

## Correspondence received by the committee – 23 June 2020

Dear Chair of the Public Accountability Committee

I am writing to you to clarify some matters raised in evidence on 11 December 2019 at the NSW Parliamentary Inquiry into the Regulation of Building Standards, Building Quality and Building Disputes regarding access to orders and decisions of the NSW Civil & Administrative Tribunal ('the Tribunal'), in particular relating to the decision of the Tribunal on a matter involving 'Biowood'.

Following the Inquiry I have corresponded with the President of the Tribunal regarding these matters, and have reviewed our internal processes for accessing orders and decisions of the Tribunal.

That review found that a staff member from the Policy Branch of the Better Regulation Division (BRD) contacted the Tribunal on 5 December 2019 to obtain a copy of the decision and was advised that it had not been published on the caselaw website as at that date. On the following day the staff member spoke with the Deputy Divisional Registrar and was advised that a copy of the judgment could be provided for a fee of \$92, due to the size of the decision. The Department of Customer Service Legal Branch formally requested a copy of the judgment on 6 December and was advised that the Registrar would deal with that request on Monday 9 December 2019. A copy of the decision was subsequently received on 9 December 2019 and the fee was paid.

These facts were conveyed to the Inquiry in evidence at the hearing on 11 December and represented the witnesses' knowledge at the time of the process to obtain a copy of the judgment.

However, I would like to make the following additional information available to the Inquiry. Under section 48S of the *Home Building Act* ("the Act") the Tribunal is empowered to advise the Commissioner for Fair Trading of any Order it makes under Part 3A of the Act, which deals with resolution of building disputes and building claims. The Tribunal regularly sends relevant Orders to the BRD Licensing team through a shared mailbox (HBS\_NCAT). This allows Licensing to update relevant records and to be aware in the event that the orders are relevant to its decision making and related matters.

Additionally, when a decision is reserved, as was the case here, Licensing may also receive the reasons for the decision. It has been recently confirmed that a copy of the Biowood decision was received in the dedicated email-box on 15 November 2019.

At the time in early December when officers were urgently seeking a copy of the decision no specific searches or requests were made with the Licensing team to see whether any details of the case had been received at that date or earlier. This led to the separate searches and formal request being made of the Tribunal, as set out above, to obtain a copy of the decision.

I can therefore confirm that the Tribunal does proactively provide NSW Fair Trading with relevant orders and decisions made under Part 3A of the Act, and did so in respect of this particular judgment.

If you have any further concerns on this matter I would be happy to discuss them.

Best regards

Rose Webb

**Rose Webb**

**Deputy Secretary**

**Commissioner for NSW Fair Trading**

Better Regulation Division | Department of Customer Service

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