

4 June 2008-06-08

Committee Secretary  
Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Committee Members,

I apologize for my late submission. I became aware of this inquiry only last week. I hope I am not inconveniencing the committee, but I wish to submit and demonstrate with my case that most definitely there is **no appropriateness and effectiveness in the present system in providing consumer protection.**

There is fundamentally complete failure which needs urgent and potential reforms to protect and salvage consumers' livelihood.

The smallest building repair work becomes your biggest nightmare and destroys you utterly and completely, financially, emotionally and physically. I am not exaggerating and I am not asking you to believe me, but to please review the facts and the documentary evidence to assess and verify:-

- why is this happening? and who is responsible!
- Are the existing laws protecting consumers?
- Have licensed traders the technical skills required to carry out the specialized work for which are licensed for?
- Are the building laws complied with and enforced appropriately when breached?
- Is the dispute resolution/CTTT expeditious, inexpensive, informal and its decision fair? (as legislated)
- Is the privatised Home Warranty Insurance providing better consumer protection?

All I needed was to replace the concrete driveway as this is also the only access to the house and my children have fallen several times due to the disrepair.

**4 days building work** – that ended up in **in 3 years dispute in the consumer Tribunal.**  
**\$17,000 concrete driveway** – to date the cost is in excess of **\$100,000** legal fees for each party (we are still waiting to date for the CTTT decision for awarded costs.) What will the member decide? Each pay their own or the losing party to pay the other.??

I will provide you with a brief summary. 3 years protracted delay in the CTTT caused by the licensed trader's strategy in perpetrating a system which has many problems and does not work within the legislation.

(the trader advised the Tribunal that went overseas twice, (adjourned Hearing from 27/5/06 to 50/7/06 the first time) and again September till 10 October 2006. Summons issued to the Department of Immigration to produce passport records for entries and exits from Australia revealed that the trader never went overseas from May to July. He misled the Tribunal, did not comply with Tribunal orders nor with summons issued (6 summons) to provide documents.

**On 6 October 2004 I was provided a quotation for \$19,360 this included the insurance premium of \$1,540.00. for a colour concrete driveway by a licensed trader.** ( )

The trader confirmed:- "I've been licensed for 14 years, my licence is on the letterhead. for insurance no worries I have included the premium in my quotation and you will have it in few days." When we accepted his quote he arrived on site at 7.00 am with 9 men, they started and removed the old driveway, levelled the ground and prepared the formwork. When we saw the trader we asked:- what about the insurance? He replied:-

"It is too hard to get it, there is too much paperwork to prepare and they also asked me to put my house as a security.." The existing driveway was already ripped up and the new was formed ready for the concrete to be poured the next day. We felt we had no choice at this point The concrete was poured the next day. Although the job was not completed, the concrete had still to be cut and sealed, the trader requested to be paid in full. I disagreed to pay for the total amount until the job was completed. At this point the trader gave me an invoice for \$11,660 which I paid him for. After that, he handed me another invoice for \$6,160.00 and told me:- "you can pay me this to- morrow when I finish. On this day I didn't notice that the figures of the 2 invoices were not adding up to the total of his quotation as initially contracted.

The next day when the driveway was completed and we could walk on it. I received a call to meet the trader to see the completed driveway. I noted numerous defects....(list)

I rightfully asked him to repair the defects before I pay him the balance of \$6,160. He refused and walked away.

On 25/1/05 I lodged a complaint with the Office of Fair Trading (OFT). A building inspector met on site with the trader and myself, he issued a 4 pages Complaint Advice Report listing many defects and tried to resolve the dispute. The trader argued with the inspector and refused to sign and did not comply with the Rectification Order.

**On 27/1/05** I received a Notice of a Hearing from the Tribunal. The trader had lodged a claim for the unpaid invoice of \$6,150.00 I had to attend the Hearing.

On 31/1/05 I attended the CTTT hearing. The presiding member accepted the trader's claim and ordered me to lodge a cross claim by the 7/2/05.

The trader briefed a solicitor and barrister, I was advised by the member that I had to get legal representation as well.

**Since 31/1/05**, first Tribunal Hearing to the 2/6/08, we attended 14 direction hearings. I am now waiting for the CTTT decision on awarded cost

According to the senior barrister this CTTT decision is “perverse in findings” I will quote several of the Member’s reasons as I believe are very relevant for the Senate’s Committee attention.

The member admitted and conceded in his reasons (in writing) that:-

- *“I have the benefit of reading the reports, listening to the evidence and looking at the photographs. I am satisfied the driveway is at least aesthetically deficient”* and further
- *“ I agree the owner may not have stressed the aesthetic requirements of this construction to the trader. However, I do not accept a competent licensed tradesman would leave any job looking as this one does, I am satisfied aesthetically the works are defective.”*

Although the member criticised the trader’s conduct and workmanship at the end he rewarded him and order **the homeowner to pay the \$6,160 and dismissed the homeowner’s claim even though he found the work defective.**

HE further stated:

- *“In respect to evidence the trader gave to the tribunal and allowed to be put before the local court, was more sloppy than Machiavellian..”*  
Please note this raises a very serious issue of perjury- transcripts are on hand.
- *“I am satisfied on the evidence before me that the use of the licence number is merely sloppy”*  
It is to be noted that the letterhead this trader used to quote had printed a business Name and his own individual licence instead of the correct partnership name and partnership licence that owned the business name. This is a misrepresentation not sloppy as the member stated.  
Although the member concedes the trader’s misconduct at the end he rewarded him condoning his serious breaches i.e. **not providing the Home Warranty Insurance Certificate** etc.

The Member continues with this very abominable reason:-

- *“ True is, that the policy of the Home Building Act 1989 (HBA)is to prohibit unlicensed and uninsured building work. Further the conduct in splitting the quotes to achieve amounts less than \$12,000 and his evidence that he did so not on the owner’s recommendation but to fool himself this is not helpful to the trader’s claim.”* And
- *“The trader’s refusal to produce documents (as ordered by the Tribunal, in respect of the works carried out in my view demonstrates a position less than full and frank and certainly contributed to the costs of this litigation”*
- *“In evidence the trader was all over the place as to the homeowners warranty insurance premium he had factored into his calculation. The contract having been made in 2004 any homeowners warranty insurance effected would be insurance of last resort. Any claim for defective works could not be maintained*

*against the insurer unless the trader was insolvent, dead or could not be found.  
None of these circumstances exist in this case."*

I question: is the CTTT member condoning and encouraging licensed traders to breach the HBA 1989 and continue to **not issue HWI certificates as it is last resort and the homeowner cannot claim insurance any way?**

What if the homeowner could bankrupt the trader?

The CTTT Member's decision is "perverse in findings" the senior counsel stated. The solicitor lodged an appeal but I requested him to discontinue it. I do not have the financial nor physical resources to pursue this matter to the Supreme Court and this is what the trader and the supporting system is counting on. I am defeated and destroyed.

Thanking you I remain  
Yours sincerely,

A terminally ill divorcee with 3 children,

PS. I have been advised that BARQ has submitted the conduct of my Licensed Trader in their Submission in Relation to Licensing and PROSECUTION Refer to BARQ's Submission pp 27-30 3RD EXAMPLE.

Also in the Supplementary Submission of BARQ pp. 23-24

