

The Submission

1. assists IPART in making recommendations on all 4 points raised by it
2. provides answers to the following questions raised by IPART - Q1, Q2, Q4, Q5, Q6, Q7. NB we answer "Yes" to Q9, Q10 and Q11. Note also we cannot comment at this stage on Q3, nor Q8, although implementation of the Process significantly reduces all costs.

Preamble

1. There is a need to Refine / Establish an easy to access, use and understand "How to" Process for doing building work in NSW
2. It is not Government's role to bail out consumers / builders do not follow the right Process!
3. When consumers/builders do follow the right Process they should be entitled to get their building work completed to the required standard and agreed price. Similarly, builders are entitled to be paid on time for any approved work
4. The Process below ensures the builder will rectify any defects etc and if not, there should be sufficient retention to ensure the work can be completed by others.

What is needed - NB many of these components already exist in part or all

1. Clear, easy to use website explaining each step in the Process - see below. It is critical that both builder and owner know, if they do not comply with required procedures / due diligence they can not take advantage of any protections.
2. Create and issue media releases and advertisements explaining the Process and its protections
3. Builder 'star' system for easy identification of competent builders
4. Trust account system to hold deposits and retentions
5. Enforce compliance - the existence of a "**big stick**" must be well publicised. NB income from fines should hopefully make enforcement mostly revenue neutral
6. Government to partner if need be with private sector to ensure a simple accessible insurance system at a minimum cost to cover any shortfall on any required retention etc
7. Establish panel of approved Building Consultants for defect identification and QA - Government only required to bear cost to establish and maintain panel, consumer and builder to share cost of Defect Report(s) and QA. Note many Builders already pay for groups like Tyrrells to do QA throughout the construction Process
8. Consider small addition to Certifiers authority to enable them to approve certain claims e.g. Final Inspection at issue of OC - again extra cost to be shared between consumer and builder

Other Assumptions

1. Certifier accreditation better managed than the current system
2. All building stakeholders need the tools to easily access all required building information. Jerry Tyrrell has summarised this as Education + Quality Assurance + Accountability + Cooperative Rectification (where necessary) + Big Stick = Minimal insurance

Goal: Fair priced quality building work as specified on time, within budget and without defects or dispute

The Process

Step 1 Prevention through design

1. Ensure complete / accurate/complying design and documentation

Step 2 Prevention through selection

1. Ensure easy selection of competent Builder - consider the equivalent of the Border Force "Trusted Trader" Certification system for builders (most builders will qualify) and have rigorous proof of financial and expertise for the small number of new builders etc who do not (e.g. bond / extra retention/insurance - NB only needs to be for maximum retention amount etc)
2. Ensure solvency of builder - Proof of financial capacity to cover cost of the largest Progress Claim e.g. by independent Accountancy firm who is responsible if wrong!

Step 3 Prevention through ensuring adequate funding

1. Ensure solvency of the owner/client - they **MUST** pay approved claims on time to the Builder
2. Require accurate / fair progress / retentions - the owner **MUST** always be "Ahead" until final payment i.e. in the event of a problem, there must be enough "fat" for an owner to have another builder complete the project. Another way of putting it, is the building industry needs to accept a bigger retention "gap"

Step 4 Prevention through quality

1. Require expert QA throughout: Class 1 - Frame and Final; other Classes - Benchmark, Progress and Final.
2. Require expert competent certification

Step 5 Prevention through control of payments

1. Pay claims / retention only on completion of each stage - and only where QS / architect / expert approved
2. Final Claim only to be released when all work complete other than minor maintenance. If in doubt also ensure a small retention is withheld until minor maintenance is done
3. Use a longer final retention if need be to cover any risk e.g. where a new builder with limited track record is involved

Step 6 Reward success

1. Have clear benefits like maximum No Claim Bonus if applicable for successful Builders; smaller retentions etc

Step 7 In the very unlikely event of a Dispute

1. Require immediate identification of defects - this is the critical step in any dispute - both owner and builder MUST agree BEFORE the job starts on a Building Consultant identifying the defects. The Building Consultant must be both independent and competent and his / her decision must be FINAL (No appeal rights). Consider in rare instances the use of Mediation to ensure all parties can have their say whilst still focusing on the defects list and to handle potential evidentiary grey areas like variations.....
2. Require QA of the repairs / rectification work
3. Require any unpaid retention to be lodged in Government Trust account - e.g. model on Rental Bond Board system
4. If the Builder does not fix, then
 - a) IMMEDIATE legal action (NCAT directions style short hearing issuing all required orders). If non-compliance
 - b) IMMEDIATE cancellation of license
 - c) IMMEDIATE winding up/bankruptcy
 - d) IMMEDIATE rectification by others
 - e) IMMEDIATE penalties and
 - f) most importantly IMMEDIATE consistent media releases on these actions UNTIL Builders get the message they will be punished IF they do bad building work If repairs complete etc and the owner still refuses to pay, then Government authorised to IMMEDIATELY pay retention out of Trust Account
5. All the above dispute resolution / rectification must be done as quickly as possible.

Conclusion

The above Process will provide a social contract to ensure building work is done on time and budget, and in the rare instances it is not, defects are rectified quickly. It will further limit recurrence of major failures like Mascot Towers or the Opal Towers. In return stakeholders rights to mostly slow costly, civil claims are ABOLISHED just as the NZ accident compensation scheme has abolished claims for personal injury in exchange for a social contract of community funded payments

My background

Over more than 40 years, I have witnessed adoption by Government of many schemes that at best can be summarised as costly to Government and users of builders' services, difficult and slow to navigate (if at all) and unable to ensure overall building quality is maintained / improved. My experience includes:

1. Lawyer (UNSW) - more than 40 years with particular experience in building mediation, disputes and litigation
2. Building qualifications (UTS) - extensive experience in many construction projects since 1978
3. Accountancy qualified (UNSW) - involved in the financing and management of many construction projects since 1978
4. Commitment to consumer protection - Founded Tyrrells Property Inspections (1980) - one of Australia's largest building consultancies (I declare my interest - I still retain a 20% share in Tyrrells).
5. Note CV available on request

I am happy to assist in any honorary advisory capacity to ensure that NSW can implement an affordable that delivers quality building work for all stakeholder.

Please contact the writer at any time if any additional information or clarification is needed.

Please acknowledge receipt.

Yours sincerely,

Timothy Tyrrell

25 May 2020

Survival Emergency Solutions

As reported in Fairfax Newspapers ***"ifirstaid is free, our gift to everyone, and if you don't have the app, or one of our competitor's ... you're an idiot,"***^{https://www.theherald.com.au/story/5818466/familys-pain-inspires-}

first-aid-innovation/

T: | E: t_w_tyrrell_solicitor@survival.net.au | W: survivalfirstaidkits.net.au

This email and any attachments may be confidential and contain privileged information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this message in error please delete and notify the sender. When communicating by email you consent to the monitoring and recording of that correspondence.