

**16 October 2008**

*(General Purpose Standing Committee No. 4)*

**Portfolio**

**Fair Trading**

**ANSWERS TO QUESTIONS TAKEN ON NOTICE DURING  
HEARING**

**CAS Alerts - Ms Cusack asked-**

(pp. 14, 15)

- (1) Can the Minister advise the thresholds which trigger automatic alerts in the Customer Assistance System (CAS).
- (2) Can the Minister explain how the Office of Fair Trading's automatic complaint monitoring system works.
- (3) Can the Minister advise how many alerts have been generated.

**ANSWER**

- (1) Trader alerts are generated when the threshold value of enquiries or complaints received during a rolling period of 14 days is reached. Regional alerts have a threshold of three; state wide alerts have a threshold of five.
- (2) All enquiries and complaints received from customers in relation to marketplace issues are entered in a centralised Customer Assistance System (CAS) online.

Customers are also able to lodge online complaints through the Fair Trading web site.

The system will generate a trader alert depending on the threshold value of enquiries or complaints received during a rolling period of 14 days.

Once an early warning alert is received, further analysis is undertaken to assess the volume, nature and complaint trend. Depending on the results of the assessment, the following actions may be initiated:

- A Trader Liaison Officer (TLO) is appointed to initiate a co-ordinated response for all complaints with that particular trader;
- Instructions are given to all other staff to forward any complaint concerning that particular trader to the TLO.

Where necessary, further analysis is conducted to assess whether any breach of the legislation administered by the Office of Fair Trading can be identified.

Depending on the situation, one of the following actions will be taken:

- Visit by an Inspector to educate the trader on his/her rights and responsibilities;
- Assist the trader to resolve outstanding issues including guidance in setting up a complaint resolution process;
- Escalate any major breaches identified for further Investigation and Compliance/Legal action.

- (3) In the 2007/2008 financial year, the system generated automatic alerts in relation to 111 traders.

#### **CAS Trigger System - Ms Hale asked-**

(pp. 19 & 20)

- (1) Can the Minister advise whether complaint monitoring takes place over the entire period of a company's existence or during a set period only.

#### **ANSWER**

- (1) The automatic complaint monitoring system monitors complaint levels over a 14 day rolling period. If the number of complaints about a specific trader breaks the threshold over that 14 day period, an automatic alert is generated.

#### **Associations Incorporation Act - Mr Smith asked-**

(pp. 20 & 21)

- (1) How many incorporated associations are behind in the lodgement of their statutory returns and for how long have they been behind in the lodgement of their statutory returns?

#### **ANSWER**

- (1) Section 27 of the Associations Incorporation Act 1984 requires that annual statements must be lodged within one month of the date of the association's annual general meeting. The annual general meeting must be held within six months from the end of the financial year of the association.

As at 30 September 2008 there were 38,270 incorporated associations registered. The compliance rate for lodgement of annual statements has traditionally been relatively low at approximately 67%, partially because of the large number of incorporated associations that are not currently in operation.

Measures currently in place to improve compliance rates for lodgement of the annual statements include:

- reminder letters are issued to all new associations 18 months after incorporation, with follow-up action instigated if there is no response to this correspondence,
- a compliance program whereby follow up letters are issued to those associations where they have failed to lodge a return within the last 7 years, and
- as non-compliant associations are identified they are automatically issued with a follow-up letter.

Where there is no response to these initial measures, there is an escalation and follow-up process which may ultimately result in prosecution action being taken.

As an indication of the scale of these programmes, for the 2007/2008 financial year, approximately 3,000 compliance letters were sent, with another 2,300 letters sent asking the associations concerned to show cause why their incorporation should not be cancelled on the basis of non-compliance.

Wherever possible, associations are assisted to comply with their statutory obligations under the Act. In considering whether prosecution is an appropriate action it is important to note that the penalty for failure to lodge an annual statement, in the event of successful prosecution, is \$220.00.

In addition to the above programs, the Associations Incorporation Amendment (Cancellation of Incorporation) Bill 2007, assented to on 20 October 2007, has allowed the cancellation of a large number of associations previously identified as inactive for many years and possibly meeting the necessary grounds for cancellation without the need to incur the significant advertising costs required under the earlier provisions of the Act. This work has been undertaken on a staged project basis. To date the incorporation of more than 3,000 associations have been cancelled on this basis.

To assist associations in lodging, annual statement forms (Form 12) are readily available via the following avenues:

- by downloading from the Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au),
- from local Fair Trading Offices, and
- by telephoning the Registry on 1800 502 042.

## **Proactive Steps in Product Safety - Dr Kaye asked-**

(p. 21)

- (1) What proactive steps is Fair Trading taking to ensure that toys imported are not defective and dangerous?

### **ANSWER**

- (1) Fair Trading is committed to ensuring that toys supplied in NSW are not hazardous. Recent examples of unsafe toys which found their way onto the shelves led to an immediate response from Fair Trading which resulted in these toys being removed from shelves and appropriate ongoing restrictions placed on their supply.

There are significant penalties in place to encourage ongoing compliance with restrictions placed on toys. Suppliers face fines of up to \$22,000 for an individual or up to \$110,000 for a corporation for supplying products in contravention of a product safety standard or prohibition order.

While the importation of toys is ultimately the responsibility of the Commonwealth, through its oversight of the Australian Customs Service, Fair Trading is working collaboratively with the Commonwealth and other jurisdictions and industry to pro-actively deal with product safety issues, particularly in respect of toys.

In September this year, NSW took part in a Toy Summit chaired by Queensland. The focus of the summit was for Government and Industry to work to minimise the likelihood of hazardous toys entering the marketplace.

Fair Trading continues to actively monitor the NSW marketplace to ensure that any dangerous toys are removed from the marketplace.

During the lead in period to Christmas trading when toy sales are most prevalent, Fair Trading staff are active in visiting stores throughout NSW.

Last year alone Fair Trading conducted 743 inspections at retail stores and markets in more than 190 towns across NSW. Toys were the predominate products targeted during these inspections. The inspections targeted the 23 product safety standards and over 30 prohibition orders, of which 16 relate directly to toys. These proactive marketplace activities resulted in Fair Trading prosecuting 13 traders, issuing 16 infringement notices, the withdrawal of more than 160 varieties of unsafe products from sale and the formal caution of 46 suppliers.

Under COAG's national regulatory reforms, Fair Trading will continue to have an active participation in the marketplace and will work collaboratively with other jurisdictions to ensure that unsafe toys do not find their way onto NSW shelves.

## **Fair Trading Representation in Legal Proceedings - Ms Cusack asked-**

(p. 29)

- (1) How often in the past year has Fair Trading represented consumers in certain cases?

### **ANSWER**

- (1) During 2007-08 the Commissioner for Fair Trading, with the written approval of the Minister for Fair Trading, granted legal assistance under the *Fair Trading Act 1987* as follows:

- to 3 consumers for the conduct of proceedings in the Court of Appeal;
- to 1 consumer for the conduct of proceedings in the Supreme Court; and
- to 1 consumer for the conduct of proceedings in the Consumer, Trader and Tenancy Tribunal.

In 2008-09 to date, the Commissioner for Fair Trading, with the written approval of the Minister for Fair Trading, has granted legal assistance to 1 consumer for the conduct of proceedings in the District Court.

## **Guttering - Ms Hale asked-**

(p. 33)

- (1) Are you aware of a complaint inspection advice prepared by the Department of Fair Trading, which says:

It is my opinion that the overflow provisions to the guttering as installed are ineffectual and unfit for purpose. I am unable to form an opinion as to the cause of the cracks to the masonry, however, the guttering system as installed may currently be allowing water to enter the cavity, cause mould and cause structural instability in the long term if unaddressed.

On 6 March a meeting was convened by the Office of Fair Trading that involved representatives of plumbing and building industries, guttering manufacturers, Standards Australia and relevant government agencies. In a press release the former Minister for Fair Trading said there have been very few complaints.

- (2) Have there been many complaints to the Office of Fair Trading about guttering?
- (3) Has there been an increase in the number of complaints since the Minister issued that press release.

## **ANSWER**

- (1) The complaint inspection advice relates to a particular complaint handled recently by Fair Trading and, when read in its entirety, the inspection advice indicates that the problem involves an insufficient number of downpipes. Although outside the statutory warranty period, Fair Trading has successfully mediated the matter with agreement by the trader to undertake rectification work.
- (2) Complaints received represent less than 1% of total complaints received by Fair Trading.
- (3) Complaints received still represent less than 1% of total complaints received by Fair Trading.

## **Retirement Villages Bill - Ms Cusack asked-**

(p.38)

- (1) In relation to capital maintenance, what were the main changes that were made between the 2006 draft [consultation draft Retirement Villages Amendment Bill 2006] and the 2008 bill [Retirement Villages Amendment Bill 2008]?

## **ANSWER**

- (1) The main aspects of the capital works provisions in the revised Bill are essentially the same as contained in the consultation draft Bill released in 2006. The policy intent of the Bill was to shift away from the present system which requires residents to pay for maintenance and operators to pay for capital replacement. Respondents to the review of the Retirement Villages Act generally agreed that this system is not working well and creates unnecessary disputes between residents and operators over whether particular work is 'maintenance' or 'replacement'.

The Bill proposed that:

- maintenance and capital replacement be treated together as capital works;
- the costs of capital works be split between residents and operators as agreed, with residents paying no more than 50% of the costs involved;
- where a resident owns their premises, the cost of internal capital works be shared between the resident and the operator in the same proportion as they are to share any capital gains;
- residents be given the right to carry out urgent repairs and be reimbursed if the operator fails to arrange the repairs within a reasonable time after being notified.

All of the above amendments were carried across from the 2006 consultation draft Bill into the 2008 Bill which was introduced into Parliament. However, Parliamentary Counsel redrafted the capital works provisions to set out the policy intent more clearly. This resulted in the entire section being redrafted for clarity and the provisions renumbered.

This was done primarily in response to submissions and letters received in response to the consultation draft Bill which indicated that the intent of the amendments was not clear. A number of new provisions were also added to this part of the Bill in response to concerns raised by residents.

The main refinements made to the capital works provisions were as follows:

- A regulation making power was added to allow the maximum percentage that can be funded from residents' recurrent charges to be reduced;
- A definition of what constitutes 'urgent repairs' was added;
- The general obligations of operators and residents are better explained;
- Provisions about access to the Consumer, Trader and Tenancy Tribunal and the powers of the Tribunal are set out in more detail;
- All registered interest holders (i.e. long term leaseholders and strata lot owners) treated the same in terms of responsibility for work inside their residence;
- A list of items for which recurrent charges cannot be used was added;
- A regulation making power was added to include additional items which cannot be funded from residents' recurrent charges; and
- The process for obtaining resident consent was set out in a separate clause for greater clarity.

#### **Retirement Villages Bill - Ms Cusack asked-**

(pp.38 & 39)

- (1) What are the changes to the treatment of capital maintenance and capital replacement the Retirement Village Association referred to in its media release of 3 July?

#### **ANSWER**

- (1) Questions about a press release issued by the Retirement Villages Association should be referred to the Association.

Nevertheless, the main change to the capital maintenance and replacement provisions between the 2006 consultation draft of the Bill and the 2008 Bill introduced into Parliament was that this part of the Bill was redrafted and renumbered in order to clarify the intent of the legislation. Some subclauses and clauses were added to remove any confusion about the effect of these provisions and key regulation making powers were added to ensure that the system could be refined and adjusted, if necessary, once it has been in operation.

The main changes to the capital repairs provisions were:

- the addition of a regulation making power to allow the maximum percentage that can be funded from residents' recurrent charges to be reduced;
- the addition of a definition of what constitutes 'urgent repairs';
- a clearer explanation of the general obligations of operators and residents;
- more detail added to provisions about access to the Consumer, Trader and Tenancy Tribunal and the powers of the Tribunal;

- all registered interest holders (i.e. long term leaseholders and strata lot owners) treated the same in terms of responsibility for work inside their residence;
- addition of a list of items for which recurrent charges cannot be used;
- addition of a regulation making power to include additional items which cannot be funded from residents' recurrent charges; and
- the process for obtaining resident consent was set out in a separate clause.

**Residential Parks - Ms Hale asked-**

(p.41)

- (1) Dealing with the position of pensioners in residential parks, will you make representations to the Minister for Water, the Minister for Local Government, water suppliers, and the Local Government and Shires Associations to develop strategies that ensure that park residents have an unequivocal right to pensioner water rebates? You have made representations?

**ANSWER**

- (1) The former Minister for Fair Trading wrote to the Minister for Local Government in July 2007 in relation to pensioner rebates from water suppliers. More recently, I have written to the new Ministers for Local Government and Water Utilities seeking advice on the issue.

**Retirement Villages - Ms Cusack asked-**

(p.41)

- (1) Would you also provide an answer in relation to retirement villages as well?

**ANSWER**

- (1) As this issue has not been raised with me, I have not made any representations on the issue. However, I have asked the Department to look into the issue to determine if there are any impacts for retirement village residents and if appropriate, make similar representations to the relevant Ministers.

Virginia Judge, MP  
**Minister for Fair Trading**