



Standing Orders and Procedure Committee

REPORT 5/56 – SEPTEMBER 2016

CITIZEN'S RIGHT OF REPLY - CHAMPION HOMES

REPORTS
COMMITTEES

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LEGISLATIVE ASSEMBLY
NEW SOUTH WALES



LEGISLATIVE ASSEMBLY

STANDING ORDERS AND PROCEDURE COMMITTEE

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Terms of reference

The Standing Orders and Procedure Committee has been appointed to inquire into, and report on any matter relating to the Standing Orders or the procedures of the House and its committees.

Speaker's foreword

At a meeting of the Standing Orders and Procedure Committee held on 24 August 2016 the Committee resolved that Champion Homes should be given a Citizen's Right of Reply in response to comments made about the company by Mr John Robertson MP, Member for Blacktown, in the Legislative Assembly on 17 March 2016.

It should be noted that, in accordance with Clause 6 of the Citizens' Right of Reply procedure adopted by the Legislative Assembly on 15 September 2015, the Committee has not judged the truth of any statements made in the Legislative Assembly or Champion Homes' submission.

I commend the report to the House.



The Hon. Shelley Hancock MP

Chair

Chapter One – Champion Homes' request for a Right of Reply

- 1.1 In an email to the Speaker, dated 8 July 2016, Champion Homes sought a Citizen's Right of Reply in response to comments made by Mr John Robertson MP, Member for Blacktown, in the Legislative Assembly on 17 March 2016.
- 1.2 The Standing Orders and Procedure Committee (the Committee) concludes that Champion Homes should be given a Reply, in a form agreed to by Champion Homes and the Committee, and that it be published by the Legislative Assembly. Champion Homes' Reply can be found at Appendix One of this report.
- 1.3 In agreeing that a Reply should be given to Champion Homes it should be noted that, in accordance with Clause 6 of the Citizens' Right of Reply procedure adopted by the Legislative Assembly on 15 September 2015, the Committee has not judged the truth of any statements made in the Legislative Assembly or Champion Homes' submission.

Appendix One – Reply from Champion Homes to comments made by Mr John Robertson MP, Member for Blacktown

1. On 17 March 2016 the Member for Blacktown, Mr John Robertson, delivered a Private Member's Statement regarding housing within the Blacktown electorate. There are a number of factual inaccuracies in Mr Robertson's statement to the House which we wish to clarify for the record and to have placed in Hansard.
2. Champion Homes uses a standard building contract issued by the Housing Industry of Australia (HIA) and incorporates a number of special conditions. Consumers are supplied in advance with a copy of the contract which also contains a comprehensive consumer guide.
3. The special condition which has attracted the attention of Mr Robertson is a price escalation clause which is highlighted on the front page of the contract with the words "WARNING – The contract price may vary under this contract" and which provides for the contract price to increase by a nominated percentage if building works are not commenced within a stipulated time through no fault of the builder particularly at a time of rapidly increasing building costs.
4. Mr Robertson has commented on this clause and in doing so we believe he portrayed Champion Homes as being insensitive, greedy and uncaring, allegations which we categorically reject.
5. Mr Robertson's comments (in italics) and our responses are reproduced below:
6. *(D)ays before Christmas, you suddenly discover that your house is being held to ransom. The building company refuses to hand over the keys. It is asking for more than the agreed sum, more than the fixed price that you were given. It is asking for 3.75 per cent more than the agreed sum. The building company says that if you do not pay more money it will not give you the keys.*

We do not accept the statement that Champion Homes informed customers of price increases literally days before they were to take possession of their completed home. In most cases customers were advised early during construction that the contract price adjustment would be passed on. In some cases where a customer had difficulties to make the full final payment alternative arrangements were made. We reject the claim that customers were held to ransom.

7. *This has happened to more than 70 residents in the electorate of Blacktown who purchased home and land packages from Landcom and engaged a company called Champion Homes to build their homes. Champion Homes is a building company that has serious questions to answer about how it treats customers, families, who have contracted it to build their new homes.*

Although Mr Robertson claimed that there were questions that needed to be answered by Champion Homes, he did not contact us prior to making his statement in Parliament to seek our specific responses to the matters raised by him. Indeed, we became aware that one of Mr Robertson's constituents wanted to meet him and had asked for Champion Homes to be present as well. On the morning of the scheduled meeting, Mr Robertson's office advised the constituent that Mr Robertson was not interested in seeing any representatives from Champion Homes.

8. *It is not only the 70 residents in Blacktown who are affected; people who are building homes in an estate called Thornton, in the electorate of Penrith, have also had the same experience. Managing director Steve Malesev and business manager George Vardis (sic) have some serious questions to answer. They need to answer why Champion Homes is asking for 3.75 per cent extra in payment. The company has asked not one or two people but more than 70 in Bunya estate in Blacktown. Why are customers being abused, threatened with legal action and not properly informed about work on and progress with their properties during construction? Why did customers receive no notification of price variation before alleged additional work was commenced in the building of these homes?*

Mr Robertson has raised issues that touch on the development by Landcom (now UrbanGrowth NSW) of two new estates located in Bunya (Bungaribee) and Thornton (Penrith).

9. In the case of Bunya, Landcom invited a number of builders to tender to be part of a panel of four preferred builders and Champion Homes was one of them. The arrangement with Landcom was that a prospective purchaser would purchase a particular lot from Landcom and then enter into a building contract with one of the preferred builders in the estate to build a house. The process of obtaining development approval effectively involved a three step procedure. Initially, the builder was required to obtain a preliminary approval from the Bunya Design Review Panel that had been established to oversee the plans prepared by the four panel builders. Once the Design Review Panel had commented on the proposed plans and any amendments were made, it would issue a final approval (known as "DRP approval"). Upon receipt of the DRP approval the builder was in a position to complete and lodge the development application with the local consent authority, Blacktown City Council.
10. In most of the construction jobs which Champion Homes undertook at Bunya, purchasers wanted to modify the plans to suit their particular needs and in many instances sought to stretch the building design guidelines. Although Champion Homes was very prompt in its turnover of plans and designs, in our experience the delay between obtaining preliminary and final DRP approval often exceeded three months and this was before the application could be submitted for development approval by the Council.

11. In the case of the Thornton Estate, in early 2012 Landcom invited builders and developers to lodge expressions of interest to participate in that new estate. Landcom explained that the selected builders would be assigned to specific lots within the estate which would then be sold to the public as "house and land packages" with buyers being required to sign a building contract first, before entering into a separate contract for the purchase of the land. Landcom further noted in that invitation that it intended to register the subdivisions in December 2012, with construction of residential homes expected to be able to be commenced in January 2013, noting that tender prices would be fixed for a period of six months to allow enough time for sale and construction to start.
12. There were considerable delays experienced in the completion and registration of the subdivision of land at Thornton during the various staged releases of land. These delays were beyond the control of Champion Homes.
13. By way of example, part of the Stage 2C Release was stated to be ready for construction to commence in September 2014 but the land subdivision was not finalised until January 2015. In another case, Landcom had issued marketing material advising prospective purchasers that the prices were valid until November 2014. The land in question was further subdivided and registration was not finalised until August 2015, more than 9 months later. Only then was Champion Homes in a position to commence proper preparations for the proposed building works.
14. Champion Homes in good faith had fixed its building prices based on the projections provided to it by the developer as to the timing of the release of new residential lots.
15. *Steve Malasev (sic) has often refused to communicate with residents, directing them to Landcom, because Landcom is the developer, or simply ignoring their requests for answers. I tell their story and I pose these questions because numerous affected individuals have come to me with identical issues with Champion Homes. It seems unbelievable that, of the more than 70 houses that were built that I am aware of, they all had variations that equated to 3.75 per cent. It seems more than a coincidence that that is the case.*

Champion Homes built more than 300 homes in Bunya and approximately 80 in Thornton. In the Bunya Estate Champion Homes had not passed on any price increase in over 200 of those jobs. However, in the last 12 to 18 months price increases within the construction industry have been significant. Champion Homes has not issued price increases in every job it has built in Bunya.

16. *What I find more disturbing is the conversations that are carried out between the home builders and Champion Homes. They get hit with these variations and are told that if they do not pay the money they will not get their keys. When they say they do not have that money, the response to one particular almost homeowner was, "How much money have you got? Whatever you can afford, we will take." The fact is that this is a rort. It is very alarming that people who, in many instances, are looking to purchase their first home or their first new home are put in those circumstances, with their houses effectively held to ransom until they pay these fees.*

We do not accept the claim that customers were held to ransom or that they were coerced. In most cases, Champion Homes offered customers a substantial discount (which was accepted) and openly acknowledged that customers may experience difficulty but pointed out that as a builder it was unable to contain the rapidly increasing costs within the building industry as a result of the recent housing boom.

17. These pressures on building costs cannot be underestimated. For example, in its review of construction markets in March 2015 the quantity surveying firm WT Partnership pointed out that stronger levels of building work were driving a shortage of tradesmen, notably in trades such as formwork, partitions and linings, and concluded that significant price escalation was occurring in New South Wales and particularly in Sydney as subcontractors “take advantage of the wealth of project opportunities and are becoming increasingly choosy about the projects they take on”. The firm had previously predicted that in New South Wales there would be very strong pressure on prices and costs amid a significant ramp up of construction work with rates arising in structural trades by between 10 and 15% and this would have a flow-on effect in new residential building work.
18. It is concerning that Mr Robertson as a Member of Parliament has made comments that have adversely impacted on the professional reputations of a reputable builder and two officers of the company without first seeking to obtain their response to the allegations.
19. For those reasons we seek to have our right of reply incorporated into the Hansard to correct the record for what we believe is an unfair attack on Champion Homes.

Appendix Two – Citizens' Right of Reply procedure

(Adopted 15 September 2015, *Votes and Proceedings*, pp. 325-7)

That, during the current Parliament, unless otherwise ordered, the following Citizens' Right of Reply be adopted:

- (1) That where a submission is made in writing by a person who has been referred to in the Legislative Assembly by name, or in such a way as to be readily identified:
 - (a) claiming that the person or corporation has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person or corporation; and
 - (b) requesting that the person be able to have consideration given to an appropriate response being published by the Legislative Assembly or incorporated into Hansard,

and the Speaker is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Standing Orders and Procedure Committee;
 - (d) the submission was received within 6 months after the relevant comments were made in the House unless the applicant can show exceptional circumstances to explain the delay; and
 - (e) that it is practicable for the Committee to consider the submission under this resolution, the Speaker shall refer the submission to that Committee.
- (2) That the Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Legislative Assembly.
- (3) That if the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any Member who referred in the Legislative Assembly to that person or corporation.
- (4) That in considering a submission under this resolution, the Committee shall meet in private session.
- (5) That the Committee shall not publish a submission referred to it under this resolution of its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Legislative Assembly.

- (6) In considering a submission under this resolution and reporting to the Legislative Assembly the Committee shall not consider or judge the truth of any statements made in the Legislative Assembly or the submission.
- (7) That in its report to the Legislative Assembly on a submission under this resolution, the Committee may make either of the following conclusions:
 - (a) that no further action be taken by the Committee or the Legislative Assembly in relation to the submission; or
 - (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person or corporation and the Committee, be published by the Legislative Assembly or incorporated in Hansard by the Speaker.
- (8) That a document presented to the Legislative Assembly under paragraph (5) or (7):
 - (a) in the case of a response by a person or corporation who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
 - (b) shall not contain any matter the publication of which would have the effect of:
 - (i) unreasonably adversely affecting or injuring a person or corporation, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.
- (9) That a corporation making a submission under this resolution is required to make it under their common seal.
- (10) The provisions of Standing Order 306 do not apply to any report made by the Committee to the Legislative Assembly under this resolution.