

Mr. Richard Willis
Secretary, Council Committees
Department of the Legislative Council
Parliament House
Spring Street
East Melbourne, 3002
Phone: (03) 9651 8696
Fax: (03) 9651 6799
Email: richard.willis@parliament.vic.gov.au

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Dear Mr. Willis,

I am writing this submission to comment on Victoria's Builders Warranty Insurance Scheme. The present Builder's Warranty Insurance scheme and the accompanying Building Regulatory Framework is inadequate in managing Victoria's registered builders, does not promote good building standards or ethical building conduct and fosters a building industry climate where builders are not deterred from continuing to build defective homes and refusing to complete or rectify these defective works, and wherein the resultant building standards are substandard and by virtue fail to provide adequate protection for the vast number of consumers who build or renovate homes in Victoria.

In our experience with attempting to have the building defects in our home fixed, we have found that under the present Builders Warranty Scheme, the Building Regulatory Framework fails to adequately manage and regulate the building industry, and does not provide effective deterrence measures against builders who act unprofessionally or unconscionably, and who continually build substandard building works. As there are no penalties enforceable by the BACV or the Building Commission, the builder views their legal responsibility to rectify defects as a '*game of odds*'. A common practice in the case of a defective home is to '*wear down*' the consumer by using evasive and unethical tactics, such as refusing to fix defects so

the client will have to expend their emotional energy and time to fight for repairs to their home ie. ignoring requests for rectification (calls, email, letters, verbal discussions), providing written confirmation to fix defects but not acting on it, providing false technical information as to the adequacy of the repair works, repairing defects using inadequate and temporary methods, and if the defects reoccur and the owner seeks rectification, applying the same evasive, unconscionable and oppressive strategies again singularly or in combination, so as to prolong the inadequate repairs to last to the end of the warranty period.

During this process, many consumers simply give up, mentally, physically and emotionally drained and exhausted from the arduous process of having to fight daily battles, sometimes for years on end, for a defective home which they have fully paid for. After a protracted dispute period the odds are that many owners do not lodge complaints or seek recourse to repair defective works. If the consumer does lodge a formal complaint with the BACV, and even if the case is subsequently referred to the Building Commission, there are no penalties for the builder's conduct or their consistent breach of the building standards, and certainly no Public Register to record the frequency of the builder's performance, unprofessional behaviour and record of building directions and cases.

Without strong enforcement penalties and disciplinary mechanisms, builders are not deterred from repeating the same pattern of employing unconscionable and unprofessional behaviour to delay or circumvent repair, and building substandard houses again and again. It is possible for a builder to be over-represented at the Regulatory Bodies' complaints register, have substantial case files, directions and domestic building inspections, and not be disciplined with any penalties for their misconduct and defective building works, either in the form of substantial monetary fines, licensing penalties (a BPB jurisdiction), or a Public Record of directions, license demerits, and cases (as found in the Queensland BSA model). This has meant that builders can and do feel free to continue working in the industry and continue building defective houses, confident in the knowledge that they will not be held accountable by the regulatory system for unethical practices, unprofessional conduct and failure to comply with the building standards. It is an unjust and unfair system where the insurance companies and to an extent, the builders are the winners, and where homeowners are left with inadequate consumer protection and often devastated and ruined lives.

As the complaints register at the BACV will attest, the above building situation illustrated is not an atypical experience. It is situation which describes my family's distressing experience with building our home with Gary Simonds of Madisson Prestige/Simonds Homes, and would explain at great lengths why seven (7) years on, **our house has never been properly repaired or Defect Free**, despite a case history of involving four (4) regulatory bodies and parliamentary members multiple times over the last seven (7) years: the BACV, the Building Commission, the Plumbing Industry Commission and our local MP. To the present day, our house is **STILL** unrectified with long term, serious and health threatening defects such as leaking rooms and garage, leaking external doors, mouldy carpet, mould riddled walls and ceiling, a missing balustrade which Simonds Homes has refused to return to us, and a render facade that is visibly unrepaired and incomplete, amongst other defects still needing rectification, and wherein the builder, Simonds Homes, has simply walked away, leaving my family living in an incomplete and defective home, and has blatantly disregarded their legal and statutory obligations under the law.

OUR BUILDING EXPERIENCE

Our home was built by Gary Simonds (Madisson Prestige and Simonds Homes) seven years ago. Although the building contract was only for a standard eleven (11) month period, it took almost two (2) years to construct due to the myriad and multiple major, minor and serious defects numbering in the hundreds, defects which this builder refused to rectify or fix properly. Our house remains defective today. A chronological and complete list of all these defects and our complete building experience can be provided to the Inquiry Committee. We recorded defects ranging from leaks in our doors, windows, roof, ceilings, walls, gutters, baths, defective trusses, faulty brickwork, collapsing shelving, a rusting balustrade, missing pipework, installed kitchen appliances which breached the Gas Code, defective joists, broken backblocking etc.

Our house has been **NEVER** been defect free. We have recorded leaks in **ALL** of our internal rooms in our double storey home, bar one (1) room. We also documented external

leaks in our gutters, our stormwater drain (with a sectional length of pipework actually missing when it was dug up) and various other leaking external pipework. Our External Balcony French doors had been leaking continuously during construction (see photo) and continued to leak on countless occasions for five years, post handover. These doors still leak. They have been replaced twice, with the first replacement being defective and causing massive internal flooding (see photos), and damaging a large section of carpet (see photos). The carpet, underlying floorboards, cornices and architraves in the four leaking rooms of my house are now riddled with black mould. An Independent Building Inspection confirmed that this third set of External French doors was not '*weatherproof*', and was not constructed to comply with Australian building standards. It continues to leak, along with the garage, the porch and the study room. These areas have been leaking continuously for the six (6) years. Although rectification attempts were done to repair the excessive number of leaks, it is clear that the rectification works by Simonds Homes were inadequate, as these leaks remain unfixed. The carpet is severely water damaged (see photos) and a health hazard to my family.

Apart from a brief three (3) month period post Handover, our house facade since construction seven (7) years ago has similarly never been defect free, beginning with the wrong coloured mortar, followed by defective brickwork (two batches of defective quality bricks which peeled, cracked and discoloured), a hebel block which Simonds Homes installed underground contrary to manufacturer's instructions and which consequently buckled and cracked, and a render facade which also cracked, rusted, peeled and leaked, followed by incomplete repair works to the render using incorrect render materials, colours and textures.

Our External balustrade (see photos), which was removed fifteen (15) months ago by Simonds Homes, and which we requested in writing to be returned, remains with Simonds Homes in detinue as they have refused to return it to us. Most importantly, at present and despite several letters from lawyers and our local MP Luke Donnellan, Simonds Homes has refused to communicate and return to rectify these building defects. Our house has **never** been defect free and at this stage, continues to remain so as Gary Simonds of Simonds Homes has refused to properly rectify them.

CONDUCT

Building our home was characterised by a numerous, never ending list of both major and minor defects spanning seven years. As laypeople with no knowledge of building, we placed a considerable amount of trust on the knowledge and experience of Simonds Homes (Madisson Prestige).

The defect rectification process for outstanding defects followed a particular pattern. We would request for a defect to be fixed. We would be told that it did not need repair or if rectification was confirmed, we would be informed that the method used was permanent and adequate. We then found that the rectification method used was a panacea, often quick and inexpensive, although we were informed that it was a permanent solution. It did not adequately rectify the defects to Australian standards. The repair was often short lived. The next time the defect occurred, the builder would utilise an evasive strategy of ignoring correspondence, emails and telephone calls for several weeks and/or months or state to us they were *'following it up'* during our on-site discussions. We were also provided with information suggesting false interpretations of Australian building standards ie. *'We rely on glue strength to hold our shelving, not on the screws nailed to the stud'* and *'Every balustrade should expect some rust'*, a comment in relation to our brand new balustrade which had started rusting three (3) months after handover. When written confirmation of rectification was sometimes provided by the Simonds Homes, in some cases with commencement dates to fix major defects such as the cracking and buckling render facade (see photos), there would be no response to our numerous letters, telephone calls, or verbal queries requesting for the repairs to commence once the promised dates had lapsed without repair. In the case of the render, this conduct and pattern of promising repairs but never rectifying the defect properly, has been ongoing for five (5) years. The render remains unrepaired (see photos). When we requested for defects to be repaired again, the same cycle of evasive tactics would begin. The effect was to play a *'cat and mouse'* game in an effort to wear down the owner from stress, emotional trauma and the seemingly endless array of defective works, many of which were never properly rectified to this day.

PERSONAL IMPACT

Building our home has turned into the proverbial nightmare, one which is far from over for my family. For the last seven years, our lives have been placed on hold battling Simonds Homes (Madisson Prestige) to have the defects in our home properly repaired. The building experience has affected every aspect of our lives, and has immeasurably damaged our personal, physical and psychological health and the quality of our lives. The long term trauma and constant stress has resulted in illnesses and long term medical conditions for my family.

It is an incredibly traumatic, emotionally distressing and painfully inhospitable experience to live in a home which has been, for the last seven (7) years, a perennial '*battlefield of defects and problems*' that still needs to be fixed, and where you have no peace of mind and feel traumatised on a daily basis viewing the reminders of injustice and unresolved conflict: the mouldy carpet, walls and ceilings, constantly leaking balcony doors, a front house facade that is visibly in disrepair, defective and semi-painted in not one, but several different render colours and textures, as well as a missing balustrade etc. For my family, it was inconceivable that after experiencing a horrific seven years of construction and living in a never ending defective house, that even to the present day the builder, Simonds Homes, would unconscionably use standover, evasive and oppressive tactics to refuse to rectify long term and serious building defects and faults which they are obliged to fix under law.

UNREGULATED CONDUCT AND BUILDING STANDARDS

I believe my family's building experience with Simonds Homes is not an uncommon one. As a disturbing indication of the present building climate, the conduct and substandard building works that we have experienced are reiterated in the numerous and growing number of public reviews and homeowner's commentaries about Simonds Homes' on various public review sites, forums and blogs on the internet. I would like to draw the Committee's attention to several of these consumer sites: product review, xom reviews and homeone forum (Please refer to attached copies of these reviews). The public presence of these negative reviews indicates a systemic practice of unprofessional conduct and poor building practices by this builder, which has so far been unregulated. This is in addition to Simonds Homes' case and complaints history at the BACV, the Building Commission or their appearance at the Building Practitioners Board for an inquiry into conduct and competency in 2005-06.

It is clear and pressing that we need tougher Victorian regulatory measures and that there is a lack of consumer confidence in the integrity and competence of the building industry. In the absence of adequate consumer protection from a genuine Builders Warranty Insurance scheme and a strong Building Regulatory Body and Framework which ought to effectively deter unethical builder conduct and poor building practices at the outset, consumers are now creating their own public record of bad building practitioners.

If the building regulatory framework did indeed provide adequate consumer protection and industry management, how can a volume builder like Simonds Homes:

- Be over-represented at the complaints register (telephone and written) and case files at the BACV;
- Have Records, Directions and Cases at the Building Commission;
- Have a growing number of public reviews about their unprofessional conduct, substandard and defective building works, poor customer service, standover tactics and refusal to be legally liable to repair defective building works;
- Be a frequent attendee at the VCAT Domestic Building List; and
- Be the subject of a recent Inquiry into conduct and competence at the Building Practitioner's Board.

And still be permitted to continue building.

REFORM

As a homeowner who has experienced firsthand, and continues to experience, the failure of the Builders Warranty Insurance and the present Regulatory Framework to provide adequate consumer protection and effective deterrence measures to regulate and manage the building industry, a reform of the present regulatory system is urgently needed.

A genuine and effective Builders Warranty Insurance scheme needs to take into account the practical realities of the Building Industry Mentality and Culture. It means implementing strict Professional Accountability and Compliance Procedures at the outset to ensure that

builders are held firmly accountable for the quality of their building works, and to ensure that consistently good building industry standards are maintained. Instead of piecemeal statutory powers which are invoked after protracted dispute resolution processes, a wider range of tough and effective penalties needs to be enforceable early on and imposed on the areas that will matter and impact most on a builder:

- Licensing (which affects their ability to continue working)
 - Demerit points, fines, work restrictions, removal of license, increased premiums for non-compliance.
- Professional Competence and Reputation (which affects their earning capacity)
 - Public Register of formal complaints listing directions, cases, investigations and inquiries.

My family's building experience is a visible and palpable example of how some builders view the enforcement and compliance powers of the current Victorian Regulatory Bodies. In several of our verbal discussions with and correspondence to Simonds Homes, we clearly and unequivocally stated that we would be bringing our case to the BACV and the Building Commission again, and more importantly, to the Building Practitioners Board, if these long term defects (some of which had been outstanding for six (6) years) were not rectified properly. That was fifteen (15) months ago. Our comments seeking our rights to be upheld were blatantly ignored by their management, with Simonds Homes electing to walk away from their statutory and legal obligations. Poor regulation in the building industry has meant that builders believe they will not be held accountable if they act unprofessionally and take no responsibility for the quality of their work. Without strong and enforceable powers to compel builders to conciliate and fix defective work, unscrupulous builders treat the system with contempt and ignore Victoria's Regulatory Bodies: the BACV, the Building Commission and the Building Practitioners Board.

The current Victorian system needs a complete overhaul to a unified, strong and robust regulatory body. The present regulatory framework and justice system supports unethical builders and poor building practices. This body needs to be robust, independent and

professional with proper powers and the ability to apply tough penalties to discipline bad building practitioners and deter recalcitrant building practices.

The Queensland Model has been a successful, effective and sustainable scheme for twenty eight (28) years. It is a first resort system where tough regulatory penalties and early onset compliance measures have resulted in minimal consumer claims (See Queensland BSA Annual Report 2007-2008).

Following closely on the principles of the Queensland model, a Genuine Victorian Builders Warranty Insurance scheme needs to include:

- A Public Registrar of directions, case history, court appearances, licensing penalties and conduct and competence inquiries. This is a much needed measure, as in theory a builder can have a strong case history of recorded and formal complaints at the BACV, conciliated cases, building inspection reports and directions, be frequently in the courts, be the subject of a Building Practitioners Board Inquiry, and remain unpenalised (bar a minimal fine) by the present regulatory system and still be able to continue with their present conduct and building practices.
- Registration requirements should be more stringent and extend to cover a greater class of subcontractors and trades, such as bricklayers and painters.
- Regular Auditing of builder competence and conduct. If a builder is over-represented or has a strong complaints, directions record and case history with the Regulatory Body, there should be wider and early trigger provisions for an investigation and review of their continued ability to practice.
- Builder registration and eligibility for insurance needs to be tied to maintaining a clean public building record and fulfilling their obligations under the law.

The difference with the Queensland model is that there are direct, clear and immediate incentives backed up by strong regulatory and legislative powers to compel the builder to fix defects within a reasonable yet expedient period of time (compared with the BACV's recorded five (5) months). The enforcement procedures are tough, effective, comprehensive

(multi penalties if not followed as per the BSA model) and pre-emptive. If the builder is aware that at the first instance of their refusal to fix building defects, compliance measures like licence removal or suspension, costly penalties for Infringements (\$2,000 BSA - Qld model), loss of licence demerit points, the public listing of directions, tribunal and/or court prosecution, and cost recovery for defects fixed by the Regulatory Body are all enforceable within a given time-frame, then there is a high likelihood of builder compliance with the Regulatory Bodies directions and/or on-site agreements to rectify or complete works. Furthermore, this multiple penalty system is a strong deterrent to builders not to construct defective houses in the first place, given the strong regulatory fence of enforceable directions, pecuniary fines, tribunals, courts and licensing removal and associated penalties.

- Fairer Building Contracts

- In addition to regulatory reform, there needs to be changes to the Standard Building Contracts to ensure that consumers' rights are protected, to make it fairer and to redress the imbalance which presently strongly favours the builder, fails to encourage reasonable completion dates to the considerable detriment of the consumer, and leaves little scope for transparency of the adequacy of the building works. One provision that needs reform is the grossly minimal weekly penalty rates for late completion, usually \$150-\$250 a week, which fails to encourage reasonable completion times for the building works. In effect, it has often used by the builder as an effective Pressure Tactic against the owner to accept substandard building works, as the cost of an average rental ie. \$900 a week, is not covered by this minimal sum. In our case, the construction time of our home was only 11 months, and due to the constant refusal and delaying tactics of the builder to rectify construction defects, our home was eventually completed 23 months later, at more than twice the length of the time agreed to in the building contract. With a \$250 a week penalty in our contract for late completion, there was very little incentive for the builder to quickly remediate the large number of defects in our home. These penalty rates need to be upscaled to a statewide minimum amount ie. \$600 or greater, to ensure fairness for the consumer in the building transaction.

- The HIA Building contract also needs to clearly state, in plain language, the legal rights of the owner to access the site. A common criticism is the vagueness of the written provision to clearly confer access rights to the owner over the builder with reasonable access times and frequency. Common builder practices have been to deny or severely curtail owner access ie. cases where builders have forbidden owners to bring building inspectors, falsely claiming only one person is allowed on site at each visit (see homeone forum attachment). As an example, during our 2 year construction period, the lack of specificity in our HIA contract meant that our request for site access to allow regulatory bodies, such as the Plumbing Industry Commission to inspect the building works, was denied by the builder both verbally and in writing, with no just or reasonable cause. It was only after Handover, when most of the relevant works had been completely installed and plastered over, that an inspection could be conducted by the PIC. It was then that they confirmed that installed items, such as our Gas Cooktop, actually breached both the Gas Code and Australian Safety Standards, and constituted a safety hazard to my family.

CONCLUSION

The present regulatory system fails to adequately manage and regulate the building industry, and does not provide effective deterrence measures against builders who act unprofessionally or unconscionably and who continually build substandard and defective building works. In order for Victorian consumers to be afforded genuine protection under a well regulated, well managed and ethical building industry, major reform of our current mandatory last resort Builders Warranty Insurance Scheme and Regulatory Bodies is urgently needed.

Yours Sincerely,

Christine Chua