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Win for Nicheliving as State Administrative Tribunal puts builder's deregistration on ice

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The State Administrative Tribunal has granted a stay to Nicheliving's deregistration by the building sector regulator pending a major review, acknowledging the decision will prolong "uncertainty and distress" for some customers.

The Building Services Board decided not to renew the group's registration earlier this month, leaving its residential construction arm unable to carry out works.

But it also allowed frustrated and long-suffering customers to apply for up to \$200,000 in State Government-underwritten home indemnity insurance that can cover or contribute to the completion cost.



Moulina Sahai has been waiting for four years for her house in Alkimos to be finished. It has been vandalised. YES

More than 200 homes are yet to be completed, and 155 customers have lodged claims with the insurer QBE.

The board questions whether Nicheliving can pay its debts when they fall due, and the SAT has been told its property holdings are worth \$44 million compared to total debt of \$76 million.

But the group argued in the SAT that the board's decision was wrong, submitting that if the stay were not granted, the financial impact on the group would be

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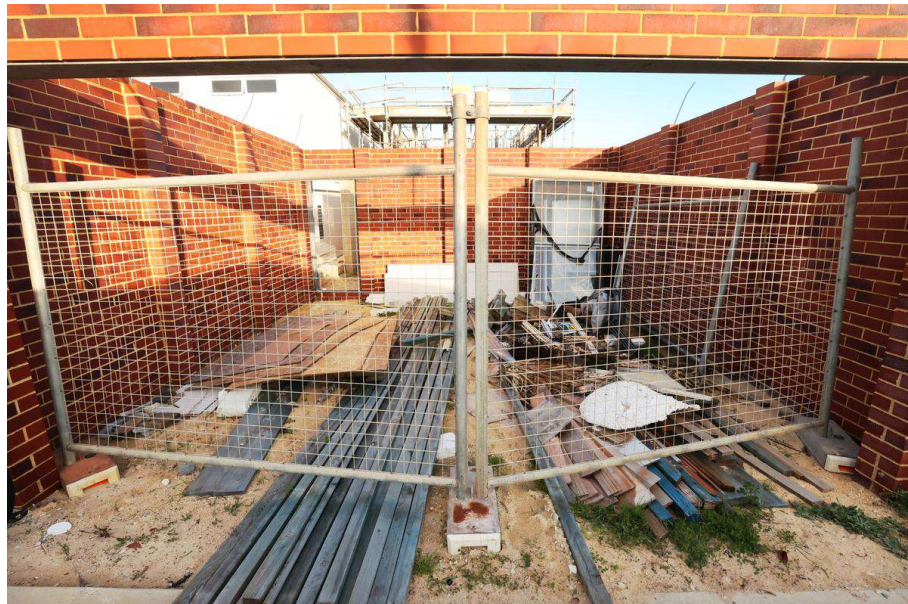
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“significant if not fatal”.

Nicheliving directors were concerned that they would be liable for indemnities, including being chased by QBE to pay back any insurance payout.

“We placed considerable weight on that factor,” SAT President Kathleen Glancy said on Friday.

Many disgruntled customers signed up to fixed-cost contracts in 2020 and 2021, when Nicheliving took on four years’ worth of work as the State and Federal Governments over-stimulated the sector at the height of the Covid pandemic.



Nicheliving is not allowed to take on new residential building work while its registration status is being resolved. YES

Nicheliving has admitted it focused on jobs inked in 2022 and 2023 as they were profitable, whereas those earlier contracts were not because costs had surged industry-wide.

Nicheliving told the SAT that it was unlikely, in a tight construction market, that customers could find other builders with the capacity to complete their homes in a timely fashion and that they would be better off sticking with them.

Justice Glancy said the tribunal could “place little weight” on QBE’s website listing alternative builders that may step in, acknowledging that some customers had been greatly relieved by the deregistration, feeling they could finally move on.

She said the SAT did not overlook the fact that the stay would prolong their uncertainty but said the review would be expedited.

Mediation has been scheduled for August 30 ahead of directions hearing on October 16.

Commerce Minister Sue Ellery said the decision was disappointing and would be “a blow” for long-suffering customers.

“The State Government and the board opposed the stay application in the SAT as we believe it’s not in the best interest for the many customers who are still waiting for their home to be built,” Ms Ellery told The West Australian.

“The State Government will continue to oppose Nicheliving’s appeal against its deregistration and we are extremely disappointed the appeal won’t be heard until November, despite State Government lawyers requesting an earlier hearing.



Commerce Minister Sue Ellery said the SAT's decision was disappointing. YES

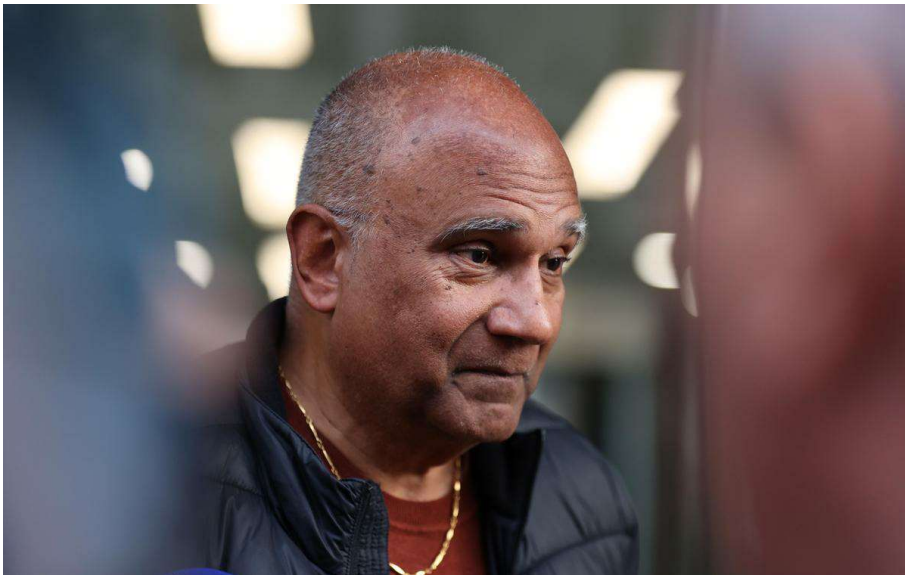
"While the SAT process continues, Nicheliving customers won't be able to progress home indemnity insurance claims through QBE.

"QBE will contact customers who have started the claims process to provide updated guidance."

Peter Symons, whose house is still unfinished after two and a half years, said the decision was frustrating, but it came as no surprise.

"What we really have to do is sit back and just bide our time for the mediation and for the final hearing to take place," Mr Symons told The West.

"You have to be patient. There's no point being jumping too early because you may make the wrong decision.



Peter Symons, whose house is still unfinished after two and a half years, said the decision was frustrating, but it came as no surprise.

"So it's a long time to wait, and of course, it's mentally draining."

Ben Sasson from Vogt Legal, which has about 50 Nicheliving clients on its books, including 19 who have instructed the company to issue notices of default, said the homeowners were in limbo.

"The biggest issue is that they're being left without much guidance from the Building Services Board or the insurer QBE," Mr Sasson told reporters.

"They're being told one thing one day and then another thing the next.

“Without proper legal advice, it’s a very, very hard field to try and manoeuvre through.

“And when you consider that building a home is likely to be a person’s biggest purchase, it just shows how big the stakes are.”



Ben Sasson of Vogt Legal.

Vogt Legal is stressing to clients to tread carefully, warning them that incorrectly terminating their contract could result in liability for damages – Nicheliving issuing for lost profits - and jeopardise their ability to claim insurance.

“Homeowners must get legal advice so they understand that there is a contractual necessity to give the builder a notice of default, warning of a pending termination, and, more importantly, when and how to exact a notice of termination,” director Will Vogt said.

“Subject to obtaining legal advice, Nicheliving homeowners can and should be issuing a notice of default for various breaches of contract committed by Nicheliving.

“They should not act on the notice of default until the tribunal delivers a decision dismissing Nicheliving’s application for review of the Building Services Board’s decision to not renew Nicheliving’s registration.”

QBE and Ms Ellery also strongly recommended that Nicheliving clients obtain independent legal advice before terminating their contract.

“Whilst a building contract with Nicheliving remains active, homeowners have not suffered a loss under the home indemnity insurance policy conditions,” the

insurer said in an emailed statement to The West.



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