



2/7/2019

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Dear Director of Courts Strategy,

I have been asked by [REDACTED] the [REDACTED] to respond to your call to arms on the "Review of the Civil and Administrative Tribunal".

I was going to sit and answer each of the questions you ask on the fact sheet, but I really couldn't find the words to really tell my story that way. The words to tell the story that needs to be heard. And I truly hope that these words do not fall upon ears that won't listen and make change.

This will probably become an epic story, but I am going to write to you from the heart, as a Builders wife who through the NCAT system has seen her husband (let's call him The Builder) become a broken man. My husband was the strongest person I know. He always stood up and went to work and provided for his family as all good men do. But through no fault of his own, was dragged into what he was led to believe was a simple and effective system that allowed him to recuperate money that was owed to him on work that he had completed. Essentially this system, NCAT, has allowed him to be feasted upon by the hounds both financially and emotionally.

Being a licensed builder comes with many responsibilities. There is not only the worries and work that comes with running a small business, but there are the laws to follow – Worksafe, ATO, Australian Standards on building, Local council law, and these are just a handful of the things builders are expected to know. Then there is finding the next job, quoting, ensuring there is work for your subcontractors. There are a million things I could write here about being a small business and the pressure that's involved. But we are strong people. The Builder is good at what he does and he had faith the system worked. He takes all the building responsibilities very seriously.

In our case my husband did his trade as a carpenter and then went to TAFE and night to complete the builder's course, whilst working full time as a carpenter. He then gained site experience and used this to obtain his Builders License. He started small doing odd jobs, working for himself the entire

time. Keeping himself employed I might add, paying tax, not being a burden on society. Now I have known The Builder for nearly 18 years, and he has not had a day when he couldn't work unless he chose not to. He has never done a business course, or a law degree, he is a builder, who everyday builds with tools and his knowledge and makes peoples dream homes.

The smaller jobs became bigger jobs, his experience grew, we worked hard, made sacrifices, and we went through all the red tape to get our Home Owners Warranty eligibility up to 1.2 million dollars. Progressively of course. We started at \$50,000.

Mostly focusing on renovation work as that has been The Builders niche, we have completed many large scale renovations. The Builder gains a lot of self-satisfaction from turning someone's old, worn out home, into a real masterpiece and dream home for his clients.

Life was good. Business was good and we were winning at life.

All was going great until the October of 2017 when we found ourselves our first genuinely difficult client. Everything was going well with them right up to the signing of the contract. At that point, despite the contracts being sent in draft form to the clients, and approved for finalization, the wife had wanted to change the progress stages and the % amounts associated with them, particularly the practical completion to be at 10% not the 5% we had. The Builder looked her in the eye and flat out said "I am not willing to sign a contract with any more than 5% as practical completion". She agreed and signed.

When it came to the start date and us trying to get all the paperwork in order things began to deteriorate. The client could not see past a start date being confirmed, but before this could be confirmed we needed a simple "yes we can go ahead with the engineering at said price" email as to get all the necessary paperwork in order to for the construction to start. Without that go ahead, we had no engineering which meant no construction certificate could be issued and therefore we could not confirm a start date. I can see your eyes probably just glazed over, but that is just one example of things builders know and put in place every day. One example of how we educate clients along the way. One example of red tape we need top deal with. This was also something that the Owners were to organize, not us, we were just helping them get it done.

A few emails went back and forth, with no answer being made on the question we so desperately needed an answer on. In the end we received an email from the client

Please provide a concrete date for work to commence, a copy of the building certificate and a date of when the engineer will be commencing his work by COB Friday 22/9/17. If we do not receive the above within this timeframe we will have no choice but to consider our options with continuing with the build, if this is the case we would be seeking recovery of any costs this may incur.

Wow, great – that's an awesome way to start off the job, that we haven't even taken a deposit for yet. We got this checked by a lawyer, and without him looking too hard into it, there was little we could do but start the job. The Builder wanted to walk away.

The Builder ended up calling the husband and working it out over the phone.

We were advised to "Follow the contract". So, we did. Every single change, discovery, additional piece of work was signed off by way of variation. Any actual choices on the build for example the roof colour was a signed document. Clients were notified of anything and everything they needed to know throughout the job. We did all the paperwork. I have a folder full of it.

The Builder started work. The client was completing the demolition as to save some money. It had not even been started. The Builder went with it. Worked with them and worked around it, never mind the fact it costs The Builder money. Even let them use the truck and took rubbish to the tip for them at cost to help them.

Excavations were done within 2 days and the first progress stage invoice was issued. The invoice email was replied to with “you have been on site for 2 days; how can we be expected to pay that amount of money for only 2 days work”. The said amount of money was agreed upon under the contract. Its not like they didn’t know it was going to happen.

Wow we were thinking, this is really great. So the Builder explained to them that the money wasn’t just to pay for what had been done, that it was to pay for the windows that had been ordered, the frames and trusses, the steel frame, as well as a bunch of other things that had been placed on our accounts and would be on site within days and in place ready for their use within a week or so.

The Builder was accused of being a rip off as well as called a few names under the sun in a 17 min long conversation that in all honesty if I was The Builder I would have hung up and packed up and let them sue me, the conversation was disgusting. But The Builder is good with people, he made them come round as we knew at this point there is very little we can do than complete the work, as we have signed a contract to do a job, and we must do that said job now.

Can clients speak to you like this at work?

The invoice was paid, the client calmed down, and things progressed. The frame was erected in 3 days, and the roof on by the end of the following week – and it rained in there too from memory. The Builder doesn’t stuff around, he likes to work hard and get the job done.

So the next progress stage comes around. And again, they balk at the invoice. Several conversations have happened about the job on site, how things are going to progress, being a renovation there are some swings and roundabouts when it comes to following a progress schedule, but overall the progress stage was “substantially completed”.

This theme continued throughout. Due to the job running over the Christmas period/ Industry shutdown time and the clients adding to our scope with tiling becoming part of the works to be completed The Builder had sat down with the clients had explained to them how it could work, and the way the works were going to be carried out.

The tiler was only available over a week’s period in the new year. This time had been deliberately blocked out of the contract as The Builder had wanted to spend some time with the kids.

So this meant that some of the frame work in the existing house, that the clients were living in, would need to wait so that the walls of the bathroom could be sheeted, as well many other things, electrical rough in, waterproofing, etc was completed as to take advantage of the period our tiler was available.

During the meeting this was clearly explained and noted in following emails. They were fine with this.

Despite all the additional work being done on the next progress stage as to accommodate the clients need for a tiler (which was never part of the contract scope). When The Builder issued the Frame stage payment, you guessed it.....they balked and didn’t want to pay.

This was Christmas eve. The Builder hadn’t been paid since November. There were bills due, so on the advice of the HIA and the Lawyer, a “Warning of Breach letter” was issued. It outlined both the clients concerns, as well as The Builders. It also stated that we were willing to issue a progress

payment schedule change as to alleviate their concerns, and without payment no further work would be happening.

The bill got paid. Thankfully. The kids got Christmas and works recommenced earlier than The Builder had wanted mostly due to the tiler needing him on site.

All variations continued to be signed off, meeting notes were sent via email, and The Builder continued doing his best for the client.

It came to the end of the job, and due to the work being completed so quickly the time between invoices issued and the next stage being almost completed weren't long enough, things overlapped but it was ok we could work with it. But again, push came to shove, and the client had no money left.

At this point a breach of contract letter was issued, works were stopped, and we enacted the security to pay clause. The client needed to prove they had the funds for us to finish the work.

Well they didn't have the funds. The client came to me this time (you see I'm the soft touch) and told me as such. There was an issue with the bank, which we completely understood but with almost \$45000 outstanding and less than a week's work remaining I am sure you can understand our predicament.

The client did pay a chunk of the money, but left the current invoice outstanding my almost \$9000. (with the total end amount at \$19011 – not a small amount of cash there – its pretty much our profit on the job – well 10%).

At this point we could see what was happening we had engaged a lawyer and we were using our contract.

We called fair trading to get a mediator out to site as the client could only see that a stage hadn't been completed but being a renovation considerable work on even the practical completion stage had been carried out. Fair trading couldn't help us, as they saw it as a contractual issue, and couldn't help at all. But in the end the client called them.

I dealt with Fair trading, as The Builder was now on our next site working to get the job out of the ground.

They were fantastic, and although initially our job was shoved from desk to desk there was one girl that really took an interest in our case and tried to help get it resolved. Fair trading had suggested to the client to pay the builder, and we would complete the work we were always ready and able to get back there straight away despite our new job being a million dollar project, that was barely out of the ground with a developer we were keen to impress.

In the end the client didn't hear what they wanted too and started to ignore fair trading despite several phone calls and emails trying to contact them. The case was then referred to NCAT.

That same Fair trading worker, [REDACTED] called us a few months later just too see how we were travelling, we told her the story, and should could not believe that NCAT had allowed it to progress to a defect claim on a job that wasn't completed.

So we did our thing, prepared a simple DIY report on the job, using photographs showing the works to be completed, and what was outstanding. It was a simple report – we were trying to keep things cost effective and get the whole situation sorted as cheaply as possible.

I lodged with NCAT, So our little simple report in a manila folder that was about 20 pages long, and stated throughout can we please have orders as to ensure we get paid and we will complete the works and then if anything is defective we will repair/ rectify at our cost as per the Home Building Act. Still at the same price mind you, even though it was going to be a pain in our timeline for our next job and potentially land us in NCAT again.

Then we had our mediation. At the point of mediation, the clients had been given misinformation from their building inspector, who they would then rely upon in reports submitted in the counter claim. Because of their expert's false report, as far as they could see we had built the dodgiest house in town, it was simply untrue. Yes, there were some minor items that needed attention, but overall the works were of good quality. The problems he had found were tiny things that didn't meet the BCA, but they were all common industry practices that all trades out there do every day. For example, the roof screw pattern was a screw pattern The Builder has been doing since he was an apprentice. The same screw pattern that is in the Colourbond/ Lysaght's installation guide was followed – unfortunately this doesn't meet the BCA. How are we to know such a thing? Why is such a large company allowed to have misinformation on their site? But that's a whole other conversation for another day. I am sure you see my point though.

Please also remember that we hadn't completed the job. We had been forced to stop work due to nonpayment of an invoice.

Almost 6 months later with numerous extensions granted to the other party, our simple report was responded to with 3 huge folders of all I can now describe as wasted trees.

It was a defect report that was general, nonspecific and did not consider any of the variations/ paperwork that had been completed throughout the job. It was exaggerated and as far as I can see was an expert leading a client down a path to make money with a grossly inaccurate claim.

NCAT procedure was carried out, and at the directions hearing we were advised to say nothing. The Tribunal member that looked at the reports and I remember her looking at ours and I could see the look in her eye, this poor builder. Yet nothing was asked of us. The Builder ended up piping up and saying, "Your honor, All I want to do is complete the job and get paid, I will fix my defects, but I want to be paid for the contract price I agreed too". She said nothing more than all I can see here is a Builder that wants to be paid for his work, and this is going to cost a lot of money and a lot of effort for what? – Why could she not have made orders then and stopped the costly experience for both parties.

Procedure continued, about 4 more extensions were granted to the other party despite our strong opposition to this. Our expert completed everything on time, and all our paperwork was always lodged on time, if not earlier than the expected date.

It was During this next period of waiting and not being able to move on with our lives, that we started being harassed by the client's children. Facebook messages to the business began, threatening The Builder, One of their children spat on The Builders car at soccer training where he coaches a local team, and on Christmas eve, we were woken by their kids on the horn out the front of our home screaming profanities. This woke our sleeping small children. And meant we got very little sleep that night. Police could do little to help, but here we are a small young family, being harassed by someone that's parents owe us some money.

Turns out, our expert had come up with exactly what we had originally said, and the dollar amount was \$20,000 including the defective works.

The other parties' experts had it at \$130,000

There were 2 reports from different experts at chalk and cheese. But we now under the advice of lawyers as there was an extensive counter claim had to follow procedure. I cannot speak on the other parties' behalf, but all I could see what this was becoming about the pool they had on the plans and they couldn't afford, and this was a way to extract money from another human being.

I am going to digress for a moment, but this is something NCAT don't really see, Builders aren't big business. We are little people just going to work, there are no massive profits at the end of the day, we don't have shareholders, just Dad's and Mum's, normal people going to work, doing the same thing everyone out there does but without the guaranteed pay cheque at the end of each week, without the holiday pay, without the super contributions, without the job security, and with much more responsibility not to mention that generally we put our houses on the line just to gain the insurances/ home owner warranty required to work with our licenses. I can say with all honesty that The Builder and I aren't really any different from our clients – they just usually get paid for their work.

NCAT and the lawyers arranged a conclave with a technical member, which was helpful. It got rid of a lot of rubbish within the defect report. But the client's expert was continually difficult with the final report. Extensions were granted, but at the end of the day we ended up at hearing day without it being finalised. Now in my eyes this is something NCAT and the tribunal member should have jumped on immediately. Why did we not have a joint report? This lack of joint report also hindered our defense, it didn't allow us to know exactly where we were at going into that room on hearing day.

The member instructed the experts to go and sort it out, and within minutes with the help of their barrister I might add, it had gone from the \$130,000 to just over \$20,000.

Now this is the bit that I truly consider was unfair. Our case was never seen, out of all those documents – the documents that as a builder under the Home Building Act we are required to have. That job contract was not even looked at by NCAT. Not a single piece of evidence was seen by NCAT. The lawyers made deals in the hallways, and I am going to be frank, but all in all it seems that the entire process had been a stage for both Lawyers to make a few dollars. Now I can see people would consider that to be the fact with all lawyers, but this was particularly bad. Not a place to which you can defend yourself easily.

Now I am unsure exactly how to voice what happened next, it all happened so fast but by lunchtime we had come to the agreement that we would fix the defects, and each party would bear their own costs. The Builder was ok with this, despite not being able to claim the almost \$9000 that was overdue, it meant it was over and he always had to fix defects.

After this deal was struck, their barrister came into our room and said, "No that won't do, they want some money as well, would \$1000 be ok?"

The Builders like ok its \$1000 let's just get this over with. Next thing we knew it had become \$5000.

I would like you to bear in mind this now going to hearing, seeing the other side had wasted 5hrs of the day, was going to cost us more money, another days work missed, so as a business – even though we are a small business – we made this decision to go with it.

In the meantime, in the 18 months this entire thing was playing out, we have also had 2 more clients that were holding money. 1 was the developer that we were working for, who owed us about \$40,000. He didn't have the funds at the time, and we worked with him, there was no issue with the work, Luckily a crazy neighbor reported him to the council for trying to move tenants in without an Occupation Certificate which meant we got paid. These certificates that we held, were the 1 thing that saved us. They were also something the Tribunal technical member from conclave frowned upon us for holding onto. It was said it was unreasonable to hold these certificates on the client.

Do you not think that perhaps it is a little unreasonable that the client is holding money on the builder?

And in the week before this hearing another client that has refused to pay us a massive sum of money on a cost-plus job we had completed, where additional work from the scope has been done and now they refuse to pay for it. There seems to be an epidemic in our local area for people using this costly and time-consuming system to get out of paying their bills. I can tell you 10 other builders that have had similar experiences in not getting paid.

So, this was hanging over our heads as well. It was better for us to pay this money and use the what a hearing would now cost as we had spent 5 hours doing nothing preparing an trying to recover the \$120,000 we were now out of pocket from another job.

NCAT issued a work order, with decisions that were based on all the work orders being carried out on time. We had scheduled that work it into our next jobs as well, with the defective works being planned to be carried out this week and next.

As of today, the already agreed upon joint defect report is not completed. Our expert has completed it, and it was handed back to the other party as far as he can see it completed on the 14th June 2019. Today is the 1st July 2019 and we have nothing.

NCAT granted an extension till the 24 June 2019 without our knowledge.

Those work orders will now impact our future clients we have signed contracts with. Contracts that don't have a "Sorry we have orders from the court to complete this other guy that's really slack on his paperwork clause in them" Contracts that we may end up in front of you with again due to not being able to meet our agreed terms.

So, you ask do you think that NCAT is a fair system. I don't think it is fair.

Does it work, NO it doesn't work.

Its breaks people. Its broken my husband. The Builder, who will do anything for a client. The builder who has always put the job in front of the family to keep a client happy. The Builder who is a bloke that if he says he will do something he does it. He doesn't need a contract to agree upon something.

He is good to his word. I know he is my husband, but he is a good person who does good things. And takes peoples word as what you would in the old days, just that – their word.

This whole process has made him see a side of himself that is dark, and as I am being brutally honest here, he has had suicidal thoughts, he has considered ending it all as due to a system that is failing. After the whole hearing day, he was looking at life insurance policies as he thought that him ending it all would be the most guaranteed way that he could look after his family. Him ending his life! How is that a fair system.

This system failure is now failing people that should be getting paid, people who went to work and people who did the right thing. People who rely upon this system to get paid, and who when they have now used it, got completely screwed.

He cannot guarantee he gets paid for a job. Which means he cannot guarantee that there will be food on the table for his kids, or even there will be a roof over our heads. How would that make any normal person feel?

You also ask does NCAT resolve legal disputes quickly, cheaply and fairly. I can categorically say a massive NO to all three. This entire process for what was a debt recovery for The Builder was for \$19011.

It has cost us time with me working on the case or something to do with the case for at least 8hrs a week. Over let's say only 60 weeks, that's 480 hrs. – let's say I was to be paid for that work – well that's another \$14000.

On top of all this heartache and effort, actual costs with lawyers, work we didn't get paid for and experts which is upwards of \$40,000. That's over \$50,000 we have had to lose this year.

It was also said in a directions hearing, that costs in these types of things were a part of doing business. This statement is the most ridiculous thing I have ever heard. Because we are a small business, we should be expected to have \$40,000 on hand to cover things like this? But the client shouldn't be expected to pay costs on a frivolous claim. The client has every right to do this to another human, that is not fair.

If those additional powers you ask of to help enforce its decisions mean that people (builders/tradies) will get paid, then yes NCAT needs more power.

NCAT needs members to look over the documents, see the original claim and try and really guide the particular situation, but guide it in a way that a respected person can. Not just sit up the front of the room and offer direction. Its not working.

The entire process is wrong, and I truly believe that a Fair trading inspector, or even the Certifier needs to become involved in the process of is the job actually finished? If it's not completed, then it's a contract issue and that's all that should be sorted out. The Contractual issue. Why would a builder stop working on a job they are getting paid for?

No defects, no ridiculous incomplete works claims. Ultimately the MP48A allows the builder and expects the builder to fix any defects. So, they shouldn't be part of any hearing. Unless of course Builder was not able too, but then its different story.

So there it is, an epic tale of a builder that has done everything right, a builder that did all of his paperwork, a builder that was working with a difficult person. A Builder that was just going to work

to support his family. A builder who now, is a broken man and unsure how to move forward with his life. A man who now has moments when he really doesn't know if he wants to move forward with his life.

I would also like to thank you for taking the time to read through this story. Thankyou for listening, and I truly hope that I can thankyou again for making the changes required here. The changes that will make NCAT the FAIR tribunal that it should be. The changes that are needed to make this system Fair and the changes that will make this world that we live in, the world our children live in a better place.

Both The Builder and I would be happy to come to the round table discussions that you are having as well. We will make ourselves available for any time that you choose to have these talks.

Yours sincerely

The Builders Wife, Dannielle.