Refer: Attachment 11

It took all this time to only identify 5 defects? We noted that the items accepted in the list are only 5 out of a total of 135 critical, serious defects. Refer: Attachment 12

## TERMS OF REFERENCE

### c) The Resolution of complaint

Our complaint has not been resolved as we have not been provided with any result of Licence faculty.

Being the first home we built we were unaware of our rights and entitlements. When we discovered problems we rang the builder to come and fix them. The builder on 17.4.00 requested us to complete a form they provided called a maintenance list. My very sick husband using all his strength and common sense listed 13 items. That was obvious at the time to the untrained, unqualified eye.

**Refer: Attachment 13 (Maintenance List 17.4.2000 listing 13 defects)**

P.H came and fixed some of the minor defects but not all. Some of the defects listed today have not been rectified i.e. in my Husband's bad English "Down pipe split and pipe should be running down" as stated in the above list.

We noted significant water penetration around the 1<sup>st</sup> and 2<sup>nd</sup> floor and through internal ceiling throughout the house. We had to call Emergency services during a storm as we flooded. We then engaged the services of Phillips Building Consultants.

On 22/1/02 Alison Meggarity MP Member for Menai made representations on our behalf to Hon John Aquilina MP, Minister of Fair Trading. **Refer: Attachment 14**

On 7/2/02 in response to Ms Alison Meggarity, representations, Mark Lynch Case Co-ordinator Building Disputes Unit writes to us stating: -

*"The Minister for Fair Trading has established a Building Disputes Unit in order to resolve disputes involving home residential construction work... I request you contact me..."*

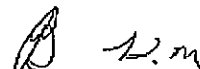
**Refer: Attachment 15**

On 13/3/02 a mediation session had taken place. **Refer: Attachment 16**  
(Terms of agreement reached following mediation)

After 6 years of suffering – (made worse) combined with my poor English skills as we were unaware of our rights and entitlements; the stress, inconvenience, embarrassment; financial burden has overwhelmed us.

Our Building Consultant Mr. Phillips referred me to BARG.

BARG advised me that OFT was in existence to help me. I should put my trust in the system and lodge a complaint.



**BARG explained** to us that OFT is the regulatory authority to resolve consumer complaints and we should lodge a complaint.

On **21.2.06** we lodged our complaint against P.H with OFT attaching Mr. Frasca's Structural Engineering report (2 Volumes) dated **30.11.05**. An additional report dated **2.2.06** recommending demolition was issued by Alfred Frasca.

Refer: **Attachment 17**

On **4.5.06** Mr. Peter Stubbs a Principle Building Inspector calls and advises that he would be conducting a site meeting on Monday **15/5/06** at 10 am on site. During this telephone conversation I requested for Mr. Frasca be present during this meeting to represent our interests as we do not understand the full extent and seriousness of the structural defects.

Mr Stubbs advised that: - *"If Alfred Frasca is on the premises at this time the builder will leave"* Therefore I was forced to accept his inequitable ultimatum.

On **8.5.06** I requested whether Mr. Stubbs has structural engineering qualifications to assess Mr. Frasca's structural reports.

I called OFT/HBS and spoke to Mr. Newton who advised me: - "Peter Stubbs will make that call" whether or not an engineer is necessary.

It is evident that we had no choice but to accept what it was the HBS decision, which in my view is a "measly consumer protection" that the OFT was offering as we weren't given a choice in the matter.

On **15.5.06** a site meeting was held between OFT Officers Mr. Peter Stubbs, Mr Rick Matesic and Ian Paton and \_\_\_\_\_ representing \_\_\_\_\_. We followed Mr. Alfred Frasca's report. Mr. Stubbs provided a Compliant Inspection Advice stating:-  
*"Contractor agreed to fax copies of all certification relating to the construction of the house by 19 May, 2006"*

Refer: **Attachment 18** (Complaint Inspection Advice File No: C 2006/4955)

On **17.5.06** P.H representatives arrived onsite - **without prior notice** to excavate an exploratory test pit located at the South Western corner. They left the hole uncovered and hazardous further endangering my family and any persons walking in the vicinity.

On **18.5.06** Peter Stubbs calls to advise the builder excavated exploratory test pit and found piers contrary to what Mr. Frasca stated. Mr Stubbs advised he wanted to come back on site to take photographs. We had to call Mr. Frasca on site at the same time to prove the defective work.

Refer: **Attachment 19** (Alfred Frasca's letter dated 22.5.06)

\*\*\*\*\*  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

The OFT's protracted delay is causing massive financial hardship and undue stress to my family with the additional structural engineers and consultants to prove the defects, copious correspondence is creating a very stressful family situation.

**Refer: Attachment 20 (List of experts)**

In the contrary, after 8 months since we lodged our complaint to the OFT obtaining 11 reports, at a cost in excess of \$20000, 6 years of suffering to prove the serious, critical defective work on 14/9/06 received OFT letter advising that: -

*"The Principal Building Inspector concluded that from his inspection of the premises there was no evidence of defective work".*

**Refer: Attachment 21 (OFT letter dated 14.9.06)**

The decision of the OFT is reducing our chances of winning any dispute resolution as being a Statutory Authority the Builder will use this OFT decision against us.

This is how damaging the OFT decision is.

In this same letter dated 14/9/06 OFT/HBS claimed: -

*"A site meeting at our home on 15.5.06 to attempt a mediated settlement of our dispute with the contractor. The dispute was dealt with on the basis of an agreement to certain actions taken by the builder and a compliant inspection advice form gave effect to the terms of the agreement."*

In actual fact on 15.5.06 a site meeting was held between OFT Officers Mr. Peter Stubbs, Mr Rick Matesic and Ian Paton and \_\_\_\_\_ representing \_\_\_\_\_. During this meeting we went around looking at all defects as listed in the Appraisal of Building Works Report by Alfred Frasca and Associates

**We did not understand what Mr Stubbs meant: "attempted a mediated settlement" These words were not ever mentioned during this meeting.**

We then asked BARG for assistance in explaining what a **mediated settlement** is.

My daughter and I deny emphatically and state that, **No Mediation** had taken place. Mr Stubbs provided a Compliant Inspection Advice only which states:-

*"Contractor agreed to fax copies of all certification relating to the construction of the house by 19 May, 2006"*

**Refer: Attachment 18**

OFT has not provided me with any assistance or mediated facility on that day or any other day, furthermore:-

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144821 12

*NS* *LM*

- a) Did not assess defects by an appropriate qualified structural engineer
- b) No attempt was made to mediate between the two parties. I was not even aware that a mediation process existed. The day he came he didn't explain procedures or options available, if any.

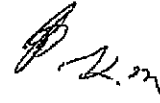
On 20.9.06 we requested Mr. Frasca to assess and reply to OFT letter dated 14.9.06 as we could not accept the OFT's assessment (especially when Mr. Stubbs has no Engineering Qualifications). Mr Frasca stated: -

*"The statement by OFT in their letter dated 14 September 2006 that "there is no evidence of defective work" is incorrect.*

*We are prepared to meet any structural consultant on site to demonstrate the areas of structural inadequacy and the non-compliance with a D/A approved plans, council conditions of consent, BCA, and Australian Standards".*

Refer: Attachment 23 (Alfred Frasca's letter dated 22.9.06)

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
48 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144821



## TERMS OF REFERENCE

### d) The exercise of disciplinary powers

Only after 6 years of suffering since signing a building contract with  
(made worse) as we were unaware of our rights and entitlements and only found out OFT  
existed.

BARG explained to us that OFT is the regulatory authority to where consumers can  
lodge complaints and we should lodged a complaint and attach the experts reports.

On 21.2.06 we lodged our complaint against with OFT.

I put my complete trust in this system which has yet again failed me miserably. I am  
back to square one.

Although has clearly breached EP&A Act by not complying with  
Council D/A Conditions of consent, HBA sec 18B, BCA and AS.

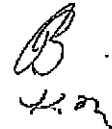
The OFT did not recognise the breaches and Non compliances of

**NO DISCIPLINARY ACTION HAS BEEN TAKEN!**

This is unfair and unacceptable.

**THE LAWS ARE BREACHED BUT NO CONVICTION?**

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
New Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621





In the contrary, after 8 months since we lodged our complaint to the OFT we had obtained 11 reports i.e.:-

1	9/8/01	DEFECTIVE WORK REPORT BY PHILLIPS BUILDING CONSULTANTS AND INSPECTORS PTY LTD
2	23/5/02	Preliminary Defective and Incomplete Work Report by Phillips Building Consultants and Inspectors Pty Ltd
3	24/5/02	Report Eccles Clarke and Associates Pty Ltd – HOW Claim No2/00364
4	29/6/02	Report Dr B N Emerson –
5	30/11/05	Appraisal of Building Works Report by Alfred Frasca and Associates
6	3/8/05	Pest Report by PESTFORCE
7	1/18/05	Roof Truss Report by MITEC AUSTRALIA LTD
8	8/11/05	Roof Truss Report by Forest NSW
9	2/2/06	Alfred Frasca and Associates – Brief report recommending demolition
10	22/5/06	Alfred Frasca and Associates – Brief report detailing second pier inspection
11	20/9/06	Alfred Frasca and Associates Brief report – Brief report dated assessment and reply to OFT letter

At a cost in excess of \$20000, 6 years of suffering to prove the serious, critical defective work on 14/9/06 received OFT letter advising that: -

*"The Principal Building Inspector concluded that from his inspection of the premises there was no evidence of defective work".*

The decision of the OFT is reducing our chances of winning any dispute resolution as being a Statutory Authority the Builder will use this OFT decision against us.

This is how damaging the OFT decision is.

In 6/10/06 I received a letter from Liverpool City Council as the PCA who has provided us with a copy of a letter dated 26/10/06 written to in relation to:-

*"Documentation received from Alfred Frasca's and Associates concerning several matters relating to structural and architectural finish of the subject dwelling. Seeking confirmation on some of these issues"*

**Refer: Attachment 23**

It is evident that Council has acknowledged Alfred Frasca's report and is accepting his assessment and has requested to provide a response.

On 9/10/06 I received correspondence from Vero Insurance:-

*"We advise your claim has been determined as the outlined in the attached inspection summary"*

Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

*B*  
*2.07*

We noted that the items accepted in the list are only 5 out of a total of 135 critical, serious defects. Even Vero noted at least 5 defects. Refer: Attachment 11

**This clearly demonstrates 3 separate Government/ Insurance Bodies are assessing and concluding in 3 very different ways about defective work.**

**Why?**

**Is the OFT's Inspection so bias and/ or unqualified?**

**Can this respectful Committee assess and consider the OFT's actions? Certainly experts cannot be wrong especially Alfred Frasca to put his professional career at stake.**

**Especially the quote in his brief report of 20/9/06, Refer: Attachment 22 stating:-**

*"We are prepared to meet any structural consultant onsite to demonstrate the areas of structural inadequacies and the non - compliance with the DA approved plans, council conditions of consent, BCA and Australian Standards"*

We, like Mr. Frasca, dare and request any qualified expert engineer to meet on site with Alfred Frasca so that we can compare lemons with lemons, no apples with lemons.

For the past 6 years my family have suffered undue physiological, financial and emotional hardship.

My eldest daughter at 20 years old is forced to put her education on hold indefinitely to assist me in concluding this matter.

My second daughter at 19 years old has not even completed year 10 studies.

My son at 16 is in this final year at school completing HSC and is forced to take on work to support us. He is unable to concentrate on his studies.

I hold liable the Office of Fair Trading who refused to enforce the HBA 1989 as per their statutory duties and continue to force my children and I to live in a health hazard house endangering their lives.

After the loss of my husband, this dispute has consumed me. I have had no assistance from anyone struggling to make it alone.

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

When my husband and I at age 24 came to Australia in 1979. We believed this was the land of opportunity. A place where we could bring children into the world. Teaching our child honesty and hard work.

Worked as a team. Day and night so one day we could also have the great Australian dream of owning our own home.

However what started of like a wonderful dream promptly became the very Australians nightmare that put my husband into the grave and we are still continuing to suffer.

Our years of hard work and love gone down the drain.

**To date OFT/HBS have failed to carry out their statutory duties towards my family and the public at large.**

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

*B*  
*Rm*

e) **The enforcement of relevant legislation**

I was advised to go see BARG in June 2005, I was advised to get a copy of our D/A file from Liverpool Council. I discovered that the building works were not appropriately certified I then commissioned a structural engineer Mr. Alfred Frasca to assess the building and report whether the house as constructed was complying with D/A Plans, Specifications BCA and AS.

On 30/11/ 05 Alfred Frasca and Associates provided the completed report.

Where we discovered many non compliances of:

- Environmental Planning Assessment Act BCA & AS
- Council conditions of consent – have not been complied

**Refer: Attachment 22A**

Firstly, the EP&A Act states the before a builder can commence construction he must obtain a D/A from Local Council and build according to the plans and conditions of consent.

Provincial Homes has not done this and we are forced to pay the ultimate price. Forced to live in a health hazardous, structural defective, non compliant house.

Secondly, EP&A Act states that compliance certificate must be issued for the critical structural stages.

Alfred Frasca stated: (See his letter of reply to OFT 20/9/06, page 1-2)

**Refer: Attachment 22**

*"We have received the certificates enclosed in Fair Trading letter dated 19 July 2006, and we note that Fair Trading has accepted the certificates without verifying the validity and accuracy of the certificates; whether or not the certificates are in accordance with the EP&A Act.*

*In particular we note the following:*

- a) *The letter dated 13 July 1999 is not acceptable as it is not an appropriate compliance certificate as prescribe by the EP &A Act. The letter implies certificates of the slab only. The letter does not provide any certification for the footings, or the installation and certification of any bored piers. Board piers are required adjacent to the Sydney Water Sewer in order to satisfy Sydney Water letter dated 24 August 2005 in Appendix No 11 in our report Liverpool City Council.*

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144621

*b) The ground floor slab has not been adequately inspected and certified. The ground floor slab was not built as specified on the contract council approved architectural and structural plans. The thickness of the garage slab (89mm and 94mm) as constructed is less than specified (100) in the contract council approved structural plans. Refer our report part 6.4."*

**Refer: Attachment 22B**

**1) In addition all Council Conditions of Consent has not been complied with. Refer to Alfred Frasca's report. Attachment**

**2) HOME BUILDING ACT 1989**

- a. Licensing
- b. Dispute resolution
- c. Disciplinary action

**3) Sydney Water Conditions of Consent**

**In conclusion EVERY Relevant Legislation has been breached in our house but WHO and HOW is it now going to be enforced if ever?**

**Our lives will be collapsing as our house.**

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
46 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144821



f) **The establishment of a Home Building Advice and Advocacy Centre**

After 6 years of suffering since signing a building contract with combined with my poor English and unawareness of our rights and entitlements.

We were desperate.

There was and is **No where to go to get independent Home Building advice.**

During this time, I did the best I could. I spoke with legal aid and numerous other people including our Local Parliament Member trusting and believing implicitly the advice provided.

I relied solely on the information provided by these professionals.

Our Building consultant Mr. Phillips referred me to BARG.

In June 2005, I met with BARG, in my hour of need I was given a ray of hope. BARG explained to me that there are organisations like OFT and Council in existence to help me. I should put my trust in the system and lodge a complaint.

**BARG explained** to us that OFT is the 'regulatory authority' who resolves consumer complaints and that we should lodge a complaint.

I was never advised by anyone before to lodge a complaint against the Builder. I was not aware it even existed.

I was never provided accurate information or advice detailing my options or facilities that existed. I was told to go to CTTT by my local member.

The Government is letting us down. Allowing us to enter into building contracts with incompetent builders knowing full well that if something were to go wrong we have **No leg to stand on.** Then OFT attempting to wipe their hands clean of the mess they created.

There is an **urgent need for an independent Home Building Advice and Advocacy Centre to assist before they start building, during or after when problems occur.**

The current system the OFT does not assist any person to lodge a complaint, or resolve it.

**Where do we go? Now?**

We are living in a seriously defective home with **No HOPE** or assistance by anyone but expensive lawyers!

.....  
Justice of the Peace  
In and for the State of New South Wales Australia  
Neil Thomas Burns  
48 Lucas Ave MOOREBANK NSW 2170  
Australia  
Registration No: 144821

