

Submission  
No 69

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

**Name:** Name suppressed  
**Date Received:** 26 July 2019

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Partially  
Confidential

### Background:

We are the owners of a residential build in the Illawarra suburb of Wombarra. We engaged a builder (2 co-owned directors) called

who after careful vetting and background checks were selected based on;

- Price
- Reputation
- Schedule adherence
- Design (architectural) and construction

The build was to be \$980,000 and with additional agreed variations this has grown to approx. \$1.25M. The house build commenced in November 2016 and was to be completed within 53 weeks. All monies were progressively paid as per contract, and no money is owed.

### Matters for the Inquiry:

Concerns for the schedule delivery of the property commenced in Easter 2017 when abruptly all activities on site were stopped for no reason. We learnt at the time that a much larger home in our street was awarded to . When questioned at the time the reply for the delay 'that the commitment to the new build has nothing to do with your build and in fact due to the close proximity will allow your house to be completed on time by Xmas 2017'. Adding to the woes I was constantly threatened with '*we have a right to finalise this contract and liquidate for damages*'. I progressively collated information and documented all matters to present to Fair Work including defects that currently exist. I am not at liberty to place an extensive list of my grievances however the following issues are presented;

- Failure submit progressive certificates
- Failure to address completion of variations including pool, air-conditioning, floor heating, bathrooms, incorrect windows and associated internal finishes (stairs, doors, wardrobes, lighting etc.)
- Storm Damage inflicted March 2019 due to roof design defects confirmed by Private Certifier (attached)
- Driveway design that did not meet engineering specifications and not include storm water facilities
- Acting as an unregistered Architect and falsely acting as an Architect in contrary to NSW Architectural Registration Board (Complaint pursuant to s34 of the Architects Act 2003)
- Failure to inform the owner of the Insurance Claim outcome due to design of roofing and actions for 3 months after storm event in March 2019
- Ongoing stalling by being uncontactable either by email, phone or person including boorish and threatening behaviour when confronted to mediate
- Causing company to become insolvent to avoid accountability and then commence new companies to avoid formal investigation and justice

Our fortunate circumstance was that we were able to live in our existing house and avoid financial hardship with rent. The only means to progress the build on the house was to withdraw payments and after continual promises and fallen commitments we don't even

have a house in lock up with many defects. This the status as per the attachments as of the time of this submission;

- Defect Notice by our Certifier is attached
- I had notified the Fair Work and prepared a detailed application for NCAT to adjudicate a formal judgement. This process was unhelpful and convoluted
- Due to another property owner in NCAT over very similar circumstances, and my impending issues (defects, Architectural Board matters, progress, defects etc.) being presented have on the 17 July 2019 went into External Administration
- During December 2018 and until recently formed and is undertaking a commercial build for in Bulli NSW
- Since April 2018 and formed a pool construction company called this has ended in November 2018
- and were found by the NSW Architectural Board to not be a registered Architect and claimed over \$26,680 in fees
- The matter is now to be presented to the Home Warranty Insurance who have accepted the claim for review and declared that subject to the independent building assessor and quote based on three (3) independent builders I can claim 20% of total contract + variation value (including outstanding monies withheld with my Bank) and any formally accepted defects from which would include roofing, windows, driveway etc..) to a maximum value of \$340,000
- On my estimates I will still have to foot the bill for interest payments, suffer the ignominy to have another builder willing to complete the house and still be out of pocket by several hundreds of thousands of dollars
- The system is inadequate where the individual directors can maliciously mislead and work the system to guarantee monies paid and then use the same Builder Licences to liquidate their former company and continue in the local area as reputable business without remorse, penalty or accountability
- The impact on my family for nearly three years have taken an enormous toll on my family's mental health, our finances and the reality of having a defect laden unfinished house from which community embarrassment has been endured
- I would like the companies named to be used as a test case in this inquiry, I also believe the following requires to be considered;
  - o A Public Register similar to the NSW Food Authority a Public Register of penalty notices for all misdemeanours based on offences determined by a newly established Building Industry Commissioner (BIC) or Fair Trading
  - o Builder Licences to be held under suspension for a period of 12 -36 months for the first occurrence for such events described for serious offences including disqualification to restart or hold another company until a formal Clearance Certificate is issued by the BIC
  - o Why does Fair Trading NSW allowing a residential builder to close one company and simultaneously, operate on commercial builds?
  - o The ASIC alignment to prevent disqualified Directors under the BIC to be prevented to hold any Directorship in companies or business's associated with Residential and Commercial building

- How are ASIC exercising their regulatory responsibilities in reviewing whether a building company has been trading insolvent or Directors able to recommence trading under a new company instrument?
- A designed registration scheme that allows a Certification of Builder Licence Competency (Similar to the Mine Qualification Board [www.resourcesandgeoscience.nsw.gov.au](http://www.resourcesandgeoscience.nsw.gov.au)) where a person can only exercise a statutory function if they are nominated by the BIC. A person may only be eligible to be nominated for certain statutory functions if they satisfy the requirement for the nomination which may be to have a practicing certificate of competence in categories such as;
  - Residential builds over \$100k
  - Commercial builds over \$100k
  - Pool construction
  - Unit and Multi building Construction etc.
- How can a company or individual falsely be able to provide architectural services, with no qualifications as an architect escape formal investigation and penalties?
- Why is the NSW Architectural Board precluded to exercise any authority or powers to formally investigate and prosecute persons or companies who portray themselves as Architects?

Attached;

- Private Certifier report
- NSW Architectural Board letter and response
- ASIC Confirmation of ‘External Administration’
- Photos of house status
- Photo of site
- Website
- Website
- Photos of conducting Residential Building on my property