



Pointing the finger: manufacturer and installer are blaming each other for a leaky pipes crisis.

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Len Buckeridge, who died at his desk in 2014 aged 77, was known as a businessman who never shied away from a fight, particularly with unions, “commies”, politicians, and bureaucrats.

He built his BGC Group from nothing into Western Australia’s biggest vertically integrated house builder and turned himself into a double billionaire in the process.

At the time of his death, he was ranked 17 on the *BRW* Rich List in Australia, with his wealth valued at A\$2.1 billion. In keeping with his battling persona, his family fought over his estate for years.

In August last year, the *Australian Financial Review* reported BGC had canned a sale process for the business, reported that April as involving Macquarie Capital, as its home building division was hit by a tight labour market and rising costs.

In August this year, litigation funder Omni Bridgeway said it had agreed to fund a proposed class action against BGC alleging breaches of the WA Home Building Contracts Act involving building delays and price increases for customers who entered into building contracts between July 2019 and June 2022.

The motivation for the action is reflected in scathing social media posts from customers whose language would make the Honey Badger blush.

In the middle of all this, BGC has put up its fists for a bareknuckle bout with New Zealand’s Fletcher Building over bursting pipes in thousands of Western Australian homes.

In essence, the dispute is a building industry classic – customer suffers costly problem, installer blames faulty product, manufacturer blames faulty installation.



BGC is headquartered in Perth, Western Australia.

Various numbers have been thrown around on liability but it's clear the stakes are potentially high, as in tens to hundreds of millions of dollars high, particularly for BGC.

The question on this side of the Tasman is the size of Fletcher's exposure. Now that we've heard presentations from BGC and Fletcher, the answer looks likely to involve lengthy litigation.

### Science

While we could summarise the arguments of both sides as 'our science is better than your science', which on balance isn't helpful, there are also holes in each case that let doubt seep in.

According to BGC, it has been using exclusively Fletcher's Iplex polybutylene pipes in its plumbing installations for 20 years.

However, the pipes are now bursting in homes built by its companies at the rate of 6.7 a day. From August 2021 to October 6 this year, it recorded 2003 bursts across 1118 homes, with bursts occurring at an increasing frequency over the period.

BGC said it had identified a pattern whereby 99% of the bursts were in homes built since 2017 using Iplex Pro-fit pipes made with Typlex-1050 resin, a raw material sourced from Ylem in Korea, one of the world's major resin suppliers. Previously a different resin had been sourced by Iplex from LyondellBasell, one of the world's other major resin suppliers.



BGC chief executive Daniel Cooper pictured during his company's presentation to analysts.

### **Stress cracking**

Theorising the resin was a factor, BGC commissioned tests from Dr John Schier of ExcelPlas, a specialist in polymer testing, which found the bursts were the result of environmental stress cracking and the propensity to crack was caused by the physical properties of the Typlex resin.

BGC said the testing also ruled out other potential causes, such as bending strain from faulty installation, chlorine damage, or water pressure.

It sounded a compelling argument at the time. However, a problem for BGC is Iplex piping was installed in about 15,000 homes outside WA, which do not appear to have had an equivalent failure rate.

BGC argues the pattern is just taking time to emerge in the more diffuse markets of the eastern states – and it's possible different construction methods produce different stress levels in the pipes – but the lack of data is a big hole in the Typlex theory.

There's also the problem that we don't appear to have any indication of failure in anyone else's pipes made from Typlex, which is another hole requiring explanation.

### **Flawed hypothesis**

Fletcher, for its part, says it has scientific testing showing the Typlex resin functions just as well, if not better, than the Basell resin.

Chief executive Ross Taylor told analysts: "The test regimes carried out by Schiers are selective and artificial and don't reflect the actual conditions. From those tests ... Schiers develops a flawed hypothesis."

Schiers's theory on molecular weight distribution "appears to be based on the wrong interpretation of the patent literature and aberrant test results," Taylor said.

So there's the scientific tit for tat, but Taylor said Fletcher had identified poor installation as the cause of most pipe bursts it had examined using data from 270 homes.



Fletcher Building CEO Ross Taylor.

### **Eroding standards**

The problem for Fletcher is the idea that poor installation could suddenly start to cause leaks in homes built since 2017, when the plumbing installations were done by several different plumbing companies, not just BGC.

Although the leak rate varies by installer in Fletcher's data, there are still significant failures across different installation firms.

It's odd that workmanship should "erode", as Fletcher puts it, so rapidly and so widely.

There's also the question of why Iplex changed resins in mid-2017. Asked to explain it, Taylor, who joined Fletcher in November 2017, said: "Who knows? I wasn't there."

"We just change resins, sometimes a supplier may stop a resin, there was no particular reason it was part of the normal review as we work through this, where's the best place to get a resin from for that particular product. It's a very normal process."

Given Fletcher says it spent the first four months of 2017 testing Ylem's product, "no particular reason" doesn't seem like an actual reason.

### **Uneconomic product**

It's also unfortunate that the bursting pipes problem has coincided with Iplex's decision to stop making Pro-fit, because it does look, well, a little bit suss.

Taylor said it was just a commercial decision.

"The bottom line is it was an uneconomic product that we stopped manufacturing in [March] 2021 ... Through the last few years we've been getting the Australian business focused on which products were profitable and then stopping ones that weren't. Basically Pro-fit was an unprofitable product line.

"It really only had high market share in WA. As the sales became smaller, it became unprofitable."

Having stopped making Pro-fit in early 2021, Fletcher says remaining stock was withdrawn from sale in mid-2022 once leaks became apparent.

"It was a precautionary measure," said Taylor.

"Until we work out what's going on we don't want to leave the product out there; that would have been irresponsible, so we pulled the product back off the shelves."

It's certainly a responsible thing to do, as is Fletcher's move to make A\$15 million available as an emergency repair fund.

Notably, BGC is not one of the companies registered to access the fund – a decision we could speculate involves BGC’s reluctance to let Fletcher look at its leaks and blame them on installation.

### **Liability**

However, withdrawing product is also consistent with a concern to minimise liability from selling faulty product – and faulty product liability is potentially much larger than faulty installation, since it could require re-piping of 32,500 homes – 17,500 in WA and 15,000 in the eastern states.

BGC has put what Fletcher describes as a “sensationalist” figure of A\$1.8 billion on that eventuality.

Sensationalist it may be but, if a product fault is ultimately to blame, even if re-piping isn’t required the potential cost over time could be closer to the hundreds than the tens of millions.

The stakes are high, then, but for BGC they are surely mission critical.

The company says it has so far spent more than A\$7m on repairs, including seven full re-pipes at A\$60,000 apiece, and has built 11,817 homes since 2017. A finding that its installations were at fault would release potentially crushing liabilities.

Each side is therefore strongly motivated to pin the blame on the other and it’s hard to see the strongly worded presentations from BGC and Fletcher as anything other than drawing battle lines for future litigation.

At last week’s presentation, Taylor’s frustration with yet another crisis at Fletcher was evident.

Regrettably for shareholders this one could weigh on the share price for quite a while.

*\*Disclosure: Interests associated with Tim Hunter own shares in Fletcher Building.*

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