

Submission
No 53

**INQUIRY INTO REGULATION OF BUILDING
STANDARDS, BUILDING QUALITY AND BUILDING
DISPUTES**

Name: Name suppressed

Date Received: 24 July 2019

Partially
Confidential

Dear Committee

I am the owner of a property located in Wombarra, NSW (a northern suburb of Wollongong).

In August 2016 I engaged a local design and construct company to complete the design and construction documentation for my new home. That company was operated by two directors: Mr X (who described himself as a 'senior designer and project manager') and Mr Y (who held a residential building licence).

Between August 2016 and March 2017, the D&C company produced architectural and construction plans, bearing their logo, and submitted these to a Private Certifier. The Private Certifier was operating from premises adjacent to the D&C company.

In March 2017 the D&C company commenced construction of the home. These works, which comprised excavation and construction of footings, retaining walls and a basement level, were then completed at a cost of circa \$600,000. The basement comprised four garages and an entry way that was meant to be wheelchair accessible.

Following a civil engineering and independent architectural review, it was discovered that the works as designed and built could not accommodate either wheelchair access (the gradients being too steep) nor vehicular access (with gradients and transitions between garage spaces being too tight to avoid scraping and collision). I terminated the D&C company in November 2017.

Unable to face demolishing all that had been built and under the guidance of an experienced architect, I embarked on a redesign process to mitigate my damages and repurpose the structure. This was very complex and took some 10 months – with additional service design and waterproofing defects uncovered. The end result is a severely compromised design of 2 internal car spaces, a very expensive low profile car turntable (so as not to disturb retaining wall footings) and the installation of two stair lifts to accommodate disabled access. The redesign and rectification costs are in excess of \$400,000. Rectification works have just been completed by a new builder.

The D&C company refused to engage with me or acknowledge there was a problem. They told me I could "park my cars on the street" and that because the rest of the driveway connecting the garages to the street had not yet been built, the driveway wasn't in their scope of works and they had no obligation to check that the garages at the top could be accessed by cars or people.

I went to Fair Trading NSW who read my complaint and issued a certificate of failed mediation almost immediately. I was not requested to mediate or meet with anyone. I then instituted proceedings in NCAT in April 2018. The builder was given multiple extensions to the timetable and never required to explain or justify his delays or non-compliances. The NCAT proceedings were complex and very expensive. I should add that I formerly practiced as a solicitor in NSW for 10 years, so I was familiar with these types of processes. They were not accessible or geared to assist an ordinary consumer at all. The

Members at NCAT were aggressive to the home owner, gave the impression of being bored and non-plussed with the financial and emotional impact of the builder's dismissive behaviour and delay tactics. There was no requirement that the parties meet or attempt to mediate. I was put to enormous expense during the hearing to present an expert civil engineering report which confirmed the design flaws and that my solution worked and was reasonable. The D&C company never accepted that there was an error nor offered any solution.

A two day hearing occurred in March 2019. The Senior Member then requested written closing submissions and on 20 June 2019, informed the parties that her decision was reserved. The D&C company went into external administration on 17 July 2019. The proceedings are now stayed.

My legal costs of the NCAT proceeding are extraordinary and will never be recovered. My only avenue of recourse now is to lodge a home warranty insurance claim, which is capped at a maximum of \$340,000. That's a separate process I must now navigate.

I also lodged a complaint with the NSW Architects Registration Board in November 2018, given that the company purported to provide architectural services and did not utilise an architect in developing my plans. On 13 March 2019 I received the following response:

“Thank you for your email regarding X and apparent breaches of Sections 9 and 10 of the Architects Act 2003 with their Houzz listing.

The Board has made progress on this matter however the Houzz listing is still in the process of being amended. The Board will accordingly notify you once it is satisfied that all apparent breaches of the Act have been rectified.”

It would appear that closing down their website and Houzz listing is sufficient to address the false promotion of architectural services to consumers. There is no consequence for the fact that this company generated architectural plans that put in train \$400,000 of rectification costs plus legal costs.

Meanwhile the two directors appear to have parted company but continue to operate in the building sphere. The designer, Mr X, has become a licensed builder in NSW. The other, Mr Y, is working on commercial building projects operating under a new company. I am informed by NSW Fair Trading that he does not require a commercial building licence. I find this situation extraordinary.

Arising from my experience, my concerns and questions about building regulation in NSW are as follows:

1. How is Fair Trading NSW allowing a residential builder to close one company and simultaneously, operate on commercial builds?
2. How is Fair Trading NSW assessing who is a 'fit and proper person' to hold a building licence? Should Mr X be able to obtain a building licence having run a D&C

company, been through extensive legal proceedings and then placed it into administration? What about his falsely advertised architectural services?

3. How is Fair Trading NSW helping consumers resolve building disputes in a cost effective manner? Why aren't parties required to attend before them to attempt mediation before being issued with a failed mediation certificate and commence NCAT proceedings?
4. What performance review and metrics are in place for NCAT in ensuring the jurisdiction is accessible, responsive and holding parties to account for delay tactics during proceedings?
5. Similarly, what is the performance target for NCAT 's delivery of judgments each year; bearing in mind that homeowners have to bear substantial building rectification and legal costs for months if not years.
6. How is ASIC meeting its' regulatory mandate in reviewing whether a building company has been trading insolvent? What investigation will occur of how this company paid lawyers and barristers over the course of an 18 month legal proceeding, yet failed to complete other residential building projects on which it was engaged and then fold just before a judgement is delivered?
7. How can a company or individual purport to provide architectural services, with no qualifications or reference to an architect, and escape censure?
8. Why is the Architectural Services Board so slow to act and unwilling to prosecute this company or individual who so clearly places their profession into disrepute and causes significant financial losses to consumers?

Building or renovating a home comes with a huge responsibility. Everything is put on the line: your time, your dreams, your relationships, your hard earned money. People place great trust in a builder and when that trust is broken, I believe the State has a responsibility to ensure the systems of regulation are adequate to not only support the affected homeowner when they are most vulnerable, but to ensure those mistakes cannot be repeated on others.

I am staggered by how common my type of building experience is when I speak with others in my community. The regulation of the building profession needs urgent review. Builder's need to understand what a privilege it is to build someone's home and to be prepared to lose that privilege if they abuse it.