



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
Mr Jeremy Hanson MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),  
Ms Suzanne Orr MLA, Mr Mark Parton MLA

## Submission Cover Sheet

### Inquiry into Building Quality in the ACT

**Submission Number: 007**

**Date Authorised for Publication: 18 July 2018**

Please accept the submission for the ACT Building Industry enquiry. Although the submission isn't about quality, it is about the conduct of some builders who know that they work outside the legal framework and contracts, Phoenix companies and know that the impact to them personally is minimal.

## **Background**

We are one of the couples in a group of home builders who were unfortunate enough to select [REDACTED] as our builder. At the meeting to pick up the keys, and 11 days before we were due to move in to the property, we were presented with over \$75,000 (10%) worth of unapproved variations that we had never been informed of until this point in the build process. To cover these costs the builder consumed our pool, landscaping and other allowances that we had chosen not to proceed with but had expected to be refunded. Throughout the build, [REDACTED] insisted that we had to pay as per the contract payment schedule, it became evident after the fact, he had no intentions of ever returning that money.

Efforts to resolve this personally with the builder, failed. Efforts to mediate through the Master Builders Association also failed, with the builder claiming that we had verbally agreed to a cost plus 20% contract and that we owed him more money. The MBA at that point could only recommend that we take him to court. We then commenced action through a Lawyer and within two weeks of serving the dispute notice the builder went into liquidation, leaving contracted items not delivered not only for us but other couples.

Other members in the group have suffered similar experiences with this builder, allowances simply disappearing in other build costs, contracted items not delivered, homes not completed and identified (within the 90 days) defects not rectified.

[REDACTED] started building under a new company name, [REDACTED], 10 months before choosing to liquidate [REDACTED], leaving his [REDACTED] clients with unfinished contracts, no defect rectification and out of pocket.

Since [REDACTED] went into liquidation we have been the subject of threats from [REDACTED] Lawyers following a claim against [REDACTED] Builders Warranty Insurance and now have proof that electrical goods claimed by builder were not used in our house build.

Our experience has shown that the focus is on the building industry as it contributes a considerable amount to the ACT economy, but there is very little focus on the home builder that is funding the industry.

## **When the company goes bankrupt, the builder (actual licence holder) is not held responsible.**

As a consumer, building contracts are signed between the building company and the individuals who are building the dwelling. For the majority of the domestic builders in Canberra, the person who signs the

contract on behalf of the company is also the individual who holds the builders licence number that is issued by the ACT Government.

When [REDACTED] declared bankruptcy, [REDACTED] as the Director is barred from holding a directorship in another company for a number of years. However, he retained his personal builders licence and continues to use it to build under a new company name [REDACTED]

While he was failing to honour contracts he personally signed as a Director of [REDACTED], he was building for new clients and using his same builders licence number on the [REDACTED] contracts.

Why is it that [REDACTED] can retain his builders licence, continue to build under a new company name and still hold membership to the Master Builders Association?

### **Recommendation**

Laws need to be introduced that will see the individual who holds the builders licence, have the licence cancelled if his/her builders licence number has been used on contracts associated with a company who have failed to honour contracts or have gone into liquidation.

## **Role of the Master Builders Association**

Unfortunately, the Master Builders Association provides very little value to the home builder or consumer, as their prime role is to represent the builders and the building industry.

The MBA urges consumers to contact them so that they can put them in touch with suitably qualified builders, and although the MBA don't state it, consumers would assume that builders recommended by the MBA would also be reputable, honest and trustworthy. It became evident through our experience that the MBA don't see these qualities as being important. MBA continued to support [REDACTED] and his new company while he failed to honour his [REDACTED] contracts and put the company into liquidation.

Consumer complaints to the MBA about their members are met with a closed process where the complainant is never informed about the complaint process, the MBA findings, or if any actions, if any, were taken against the builder.

In our case, it took a phone call, three days after Emailing the details of the complaint, before the addressee opened and read the Email. Efforts to resolve the issue ended with the builder walking away from the process. The advice from MBA at that point was to take the builder to court, the MBA then took no further action in regard to the complaint or against the builder.

Efforts by Mark Parton, MLA, to have the MBA explain why [REDACTED] is still a member of the association and presumably one of MBA's "suitably qualified builders", has failed with little outcome. Mark's last Email to me regarding the matter, and following a meeting with MBA, was "*I feel like I've been fobbed off somewhat*". Certainly, their rhetoric about cleaning up the industry don't align with their actions.

The MBA recommend their members to home builders, home builders sign MBA contracts, but this provides no protection to the home builders from what is a closed shop, whose only interest is the protection of its members at the expense of public interest and consumer protection.

### **Recommendation**

The charter of the MBA and HIA to be more outward or consumer focused, hold their members accountable and introduce an open complaints process. Failure to implement reform of the peak building industry bodies will continue to see them as a self-interest organisation where they will continue to be part of the problem.

## **Building Contracts**

Current building contracts issued by the MBA or the HIA are written to favour and protect the builder. Clauses that state that “This contract can be varied only with the builder’s consent”, in some instances, gives builders the opportunity to interpret and change the contract, finishes and deliverables as they see fit whilst claiming that they are within the contract terms.

Through our experience and contact with other home builders, it is obvious that builders don’t follow the contracts they sign, and it is left to the home builder to try to enforce.

Building a house is one of the biggest investments for an individual but is also one that provides the least by way of consumer protection.

Suppliers to the building industry often ask for a Directors Guarantee, this ensures that the accounts are paid and personally guaranteed by the Directors. As home builders, we don’t have that option and are left to working around a company structure that offers no guarantees at all.

### **Recommendation**

Having contracts provided by either the HIA or MBA provide no protection for the home builder. Standard building contracts should be issued by the ACT government that put the power of the contract back with the home builder.

Contracts should also include a Directors Guarantee to give home builders some satisfaction that what ever happens to the company, the Directors are personally liable.

## **Lack of representation for the consumer**

There is a lack of representation in the building industry for the consumer or home builder. When problems arise from poor quality building works or contract disputes, the home builders only viable option is to address the issue through the ACT Civil and Administrative Tribunal (ACAT), but only up to the value of \$25,000.

Anything above ACAT’s \$25,000 limit will require the matter to heard by the Magistrates Court. An option that would not be taken by many home builders due to the cost of getting the case before the

magistrate and the risk that could see the court costs exceed the original claim against the builder. Given the cost of the average family home to build, ACAT's limit of \$25,000 is inadequate to meet today's building costs.

By comparison, the Victorian Civil and Administrative Tribunal has no limit on the amount of money that can be claimed on building issues, with owners having up to 10 years to make the claim.

People who don't fall into ACAT's limits face the additional stress and costs (they generally can't afford) of a court case without any guaranteed outcome. This hasn't gone unnoticed by some builders and for the average home builder, court is not a viable option.

In our case, the quoted costs to take [REDACTED] to the Magistrates Court for the non-delivery of contract items was upwards of \$40,000

ACT builders who don't want to follow the building codes or the signed contracts know what they can get away with, they know that ACAT don't consider contract disputes and that taking a builder to court is an expensive prospect for the average home builders.

#### **Recommendation**

ACT Civil and Administrative Tribunal legislation need to be amended to increase the amount of money that can be claimed through the tribunal

ACAT should be able to hear contract disputes that arise where standard domestic building industry contracts (MBA or HIA) have been used.

Regards

Stephen & Amanda Peek

[REDACTED]

[REDACTED]