

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP975/2017

CATCHWORDS

Domestic Building – claim for refund of price paid for floating timber flooring – defects apparent within two months of laying floor - supplier and installer blame moisture content in slab and join builder to the proceeding – refund and associated damages awarded against supplier – insufficient evidence for apportionment of liability to the builder.

APPLICANT	Bruce Cromie
RESPONDENT	A.T. Carpet Brokers Pty Ltd (ACN:006 234 797) t/as Essendon FlooringXtra
JOINED PARTY	Porter Davis Homes Pty Ltd
WHERE HELD	Melbourne
BEFORE	K. Campana, Member
HEARING TYPE	Hearing
DATE OF HEARING	30 November 2017
DATE OF ORDER	10 January 2018
DATE OF WRITTEN REASONS	10 January 2018
CITATION	Cromie v A T Carpet Brokers Pty Ltd (Building and Property) [2018] VCAT 46

ORDER

For the reasons provided in writing, the Tribunal orders that:

1. A.T. Carpet Brokers Pty Ltd (ACN:006 234 797) t/as Essendon FlooringXtra must pay Bruce Cromie the sum of \$17,800 (including \$3,640 expert's costs).
2. A.T. Carpet Brokers Pty Ltd (ACN:006 234 797) t/as Essendon FlooringXtra must reimburse Bruce Cromie the application fee of \$458.60.
3. The claim against Porter Davis Homes Pty Ltd is dismissed.

K. Campana
Member

APPEARANCES:

For Applicant

In person

For Respondent

Tim Hodge, Director

For Joined Party

Joel Bett, Maintenance Manager

REASONS

- 1 This is an application by Bruce Cromie (“**the Homeowner**”) for a refund of the price paid for spotted gum floating timber floorboards (“**the floorboards**”) in his Macedon Ranges Shire home and compensation for related damages.
- 2 The Homeowner claims that defects started to appear on the floorboards within two months of installation. Two years after the floorboards were installed, and following several attempts to resolve the issue, the Homeowner has made application to the Tribunal to be repaid the price of the goods, being \$12,800, plus associated costs and damages.
- 3 The Homeowner seeks the refund from A.T. Carpet Brokers Pty Ltd (ACN 006 234 797) trading as Essendon FlooringXtra (“**FlooringXtra**”), claiming that the floorboards were not installed correctly. FlooringXtra has joined the builder, Porter Davis Homes Pty Ltd (“**the Builder**”), saying that any issue with the flooring has arisen due to the moisture content in the slab.
- 4 FlooringXtra is not the company that supplied or installed the floorboards. That company has closed. FlooringXtra has however accepted liability for the supply and installation.
- 5 I must determine the following:
 - (a) What damage or defects, if any, are there to the floorboards?
 - (b) What was the source of the moisture in the floorboards?
 - (c) Who is liable for the damage to the floorboards?
 - (d) Should there be rectification of the damage or a refund?
 - (e) Does any compensable loss flow from the damage to the floorboards?

Factual Background

- 6 The floorboards were supplied and installed in March 2015. Prior to installation, the Homeowner covered the concrete slab in a Bondall concrete sealer.
- 7 The Homeowner says “*scratches and telegraphing*” started to appear on the floorboards by May 2015. He says by October 2015, the floorboards were “*tenting*”.
- 8 In November/December 2015, the Builder attended to replace tiles in the downstairs toilet. During these works, the toilet was disconnected and reconnected on 17 December 2015. After the reconnection, a leak arose between the toilet pan and cistern when the toilet was flushed, resulting in water leaking down the wall and out into the adjoining study and hallway. There is no dispute that the leak affected the study carpet and the hallway floorboards immediately outside the toilet. The leak was rectified by 30 December 2015, and the area dried by the end of January 2016.

- 9 The Homeowner says that by March 2016, there was “*further tenting, buckling and telegraphing*”.
- 10 At this time, the Homeowner made contact with FlooringXtra and Arrowsun (the importer of the product), who blamed the water leak as the cause of the defects, from January 2016. The Homeowner says he made several attempts to resolve the matter over the following months, but then put the dispute on hold with the birth of a child.
- 11 The Homeowner says that the tenting, buckling and telegraphing is worse during periods of humidity and was very noticeable in January 2017. He says he made contact again with FlooringXtra and recommenced his negotiations.
- 12 The Australian Timber Flooring Association (“**AFTA**”) was engaged by the Homeowner to determine the cause of the defects to the floorboards. Jeffrey Richardson carried out an inspection on 17 February 2017, and provided a report on his findings (“**the AFTA report**”).
- 13 In late March 2017, the Homeowner commenced proceedings in the Building and Property List of the Tribunal.
- 14 In August 2017, the Builder sent tradesman Scott O’Donnell to attend to the damage from the leak. He lifted and inspected the flooring for evidence of water damage and moisture ingress and reinstalled that section of floor back to its original state. Mr O’Donnell did not attend the hearing, but provided a two page report with attachments (“**the O’Donnell report**”).
- 15 FlooringXtra engaged the Wood Flooring Association to provide a report (“**the WFA report**”). Peter Van Den Berghe inspected the floorboards in October 2017 for the purpose of providing the WFA report.

What damage or defects, if any, are there to the floorboards?

- 16 The Homeowner complains that not only has there been damage to the floorboards themselves, but that they were not installed correctly.

The Floorboards

- 17 A number of phrases are used during these reasons to describe the damage to the floorboards. “*Crowning*” or “*Doming*” is where timber flooring has a dome shaped surface. “*Buckling*” or “*tenting*” is the raising or expansion of floorboards around and against fixed surfaces. “*Cupping*” is the raising of the edges of individual boards. “*Telegraphing*” is a visible line on the boards resulting from a reaction between the veneer and base of the board.
- 18 The Homeowner produced a number of photographs of the floorboards. The photos show crowning, indentations on individual boards, cupping and telegraphing. The photos also show movement of the skirting boards and uneven gaps and spacing between the boards and where the boards abut the wall.

- 19 The AFTA report identified the existence of –
- (a) crowning or doming (a washboard effect in reflected light) in the living area near the patio;
 - (b) uneven gap between the floor and door in the entry hallway;
 - (c) floor buckling on opposite sides of the living room, including comparative photos during high and normal humidity;
 - (d) inadequate gaps on the edge of the flooring at various points; and
 - (e) telegraphing in the kitchen and living areas and gaps between boards near the dishwasher.
- 20 The WFA report noted that there was no obvious buckling of the flooring on inspection, but that telegraphing and crowning could be seen across the floor in certain light. It noted that on removal of the perimeter beading to inspect the allowance for expansion, some areas had minimal expansion gap and many had no gap at all, with the board edge hard up against the skirting. It also identified mould under the boards taken up during the repairs in August 2017.
- 21 The O'Donnell report noted five areas of tenting and buckling in the hallway, living, kitchen and dining areas. It also commented that the floorboards damaged by the December 2015 water leak were limited to the right hand corner of the area directly outside the toilet and to the carpet along the wall in the study.
- 22 The photographs provided by the parties, including those in the AFTA and WFA reports, speak for themselves, were taken at various times during the year and show that the floorboards have a number of defects. I find that there is crowning, tenting, cupping, telegraphing and swelling of individual boards. I also find that the defects are significant and not isolated to just one area of the home. Not only are the defects displeasing to the eye, the floorboards are uneven and unstable, with the potential of being a tripping hazard.

The Installation

- 23 The Homeowner also complains that there are defects with the installation of the floorboards – with insufficient expansion gaps and a vapour barrier that does not meet the manufacturer's specifications, and which has been compromised as a result.
- 24 The laying instructions for the floorboards (Tuff Loc 2G+5G) was tendered during the hearing. Bullet point 10 details the requirements for the vapour barrier –
- Age resistant polyethylene membrane plastic sheets (0.2mm thickness) for vapour barrier are recommended and necessary for floating-system installation. Joining between the plastic sheets should have sufficient overlap and/or sufficient tight joins to avoid leakage of

vapour from underneath. Recommended overlap should be at least 20cm.

- 25 Bullet point 13 details the requirements for expansion joints –
An allowance of at least 15 mm on each edge should be provided to accommodate expansions, including at doorway, heating tube outlet, connection with tiles and any fixed items in the area where the floor is laid. Use spacing wedges during the installation to assist in maintaining the expansions gaps.
- 26 The installer of the floorboards, Bjorn Goetzel (“**the Installer**”), says that he allowed for an 8 to 10 mm expansion gap on the perimeter of the floorboards and used a white foam underlay that had an inbuilt vapour barrier backing.¹
- 27 Arrowsun’s (the importer) representative, Kieren Crinnigan, says the requirement for an expansion joint of 15mm is for areas of high humidity such as tropical Queensland and the expansion gap provided by the Installer would have been sufficient for the Macedon Ranges area.
- 28 The manufacturer’s specifications do not come with any disclaimer or conditions about where and when the recommendations about a 15mm expansion gap apply. In fact, the requirement for a 15mm gap is the minimum to be applied, with use of the words “*at least 15mm on each edge*”.
- 29 With evidence that no more than 10 mm was provided where the manufacturer’s specification was for at least a 15mm expansion gap, I am satisfied that the flooring was not installed in accordance with the recommendations of the manufacturer of the product.
- 30 There was extensive debate during the hearing about whether or not the vapour barrier on the underlay that was used, complied with the manufacturer’s specifications. The Installer was unable to provide any details about the product used, and no-one was able to provide any certainty about whether it met the specifications of being an “*age resistant polyethylene membrane plastic sheet (0.2mm thickness)*”.
- 31 Photographs were taken by the Homeowner when the floorboards, affected by the leak, were removed on 23 August 2017. These photographs show a white foam underlay. I cannot see any barrier on the back of the foam, which was turned over in some sections. However, given that the barrier thickness is 0.2mm, it may not be unusual that the naked eye cannot see it in photographs. The Installer gave evidence that the foam does have a vapour barrier. What I can see from the photographs is that the underlay and/or barrier has not been installed in accordance with the manufacturer’s specifications. The underlay does not reach the edge of the area where the

¹ This was the only reliable evidence of the expansion gap, with the swelling of the floorboards resulting in minimal, if any, expansion gap now being visible. There were some photographs taken by the Homeowner during installation which showed 10mm packers being used around the edge of the room.

floorboards were laid in many sections, there is no taping of the joins of the underlay sheet that are evident and there is certainly no overlap of the joins anywhere in the vicinity of the 20 centimetres required. The Installer did not assert that he had provided any taping or overlay of the vapour barrier.

- 32 Despite the absence of any information about the type of vapour barrier that was attached to the underlay, and not being able to see anything that resembles a plastic sheet, on the basis of the evidence of the Installer, I cannot be satisfied that there was no vapour barrier attached to the underlay or that it did not meet the manufacturer's specifications.
- 33 However, on the basis of the photographic evidence, and in the absence of any contradiction from the Installer, I am satisfied that the vapour barrier, if one is attached to the underlay, has not been installed in accordance with the manufacturer's specifications, with no taping or overlay as directed.

What was the source of the moisture in the floorboards?

- 34 The parties agree that the cupping, crowning, tenting and telegraphing is a result of the floorboards absorbing moisture and reacting by expanding and staining. The parties, however, disagree about the source of that moisture.
- 35 Somewhat surprising to me is that neither FlooringXtra nor the Builder have suggested that the Homeowner has somehow contributed to the moisture damage through excessive mopping of the floorboards, use of the air-conditioning system, watering of the alfresco area or placing garden beds around the slab. Also surprising is that none of the experts raised the issue of the acclimatisation of the floorboards, or why the Installer did not carry out any pre-testing of the moisture content of the floorboards or sub-floor before installation. Most of the experts focussed their attention on the water leak and moisture content of the slab.
- 36 The Homeowner's AFTA report made several observations about moisture testing in the timber, the concrete slab and the air generally in February 2017. In relation to the timber, it found that "*there were no significant differences (in the moisture readings) from one floor area to another*", with the test results ranging from 8 % to 10.5 %. An impedance type concrete moisture reading of 4% was recorded in the slab in the office, with 63% relative humidity when the internal temperature in the room was 21 degrees Celsius. The concrete slab moisture readings in the garage and under the dishwasher in the kitchen were 3.5%.
- 37 The AFTA report states-
- The main concerns with the floor was therefore considered to be related to workmanship at the time of installation (expansion allowance contributing to buckling and gapping) and also product performance in the post installation environment (causing telegraphing and crowning). Regarding the water event it is considered that the floor is no longer influenced from the event as the testing and measurements were in line with floors that are not

moisture affected. However, it is also noted that moisture from *(the)* likes of an event can contribute to telegraphing in flooring and for residual appearance effects to remain. A higher humidity environment can also influence crowning which once formed does not generally recover.

38 FlooringXtra's WFA report, in October 2017, carried out moisture testing on the concrete sub floor and found the following results – (a) garage 3.4%, (b) study 3.0%, (c) lounge room 4.5% - 4.6%, and (d) 5.0% under the area of timber flooring affected by the water leak.

39 The WFA report takes issue with the following –:

(a) Water Leak – When the leak was first detected, the timber flooring (adjacent to powder room) should have been taken up to allow moisture testing on the concrete and drying (dehumidifiers if necessary). Due to the moisture affected timber being left in-situ for approximately 19 months with no recorded moisture tests or flooring report, the leak is the most likely cause of the floor failure or has contributed to elevated moisture already affecting the concrete.

(b) Expansion Gaps – The general allowance for expansion is 10-12mm or as per manufactures (sic) specifications (15mm). The installing contractor stated, the expansion allowance for this installation was around 8-10mm. After taking into account measurements of boards and an average expansion of 0.325mm per board since installation, the report concludes that the expansion of the flooring has exhausted the total gap allowed at installation.

(c) Moisture Ingress – The failure of any moisture barrier on the alfresco slab that adjoins the living area of the house and the absence of a separating vapour/moisture barrier. The report states that without such a barrier “external moisture can migrate through the concrete resulting in moisture content above the acceptable levels for timber flooring”. The entire concrete slab has been poured as one (garage, front porch, living areas and alfresco area). The alfresco and porch are exposed to the elements. Without vapour barriers separating external from internal concrete, moisture migration is likely to occur.

40 In conclusion the WFA report states –

According to the manufacturer's specifications, sufficient allowance (15mm) for expansion was not provided.

The issue regarding insufficient expansion gaps could have been corrected February/March 2016 when the buckling first occurred, approximately 20 months ago. Although the recommended expansion gap (15mm) would have been sufficient to cope with the excessive expansion due to sub floor moisture, it is unknown whether a 15mm gap could also accommodate the extra expansion during high humidity.

Even if a 15mm gap had been allowed for, the flooring expansion of $13.4 = 6.7\text{mm}$ (each end), would have reduced the 15mm gap to

8.3mm, which still places the floor at risk as it continues expanding during high humidity.

The home owner has confirmed there were concerns with the flooring (Telegraphing and Crowning) approximately September 2015, this was prior to the discovery of the leak December 2105 (*sic*).

Telegraphing and crowning are issues related to moisture and elevated humidity. It is possible the leak in the powder room had been present for longer than thought, it may have started as a minor or intermittent leak progressively worsening over time.

In my opinion, the flooring has failed due to elevated sub floor moisture 4.5% - 5.0% resulting in telegraphing, crowning, excessive expansion, and buckling of the timber floor.

- 41 The Builder did not provide an expert report of its own. However, Joel Bett, the Builders area manager took issue with the claim by FlooringXtra that moisture in the slab has caused the defects with the flooring, stating –

Moisture ingress – Through consultation with an engineer it was established that while the premise of moisture migration is possible, with the limited testing undertaken onsite at this stage it is just a theory. I believe further in depth testing would need to be undertaken to prove that moisture migration is in fact happening at this job.

Moisture testing – Our engineer also raised queries regarding the accuracy of the moisture testing completed under the timber flooring. These moisture testing machines only give an indication of the surface moisture of the concrete slab. His recommendations would be for the testing to be completed on the slab after the timber flooring has been removed for 96 hours to allow the moisture trapped in the surface (under the moisture barrier) to evaporate. Alternately, a probe test into the concrete could also be used.²

- 42 The O'Donnell report, supplied by the Builder, further states –

Whilst the leak has affected a small number of floor boards outside the powder room doorway, there is no evidence to support the water travelling any further than this area.

The remainder of the flooring installed throughout the property has in no way been affected by the small water leak in the powder room nor is there any evidence to the contrary.

The floor has been installed with inadequate allowance for the required expansion.

The underlay which had been installed was poorly cut in and has not been taped together which is not in accordance with the installation guidelines. The purpose of an underlay with a vapor (*sic*) barrier is to prohibit sub floor moisture from passing through to the engineered timber and causing damage, failing to tape the joins does not allow the underlay to perform as the manufacturer intends it to.

² These comments were made in a document submitted by the Builder in defence to being joined to the proceeding.

- 43 The Builder accepts that the floorboards outside the downstairs toilet were affected by the water leak in December 2015, and these have been replaced.
- 44 FlooringXtra suggests that excessive moisture content in the slab is the source of the moisture that has affected the floorboards. It says that the slab acts like a sponge, drawing the moisture from any source and spreading it across the length of the slab. It says that the slab in the kitchen, dining and lounge areas has been impacted by this absorption process, with the original source of the water being either the leak or a broken moisture barrier on the external slab.
- 45 The Homeowner and Builder dispute the water leak had any impact on the main living area and say that the floorboards were showing defects months before the leak occurred. Further they say that the moisture content readings in the slab are within normal range given the age of the home, and that the defects are worse, or more noticeable, during periods of higher humidity, suggesting the source of the moisture is the air.
- 46 The evidence supports the conclusion that the floorboards have reacted to excessive moisture. It is the source of this moisture that remains unclear.
- 47 Due to the timing of the leak and the existence of damage to the floorboards within two months of installation, I am not satisfied that the water leak in the downstairs toilet is responsible for any damage to floorboards, other than those directly outside the toilet. Further, given the type of limited surface moisture testing that was carried out, FlooringXtra has failed to satisfy me that there is excessive moisture in the slab, in particular in the areas where the floorboards have been impacted.
- 48 Similarly, given the timing of the testing by the Homeowner and the Builder, nearly two, and two and a half years respectively, after the floorboards were installed, the results of their moisture testing is also unhelpful. Testing of both the boards and the slab at the time the defects first started appearing would have been more reliable.
- 49 Taking into account all of the above, I am unable to draw any conclusion about the source of the moisture that has impacted on the floorboards.

Who is liable for the damage to the floorboards?

- 50 While the source of the moisture that has impacted on the floorboards is unknown, for the reasons that follow I am satisfied that, but for the failure by the Installer to allow adequate expansion gaps or lay a vapour barrier in accordance with the manufacturer's specifications, the floorboards would not have been damaged. As such, FlooringXtra has breached the implied term of the contract to install the floorboards with due and proper care, and is therefore liable for the damage.
- 51 As there is no evidence, or any suggestion, of any contribution by the Homeowner to the damaged floorboards, I find that the Homeowner does not share any liability for the damage.

- 52 The Homeowner has taken this proceeding against FlooringXtra and therefore has the burden of establishing that FlooringXtra is liable for the damage.
- 53 Given the evidence and conclusions of both the AFTA report and WFA report, I am satisfied that the floorboards were not installed in accordance with the manufacturer's specifications and that inadequate expansion joints were provided.
- 54 The WFA report questions whether adequate expansion joints would have prevented the crowning or buckling of the floorboards. However given the views of both experts that there has been a failure to provide adequate expansion joints, I am satisfied that this contributed to the damage to the floorboards. The purpose of allowing for gaps (or expansion joints) against the walls and fixtures and across the floor is to give room for the boards to expand without being pushed up against a hard surface. While some gap has been provided, it is deficient to the extent that the floor has crowned and buckled. As such I am satisfied that the failure by FlooringXtra to provide adequate expansion joints has contributed to the damage to the flooring.
- 55 FlooringXtra in turn has joined the Builder to the proceeding and has the burden of establishing either that the damage arose through a defect the responsibility of the Builder, or that the Builder's actions have contributed to the damage.
- 56 As stated previously, the Builder acknowledges and accepts responsibility for the damage to the floorboards outside the downstairs toilet and has replaced these.
- 57 For the reasons above, I am not satisfied that the water leak was the source of the damaged floorboards in the hallway or living area, or that there is excessive moisture in the slab in these areas. However, if I was to accept the proposition that there is elevated moisture content levels in the slab, FlooringXtra has not provided any explanation why the vapour barrier as installed over the slab, in addition to the membrane applied by the Homeowner, was not sufficient to prevent penetration of this moisture into the floorboards.
- 58 FlooringXtra suggested the water leak ran between the vapour barrier and the floorboards affecting the area outside the toilet. It provided no theory for the run of water to the affected areas in the kitchen, dining, living and hallway areas except to say that the concrete slab acted like a sponge, drawing the moisture out along the slab. Again, it did not explain how this moisture made its way through the vapour barrier and up into the floorboards. The purpose of the barrier is to prevent this transition.
- 59 In these circumstances, FlooringXtra has not discharged the burden of proving that the Builder is responsible for the moisture that has been absorbed into the floorboards. As such I am not satisfied that the Builder is

liable for the damage to the floorboards, and the claim against the Builder will be dismissed.

Should there be rectification of the damage or a refund?

60 The Homeowner seeks a full refund of the price paid for the supply and installation of the floorboards being \$12,800. He does not want the floorboards to remain, instead wanting to replace them with an alternative product.

61 The AFTA report recommends the following:

The main concerns that are considered to need addressing are:

(1) Expansion allowance that needs to be provided/reinstated and also considered, compartmentalisation of floor to create a number of smaller floor areas. Also this would allow the boards that separated to be rejoined.

(2) Crowning and telegraphing that exceed industry guidelines (i.e. clearly visible from a standing position and from a number of directions) can likely only be remedied by board or floor replacement.

Guidelines in manufacturer and industry publications need to be considered prior to any remedial work.

62 The WFA report does not make any recommendations about rectification, except to comment that it is unknown whether installation in accordance with manufacturer's specifications allowing for a 15mm expansion gap would accommodate extra expansion during high humidity. The report also does not make any recommendation about rectification of any part of the slab, except to recommend moisture testing of the slab before the reinstallation of any timber flooring.

63 Where there has been a breach of contract of this type, the Homeowner is entitled to recover rectification damages from FlooringXtra, so long as such action is a reasonable course to adopt.³ The Homeowner is also entitled, in the alternative, to elect to receive a refund of the purchase price. This option will be available where the circumstances demonstrate that there has been "a total failure of consideration" provided by FlooringXtra, or put another way, where the Homeowner has not received anything of value from FlooringXtra. The Homeowner has made the election for this second option and I find that he is entitled to do so in the circumstances.

64 However, the Homeowner is not entitled to a full refund of the purchase price. He is only entitled to a refund for the portion of the floorboards affected by the defects (both the damaged floorboards and the failure to install the product in accordance with the manufacturer's specifications). This is all the floorboards, excluding that replaced by the Builder in August 2017. Assessing the drawings of the flooring provided by all parties, the

³ *Bellgrove v Eldridge* (1954) 90 CLR 613.

portion replaced as a result of the water leak comprises 5% of the total floorboards installed.

- 65 I shall make an order that FlooringXtra refund the Homeowner 95% of the price paid for the floorboards, being \$12,160.

Does any compensable loss flow from the damage to the floorboards?

- 66 The Homeowner also seeks the costs associated with the removal of the floorboards, being (a) floor removal \$800, (b) kitchen kickboard repair \$1,200, (c) furniture removal and storage \$1,100 and (d) accommodation for four nights while the new floor was being laid \$1,980. He also seeks reimbursement of \$1,000 for the time associated with dealing with the dispute with FlooringXtra, including ATF Publications, emails, phone calls, mail and travel.

- 67 I will deal with each of the claims in turn :

- (a) Floor removal: The costs of the removal of the damaged flooring and underlay is damage that was in my view reasonably foreseeable by FlooringXtra at the time of the contract, as a probable result of a failure to install the floorboards with due and proper care. I find that the Homeowner is entitled to be compensated the reasonable costs of removal. No objection to the claim for \$800 was made by FlooringXtra, and I will allow this sum.
- (b) Kitchen kickboard repair: The kitchen kickboard has been damaged as a result of the expanding floorboards pushing up against it. It all needs to be replaced. Again, FlooringXtra did not raise any issue with the amount of \$1,200, and I will allow this sum.
- (c) Furniture removal and storage: The Homeowner has elected to seek a refund, such that he is placed in the position he would have been in prior to the flooring being laid, rather than having rectification works carried out. Having made this election, he is not entitled to any expense that will be incurred in having other flooring installed. This claim is dismissed.
- (d) Accommodation: This claim is also dismissed for the same reason that the furniture removal and storage was dismissed. These are costs associated with rectification, not a refund.
- (e) Time spent dealing with the dispute: The Homeowner claims a considerable amount of his time was spent in addressing the dispute and he seeks compensation in the sum of \$1,000. This claim for compensation is too remote, as not being reasonably foreseeable by FlooringXtra at the time of the contract as a possible result of a breach. In any event, I am not satisfied that the Homeowner is entitled to be compensated for his time in circumstances where he did not advise FlooringXtra immediately when the defects first appeared in May 2015, but instead delayed until after the water leak. The

Homeowner then put negotiations on hold for an extended period of time following the birth of a child. These delays contributed to the rejection of the claim by FlooringXtra. It may have resolved a lot sooner, and the issues with installation been addressed, if the Homeowner had notified FlooringXtra as soon as the defects appeared. The claim for compensation for time spent in dealing with the dispute and the associated costs is dismissed.

- 68 In summary, the Homeowner is entitled to a further \$2,000 damages from FlooringXtra for the expense of works required to put him in the position he would have been in prior to the floorboards being installed.

Costs

- 69 The Homeowner seeks reimbursement of his costs in the proceeding, including four days lost leave from his employer totalling \$5,184, the cost of the ATFA report (\$1,440), and the costs of attendance by the author of the AFTA report in the amount of \$440 per hour.
- 70 With regard to the Homeowner's claim for lost leave, a party who appears in person is not entitled to any loss suffered by attending the hearing. These are not costs envisaged by section 109 of the *Victorian Civil and Administrative Tribunal Act 1998*. This claim is dismissed.
- 71 I am satisfied that the Homeowner's engagement of an expert was a reasonable expense in this case and the evidence and opinions expressed, both in the report and at the hearing, were influential in the outcome of the proceeding. Because I consider that it is fair to do so having regard to the outcome of the proceeding, I consider that the Homeowner is entitled to be reimbursed the reasonable costs of the AFTA report and the attendance by the author of that report at the hearing. The hearing ran from 10am to almost 2.30pm. Allowing for fifteen minutes either side of the hearing, Mr Richardson was required to be at the Tribunal for five hours. I will make orders that the Homeowner's costs, fixed in the amount of \$3,640 (\$1,440 for the report and \$2,200 for five hours attendance at the Tribunal) be paid by FlooringXtra.

Fee reimbursement

- 72 The Homeowner paid the Tribunal the fee of \$458.60 to lodge the application. I am satisfied that the Homeowner made numerous attempts to resolve the issue prior to lodging the application (despite the delays referred to above) and has been substantially successful.⁴ As such the Homeowner is entitled to be reimbursed this application fee by FlooringXtra, and I will make orders accordingly.

K. Campana
Member

⁴ Section 115B of the *Victorian Civil and Administrative Tribunal Act 1998*.