



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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

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Dear Committee members

We are writing to submit an anonymous submission to the Inquiry into building quality in the ACT. We wish for our submission to remain anonymous for a reason that is part of the problem – residential house/apartment owners are unwilling to make and lodge complaints against shonky builders because the complaint would then be on an official record searchable online, which may affect future sale prices. Notwithstanding we would be happy to appear at a private hearing if the committee agreed to keep our circumstances confidential.

Over—arching recommendation

For many years the building and development industry has successfully negotiated loopholes in the Territory planning arrangements, which are not easily afforded to the ordinary citizens. If these loopholes are necessary for the economic viability of the development industry, they should not be allowed to continue undermine well-meaning regulations through their contracting arrangements.

Based on our personal traumatic experience building a house, and contrasting that with a friends more positive building experience – our overarching recommendation is that whilst more regulatory / compliance oversight is needed, it will prove to be ineffective unless the building industry is forced to use robust contracts with their clients and sub-contractors. The Institute of Architects standard contract would be a good starting point for the Committee.

Response to the specific terms of reference

Our building experience is relevant to the following terms of reference:

8. Personal experiences that can inform any of the above.

We decided to build a new house as a last resort – our preference was to purchase a house in an older, established suburb. However, despite having 1.5 professional incomes and having a substantial deposit in the range of 25 per cent of the intended purchase price, we were unable to find a suitable house to purchase that sold for the approximate value of the house. At the auctions we were going to, people were bidding \$100,000 more than what our research and bank indicated the property was worth. We gave up and decided to build, and still ended up having to spend substantially more than was originally intended on the property.

The builder was selected because they had land that we liked – we liked the location and size of the block. This was the first mistake. As the building process progressed, we were shocked when we realised that the builder regularly lied to us. Even negotiating on the ‘fixed term’ building contract was a headache, as we soon realised that the standard building contracts from the Master Builders Association, are strongly in favour of the builder. This type of sale’s contracting arrangement would be unacceptable in the real estate industry for the purchasing and sale of existing homes. When we asked our solicitor about this he confirmed it was common place in the development industry.

We finally signed the contract. Negotiating on the final design took months, and this was when the builder started charging additional amounts which we were forced to pay to get the design we wanted. However, had the builder employed better draftspersons, additional costs could have been avoided.

Months later (several months after the expected construction start date), the building commenced- and before the slab was even laid were required to pay for a very expensive retaining wall. The builder had provided an indication of price, that was half of the final cost of the wall (\$20,000 instead of \$10,000). Once the building process finally commenced we then had to call out the builder on a number of errors:

- When bricks windows in wrong place - the builder tried to rearrange wardrobes in the rooms instead of undoing and redoing the bricklaying.
- the builder said tiles that already been selected were no longer available – when we rang the supplier, the tiles were available, the builder was simply trying to make more money by making us change things and then charge a commission
- Towards the end of the build – at the time finances were tightest – paying both rent and essentially 95% of the house mortgage the builder made it even more difficult to arrange inspections so that we could make sure defects were fixed before we moved in. Despite not delivering on the specifications of the contract we were forced to make sacrifices on keeping the builder to account purely because of our financial situation.
- The building process took substantially longer than was estimated by the builder and as specified in the contract – this added significant financial cost as we were required to continue renting whilst paying 95% of the mortgage.
- Errors were made in the kitchen, which the builder tried to get out of fixing – if we had not been across the contract, some errors would not have been noticed and not remedied.
- It became apparent that short cuts were taken whenever possible and that the builder regularly tried to cover up and hide short cuts.
- We paid extra for double glazing, however the building and bricklaying around the windows and doors was so shonky and crooked, that there when the house was finished, there were gaps around the windows and doors, defeating the purpose of double glazing.

Conversely our close friends who had a much larger budget for building their house and had the financial means to pay for a registered architect and then contract a builder using the Institute of Architects standard contract had a much more positive building experience. What became apparent to us was the power our friends contract had in keeping builders to account through:

- transparent itemised costings of the total build price,
- substantial financial penalties for not completing the build in the agreed timeframe
- quality assurance – by ensuring that clients could have very regular inspections to ensure the quality of the build – not just relying on the building certification process.

1. (b) compliance by builders with the buildings approved construction plans

There were a number of building errors relating to the approved construction plans:

- When our builder's foreman informed us that brickwork was laid in the wrong location, he told us that the financial costs of fixing this mistake would be borne by a young tradie who was being sub-contracted by the builder. At the time this made us wonder whether the licensed builder had any incentive to actively supervise the build and ensure that the building would be built in accordance with the approved construction plans. It also made me very angry that the builder added 20% to sub-contracting extras we needed to add to the contract.
- Further, when the land was cut into to prepare for the build, the builders foreman was not in attendance. It is not clear whether the cut was actually what was prescribed in the approved construction plans and an incorrect cut may have meant that retaining wall was significantly larger and more costly than had been initially estimated.
- Another error that was made relates to the location of the water tank – where the water tank was located on the approved construction plans was in a location where it would never have fitted due to the location of windows. The water tank location had to be shifted elsewhere and the decision made in a rush to suit the builder. Had there been more time and information to make an informed decision, there was actually a better location for the water tank on the property.

Increased compliance of the building industry is essential. However, I believe it would be pointless for a regulator – be it ACT government or a private building certifier, to implement stronger compliance mechanisms, unless the Territory mandates contracts which require builders have with clients and sub-contractors are improved to ensure greater accountability of licensed builders themselves.

1. (c) the adequacy of regulatory mechanisms to ensure compliance with approved construction plans

As a former town planner I was heartened that the ACT had a \$5,000 landscaping bond. Sadly the MBA contract successfully 'gamed' this process. This process essentially is another way for shonky builders to make more profits at the cost of the home owner and the ACT government.

All we got from this \$5,000 worth of landscaping was turf laid over weeds – the builder did not clear the weeds or put down any soil and/or fertilizer over the existing ground which is mainly clay. The turf laid by the builder is now dead. Approximately 10 tiny plants which would have cost the builder less than \$500 were also planted. These were also planted directly into the ground which was mostly clay, without large enough holes and/or additional better soil and fertilizer.

This simple example demonstrates that regulatory mechanisms are complex and largely ineffectual with contracts that are weighted so heavily towards the building industry.

1. (d) the role of inspections and audits in the regulatory process

Building surveyors used to be employed by local government (including in the ACT) across Australia to inspect and certify building works. The change to private certification (through lobbying of the development industry) has not resulted in good quality building outcomes in the territory for many years.

Based on our personal experience and contrasting that with our friends' building experience where an architect was employed and managed the building process, the committee should seek the views of the Institute of Architects and not just the conflicted AIBS, MBA and HIA.

1. (e) the appropriateness of current practices for appointing certifiers, including addressing the potential for conflicts of interest

One of the key 'non-negotiables' in the contract was that we had to agree and 'appoint the builder's favoured building certifier as part of the contract negotiation process. This standard industry tactic presents an unacceptable conflict of interest.

2. The merits of standard contracts or statutory requirements in contracts covering building quality

Contrasting our personal experience to our friend's recent experience using the institute of Architect demonstrates that some parts of the building industry are already using standard contracts that provide good safeguards

4. Process 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

If the building industry was held accountable in the first place, then the defects wouldn't occur in the magnitude they do now. Put simply prevention (through stronger, fair and accountable building contracts) is better than the cure (defect rectification).

(c) the adequacy and accessibility of those mechanisms especially for individuals or body corporates

Our financial limitations prevented us from challenging the builder, or utilising the mechanisms in the MBA contract.

5. The cost effectiveness of building compliance and defect rectification practices for industry, government, individuals or body corporates and the potential for the introduction of alternative dispute resolution mechanisms.

Low cost dispute resolution processes should be implemented. It would be desirable if those mechanisms were available during the build time – not afterwards.

Final thoughts:

Our experience of building a house in the ACT was one of the most stressful times in our life, and the building delays and cost blow outs has had a significant effect on our lives including decision making around work and study opportunities, and being able to afford to have more children.

We think that significant changes to the building industry in the ACT needs to be made, so that shonky builders cannot get away with overcharging for substandard building.

We hope that our submission affects positive changes to building in the ACT so that other people do not have experience what we did, at a time when it is meant to be a positive experience building what was meant to be our forever house.