

**Subject:** Submission Inquiry into Last Resort Mandatory Privatised Builders Warranty Insurance.

Committee Secretary, Senate Economics Committee, Department of the Senate, PO Box 6100 Parliament House, Canberra ACT 2600, Australia

Dear Committee Secretary

I've said the same thing for over 20 years and regularly apply these principles successfully in the largest provider of consultancy in NSW.

I attach:

1. a selection of my CPD articles from my column in Connections Magazine
2. an analysis of claims in the NSW building industry extracted from DFT records.

I suggest the following would help Parliament understand and manage the building industry with emphasis on the prevention and better management of complaints:

1. set up method of tracking and annual reporting patterns of industry problems
2. set up coordinated curriculum for construction education for all industry participants - from high school to tertiary
3. set up regime of product information/mark indicating life, maintenance cycle, warning etc
4. require all consumers to warrant accuracy and completeness of the documentation they give contractor
5. require all suppliers to provide products which are fit for purpose
6. explain to consumers that QA is not being provided by contractors, Councils or certifiers
7. do not allow contractors to over claim during the project - especially the final claim
8. final claim should only be made after contractor provides all certification and a final inspection by a competent independent consultant
9. an commencement of the project, both parties should elect a single troubleshooter/QA person
10. if a fault occurs, the contractor must be allowed to remedy his mistake fault
11. lawyers must be kept out of the process whenever possible

Finally, there is no need for an insurance policy in the majority of matters when the contractor is assisted to return and fix his mistake.

Regards

**Jerry Tyrrell**

| Architect, Building and Timber Pest Consultant |  
| **Tyrrells** Property Inspections |



# CPD ACADEMY

BEST PRACTICE FOR BUILDERS

CONTINUING PROFESSIONAL DEVELOPMENT

## Sick of playing the blame game?



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**When you put what you know on paper, it makes it easier to communicate with clients and others who may have unrealistic expectations of what you and your trade should deliver, writes Jerry Tyrrell.**

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*CPD Academy is a new series of 'lessons in print' for Building Industry Connection readers to help you improve your trade skills and business know-how so that you can keep your edge in today's competitive market. Well-known Sydney consultant Jerry Tyrrell, a co-founder of Tyrrells Property Inspections, will share his insights into the basic principles of building practice – what to do, what not to do and where to go to find out more. Jerry has 30 years' experience as a labourer, tradesman, contractor, architect, mediator, building consultant and author, and has been involved in the inspection and building of more than 55,000 properties (including 30,000 timber pest inspections).*

**U**nreasonable criticism. Media exposes. Waiting to get information. Doing your best and not getting paid. Looking silly for fixing other people's mistakes. Blame. Bureaucrats who've never worked a day on site running your industry. Insurance that never made sense costing five times more than you expected.

These are just some of the problems faced every day by Australian building practitioners – problems that the Government says will be fixed by improved education. But 'improved education' is not a matter of force-feeding practitioners with expensive packages of inaccessible information.

Continuing education within the industry is most effective when there is a strong commitment to learn from the builders' side and the delivery of well-paced 'bite-sized' chunks of accessible, relevant information from the side of the educators. By 'relevant', we mean information that will help prevent practitioners from making expensive or otherwise damaging mistakes.

Tony Ransley, my co-writer on the *Property Maintenance Handbook* and a licensed builder with many years of practical experience in building and pest control, puts it like this: "Education's got to be the only answer. Nothing else has worked over the past 30 years. Education keeps solutions in the hands of knowledgeable contractors and building professionals."

This is exactly what we plan to do through CPD Academy. In the first article, we will look at the typical steps you go through in completing a building.

### The building process

How often do you hear people complaining that building or renovating is a confusing process? Yes, you builders and contractors know what you're doing, but the trouble is that your clients, the designers and other professionals involved with the job don't know what you know. Instead of finding out, their first response will be to throw mud at you if something happens that they should have known about (but didn't).

The clearer you are in communicating the overall building process to your clients, the clearer they will be about what to expect.

I have dealt with thousands of contractors over the past 30 years, and have been involved in the building, design or inspection of thousands of buildings. Using that experience, I've prepared the flowchart shown here, which details the process involved in designing and constructing a typical building.

From the flowchart, you can see that some parts of the process will require careful management,

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particularly the following areas:

- Who is doing what?
- Are there problems with the documents that need to be solved?
- Will you be blamed for latent defects in a building you are renovating – rising damp, rotting fascias or timber stairs?
- Who is recording the condition of neighbours' and council properties so that no one gets you to fix up damage that was already there?
- Have you and the client agreed on who is responsible for quality assurance and how important it is to get the subbies to fix up or finish everything while you are still on site?

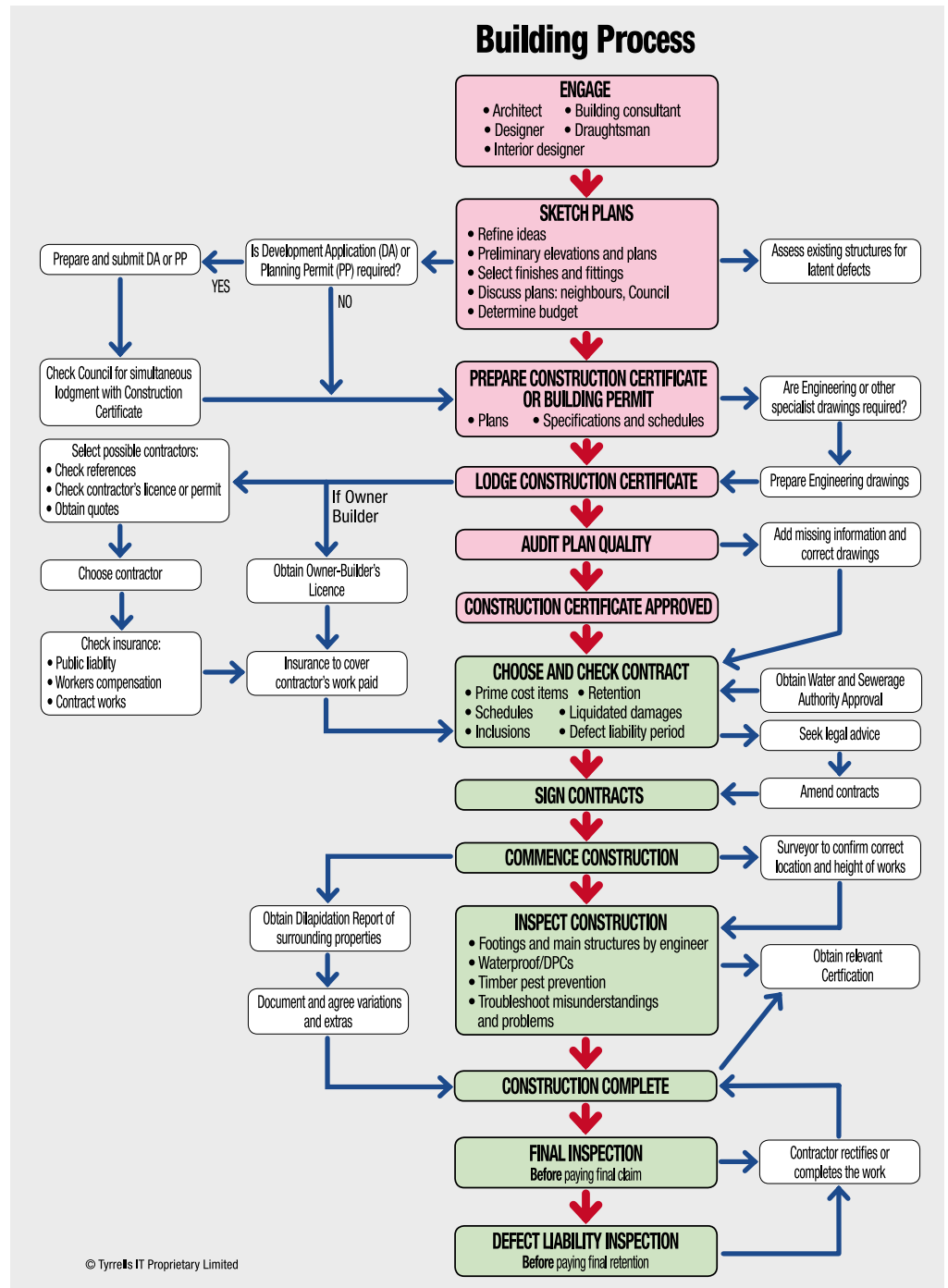
In the past, it seems that the contractor has usually been the fall guy if anything went wrong.

Perhaps it's time for a change. Why not throw responsibility back on the client to know what will happen? Give him or her a copy of this flowchart (which you can also download from [www.tyrrells.com/reports/building.php](http://www.tyrrells.com/reports/building.php)).

Finally, I'd like to get ideas and case studies from readers – whether you are a contractor, designer, architect or engineer – about how to prevent the same sorts of problems happening. We'd also welcome constructive tips that everyone can use to place the building industry back where it should be – respected and appreciated! Please email me at [jttyrrell@tyrrells.com](mailto:jttyrrell@tyrrells.com) ■

**NEXT ISSUE:**

'Mr and Mrs Perfect?' or 'How to avoid the client from hell!'



### Teamwork works!

More than any other profession, building requires teamwork from the start. Not just within your organisation, but between you, the client, the designer, engineers and council officers. So it makes sense that if a minor misunderstanding or error occurs, everyone in the team should work together to solve the problem. Want to know more? See 'Who's Who in the Building Zoo' at [www.tyrrells.com/reports/building.php](http://www.tyrrells.com/reports/building.php)



# CPD ACADEMY

BEST PRACTICE FOR BUILDERS

CONTINUING PROFESSIONAL DEVELOPMENT

## A marriage made in heaven or...?



**Selecting a reasonable and compatible client is like selecting a spouse, because in both cases, you've got a lot invested in the deal and you'll be stuck with that partner for a long time. Jerry Tyrrell 'profiles' client-types to help you decide whether to tie the knot – or not.**

*CPD Academy is a series of 'lessons in print' to help you improve your trade skills and business know-how so that you can keep you*

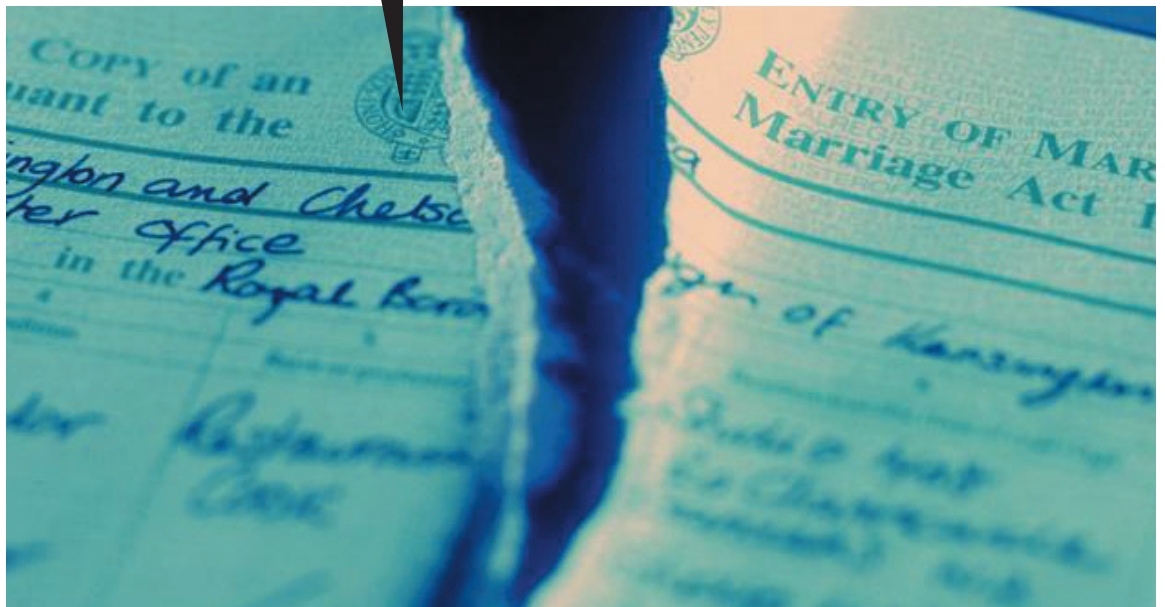
*Jerry Tyrrells Property Inspections, shares his insight into the basic principles of building practice: what to do, what not to do and where to go to find out more. Jerry has 30 years' experience as a labourer, tradesman, contractor, architect, mediator, building consultant and author, and has been involved in the inspection and building of more than 55,000 properties (including 10,000 timber pest inspections).*

**E**very year, there are more than 20,000 complaints about contractors or disputes between contractors and clients in Australia.

Every time your relationship with a client goes bad, you lose money, time and reputation.

Sometimes, you will lose the final payment; another time, it may be that referral to a few more good clients, or the unpaid time you may need to spend dealing with lawyers and experts.

Then there are the hidden costs of the stress on your family and subbies when you are fighting with a customer. Too often the problem begins when you sign up with a client you should never have worked for in the first place.



Building for someone is a serious relationship. You'll be together for *at least* six months. You are, in effect, lending the client your skills and contacts. And, in the end, can you trust that they will pay for every item ordered from the 'menu' of building works?

### Why disputes occur

Why do so many little problems escalate into the nightmares that are destroying our industry's credibility?

I reckon it's the 'people' factor: the ingredients are a simple financial issue blended with our ignorance of who we are working for. It would help if the industry set realistic guidelines for building estimating that included the contingency costs that clients should allow for on every job.

For instance, contractors tend to go

### Tips for making a perfect match

Avoid working with clients who:

- are first-timers, poorly prepared
  - have incomplete or poor documents
  - are late providing final information
  - request too many changes or extras even before you start
  - are know-it-alls
  - are ditherers
  - reject budgeting for contingencies
  - make unreasonable demands for reporting
  - are overly friendly
- get the architect to report to the project manager, that everyone gets minutes, etc. (however, on very complex projects, this may be necessary)
  - ask how you will do the simple things; for example, does your tiler know what he's doing?
  - have a partner who is difficult, silent, unknown, or a possible 'blamer'
  - are unreasonable
  - are personality types you just don't get on with

into a job agreeing with the client's view of what it will cost – instead of saying from the beginning that building costs will start at \$1200 per square metre, plus at least \$1000 more for

architectural solutions, plus at least 15% for changes and the items they forgot to ask you to include.

Usually, the contractor will put up with the client's demand, without politely ➤

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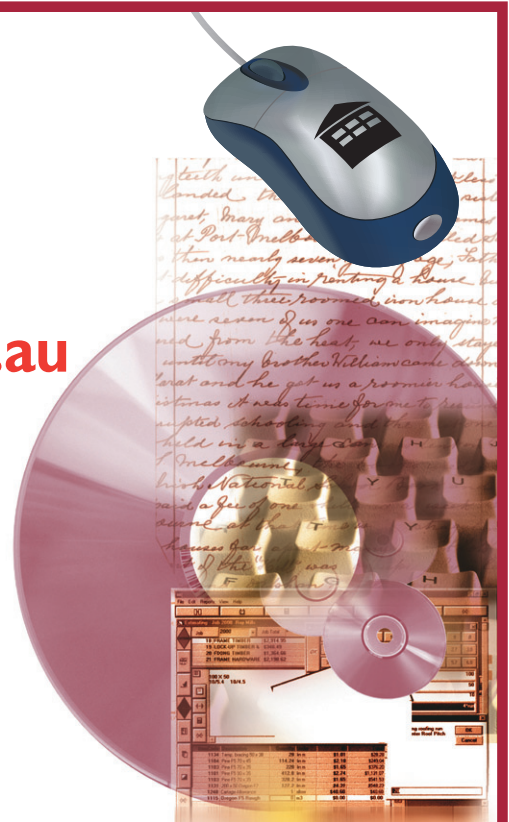
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pricing for every variation and extra that is not in the drawings. Then, because the customer doesn't expect extra cost, and probably doesn't have the money, the first thing that will be tested will be the personalities involved.

After watching so many unhappy endings, I have a rule: "It's better not to work than to work for a ratbag."

So how do you assess a potential ratbag? The methods include:

- Instinct – first impressions are a great starting point.
- Differences – will you get on if you don't agree with what they are saying?
- Likeability – could this person be a friend?
- Detail – do they really know what they are asking you to build?
- Decisiveness – how will they make decisions?

- Control – who will you really be dealing with and how organised will they be with instructions?

There are other telltale signs of a good client to look for:

- Obvious enthusiasm for the project.
- Obvious respect and equality between husband and wife or partners.
- Not condescending – they respect your knowledge and treat you as an equal.
- Enthusiasm and eagerness to be involved.
- Specific questions about technical issues that will help you both avoid problems.
- Acceptance of responsibility for changes and additional works.
- Decisiveness – will work with you to resolve issues.
- Acknowledgement that they haven't

## Analyse this...who are you?

Sometimes you can have a pretty good client, but you find that you keep upsetting the relationship. Building is a people business and you can't blame your client for things happening inside you.

This means that you should look closely at *yourself* if you are having repeated problems dealing with people.

Sometimes this can be very confronting.

For instance, why do you get angry when someone criticises your work? Why are you impatient with delays and indecision? Why can't you firmly tell the clients things they need to be told, such as when the documents are wrong or that changes will cost them money?

Who are you? What personality traits do you have that might be destructive in the relationship?

Here are some problem behaviours you need to check for:

- ✓ Denial – it'll all go away.
- ✓ Hero/good guy complex – I'll fix this and they will thank me even if I lose money. You're everyone's friend/your own enemy.
- ✓ Martyrdom – how dare they do this to *me*.
- ✓ Aggression – it's worked in the past, I'll make it work now.
- ✓ Pride – I can't make a mistake.
- ✓ Hypersensitivity – how dare they criticise my work or my workers!
- ✓ Inflexibility – I'm always right.
- ✓ Delay – everyone will forget about this eventually.
- ✓ Inability to seek help – I can sort this out myself.
- ✓ Know it all – I know more about this than anyone.

If you have mentally ticked any of these boxes, you need to take responsibility for your role in any breakdown in client relationships. Maybe talking to a professional will help you get on better with your clients and result in more productive collaborations.

## Disputes ahead? Read the signs

The following client behaviours usually indicate there will be trouble ahead:

- early disputes
- slow payment
- background criticism, especially to other trades behind your back
- silly misunderstandings
- intolerance of reasonable delays
- always distracting you
- telling subbies to make changes
- not ready with decisions
- get angry over minor problems

foreseen everything.

- Reference from another client, professional or contractor you have enjoyed working with.

Working with a client who is unpleasant or has a personality disorder can quickly damage or at worst destroy a successful business. Such a relationship may:

- affect morale
  - affect quality
  - delay progress
  - cause disputes
  - affect cash flow and profitability
  - create consequential effects on partners and family
  - create negative reputation
- In my experience, a carefully selected client will make the project easier, especially when they:
- work closely with you
  - pay for the many inevitable changes and extras throughout the job
  - learn about your personality and your role in maintaining healthy relationships with customers.

However, you need to profile the 5-10% who are just unreasonable people to work for – and tell them you are not going to do their job!

### FEEDBACK

Please email any thoughts or experiences to [jtyrrell@tyrrells.com](mailto:jtyrrell@tyrrells.com)

### NEXT ISSUE:

*Avoid being a drip! Waterproofing tips that work.*



# Insurance just doesn't add up

Jerry Tyrrell argues that competent and caring builders do not need home warranty policies.

*CPD Academy is a series of lessons in print to help you improve your trade skills and business know-how so that you can keep your edge in today's competitive market. Sydney consultant Jerry Tyrrell, co-founder of Tyrrells Property Inspections, shares his insights into the basic principles of building practice – what to do, what not to do and where to go to find out more.*

**B**uilding is a very successful industry. You – that's right – you are a vital part of Australia's \$50 billion building sector.

Yet the past five years have been a disaster for many contractors as they waste time and money getting home warranty insurance.

You already provide the warranty – the insurance is for the consumer and it is accepted as a defence against the small number of serial

crooks and jerry builders (me excluded).

I'd got hundreds of stories about your frustration with this absurd insurance.

I have watched small groups lobby government and have read all the reports, which fail to deliver relief from this mess.

What is being done? Nothing.

And until you all replace the insurance process with a warranted, good-quality product with responsible after-sales service ... hang on, you're already doing this, aren't you?

Yet it costs the building industry more than \$200 million to collect the \$4 million for real remedial works.

My research for the period 1991–2000 shows there was a problem in fewer than one in every 135 jobs.

It was probably fewer than one in 500 when you take into

account the owner-built work and small renovations and extensions.

Actual payouts by insurers to our customers total less than \$25 million a year – or less than 0.05% (1/2000th) of the work value.

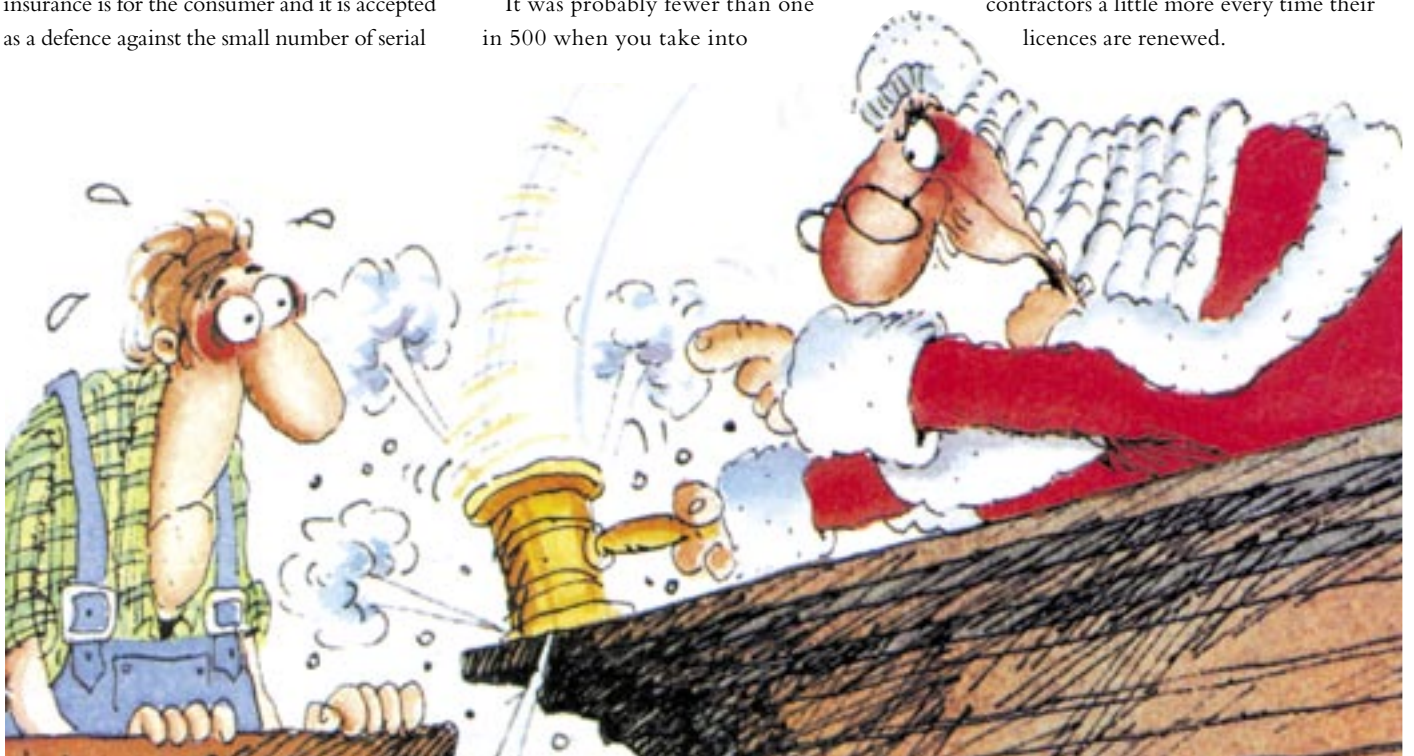
In my experience the payouts are at least twice and sometimes more than 10 times the real cost of remedial work.

So the cost of the actual problem is less than \$20 per project and less than one cent in every \$100 of building works.

It doesn't seem like much of a problem, does it?

Yet all States require contractors to provide home warranty insurance for all but the smallest jobs.

It would make more sense to simply charge contractors a little more every time their licences are renewed.



### **Why is insurance payout more than the actual cost?**

By the time a claim is made, you and the client are very angry with each other.

You can't understand why the client doesn't appreciate all your good work and is now being unreasonable about a couple of minor issues you are happy to fix.

Or maybe the client won't accept your explanation about how their choice, design or material might have caused the problem.

Then you have to deal with the so-called experts who say the 'molehill' crack in the lining is a 'mountain' of a problem.

Perhaps the lawyers instruct the expert to include every last fault, or you are up against an unreasonable or biased judge or referee.

Finally, the works get quoted by a stranger whose start-up cost is high.

People will always charge more for a job with a history of problems.

One builder got very unlucky when he took on a country job.

His customer claimed more than \$260,000 in defects for what eventually cost less than \$20,000 to fix.

The legal and expert costs exceeded \$300,000 for both parties, so the total bill for the \$20,000 problem was close to \$1 million.

The builder didn't claim on his insurance, because ultimately he would have been asked to reimburse the insurer.

### **Beware of insurance companies**

The strange thing about this insurance is that if a claim is made against you and the insurer pays, they seek recovery of the money from you.

I'd say 90% of insurance companies and their lawyers use legal costs, delays and your weaknesses to threaten and bully.

Here are some tips:

- Fix up all reasonable requests immediately – this leaves only a few items to fight about.
- Do not engage a lawyer unless it's one with a record of common sense and minimum paperwork.
- Do not have assets in your own name. This is tricky, because you don't want to avoid your responsibilities. However, if the legal and insurance teams know you have money they will milk the process to get at it.
- If the insurance company has jumped in without letting you fix the problems, you should talk tough about not being allowed to mitigate your loss – and their excessive remedial costs. Settle at what it would have cost you.

### **What can we do?**

The first step is the most important: we need to agree that small faults, problems or misunderstandings that do not inconvenience the client or cause a loss should never be claimed.

Next, we must get all the certification and warranties from engineers, waterproofers and suppliers and make sure all work is covered.

Then we need to put all our resources behind 'owning' any genuine problems or issues our clients have. ➤



PROS & CONS OF INSURANCE		
Pros	Cons	Cons for your customer
Insurer will pay for cost of a mistake or misunderstanding	The insurer gets the money back from you unless you are dead or bankrupt	Substantial delays when making a claim
	Hundreds of hours of lost time	Uncertainty about what to do
	Stress on family and relationship	Unrecoverable costs, that is mortgage or rent
	Excessive remedial costs	Hundreds of hours of lost time
	Limited chance to involve your team to fix the problem and learn from it	Stress on family and relationship
	No feedback on why the main problems occur	Problems with continuity of warranty

This means:

- Agreeing on a single, non-legal dispute resolution person before you contract with your client.
- Responding quickly and sympathetically to a callback or complaint.
- Seeking help to make sure the problem is fixed properly.
- Avoiding insurers unless they comply with the above.

### Good legal advice

Of the thousands of disputes I have been involved in, the contractor or consumer was satisfied with the legal advice in less than 5% of cases.

Legal advice that is appreciated by both contractor and client includes these elements:

- You can claim payment only for the work you have done.
- An independent person inspects work at the main stages.
- You do not demand your final claim until your subbies and suppliers have fixed up any reasonable faults.

Please email your thoughts or experiences to [jwtyrrell@tyrrells.com](mailto:jwtyrrell@tyrrells.com) ■

*Next Issue: 2050 What will our industry be like?*

# Learning from other people's stuff-ups

Jerry Tyrrell reports how clever builders can benefit from the many mistakes made by competitors and suppliers.

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**W**hen we were kids our parents were always giving us the benefit of their experiences...Swim between the flags. Watch that boiling water. Don't leave the fridge door open...

As apprentices in the building industry, we learn lots about the best way of doing things.

But sadly, once you start building for real there is very little feedback and help on:

- Mistakes other contractors are making
- Problems contractors are being blamed for
- New technology and changed practices

## WHAT CAN GOVERNMENT DO?

If our government was a serious or privately run scientific, accountable body it would:

- Encourage a no-fault reporting system for any serious problems and mistakes;
- Identify the cause of the above;
- Provide a centralised database for building-related faults;
- Standardise the terminology used by all the people involved, for example, the term for plasterboard;
- Standardise the syllabus for all trades and professionals learning about construction;
- Include risk assessment and problem

- Products that don't perform as expected
- Manufacturers that don't stand behind their products.

We need feedback to prevent unnecessary mistakes and keep up to date.

Government is doing nothing; the industry associations publish the odd tip on problems. However, much of the information is unhelpful and not founded on accurate research and analysis. The Building Code of Australia gets to the problems 10 years too late – and even then it misses the opportunity to deal with big problems like slippery floor surfaces and durability of materials.

## Typical examples

In the 1990s I had the misfortune to advise several builders about a Sydney company making lime wash and cement paint.

Jobs were going wrong, and the manufacturer abandoned the contractors without clear advice on how to prepare and recoat the works.

Since then I have not recommended this company and have always been careful to warn builders and owners about

solving of complex details with this syllabus;

- Provide frequent feedback, 'alerts' and a web-based reference on how to avoid commonly occurring problems or use new technology better;
- Recognise and reward careful builders; and
- Replace licensing with a serious continuing education program and a 'good contractor' register.

Wanna know a secret? The New Zealand Government is doing much of the above right now.



careful preparation and compliance with specifications for this type of coating.

Then there were the unfortunate builders who built AAC structures without a construction joint in sight, and the eventual trouble that caused because they believed the material specifications.

I have looked at hundreds of driveways where the contractor poorly set out the stencils, tried to pour too big an area on a hot day, failed to cut joints or simply did not slope the drive to drains or gardens.

Pretty basic stuff, but it happens again and again.

I advise consumers to see a concreter's recent work before choosing him, and to work with him to plan any complex parts of the work.

In previous articles I've covered some of the waterproofing and termite-management principles.

Now I will concentrate on the simple things we can do – or not do – to build properly.

It should make sense, because you probably know a lot of these anyway.

## WHAT WORKS



- Use a surveyor to set out key corners, levels or setbacks
  - Get your engineer to see every important part of the structure before pouring concrete
  - If in doubt, dig your strip footings deeper
  - Tell the client to get design advice on colours and finishes early, and that changes might increase the price but will be worth it
  - Vibrate all slabs on ground to achieve an effective termite barrier
  - Attach termite barriers to concrete and masonry walls in split-level floors or walls on boundary
  - Use treated timbers for bottom and top plates, and concealed floor and roof frames
  - Keep slab edges exposed even if it is only the top 20mm (AS 3660.1 requires 75mm)
  - Provide access to all voids, especially under floors
  - Slope concrete to drains and floor wastes
  - Use hobs to all balcony edges to limit salt damage
  - Use puddle flanges in all wet-area drains
  - Protect wet-area membranes as you would a plush carpet
  - Use tile adhesives and grouts compatible with the waterproofing system
  - Set out the tiles with your client
  - Warn clients about any changes in levels at wet areas or between different surfaces – advise them of the added cost of setdowns in concrete or splayed thresholds to eliminate small steps
  - Don't select the tiles. Let the client choose them, including the appropriate slip resistance
- In fact, let your client choose everything – this means they take responsibility for product quality
  - Use subsills under all weather-exposed doors and windows
  - Install draining weepholes at base of weather-exposed walls
  - Carefully install cavity flashings and weepholes to base of walls above habitable rooms
  - Paint tops and bottoms of external and wet-area doors
  - Plan safe access for future maintenance – this will also help you during the project
  - Use acrylic paints with mould inhibitors in wet areas and laundries
  - Use heavy-duty hardware for kitchens, doors and locks
  - Use sewer-grade PCV for all stormwater pipes
  - Stiffen any eaves structure, especially hip ends wider than 900mm
  - Vent range hoods to the exterior
  - Allow for shrinkage and movement whenever you join new timber structures to existing work
  - Remember – absence of shrinkage in steel floor beams can cause unevenness in the top of the floor
  - On roofs use super tough sarking
  - Fit backtrays behind any large penetration back to the ridge
  - Carefully flash joints between different roofs
  - Use stainless steel for box gutters
  - Fit overflows to box gutters and rainwater heads
  - Self-cleaning 100mm x 75mm downpipe
  - Gutter Guards are great idea – avoid using in valleys unless the valleys are wide and the roof pitch is steep

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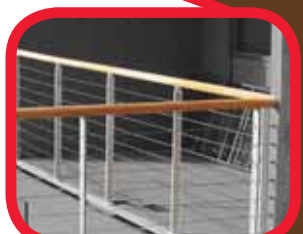
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## WHAT DOESN'T WORK



- Ground-floor slabs without setdowns
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- Leaving areas where water can pond in clay soils and rock under buildings
- Leaving formwork under buildings
- Using any chemical barrier treatment
- Infill slabs
- Building brick walls longer than 9m without vertical joints
- Embedding timber/MDF in tiles or concrete
- Not protecting finishes and components when acid-washing the building
- Letting autoclave concrete get wet
- Setting out stair riser height without allowance for different finishes at floor level
- Tiling over joints, especially between timber and concrete
- Tiling over joints in sheet flooring
- Concealed cisterns without easy access
- Frameless shower screens if your client won't accept leaks through gaps
- Rendering over joints between masonry and concrete
- Using floorboards at a moisture content different from the area where they will be laid
- Manholes too close to eaves
- Bad bows in studs in long walls
- Sloppy plasterboard joints in long walls looking into bright natural light
- Cutting holes or running services in acoustic and fire rated walls
- Leaving laminated glass edges unsealed
- Site cutting or welding galvanised steel without very careful recoating
- Using passivated zinc or mild steel fixings anywhere
- Nailed balusters, which can easily work loose
- Easily damaged western red cedar handrails, wall cladding and sills
- Planters and ponds without very careful detailing of waterproofing and drainage
- Concrete roofs without insulation
- Roofs with dog legs in valleys
- Flat offset in downpipes under eaves
- Using acrylic instead of polycarbonate skylights and roof sheeting
- Not extending the chimney above the highest ridge
- Unrestrained galvanised electrical poles with long aerial mains pulling them out of plumb
- Leaving the DPC out of painted brick fences
- Painted masonry retaining walls
- Pool copings without expansion joints
- Planting large trees against buildings
- Finally, it's silly to turn a blind eye to problems and callbacks you get when you build.

I have learnt more from fixing my mistakes than from the many building courses I did. Sometimes you simply need to explain to your client why the work has turned out a certain way. Other times you will see a mistake that you or your subbies should have avoided. I reckon that builders should always add at least 2% to their quote for 'after sales' service and fix-ups.

In the end, a professional attitude to your product will enhance your reputation, reduce the cost of complaints and disputes, and teach you what to avoid next time.

Please email me any thoughts or experiences at [jwtyrrell@tyrrells.com](mailto:jwtyrrell@tyrrells.com) ■

*Next Issue: Insurance be damned! How our good work can replace insurance.*









