

**REPORT OF PROCEEDINGS BEFORE**

**GENERAL PURPOSE STANDING COMMITTEE No. 2**

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

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**Public Forum at Parliament House on  
Friday 2 November 2007**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

The Hon. R. M. Parker (Chair)

The Hon. C. M. Robertson

The Hon. A. Catanzariti

The Hon. G. J. Donnelly

The Hon. M. A. Ficarra

Reverend the Hon. G. K. M. Moyes

Ms Sylvia Hale

**ALSO PRESENT:**

Narelle Peters, Chris Fitzgerald, Diane Condie, George Vardas, Rob Siebert, Albert Falzon, Jeanette Nix, Andris Blum, Colin Sharp, Helen Stanojevic, Diane Coldwell, Garry Wells, Charlie Tan, Con Papanastasiou, Adelesa Hon, David Bryan.

**CHAIR:** My name is Robyn Parker, I am the Chair of this Committee. Welcome to everyone in the public gallery. The Committee members are looking forward to hearing your statements and comments about this inquiry into the operations of the Home Building Service. I have an opening statement to make. It is lengthy, but is it important that we understand the ground rules so that everyone knows the procedure for this morning's open forum.

As you are aware, the Committee's inquiry is focused on the Home Building Service of the Office of Fair Trading. The role of the Home Building Service is to protect consumers by regulating the home building industry. The inquiry is examining the building licensing system, complaints resolution and disciplinary processes and the home warranty insurance scheme. The Committee is holding this forum to provide further opportunity for the people affected by the work of the Home Building Service to have their say—most particularly consumers who build or renovate their homes, but also builders who are subject to the service's regulations.

At the end of the forum the Committee will hold a public hearing with representatives of the Department of Commerce, including the Home Building Service and the Office of Fair Trading. The Committee will question those representatives about the work of the Home Building Service in the year since it last gave evidence to a parliamentary inquiry. Members of the public may be aware that this inquiry was originally commenced by a different committee and the terms of reference have been picked up by this Committee. It is nearly a year since the department gave evidence originally.

The Committee will be asking the department to respond to the issues participants raise during the forum. We expect to finish the proceedings at 1.15 p.m. The Committee will consider the statements of participants along with written material in the 40 or so submissions received to date. At the end of the inquiry, the Committee will provide a report to Parliament setting out its findings and make specific recommendations for government action.

Before we commence, I would like to make some comments about the procedures we will be following today. We have approximately 15 participants in today's forum. I will invite each participant to go to the lectern and to begin by stating their full name for the record. Each participant will have five minutes to express their views on the operations of the Home Building Service, keeping in mind the inquiry terms of reference. A warning bell will sound at four minutes and a final bell will sound at five minutes. I stress that although this is a public forum it does not allow for comments from the audience during participants' statements.

All statements made at today's forum will be recorded in a Hansard transcript of proceedings. The transcript will be publicly available and will be posted on the Committee's website next week. It is important that you take only the time allotted. If you run over, we will gong you because you are taking time from someone else and that is not fair. I know that many of you would like to talk for much longer about some of these issues, but this is the best that we can manage today.

While the privilege that applies to parliamentary proceedings, including committee hearings, is absolute, it is not intended to provide a forum for people to make adverse comments about others. The inquiry terms of reference refer to the system as a whole, not individuals. While individual experiences will help the Committee to understand how the system does or does not work, it is not the Committee's role to investigate or conciliate individual complaints. If you do wish to make serious allegations, please do not name the individuals concerned. I may need to stop participants if their comments about others are not necessary to address the terms of reference.

It is important to remember that parliamentary privilege does not apply to what participants may say outside the forum. Therefore, I urge participants to be cautious about their comments to the media and others, even if they are said within the confines of this building. Such comments would not be protected if, for example, another person decided to take action for defamation. Similarly, members of the media should be mindful that anyone who republishes material from a committee hearing is subject to the laws of defamation. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing the broadcast of proceedings are available from the table by the door.

I point out that in accordance with the Legislative Council guidelines for the broadcast of proceedings, Committee members and witnesses may be filmed or recorded, but people in the public

gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. Finally, I ask that you please turn off any mobile telephones during the proceedings. The Hansard reporters do their very best to record everything, and they do a fantastic job, but you need to speak clearly. If you use acronyms, please use the full name in the first place so that that is recorded as well.

**Ms PETERS:** I would like to distribute some photographs of my house. I will speak first about the building licensing system. What are the guidelines for deciding if someone is a fit and proper person to hold a licence? How does an illiterate person get a licence? My builder and Fair Trading records obtained under freedom of information legislation state that he is illiterate. He held the licence for 27 years despite numerous complaints. If he did not have a licence I would not have used him. Fair Trading told me that he was a good builder, that I should have no problems using him and that he had had a licence for a very long time. The policing of licences requires much greater diligence. It appears that anyone can get a licence and it is up to the consumer to prove that they should not have it at the consumer's detriment—financially, physically and emotionally.

I now turn to home warranty insurance. What is the point of having insurance if no-one can make a claim? I lodged my claim and begged Fair Trading for its assistance in getting help and having the house fixed, to no avail. The insurer bureau fought me at every turn, claiming that I did not want its help—its court affidavits clearly state otherwise—and I was not under the last resort scheme. There is no insurance of any worth to consumers in this State.

Yes, there is insurance and insurance companies make a large deal of money, but the consumer is left to fight the giants in claiming any redress at a time when most consumers are fighting to stay within a budget. What do the words "statutory warranties" mean? What dictionary should I use to see what the words "statutory warranties" mean in relation to the way that insurance companies are allowed to run with them? Home warranty insurance is not worth the paper that it is written on. It is a con perpetrated on innocent and naïve consumers.

Resolution of complaints: The only resolution I received was, "Your complaint has been added to our database and, for anything else, go to the CTTT." Only after three months, and after letters copied to members of Parliament, was an inspector sent out to investigate my complaint. My builder lost his licence due to the work on my house, Fair Trading recovered some of its costs in prosecuting the builder, and I was left low and wet: the roof is caving, the floor is sagging, and the building leaks when it rains.

During the three-month wait for inspection by Fair Trading the builder initiated proceedings against me in the Consumer, Trader and Tenancy Tribunal for the balance of his money, claiming that I had kicked him out. He finally admitted this to be a lie in the Consumer, Trader and Tenancy Tribunal. So why do I have bills totalling \$200,000—which does not include rectification of my house—and a house that is unfit to live in?

The exercise of disciplinary powers: In my case the builder did have disciplinary action taken against him, but it did no good because I am still living in a house reminiscent of third world conditions, as you can see from my PowerPoint presentation. Fair Trading took the builder's licence and walked away leaving me to fight the builder and the insurer at my own cost. And all of this after he had lost his licence! Where is the "consumer protection", as stated on the letterhead of the many letters written to me by Fair Trading? The builder lost his licence for five years, but had a full and comprehensive investigation been carried out it would have been for a much longer time period. I have made many phone calls and asked for someone to examine the piers and footings under my house. To date this has not been done. Investigators ask you to show them what is wrong. You are a consumer who has hired a licensed builder because you do not have such skills, but the inspector asks you.

I would also like to point out to you section 18B of statutory warranties. What happens to people who suffer physical illness because they fall through a hole in the front door step? I have had medical treatment for two years for that—and that is not included in the \$200,000 costs that I have amassed so far. Please think very carefully about the public in this State. The present system is not working. There is adequate legislation in place, but no one has the backbone to enforce it. If you have any queries about how the system is not working, I extend an open invitation to every Committee member to view my house, and I thank you for giving me the opportunity to address you.

**CHAIR:** Thank you very much, Ms Peters.

**Mr FITZGERALD:** I welcome the opportunity to address the Committee. I do have a PowerPoint presentation, which shows some of the faulty work: the slab of the house raised 600 millimetres higher than was ever intended, the existing fence used to retain the earthworks and the leaning retaining wall. The slides then go on to show my current living conditions after eight years. Because the brickwork needs to be rectified or completely demolished, I am unable to finish lining the inside of the house.

The work commenced in March 1999 and the end is still not in sight. That is 16 per cent-plus of my life gone, and they are years that I will never get back. I was originally quoted \$94,000 for the work. I have to date spent \$150,000 on the house. The cost of the damage, of various builders to rectify the work, exceeds \$136,000—more than I was quoted for the original house. Consumers are the ones who take all of the risk. In my loan there is a condition that says, "If we think you are not proceeding with works satisfactorily, we may take them over, including by varying, demolishing or stopping them as we see fit." It also goes on to say that they may sell the property in order to recover their costs. So I risk everything if a builder does not do the right thing by me.

The builder that I originally worked with had an incomplete and unsigned contract. The contract was not presented to me until five weeks after he started work. It is the builder's responsibility to write the contract and to put the detail in it, yet when you end up in a tribunal or court you, the consumer—the person who is not the expert—ends up having to prove what should have been in the contract. Home warranty insurance was never provided to me, even though I had been through the tribunal in 2000. After six and a half years I finally got a copy of the insurance papers, by which time the litigation in court negated any right I had to make a claim under that insurance. I had paid something like \$700 for that insurance and never had the right to claim on it.

The home is the largest investment most of us as consumers will ever make, yet we find we are left to our own devices, thrown into a legal system that does not really care about the impact on us, as consumers, how it affects our private lives, our working lives and how it affects our families. The fact that a person has been issued with a licence is supposed to mean that they are fit to conduct their business with some integrity and that you should be able to rely on them. That is not my experience. It is also supposed to mean that they know their trade. Again that is not my experience.

I have found that one of the tricks of the trade is that builders can break the law and consumers lose their rights. That is done this way: The builder drags the consumer into court. The consumer, with a mortgage, cannot afford legal advice or representation. The consumer then loses all rights under the legal principle of estoppel because the consumer has to have the knowledge to cross-claim and the money to pay for legal representation, quantity surveyors and engineering reports. Consumers, when having a house built, do not put aside money for all of this. It sends them broke.

Concerning the conduct of the Home Building Service, I had a formal caution issued against the builder, which was confirmed in a letter from the Minister, Mr John Aquilina, in March 2003. Under freedom of information I have obtained a copy of the formal caution, which is headed "Formal Caution". In August 2007 the acting Minister, Mrs Barbara Perry, wrote to me saying, "You are correct in stating that formal cautions must be noted in the public register. However, it appears you were incorrectly advised previously as a warning letter, not a formal caution, was issued. Warning letters are not required to be listed on the public register." Why the misinformation? I am sorry, there is a lot more, but I have run out of time.

**CHAIR:** Thank you, Mr Fitzgerald.

**Mrs CONDIE:** Thank you, madam Chair and members of the Committee, for the opportunity to speak at this forum. It is said that building a house is a stressful time in one's life. Well, try living next door to a development. The builder takes control of the adjoining property. I have ended up with trespass, damage, unapproved work and almost four years of stress and intimidation. I also believe the certification system has let me down and I would like to express to you what has happened to me as a small person against a big company. I seem to have no rights as I do not have a contract with the builder and now the only recourse is through the legal system, which is both tedious and costly.

I wrote to the council bringing to its attention my concerns regarding the development application and the way it was approved, and contacted it again later. I placed my faith in the council

and the certifier and I believe my rights as a property owner were infringed when a large well-known building company performed unauthorised work on my property as a result of non-compliant excavation in the development adjoining my property. This company excavated past the boundary and removed earth from under my property. The certifier issued an occupation certificate knowing that illegal work had been undertaken on my property as a result of the development next door. When I asked the council to help to gain authorisation of the work I was told I was opening a can of worms. All I wanted was a retaining wall to be built to ensure the structural integrity of my property, repair of damage and no other unauthorised work on my property—all through no fault of my own.

I am aware that this building company has complaints against it. When will something be done about this? This company is licensed by the Office of Fair Trading. I cannot complain because I do not have a contract. This company practises intimidation by phone, face-to-face and in writing until you are so worn down that you give up. It amazes me that a company can do this—over-excavate, undermine property, do formwork without the consent of the owner, damage property and inflict unnecessary stress—and nothing is done about it. It just continues to deny what it has done, even though it is there for all to see.

I tried to get help from the council regarding all of this, but it said that it is the certifier's responsibility. I approached the Department of Planning, but it is quite unclear and there is nowhere to go to get help as to who is right and who is wrong and whose job it is. If non-compliance is found by the council it does not do very much about it. It seems to me to have given the building company plenty of time to do what it wanted to do, but not build a retaining wall. After bringing non-compliant work to the council's attention, it eventually did fine the company \$600, but what is this in relation to what has happened? I mean \$600 was probably in the contingency plan anyway. When you make a complaint to a council you do so through the general manager, but it gets handed down to the relevant department, which actually did not look into the matter in the first place.

The home warranty insurance scheme is more for the builder than anyone else and I have not been able to get anywhere with that. The home advisory service is for people with a contract, it does not include property owners and, as I do not have a contract with the builder, I cannot seem to get anywhere and I feel that this needs to be changed. Unfortunately, I have found that there is no liaison between the government departments, for example, the Department of Planning, the council and the Office of Fair Trading. If this could be brought about in the Building Advocacy Service so that it is like a one-stop shop where relevant information could be found it would be more helpful to people like myself. I feel that there should be a little more put on the licensing system so that we can complain about companies that do work on our property and, as an adjoining owner, have a bit more comeback. This company worked on my property and when I asked it to cease one day the construction manager just said, "This is what I'm doing, I'm going to continue and you can look at it after and see what you think of it." I am not a builder. How would I know what is good and what is not? Thank you.

**Ms CORNWELL:** Honourable members of Parliament, I thank you for allowing me the opportunity to speak. My name is Diana Cornwell, and may I introduce twins Henry and Diana Elizabeth. I am leaving my notes and going straight to the heart of it. Home Building Service Inspector Stubbs told me there was nothing more he could do for me, yet the contractor has \$332,900 of our life savings. We are living—and I have brought my bankbook here—on \$84.28 and family payments of \$231.68 a fortnight, which makes \$315.96. You are my last hope.

**CHAIR:** We do not need your bankbook.

**Ms CORNWELL:** I have come to the conclusion that the Home Building Service in its current form is useless. Home warranty insurance: Although I have a signed contract, a project manager, a structural engineer and did everything right, they were in cahoots. So, no home warranty insurance was taken out on our job, so I have no recourse to go anywhere. I am hoping that things can be changed, and this is my appeal to you today, members of Parliament, that some law can be brought in—a fine like a traffic fine, just cut and dried, you either have insurance or you do not; you break the speed limit or you do not. I would like to see that fine set at the limit of \$200,000. That is the same as the insurance company's top pay out. What I would like is the Home Building Service to be in charge of that money and to appoint what is called a certified builder to finish the job. In other words, the

homeowner does not have any part of that money at all. For the people who choose to become certified builders it would be a mark of glory, the Home Building Service thinks enough of them, and it is a feather in their cap to increase business elsewhere in the private sector.

**Licences:** I think these need a complete overhaul. For six months I was able to ring up as an outside person and be told that my contractor had no faults against his name, no insurance disputes, never been in the tribunal, yet all the time on my job there are six others also in the same boat, 50 per cent of those homeowners are all in the Home Building Service problem desk. He was in the CTTT fighting the other people. Of course, if I had known any of this he would never have been on the job. They need a complete overhaul of the licence system. They need what the top-notch medical specialists have in America, a little folder which you give to your prospective clients. It lists everything. For example, for doctors in America it lists deaths, and that is the first thing I looked at, if you are having their specialist I went straight to the deaths of patients section so that it lists everything in there. Then the insurance company in America contacts the patient later. Perhaps we could introduce this, where the homeowner is contacted so they can state, yes, the work was done satisfactorily. All these statistics are in this little book. I do not suggest that the books go out, people would have to read them in company. It is like a bankbook. For the builder it is a precious item.

**Complaints and resolution:** I found there was not any but I would suggest the Home Building Service needs structural engineers. I found Inspector Stubbs was constrained because he could not pull off a board to look at anything. They are not allowed to touch anything. All that needs to go by the wayside. Mr Stubbs has to do other important duties. They need a team of structural engineers there who are able to bore a little hole in the floor and see if there are any floor joists there, and take a sample of the concrete to see that it is really done properly. The Home Building Advocacy Service: There was nothing. There was nowhere I could go. I am very grateful to my local council who put a compliance order and closed down the site till some rectification was done, which was several steel beams to hold up the second storey. They were essential things missing. Thank you very much.

**CHAIR:** Just a point of clarification, did you tell us the date?

**Ms CORNWELL:** Yes. I had all this done, but I realised I would miss out so I did my last bit first. Forgive me. Yes, commencing 29 September 2000, I paid \$20,000 to the architect and the project manager—brothers. They nominated the structural engineer. Am I allowed to say, this is a terribly important thing, structural engineers, if they are all in cahoots, you see, architect and project manager nominated the structural engineer. They are all in cahoots. They give out certificates of work done at the end of the job and the builder passes it on to the council. If they are in cahoots the structural engineer sometimes does not go out. He just writes the certificate or he takes the word of the builder, as he did in my case, believed the builder, and he has now destroyed all the certificates so I have no certificates to hand to council, to protect himself. Thank you for allowing me to add that important point.

**Mr VARDAS:** Thank you, Madam Chair and members of the Committee. My name is George Vardas, I am business manager for a major project home builder in New South Wales. In my former life I was also a part-time member of the former Building Disputes Tribunal and I have seen disputes from both sides of the fence. My speech today is really just a short précis of a written submission I put in, and it deals specifically with a resolution of complaints and what I have seen working for this builder for the past three years. Specifically, I am talking about what the Department of Fair Trading claims to be intervention by its officers when a complaint is received. That typically takes the form of the consumer going to the Office of Fair Trading, lodges a complaint, and the builder receives a phone call. I am now talking specifically about contractual type of disputes. If there is a building issue and it is a serious one, obviously the department will send out an inspector and you have a face-to-face meeting with the inspector and the parties and that can or cannot lead to a resolution.

In the context of a contractual dispute, for example, a variation is issued by the builder which the consumer disputes, and the parties cannot resolve it between themselves, typically the Office of Fair Trading will ring the builder and say such and such a client has this problem, what are you going to do about it? The builder will naturally put his version to the person ringing from the Department of Fair Trading and that person relates that information to the consumer. It is not resolved and then the

consumer is directed to the Consumer Tenancy and Trader Tribunal. The difficulty I have with that approach is that that is not true intervention, despite the material that appears in the Office of Fair Trading's web site and in its brochures about attempts at achieving facilitation, negotiation and consensus between builders and consumers.

Unless you have some kind of direct intervention—and I am promoting the idea, effectively, of some kind of flying squad of mediators who are available, trained, just as recently the Attorney General announced that he wants to enhance the powers of the community justice centres to take more mediations, so the Office of Fair Trading, if it is genuine about trying to achieve consensus before matters blowout into the tribunal—and heaven knows how much workload the tribunal has because it obviously does other matters apart from building disputes—I am advocating, and I set it out in more detail in my submission, there should be a genuine attempt to get someone on site or bring the parties together, and quite often you can work a resolution. If you have a mediator or a third-party neutral, as the Americans refer to it, and I understand the Victorian tribunal encourages conciliation and has trained conciliators who will go that extra step and not simply do it through the anonymity and the distance of a phone call.

The hypothetical cases I have outlined in my submission—and as for hypothetical, they occur but I do not name the individuals—in almost all of those cases at the first or second meeting of the tribunal the matter was resolved because the conciliators engaged by the tribunal come around and do what I respectfully submit should have been done by the Office of Fair Trading at the beginning, and that way you can often avoid a building dispute escalating. You play down the emotions, because by the time the parties have gone to the tribunal they have engaged lawyers and it becomes much more expensive and, as we have heard and will undoubtedly continue to hear about today, building is an emotive matter and emotions can often be restrained if there is positive intervention at an early stage. I will conclude by quoting from a passage from a report by the Allen Consulting Group who was looking at building dispute resolution in Victoria a few years ago:

Contracts can never specify or anticipate every possible factor or contingency influencing the project. There will always be uncertainty associated with the relationships between the many parties involved in a domestic building project, from owners to surveyors, consultants, builders, subcontractors. These relations, while governed by the contract, are moderated by informal understandings and practices. Complicating this there are delays, variations, changes of mind, errors and everything else that one can expect from a building project. Early intervention with a mindset of achieving mediation in the proper way I think will go a long way to alleviating the problems.

**Mr SIEBERT:** My name is Robert Siebert. I would like to hand out some photographs. Thanks for the opportunity to address the Committee. I have made a fairly detailed submission and I would just like to go through the context in which that submission is made and then I would like to raise two key issues. My history is that I engaged a builder to build my home. The work was to be completed in May 2003. The work was defective and I sought an inspection from the Office of Fair Trading. The inspection was carried out and the builder agreed to do remedial works. The builder never undertook the remedial works, so I had to take the matter to the CTTT. The findings of the member found that items were adequate or not defective even though they did not comply with the development application.

What that effectively does is put me in breach of section 76 of the Environmental Planning and Assessment Act. He made no findings in respect of work being done in a proper and workmanlike manner at the request of the builder, because the builder knew there was a subsequent prosecution against him under section 18B of the Home Building Act. This can be verified by viewing the findings of the CTTT. Basically, the CTTT dismissed evidence from the Office of Fair Trading by according it not as much weight—in fact, no weight—compared to the evidence given by the building inspector engaged by the builder. But even so, the CTTT awarded me damages. The builder was ordered to pay the damages and he did not pay. In the meantime he surrendered his licence and set up a new building company and he still operates in New South Wales and Queensland.

On the advice of the insurance company, I had to liquidate the builder so I could make a claim. The claim was submitted four months ago. I am still yet to hear a full determination. The house cannot be lived in because it does not have an occupancy certificate, and I cannot move into it 4½ years after it should have been completed. The cost of actually getting to the point where I could



submit an insurance claim was \$120,000, being rent and legal fees. That money, I think, would have been better spent fixing the house.

It raises two key issues, and I will go through them briefly. We have heard about licensing, we have heard about disciplinary actions, and we have heard about an advocacy centre. Until you go to the Consumer, Trade and Tenancy Tribunal [CTTT] to actually understand that that brickwork does not comply with the Australian standards and it cannot be certified, there is nothing that the Office of Fair Trading or the Home Building Service can do about inspecting, prosecuting builders, or having any determinations they made up held by the CTTT.

The Office of Fair Trading found the brickwork defective; it does not meet the standard and it does not meet the development approval. The CTTT said it was adequate. I cannot live in the house because of it. It is undisputed that the brickwork does not meet the code and the development approval. The chairperson of the CTTT has informed me that the CTTT has no powers under the Environmental Planning and Assessment Act, yet it exercises them. The consequence of this is that I cannot get damages awarded to fix it; I cannot get an occupancy certificate. The Office of Fair Trading has not been able to properly prosecute the builder for it, and the insurance company will not provide me with money to fix it.

One of the photos I have circulated relates to termite control. The code says that termite control is to be visible. You can see from the photo that it is not. The CTTT found that the termite control was not defective. Again, it comes to the issue: How are the Office of Fair Trading and the Home Building Service going to be able to operate in respect of licensing disciplinary action when you get that result from the CTTT? As I said, after spending \$120,000 I am at a point where I can submit the insurance claim. In this case the builder escaped a fair degree of disciplinary action. The credibility of the Home Building Service is shot to pieces.

I have also circulated a piece of paper about the insurance claim. My total costs to this point, including the cost of fixing the house, are \$290,000. The insurance company has said it will pay \$50,000. The reason for the \$50,000 is that claims are time-barred, because of the time it has taken. The CTTT did not award damages for many items. The insurance is not going to pay my rent for the last four years. The insurance company is saying it will pay 7 per cent of my legal fees.

In respect of some comments made by Lynn Baker in her submission to the CTTT, she makes the comment that it is inappropriate to have a government monopoly on insurance. I will refer to one small issue first. All those problems could have been avoided if the home warranty insurance was the insurance of first resort. I would not have had to go through the CTTT; I would not have had all the hassles. The insurance company agreed that they are defects, but it will not pay for them. If it were a scheme of first resort, the problems could be avoided.

Lyn Baker also says that if it were a government scheme it would expose taxpayers to considerable financial risk. I am a New South Wales taxpayer, and I am wearing the risk, the same as all the other people here. It is not a question of whether it exposes taxpayers to risk; it is the risk of the money to the community. Lastly, I would never wish it upon anyone to go what I have gone through. A lot of knowledge has been gained from the experiences people have had. Please draw on it, and put some better legislation in place.

**ALBERT FALZON:** Good morning, ladies and gentlemen. Thank you for giving my wife, who is here today, and me the opportunity to make representations on behalf of our four children. May I start by saying that because of the Office of Fair Trading and the Home Building Service my wife and I have lost our house.

We engaged a licensed builder whom we trusted implicitly. We trusted him so much that when he asked us for a 5 per cent deposit—not knowing he was an architect builder [...]\*, trading as [...]\*— we gave it to him straight away, even though there was not an insurance contract in place. I tender the document for you to see. As you can see, the 5 per cent deposit was paid on 28 March and

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\* Evidence suppressed by resolution of the Committee

the insurance was in place on 15 April. That is, I believe, a contravention of the Home Building Act, I think section 92.

I found that the Office of Fair Trading does not have the interest of consumers at heart. I tender a letter from me to Mr Lindsay Le Compte, which basically proves that the reason for the variance in the mortar for the brickwork was that the builder chose to buy inferior concrete. I got this through a subpoena. Also, it has a delivery docket and an invoice saying that the foundations were 15 MegaPascals, that is the strength of the concrete, which is not structural to start with. Again I provided the Department of Fair Trading with irrevocable and indisputable evidence, which it chose to ignore again. It is criminal.

I now go to the young lady over there, who has two beautiful kids. We did this extension after a lot of hard work. My wife stayed at home looking after our kids, and as our children were reaching the age where they could do their High School Certificate we said we had better do an extension so at least we are not on top of each other. For the last four years, six of us have been living in a two-bedroom house, freezing and incomplete, with a ceiling nearly as high as the ceiling in this room because the builder made a huge hole in the roof and the roof is not covered with Gyprock because everything was wrong.

If I may, I will now quote something from the New South Wales Ombudsman's report. It says, "The function of the Director General of the Office of Fair Trading is to promote and protect the interests of owners and purchasers of dwellings." I found that it did not do that. I tender another document. In his report he is basically saying that the previous commissioner was saying that they do a 100 per cent inspection, whilst the Independent Commission Against Corruption had conflicting evidence that they only do 10 per cent. With regard to reports, I tender this document as well.

The Office of Fair Trading would not accept letters that I sent. I also accuse Mr Stubbs of telling the builder what we are doing. I have that document in the form of an affidavit. Here is my tender about Mr Stubbs telling the builder what we are doing. I have it in an affidavit; some idiot must have left it there.

I would also like to say that Vero was the first company in Australia of a billion-dollar capitalisation that had the first infringement notice by the Australian Securities and Investments Commission—of all things—for a non-disclosure. I tender this document as well, so you can see who we are dealing with. That was only \$100,000, because, obviously, they did not fight it. They had the chance to fight it; they were obviously told what to do by their lawyers. They said, "We had better keep it hush-hush. Pay the \$100,000 and walk away from it." But some people saw it.

As I said, this is the report that they would not accept. It took the Office of Fair Trading six months to accept a report from Forests New South Wales which says that—I did the calculation—59 per cent of the roof trusses as installed do not comply after the tolerance is given, and that was at three feet on 900 and it was up to 65 millimetres. That is quite a big gap for a small thing like that. That is very, very dangerous. As you know, a Baptist church in Narara has recently collapsed because of a problem with a roof like that.

**CHAIR:** Mr Falzon, I am sorry but I will have to interrupt you; we have given an allotted time to each speaker. Thank you for the information you have provided, but we are not in a position to investigate individual cases.

**Mr FALZON:** No. But I want to do put it on record that Mr Peter Stubbs was telling the builder what we have done. Also, the builder has been found guilty and yet he has not even been put on the enforcement action for the year, which means that there is something very fishy. As I said, Reba Meagher has basically said that the builder complied with the rectification order when he did not.

**CHAIR:** Mr Falzon, thank you very much for your presentation.

**ANDRIS BLUM:** Thank you for the opportunity. I am from Victoria. I am described as a consumer advocate. I have been in working parties in the Victorian Government from the early 1980s, and I ended up on a statutory committee within consumer affairs, which Jeff Kennett finally abolished just before he departed government.

I come from an historical perspective. I believe that there has been a systemic failure over the last 40 years. The Building Services Corporation would have been a good example, because embedded in that system was the MBA to a large extent. Queensland seems to be about the only exception to this systemic problem.

I would like to congratulate the New South Wales Government and the Office of Fair Trading on establishing what I call the consumer building advisory service at Macquarie University as a pilot scheme. I did a report on that back in the late 1990s, which the Victorian Government never accepted. It was pretty wishy-washy because we had to try to get it through. Such a scheme, in my opinion, should cover policy development, it should monitor the market, it should have a legal component that advises consumers, it should be able to target specific court action on behalf of consumers, and it should have substantial funding—I mean millions of dollars, not a pittance.

The problem, of course, is that too many vested interests see this as getting into their area and therefore they will not approve it. This service should be strong enough to put consumers on an equal footing with the vested interests, like the MBA, the Housing Industry Association and the insurers, when they lobby governments. I believe that the Queensland system excludes these vested interests, and any system that comes out of this forum should exclude those vested interests and should have embedded in it consumers representing consumers. This is a consumer issue, not a vested interest issue, who are profiteering. The *Australian* recently, on 3 October I think, published that the Housing Industry Association was getting \$20 million to \$30 million worth of commission out of the current system.

As I understand it, within the Office of Fair Trading here you have a Builder's Warranty Insurance Consultative Committee, which is basically all vested interests; there is not a consumer representative on it. They brought out just recently some figures on the builders warranty insurance costs—I will get to that later. The Queensland system is a first resort scheme. You had a first resort scheme under the Builders Services Commission, which was dominated by the MBA, as I recall. The Queensland system should be seriously looked at; it has advantages for consumers and it has advantages for builders, like builders' security of payment, which is not provided for at the moment.

I have not got copies but I will table a letter from ASIC, which was sent to Phil Dwyer, which explains corporation regulation and it basically says that nobody has any information on what the insurers are doing and nobody has access to that information.

**Document tabled.**

You should look at Kim Booth's—who is the member of Parliament in the Legislative Assembly in Tasmania—speeches on this issue as part of your deliberations.

In terms of what the Committee decides, I think you should benchmark all your decisions against the Queensland system and if you cannot get an equivalent benefit for consumers and builders then the current system should be rejected out of hand. In terms of the figures that the Office of Fair Trading published recently up to March this year in terms of what the insurance premiums are for builders warranty insurance, all I can say is they are a disgrace. You cannot have an average figure of \$700 for an insurance policy which excludes all on-costs, GST, resellers margin, builders margin, stamp duty and so on. What you should be looking at is the cost finally that the consumer pays, which I believe, on average, is probably over \$3,000 here in New South Wales.

**CHAIR:** I am sorry, I have to interrupt you because we have a five-minute time limit and that time has expired.

**Mr BLUM:** I would just like to say that I think those figures that have been published by the Office of Fair Trading should be referred to ICAC for investigation. Thank you very much.

**Mr SHARP:** My name is Colin Sharp. Thanks for the opportunity to address the Committee. Five years ago my wife and I found ourselves in a situation with a builder which failed to comply with council regulations from the start of the renovation he was doing for us. After we voiced our concerns to the architect who was administering the contract on our behalf, the architect resigned, without giving any notice, three months into the contract. The builder was then antagonistic towards the architect we eventually found to take over the administration of the contract and continually disputed the decisions which the architect made.

Much later we were alarmed to discover that the builder and the original architect were in fact engaged in two other building disputes at the CTTT at the time of the architect's resignation. After we had been forced to pay others to finish the work which the builder had refused to do in defiance of the architect's instructions, we moved back into the house more than six months after the date for practical completion with our new baby. Shortly after moving in we found that the new work leaked and flooded in the first rain. In a matter of months we discovered termites in the new work the builder had done. When we then managed to obtain the termite certificate the builder had supplied to the local council, we discovered that he had not provided the treatment required under the contract or by council conditions of consent. Despite this, the council had accepted the certificate.

I would like to say something about the home warranty insurance because we made a claim on the home warranty insurance, the major part of which was based on the fact that to install the required termite treatment would be a very expensive exercise. The home warranty insurer recognised that the certificate supplied by the builder did not specify that the required termite protection had been installed under a new concrete slab. They, nonetheless, denied our claim, commenting that the builder should just provide the appropriate certificate, but did not explain how an appropriate certificate could be provided when the appropriate treatment had not been installed.

It seems to us that the home warranty insurance does not exist to protect ordinary people who are on the receiving end of the work of bad builders who flout legal regulations and ignore standards. Rather, it seems to us that home warranty insurers will say and do anything to avoid paying out any money, even if this means that they end up protecting bad builders from the consequences of their actions. They hire their own inspectors to investigate claims and these inspectors produce reports which, if they want to continue getting such work from the insurers, end up favouring the insurers in denying the claims. At the moment consumers have to fork out to have their own inspections done at significant cost if the claim is going to be taken seriously at all.

If consumers have to suffer the consequences of a builder's shoddy work, work for which they have already paid a large sum of money, then they should not have to find more money to prove that the work is shoddy. We believe that insurance claims need to be investigated and these investigations should be carried out by an independent body. The cost of the investigation should be borne by the insurance companies, as they will not then be paying for their own inspectors.

In regard to certification, it seems as though it does not matter if a builder's work is properly certified or not. As mentioned previously in regard to the termite protection, it did not matter to the certifying authority—in our situation the local council—that the protection certificate it was certifying did not meet the council's own requirements; they accepted the certificate anyway. The home warranty insurers' building inspectors told us that as long as things were certified it did not matter that they were not properly certified. By "not properly certified" we mean things being certified without having been inspected at all and things being certified without the required work having been done at all. The building inspectors told us that as long as the work was superficially reasonable then there was nothing that the home warranty insurance would do about it.

What is the point of requiring certificates if it does not matter if the work they are certifying does not comply with the BCI Australian standards in council conditions? In our case a structural engineer certified work without having inspected a significant part of that work—that is, the footings for a load-bearing wall. We have a copy of a fax where the engineer stated in black and white that he had not inspected the work. We then have a copy of the certificate he signed where he approves the work. When we approached Engineers Australia in regard to this matter we discovered that an engineer does not even have to be registered in New South Wales to carry out his work, and cannot be held to account in matters such as this. He can get away with whatever he likes, and this is what happened in our case.

What is the point of requiring certificates if certifiers can issue them without having looked at what they are supposed to be certifying? Why are certifiers allowed to get away with issuing certificates in such circumstances? In our case the local council, who are the principal certifying authority, gave final approval on the job without having once carried out any of the inspections required by their own conditions of consent. The CTTT is supposed to exist to give consumers a fair go in pursuing their rights against unscrupulous builders. However, when we went down this path against an established builder who had ripped us off, we found ourselves up against someone who had the money to pay for expensive Macquarie Street lawyers. The builder in our situation seemed to see it as a badge of honour to not do the work expected of him under the contract. He then revelled in the fact that he could wriggle out of being held to account for it by the arguments of his legal team.

We also know of another case heard in the CTTT where the consumer won costs and damages but this builder then simply appealed to the Supreme Court, safe in the knowledge that the consumer did not have the means to run a case there themselves. Justice in the realm of building disputes should not be available to the highest bidder; building disputes should be investigated by an independent regulatory authority. In conclusion, we believe there should be an independent regulatory body which is given real power to investigate cases where builders are not meeting their statutory requirements, and to hold them to account. This body should also be empowered to investigate building disputes in an impartial way. The costs to the consumer of these builders who do defective work and force consumers to pay for expensive building reports and to initiate costly legal action in an attempt to get justice are not just financial; the stress that our building dispute has had on us has also killed off any chance that we may have had to grow our family. The financial costs continue to mount up as we have to rectify that defective work ourselves.

The actions of our builder in ignoring the BCI Australian standards in council conditions were nothing short of criminal. We believe that if builders were indeed guilty of a criminal offence for this sort of behaviour and if there was an authority with the power to prosecute them in these situations then these actions would stop.

**CHAIR:** Thank you very much.

**Ms STANOJEVIC:** Madam Chair, honourable members of this Committee, thank you for the opportunity to address this inquiry. My name is Helen Stanojevic and I am a mother of three. Here I am standing before you and holding what I am surviving on: prescribed medical injections. I truly think that I am a different person since the decision was made to build our home. I had no idea that a brand new home could cause and continue to cause so much physical, emotional and financial pain to my family. Presently I stand before you with an application with the CTTT still ongoing. The following is a brief summary of the events that happened to us—my husband Michael here—and led to an application to the CTTT, and how our anticipated Australian dream of building our home has turned into a nightmare.

Five years ago we decided to build our home. Before we started we made sure that we followed all the correct normal procedures. The builder advised us that he had a licence and that the licence was current. We received all the brochures from the builder telling us that our house would be something that would last for our lifetime and that we would be proud of it. We had visited all the display villages and had selected the house that we wanted built. Even more reassuring was that we saw the house at the display village and the builder we chose is the largest and the most respected builder of project homes in New South Wales. My family was looking forward to living happily in the new house. That did not happen, otherwise I would not be here today with my husband Michael.

We signed the building contract in November 2002 and in July 2003 our home was completed. The builder requested final payment and we paid the final payment. At settlement time we were not aware that the builder had not obtained an interim or final occupation certificate. My contract with the builder said that we should have been supplied with this. I was shocked. I have since discovered that the inspection had failed and there was no interim or final occupation certificate and that the builder was aware of this before they took our final payment.

After settlement we were provided with the keys and moved into the house. There were obvious multiple defects with our house, and shortly after settlement one of our ceilings collapsed. Unfortunately, I have only got a few photos to show you that, but they may be passed around. The construction of our house left open holes between the eaves and the roof so big that normal-sized birds can enter freely. Despite calling the builder and writing multiple formal letters, no resolution occurred. Our three-months maintenance warranty was completed by my husband Michael and sent to the project builder. To this day our three-months warranty has not been fulfilled.

I was desperate and, not knowing what to do, I submitted a complaint to the Department of Fair Trading on 20 October 2003. An inspector from the Department of Fair Trading came to inspect our house on 8 December 2003. The inspector listed approximately 29 defects. While inspecting the premises he advised us to refer the matter to the CTTT. We lodged our application with the Consumer, Trader and Tenancy Tribunal on 15 February 2006. Since that time our application to the CTTT is still ongoing.

After approximately 15 months in the tribunal the builder offered us a settlement deal on 18 May 2007. We refused to sign this deed after reading it because the deed was written by the builder. It was unfair, and if we had signed it it would release the builder from any responsibility. The builder referred the case back to the CTTT requesting the matter to be listed for further directions hearings and demanding costs for the CTTT proceedings. We have been recently advised that the deed offered to us was unconscionable.

How does a builder with a good reputation in New South Wales ask us to sign a deed like this? We obtained independent advice from the New South Wales building group and we were advised to check the builder's licence through the Department of Fair Trading's website.

When we extracted the licence from the Internet we found: "Number of external insurance claims paid, six; Number of statutory insurance claims paid, three; Penalty notice under section 4 of the Home Building Act: offence, unlicensed contracting, penalty \$1,500"—

**CHAIR:** Excuse me, I am going to have to interrupt you. There is a five-minute limit and your time has expired. You can say one last sentence.

**Ms STANOJEVIC:** The CTTT resolution is a matter of great concern. We have been in the tribunal for almost two years. I thank the Committee for listening to me. I was told that the CTTT is inexpensive, expeditious and informal. Quite frankly, it is nothing like that—and I am a living example.

**CHAIR:** Thank you very much.

**CHAIR:** I call Mr Garry Wells.

**Mr WELLS:** Good morning. My name is Garry Wells. I have three children and I am 90 per cent deaf. I have not been able to work full time for some years. I purchased an older-style property as a means of income to help my family survive as my hearing got worse. On 24 April 2007 my rental property caught fire in the cavity of the roof at the main electrical connection after heavy rain. So I called my insurer, which called someone out to inspect the damage. The assessor, Peter Davis, organised [...] to tarp the damage caused by the fire. But the water still kept pouring through my ceiling every time it rained. I did not think things could get worse until [...] was sent back to repair the damage. The insurer was not giving me an opportunity or a choice to obtain my own quotes from builders and I was forced to use their repairer.

On 27 April the assessor organised [...] to carry out electrical work as part of the same claim for the value of \$2326.40 and paid it directly to the builder without a contract or approval from me. Then on 6 June 2007 I received a defect notice from Energy Australia for the work they had carried out. On 30 May 2007 I received the first contact for the fire damage from [...] signed by [...]. I was

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\* Evidence suppressed by resolution of the Committee

very confused because the licence number on the contract was different from the licence number on the business card that [...] gave me.

**CHAIR:** If I may interrupt for a moment, we have asked everyone not to name individuals or building companies. Please stick to the general issue.

**Mr WELLS:** That is no problem. Therefore, I called the Office of Fair Trading and asked for a licence check. I was told that licence No. [...] on the business card was not for that company but was an individual carpentry and joiners licence, and it had expired. They also told me that the other licence—[...]—was a building company and the gentleman could not sign the contract because he was not listed as a supervisor at that time. They also stated that company licence [...] was a restricted licence for building work under \$12,000 and the company was not permitted to do work requiring home warranty.

After I complained to the assessor on 25 June 2007 I received a second contract. This contract was split into two individual contracts for the same insurance claim. One was for \$11,957.83 and the second contract was for \$1,648 for the water-damaged ceiling also caused by the fire. I was not happy at this point and I could see they were trying to avoid home warranty insurance. The total price of the two contracts was \$13,605.93 plus electrical. I refused to sign the contract—there was no reason for two contracts. On 17 July the contractor called on site with his workers and materials ready to start. I felt that I was being intimidated to sign a third contract without the time to read it properly. I still felt there was a hidden agenda in the contract to avoid home warranty because the contract had a second page attached with a listed scope of work that was not priced or estimated. Also the same contract had two different company names—on one page it had the first company and on the second page it had another company name.

Then on 18 July I received a letter from the assessor advising me that the company that had been authorised to complete additional work over the \$11,957.83 for water-damaged ceiling had already been included in the contract but not estimated. I had been tricked out of my home warranty. The work stopped after three days uncompleted and never continued due to a dispute over the removal of asbestos. Asbestos pieces were left lying carelessly around the building and were a health risk to the tenant and visitors. The asbestos was not removed correctly and according to WorkCover's code of practice for asbestos removal.

**CHAIR:** Mr Wells, do you have something to conclude on because your five minutes has expired?

**Mr WELLS:** I only want to add that I was also concerned with the home building inspector because the asbestos issue was so bad and he virtually ignored it. Thank you.

**CHAIR:** Thank you very much.

**CHAIR:** I call Mr Charlie Tran.

**Mr TRAN:** Dear Madam Chair and honourable members of the Committee, please bear with my English—I speak it with a Saigon accent. Thank you for allowing me to address you in this inquiry. My case is long and it is very similar to others, especially Helen Stanojevic's case. But Helen still has her husband; my marriage broke up. Helen did not lose much money but I spent \$700,000 on my home plus the legal costs and now I have been forced out by my own city council because the house is too dangerous to live in. I am forced to live in a caravan.

The problems started in 2002. The same as in Helen's case, the builder was a licensed builder but on a rejected licence he was still building. Even though there are so many victims of this builder—like me—the Office of Fair Trading refused to take any action. Now he has wound up his company and started another company under his son's name and is still operating. There will be more and more victims like me. I will not talk about my ordeal over the last five and a half years because I do not

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\* Evidence suppressed by resolution of the Committee

have time. But the first thing I did in this dispute with the builder in 2002 was to say to the CTTT, "Give me help." But instead of helping me they punished me by giving a wrong judgment against me. I had to appeal to the Supreme Court, and I won. The builder had to pay me but he claimed everything back from the Government because he said it was not his fault that I appealed to the Supreme Court because the CTTT gave a wrong judgment. So I was in the right but I lost 30 per cent of my costs. The builder who dragged me into this mess claimed everything back from the Government and you, the taxpayers, had to pay him. The system is a mockery. I cannot understand it.

I conclude my speech by saying: Look at me; am I a criminal? I do not think so. But I am now being sued by four parties: the builder is suing me; the insurance company is suing me; my former solicitor is suing me; and Fairfield City Council is suing me. And it is not my fault; it is their fault. I am now in the Supreme Court, the District Court and every other court in the land. What did I do? Nothing. Four solicitors, four barristers and even a Queen's Counsel are against me. How can I win? The problem was caused because the Government allowed this builder to operate. That is my conclusion. Thank you very much.

**CHAIR:** Mr Tran, if you have further documents that you would like to table the Committee is happy to receive them.

**Mr TRAN:** Yes, thank you.

**CHAIR:** Other people who spoke today and who ran out of time can pass on any other information to the Committee at the conclusion of today's forum. I call Mr Con Papanastasiou.

**Mr PAPANASTASIOU:** I am Con Papanastasiou. I have a wife and two kids and we have all been sick with nerves for seven years because of a builder. We signed a contract on 8 October 2001 with a builder to build our home. We trusted him very much. When I say that I cry because I have been sick for seven years. After seven years arguing our case before the CTTT we found out that he is not a builder but a criminal. We have a criminal report from the police against him. First, on the contract we signed with him he put his company, which was unlicensed. Secondly, he did nothing to comply with the building law, BCI Australian Standard or council requirements. After all that, he took us to court because we did not make the final payment. We asked him for the final occupation before we paid him. That is why he took us to court.

That is why he took us to court. Now I understand after seven years, but then I could not understand why. He forced me to sign some important pages of the contract to prove his variations and he included extras on the bill to prove it to the Consumer, Trader and Tenancy Tribunal. Without agreement between us, he included the variations anyway. We have a NSW Police criminal report about him dated 5 August 2005. He and I are before the Consumer, Trader and Tenancy Tribunal and he has done bad things to other consumers. That is why I call him a criminal. I have evidence about all of that if the Committee would like it.

The builder started the work one month before the home warranty insurance was issued to me and one month before the construction certificate was approved. The builder had inspections done on the piers and holes for the zone of influence on 23 November 2001. The construction certificate was approved on 17 December 2001. He had another inspection of the slab reinforcement on 12 December 2001. There were seven inspections before the construction approval and the insurance certificate were issued. I can provide that evidence if the Committee wants it.

The principal certifier did not pass one inspection. I can understand why. My English is not very good, and I will not tell all of the story because it is too long. I want someone with responsibility to give me answers because I want to sleep tonight. I have not slept for seven years. I know the names of all these people from the Consumer, Trader and Tenancy Tribunal because I have known them for seven years. They finally fined the builder \$3,000. I spent more than that on phone calls to them. The builder then gave me a bill because he thinks he is in the clear and is honest. He has had to pay only \$3,000. You saw the pictures.

**CHAIR:** We have them.



**Mr PAPANASTASIOU:** You saw the roof?

**CHAIR:** Yes.

**Mr PAPANASTASIOU:** Only my consultant went into the roof. Neither the Consumer, Trader and Tenancy nor the council inspected it because they were too busy. Do you believe that? What else can I say? The Consumer, Trader and Tenancy Tribunal, builders, homeowner insurers and solicitors all work together against consumers. I have seven years' worth of evidence in writing, even from them. I have spent \$150,000 in legal fees and \$50,000 on seven reports, three of them from the Office of Fair Trading. They have so many reports about not complying with Building Code of Australia standards or council regulations. They have all fought with me for seven years. Now we are sick and have no money. The council came back after one year and we did a settlement on 9 October 2006. I want this finished. The builder has not done what he agreed to do in the settlement. After that I said I am going to sell my house and live in hay paddock. I do not care.

**CHAIR:** I hope it does not come to that.

**Mr PAPANASTASIOU:** We go against everyone—even the council. I am going to *A Current Affair*. I am honest and I want others to treat me honestly.

**CHAIR:** Thank you for your presentation.

**Ms HON:** Good morning members of Parliament. I take this opportunity to express my gratitude for the chance to address you. My story is not the usual nightmare; mine is one with a happy ending. As I am sure many of you can imagine, building one's home is a lifetime dream. In many cases it involves the entirety of one's savings. In my case, even though I was able to bring my dream to fruition, it was only due to the existence of the Building Action Review Group that allowed me to avoid many of the pits and obstacles that stood in my way.

One of the main areas where the Building Action Review Group offered invaluable knowledge was when I was faced with deciding which builder to choose. Understanding that most builders are good, hardworking and honest people, it takes only a minority to destroy the reputation of the whole. Some of this minority with bad past histories will often trade under different names or ownership in order to circumvent the customers' ability to elicit their records. The Building Action Review Group assisted me by offering its expertise.

I was given the following six points: First, use the net to check the Office of Fair Trading website for a good, licensed builder; second, if they are licensed, find out if any complaints about that builder were lodged by previous customers; third, go to a legal site to check their past history—that is, whether they have had legal proceedings taken out against them; fourth, check with the Office of Fair Trading whether their business name is registered; fifth, check with the Australian Securities and Investments Commission for the financial status of the company; and, sixth, how to obtain approval by an engineer with regard to the base structure of my home.

Throughout the construction of my home the Building Action Review Group kept me informed of the rules and changes in regulations. As such, I was informed of the right to choose the principal certifier. This was very important because often when the homeowner was not aware of that right the builder could choose and liaise with a certifier to underhandedly approve the completion of the house regardless of whether it had met the proper standards. Before completion of the house, the Building Action Review Group also informed me that the council kept records of inspection reports and items that had to be completed by the builder. Hence, I was given the knowledge to withhold the final payment until these items were completed. If I had not been informed of that, the builder may have taken a long time to complete my home. That may have meant continued costs for me in renting. Lastly, on the signing of the building contract, the Building Action Review Group voluntarily went through the entirety of my contract to ensure there were no hidden loopholes that could put me at a disadvantage.

Truly, this group should be highly commended for the assistance it gives without any financial incentive and with goodwill. As I mentioned, the majority of builders are good, hardworking and honest people. However, due to the huge costs involved in building one's home, not to mention the emotional stress involved, the existence of a few underhanded tactics used by a minority makes it necessary for the Building Action Review Group to continue to ensure the rights of homeowners are properly protected. Consumers need to be forewarned prior to starting to build their home to ensure that the contract documentation is correct during construction and/or at the completion of the house. In dealing with a builder in a dispute it is essential that an independent consumer group similar to the Building Action Review Group exist to educate homeowners in achieving the building of their dream home with a happy ending. Thank you for giving me the time to share my thoughts and opinions. I truly hope you will carefully reflect on what I have said today.

**Mr BRYAN:** Thank you for the opportunity to speak to the inquiry. In December 2002 my wife and I signed a building contract. To this day the house is only at lockup stage—that is, the brickwork completed—and there are many outstanding building defects. Over the past five years we have been subject to the incompetent and dishonest practices of a licensed building contractor, the extremely poor, legalistic and costly claim process of the homeowners warranty insurance scheme—which is extremely biased towards the insurer, who can afford expensive legal representation—and also the inadequate operations of the Office of Fair Trading and the Consumer, Trader and Tenancy Tribunal.

When I lodged my submission last Sunday, we still had not been notified that the case had been decided. The following Monday we received notification from the Consumer, Trader and Tenancy Tribunal. Without going into any specifics, I will take the Committee through the basic sequence of events. As I said, we signed a building contract in October 2002. It was not until March 2003 that the builder commenced construction. I believe this was due to homeowner warranty-type issues. On 22 January 2003, the builder's licence number on the contract was cancelled by the Office of Fair Trading. I was not notified by the builder or the Office of Fair Trading that the licence had been cancelled. That is a major flaw in the system. It would be very simple to have a cross-reference system where the builder's licence is paired to current projects. That information could be provided to the Office of Fair Trading by the council and then corrected once the occupation certificate is issued.

In February 2003 the builder was issued with another licence. Again, this was just before he began building. The licence was restricted to the construction of single-storey homes and homes not requiring homeowner's warranty insurance. That should have prevented him from building. On 17 February 2003 the homeowner's warranty certificate was issued and the building proceeded slowly over the next few months with all sorts of excuses from the builder. On 18 December that year—that is, nine months after a six-month contract was signed—the brickwork was at lockup stage. However, I considered it to be faulty and engaged the services of a professional building inspector, who confirmed my thoughts. On 21 January 2004 I had the building inspected by a senior building inspector from the Home Building Service. He confirmed my suspicions and my building inspector's recommendations. Everything we raised was signed up as a defect. The builder agreed during that inspection to rectify all the defects, and I took that as a verbal extension to the contract.

The basis of the problem is that the issues brought up as defects at that inspection could have later been used to justify a claim for statutory warranty repairs under the contract.

I did not receive a copy a copy of that inspection until five months after it was done. I sent Vero the application for the insurance. It was rejected because the builder was not insolvent; that is, the builder continued to design homes but it could not build them, so therefore I was forced to try to put them into liquidation by going to the Consumer, Trade and Tenancy Tribunal [CTTT]. I had to engage legal representation but at the Consumer, Trade and Tenancy Tribunal, the builder did not even bother to turn up for two directions hearings, so Vero was brought in as a second respondent to those hearings, eventually.

On 4 February 2005 Vero sent out its first building inspector to the site, Cergon Building Services. On 20 May I received notification from Vero that they had basically agreed to all those defects but only that they needed to be costed. Somehow or other Vero was allowed by the Consumer, Trade and Tenancy Tribunal to do a further inspection by another company, Civil and Build Pty Limited. Amazingly this report conflicted with everything else that had been brought up by the Home

Building Services inspector and my previous inspector. There were many, many directions hearings, et cetera. On 31 October there was a building conclave held on site. I was not permitted to attend that conclave. I was banned off site or the conclave would not go ahead.

**CHAIR:** I can tell that you have a great deal more information and the five minutes has expired. I wonder if you might consider passing on that information, as it would be useful to the Committee. Now you may like to make your concluding statement.

**Mr BRYAN:** The basis of my argument is that during the home building inspection, reference is made to the Building Codes of Australia, Australian Standards, and the guide provided by the Office of Fair Trading on its website. On the basis of that, as well as my building inspector's reports, I consider I had a case for claims under statutory warranty. When the case was finally determined by the Consumer, Trade and Tenancy Tribunal member, he stated that the Building Codes of Australia [BCA] and the Australian Standards, et cetera, were to be used only as a guide. I agree to that to some extent, but only that they are the minimum, the very minimum, that they must comply with.

Basically the Consumer, Trade and Tenancy Tribunal member has disagreed with the Home Building Service report, the building stock tolerances in the Building Codes of Australia and the Australian Standards, et cetera, the Cergon Building inspection report, which was the first inspection report done by Vero, and the tolerances in the guide to standards and tolerances that they publish on their own website. It is ridiculous. So, the outcome of the Consumer, Trade and Tenancy Tribunal hearing was, as I stated, that the member was—

**CHAIR:** We have really run out of time, I am sorry.

**Mr BRYAN:** I am sorry.

**CHAIR:** If you have some information to pass on to the Committee, it really would be useful.

**Mr BRYAN:** My main point is that a line should be drawn in the sand as to what is a defect and what is not a defect. The Home Building Service says it is. The Consumer, Trade and Tenancy Tribunal member, with no building experience at all, says it is not; he awards otherwise. I have now been awarded \$108,000, although I initially applied for \$360,000 worth of damages. Because Vero offered \$140,000 before that, I now have to pay all of Vero's legal expenses which are estimated at \$30,000 to \$40,000.

My family is left in financial ruin. Like a lot of other people here, we have had to undergo medical treatment for depression and high blood pressure, et cetera. There is just no justice for the honest person out there. Personally I want to take things into my own hands. [...]\*

**CHAIR:** Thank you!

**Mr BRYAN:** [...]\* That is how cocked up this whole system is.

**CHAIR:** It is a very emotional situation. Thank you very much.

**CHAIR:** I call Glen Condie.

**Mr CONDIE:** G'day everyone. Thank you, Madam Chairperson, and members of the Committee for the opportunity to speak at this forum. My parents are the owners of a property adjoining a recent development so they do not actually have a contract with the builder. I sympathise with all of you people who do have contracts with builders because I thought that people who had contracts might have been better off than we are, but no. We do not have a contract with a very large building company and so we were advised by the Office of Fair Trading and the Consumer, Trader and Tenancy Tribunal that they cannot help us. I hope that my submission and also my mother's

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\* Evidence suppressed by resolution of the Committee

submission might convince the Office of Fair Trading to help adjoining property owners, even though they do not have a contract with the builder.

One of the largest building companies in New South Wales and one which I believe has served as representatives of government agencies, performed non-compliant excavation and further work upon my mother's property. The work was undertaken without my parents' consent and, as I understand it, it went against the recommendations contained within geotechnical reports prepared prior to the signing off of the development application [DA], before the excavation. At one point my mother actually saw them working and she could tell that they were working on her property, so she went outside to intervene. She asked the workers to stop doing what they were doing. They went to get the foreman and the foreman came out from this large building company and basically said, "You will just have to wait until we are finished and then you can see what it looks like." Basically, her rights were infringed. This is a company that probably influences the New South Wales Government in some way.

The private certifier [PC] involved, apparently from a company that has had many complaints against it, including some in the media, suggested that a retaining wall was necessary, but the building company did not follow the directions of the private certifier. A retaining wall was never built. Instead, they just put concreting in and then they were able to get structural reports from engineers to say that that was fine. I am of the belief that other independent entities within the private certification system have provided false documents to cover the actions of the building company. This is what I believe to be the influence of a large building company in New South Wales. Incidentally, the engineer now states that he has lost the documents and photographs. So this is the professional conduct of an engineer who was employed or contracted with one of the largest building companies in New South Wales which probably influences the New South Wales Government.

We tried to obtain help from the Randwick City Council. At this point I have to thank the mayor at the time, Murray Matson, because he did help us, but, anyway, the council basically refused in the end. My mother had submitted a submission prior to the approval of the development application to clarify the extent to which the excavation would come near her boundary. We heard nothing from council regarding that. I wrote to the mayor. Incidentally, this all started in March 2004, the excavation. The council was doing nothing so I wrote to the mayor in December 2004 and he did help, but the complaint was handled by the same officers of Randwick council who were involved in the dispute. There is no independent complaints system in Randwick council. Then the same council officer who dealt with our complaint had earlier indicated, and this was in writing, that engineers' reports appeared fine, even though one report stated that underpinning had been taken prior to excavation.

I had a recent meeting with the senior council officer and I showed him photographs of the site before excavation and after. He laughed and said, "It's impossible that they could have underpinned", but this is the same guy who had written that it was fine. Gradually the council and the private certifier served a fine on the builder but nothing has really been done since. We have been advised that the department of planning at the Randwick City Council could have done a lot more and other councils in Sydney have also suggested that they would have done a lot more. In summary, I believe that the influence of a major building company has had detrimental effects on my parent's property as well as infringing her rights. This is a company that probably influences the New South Wales Government or government agencies.

I believe that influence has affected the private certifier, the council and the engineer. I request an inquiry into the private certification system in New South Wales. I believe the certification process has failed in this case and adjoining owners need the help of the Office of Fair Trading. The development has been signed off and my parents' property has been left damaged and with the unauthorised work. What will happen when they want to sell? If government agencies use representatives of large building companies for advice, I hope that the general public is allowed to advise these government agencies of the activities of these large building companies. Perhaps the Office of Fair Trading can help in this way. Thank you.

**CHAIR:** I call Lydia Chakoush.

**Ms CHAKOUSH:** I would like to thank the Committee members for allowing me to speak today. Some of you know me. I spoke last year at the General Purpose Standing Committee No. 4 committee. I bought a home in 1999, a brand new one, and I did not have to deal with contracts. I believe that we bought a dream home, built by a licensed builder. Two years later, that was not the case. Water is leaking through the ceiling, flooding the backyard, and cracks are in the exterior-interior. To cut a long story short, we have been dealing with the Home-Building Service for close now to five years; insurance—pretty much the same.

I found out about the builder when I wrote a letter to the former Minister who responded to us. She stated that this builder held a licence which was surrendered in 1976. I was further to find out "the subsequent licence" of this builder "was issued based primarily on the fact that he held a licence", not on the fact that he was skilled or qualified to build residential buildings or homes. I think this is contrary to the Home Building Act where the director general must require licences to be accompanied by such particulars as qualifications and skills. I asked the former Minister to provide confirmation and the documents related to this builder's licence in 1976. This was back in 2006. It is now 2007. We never received a confirmation or a response.

I further found out that this builder had eight complaints lodged against them with one particular licence. That licence expired. He waited 12 months and applied for a new licence. It was issued. With that licence there were another four consumer complaints lodged and then he built my home plus three others in a complex of four townhouses. I stand here today disgusted, knowing that this man was licensed based on the fact that he actually held the previous licence and not that he was skilled or qualified. I am also disappointed with the fact that there were other complaints, and there should be an alert, a trigger, for the Home Building Service, for the Building Codes of Australia [BCA] and for the Office of Fair Trading to be cautious, to be wary, to check and examine if this trader deserves another licence because in this case it has been repeated and repeated over again.

In 2006 the other three home owners and I were forced to sign away our rights with the insurance company only because we cannot afford it any more. It has just taken too much. I am a single mum with two girls. I earn \$32,000 a year and the legal expenses are beyond my means. The other home owner is a pensioner and the others are a young family with a small child. It took 18 months after we signed these terms of agreement or mediation or resolution with the insurer that work started on our homes to patch up our townhouses. I believe that is what it is—it is a patch-up because the real issues will not be fixed and that is of great concern to me.

My daughters are happy because they have sort of got a normal lifestyle now. They see there is no more water leaking from the ceilings above, but the issue here is that a person should not be forced because of financial debts caused by a home building complaint to succumb to the insurance companies and be forced to take whatever is offered, the littlest, because they cannot continue. The stress and the financial debts are just out of a normal person's means. Consumers are suffering, as you have heard here today. Every time I heard a story, I felt that because I knew exactly what they were going through and are still going through today. That is all I have to say. Thank you very much.

**CHAIR:** Thank you very much for your presentations today and for the way in which you have conducted yourselves, we know that it is a very emotional issue for a great many people and we appreciate that very much. The information is very useful. If anybody does have information that they would like the Committee to see, we would be happy to table that and pass it on to Committee members. There has been some documentation tabled this morning, which we will make available to Committee members. Some of you have presented information that is in original form, particularly Mr Falzon and Mr Wells, and we would like you to see the Committee staff about that because we do not want to take your original photographs and letters.

**(Short adjournment)**