



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
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Ms Suzanne Orr MLA, Mr Mark Parton MLA

## Submission Cover Sheet

Inquiry into Building Quality in the ACT

**Submission Number: 74**

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**From:** [vijay.raj](#)  
**To:** [LA Committee - EDT](#)  
**Subject:** Submitting Report of Faulty Positioned House by Builder.  
**Date:** Thursday, 29 November 2018 10:18:42 AM

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This submission relates to agenda item “Regulator and alternative dispute mechanisms”.

## **Summary**

The dispute mechanisms for home buyers seeking remedy against a builder / insurance company for delivering a faulty build strongly favour the builder’s insurance company(s).

Insurance companies with their dedicated legal teams and ‘deep pockets’ simply drag out a dispute resolution process beyond the home buyer’s (claimant’s) ability to fund the process as there are no regulatory controls to compel the insurance company into taking action in a timely manner. Outside a courtroom process, which is usually out of reach for a home buyer to pursue due to the cost.

A home buyer seeking remedy either gives up on the claim altogether or settles for a resolution far below the justified level.

This is especially a problem where a defect in the construction has been clearly established. There should be clear and compelling regulatory controls to require the insurance companies to take action within a reasonable timeframe.

## **Details**

The following provides a real life example to better understand the issue.

We got built an off-the-plan home from a builder. The builder built the house in the wrong location - 1 metre closer to the neighbour’s fence than they should have. This led to impact on the use and value of the both the home buyer’s house and the affected neighbour’s house.

We lodged a claim with their builder. The builder lodged a claim against their insurance company. The certifier’s insurance company was also involved due as that work was sub-contracted.

The claim was lodged in May 2017 until now being November 2018 (a year and a half later) the insurance companies had made no progress in trying to remediate the issue. Meanwhile, We had incurred over solicitor fees.

The insurance companies simply did not care. This was evident by the fact that they barely responded to correspondence since last nine months.

In a desperate move to progress the matter, we have been paying for various reports of our house and seek quotes to remediate the faulty build to make an offer to the insurance companies – something that the insurance companies should have driven and paid for. This is just adding insult to injury.

Failing that a court process will have to commence to seek resolution. Except the current regulatory advice recommends that all out of court options are exhausted before proceeding. Except in practice, the out of court precursor options simply allow the insurance companies to drag the matter out draining the aggrieved house buyers of their limited resources, fundamentally breaking their will – how unfair!

## **Recommendations**

Where a faulty build is established, the insurance companies should be required to progress the matter within a reasonable time (3 – 6 months). They should be required to provide resolution option(s) for consideration by the home buyers before the matter can proceed to court. Failing to do so shows bad faith and exploitation of information and resource asymmetry and should carry penalties.

Builders, Certifiers and Surveyors (Trades linked to the issue) licenses to be suspended until this resolves.

## **Background**

Regulator and alternative dispute mechanisms

Currently the process of obtaining a rectification order, or similar recourse, is difficult, costly and may require extensive litigation. The cost to the individuals and companies involved, the ACT Government and the economy is significant, using money that could be better spent elsewhere, creating an economic dead weight.

The system also propagates the potential for market failure, as purchasers are likely to be ill-informed on the mechanisms available to them in resolving a dispute. This creates asymmetric information on the part of an actor within the market, restricting the ability for the market to achieve efficient outcomes.

Processes and practices for the identification and rectification of defects including;

- a. Current mechanisms available for defect identification and redress;
- b. The effectiveness of those mechanisms to ensure rectification in instances where standards have not been met;
- c. The adequacy and accessibility of those mechanisms especially for individuals or body corporates; and
- d. The effectiveness of efforts to address “phoenixing” – the transfer of assets from an indebted building company to a new one to avoid paying its liabilities.