

# CRACKS IN THE SYSTEM

The number of disputes in Victoria between home owners and builders is skyrocketing and trying to resolve them is often a long road to a dead end. Adam Carey reports.

**A**S AUSTRALIA switched on to the reality-TV trials of four couples renovating run-down Richmond homes on *The Block* this year, another couple were mired in their own real-life renovation horror story in the same suburb. But unlike in *The Block*, there has been no neat, cathartic ending for Sharon and Steven Harrison.

The Harrisons paid \$621,000 for an unrenovated house in Richmond in 2007 and it is now an uninhabitable shell that has not been worked on since last October.

They have spent more than \$100,000 and a year of their lives fighting two builders and two building surveyors who have worked on their home, three of whom are currently under investigation for allegedly shoddy work and negligent conduct.

"The entire affair has taken a huge toll on us, both personally and financially, and many in our situation would have faced financial ruin," Sharon Harrison says.

This couple is just two among many to have been ensnared in an intractable problem enveloping the Victorian domestic building industry, which is lumbered with an incoherent, tangled consumer protection system that all too often takes home owners seeking justice on a long journey to a dead end.

The Harrisons and their three-year-old daughter, Sarah, moved out of the Richmond house in July last year for what was meant to be a two-month, \$100,000 renovation job.

But they have been living in rented accommodation ever since after tearing up the contract with the first builder when it emerged that his work had breached the building code.

They then struck further troubles with his replacement, whose allegedly defective work has also

caused long and costly delays. Incredibly, a second surveyor signed off on this work, after issuing a building permit without the Harrisons' knowledge or consent.

"We never authorised a second surveyor, we just had a building permit arrive in the post," Ms Harrison says.

The fact the first builder's work breached the building code and intruded into the next-door neighbour's property by half a metre has prevented the couple from continuing to renovate their house, because they have had to apply to the City of Yarra for a new planning permit.

Last November the Harrisons complained to the Building Commission, which oversees the building control system in Victoria, about the surveyor who approved the first builder's work, alleging that his decision cost them vast amounts of time and money.

The commission wrote to the Harrisons last month — some 10 months after the complaint was made — to inform them it would not pursue the case against the surveyor due to "insufficient evidence available to warrant any further action".

Appalled, the Harrisons took their case to their local member of Parliament, who happened to be Premier Ted Baillieu, the member for Hawthorn. The Premier took up the case for the Harrisons, phoning the Building Commissioner to express his concern.

A few days later the commission made an about-face and reopened the case, telling the couple that it was "now of the opinion that an investigation into the conduct of the relevant building surveyor . . . is warranted".

It was a breakthrough for the Harrisons, but after months of fighting and costly delays they are scathing about the level of consumer protection that exists for home owners in Victoria.

"We feel very disheartened by the

Building Commission, and the Building Practitioners Board in particular, and feel that these organisations are simply quangos that have failed to fulfil their obligations towards consumers and put a stop to the activities of unscrupulous building practitioners," Ms Harrison says.

The Harrisons' case is indicative of a growing problem in the Victorian domestic building industry, which is experiencing a skyrocketing number of disputes between domestic builders and property owners. The rising number of cases is placing a strain on consumer protection agencies, which are scrambling to keep pace.

Victoria is the only state in Australia in which building disputes are handled by two separate government agencies — Consumer Affairs Victoria and the Building Commission.

Together, they run the building disputes resolution service Building Advice and Conciliation Victoria, which is designed to be "a one-stop shop for consumers and builders, providing free advice and assistance to resolve domestic disputes".

But home owners and builders alike complain that there is no "one-stop shop". The true picture is far more oblique, as home owners are bounced between the Building Commission, Consumer Affairs, Building Advice and Conciliation Victoria and the Victorian Civil and Administrative Tribunal.

The model favoured by the Building Commission for handling domestic building disputes is an on-site negotiation between the builder

and home owner, adjudicated by an independent umpire.

The number of these on-site conciliation processes has increased dramatically in the past two years: in 2010-11 the Building Commission handled 738 on-site conciliations between builders and home owners compared with 309 disputes in 2009-10.

The commission lauds its on-site conciliation model, saying it achieved a 94 per cent success rate last year in resolving disputes between builders and consumers.

"When you have an umpire attend on the site and she or he makes an informed but timely decision, my experience tells me the builder and consumer are prepared to accept that and get on with the job — a 94 per cent success rate bears that out," says Victoria's Building Commissioner, Tony Arnel.

Even so, the danger of getting bogged down in a backlog of disputes has led the commission to review its complaints-handling process in an attempt to speed things up.

"It's important that we're able to make sure there is a process in place that is a timely and cost-effective way of allowing people to resolve their issues," Mr Arnel says.

Consumer Affairs Victoria has also been grappling with a much greater workload. According to a spokeswoman, in 2009-10 it handled 2038 disputes between consumers and builders — 245 of them on-site, almost double the number of the previous year.

Indeed it champions on-site

conciliation, saying it successfully resolved 81 per cent of cases it dealt with in that time.

But neither agency keeps figures on how many complaints do not make it to conciliation, so the true number of disputes is not known.

Phil Dwyer of the Builders Collective of Australia, a group that represents domestic builders, says the figures given by the Building Commission and Consumer Affairs represent a fraction of the true number of disputes between builders and property owners.

"These are only the people who are willing to compromise or settle. They only form a small percentage of the complaints that exist," Mr Dwyer says.

He says the conciliation model is fatally flawed, because it is voluntary. No builder or property owner can be compelled to conciliate, forcing aggrieved parties to pursue legal action through the Small Claims Tribunal. Such cases have been known to drag on for months, costing tens of thousands of dollars.

Roughly 1 per cent of all domestic building jobs in Victoria end up in the Victorian Civil and Administrative Tribunal. Last year, VCAT heard 878 disputes between owners and builders. But the tribunal's rulings are not enforceable. Only the Supreme Court can deliver a legally binding ruling.

Another home owner who has experienced the system's shortcomings is Montrose woman Beverley Loyson. She made repeated, but futile, attempts through Consumer

Affairs to bring a builder to her home to talk out their differences.

Ms Loyson and her husband Paul have been at loggerheads with their builder since 2008, when it became apparent to them that his work did not match the construction plans they had signed off on for their home.

They say the builder has left them with an inferior home to the one that was contracted to be built.

Unlike the Harrisons' house, the Loysons' home is habitable, although it has a long list of building defects including skewed walls, shorting electrical fittings, floor tiles that have lifted and cracked and leaks from the roof.

Beverley Loyson says the property was meant to be their dream home but is so badly built they would gladly sell it, had they not been told by real estate agents that its defects would prevent them from getting a good price.

"You cannot put a price on the stress this has caused and we cannot walk away from it because the structure is failing in certain areas," she says. "The estate agents who have come to view the property have all stated categorically that they could not put this property on their books until these issues are resolved."

Ms Loyson initially presented a long list of different times she was available for on-site conciliation, but after two years and seven months of increasingly rancorous negotiations between her and the builder, in June Consumer Affairs admitted failure in its attempts to bring the two parties together and closed the case.

And any hopes the Loysons had that they could compel their builder to return to work on their house were dealt a grievous blow when they discovered last month that the builder had recently become insolvent.

Consumer Affairs has advised the Loysons that the only remaining avenue open to them is to pursue the builder through VCAT, but Ms Loyson says that after spending hundreds of thousands of dollars on her family's Montrose home, she cannot afford the legal fees.

"It's going to be cheaper for me to let him get away with it and get another builder to come in and repair the damage than it is to go through the process of VCAT," she says.

There are numerous cases in Vic-

toria of domestic builders entering into insolvency only to re-emerge as a new business entity within days as a way to escape an aggrieved client's claims for compensation.

Phil Dwyer says these "phoenix" builders are another symptom of the state's inadequate dispute resolution system. He says small builders sometimes go insolvent deliberately to avoid being sucked into costly disputes that can drag on for years.

"It's very unfortunate, but builders often allow themselves to go insolvent just to get rid of a claim," he says.

The Loysons are now hoping to claim on their builder's warranty insurance, which is payable when a builder dies, disappears or becomes insolvent.

But as *The Age* revealed earlier this year, the number of successful claims made on builders warranty insurance last year was minuscule, with just three home owners making successful insurance claims against their builders in the 12 months to June.

The warranty insurance is mandatory in Victoria, but is widely derided as next to useless for consumers. It has been labelled "junk insurance" by consumer group Choice.

Meanwhile, the Harrisons are at long last set to renew renovation work on their house in Richmond this week, having recently been granted a planning permit.

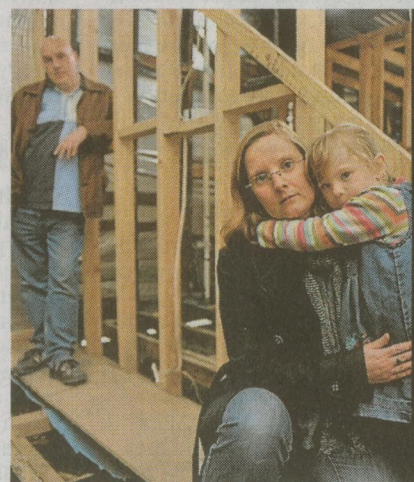
Also this week, the second builder and building surveyor who worked on the house will face the Building Practitioners Board, which will rule on whether their conduct warrants a reprimand or even deregistration. The Harrisons complained to the Building Commission about them last month.

Building Commissioner Tony Arnel insists Victorians should be confident — and for the most part are confident — about the state's building industry consumer protection system.

"We investigate every complaint that comes to us and if there is a prima facie case to answer then those cases are always referred to the Building Practitioners Board," he says.

But it is not surprising Beverley Loyson doesn't share Mr Arnel's confidence in the system. "The whole system is rotten," she says.

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**“You cannot put a price on the stress this has caused, and we cannot walk away from it.”**

Beverley Loyson (right)

The Harrison family (left).  
PICTURES: JOE ARMAO, WAYNE TAYLOR

