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BENCHMARKS FOR INDUSTRY- BASED CUSTOMER DISPUTE RESOLUTION SCHEMES: ISSUES PAPER 2013

BUILDING COMPLIANCE REFORM ASSOCIATION

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EXECUTIVE SUMMARY

In the Building industry, the application of 'Benchmarks' within Internal, External and Judicial Dispute Resolution mechanisms, provides much rhetoric, but has no basis in reality.

For building consumers, internal dispute resolution is non-existent. Builders and surveyors, and all the other players know their obligations, but given that industry-wide across Australia there is no compliance and no enforcement, the building practitioners have no interest in meeting any of their contractual or legal obligations. Since the industry is self-regulated and de-regulated, practitioners been allowed to be contemptuous towards owners and the system simply because they can do so. Their misconduct is sanctioned by the Government agencies and supported by the vested interests and other beneficiaries, so there is no motivation to force compliance.

With regard to 'Alternative Dispute Resolution', or "mechanisms allowing an unsatisfied complainant to further pursue their complaint", these are all broken. Those involved in such processes are complicit in working with the builder offenders and against owners, as also applies in the 'judicial' forum. There is much conflict of interest and collusion, owners are outsiders in a system guaranteed to reward the offenders and to deliver further harm to owners.

In the Benchmarks Paper, the theoretical framework assumes that there is a regulatory model in place to underpin the system, with enforcement procedures and monitoring of practitioner conduct. The assumption also seems to be that there are codes of conduct, disciplinary boards or tribunals and procedural fairness. However, in the building industry none of these prevail.

The whole 'consumer protection framework' in the building industry exists in a mythical format. The reality is that in practice, there is no protection for consumers. All the putative 'mechanisms' are controlled by all the so-called 'stakeholders', except the number one stakeholder, the owners who fund the industry. The Government agencies relinquished control more than 20 years ago and this has ensured the growth of the ever-expanding 'dispute industry'. Owners are locked out, with no voice, rendered powerless. They are not consulted and have no effective representation.

Worst of all, no consumer agencies will take up the cause of building consumers. Be it Consumer Affairs Victoria, the Office of Fair Trading, APRA, ASIC or the ACCC, not one agency will enforce compliance with building laws, regulations, standards or consumer laws. In some industries, especially vital industries like building that drive the economy and create large-scale direct and indirect employment, there is an industry Ombudsman. But there is no such Ombudsman for building. Even though there is supposed to be insurance, in practice non-existent, owners cannot contact the Financial Ombudsman Service because this 'junk insurance' is exempt from the FOS's role. No accessibility, accountability or independence!

For building consumers to read about the Benchmark principles of 'best practice' and robust dispute resolution schemes that are credible, efficient and flexible is truly incredible. It is similar to reading about the 'consumer protection framework'. Such idealistic terms appear to come from another universe, unfounded in reality. For example, if one considers the breadth of research and the established evidence on the building industry and the 'consumer protection' models, it is indisputable that accessibility, independence, fairness, accountability, efficiency and effectiveness all evaporated a long time ago. Further, this actuality can be verified in the thousands of consumer case studies, all demonstrating how owners have been crushed by the current system. If the Benchmarks' principles and practices are ever to become a reality, a new model with major reforms to achieve these ideals will only be accomplished through consultation with genuine consumers. The way forward is through good governance, proper regulation, enforcement and a new culture melded in ethical foundations.

Mr Colin Neave
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PARKES ACT 2600

RE: Benchmarks for Industry-based Customer Dispute Resolution Schemes: Issues Paper 2013

Dear Mr Neave

We are a voluntary consumer advocacy organization, committed to reform of the current 'Consumer Protection Framework' for domestic building consumers across Australia. We wish to make a submission to the CCAAC on this Issues Paper, the 'Review of the Benchmarks for Industry-based Dispute Resolution Schemes', in order to highlight the reality of the disastrous so-called 'Dispute Resolution Schemes' as they pertain to the building industry.

In the building industry, there is a putative 'Consumer Protection Framework'. But it exists only in theory. The actuality reveals that in every aspect, the Framework is purely mythical, with it providing no protection for building consumers. As for the 'building dispute' options within this broken system, they are mythical, designed to support everyone except consumers. As the research confirms, building disputes have been 'created' through a complete lack of compliance and the dispute resolution 'schemes' operate to secure more financial benefits for a whole range of beneficiaries. But for owners there is absolutely no possibility of achieving any justice, and worse the 'dispute resolution' schemes exploit and cause more harm to consumers!

For building consumers across Australia, there is **zero** consumer protection and this has been the case for at least the last 20 years. A controversial 'hot potato' and an embarrassment for so long, in the past decade alone this issue has generated 70+ Parliamentary Inquiries and Reviews at the Federal level and in the States and Territories. This is testimony to the ongoing failure of deregulation/self-regulation of the building industry and those engaged in it, together with those employed as Government officials in the regulatory and consumer protection agencies, and all those involved in the sub-industry called the 'Building Dispute Industry'. We can provide volumes of evidence, both extensively and independently documented by many and multiple sources of Federal and State Government agencies, as well as Reports by Government Departments and agencies and also Inquiries, Audits and Studies by independent, private research companies. All demonstrate the facts and all support the sad reality that building consumers are totally unprotected. Further, our organization has documented many thousands of consumer case studies; regrettably their stories marry perfectly with the research.

The total lack of consumer protection for ordinary Australians, for whom investing in the 'great Australian Dream' is the largest outlay of their lives, is a national disgrace. The actuality of no protection has caused devastating consequences for Australian building consumers, with horrendous detriment and suffering, both financial in every other way - and ever-worsening, particularly over the past decade. It has spawned a consumer catastrophe on a grand-scale, inflicting far worse damage than any natural disaster ever recorded in this country.

Consumer catastrophe

This consumer catastrophe is the result of a combination of systemic injustice (first confirmed 20 years ago by the Auditor-General), intermixed with the widespread corruption throughout the building industry and through the State Government agencies responsible for enforcing compliance with building laws/regulations and consumer protection laws; these exposed in three recent Reports by the independent Auditor-General's and Ombudsman's Offices, as well as many others, such as KPMG Report on Fraud and Corruption in the building industry, the Ombudsman's report on Conflict of Interest, etc., etc., etc. It would be bad enough that the Government officials have failed in their lawful obligations under State and Australian consumer laws. But much worse, the evidence that has now been tabled, much of it over the last 18 months, proves the complicity of Government officials in promoting the corrupt system and deriving tangible personal benefits. Through their failure to adhere to any corporate governance obligations and probity measures, they have actively advanced corruption and sanctioned a 'lawless' industry, which has allowed all those involved in the industry to disregard all laws. Instead of being a part of any solution, the public officials are the fundamental problem and the cause of obstruction of justice. These officials have enabled the cowboys to flout compliance with all regulations and consumer protection laws; to ignore their contractual obligations; to ignore the 'statutory warranties'; to frustrate, and to delay and drag out the so-called 'building disputes', thereby guaranteeing serious and ongoing harm to owners**.** They have effectively facilitated the cowboys' licence to 'legally rob' consumers.

In order to appreciate the extent of damage to consumers, some statistics provide an insight. First, one in every two building consumers – or 50% have problems! (Australian Consumer Law Survey, Sweeney Research June 2011). In Victoria in 2010-2011, 256,000 building consumers suffered problems through building. This should be astonishing, but as with everything in building it has elicited no response, and worse no action. Consequently, there has been no change. Even more cruel, the situation in a self-regulated' market (this supported and confirmed by the HIA and approved by Governments in 2002) has guided the building market to greater degeneration and, as the statistics demonstrate catapulted the cowboys in increasing numbers to more recalcitrant conduct, exacerbating further the nature and intensity of the harm that they are willing to inflict on consumers. Again for the majority of consumers, the experience has been and continues to be devastating.

In terms of the financial detriment to Victorian building consumers, the statistics speak for themselves. In 2005 it was $500 Million, by 2008 it had increased to $1.6 Billion and by 2011, it had escalated to around $3+ Billion! It is staggering. Keep in mind that Victoria has about one third of building in Australia and so if we multiply times three plus - and factor in that these statistics are 2 years out-of-date - we have around $10 Billion per year, in financial detriment alone to Australian owners. This is without detailing the psychological and emotional harm; the negative impact on health, etc.; without counting the numbers who have paid the ultimate price and lost their lives; without totaling the increasing numbers now joining the ranks of the 'new homeless', made homeless through trying to build and pay for a home, but robbed by the cowboy builders and the teams who help them; and there are all the others whose normal lives as they knew them have been lost, be it for years or in so many cases, forever.

In the introduction to this Australian Consumer Survey of 2011, David Bradbury said:
"The ACL began on 1 January 2011, and the Survey provides a baseline to enable our regulators to build consumer and business awareness of the ACL, encourage compliance and effectively enforce the law. I hope that the Survey is a valuable tool in thinking about how to promote well-functioning markets for the benefit of consumers and businesses."

Unfortunately, this sentiment is never going to consummate in reality for building consumers, unless there is very major reform. And there can be no positive reform without serious consultation with genuine building consumers who know just how the system deliberately works against them - and some consumer representation, which at present it is non-existent.

As the Sweeney Research Survey revealed in 2011, 1 in every 2 building consumers are negatively impacted annually. For the vast majority of these owners, their 'problems' are very major and extremely serious. For example, if dealing with decent, ethical builders, there will be few blunders and they will be willing to rectify mistakes. But the cowboys, who deliberately 'build' non-compliant, sub-standard buildings, using seconds' materials, cheaper fittings than in the Specifications and cheap labour (when they rob consumers, they commonly do not pay the trades people), they have the money and refuse to give it back or rectify work and complete work. Basically, they refuse to honour their contractual obligations, the statutory warranties – or anything else. They know no one will enforce the building regulations, the building or consumer laws and so they are free to do just as they please – and they do! After a colossal financial outlay, owners are left with serious defects and non-completion of work. And they have no options. No one will help them; they are left with their losses and no means of remedy.

Non-compliance with building standards, contracts, plans and permits is the norm. For owners left in a mess by the cowboys, it is impossible to ever get any resolution, any redress or any form of recompense – because unlike what David Bradbury hopes, the reality is that none of the regulators have any interest in "encouraging compliance" or "effectively enforcing the law". The cowboys know this well and behave accordingly.

David Bradbury is correct in thinking that there is a "well-functioning market" in building. The market functions very well for driving the economy and for all those in the business of 'building'. It serves the needs of the cowboy builders and surveyors and all those beneficiaries of the sub-industry called the 'building dispute industry'. These comprise the lawyers, the consultants, the 'experts', most of whom are not independent in any sense. Most are available to represent the recalcitrant and repetitive offenders. They will 'get them out of trouble' for a fee. And it is the owners' money, robbed by the builders used to pay for the fight to make sure the offenders get off. For consumers, this is how they are hammered into the ground. In a system driven by money and bonded through the buddy networks, owners are simply outgunned. Thus the system works to reward the offenders, at the very great expense of consumers, causing hundreds of thousands of Australians enormous pain and suffering every year. The ACL and the state agencies prop up what has been proven to be systemically unjust, unbalanced and unfair. The system is weighted to favour the cowboys, with no way under the present system for consumers to get any help, fairness, much less get what they have paid for!

The Real Beneficiaries of the Domestic Building Industry

There are many who benefit from the domestic building industry and for all of them the rewards are enormous, be they unlawful and unfair rewards. The beneficiaries are the 'builders' (more than half with no qualifications, no competencies, no ability to speak English and no ability to even read Plans and in Victoria so many have bought their licence) and the surveyors, the engineers, etc. The beneficiaries are the officials of the Government agencies, well paid not to do their jobs, but to wine and dine the volume builders and to entertain them in the corporate boxes at major sporting events, to play golf with those that they are meant to regulate and to spend excessively on world travel – all on owners' money! Since they do not work in relation to their paid responsibilities, they can spend their time downloading and emailing porn. Not responding to responsibilities makes for a good life! And all funded by owners, not taxpayers - but building consumers!

How can owners expect any enforcement or disciplinary action from the regulators against their friends, partners and close buddies? How can the regulator officials play golf with their surveyor buddies one day and call them to account for breaches of the regulations and misconduct the next? They cannot – and they do not! Then in many cases, these Government officials who have abrogated their responsibilities, have further been rewarded with commissions as kickbacks. The whole governance framework is riddled with conflict of interest and collusion, ruled by the buddy system and money-driven, providing the perfect environment for corruption and the motive to cover up the truth. And it has all been executed brilliantly! Owners have been excluded from any part in the legislative, decision-making and corporate governance systems. Left voiceless and powerless, consumers have funded the building industry, the dispute industry and the Government agencies, as well as all the vested interests' incomes by default. And then, they have been further damaged, without any protection in the aftermath of the building disasters, designed to be the inevitable result of a lawless industry. Consumers are left with nowhere to turn and no one prepared to help them.

Then there are the other beneficiaries, who get the millions of dollars a year in insurance premiums and others who take huge brokerage fees – both groups from obtaining money that owners are mandated to pay. This is the insurance that Jeff Norton (at that time a senior executive of the Victorian Building Commission) told the 2010 Victorian Parliamentary Inquiry **"does not exist**" and further added that it: **"is not a warranty product**"! So why were/are owners paying for something that does not exist? Sadly, the answer is that this is the how the building industry is schematized**.** It functions to benefit anyone and everyone, except home owners. It is their misery that has spawned the enormous 'building dispute industry', which only serves to cause additional harm.

Worst of all, there are the beneficiaries involved in making a fortune through building consumers in the guise of being 'industry associations', somehow connected to real people involved in 'building'. In reality these organizations are private companies, who have used their influence for their own financial gain. They play a very significant role through lobbying Government and directing policy to maintain and further enhance their own vested interests. These 'industry associations' do not in any way represent the interests of anyone except themselves. Certainly, from a consumer perspective they could be deemed to be a destructive impediment. They meet and consult with Governments very regularly, put forth policy to suit their interests and are prepared to proclaim publicly that they are able to direct the Government's policies and practices (we can provide evidence of same.)

Now to consider but one instance which demonstrates the blatant disregard for consumers. We need look no further than the falsely named 'warranty insurance', asserted to be a benefit for consumers. The industry associations, together with a few small players manage to extract hundreds of millions of dollars every year through brokerage fees from this mandatory 'warranty insurance' that Australian owners are forced to pay. They have succeeded in making huge profits now for 11 years. This is the same insurance that fails to have virtually any successful claimants! For example, in 2010-2011, the insurance premiums paid by Victorian owners was about $87 Million. In that year, there were three (3) owners who managed to have a claim paid out – and they were paid a combined total of $108,000! Yes, out of $87 Million forcibly removed from consumers, $108,000 only was returned to 3 of them!

This is obviously scandalous. It is 'money for jam', for both the brokers and insurers. And now with the Governments in Victoria and New South Wales as the insurers, this money yields another windfall for Government. So consumers in one state have been compelled to donate in one year $87 Million, with more than 99% of them having no likelihood of a payout. It is more than poor policy, more than unjust, more than unethical. It is criminally heinous.

As any reasonable person would conclude, it is immoral for their elected Governments to allow the vested interests to direct policy, to orchestrate processes to use and abuse consumers, to ratify this rotten system that takes consumer money and then through the so-called 'dispute resolution system', robs them further.

To sanction this unprincipled system that continues to fleece consumers of millions and millions of dollars every year, knowing full well that instead of protecting home owners the Government and its agencies have enabled further exploitation truly beggars belief! This relinquishment of responsibility, abrogation of duty of care and deliberate planning to act in contravention of one's responsibilities in order to harm consumers is shameless.

Apart from these reputed 'associations', there are many others who have been allowed to misuse and manipulate the system, to take advantage of consumers' lack of protection, particularly those engaged in the growing ' building dispute industry'.

The Dispute Resolution Industry and its Stakeholders

In the 'building dispute industry', there are many stakeholders. These include those called 'builders' and 'surveyors'. As well there are the so-called 'building consultants' and 'experts', where in Victoria many hold no qualifications and too many are neither independent nor objective; they simply act as the 'hired guns' of the recalcitrant cowboys (evidence can be provided). Many are in the regular employ of the 'builders', the 'surveyors', the insurers and the lawyers, prepared to write whatever reports they are instructed to produce for a putative 'dispute' - as long as it extracts mega dollars. The 'consultants' and the lawyers provide commission, one to the other for referring new clients, all from the group called 'owners'. This is the group who are swindled again and again – the source of all money. So many of the cowboys and their 'consultants' are simultaneously employed by the Government agencies and the agencies will protect them. The question consumers ask is: "Why?"

It is the owners who in their search for justice have their money continually extracted by professionals within the dispute industry. But prior to this dispute stage, owners have already paid for their so-called 'building' (defective and incomplete), funded the so-called 'self-funded' Government agencies and paid for the 'junk insurance', which benefits all except consumers.

Within this artificially created sub-industry, consumers are once again called upon to pay for the Government agencies' Dispute Resolution Schemes. For example, the Building Commission is supposed to be in control of regulation and if there are disputes, it is supposed to provide independent building inspection reports. However, the Building Commission has been an abysmal failure in both of these roles.

The Building Commission and Consumer Affairs Victoria jointly have the responsibility for Building Advice Conciliation Victoria (BACV) in Victoria. Once again there is much evidence to demonstrate the failure of both agencies in fulfilling the roles for which they were funded. In this instance, owners have been forced to pay for services that have never been provided and instead have once again rewarded all the professional vested interests. One example is that Victorian owners, through their building permits paid $7.7 Million in 2011 to fund BACV, as the imaginary dispute resolution agency. This is despite the fact that there is little chance of an honest inspection report from the Building Commission. This is also despite the fact that there is almost no chance of Consumer Affairs Victoria officials providing owners with truthful advice. This is furthermore despite the fact that owners have almost no chance of obtaining any genuine conciliation services, much less achieving any positive outcome.

Sadly in Victoria, when owners obtain no resolution at BACV, which seems to be BACV's objective, they are directed to pursue justice at the Domestic Building List of the Victorian Civil and Administrative Tribunal (VCAT). The system has compelled owners to go to VCAT for what has been deemed a 'civil' jurisdiction, when for many owners their claims involve what can only be described as criminal conduct. Once more, as with all parts of the system, 'the VCAT scheme' has been designed for all the vested interests to be rewarded, with owners having no chance of being successful and no chance of justice. More cruelly, owners once more fund the Domestic Building List of VCAT and in addition pay all over again for their case to be supposedly adjudicated.

The Pre Dispute Phase

Owners who have complaints generally have many and multiple reasons to be aggrieved. Sadly for most aggrieved consumers, it is not simply that they do not get what they have paid for – although they should be able to realize that expectation, marketed as 'real' by the Government agencies. It is extremely wicked that they are robbed of their life savings and future life options. But for most, this is not the worst. The actuality for too many is NO foundations, NO paint, POOR brickwork (50%), NO compliance with what was meant to be built, NO safety, very dangerous buildings (with the need to move out of the house permanently because it so unsafe) or live in it and experience the ongoing nightmare. This is not overly dramatic. We wish that it would be. But no, this is the reality for the owners who land the cowboy builders and surveyors and it is the experience that ruins their lives. To learn that Governments and their agency officials do not care is probably the worst experience of all. It is shattering to learn that those who they trusted, those whose responsibilities are to enforce the laws and to provide protection, all abrogated their responsibilities and duty of care.

The building phase is horrendous. The cowboys will double payments, overcharge on a whim, make up invoices for imaginary variations and charge for items never installed. Demanding stage payments in advance (against the law) and then forcing owners to pay again to the supplier is common. Then there is the terrorizing, threatening to stop work without any reason, denying access to visit your own site, the land you have paid for, then ignore interspersed with intimidation and ongoing bullying. This is the shared experience. When owners try to make contact, they are ignored, or not allowed to visit, or told to pay another $2,000 by the next day (not a variation to the contract and totally illegal). But because the Government agencies, in this case BACV are hooked in with the cowboys, when owners seek BACV's advice, owners are forcefully informed that they must pay, even if the stage is grossly defective, even if it is unfinished or even if it is so bad that it needs to be demolished! And the owners, naïve, looking for guidance, people of integrity, always do as advised. This is the CON.

Then there is the pressure applied by the delinquent builder, together with the BACV's or the Government agency's coercive powers. They hammer the already disillusioned and battered owners, crush them into submission. Browbeaten, they part with more money because the Government agencies have advised them, persuaded them that they must. And then added: "You can claim it back later at VCAT!" It is as if you could simply go to VCAT after the building experience and apply for a refund, when nothing could be further from the truth.

Most consumers who end up in a 'dispute' have major defects (the decent builders fix the minor ones). There is the major non-completion of work, one third or half of the building finished, but very defective, such that increasing numbers of cases are so structurally unsound and overwhelmingly unsafe that demolition is the only option. Owners have experienced the ongoing bullying and intimidation which is par for the course.

They have been denied access to inspect the building, been overcharged, threatened with stop work, or worse they may have been physically assaulted.

The builders know how to use the system to their advantage and how to drive owners to the edge and then 'come in for the kill' demanding more money. The experience has been so distressing and frightening that owners are desperate to be free of the builder, to get into their house. Not to mention paying rent and the interest on the bank mortgage over the months or years when the builder has left the site, leaving behind an incomplete/uninhabitable building.

Over time, owners realize that it was the Government agencies who promoted the 'you are protected' story before the event, then afterwards spun the 'buy beware, you did not do your homework, it is your fault' story! This is the strategy called 'blame the victim'. For owners, it is the financial robbery, the shocking and non-compliant building, the grossly defective works, as well as dangerous building practices, but it is also the negative impact on every aspect of their lives that is most disturbing. The financial loss for many is crippling and no recovery will ever be possible in any sense – they have lost everything they worked for their whole life, or the part of their working life to that point. But it is the after effects that are most damaging.

So many owners are chronically ill. For those who actually manage to live, there is no possibility of recovering their losses or their lives as they knew them. For others, the financial loss is enormous, but they may survive and have some life, reduced in terms of financial security and with fewer options available, but for far too many their health is negatively affected forever. The price for signing the con-tract? The price for seeking 'Help" from CAV? The price for advice from BACV and the "you should go to VCAT"! It is far, far too high.

The worst of all is the ongoing nightmare, the one all owners thought would end when they got their land and building back at 'Handover'. But for more than 50%, this is simply the beginning of phase two of the never-ending nightmare, the one that will damage and devastate forever. After a long, distressing building experience, the owners come to realize that they have had no say – in the design or having the actual building that they wanted, and as for getting what they paid for? As time passes, as the years pass, they come to see more defects surface and gradually come to understand that when the bully builder walked away leaving a trail of destruction, their lives in chaos, they were rendered helpless. In actuality, they learn that there are no 'statutory warranties', no 'guarantees', no help anywhere with the regulator or the supposed consumer protection agencies. They reflect on the unfair contracts and contract terms, the misleading and deceptive conduct and the unconscionable conduct in so many cases. Then additional to these core consumer protections being ignored, building consumers have to contend with the fraudulent insurance, the 'warranty insurance', when there is no warranty and no insurance!

After Handover, the reality hits home. Some owners learn that they have paid $300,000, $800,000 or $1.5 Million for an incomplete, defective, non-compliant piece of 'building'. Then many learn that it was never certified, the building does not comply with the Plans, Permits or Specifications and the documents are unsigned and not approved (supposedly illegal) - and always this is unbeknown to consumers. For others, they see the small cracks, then larger ones appear and the penny drops - it is the foundations!

The owners learn that these revelations are but the beginning. They see the brickwork up close for the first time – an eyesore and with too few articulation joints and the sub-floor vents, with too few, all in the wrong places and blocked! Then the discovery of plumbing and electrical problems, with the consequent dangers and safety issues. And then poor plaster, little paint and the list grows and grows as the veracity fully unfolds over time.

There are always the bricks – the 'seconds' bricks and poor bricklaying in about 50% of defective buildings, and there are almost always plumbing and drainage issues, water leaks, etc. These are basically a given in the very bad cases and much more is the norm.

There are the plaster bulges and prominent joins are standard, and as for the paint – or a total lack of it, this is all too common. Then there are the items that owners pay for, but never receive. There are the items they never requested or received, but are charged for! There's always the buckets that must come out every time it rains, and we have the oddities like the 'bath in the bedroom'. It's a clever, creative industry. No skills, no genuine customer service and a definite lack of ethics! But imaginative, fraudulent and very cruel. Many cowboy practitioners are well practiced bullies, skilled in intimidation, physical assault, blackmail, fraud and some are fully fledged criminals.

Once in their 'new house' discovering more defects, owners typically find more debacles, a typical one being the failure of the air conditioning. It is switched on this 45 degree summers' day, but it does not work. Months later, after many calls to the supplier and manufacturer, the owners learn that the unit is too small and cannot function when it is hot. So in reality, there is air conditioning that will only work in winter! This is a very common item of deception, the deliberate purchasing of an undersized unit because this is another way the cowboys, through defrauding the owners, can make more money. And they know it as 'legalized robbery'! They know they are immune, exempt, protected. They know that the BACV will do nothing, whether you have major and multiple issues – say $80,000, or $200,000 or $1.2 Million. The BACV will advise: "No, you can't claim on the insurance." In disbelief, owners call the Building Commission, CAV and BACV again and in unison, they say: "Get a lawyer and go to VCAT!"

Over time, many more problems are discovered. It may be the infamous 'waffle slab', we understand initially approved by the accommodating regulators to appease the volume builders, reducing their costs and increasing their profits; or it may be the total lack of foundations because a 'builder' has the surveyor 'in his pocket'. On the other hand, it might well be the 'short- cut' on foundations, where to save money on the high-end, expensive house, the cowboy decided to spend less, not go deep enough with the foundations, and aided by the geotechnical expert, he pulls it off! Then the enormous defect rectification costs are left with the owners. And for owners to sue is impossible – that is the VCAT system. And while the surveyors and engineers have PI Insurance, there is almost never a claim. As one young man confessed, who had worked in the PI Insurance Department of a large insurer for 7 years, he had never once seen a claim lodged, let alone a successful claim paid out against a surveyor! All know that in a lawless industry, there are no consequences for the cowboys, no disciplinary penalties that matter, no insurance outcomes, no anything.

The owners have tried the builder, pointing out that they believe they have rights. The builder laughs and says: "I am not coming back!" He later adds: "Please sign off on the warranties!" I hear you say, this is illegal. But what does it matter? The cowboys know the laws are meaningless and they are practiced in avoiding their legal obligations. After many frustrating months, the owners eventually get the message. The builder's obligations and the surveyor's responsibilities mean nothing. As for the owners' rights, they now realize that this was just another part of the consumer con. Around this time, owners think "Well, I have the 'warranty insurance' and that will work." Then comes one of the cruelest of blows. The solicitor had warned at the beginning and before the con-tract was signed: "Make sure the builder is **registered and he must have** '**warranty insurance**!" The owners had heeded the advice. Now they make many, many telephone calls. In absolute disbelief, they make the calls again. Finally, the reality hits, not as any one of them would have expected.

For the first time, owners discover that there is no insurance. It was a cruel hoax, where the owners were intentionally never alerted to the limitations of the scheme, did not know that it was designed primarily as a hoax. It turns out to be a scam, devised to deceive, to defraud all the unsuspecting owners to surrender their money. The vested interests have benefitted as a result of the owners' loss and worse this was the plan, brilliantly executed!

If the owners happened to have a policy, the insurance scam is now revealed. Their builder is alive and well – not dead, not disappeared and not insolvent (DDI). If the builder is insolvent personally, an owner cannot claim while the builder's company is still solvent, even if it is a sole trader! As well, it is noteworthy that many owners never receive a policy, another supposed illegality. By law owners are to be provided with the policy prior to paying a deposit!

However, like every other part of the building industry system, it is 'Rafferty's Rules'. There are laws, rules, warranties, but without enforcement, in practice there are no laws, rules or warranties! Most owners do not receive an insurance policy prior to paying the deposit, and many owners never receive a policy. The cruel ploy is that policy or not, no one can claim the insurance anyway. Insurance "does not exist", as Jeff Norton of the Building Commission informed to the 2010 Victorian Parliamentary Inquiry into BWI**.** Consumers are compelled to pay for a product that does not exist! Consumer protection via a non-existent insurance scam!

Thus, is not surprising that the cowboys have carte blanche to behave badly, aware that there are no consequences. In time, cconsumers come to grasp the reality that the building practitioners can walk away. They learn that they can try for some justice. Deliberately misguided by 'the system', they go step-by-step through the 'dispute resolution' processes and eventually discover there is no protection for them. With each step, there is more exploitation, damage and loss.

The Building Dispute Resolution System – Internal, External and Judicial

The complaints' handling process and 'dispute schemes' as they operate in the building industry, whether the Internal, External or the Judicial Dispute Resolution scheme, all have entirely failed. Using Victoria as an example, one can confidently generalize from the Victorian schemes to the other states, which unhappily operate every bit as badly and have failed owners.

There are three supposed forms of dispute resolution for building consumers in Victoria:

(a) Internal dispute resolution, whereby the owner approaches the 'builder' and surveyor
(b) External dispute resolution, whereby BACV (Consumer Affairs Victoria and the Building Commission joint venture, the lead role with CAV)
(c) Judicial dispute resolution, whereby a judicial process, in this case the Domestic Building List at VCAT is nominated as the only place owners can lodge a claim

Internal Dispute Resolution

In building, the first 'Internal' form of dispute resolution does not really exist. All the cowboys dismiss owners, no matter how serious their problems. They have all the owners' money and thus owners have no form of leverage to influence them to return and rectify/complete work. Builders are unregulated and uncontrolled. They are not compelled by any agency to rectify or complete work and without force, they simply ignore owners. There are in effect no 'disputes'; there are the owners' complaints, which are easily ignored.

In terms of the surveyor acting as an inspector and enforcing compliance, this is worthless. As the Building Commission and builders so often inform consumers: "the surveyor is a God". He can do just as he pleases. And surveyors commonly do! Then the builders laughingly inform the owners that: "the surveyor is in my pocket." Yes, one works hand-in-glove with the other. So the delinquent surveyors either choose not inspect work at all, or after inspecting work and finding that it is non-compliant, and in breach of building laws, regulations and standards, they will approve the non-compliant work! If caught out for not inspecting works, some surveyors will accept 'Declarations' or 'Statutory Declarations' from 'builders', stating that they were allowed to change plans, or foundations, or whatever.

Some surveyors will allow building without the Plans ever having been signed off, not legitimate and not approved, which is supposedly an essential requirement under the legislation. Some surveyors even have been caught issuing a permit AFTER the building has been erected – when the whole purpose of a Permit, Plans and Specifications is to have the building built as compliant with what has been prescribed! As for the Councils trying to enforce compliance with private surveyors, there are the Head Surveyors of Councils, who have been approached by their staff about recalcitrant surveyors, but they have refused to lodge any complaint about particular surveyors with the regulator or registration/disciplinary board, even though these surveyors have a long history of misconduct and are well-known as crooks by all in the industry. On the other hand, some Councils have tried to make the industry more decent. They have lodged formal complaints to the Building Commission and the Building Practitioners Board. However, the Council's complaints have been ignored – even when there have been multiple complaints put forward by several Councils about the same surveyor. In the industry, this is known as 'being untouchable!"

There are surveyors who will refuse to hand over new documents when an owner has been forced to engage a new surveyor – one such case recorded in the Victorian Parliamentary Hansard. Also many owners are compelled to remain with surveyors after the surveyors have breached their obligations, with the Building Commission refusing to allow a new surveyor to be appointed. Then there are those whose penalties incur a reprimand and a fine, but it seems many never pay the fine – so in practice, there was no fine! Even more amazing are the surveyors who have their registration supposedly suspended, but this is not enforced. Owners and Councils are not notified and the surveyors continue to operate as if no such suspension was ever made. The whole registration, regulatory and disciplinary systems are dysfunctional.

In relation to Consumer Affairs, there is extensive evidence establishing the reality that it refuses to enforce compliance or take action against any registered practitioners; it only acts against the unregistered cowboys, and then only against about 14 individuals each year! So the registered builders or the surveyors know that they will never be penalized by CAV. Combined with the very few who are called to account by the BPB each year, 50-60 on average, the likelihood of any disciplinary action or prosecution is so minimal that there is simply no fear about ongoing misconduct, no deterrent for serious serial offending and no chance of a public warning by CAV for repeated wrongdoing.

VCAT has such a bad reputation, especially the Domestic Building List that one owner recently sought to conciliate outside the VCAT system and spent $200,000 on lawyers and obtaining reports from so-called consultants and experts. This was all to no avail, as the builder, surveyor and engineers involved refused to mediate – even though all are clearly culpable. Finally, an ethical Barrister, who took an enormous loss himself when building and is familiar with the DBL at VCAT, advised the owner to stop spending and to give up. He described the system as 'unwinnable' for owners because it is dysfunctional and provides no opportunity for a just outcome. In this case, almost the worst scenario possible, the building has to be demolished!

Thus, the 'Internal' mechanism for complaints handling proposed by the Benchmarks' paper is not a possible avenue for owners. It is thwarted by the systemically unjust process, whereby the Building Commission, the BPB and also Consumer Affairs support recalcitrant practitioners, regardless of their ongoing misconduct and even if over a long period of years.

The 'internal' dispute resolution is illusory, a figment of many of those who are vested interests in the 'Judicial' system and their imagination, and equally inspired by the Government officials who happily help them promote this 'Judicial' mechanism as the means of dispute resolution.

External Dispute Resolution – the BACV

The 'External' system is an appalling failure. It is a myth that consumers have any fair chance of presenting their case at the Building Commission, with CAV or the combined BACV. Whether seeking honest information, correct and accurate advice or what most consumers hope for, a genuine 'conciliation' process, in every case the Government agencies individually and collectively ensure that none of these are possible.

Most complaints, this means **94%-99% of written complaints in any given year are ignored by BACV**. We know few consumers get referred to BACV 'conciliation'. This is because to meet the criteria, the builder has to be willing to participate. And very few are willing to do so. To take one example, in the CAV Annual Report for 2006-2007, we learn that 2,113 building consumers put in written complaints to the BACV in that year, and we are told that: "83% of conciliated complaints being successfully resolved." It sounds good. However, it turns out that the 83% refers to those cases conciliated, **which means that only 21 consumers out of 2,113 consumers had 'conciliation', just 17 consumers**!

Furthermore, we are told that CAV **"is highly successful**" (CAV Annual Report 2006-2007, Page 7). Thus 17 consumers out of 2,113 managed to obtain what CAV has termed 'successful conciliation'. We ask: "How could that be successful, given that this is a mere 0.8%" It is in fact, less than 1%. It would seem to be 'unsuccessful' and not "highly successful." It is the clever wording of CAV SPIN, misleading us to think that the conciliation success rate applies to dispute resolution for the 2,113 owners. However, in fact this 'success rate' applies to the minute numbers of building consumers who actually managed to obtain the illusory 'conciliation' and in this 2006-2007 year, it was a trifling 21 owners! The reality of the whole BACV process is that CAV officials have been untruthful, they have wasted consumers' time and many consumers have lost years involving themselves with BACV. At the end of the day, it has been for no outcome, much less any positive outcome! Even worse, large numbers of owners have been pushed by CAV to pay the builder more - and for doing nothing!

In one of the few cases conciliated each year, an owner approached BACV in 2010. Her builder had left the site months earlier. Reluctantly and with solicitor by his side, the builder came to 'conciliation'. There the BACV 'conciliators' advised the owner to pay the recalcitrant builder another $150,000! He was not owed this money and not entitled to this money, but it was supposedly a carrot to entice him to return to work - after 7 months. Everyone knew he would never return. As it turned out this cowboy builder went broke 8 months later, leaving this owner and 63 other owners in a terrible mess. This owner's building is still unfinished nearly 4 years later. BACV tried to harm the owner further, by pressuring her to pay this cowboy more, a huge sum of money, knowing full well that any money paid would not bring the builder back to work. This is the BACV strategy, in common with all the Government agencies.

There is no pressure on the builder to conciliate, or to return and rectify/complete works.

As for taking enforcement action, neither the Building Commission nor Consumer Affairs Victoria will take such action in relation to any illegality, major misconduct or anything else. CAV will only prosecute the 'unregistered' cowboys – a minute number of about 14 each year. Thus, for the 24,000 'registered' Victorian cowboys, no action! The cowboys are very aware and refer to it as 'a big joke'. Not so funny however, if you are an owner!

CAV has enforcement powers, **but has conveniently refused to use its powers in building cases.** We now know that this is in building, but also in the other consumer market sectors. The latest VAGO Report identified that: "a range of administrative weaknesses undermine the effectiveness and efficiency of elements of CAV's compliance activities and its compliance framework. **None of the 16 badged compliance and enforcement officers spoken to during this audit** - out of a total of 45 - **were aware of more than two of CAV's 14 compliance and enforcement guides and procedures.** These officers should know what policies and procedures exist, even if they do not need to know the specific details of each one. **This lack of knowledge increases the risk that compliance functions are not undertaken**…" (VAGO Report on CAV and 'Consumer Protection', April 2013 (Page vi) So now we know why there has never been any enforcement of compliance by CAV - the Enforcement officers would not know what to do. Yes, they are in fact paid - to NOT ENFORCE COMPLIANCE!

In the case of one couple, they were extremely worried. The flickering lights made them nervous and provided a warning of danger. They tried the builder and the electrician – for weeks, but there was no response. So they went to BACV and after lodging their written complaint, nothing. Months and months passed. The builder and the electrician refused to come back. BACV's 'Help' amounted to nothing; its response was that the builder and the electrician did not want to do anything. **The owners pleaded with BACV officials for help,** but were told that the regulator and consumer protection agencies have no powers and could do nothing for them, which of course is nonsense. Seven (7) months later, still ignored by BACV, **the house caught on fire, risking injury and death to the family.**

All the protectors of the Electrician arrived; the Fire Brigade, Energy Safe Victoria (an oxymoron), the Forensic Fire experts, etc. The verdict? Yes, the electrical work was shocking and the electrical work in the whole was house non-compliant. Later the owners learned that the apprentices did the 'work', the electrician never even stepped inside the house, much less checked the work, but he signed the certificate. He took his money and left.

In this case, Energy Safe Victoria made sure the electrician was given a minor penalty and pleaded with the owners not to go to the media, thereby ensuring that the story was covered up. The family of three could have died, but no matter.

It is a reality that non-compliant electrical work, like non-compliant plumbing is common. But it is also extremely dangerous. The myth is that the industry is tightly regulated, the reality is that there is no enforcement of compliance and no one cares, even when lives are threatened.

With regard to Consumer Affairs Victoria, the myth is that the agency is supposed to help consumers. In fact, CAV's head office has large posters which state: "**All through your Life, We're here to help**"! The posters spell out the myth, but both the actions of the Director and the CAV's senior officials have demonstrated the very opposite in practice. Yes, once again the reality is that **CAV will not help consumers**, but worst of all it actively supports those who breach consumer laws.

Like the Building Commission, CAV is equally clever and crafty, able to omit information, even when instructed by Government to include information for the benefit of consumers.

It is an expert in false statistics as we recently learned in the VAGO Report on CAV and 'Consumer Protection', in April 2013. CAV falsified statistics in its Annual Report and we have more examples of it producing false statistics, devised to deceive the public. CAV is a true professional in deceptive conduct. As the agency charged with the duty of 'protecting consumers', its conduct is unacceptable from any standpoint, especially from the viewpoint of consumers, who it has the statutory obligation to protect!

An example of the BACV's true allegiance is revealed in a case where an owner had the lounge room ceiling collapse. Poor workmanship was the cause and this posed a very serious risk to the family. When the large volume builder was contacted, a refusal to take any action was the response and this was later put in writing to the owner.

Some months later, Today Tonight was to put this story to the public, highlighting the company and its refusal to act, both from a safety and warranty point of view. Once contacted by Today Tonight, the large building company suddenly had a change of mind and agreed to return and rectify the ceiling; and under pressure from the owner all the other faulty ceilings throughout the house were also rectified. This is where it is interesting. The builder did not want the TT story to go to air. So four of the senior members of the company visited the owner, **along with an official from Consumer Affairs Victoria** – the objective was to talk the owner into withdrawing the story and not having it go to air. But how did the CAV official decide to come with the building company representatives to persuade the owner to have the story disappear? The answer is that CAV is a friend of business, not in any way connected with consumers, not in any way involved in its supposed role of consumer protection. This is but one example, one of the many shocking realizations for consumers!

Thus, from these few examples, it is clear that spin and deliberate lies have motivated the Government agencies' officials, who have been very willing to use any and every tactic to support the unjust and corrupt system of which they are a critical part. They have falsified statistics; used cunning and crafty language to mislead; they have ignored Government directives; deliberately given wrong advice. They have intentionally caused serious harm to consumers through 'non-conciliation' and 'conciliation', supporting the cowboys and doing whatever else has been required to damage consumers. And despite all senior officials having obligations and a Code of Conduct, they have purposely chosen not to provide any protection to consumers, in the full knowledge that they would cause further damage to individual owners and to consumers collectively. They have lied to the Government, consumers and the public. And all those who have overseen this official misconduct have been allowed to walk away from their positions. None have been called to account. This is scandalous and shameful.

Judicial Dispute Resolution – the VCAT

Attempting to seek justice in the Domestic Building List at VCAT is like trying to seek a just outcome from the Building Practitioners Board. It is an impossibility, as all consumers ever involved will confirm. At the beginning, as one would expect, owners are generally unaware. They think that there will be respect for the truth, they think that the evidence will be based on facts, fair principles applied, with an impartial judgment. They misguidedly believe that a fair outcome will be not only possible, but probable. Then they learn about the culture and they discover that conflict of interest and collusion is widespread, relationships compromised on the regulatory body, the boards, committees and councils, at the BACV and at VCAT. They also learn of the 'cross-pollination' of roles, from the private sector and across to the public spheres, and back again, as the key roles are shared by the same people crossing from one sector to the other undermining every part of the system (again much evidence can be provided).

The VCAT slogan is an interesting one. **"Fair, Efficient Justice for all Victorians"** is the claim. This slogan of spin is similar to the CAV's: "We're Here to Help!" Both were prepared as a public relations exercise, designed as persuasive pretence for the masses and they are equally false and totally misleading. The pursuit of justice at VCAT is a mythical concept, utterly unattainable. The proponents of the system are the Government agencies, who advise owners to: "Get a lawyer and go to VCAT!" They advocate on behalf of the vested interests who work in the DBL, primarily the solicitors, barristers, building consultants, experts and VCAT Members. For all these beneficiaries, it is essential that owners have disputes and that they believe in the VCAT slogan; if not, all of the beneficiaries would not have work at VCAT.

The theoretical purpose of VCAT is in stark contrast to the reality. The way the DBL operates is not fair, not efficient and no justice is to be found for owners. VCAT functions to ensure the offenders 'win' and will return to provide ongoing business – as such it clearly cannot be fair. It faithfully serves the needs of the lawyers and consultants who earn their lucrative incomes at VCAT and it also provides these groups with the means for obtaining cowboy clients who will deliver repeat business. The advertising is provided by the Government agencies, performing a marketing role through promoting the VCAT option to owners (paid for by owners), increasing the numbers of owners who will take their case to VCAT each year and thus ensuring the continual growth of the DBL at VCAT. The VCAT system rewards all in the VCAT network and the senior officials of CAV, but not the owners. Since owners come along only one time, they need to be lured into the VCAT net and disingenuous advertising, with slogans about fairness and justice are just what does the trick. We have a perception designed as deception.

The owners with major losses, who as always have had no success under the other dispute resolution mechanisms, are hooked in - if they have any money left. Their case must go to this quasi-legal 'kangaroo court'. In theory, VCAT is obliged to act fairly and observe the rules of natural justice. However, this is manifestly absent in the DBL. In its service charter, VCAT uses words like: "fair", "accessible", "impartial", "cost-effective" and "consistent". Perhaps the last one is true; VCAT is consistently a disastrous experience for building consumers.

VCAT does not follow court procedures and is not bound by the rules of evidence. These features, together with the widespread conflict of interest apparent among the users and Members of the DBL, have shaped the reality of this proclaimed 'Judicial' system. It is not staffed by judiciary; the proceedings are commonly blatantly biased, unfair and marked by months and years of deliberate time wasting; a flagrant lack of independence is apparent; owners are forced to expend enormous sums of money, with both the lawyers and consultants charging $350.00 to $600.00 per hour; rulings are often not based on the evidence, but linked to relationships and the "who you know" principle; Orders are commonly ignored by offenders; the winners are always the vested interests and in the majority of cases the building offenders.

One example of unfair practices is in the area of Mediation. Owners can attend 'mediation', but if with lawyers be entirely locked away in a room, not consulted during the several hours, then to learn that there was no mediation at all! The mediator simply wandered about and the lawyers chatted away on a matter unrelated to the building issue. Then the owners receive an Invoice from the lawyers for $2,500.00. Incredibly, the 'Mediators' can be building lawyers, developers or building consultants – everyone knows everyone else very well. It is like a small, private club. Hence, it is unsurprising that mediation is a costly and useless exercise for owners.

There are so-called 'mediations', 'compulsory conferences', 'conclaves', and many, many 'directions hearings' – and then they all start again, but with months and months between each event. Nonetheless, the lawyers' manage to find things to charge for and the accounts come in every month, whether they have had to do anything, or not.

There will always be 'perusing an email', telephone calls, sending emails and the old 'hundreds of pages of photocopying'. Thus, the years pass, the owners have lost hundreds of thousands of dollars and the stress is unbearable. But this is the nature of the DBL at VCAT. It is noteworthy that VCAT has a quite different and unreal perspective. It states:

"How VCAT resolves cases
Variations in how we resolve cases may occur due to the nature of the cases brought to each list. Some cases may take 15 minutes to resolve, while others may take a day. In exceptional circumstances, it may take several weeks to hear a case due to the complex nature of the issues involved."

There is no mention of the many conferences and conclaves, etc. and no mention of cases lasting months or nearly a decade! Likewise there is no mention of all the tricks that are part of the VCAT sanctioned delaying stratagems that the offenders' lawyers use constantly.

An examination of how badly VCAT operates is insightful. The many irregularities, the connections of Members, the emphasis on 'experts' and 'reports', the enormous costs to owners, the years that pass, the total lack of impartiality, and all combined with conflict of interest and collusion across this supposed 'legal stage', has to be seen to be believed. The experience of all owners attest to the myriad of problems, not the least being the unfair procedures, the inherent bias and the complete lack of integrity and ethical principles. The fact is that owners have no hope of achieving any measure of justice, but worse most will be further harmed financially, losing many years of their lives. In all respects for the years that they are involved, the owners' experience means that every aspect of their lives is negatively impacted.

There are so many thousands of horror stories. As one solicitor said: "VCAT is a health hazard!" This is an understatement. It was designed to be expeditious, accessible to self-represent and cheap. But the Domestic Building List is the complete opposite; it is lengthy, not accessible without an entourage of lawyers and consultants and very, very expensive. Cases commonly go for 5 years and can last up to 9 years! VCAT has been captured by the stakeholders and the costs accordingly for these vested interests can be from $100,000 to $500,000 – or if there 9 years, close to a Million dollars is not unrealistic.

The DBL at VCAT has been hijacked by a variety of vested interest groups and societies – and all the beneficiaries. The poor, naïve consumer has no chance against all these powerful interests. Not to mention the VCAT Members – who include Developers, Building Consultants, Building Industry Lawyers, Ex Building Commission officials all acting as VCAT Mediators. Of those who work in the Domestic Building List, many have prior links to major building companies, developers, building lawyers, etc. The Consultants by their own admission are best friends with the Senior Members. The Lawyers and Consultants provide commission one to the other for introducing new clients (all consumers) and all involved in the DBL at VCAT meet, do business and then socialize together. This cannot be healthy, apart from their personal interests and business interests, they have opposing interests to consumers. Most have close relationships with other key building people and organizations, which should not allow their appointment to positions in the governance and judicial schemes. But the standard governance principles do not apply. We ask: "How can this be allowed?" There is no impartiality or independence at VCAT, which serves the interests of those who make money from this 'Judicial' system. It functions to oppose the interests of consumers and the vested interests have managed to make VCAT inaccessible for many, and very lengthy and costly for those owners who try to seek justice, in stark contradiction to how it was supposed to function. VCAT does not operate fairly and as a critical part of the justice system, it has been a spectacular failure.

Obtaining 'independent' evidence is virtually an impossibility. If consumers do somehow manage to find an honest, ethical consultant, then the builders/surveyors and any adjoined parties will ensure that such truly independent evidence is refuted. It is within their power to arrange payment for the delivery of the desired reports. Commonly the reports or tests will miraculously support the cowboys. In addition, the procedures are unfair, designed like the Building Commission's and CAV's false procedures and false statistics, to put forth a false reality (See recent VAGO Reports on the Building Commission and CAV). Owners are led to trust CAV's marketing on VCAT and VCAT's spin on itself. Only after they have lost many years of their life and a fortune from their life savings do owners realize that they were misled.

To observe the workings at the DBL is to make one turn pale. Final Hearings can last 17 days – and one such case a few years ago earned the lawyers and consultants a fortune. However, in this particular case, there was **no possibility of the owners ever 'winning' because the 'builder' was insolvent and had been unregistered for years. The couple were living like they were 'camping' for 5 long years. The woman gave up her studies and future career to help with the preparation of the legal work in order to save on legal costs. However, because it had been allowed to drag on for years, the legal expenses were still an enormous $200,000!**

After the long 17 day final hearing, it was well over a year before the couple received the decision from the Senior Member at VCAT and only then after intervention from the President of VCAT. In total, the case ran for 5 years, put simply as part of the beneficiaries' gravy train, as there was no chance that the owners ever could 'win' or obtain any compensation. The owners lost years of their lives, lived in very poor conditions, enduring great stress. As well, as is always the case, there was an unbelievable strain on their relationship. Not to mention the loss of this huge sum of money - and this was a donation to the lawyers and consultants, pure and simple, as these beneficiaries knew that these owners could never have gained any recompense. So they were conned into losing another $200,000. This is how VCAT maneuvering really works, taking advantage to harm young people already in a mess and with a large financial loss.

In other cases, the lawyers have openly lied to the Members to get delays and adjournments, when all had known that there was no basis for asking or being allowed more time – or as the owners' solicitor and barrister well knew, no possibility of the owners ever obtaining financial or any other form of redress. Some Members have even made up stories about consultants' late reports, suggesting that in their small circle of VCAT users, they know the consultants personally and have heard that they are 'unwell', at the same time being fully aware that the report was months overdue, deliberately not submitted as a delaying tactic - completed, but withheld. Lies are par for the course, some Members happy to accept them, the file in front of them and aware that they are being told lies. It is a sad reflection that many of the VCAT Members accept the misleading and false information, granting delays, whilst knowing that the decision will cause grave harm to the owners.

One owner, after years at VCAT had Orders made, supposedly in his favour. The builder was to return and rectify the many defects, but the cowboy builder simply ignored the Order. Another owner, and another owner, and many others have had this same experience – as have hundreds more. Orders are made by VCAT, then ignored by the offender, so they are totally worthless. VCAT cannot enforce its own Orders along the way, or after a final VCAT hearing, which may be 5-9 years after the VCAT Points of Claim have been lodged.

Of course, the cowboys know the system and their lawyers know how to advise them, how to drag out the cases for years, all aimed at sending the owners broke, causing extraordinary stress and getting the majority of owners to eventually give up under the weight of the heavy financial and emotional burden. It is tried and true and works very successfully. What is so distressing is that the conduct of the VCAT Members and the lawyers involved has nothing whatever to do with fairness and justice. Despite their positions, all contribute to the injustice.

In one VCAT case, which has been ongoing for 4 years, the owners have spent $400,000 to date, but they have not yet made it to a final hearing and the original renovation was $280,000 – although the damage is much greater than $280,000 because the company managed to build a very seriously defective addition and **also ruin the owners' original house**! This building company has a bad history as a serial offender, but very much at home with the VCAT system.

Then there is the Isaacs case, where the owners spent years at VCAT, were awarded money for damages and their costs of $150,000. But the builder then went broke and the insurer should have honoured the payments under the 'warranty insurance'. But the insurer refused to pay the costs incurred in their case as VCAT had awarded. So back to VCAT the couple went, only to have the Member set a precedent, deciding that the insurer did not have to pay the costs.

This is the system the owners had to follow, the 'Judicial' dispute resolution system. They had no other choice when the builder refused to rectify their major defects. Yet, VCAT could rule in the insurer's favour and against the owners' interests. This outcome is unsurprising. This is the VCAT way and the Members support the cowboys, the lawyers, the consultants and the insurers – everybody except the consumers.

We have thousands more VCAT stories – all different, but all the same. As one ethical solicitor stated: "The VCAT DBL has been designed for owners to lose, even when they 'win'!"

The system is immoral, money buys reports, and money buys delays - and buddy network of relationships is extremely unhealthy. When money cannot buy what is needed, the falsehoods will suffice. And this extends to building cases in the Supreme Court. Whatever is required, the means will justify the end – and regardless of truth, evidence or integrity.

The VCAT Orders are unenforceable, absolutely worthless to owners. The tactics are appalling and 'Justice' unattainable. These cases may last over 5, 7 or the latest record is 9 years. Yes, 9 years! Who gets that for murder? Let alone being the victim, after having been 'legally robbed', then forced to a civil jurisdiction to lose another $400,000 or more. For not finding any justice!

Aside from the financial loss, it is the years of normal life lost, the loss of work, career, business – and marriage and health. What a justice system! Owners often say: "Are we living in a parallel universe?" Any normal, reasonable person, trying to understand would appreciate such a response as 'normal'. In the building industry, nothing is 'normal'. VCAT operates, just as the entire 'consumer protection framework' does, in serving to exploit owners' disadvantage in a corrupt set of 'schemes', taking their money and enabling an unfair, unjust system to harm and hurt, rather than to protect. Some owners **have died in the VCAT process, and in the BACV process too. This is the ultimate price one can pay for deciding to build.** As for the others, far too many have had their lives changed forever.

VCAT has the authority to refer building practitioners to the disciplinary body, the BPB. It was supposedly the expectation that VCAT would do so when it was apparent that delinquent practitioners should be made accountable.

But in 15 years, VCAT has not ever referred one building practitioner to the BPB. NOT ONE! Given the many delinquents and the many serial offenders, VCAT obviously has no commitment to a clean, decent and ethical industry.

Mr Neave states in this Benchmarks' Foreword that: "Industry-based customer dispute resolution schemes play an important role in ensuring that consumers have access to credible, efficient and flexible dispute resolution." In building, this is most definitely not the case. Such a sentiment does not translate in any form to be a reality. First there is NO credibility, NO efficiency and NO flexibility, and no possibilities for any of these. But worst of all, for the overwhelming majority of building consumers, there is no chance of any fair or just outcome.

The objective of those in control of all aspects of building is to ensure that there is NO "credible, efficient or flexible dispute resolution" process. Rather, those who are involved as the regular players in the system aim to safeguard the building cowboys' interests and, at the same time, provide for their own interests. All groups are closely aligned to ensure their mutual benefit. Mostly, if not always this will be financial benefit. The cowboy builders and surveyors will return again, always requiring the many permanently engaged 'experts' and lawyers to handle their 'disputes'; they will all pay handsomely to "get out of trouble" because the money is money misappropriated from owners to fight owners' very legitimate claims. They will defend the indefensible and care less that there are no rational grounds and no evidence. They will make up the 'evidence' and use every means required to achieve their end.

Owners cannot compete with all the powerful forces against them, particularly the lawyers, so many of whom have displayed their non-regard for the law. For ordinary consumers this has been the gloomiest reality – most consumers believed that lawyers were persons of integrity, persons who believed in truth, in real evidence, in the law, in justice. Why did we think that laws, the rule of law and integrity meant something? We were ordinary, law-abiding citizens who trusted and we were betrayed. The awakening has been extremely disheartening.

Many of the cowboys openly breach the ADR guidelines and the tribunal orders as a matter of course. This include locking out the owners, very openly lying about defects, lying to obtain delays and adjournments in order to drag cases out for years and use all manner of strategies to 'win'. One senior solicitor, who works for a disciplinary Board in the Victorian building industry, recently responded to a question about a builder and his lawyer lying at an Inquiry that was held only a short time ago at the Building Practitioners Board. This was his explanation in relation to both the builder and his solicitor being deliberately untruthful. He said: "But everyone lies!" Yes, we the owners knew that from our many individual experiences, but we did not expect such an unashamed response, with the solicitor untroubled by the question, laughing as he expounded on what he saw as normal conduct. Add to this the other common practices of unfair procedures, fabricating information, procuring false reports, deliberately being deceitful and misleading the boards, tribunals and courts - and often with the assistance of the these Government officials and VCAT.

Conclusion

Mr Neave comments in the Foreword that: "Consumers rely on a range of mechanisms to ensure that they get what they pay for". This is what building consumers want most of all and why should they not expect to achieve this objective? They have dutifully paid, and overpaid to get what they have paid for! But for 1:2 owners, this is not possible. For 50% of owners this will never be a reality. If they just lost out on some paint, or some tiles. But the actuality is that it is not a small loss. If it were, that would be grand! The reality is that most losses are big. Most losses are not sustainable. Most losses are killers in every sense.

The ordinary, average owners cannot withstand a loss of $500,000, or $1.5 Million, or, or …It literally kills people and the Government agencies help the process along. It is a deliberately slow process, designed to kill in a painstakingly slow manner, known in building circles as 'killing them slowly'.

In the Benchmarks' paper, Mr Neave says: "They (consumers) may simply wish to draw attention to their grievance, or they may complain to seek redress for a perceived injustice." For building consumers, they try to draw attention to their legitimate grievances, and most want to try to get redress, but neither is feasible. It is a futile exercise, resulting in many lost years and much lost money, as owners are thwarted at every turn and their losses continue to mount, additional to what the builder was allowed to steal. At the end, the building remains as it was handed to them - very defective, disastrous and with no way out. It was fine for the 'builder' to hand over the garbage house, but owners cannot live in it, cannot afford to rectify and if they want to sell without rectification, they will be sued! How does this make sense? The 'builder' can hand over a rotten building, having being paid fully – and then simply walk away. But for the owners, they have no options. This is the real life experience for one in every two owners who make the biggest mistake of their lives and decide to build! Through no fault of their own, their lives are ruined and they will live with the consequences forever. And as for the Benchmarks "guiding effective practice" or playing an important role in the building industry-based dispute resolution schemes, such lofty expectations are mythical and so far removed from the reality of the consumer experience in the building industry.

If the Benchmarks' principles are supposed to apply in relation to the building industry, clearly they do not. Building consumers would welcome a system with Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness – and not just in the dispute arena. Sadly, the building industry, with no regulation and no enforcement and riddled with conflict of interest and corruption, needs massive reform. It has been designed to create a burgeoning dispute industry – and this is a fundamental problem – among the many others!

There is a complete absence of good corporate governance, no accountability and no transparency. As well, consumers are abused because they have been very intentionally locked out, their concerns all ignored and their voices silenced. They are the 'lambs to the slaughter', regardless of their education, intelligence, socio-economic or cultural background. All are disadvantaged. All are vulnerable because they have no influence and no consumer protection.

In closing, we note this statement, which appears in the Benchmarks' document: **"The Benchmarks Document also serves as a guide for consumers as to what they should expect from dispute resolution schemes."**

For Building consumers, none of the Benchmarks apply by virtue of the systemic and corruption injustice across the industry, including the Government agencies and those in the 'dispute resolution' schemes. The consumer catastrophe, impacting on all Australians and their families is now 6 times worse than it was in 2005. We have a complete absence of ethical principles, policies and practices.

What could consumers realistically expect, especially now that those involved in this Review, have been made aware of the failed building industry? Clearly, the building industry needs guidance, but more than that. It is time for policing this industry, controlling the agencies' processes and ensuring that they adhere to Benchmarks' policies and principles. From the points raised in this paper, it is obvious that the building dispute industry requires instruction; all involved have displayed an almost criminal resistance to act with any integrity. This should not be allowed to continue.

We call on the Federal Government of Australia to help all Australian building consumers. We ask that you intervene and clean up the industry, stop the scams, introduce genuine reform, whereby consumers can expect some protection. We need a new honest and decent culture across all the Government agencies, with the officials' conduct monitored and the system firmly based on accountability and transparency. In order to succeed, it is imperative that genuine building consumers, with expertise and first-hand experience are engaged in the consultation process and represented on any new governance bodies.

At the very least consumers deserve what other consumer market sectors already have in place. They need a dedicated and funded consumer organization so that building consumers' interests can be represented and a Building Industry Ombudsman should be appointed, to provide independence and oversight, free of any entanglement with the many stakeholders currently involved in the building industry.

We would welcome consultation when you have had time to read through this paper.