

Submission  
No 60

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

**Name:** Name suppressed

**Date Received:** 25 July 2019

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Partially  
Confidential

**I respectfully request that my name is suppressed from this submission before it is published as I fear further retaliation from the builder. However, I am happy to provide any further information you require such as details of the builder and insurers and the certifier.**

Thank you for the opportunity to make this submission. This submission relates to parts (a), (b) and (f) of the Terms of Reference.

I am an 80 year old registered nurse and almost three years ago (4 September 2016) I entered into a **36 week, fixed price contract** with a NSW licensed builder to undertake an extension my home of more than 70 years, a semi- detached cottage approximately 90 years old. The renovation was to cost approximately \$450,000 and the original part of my home was not to be touched. Through no fault of my own I am now out of pocket over \$550,000 (paid for by way of a mortgage) and I am still not living in my home due to major building defects, gross negligence and unreasonable delay on the builder's part. Furthermore, due to the gross negligence on the part of the builder, much of the original part of my home (including the heritage ceilings) and my personal belongings have been destroyed or stolen.

I feel entirely let down, not only by the licensing process that gave this dodgy builder a licence, but also the so called dispute resolution process which is prohibitively expensive for me to pursue. Adding into the mix is the segmented insurance process (one for builder's negligence, another altogether for Home Warranty Insurance and third my own building insurance) which has left me in a position where no insurer wants to take responsibility for the damage and defects in my home.

This whole situation has left me with medically-diagnosed severe depression and has robbed me of the enjoyment of my retirement two years ago. There seems to be no end in sight and I have no idea when or if I will ever move back into my home.

### **Unsupervised tradesmen**

Before entering into the contract, the builder agreed to employ a site foreman and project manager, but no such person was ever engaged by the builder and tradesmen were left unsupervised on the site, while the builder was employed as a project manager elsewhere. The builder engaged inexperienced labourers (including his apprentice hairdresser son) and failed to cover the roof with any sort of tarpaulin for some 5 months, during which time rain destroyed my heritage ceilings, walls, floorboards and much of my home contents. The damage caused by the absence of a roof covering amounted to some \$360,000 and extended to my neighbour's adjoining semi, which left me in a very uncomfortable situation with a neighbour who I have had for many years.

### **Progress payments**

I paid my initial deposit and contractual progress payments on time and I can only conclude that the reason the builder did not employ a site foreman to project manage the build is because he had spent my money elsewhere and did not have anything left to complete (or indeed start) my build. In this regard, I note that the builder was building his own home at the same time and I suspect that is where much of my money went. I also note that the builder wrote to me in July last year stating that he couldn't afford to complete the build and was only completing work on weekends. How this is possible when I have paid every invoice on time is beyond me.

Despite the builder being obliged to pay for certain items as part of the contract, it became commonplace for him to refuse to pay suppliers. One such example was my kitchen which I had to come up with \$27,000 for at short notice following a call from the supplier who told me that the builder was refusing to pay them. This left me in a very embarrassing situation and I felt that I had no choice but to pay them. Other times he would ask me to pay for things with the promise of crediting it from my next progress payment, but he did not always follow through.

Initially the builder insisted that I pay an additional deposit for my windows over and above the contractual requirement, which I now understand is illegal.

It is commonplace for lawyers and real estate agents to be required to put any money received from a client through a trust account so that the funds can be traced and accounted for properly. There is also a fidelity fund in place to protect clients. I cannot understand why the same rules are not in place to protect people like me from builders who take their client's money and don't follow through on their commitments.

### **Private certifier**

The private certifier engaged by me, on advice of the builder, but paid for by me, is apparently a personal friend of the builder. Despite the builder's assurances that the certifier would inspect the build at each stage, when my niece contacted his office 15 months into the build (January 2018), they informed her that he had not inspected the site since January 2017 and that was at the foundation stage. He has inspected the site since, but not at the critical stage inspections. The builder has now said on two occasions that the build is at practical completion, but is yet to provide critical stage inspection reports and my expert disagrees that practical completion has been achieved and has issued reports accordingly.

On **several** occasions, when my niece raised issues in regard to non-confirming hydraulic engineering works, the builder's exact words were "don't worry, the certifier's on side".

The private certifier has pressured me to accept an occupation certificate, despite being in possession of the expert reports which detail the major building defects. Since private certification has been in the news headlines, the private certifier has gone suspiciously quiet.

### **Insurance – a further nightmare**

I attempted to make a claim on my building insurance after the extensive water damage due to the roof not being covered. Despite being insured with 'Insurer 1' for more than 60 years, I was told that I was not covered and left on my own to pursue the builder. After the intervention of my niece in contacting the CEO of 'Insurer 1', they agreed to put us in touch with an expert. However, I was still on my own to deal with the builder. The expert not only reported on the damage but uncovered major structural defects in the new building works. Two days before my building insurance policy was due to be renewed, 'Insurer 1' contacted me and said that they would not renew my insurance unless the damaged was fixed. How I was going to attend to this in two days, with no money and without access to my home was beyond me and caused me an extreme amount of stress because not having building insurance would make me at risk of the bank taking possession of my home. After further intervention by my niece, 'Insurer 1' reluctantly agreed to a 12 month extension.

I then engaged a lawyer to pursue the builder in relation to the damage and defects. This was a further nightmare in itself as the builder's PI insurer 'Insurer 2' engaged an aggressive law firm to represent them. I was ultimately pressured into accepting a settlement of far less than the total damage bill (less than 60% and only \$200 towards legal costs – my legal costs bill at that stage was around \$20,000) under the threat of a Calderbank letter and being in breach of my mortgage as the 12 month extension on my building insurance was due to expire. The settlement was reached 10 months ago and 'Insurer 2' made an interim payment at the time. Today they have advised without explanation, that they are backing out of the settlement and consider themselves no longer involved in the matter. Essentially, I have incurred significantly more legal costs for no result.

Based on the promise of the further payment by 'Insurer 2', I undertook works to repair my home, had furniture restored and ordered replacement furniture which I am now unable to pay for. Today's revelation has floored me.

Meanwhile, I am still trying to get the builder to rectify the major defects in his work so that I can move in to my home. The builder has changed lawyers three times which has only drawn out this nightmare and increased my legal costs substantially as my lawyer has to keep providing documents and information to each new lawyer. The Home Warranty insurer has advised that unless the builder is insolvent, dead or missing, they will not pay. As he is none of those, just obstructive and hoping that I will simply give up, I am left with no choice but to keep borrowing money to fight him to make my home safe to live in. Building warranty insurance in this circumstance has been absolutely useless, despite the hefty premium I paid (\$3,200). I do not understand why the home warranty insurance does not kick in in a situation like mine and the law should be changed so that it does.

### **Building defects**

The major building defects in my home include:

- Electrical defects resulting in Ausgrid issuing a defect notice
- Water penetration issues
- Hydraulic engineering not built according to plan
- Safety issues such as trip hazards in flooring levels and riser heights on stairs
- Variations to the plans which were not agreed to, nor approved by council

Minor defects include obvious things as not putting taps in the laundry for me to connect my washing machine to, terrible paint finishes, mismatched tiles, inadequate plumbing in the kitchen and electrical outlets which interfere with the function of doors.

### **Legal fees and access to dispute resolution**

To date I have incurred over \$60,000 in legal costs and the costs of engaging experts to provide reports and my lawyer wants an additional \$60,000 to run the matter in NCAT – a tribunal which is supposed to provide people with cost-effective, efficient access to remedies for people in my situation.

NCAT is my only option as Fair Trading advised my lawyer that my only option was to seek a refund from the builder. This is completely unrealistic and as expected, the builder would not agree to give me a refund.

Whatever the dispute resolution process is in NSW, it has clearly failed me. There should be some sort of building ombudsman who I could have complained to without a lawyer, who would have made a binding determination.

### **Builder's licensing**

It is evident that this builder obtained his building licence far too easily. Having been a bricklayer for many years, he evidently obtained his licence in recent years through recognition of prior learning.

Most professions require a period of supervision when a licence is first issued and the professional must demonstrate their proficiency before they obtain an unrestricted licence. I do not understand why the same does not apply to builders.

The plasterer who repaired my ceilings showed me a text message he had received to say he could get a builder's licence with recognition of prior learning. He said that there was absolutely no way that he could be a builder when his profession is plastering and considers this is why there are so many shonky builders – it is all too easy to get a licence.