

BUDGET ESTIMATES 2008-2009
(General Purpose Standing Committee No. 4)

Portfolio
Fair Trading

ANSWERS TO QUESTIONS ON NOTICE

Vero - Ms Hale asks-

- (1) Since becoming Minister for Fair Trading, have you met with anyone from Vero? When? What was the purpose of the meeting?

ANSWER

- (1) No.

Review of Retirement Villages Bill - Ms Hale asks-

- (2) Will the retirement Villages Bill be amended, prior to any further debate on it in NSW Parliament?
- (3) Given residents do not have a stake in any capital appreciation on resale of a retirement village (which goes to the owner), why should residents pay up to 50% of the cost of capital replacement, rather than the owner?

ANSWER

- (2) The Government is considering changes to the Retirement Villages Amendment Bill following additional consultation with the Retirement Village Residents Association, the Retirement Village Association and the Aged and Community Services Association..
- (3) Many residents do share in the capital appreciation of their retirement village residence when it is sold. The amount can vary depending on the village contract, but can be as much as 100 per cent. It should also be noted that, under the current system, residents do in fact pay for a range of capital replacement costs as well as all maintenance.

The current system of sharing capital works costs between residents and village operators has been shown to have a number of shortcomings and often leads to disputes. However, the proposed new model for sharing these costs has caused concern among some residents and, in response, the Government has committed to making changes to the Bill to address those concerns.

Guttering - Ms Hale asks-

- (4) Is it the case that the new guttering provided by Lysaught, if installed according to manufacturing instructions, the guttering is not in fact complying with the Building Code of Australia?

ANSWER

- (4) I am advised that Lysaught provide information pamphlets that provide some basic guidance on the installation of gutters. The provision of the information pamphlets does not exempt a plumber from their responsibility to comply with the Building Code of Australia or Australian standards. To assist plumbers, the information pamphlets designed by Lysaught also include a reference to the applicable Australian Standard. I have asked Fair Trading to review the installation instructions issued by all manufactures to ensure that they appropriately direct installers to their obligations to install their product in accordance with the Building Code of Australia and Australian Standards. I have also asked Fair Trading to issue a circular to builders and roof plumbers, which descriptively sets out the methods of installation that comply with Australian Standards and the Code.

Review of Residential Tenancies Act - Ms Hale asks-

- (5) How far off is a draft Bill following the review process?
- (6) Will an exposure Bill be circulated before it goes before Parliament?
- (7) Will there be anything in the Bill to regulate private rental rent increases, or to limit them, for example, to once a year?

ANSWER

- (5) The proposed final package of reforms to the tenancy laws has yet to be finalised. A draft Bill will also be prepared for consultation. It is anticipated that the Bill will be introduced into Parliament in 2009.
- (6) No decision has yet been made on whether an Exposure Bill will be circulated before the reforms to the tenancy laws are introduced to Parliament.
- (7) The issue of further regulation of private rental rent increases was raised in the review of tenancy laws. The Office of Fair Trading received a range of submissions in relation to this issue. The Government's position on this issue has yet to be finalised.

Interest on tenants' rental bonds – Ms Hale asks-

- (8) How was it determined that returns to tenants on bonds be fixed at only 0.01 per cent?

ANSWER

- (8) Since the introduction of the scheme to pay interest on rental bonds the rate of interest paid has always been linked to a banking product, currently the Commonwealth Bank's Streamline Account. Tenants receive 0.01% interest on bonds because that is what the Commonwealth Bank pays to its Streamline Account holders. The question of whether interest should continue to be paid on bonds, and if so at what rate, was one of the issues examined during the review of tenancy laws. The Government's final position on this issue has yet to be determined.

Home Warranty Insurance - Ms Hale asks-

- (9) In her evidence to the Upper House Inquiry into the Home Building Service the Commissioner for Fair Trading stated that the NSW taxpayer should not bear the risk associated with Home Warranty Insurance in NSW. Given that statement, who bore the risk of Home Warranty Insurance due to the collapse of HIH?
- (10) If any of the present insurers became insolvent, who would carry the risk?
- (11) Beechwood and other recent builder collapses in NSW clearly demonstrate the need for the Queensland model of consumer protection to be introduced in NSW immediately. Will your government do so?

ANSWER

- (9) When taken in context, the statement quoted, "that the NSW taxpayer should not bear the risk associated with Home Warranty Insurance in NSW", was directed more broadly at the options available for the delivery of home warranty insurance, including the option of a government operated scheme. As to the specific question of who bore the risk of Home Warranty Insurance due to the collapse of HIH, the risk was borne originally by policy holders. This was the situation for all classes of insurance provided by HIH. However, the Commonwealth and State Governments subsequently took action to put a rescue package in place that would allow policy holders to continue to rely upon the insurance policies that had been issued by HIH.

To this end, part 6A of the *Home Building Act 1989* provides that the State must indemnify any person who is entitled to recover an amount under a contract of insurance entered into under Part 6 of the Act in connection with any matter, and who is covered by an insolvent insurer's policy, to the extent of the amount that the person is entitled to recover under that policy in connection with that matter. The Building Insurer's Guarantee Fund is established for this purpose. The Fund consists primarily of money required to be paid into the Fund out of the Policyholders Protection Fund in accordance with section 16D of the *Insurance Protection Tax Act 2001*.

Section 16D of that Act provides that the Policyholders Protection Fund must be applied to meet expenditure from the Building Insurers' Guarantee Fund in connection with contracts of insurance entered into by declared insolvent insurers and all payments made from the Policyholders Protection Fund under section 16D are to be made in the amounts, on the conditions and at the times determined by the Treasurer. The Insurance Protection Tax Act 2001 imposes a tax on the total annual amount of all premiums received by insurers for general insurance as determined in accordance with the Act.

- (10) This would be determined by Governments if and when it occurred. It should be noted, however, that since the HIH collapse, safeguards have been put in place by the Australian Prudential Regulation Authority to improve the solvency of all Australian Insurers.
- (11) The Beechwood collapse indicates that the NSW consumer protection regime for homeowners is working. Vero Insurance Limited, the insurer handling the home warranty insurance claims of Beechwood customers, advises that to date it has:
- issued 314 new insurance certificates;
 - made 60 incentive payments of \$15,400 to the builder to assist with the recommencement of construction of homes totalling \$924,000;
 - accepted 64 of the unusual circumstance requests with an average pay out to claimants of \$2,744 to cover the costs of graffiti removal, repairing damage caused by vandals or damage due to exposure to elements while the Beechwood sale process was taking place;
 - paid ancillary costs of \$360,000 on 92 claims relating to rental, storage and removal costs equating to an average payment of \$3,899 per claim; and
 - authorised some 'non claimable' items such as air conditioners (where claimants were living in less than ideal conditions) and provided appliances to 29 homes at a cost of \$313,959.

I am advised that the new owners of Beechwood Homes have fully completed and handed over 50 homes and have recommenced construction on another 246 homes. The cost of claims under home warranty insurance policies issued by Vero to Beechwood customers has been estimated by the insurer at between \$6 million and \$7 million. The progress made by the new owner of Beechwood Homes and the home warranty insurer, Vero, demonstrates the consumer protection framework the Government has established is assisting consumers.

Home Building - Beechwood Collapse - Ms Hale asks-

- (12) When Beechwood Homes collapsed, how many home building contracts with Beechwood Homes existed?
- (13) Now four and one half months after the collapse of Beechwood Homes, how many of the houses to which those contracts related have been completed?

- (14) When Real Property Constructions in Queensland collapsed, how many people had contracts with Real Property Constructions?
- (15) Four and one half months after the collapse of Real Property Constructions how many houses to which those contracts related had been completed?
- (16) When comparing the consumer protection provided to homeowners in NSW and QLD is it still the opinion of the NSW Government that the NSW system provides the better consumer protection?

ANSWER

- (12) 350 houses were under construction.
- (13) 50 homes have been completed and work has recommenced on a further 246 homes.
- (14) Fair Trading has not been involved in that matter and the question should be referred to the Queensland Government.
- (15) See Question 14 above.
- (16) Both the NSW and QLD systems contain the same consumer protection elements within their framework. Both involve a free dispute resolution service which applies where the builder is in business and capable of being directed to rectify a problem of incomplete or defective building work. Both have home warranty protection which activates when the builder is no longer around or capable of fulfilling his or her responsibilities.

In terms of comparing dispute resolution services I am advised that the NSW dispute resolution service provided by Fair Trading was successful in resolving 86% of building disputes during the 2006/2007 financial year. Queensland's dispute resolution service provided information that showed that a successful outcome was achieved in 74% of their cases in the same year. NSW has consistently achieved an average of about 85% resolution of building disputes since the inception of the Home Building Service in 2003. Clearly, this aspect of the consumer protection framework is performing better comparatively.

It is difficult to directly compare home warranty protection, because of the differences in the extent and nature of the cover provided. Previous comparisons undertaken have indicated that premium rates for a range of building categories in NSW are half of their Queensland equivalent.

Home Building - Mc Faddens - Ms Hale asks-

- (17) Is it reasonable for the McFaddens, whose case was reported in the SMH on 22 September 2008, to be indemnified for the losses they have incurred, such as legal costs, cost of rectification and costs of works over that are over above the original contract price, due to the actions of a builder?

- a. If they are entitled to be indemnified who will provide that indemnity?
- b. What form will that indemnity take?

(18) What steps are being taken by the Office of Fair Trading to ensure such situations do not reoccur?

ANSWER

- (17) If the builder is unable to undertake the necessary rectification works as ordered by the Consumer, Trader and Tenancy Tribunal or a court because of death, disappearance or insolvency, the home warranty insurance policy in place for the project will cover the homeowner for the costs involved in having the project completed. This will include cover for loss or damage arising from a breach of a statutory warranty for a period of 6 years for a structural defect and 2 years for a non structural defect and legal or other reasonable costs incurred in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (18) The Home Building Amendment Bill 2008 recently introduced into Parliament will, when passed, allow consumers to lodge a claim with their insurer if their builder fails to comply with a monetary order of the Consumer, Trader and Tenancy Tribunal. This will enable homeowners to more quickly make a claim so they can complete the construction of their home and have any defective building work rectified. It is also open to consumers to seek dispute resolution through the Office of Fair Trading.

Home Building - Conduct of Cavalier Homes (Gold Coast) - Ms Hale asks –

- (19) How many complaints about Cavalier Homes (Gold Coast) have been lodged at the Office of Fair Trading?
- (20) How many applications against Cavalier Homes (Gold Coast) have been lodged at the CTTT?
- (21) Was Mr Tony Younan the nominated supervisor and owner of Cavalier Homes (Gold Coast) who was the builder that caused Mr Siebert to incur losses of approximately \$300,000 as reported in the Sydney Morning Herald and Northern Star newspapers?
- (22) Was it the same Mr Younan who was investigated by OFT and was considered by the OFT to have misled the CTTT?
- (23) Was it Cavalier Homes (Gold Coast), owned by the same Mr Younan and a parent company T&T Building also owned by Mr Younan that failed to comply with agreements made with the OFT?
- (24) Was it Cavalier Homes (Gold Coast), owned by the same Mr Younan and a parent company T&T Building, also owned by Mr Younan, that failed to comply with orders from the CTTT?

- (25) Was it the same Mr Younan who established T&T Building (Prestige), which was given a contractors licence during the period of litigation with Mr Siebert, effectively creating a phoenix company?
- (26) Is it the same Mr Younan to whom the Office of Fair Trading continues to provide builders licence No 46949C?
- (27) Is T&T Building Prestige a company, licence no 166286C owned by the same Mr Younan's relative who continues to use Mr Younan as a Nominated Supervisor?
- (28) Does the Director General consider Mr Younan a fit and proper person to hold a contractors licence?

ANSWER

- (19) 14.
- (20) 12 applications in total have been lodged with the Consumer Trader and Tenancy Tribunal where Cavalier Homes (Gold Coast) Pty Ltd was listed as the respondent. The first application was received in 2004.
- (21) Mr Tony Younan was the director and qualified supervisor for Cavalier Homes (Gold Coast). The Tribunal determined that Mr Siebert should receive \$77,553.60 from the company.
- (22) The Tribunal made its findings in the Siebert case against Cavalier Homes (Gold Coast) Pty Ltd on the balance of probabilities on the evidence provided. Subsequent inquiries made by Mr Siebert with the Tribunal raised the possibility that the Tribunal was misled by the other party to the proceedings contrary to section 71 of the *Consumer, Trader and Tenancy Tribunal Act 2001*. On 3 May 2007, Mr Siebert was advised by the Tribunal that the Tribunal had no power to investigate or prosecute the allegations but that his allegations had been referred to the Office of Fair Trading for investigation.

Mr Siebert alleged to Fair Trading that the builder and its legal representatives provided a number of fraudulent and misleading pieces of evidence to the Tribunal. The Home Building Service reviewed the case, including the Tribunal's file on the matter, to determine whether there had been any breaches of legislation. I am advised that the Home Building Service found no evidence of any fraudulent evidence being provided by Cavalier Homes or its legal representatives.

The Home Building Service also investigated the issue of defective work by Cavalier Homes to determine whether disciplinary action against the company would be appropriate. As Cavalier Homes was no longer licensed, no action was taken in this regard. However, disciplinary action was taken against the director and supervisor of the company, Mr Younan, and a penalty of \$10,500 was issued against him. Mr Younan appealed the decision to the Administrative Decisions Tribunal, which ordered that the penalty be reduced to \$5,500.

- (23) Mr Younan was the director and qualified supervisor for T&T Building Pty Ltd. He resigned as director of the company in February 2006 and remains as one of the two supervisors. I am advised that there is no indication that T & T Building is a “parent company” of Cavalier Homes.

At the initial mediation between Cavalier Homes, Mr Siebert and Fair Trading’s building inspector, the builder made agreements to undertake certain works. However, on gaining subsequent access to the property, Mr Siebert identified further issues and decided that the matter was best dealt with through the Consumer, Trader and Tenancy Tribunal. Any agreements or orders through Fair Trading’s dispute resolution service become void once a matter is taken before the Tribunal for determination. The builder had not complied with his agreement to undertake work prior to Mr Siebert’s decision to pursue the matter through the Tribunal.

- (24) As stated above, Mr Younan was the director and qualified supervisor for T&T Building Pty Ltd. He resigned as director of the company in February 2006 and remains as one of the two supervisors. I am advised that there is no indication that T & T Building is a “parent company” of Cavalier Homes.

Cavalier Homes (Gold Coast) Pty Ltd was issued with a money order of \$77,553.60 by the Tribunal, which Mr Siebert sought to enforce. However, the company failed to pay and Mr Siebert initiated proceedings in the Supreme Court to wind up the company.

- (25) Prior to Fair Trading initiating disciplinary action against Mr Younan for defective work, Mr Younan surrendered the license of Cavalier Homes and applied for another license under the company name of T & T Building (Prestige) Pty Ltd. The license for T & T Building (Prestige) Pty Ltd was granted in June 2005. I am advised that at the time Mr Younan lodged his application, no action had been taken against Cavalier Homes by Fair Trading’s Home Building Service nor had the Tribunal made any findings against Cavalier Homes. Accordingly, Mr Younan was granted the license for T & T Building (Prestige) Pty Ltd. Mr Younan ceased being a director of the company in February 2006, but remains one of its two supervisors.

- (26) In May 2008 the Home Building Service refused to renew Mr Younan’s individual contractor licence (46949C) on the ground that he was a director of Cavalier Homes, which was under administration. This action was taken under clause 39A(1)(C) of the Home Building Regulation.

Following a request from Mr Younan’s solicitor for an internal review, the decision was overturned. The officer undertaking the review, the Co-ordinator Licence Review and Audit, took the view that, pursuant to clause 39A(1A) of the Regulation, there was no risk to the public and further, that Mr Younan had taken all reasonable steps to avoid the company being placed into administration. However, Fair Trading is currently revisiting the issue to ensure that its determination to renew Mr Younan’s licence (upon internal review) was correctly made.

- (27) See question 25.
- (28) Mr Younan has been fined under Fair Trading's disciplinary regime for his part in the Siebert matter. This is the only conduct issue relating to Mr Younan that has arisen since he became a licensed builder in 1994. Nevertheless, as stated in 26 above, Fair Trading is reviewing the decision to renew his personal licence under current legislative and regulatory provisions.

Residential Parks – Rent Increases – Ms Hale asks-

- (29) What is the justification for park owners to automatically be able to increase rent up to CPI, when there may be no improvement in facilities or amenity of a residential park, and without having to demonstrate an increase in costs?
- (30) Is the current s.58 of the Residential Parks Act anti-competitive, as it allows the industry a rental increase for doing nothing in return?
- (31) Is s.58 adding to the inflationary pressures on park residents (pensioners) who are feeling the brunt of a high CPI?
- (32) Should the onus of proof be placed on the park owner, (rather than the park resident) to justify that the rent increase is not excessive?

ANSWER

- (29) Residential parks are run by their operators as a commercial business and they will need to increase fees from time to time as their expenses increase. Following the 2005 review of the Residential Parks Act, an amendment was made such that the Tribunal was unable to rule that an increase was excessive if that increase did not exceed the CPI movement for the period since the last increase.

This encourages park operators to keep their rent increases to the level of the CPI for the period. Prior to this there were very large numbers of excessive rent increase applications to the Tribunal, which have continued to decline since the amendments.

- (30) Most businesses find that their expenses increase over time, so that they need to charge a higher amount for the same goods and services. Section 58 seeks to encourage park operators to limit the increases in rent to covering their cost increases. Park operators are not required to increase their rents, and are free to compete with other parks on rents, services and facilities offered to residents.
- (31) Pensions are reviewed on a regular basis, and the CPI is the basis of pension increases. Section 58(2A) encourages park owners to limit their rent increases.
- (32) It is a foundation of our legal system that in civil matters the applicant is required to prove their case on the balance of probabilities. In the case of residential parks matters, it is the residents who are claiming that the increase is excessive and they therefore are required to provide evidence to support their case.

A change in the onus of proof could lead to a significant number of applications before the Tribunal. For every rent increase above the Consumer Price Index, residents would only need to refuse the increase, thereby requiring the operator to go to the Tribunal to prove it is not excessive. There would be no disincentive to residents opposing the increase on vexatious grounds given that they would have nothing to lose by rejecting the increase nor would they have to prove anything once the matter got to the Tribunal.

Residential Parks – Access to Government funded rebate and relief schemes for water or electricity – Ms Hale asks-

- (33) The majority of permanent residents on residential parks cannot access the Energy Accounts Payment Assistance (EAPA) program or receive Water Accounts Payments Assistance (WAPA) that are available to the general community. These programs offer assistance to people who fall into arrears with their electricity and water payments. This is because the majority of park residents are not customers of the local electricity or water supply authority. They have no option but to purchase their electricity and water from the park owner. Will the Minister speak to the state Water and Energy Ministers (and any relevant Federal Ministers), about this anomaly?
- (34) Will you implement changes to the Residential Parks Regulation 2006, that were promised by the Minister for Fair Trading in the second reading speech of the Residential Parks Amendment (Statutory Review) Bill, to overcome this problem?
- (35) Will you implement changes to the Residential Park Regulations 2006 to prohibit additional terms being included in the agreement that would allow park owners to allocate rent payments by residents to any other charges they see fit?

ANSWER

- (33) 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.
- (34) The previous Minister stated in the second reading speech that *“Billing and charging arrangements for electricity, water and gas supply will be made more consistent and more closely aligned to utility services provided to members of the community living in conventional housing in the same locality.”*

I am advised that the Minister was referring to the amendments being introduced in the Residential Parks Amendment (Statutory Review) Bill, and made it clear that the park owner would not be able to bill the resident more than they would be charged if they were living in another form of housing in the same locality.

- (35) Section 40 of the Act provides that any amount paid as rent by a resident must be applied to rent and not applied to any other outstanding charges payable by the resident, unless the agreement specifically provides otherwise.

This issue has not previously been raised with me, but the matter will be considered when the legislation is next reviewed.

Residential Parks - Commonwealth Rental Assistance Payments – Ms Hale asks-

- (36) In regards to Centrelink Commonwealth Rent Assistance payments – the Single pension threshold for site fees is \$119.00, but for married couples it is \$145.00, however they each pay the same site fees. Will you take this up with the Federal Minister?

ANSWER

- (36) The method for determining rent assistance payments is a matter of Commonwealth government policy.

Residential Parks – Training for park owners and managers – Ms Hale asks-

- (37) Real estate agents are required to be licensed and must undergo training. Should Residential Park owners and managers have to undertake a six-week course (e.g. at TAFE) on how to run a residential park in order to gain a licence?

ANSWER

- (37) There is no evidence that widespread problems exist which would be addressed by licensing of park owners. In a similar way, there has been no evidence provided to Fair Trading that lack of particular knowledge or skills on the part of park managers is causing a high level of problems in residential parks.

Residential Parks - Funding for resident organisations – Ms Hale asks-

- (38) Should funding for volunteer residential organisations such as residential park residents associations receive some funding from Fair Trading?

ANSWER

- (38) Fair Trading administers a range of community grants programs. Any eligible individual or organisation may apply for funding in accordance with the grants program guidelines.

Residential Parks – Pitfalls of buying a new manufactured home – Ms Hale asks-

- (39) Will the Office of Fair Trading conduct an investigation into the sale of manufactured homes to residents which sometimes have a huge mark-up compared to the manufacturer's price?
- (40) Will the Office of Fair Trading put together a campaign to warn prospective buyers about the financial implications of this lifestyle and the significant losses that can be incurred?

ANSWER

- (39) Goods and services available in the marketplace are not subject to price control, and this includes manufactured homes. Fair Trading recommends that consumers always shop around to compare prices and quality before buying goods or services.
- (40) The Office of Fair Trading produces the information booklet *Residential Park Living* and a range of fact sheets for residents living in or moving into a residential park. There is extensive information available on Fair Trading's web site, including warnings to prospective residents of the potential costs involved in living in a relocatable dwelling in a park. Fair Trading also funds a network of tenants advice and advocacy services, including the Parks and Village Service, to provide information and community education for residents.

Fleet Cars - Ms Hale asks-

- (41) What is the percentage of hybrids in the car fleet associated with the Office of Fair Trading?
- (42) Is there a mechanism within the agency to reward staff who choose not to exercise an entitlement to a fleet vehicle as a part of their package but use public transport instead?
- (43) What car does the Commissioner drive?

ANSWER

- (41) The Office of Fair Trading's car fleet consists of two Hybrid vehicles (i.e. Toyota Prius). This represents 1.3% of the total fleet.
- (42) There is no such mechanism. The Office of Fair Trading is required to conform with NSW Government policy in relation to salary packaging arrangements for eligible staff members who decide to access fleet vehicles. Staff are generally encouraged to use public transport when it is convenient and appropriate to do so. Staff may opt to purchase public transport tickets as part of salary sacrifice arrangements.
- (43) The Commissioner for Fair Trading drives a Honda Civic.

Compliance with the Building Code of Australia for the installation of "High front" guttering systems – Ms Hale asks-

On 27 September 2007, Darrel McIntyre, Principal Building Investigator, Building Investigation Branch, Home Building Service, wrote to Jason Higgins Plumbing Pty Limited, wrote to Jason Higgins Plumbing Pty Limited. In his letter (**copy attached**), Mr McIntyre said:

'Re: Compliance with the Building Code of Australia for the installation of "High front" guttering systems.

'Further to our meeting on 14 September 2007 I confirm the Fair Trading position is that the installation of any guttering system by qualified plumber and roof plumber is to be in accordance with the requirements of the Building code of Australia and the Australian Standard AS500.3.2003.

'The installation of all roof drainage systems must be designed so that any overflow during heavy rain periods is prevented from flowing into the building.

'Failure to comply with the code and standards may be deemed defective work and could cause significant structural damage to the building as a result of water penetration. This may result in significant financial loss to the consumers.

'None [sic] compliance with the BCA by plumbers and roof plumbers is seen as defective work and would result in disciplinary action being taken against the licence holder.'

- (44) At the meeting on 14 September 2007 and in telephone calls did Mr Higgins point out that the method of installation of high front gutters stipulated by manufacturers and involving the use of spring clips made it impossible to comply with the relevant provisions of the BCA?
- (45) Did Mr Higgins indicate that it was only as a result of his experience in dealing with complaints about leaking rooves in the aftermath of very heavy rainfall in the Hunter area that he realised that the method of attaching high front gutters required by gutter manufacturers if the work was to be covered by manufacturer's warranty made compliance with the BCA impossible?
- (46) Did Mr Higgins indicate that other plumbers, council inspectors and TAFE teachers to whom he had spoken were unaware that the method of gutter installation using the manufacturer's recommended method and spring clips made compliance with the BCA impossible?
- (47) Prior to Mr McIntyre's discussions with Mr Higgins, was Mr McIntyre aware of the compliance problem?
- (48) Did Mr McIntyre send his letter stating that non-compliance by plumbers with the BCA would be viewed as defective work "and would result in disciplinary action being taken against the licence holder" or letter along similar lines to:
- a. any other plumber or plumbers association
 - b. any local government inspectors or local government organisation
 - c. any private certifiers or certifying body
 - d. any builders or building association
 - e. architect or architects association
- (49) If not, why not?
- (50) If not, was the intent of writing solely to Mr Higgins an effort to silence his concerns about the installation of high-front gutters.

- (51) Did Mr McIntyre either prior to or after the sending of the letter to Mr Higgins on 27 September 2007 meet Mr Higgins in Cessnock?
- (52) If so, did Mr Higgins point out to Mr McIntyre that in his view the 40mm holes drilled at frequent intervals in the gutters of the Centrelink building in Cessnock were unable to prevent water overflowing into the building in heavy rain events?
- (53) Is it correct that, despite the presence of these holes, water continued to backflow into the interior of the building?
- (54) Did Mr McIntyre ever inform Mr Higgins that he had spoken to the manufacturers of gutters and they had assured him that the provision of slots in gutters was sufficient to prevent any backflow into wall cavities?
- (55) Does the Department still persist in the view that slots in gutters are sufficient to handle any overflow from high-front gutters?

ANSWER

- (44) Officers from Building Investigation Branch met with Mr Brian Higgins and his two sons in his Cessnock offices on 14 July 2007. He stated that in his opinion the high front guttering systems marketed by the major roll formers did not comply with the BCA: that is, in overflow situations rain water would flow back into the box gutters and the wall cavity of the house. At this meeting Mr Higgins or his sons did not disclose to officers that he had developed a patented gutter gripping system which he was trying to launch on the market.
- (45) Mr Higgins did raise this issue and presented this view to Fair Trading.
- (46) Mr Higgins had formed the opinion that other plumbers, council inspectors and TAFE Teachers were not aware of this alleged issue.
- (47) No. Subsequent consultations held with industry experts also made clear that they were unaware of any compliance problems with this product, which I am advised has been in use for the last 17 years approx.
- (48) No. Mr Higgins sought advice in respect of compliance action that Fair Trading may take in the case of defective work having been carried out by a licensed plumber/ roof plumber. The attached letter was only sent to Mr Higgins.

I am advised this letter was provided as advice directly relating to alleged defective work his son Jason was investigating on behalf of an insurance claim and rectification of work as a result of an insurance claim. This letter was not forwarded to any other organisation.

- (49) See 48.
- (50) No. The letter was provided to Mr Higgins to identify to him the compliance actions that Fair Trading may implement in the event of sufficient evidence to support a complaint of defective or poor workmanship.

(51) Yes. Mr McIntyre had met with Mr Higgins in his office on one occasion. However, he had spoken to Mr Higgins on a regular basis about his issues by telephone. It was only during these subsequent conversations that Mr Higgins disclosed that he had a particular commercial interest in an alternative product to replace the spring clips in high front gutter systems.

(52) Mr Higgins' son, Jason, took Fair Trading officers on a tour of a sample of an alleged problematic site in the Cessnock area, being the CentreLink offices in Vincent Street Cessnock. The building exhibited signs of water overflowing into the eaves of the building and some subsequent damage to the internal lining of the building which Mr Higgins had inferred was caused by overflow from the gutters. The officer from the Office of Fair Trading could not tell if there were any other water penetration issues involving installation of roofing materials or valley flashings that may have contributed to the visible damage. This is a commercial building and therefore outside Fair Trading's usual jurisdiction.

Jason Higgins alleged that the overflow provisions of the BCA had not been adhered to thus the failure in the guttering system. Mr Higgins jnr. had drilled 40mm holes at various points along the gutter which did correct the problem. Mr Higgins was of the opinion that the problem was that the down pipes and the subsoil drains were not big enough to carry the volume of water. Clearly this is a failure of the total roof plumbing design of this building and not solely attributable to poor performance of high front slotted gutters.

(53) Mr Higgins did make these assertions, but the officer from the Office of Fair Trading was not in a position to support or refute the assertion.

(54) Yes. Information from the major manufacturers of high front gutters indicated that the slotted gutters would allow adequate overflow provisions under normal circumstances. I am advised that brick veneer and double brick cavity homes are designed to address water egress into the boxed eaves and the cavity brick wall by the use of flashing and weep holes at the bottom of the walls.

Fair Trading has received minimal complaints in relation to the issues outlined by Mr Higgins. Less than 1% of total complaints made to Fair Trading relate to the installation of guttering.

(55) The Office of Fair Trading does not endorse any materials, products or construction techniques. Fair Trading has never held the view that a slotted gutter on its own will be sufficient to handle an overflow. It is the Office of Fair Trading's position that the installation of a slotted gutter is one of a number of methods that can be employed to enable a plumber to comply with the requirements of the Building Code of Australia and Australian Standards. It is incumbent upon the person who installs the guttering system to ensure that the system will provide overflow protection for the rainfall that could typically be expected in the area where the building is being constructed. For example, it would be pointless to design a guttering system that could cope with a tropical downpour if the home is being built in Broken Hill

In installing a guttering system, a plumber may calculate that additional overflow protection such as slotted rainwater heads, a gap between the fascia and the gutter and/or additional down pipes may be needed as dictated by the Building Code of Australia. Despite extensive consultation with industry experts Fair Trading has not found any systemic problems with installation where high front gutters are being used.

This notwithstanding, Fair Trading will be checking to ensure that the manufacturer's installation instructions draw the installers attention to compliance with the Building Code and Australian Standards. Fair Trading will also be issuing a descriptive, instructive circular to builders and roof plumbers which sets out how to ensure the installation of guttering complies with the Code and Standards.

Builders Warranty Insurance Premium - Ms Hale asks-

- (56) Does the revenue from the Builders Warranty Insurance Premium go to consolidated revenue?
- (57) What are the catastrophe re-insurance arrangements referred to by the then Minister on 16 May when she said in respect to claims on an insurer over \$10M: Any additional amount required will be covered by the NSW Government's catastrophe reinsurance arrangements which are funded through the premiums on written policies. Any suggestion that taxpayers will be slugged is just nonsense?
- (58) Where would the money come from if the claims for a single event exceeded \$10M?
- (59) Would taxpayers of NSW be exposed to any risk if the claims for a single event exceeded \$10M?

ANSWER

- (56) This question should be referred to the Treasurer.
- (57) Due to the insurance crisis that arose in 2001/02, individuals and insurers alike experienced a high increase in the cost of insurance, while concurrently the cover available was being diminished. In New South Wales and Victoria reinsurers of builders warranty withdrew from the market. This resulted in insurance companies being unable to obtain reinsurance protection for risks above their retention levels leaving them unable to provide insurance coverage to Home Building contractors.

The Government intervention ensured that insurers remained in the builders warranty market, thus enabling builders to obtain insurance and not leave the consumer at risk of having no recourse for claims arising from construction faults in homes and high rise buildings.

The Government agreed to provide reinsurance protection to two of the three existing insurers, Dexta Corporation Limited (backed by Allianz Insurance) who had around 40% of the market and Royal Sun Alliance Australia Limited (now VERO Insurance) who had around 60% of the market. The third insurer was Reward Insurance who withdrew from the market due to its inability to meet APRA capital adequacy requirements. Dexta Corporation Limited later withdrew from the market on 31 December 2002.

The Government has since entered a similar agreement with QBE and CGU (IAG Re), and continues arrangements with Vero.

Reinsurance is the insurance cover taken by insurance companies. Reinsurance enables insurance companies to spread their risk for losses above predetermined limit and minimise their exposure to large claims for catastrophic incidents that would generate large numbers of claims.

- (58) While the management of these arrangements is the responsibility of the NSW Self Insurance Corporation as a branch of Treasury, the collected money is received into the Crown.
- (59) No, taxpayers will not be exposed to any risk.

Questions from Ms Cusack – Ms Cusack asks-

- (60) What is the procedure consumers should follow to make application to the Minister for Fair Trading for legal assistance?
- (61) What assistance are you giving to consumers with longstanding home warranty disputes with the insurer who will not be assisted by the new legislative amendments; are unable to complete building works; and lack resources to achieve a fair outcome in their dealings with their insurer?
- (62) Do you record complaints received from Tradesmen and subcontractors concerning overdue payment for work by builders? If yes, how many complaints have been received in 2006-2007 and 2007-2008? Was Beechwood one of the companies complained about?
- (63) When will the reforms to the Associations Act be introduced to Parliament?
- (64) What progress has been made handing over to the Commonwealth your responsibility for mortgage and finance services? When will this handover be complete?
- (65) When will legislative amendments dealing with fringe lenders be introduced into Parliament?
- (66) What is the status of the review of landlord and tenancy act? When will this long awaited revamp of our laws be introduced to parliament? Is the minister considering bringing forward some of the reforms considered more urgent, and if so which reforms and when will we see them?

- (67) When were the new regulations for the retirement village act drafted and which stakeholders have been consulted? When will these regulations be released by the Minister for public comment?

ANSWER

- (60) Under the *Fair Trading Act 1987*, the Commissioner for Fair Trading can grant legal assistance to persons in relation to certain kinds of legal proceedings. The person must be a consumer, as defined in the Act and:

- wish to bring legal proceedings (other than criminal proceedings) arising out of the supply to them of goods or services or the disposal to them of an interest in land; or
- wish to make an appeal or seek judicial review in relation to such legal proceedings; or
- is a party to these legal proceedings.

The Commissioner may grant legal assistance to a person if:

- satisfied that they are a consumer;
- satisfied that they have reasonable grounds for bringing, or being a party to, the proceedings to which their application relates;
- is of the opinion that it is desirable, in the general interests of consumers or of any class of consumers, that assistance should be granted to them; and
- written approval of the Minister to grant assistance to them has been received.

An application is made on the form approved by the Commissioner. Application forms together with an information sheet for applicants can be obtained by contacting the Office of Fair Trading or visiting any of its service centres throughout NSW.

- (61) The proposal to create an additional trigger will mean that homeowners will be able to lodge a claim at an earlier stage of the dispute resolution process but it will not change the coverage of the scheme. It is not considered that any special arrangements are required to assist consumers with disputes with home warranty insurers. There is an existing right of appeal to the Consumer, Trader and Tenancy Tribunal for a homeowner aggrieved by a decision of an insurer on a home warranty insurance.
- (62) No. Fair Trading does not record such complaints.
- (63) It is anticipated that the Associations Incorporation Bill 2008 will be introduced into Parliament in 2009.

- (64) On 2 October 2008 the Council of Australian Governments agreed to the implementation plan for the Commonwealth Government to assume responsibility for all areas of consumer credit.

The Commonwealth Government will implement national credit legislation in two phases. Phase one will be in place by mid-2009 and phase two by mid-2010.

Under phase one the Uniform Consumer Credit Code will be enacted into Commonwealth legislation and a national licensing scheme will be established to require providers of consumer credit and credit-related brokering services and advice to obtain a licence from the Australian Securities and Investments Commission.

Phase two will involve enhancements to national credit regulation.

- (65) There are no legislative amendments dealing with fringe lenders scheduled for introduction into the NSW Parliament.

The draft Consumer Credit Code Amendment Bill 2008 (Queensland) contains amendments dealing with fringe lenders. Under the Uniform Credit Laws Agreement, amendments to the Consumer Credit Code must be agreed by a two-thirds majority of the Ministerial Council on Consumer Affairs and introduced into the Queensland Parliament. If passed, they will apply automatically in New South Wales and the other jurisdictions that are parties to the Uniform Credit Laws Agreement. The Bill has not yet been approved by the Ministerial Council into Consumer Affairs for introduction into the Queensland Parliament.

- (66) Following an extensive consultation process, recommendations resulting from the review of NSW residential tenancies legislation are currently being finalised for the Government's consideration. The next step will be the drafting of an Amendment Bill for introduction to Parliament.
- (67) Supporting regulations for any amendments to retirement village legislation will not be drafted until the Amendment Bill has been passed by Parliament. The drafting of any regulations will involve thorough consultation with key stakeholders and will be released for public comment during 2009.

NSW Rental Bond Board - Ms Cusak asks-

- (68) What is the criteria or formula for determining the amount of rental bond board funds to be expended on the CTTT?
- (69) What funding is available for advocacy services for retirement village residents?
- (70) What funding was allocated in 2007-08 to the NSW Department of Housing and for what purpose?
- (71) What funding was allocated to NSW public housing tenants services?

ANSWER

(68) In the case of the Consumer, Trader & Tenancy Tribunal, the Tenancy Division operations are jointly funded by the Office of Fair Trading and the Rental Bond Board Interest Account. The latter is in accordance with the Landlord and Tenant (Rental Bonds) Act, 1977. The Tribunal identifies its workload during the financial year and funding commensurate with these needs is allocated from Rental Bond Board funds.

(69) The Aged Care Rights Service is funded at \$0.387 million per annum to provide advocacy, information and education services for residents in supported accommodation, such as retirement villages, nursing homes, hostels and boarding houses across New South Wales.

The Older Persons Tenancy Service is also funded at \$0.197 million per annum to provide specialist support services (including advocacy) for older tenants, including retirement village residents that fall under the Residential Tenancies Act 1987, and protected tenants.

(70) There was no funding allocated to the NSW Department of Housing in 2007-08.

(71) Funding is allocated to the Tenants Advice and Advocacy Program (TAAP) which supports the provision of services by community-based organisations to both private and public tenants. In addition, funding is provided to the CTTT which includes a tenancy division that deals with disputes involving both private and public tenants.

Financial Counselling - Ms Cusack asks-

(72) Please give details of funding for service by agency for 2007/08; 2007/09; and 2009/10 (budget)

(73) Please give details of funding for training by agency for 2007/08 and 2008/09 and 2009/10 (budget)

(74) What is the increase for indexation for 2008/09?

(75) Is this grants programme guaranteed or subject to review in future years?

ANSWER

(72) The Office of Fair Trading funding allocations for services for 2007/08; 2008/09; and 2009/10 are as follows:

2007/08 - \$2.35 million;
2008/09 - \$3.8 million; and
2009/10 - \$3.8 million.

(73) The Office of Fair Trading funding allocations for training for 2007/08; 2008/09; and 2009/10 are as follows:

2007/08 - \$0.065 million;
2008/09 - \$0.1 million; and
2009/10 - \$0.1 million.

- (74) The increase for indexation for 2008/09 is 3.3%.
- (75) At this stage there is no scheduled review of the program and the program has been included in the Department of Commerce forward estimates.

Virginia Judge, MP
Minister for Fair Trading