

**Submission
No 113**

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

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Date Received: 28 July 2019

In the Australian Financial Review dated 4 July 2019 on page 34 the headline is

'When dream home became nightmare'

I am the owner of the property at Seaforth, to which the story refers.

Numerous other news outlets/publications online have picked up the story including N.Z, U.K and an article published in Chinese.

There are many flaws in the NSW Building Industry and my Litigation case highlights some of them.

The Australian Financial Review mentions in relation to my case an unlicensed builder colluding with his friend a licensed builder to sign sham contracts to obtain Home Warranty Insurance.

Justice McDougall in his statement said:

"It is by no means immaterial that his wife, (unlicensed builders) Ms PN, was to obtain a very substantial benefit, by way of a payment of \$4.17million out of the proceeds of sale, upon settlement. I think that Mr N was prepared to do all that he could, including making false written representations, to procure the necessary home warranty insurance certificate, to facilitate settlement and ensure payment of that sum to his wife."

This is just one example from my litigation case where there has been total disregard for building industry regulations and in fact the law.

My six-year battle in litigation, which concluded on 20th of June 2019, has highlighted the lack of enforcement of penalties as a deterrent for unlicensed and licensed builders who do not follow the building regulations.

This is a categorical failure of the system to innocent individuals like myself.

I will provide a brief description of the areas identified in my particular case.

In June 2012 I signed a Contract of Sale to purchase a waterfront property in Seaforth for 8.550M.

The house was advertised as 'newly built' but in fact was an extensively renovated 1970's home.

Due to the value of the property and all building work not being fully completed at the time I signed the contract, my conveyance lawyer had two special conditions written in to the Contract of Sale.

In brief, it gave me the right to rescind the Contract if these conditions were not met.

'That all building works undertaken on the property in the 6 years preceding exchange of the contract (building works)

(a) have been completed in accordance with the requirements of Manly Council (this may be by a final occupation certificate or similar certificate); and

(b) are covered by a current home warranty insurance policy in respect of the whole of the building works.

Due to the Final Occupation Certificate and two Home Warranty Insurance policies being provided I settled on the property in September 2012.

Within a couple of months of moving into the premises defects started to appear and at the recommendation of my lawyer I appointed a Building Consultant in February 2013.

Due to the extent of the defects identified I started legal action in August 2013 and litigation in the District Court of NSW in 2014 against the licensed builder named on the HWI policies.

I will give a brief outline of defects later on in this submission.

What unfolded in the legal process is that:

JN & MT two unlicensed builders carried out all the renovations on the property. The licensed builder did not attend the property at any time whilst building work was being undertaken.

The licensed builder was paid by JN \$6000 – \$8000 for the use of his building license.

The licensed and unlicensed builder then signed sham-building contracts in 2012 and dated them 2010 and 2011 respectively and also provided a letter to the Home Warranty Insurer stating that DM (licensed builder) had done all the building work and had been paid in full.

Justice McDougall handed down his judgement in the Supreme Court of NSW in September 2018 and awarded me the amount of \$576,966 from the licensed builder as he deemed he was legally responsible for the defective building work specified in the sham contract even though he had carried out no such work.

The licensed builder declared bankruptcy in April 2019 and as at the writing of this submission I have received no money from him.

I won my litigation case against the licensed builder yet he walks away and does not incur any penalty for allowing his license to be used or for committing fraud.

How is that a deterrent for anyone in the building industry that does the wrong thing?

Why has he not been prosecuted?

Are individuals in the building industry above the law?

I have checked the Service NSW building license register and although the judgement against the licensed builder was handed down in September 2018 there is nothing to alert the public to his dishonesty.

Both parties being the licensed and unlicensed builder admitted in court and in their respective affidavits that they have been undertaking building work in this manner for 20 years.

How is it possible for this dishonest behaviour to have gone unnoticed for so long?

In 2015 I added the unlicensed builder JN to my litigation case as well as the owner of the property and at that time moved it from the District Court to the Supreme Court of NSW, as the estimated building defects are around \$2M.

I had two cases running concurrently in litigation in the Supreme Court of NSW one a **defect** case and the other a **no contract** case.

I won the defect case against the licensed builder as mentioned above.

The unlicensed builders defence in the **defects** case was in brief *'that he had no building license or permit so how could he be held responsible for the defects.'*

This has certainly highlighted another significant issue within building legislation and the law. If you cannot be deemed responsible for defects in building work you undertook because you do not have a building license why would you bother to get a license.

Justice McDougall awarded me \$1,134,917.80 against the unlicensed builder in my **no contract** case, as he was the agent of the owner (his father-in-law) and \$1,095,141.80 from the owner if the unlicensed builder does not pay me.

The unlicensed builder also filed for bankruptcy in April 2019 so it will be unlikely that I will receive any money from him.

I am in the process of bankrupting the owner of the property in the hope that I may receive some payment of the money that was awarded to me by the Supreme Court of NSW.

There is no deterrent for either the licensed builder or unlicensed builder under the current building legislation as neither of these individuals has been prosecuted. There is no point having rules, regulations and laws if the building industry itself does not enforce them.

During the course of litigation it was also discovered that most of the contractors engaged to work on the Seaforth property did not have licenses in their various trades.

In Summary two unlicensed builders undertook extensive renovations to an expensive water front property. They also supervised other unlicensed contractors and as a result I have a home with \$2M worth of defects.

To obtain Home Warranty Insurance the owner's son-in-law unlicensed builder and his friend licensed builder made up sham building contracts and wrote a letter to the Home Warranty Insurer with false information.

The HWI issued insurance as a result of the fraud committed by the two individuals mentioned above.

Regardless of what building legislation is in place this will continue to happen unless there are severe penalties. Words mean nothing and unless whatever is decided upon is enforced it is a complete waste of taxpayer money to hold a Parliamentary Inquiry.

Individuals and companies that break the law need to be prosecuted and the offending parties sent to gaol. Monetary fines are not a deterrent.

Private Certifier:

Private Certification is another area in which the building industry fails.

A Private Certifier issued a Final Occupation Certificate on the Seaforth property in September 2012.

The certificate was issued yet my property has 33 variations from the approved Manly Council DA.

Some variations are to do with building and floor heights etc. or are of a minor nature so would not necessarily have been noticed during an inspection by the certifier. Yet others are significant.

DA approval was for 4 bathrooms and the property has 7. A balcony, which looks into the neighbour's living room, has been built where there is supposed to be a roof.

The question I would like answered is, *'Did the Certifier ever carry out a final or indeed any inspections on the premises?'*

My understanding of the job of a Private Certifier is that they are to ensure that building work is done according to Australian Standards, is carried out in accordance with the approved DA, is done by a licensed builder and insurance is obtained before the commencement of building work and that insurance is to reflect the true nature of the work being undertaken.

The building work on the Seaforth property fails in all those areas. Besides what I have already mentioned there are also many breaches of Australian Building codes. These were all identified in the extensive Building reports I filed in my litigation case.

These breaches would have been obvious to any individual in the building industry.

The Private Certifier on the Seaforth property has failed in his duty as a Certifier. The Parliamentary Inquiry needs to address this issue and consider whether Council Building Inspectors should be responsible for overseeing and certifying building work in their own municipalities.

In 2012 my husband and I purchased what was supposed to be our *'dream home'* but as the headline in the Australian Financial Review stated it has *'become a nightmare'*.

Since September 2012 there has been a never ending stream of building consultants, civil engineers, mechanical engineers, hydraulic engineers, electricians, mould expert, electricians, plumbers, builders, lawyers as well as inspections by the defendants their experts and legal teams.

My home has been a construction site as temporary repairs were undertaken to mitigate further loss and I now have at least another 18 months of building work required to rectify the noted defects.

I have spent 6 years in litigation at a huge financial, physical, mental and emotional cost to my family and myself.

So far my consultants and legal fees are over 1.7M. Justice McDougall awarded me 2/3 of these costs to be paid by the defendants. At this stage I have not received any money from any of the three defendants for legal fees nor for the **defect** or **no contract** case amounts awarded to me.

As stated above the licensed and unlicensed builder have both filed for bankruptcy and as the 3rd defendant (owner) has made no attempt to pay me I have started bankruptcy proceedings against him.

In total I am out of pocket around 1.7M for consultants and legal fees and I also have to find another 2M to rectify the building problems on a house I purchased for 8.550M.

I have two HWI policies with a limit of \$340,000 on each. At this stage it is possible that I will not receive a cent from the insurer. There is a condition where the homeowner is protected from fraud but it seems that the licensed builder has to have undertaken the building work.

Home Warranty Insurance is another area that needs to be investigated. The maximum claim on any policy regardless of the amount of insurance is \$340,000.

Why does a claim not reflect the amount of insurance coverage?

I was given two policies to fulfil the obligation in the Contract of Sale and as a result I purchased the Seaforth property. Without the security of the Home Warranty Insurance I would have rescinded the contract.

The information in relation to the obtaining of the insurance was not available to me at the time of purchase and only became available after my lawyers subpoenaed the insurer.

Their needs to be changes made to the legislation so that buyers in the position I now find myself in are guaranteed the protection of insurance regardless of how it was obtained and can receive compensation for the total amount of the defects.

Brief summary of the type of defects:

Major water ingress issues, on all 4 stories of the premises.

Down lights transformers in the ceilings that melted and caused smoke.

95% of lights failed in the premises, which left some rooms without lighting.

Ducted air-conditioning installed on all 4 levels of the property into ceiling cavities that were not big enough for this type of air-conditioning.

Due to the condensation caused by water ingress even on a sunny day in April it was not possible to see out the floor to ceiling windows.

Extensive mould throughout the premises, particularly in bedrooms with balconies attached. Samples of the mould were taken and the type found posed a health risk to the occupants.

(We did not have the funds to move out of the home as we put nearly all our assets and available cash into purchasing the property)

In wet weather water enters through the roof of the building and also into living spaces via the balconies on all levels.

Part of the roof lifted in strong winds, as there were no nails or screws to hold it on.

Gas entered the premises from the underfloor heating boiler and gas fireplace.

(This posed a serious health risk to the occupants of the premises).

A power point over a basin in the LG bathroom was double-sided taped to the wall tiles and the screws glued to the faceplate to give the impression that it was secured to the wall.

(This could have resulted in someone being electrocuted if that power point had fallen into the basin).

A large amount of external tiles on balconies and the pool deck have cracked as well as a large amount of internal tiles.

All the defects listed above are due to items not being installed as per manufacturers guidelines and /or building work not being done as per Australian standards.

In total 99 defects have been identified at the Seaforth property.

I commenced litigation with the belief that I would receive money from the defendants and it would enable me to do the remedial work required to my property.

If the law does not provide me this opportunity and the defendants can declare bankruptcy to avoid their responsibility what is the point of litigation?

Dishonest licensed and/or unlicensed builders should be made to pay the funds awarded by the courts or go to gaol for a substantial amount of time. This would certainly be a huge deterrent, as the crooks in the industry would have less chance to manipulate the system as they do now.

In my case these individuals have the means to pay but they have no assets in their own names as they have deliberately placed properties in the names of their wives and/or their children.

The penalties for not adhering to the building regulations needs to be so great that there is no incentive for dishonest people to break the law.

I spent years in litigation also believing the law would hold the individuals accountable, justice would be served and it would stop them from doing this to other individuals but it seems a lengthy litigation case and declaring bankruptcy has not stopped the unlicensed builder from continuing to do what he has always done.

Due to my experience over the last six years I would not recommend litigation to anyone. It is nothing but a futile endeavour. In fact I would have been better off using the money to fix the defects at my property rather than believing in what I now know is a failed and flawed system.

The lack of enforcing building regulation violations does not protect the innocent parties but in fact gives the crooks the incentive to continue to rip off their victims and the innocent are left to foot the bill.

I understand from news reports in relation to the Opal tower etc. that the government is considering paying owners in apartments buildings money to rectify building defects.

Whilst some may see this as a move in the right direction, I see it as further evidence of a flawed system. Many homeowners like myself are struggling to find the money to fix up their homes and have to borrow funds or redraw on their mortgages.

The availability of funds should not be specifically for apartment owners in tower blocks when there are many, many others who have been ripped off and are left with homes that are not finished or homes with major defects.

We are all victims of a corrupt building industry. Is the government also going to punish us?

The building industry needs a complete overhaul but there is no point putting any further legislation or laws in place if the government is not prepared to take a firm stance with those in the building industry who break the law.

A penalty for breaches of the building legislation and/or the law needs to be a deterrent and at this time it is NOT!

I can provide all documentation from 6 years of litigation as well as photos, the Judgment handed down by Justice McDougall, Court transcripts and all documents in relation to matters that I have referred to above.

icare NSW had been following my case and when the September judgement by Justice McDougall was handed down they contacted the Department of Fair Trading who then contacted me for a statement.

I provided a 50-page draft statement to the Department of Fair Trading that provides the chronological order of events and have 100 exhibits of evidence to go with the statement.

As at the time of writing this submission I have not been contacted by The Department of Fair Trading to provide a final signed statement.

I am available as a witness in the Parliamentary Inquiry if required.