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History

In September 2002 I entered into a contract with Cavalier Homes (Australia) to build my home. As Cavalier Homes (Australia) would not provide Council with a copy of the home owner warranty insurance a construction certificate was not provided to Cavalier Homes (Australia) and work on the house was delayed. In February 2003 the contract to build my house was novated to Cavalier Homes (Gold Coast) who started work in March 2003. The work was to be complete by May 2003.

Problems with workmanship were apparent from March 2003 and these were brought to the attention of the builder who did nothing about them.

In August 2003 the builder issued a certificate of practical completion. The previously identified defects were not fixed and the house still had doors and steps missing.

In October 2003 as a result of a complaint to the Office of Fair Trading the house was inspected and the builder agreed to do various works. The builder did not undertake the works as agreed.

Due to the unrectified faults and because more defects were identified I took the matter to the Consumer Trader and Tenancy Tribunal (CTTT). It took some 12 months before a hearing was held.

I won the matter in the CTTT and was awarded costs. The builder did not pay so I had to liquidate the builder before I could submit a claim on home warranty insurance. A claim was submitted in July 2007.
As the claim was not responded to within 90 days (after 45 day its deemed as refused and I had another 45 days to lodge an appeal) I made application to the CTTT.

A detailed chronology is attached at Appendix A

The insurer then provided a response to my claim.

At that time my claim was for

Cost of alternate accommodation as per the Home Building Act and Insurance Policy (Records of rent can be provided)

Approx $55,000

Legal costs as determined by the Supreme Court as per the Home Building Act and Insurance Policy (Supreme Court Determinations can be provided)

Approx $59,000

Cost to liquidate the builder as required by The insurer (receipts from solicitor can be provided)

Approx $6,000

Cost to rectify the house as assessed by the insurer (assessment by the insurer’s Inspector that did not include a number major items which prevented me from getting an occupancy certificate)

Approx $167,000

Total

Approx $287,000
After a further 12 months the Office of Fair Trading intervened and negotiated a settlement with the insurer. The maximum available under the policy was $200,000. With the further 12 months rent my legal costs and costs of alternate accommodation were $135,000. Even if I got the maximum amount under the policy I would be at least $100,000 worse off that I would have been if the house was built correctly.

Further the $135,000 spent by myself on rent and legal costs plus any amount spent by the builder has been on advantage to no one and has not contributed to the fixing of the house.

My experience has highlighted a range of issues.

**Insurance**

At present the Home Owner Warranty Insurance scheme based on “last resort”. The system creates a number of issues that could otherwise be avoided if the insurance was based on a first resort system such as in QLD.

The issues are

- Barriers to Submission of Claim
- Availability and use of damages
- Assessment of Claims
- Limitation on lability
- Use of Insurance to limit liability of builders at expense of consumers.

Further the Regulations and the wording of the policy create “loopholes” such that homeowners may remain having to meet a significant portion of the costs
incurred in the resolution of their matter as occurred in the Isaccs matter in Victoria.

**Barriers to Submission of Claim under Last Resort Insurance**

How the present Home Owner Warranty Insurance scheme has been applied in my case is that I had to go through the CTTT to be awarded damages to rectify defects in my house, I then had to liquidate the builder before I could claim against the Home Warranty Insurance.

The cost of these steps to the point of liquidation of the builder were

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Legal costs</td>
<td>$59,000</td>
</tr>
<tr>
<td>Cost to liquidate the builder</td>
<td>$6,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$65,000</strong></td>
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</tbody>
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As the insurance is last resort insurance I have had to meet these costs before I could submit a claim against the insurance. Having to meet such costs creates a financial barrier to home owners needing to claim on insurance.

My situation is exacerbated because I have not been able to move into the house because an occupancy certificate cannot be given for the house. As such I have had to incur rental costs now over $70,000.

After meeting the cost of building a house most people are not in the position to be able to overcome the financial barrier, in my case $120,000, to submit and insurance claim.

Having the insurance scheme based on last resort with significant costs having to be incurred before a claim can be made, effectively creates a
financial barrier which must be overcome by home owners before they can access the scheme. The financial barrier also effectively blocks most home owners being able to contest the insurer's decision in the CTTT or VCAT as if dissatisfied with the insurers decision they cannot afford to take it back to the CTTT, VCAT or the Supreme Court.

It is recommended that the Home Owner Warranty Insurance scheme be changed to a first resort scheme such as that which exists in QLD.

**Availability of use of damages under last Resort Insurance.**

In my case whatever the settlement with the insurance company, some $65,000 has been spent on legal costs and liquidation of the builder, and $55,000 on rent waiting for damages to be determined and paid. There has also been expenditure by the builder in defending his position. This $120,000+ has been spent on items other than fixing the house.

This expenditure has benefited neither the builder nor me. The only beneficiaries of the $120,000+ have been lawyers, landlords and to a much lesser extent building inspectors. It is my opinion that it would have been more appropriate to have the monies spent on rectifying the house.

The situation is exacerbated if the cost of fixing the house, plus legal costs, plus rent exceeds the cap on liability as detailed in the insurance policy (now $300,000). In such a case, if the cap is imposed, monies which should have been available to fix the house would have had to be used to pay legal costs and rent leaving the homeowner out of pocket for the repairs and possibly unable to fix the house. This is seems to be at odds with the intention of the legislation. Further it does not seem to comply with the principals of award of
damages being that a person should, in so far as money can, be placed in a position he or she would have been if the work had been completed properly.

It should be noted that if considered fairly a first resort insurance scheme would reduce the costs of alternate accommodation and legal costs during the dispute with the builder hence reducing the liability of the insurance company.

Again it is recommended that the Home Owner Warranty Insurance scheme be changed to a first resort scheme such as that which exists in QLD.

**Assessment of Claims.**

The NSW Insurance Policy under Clause 3.1 as does Regulations 57 to 59 indicate the Insurer will pay if the home owner suffers

- Loss or damage due to breach of statutory warranty
- Alternate accommodation
- Any legal cost

The Regulations would seem to indicate that there are no exceptions to these items. In Victoria the Regulations are more restrictive on the damages that can be claimed.

It is difficult to believe the Act and Regulations and subsequently the approved insurance policy were written to preclude a homeowner recovering damages that would place him or her in a position that they would have been if the work was completed properly (Hadley v Blaxendale) and are available under common law for damages.

**Limitation on Insurer’s Liability**

The NSW Regulations detail the losses indemnified and 58 detail the limitations on liability . .
The Regulations are being used by the insurance companies to limit their liability to a maximum amount which is now $300,000. It appears that this is inconsistent with intent of the Regulations and the Home Building Act to provide consumer protection as neither place any limit on indemnity. Insurers are using it to limit the indemnity provided to the home owner. This is seems incongruous as there is nothing limiting a builders liability if the builder remains a trading entity.

It is understood that an insurer’s liability is capped at $10m and there after it is underwritten by the Government. In such a case the limitation of liability of the insurer to the home owner serves little purpose except to ensure profits for the insurer and it does not provide protection to the home owner.

It is recommended that no minimum amount be specified and that it is stated the losses indemnified are uncapped subject to the imitations in Clause 58.

Contrary to evidence given to the Senate Inquiry, consumers cannot take out additional insurance. To do so would require the agreement of the insurer who in turn would seek greater sureties from builders who would rightly refuse. As the insurers risk could not be passed on insurers will not provide cover in addition to that legislated. In my case this was tested in the CTTT and it was found that there was no way additional insurance could be obtained.

**Use of Insurance to Protect Builders**

As early as May 2003 it was apparent there were problems with the house. In October 2003 I took the matter to the Office of Fair Trading. Fair Trading inspected the house and Cavalier Homes (Gold Coast) agreed to undertake
various rectification works. Cavalier Homes (Gold Coast) did not undertake the rectification works.

Because the rectification works were not undertaken and because further defects were identified the matter went before the CTTT. My application was lodged in the first half of 2004 and the hearing was held in July, August 2005. The CTTT handed down its findings in July 2006. I won the CTTT hearing and was awarded damages and costs. Cavalier Homes (Gold Coast) did not pay and I was forced to liquidate the company so that I could claim on home warranty insurance.

Parallel to these activities Cavalier Homes (Gold Coast), one of its shareholders and its nominated supervisor, Person A, the person who also owned T&T Building (the company that held the remaining shares in Cavalier Homes (Gold Coast)) was undertaking actions to avoid making payment to me and to remain in business as home builders.

On 19th July 2004, Person A renewed his licence for T&T Building, a company which I understand he owns, and on 1st March 2005 upgraded the licence to allow him to undertake all types of building works including building houses. At this time he effectively held two licences which is illegal under the Home Building Act in NSW.

On 4th August 2004 Person A established another company T&T Building (Prestige). I understand its shareholders are Person A and T&T Building which is owned by Person A with Person A’s son as a director. The new company. T&T Building (Prestige), commenced trading building houses as
can be seen from records of the QBSC. The new company had the same business address as Cavalier Homes (Gold Coast).

On 25th May 2005, immediately before the CTTT hearings Cavalier Homes (Gold Coast) surrendered its licence to build houses and although it remained a registered company it ceased work building houses.

T&T Building and T&T Building (Prestige) continue to operate as building companies with T&T Building (Prestige) building houses. Cavalier Homes (Gold Coast) is in liquidation.

Evidence can be provided in the form of Company Searches and Licence Checks to verify my statements in this matter.

It would appear Person A has indulged in the practice of Phoenix Companies where a company is closed down to avoid debts and a new company is established to carry on the business in this case of building houses. Further it appears this practice is supported by the insurer.

My position is that after seeking consumer protection and winning I will be $70,000 worse off than if I had accepted the defective house, which cannot be given an occupancy certificate.

On the other hand the builder has his liability limited to the $50,000 offered by the insurance company, is not liable for fixing the house and continues to trade as a builder with insurance probably provided by The insurer.

This demonstrates a practice, probably supported by the insurer, where The insurer effectively protects the builder by allowing the liquidation of the builder’s company so that a reduced payout is made to the home owner. The amounts recovered by the insurer from sureties and bonds provided by the
builder to. The insurer would less than the amounts required to fix the house and meet the home owners costs. In effect the consumer gets less and the builder has to pay less to the insurer a situation that does not provide the consumer protection required by the Home Building Act but protects the builder.

Again it is recommended that the Home Owner Warranty Insurance scheme be changed to a first resort scheme such as that which exists in QLD. In the alternate it is recommended the regulations and legislation be changed such that the home owner can recover damages through the insurance or have the insurance company do works such that the conditions of the Contract and development consent are met and that legal and alternate accommodation costs are met.

**Position of Others**

Australian Consumer Association (Choice), builders activist groups such as the Australian Builders Collective, consumer groups such as BARG, the Master Builders Association and every builder or home owner I have spoken to who has had dealings with Home Warranty Insurance except one all agree the system needs reform. All indicate they would prefer the QLD model over the NSW system.

A scheme similar to the one in place in NSW has recently been scraped by Tasmania.

As can be seen from my submission insurance companies have been provided loopholes so that they do not have indemnify an owner against all
the losses the owner may incur due to the poor performance of a builder despite what appears to be the intent of the Act and Regulations.

For the consumer there is no requirement for a builder to take out insurance for works under $12,000. Most consumers would insure any other possession worth $10,000 so it seems ludicrous that insurance is not required for building work of $10,000.

One case heard before the CTTT at which I attended a homeowner engaged a tiler for approximately $2,800 to lay tiles supplied by the owner. The tiling was laid without expansion joints and the tiles “exploded”. The cost of repair is estimated by the CTTT at $22,000. As there was no insurance it is most probable the home owner will not recover damages.

At the high end, if the cost of legal fees, rent and rectification cost is over $300,000 the owner pays the amount over $300,000 even though he or she is not at fault. The owner would not have to pay if the builder was still in existence. The owner gets less if the matter has to be claimed on insurance.

For the small to medium builder they generally have to put up their home as equity in order to get insurance.

It is ironic that consumers and builders on NSW both agree the system needs to be reformed. They can even agree on options to do so and have done so for some time but at this stage no reform has occurred.

**Alternate Dispute Resolution System**

The issues of Home Warranty Insurance and the dispute resolution process are intrinsically linked and as such must be considered together. For example
the position of insurance in the dispute resolution process needs to be defined before any discussion on Home Warranty Insurance can be held.

In recognising the link my submission firstly compares the present system in NSW and a proposed system developed with the objectives of:

- Having process equally available to both builders and home owners;
- Having a short process in respect to time to reduce cost;
- Having a minimum cost process to avoid financial barriers to appellants;
- Having a process where only the issues at hand being compliance and contract are addressed and matters do not become bogged down in legal argument; and
- Having a process where the issues are addressed once only (subject to appeal).

From that system evolves a concept of Home Warranty Insurance within the dispute resolution system. There after is a discussion on the coverage of the insurance and whether that insurance should in the hands of the private sector or government.

**Comparison between Existing System and a Proposed System**

A description of the existing system of dispute resolution and an alternate system of dispute resolution and its impacts on builders, home owners and insurers is given below.

**Present System in NSW and Victoria**

**STAGE 1**
Advise defaulting party that works need to be rectified, monies paid, access given etc and seek agreement with the other party on how the matter to be resolved. If the matter is resolved the process stops here.

**STAGE 2**

In the event the matter is not resolved either party can take the matter to the HBS. Note this avenue of redress is not available to the builder.

HBS inspect the property/issue and direct the builder to do works. If the direction is complied the matter stops here.

**STAGE 3**

If the Order not complied with the matter has to be taken by the appellant to the CTTT or VCAT. Hearings are held and a determination made. Generally the CTTT or VCAT member does not have a building background and is ignorant of many requirements of Australian Standards and the BCA.

If the Order of the CTTT or VCAT is complied with the matter stops here with the exception that the home owner must source another builder and go through the building process again with the new builder.

**STAGE 4**

If the Order is for money and is not complied with the appellant needs to seek a Court Order and serve it on the defaulting party.

If the Court Order is complied with the matter stops here with the exception that the home owner must source another builder and go through the building process again with the new builder.

**STAGE 5**
If the Court Order is not complied with the appellant must liquidate the defaulting party. Now in NSW this is a new trigger for an insurance claim.

If there are sufficient assets available to meet the costs incurred to rectify the problem the matter stops here with the exception that the home owner must source another builder and go through the building process again with the new builder.

**STAGE 6**

After liquidation, if there are insufficient funds available for restitution the appellant needs to lodge an insurance claim. This avenue is not available to the builder. The claim is assessed and if agreed the matter stops here with the exception that the home owner must source another builder and go through the building process again with the new builder.

**STAGE 7**

If the insurance claim is not agreed with, the matter has to be taken by the appellant to the CTTT or VCAT.

**STAGE 8**

After the directions of the CTTT or VCAT are complied with by the insurer the home owner has to engage a new builder to undertake the rectification works and there is a risk the whole dispute resolution system will be invoked again with the new builder.

If the directions of the CTTT or VCAT are not complied with the matter must be taken by the appellant to the Supreme Court.

A further Home Warranty Insurance premium needs to be paid for the new contract.
Further prosecution of the builder by HBS will be subject to further action in the CTTT or VCAT and appeals through the Supreme Court and or the Administrative Decisions Tribunal.

**AVENUES TO CHALLENGE**

Any claim by an appellant, direction from the HBS or determination of the insurance company can be challenged in the CTTT or VCAT.

In limited circumstances the CTTT or VCAT may be asked to review the decision and may or may not accede to that request. The matter could be taken to Supreme Court on points of law or procedural fairness but again in limited circumstances. Neither of these necessarily relate to, nor cover issues of compliance with the DA, Standards and BCA or contract.

**MYSITUATION**

It has taken 5 years, $65,000 in legal fees and $60,000 in rent to get to the end of Stage 6, where I could submit an insurance claim, as described above.

**Proposed System**

The proposed system was developed without detailed knowledge of the QLD system (apart from anecdotal evidence) or any preconceived notions apart from

- Having process equally available to both builders and home owners;
- Having a short process in respect to time to reduce cost;
- Having a minimum cost process to avoid financial barriers to appellants;
• Having a process where only the issues at hand being compliance and contract are addressed and matters do not become bogged down in legal argument; and

• Having a process where the issues are addressed once only (subject to appeal).

The system proposed ends up closely following the QLD system with the exception that the Order is the thing which has to be executed or challenged. The parties are not challenging each other.

STAGE 1

Advise defaulting party that works need to be rectified, monies paid, access given etc and seek agreement on how the matter to be resolved. If the matter resolved the process stops here.

STAGE 2

In the event the matter is not resolved, either party can take the matter to the HBS. If there is an agreement on what has to be done HBS issue an Order for whatever has to be done to be done. This can be applied to either or both the builder and the home owner.

If there is no agreement HBS determine what has to be done and issues an Order accordingly.

If the Order is complied with, the advice that it has been complied with is co signed by both parties and provided to HBS, the process stops here.

STAGE 3

If the Order not complied with, defaulting party is guilty of an offence and

• Rectification works done by insurer in accordance with the Order;
• Where monies involved, District/Supreme Court order and normal recovery of monies procedures; and

• Defaulting party fined or prosecuted by HBS for non compliance with Order and any other offence.

The matter as far as the consumer is concerned is finalised here.

AVENUES TO CHALLENGE

The only thing that can be challenged is the Order. The only avenues of challenge are:

• Where it is considered works found not to be in compliance with DA/Standards and BCA are in fact complying or visa versa; and

• Where it is considered works found not to be in the contract are in the contract and visa versa.

If the Order is challenged by either party the matter goes to the CTTT where

• Issues of compliance with Standards, BCA, DA etc are as determined by HBS

• Issues of law (whether it was in the contract) determined by CTTT

• Findings of CTTT include the determination of HBS.

CTTT may be asked to review the decision and may or may not accede to that request OR matter could be taken to Supreme Court.

MODEL APPLIED TO MYSITUATION

Based on the time frames in the QLD model, as given to this Inquiry, it would have taken less than 3 months and no expenditure to get to a point where I could submit an insurance claim. This can be compared with the 5 years,
$65,000 in legal fees and $60,000 in rent it has taken under the present system in NSW.

**Advantages of the Proposed System for Builders, Home Owners and Insurers**

Advantages of the proposed system over the existing system are;

- The process is fully available to both builders and consumers where as the existing system is not.

- The steps in the process for the home owner are significantly less resulting in both a reduced cost to the builder and home owner and a reduced time for resolution of the dispute.

- The reduced time for resolution of the dispute will result in lesser claims for items such as alternate accommodation thus reducing the cost to the insurers.

- There is a lesser involvement of lawyers as a matter only needs to go to the CTTT once and there is no requirement for liquidation, thus reducing costs.

- The CTTT is provided support in its role and as such the risk of making determinations that are wrong or will be challenged is reduced.

- The financial barriers (cost of CTTT hearings etc) which must be overcome before an insurance claim can be submitted are greatly reduced making the system more available to builders and home owners.
• As orders are either the payment of monies due under the contract or works to be undertaken, disputes about the cost of rectification works do not arise, nor can either party wrought the system to gain advantage or a wind fall gain over what was specified in the original contract.

• The avenues for challenge are only available to challenge the Order made by HBS and as such matters need only go to the CTTT once.

• The home owner does not have to repeat the steps in the construction of a house such as engaging a builder, managing that builder, progress payments, inspections etc to achieve the house specified in the original contract.

• The requirement to have to pay a second or even third insurance premium for the completion of the same works is avoided.

• The process in part limits conflict to that which is contained in the Order making the dispute resolution process less personal and easier to manage.

• There is finality for all parties in the proposed system whereas the existing system may cause the complete dispute resolution system to be repeated after the home owner has engaged a new builder.

**COVERAGE OF INSURANCE**

The NSW Home Building Regulations state the insurance policy must indemnify the beneficiaries under the policy for any loss or damage and include legal costs and cost of alternate accommodation. This is consistent with the principles of Hadley v Blaxendale.
Limitations on liability are described in Clauses 56, 57 and 58 of the NSW Regulations and those limitations do not, on face value, limit the indemnity for rectification, legal costs and cost of alternate accommodation. They do not cap the indemnity to be provided by the insurance.

At this stage, as evidenced in my first submission to the Inquiry, Home Warranty Insurance does not cover the rectification of works, legal costs incurred nor the cost of alternate accommodation. If required the documentary evidence to support this statement can be provided. Further it is considered by the insurance company (The insurer) that their liability is capped at $200,000 (now $300,000 for contracts entered into more recently).

To provide consumer protection the insurance must indemnify the beneficiary against events and costs incurred which were

- Foreseeable
- Within the control of the builder
- As a result of the actions of the builder

It should not indemnify against things such as earthquake or terrorist attack being items outside the control of the builder nor changes in legislation or things so remote as to not be foreseeable such as loss of share market investment opportunities unless specifically included in the building contract.

They should not indemnify the beneficiary against actions taken by the beneficiary which impact on the building process.

The opportunity should be made for owners to seek additional insurance for events such as earthquake or wet weather, if the beneficiary so desires. This additional cover would be provided at an additional cost.
To ensure insurance policies provide the coverage as intended by government the wording of policies should be mandated and no cap on the indemnity provided. If insurance remained in the private sector differentiation between insurers would be provided by:

- Cost of insurance (determined by risk profiling of individual builders);
- Additional coverage for items such as rain which are addressed in the building contract and the risk would normally remain with the beneficiary; and
- Additional coverage for items covered beyond those in the building contract.

**Advantages of Mandated Policy to Consumer**

The primary advantage is that the consumer will receive the protection intended by the Act, that is, to be placed in a position he or she would have been if the work was undertaken properly.

**GOVERNMENT AS PRINCIPAL INSURER**

**Description of Proposal**

In NSW and other states with the exception of QLD and now TAS the insurance is provided and managed by the private sector. As such the collection of premiums, assessment and payment of claims and the carriage of the associated risks are all undertaken by the private sector.

At present the exposure of the private sector insurers to risk is limited to $10m for a single event. There after the risk is assumed by government.
As principal the private insurers have historically made significant profits from home warranty insurance as demonstrated by both balance sheets and the willingness of new insurers to enter this market. Financial reports from the Building Services Corporation in QLD also demonstrate substantial profits can be made and, if Government is the insurer, returned back into the industry.

After reading and considering the submission of the Queensland Building Corporation, if such a system was implemented the majority of concerns I have would be addressed. The only ones not addressed would be the meeting of legal costs and alternate accommodation, costs which should be met on the principals of Hadley v Blaxendale; that is the owner should be placed in a position, in so far as money can, that he would have been if the work was done properly.

The only other concern is that the insurance should not be capped. Advice from OFT in NSW has indicated very few claims exceed the present “minimum insurance requirements” of $300,000 so to have an uncapped scheme would pose little risk to Government.

If a scheme based on the QLD model were to be implemented the insurance risk would be carried by government as they do now for incidents over $10m and any profits made, as they are presently made, returned to government.

A view has been expressed by the Minster of Fair Trading in NSW that it would be too expensive for government to set up a new government run home warranty insurance scheme. She quoted a figure of $66m as compared to the $70m profit made by the previous (before privatised Home Warranty
Insurance) scheme in NSW. The profits from the previous scheme could be used to set up the new scheme.

Transitional arrangements could be made by novating the existing insurance contracts to the government insurance. In doing so policies could be amended to provide a trigger for claim being the non compliance with HBS Orders thus reducing the possible payouts under these policies as outlined in the advantages of the alternate dispute resolution system.

**Advantages of Government as Insurer**

Advantages of Government as Insurer are

- There would be no tension between the insurer’s requirement to maximise profit yet make payouts to home owners and as such the focus would be consumer protection.
- Profits from the scheme (as demonstrated as being available in the QLD scheme) would be retained by government or returned to the building industry through training programs and other support.
- A single policy would be used which would reflect and be used to fulfil the intent of government as it would be interpreted by government.

There would only be a minimal increase in risk to government as at present government assumes the risk for incidents over $10m. In the alternate government would retain the profits present made by the insurers and commissions presently paid by insurers.

Transitional arrangements would be relatively easy to make and implement.
RECOMMENDATIONS

It is recommended that

- The dispute resolution system be revised to that proposed to reduce costs to all parties including the insurer and allow the speedier resolution of disputes.

- The basic Home Warranty Insurance policy wording be mandated with options being provided for additional coverage.

The Home Warranty Insurance be provided by Government in a manner roughly consistent with the QLD model, the exceptions being the costs to be met and the removal of a cap on insurance.

Rob Siebert
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Appendix A

Chronology

Chronology of Events with my house

Sept 02. I entered into a contract with Cavalier Homes (Australia) to build a house.

Feb 03. Contract was novated to Cavalier Homes (Gold Coast) as Cavalier Homes (Australia) could not get Home Warranty Insurance in NSW. Cavalier Homes (Gold Coast) started work shortly thereafter.

May 08. I first notified Cavalier Homes (Gold Coast) of problems with the house (slab and sub floor brick work). I was told not enter the site. This continued as I pointed out more defects for next 6 months. I was continually threatened with legal action (Letters can be provided)

Aug 03. Cavalier Home advised of practical completion. As doors were missing and there were no steps etc etc. I said it was not complete.

Oct 03. Cavalier Home advised of practical completion. I disagreed because defects such as the floor were not fixed.

Oct 03. OFT Inspected and directed Cavalier Home to fix the slab, subfloor brickwork and floor. Cavalier Homes did not carry out works

Nov 03. House was inspected and 5 pages of defects identified and as such I advised house was not complete. Cavalier Homes (Gold Coast) emailed a response agreeing with may of the defects.

Cavalier Homes took no action to fix the defects

Jun 04 I lodged a dispute with CTTT. I did it at this time because I did not want to be accused of not providing Cavalier Homes sufficient time to fix the house.

Aug 04. I submitted evidence to CTTT

Sept 04 Cavalier Homes were supposed to submit evidence but they did not. They were given until Nov 04 to submit it.

May 05 I sought access to the house so an inspection could occur prior to CTTT hearing and defects lists updated and confirmed. I was refused. Matter went to CTTT and CTTT ordered I be given one day. I then had 3 days to get the report prepared and submitted.

Aug 05. CTTT hearings commenced. (During the hearings the peson from Cavalier Homes asked the security guard how he could get me beaten up. This was reported to the Member who took no action. I can provide details of witnesses including my solicitor at the time)

Jul 06. CTTT handed down their findings. I won with the findings in the substantive matter being given in Jul 06 which stated costs of rectification was $61,111. Notwithstanding there are problems with the CTTT decision in that

1. The CTTT found items adequate even though they did not comply with the DA. The Chairperson of the CTTT has subsequently advised me they have no power under the EP&A Act so their determination places me in breach of the EP&A Act (Letter advising no powers under Ep&A Act can be provided). I had no funds to pursue this in the Supreme Court and remain in breach of the EP&A Act
2. The CTTT was misled (termite control and other items). This has been investigated by OFT and it was found the CTTT was probably misled (report was obtained under FoI and in the bundle. Not it recommends prosecution but no prosecution ever took place). I had no funds to pursue this in the Supreme Court

3. The CTTT found items did not comply with the contract (such as no back steps) but awarded no damages. Legal advice (in the bundle) concluded I was denied natural justice but again no funds to pursue this in the Supreme Court.

4. Cavalier Homes (Gold Coast) asked that no findings be made in respect to s18b of the Act (work done in a proper and workmanlike manner) as they were being prosecuted for breaches of 18b in a separate legal action. The member did not make any findings that work was not done in a proper and workmanlike manner and ignored (placed little weight) on OFT evidence.

Nov 06 I was awarded costs.

Nov 06. I placed a claim on Cavalier Homes (Gold Coast) for the award of damages and costs but they did not pay. Orders to pay were then sought and issued from the Supreme Court. Cavalier Homes (Gold Coast) still did not pay but the owner who was also the licenced supervisor of Cavalier Homes (Gold Coast) had set up another company (T&T Building Prestige) and continued to build houses. (details of licencing and renewal of Tony Younan's licence can be provided)

Jan 07 I commenced liquidation the Cavalier Homes (Gold Coast) so I could claim on Home Warranty Insurance completing the requirements for liquidation Jul 07.

Jul 07. I submitted and insurance claim. At that point I had incurred $65,000 legal costs ($59,000 as determined by Supreme Court plus $6,000 to liquidate Cavalier Homes (Gold Coast)), $60,000 rent of alternate accommodation. The insurer did not assess the claim in the statutory period so I lodged an appeal in the CTTT.

Oct 07. The insurer then assessed the house and estimated the repair costs at over $165,000. (Report in the bundle)

Oct 07 the insurer offered approximately $50,000 to settle the claim (copy can be provided). If accepted I would have been $70,000 worse of than if I had never sought consumer protection. It was refused.

Nov 07. Met with Commissioner of OFT who agreed it was reasonable to expect costs would be paid and house fixed.

Mar 08 Legal assistance was provided by OFT.

Sept 08. An offer was received from the insurer and it was recommended by OFT that the offer be accepted (Legal opinion obtained by OFT can be provided). I understood OFT were to accept the offer

Nov 08. The insurer offered to have the builder fix some defects in the house and make a payment of about $100,000. The offer was of lesser value to me that the original offer and refused

Jan 09. The insurer again offered the amount agreed on 25 Sept 08 and again it was accepted and paid in February 08
Jan 08. Various emails (you have) suggesting I should not expect full amounts to be paid, that the system could do nothing more, inferences I should ask the PCA to certify works not in accordance with the DA etc

At this point my costs are, Legal costs $65,000, Rent $70,000 and the insurers estimate to fix the house $167,500 giving a total of $310,500. The maximum under the policy is $200,000 (I cannot disclose what I am getting for legal reasons) so even if I got the maximum I would only have $65,000 to meet a repair bill as estimated by the insurer of $167,500.

Feb 09. Offer received from insurance company and based on advice from OFT the offer was accepted.

Mar 09. OFT, Council and myself met on site to determine what works were required such that I could get an occupancy certificate. Council advised that all the works identified by the insurer were to be done. Council in addition advised repairs to the subfloor brickwork and slab which were not included in the insurers estimate had to be undertaken or certified by a practicing engineer.

May 09. OFT Investigate and make recommendation for an ex gratia payment to me on the basis of failure of the system to provide consumer protection

Nov 09. Minister decides not to make ex gratia payment

After nearly 7 years, having to send over $130,000 on rent and legal costs to get through the system and now facing a repair bill of over $167,000 I still do not have a house I can live in.

The issue now is how do I get the house which I paid for and my costs met.

The case demonstrates the system does not work. It also raises other issues such as

1. In my case despite the best efforts of Office of Fair Trading, as they provided the legal assistance and negotiated with the insurer, even they could not get me my house.
2. It took over 5 years and $65,000 in legal costs to get to a point where I could lodge a claim. In QLD it would have been 28 days and $0.
3. Of the amount available to me approximately 70% had to be spent to get through the system. The expenditure of that money was of value to no one. That money would have been better off used fixing the house.
4. I have discussed the problems with the system with Ministerial staff and the head of the Home Building Service on 25 Sept (and kept minutes). Both the head of the Home Building service and I agreed on the problems and many measures to address them. The information was sent to the Minister who basically dismissed it so it appears she does not listen to either consumers who are impacted on OR her most senior public servant in this matter. Correspondence and paper trail can be provided

It is claimed by the Minister that the system has streamlined by a forth trigger but in my case that would mean 5 years and $60,000 to get though it versus 5 and a half and $65,000 and in many cases it would not work without having to go back to the courts.