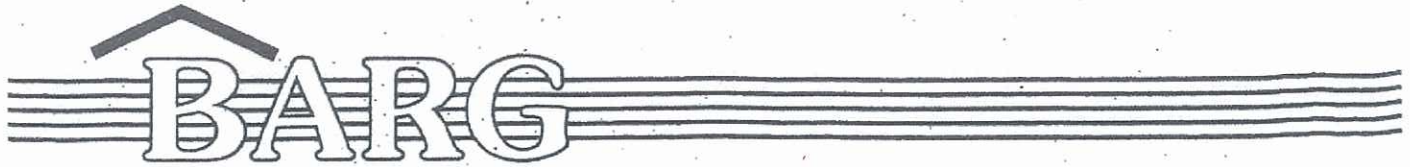


**INQUIRY INTO INQUIRY INTO THE OPERATIONS OF  
THE HOME BUILDING SERVICE**

**Organisation:** Building Action Review Group  
**Name:** Mrs Irene Onorati  
**Position:** President  
**Telephone:** 9819 7080  
**Date received:** 7/11/2007

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*Partially Confidential*



**BUILDING ACTION REVIEW GROUP, INC.**

Associated with Property Owners' Association NSW

7 November 2007

The Director  
GPSC No.2  
NSW Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Re: Legislative Council - General Purpose Standing Committee No.2  
Inquiry into the operations of the Home Building Service

Please find enclosed BARG's supplementary Submission into the operations of the Home Building Service in response to the Supplementary Submission by the NSW Office of Fair Trading to the General Purpose Standing Committee No.4 dated December 2006 for your attention and distribution to the GPSC No. 2 Committee Members.

Thanking you

Yours Sincerely,  
Building Action Review Group Inc.(BARG)  
Executive Committee

Encl.

***BUILDING ACTION REVIEW  
GROUP Inc.***

***Supplementary Submission***

to the

***General Purpose Standing Committee No 2***

***Inquiry into the Operations of the  
Home Building Service***

***In response to***

***NSW Office of Fair Trading  
Supplementary Submission***

***To the***

***General Purpose Standing Committee No.4  
dated December 2006***

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## **ATTACHMENTS**

**A** NSW Office of Fair Trading Supplementary Submission December 2006

**B** BARG's letter to GPSC No 2 dated 11/8/07 to GPSC No 2.

**1** BARG's comments Budget Estimate conduct of Proceedings of 28/8/06

**1a** BARG's Comments to further Budget Estimate answers

**2**

**3** OFT letter to Mr and Mrs Ivaniov dated 24/3/04

**4** Garry Wells Documents

**5**

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**9** Campbell Inquiry Recommendations

**10** Building Certifier at work despite fines

# SYNOPSIS

## *Review of Home Building Service*

The Home Building Services (HBS) was established in February 2003 following the NSW Parliamentary Joint Select Committee on the Quality of Buildings (The Campbell Inquiry).

Despite the Campbell Inquiry coming to the conclusion that this "new unit" should stand alone, separate from the Department of Fair Trading, regrettably this was not thoroughly implemented by the Government.

The HBS is not an independent organization as recommended by the Campbell Inquiry, but simply is an extension of the Office of Fair Trading (OFT) which was heavily criticized by the Campbell Inquiry. (Refer page 26 of the Campbell inquiry report).

On 14/02/03 BARG had its first introductory meeting with Mr. L. Le Compte, the New HBS General Manager. This meeting was attended by BARG's President Mrs. I. Onorati and Pro Bono Solicitor, Mr. Sal Russo, who proposed that 10 case studies be provided as a sample of the problems encountered by consumers for the HBS examination and investigation.

After the meeting with the General Manager Mr. Le Compte, we believed that the HBS would achieve an effective outcome as recommended by the Campbell Inquiry and we looked forward to our future meetings.

In fact, Mr. Le Compte in December 2003 wrote and thanked BARG "...for bringing to my attention this year a number of instances where consumers had suffered significantly as a result of the activities of various builders".

Mr. Le Compte further stated in the above letter:-

*"The information you have provided has been of invaluable assistance to me in developing the operations of the HBS, I have also appreciated the frankness of your comments at the various meetings we have had."*

He suggested establishing a Quarterly Meeting program to enable us to review the progress of various matters, to diarise meetings for 4 hours and he provided 4 available dates.

This restored faith and hope in the BARG's members and in the Executive Committee.

Mr. Le Compte was the HBS appointed General Manager from February 2003 to July 2005.

During this period BARG had 8 Quarterly Meetings which are recorded in correspondence and minutes of the meetings held.  
From October 2005, Mr. Steve Griffin was appointed HBS A/General Manager.

Mr. S. Griffin held 3 Quarterly Meetings with BARG, these were held On 19-10-05, 01-03-06 and 25-05-06

At the first Quarterly Meeting with Mr. S. Griffin, on 19-10-05, BARG confirmed its agenda concerning "the most important elements of Consumers protection" i.e

Builders Licensing,  
Complaints Investigation,  
Home Owners Warranty Insurance,  
Consumers Traders & Tenancy Tribunal, and  
Consumer education

At the Meeting with Mr. Griffin, BARG supported each element of consumer protection with relevant cases of consumers' complaints.

BARG emphasized the case studies of 3 BARG members which exemplify the systemic misconduct of 3 licensed traders' and reflect on the lack of diligence and due care of the OFT.

These case studies are  
and are particularized at pp.20 - 24 of this submission

All the above three cases display a pattern of repetitive conduct which the HBS has condoned when it was aware of its existence from its own records.

BARG wishes to deal with the last 3 meetings with HBS to demonstrate how and why this Inquiry was spearheaded. Refer to Minutes of the 19/10/2005 Meeting attachment No.7 of BARG's submission to GPSC No 4 Inquiry into the Operations of Home Building Service (GPSC No4)

At the Meeting on 01/03/06 – BARG re-iterated to HBS the same items as discussed at our First Quarterly meeting with Mr. Griffin, re confirming, inter alia, the 3 above named cases. Refer attachment No.8 of BARG's submission to GPSC No 4

The Meeting on 24/05/06, was our third and last Quarterly Meeting with HBS. At this meeting BARG believed that it was very important to re-confirm what were the objectives and aims of the Quarterly Meetings with HBS in an effort to adhere and move forward to reach resolution.

BARG's Objectives and Aims of Quarterly Meetings with HBS are:-

(i) Compliance and enforcement of Home Building Act (HBA) 1989;

- License issues
- Investigation
- Prosecution
- Disciplinary Action
- Delay

(ii) Aims;

- Assist the OFT\HBS to resolve consumers complaints by bringing to its attention:-
  - (a) The serious misconduct and breaches of the Home Building Act by traders
  - (b) The action\inaction\ delays and conduct of HBS and its officers etc as demonstrated by BARG Members case studies.

At the above Meeting Mr. Griffin confirmed his support to the BARG's objectives and aims.

Mr. Griffin replied:- *" I accept the objectives and the aims and I agree that some cases will be resolved, but some won't, there must be a compromise "*.

At this meeting Mr. Michael Cooper, Director Insurance Services Branch, provided a report in relation to Mr. & Mrs. Frantzis' complaint. The subject report was contrary to the specific representations Mr. and Mrs. Frantzis requested BARG to make on their behalf. i.e. 'about the delay and inaction in the handling of their complaint by the HBS'.

Mrs. Frantzis had given to BARG a copy of a letter dated 23 May 2006 to be tabled at this meeting.

However, Mr. Cooper objected to the letter and forbade Mrs. Onorati from reading and tabling it.

Mr. Cooper's conduct in preventing BARG from tabling critical consumers' representations caused an impasse that prevented further communication. This behavior was contrary to the agreed purpose and objectives of BARG's Quarterly Meetings with HBS. Thus, the meeting concluded in order to defer the matter to another forum.

Consequently, on 22/08/2006 – BARG submitted a report to the Hon. Members of Parliament in relation to the serious concerns about the current state of Home Building including the Home Warranty Insurers. Refer attachment 17 of BARG's submission to GPSC No 4. This document was tabled at the GPSC No.4 Budget Estimate meeting on 28/08/06 where questions were asked by the Hon Committee Members to the former Minister for Fair Trading, Hon Diane Beamer and Ms L. Baker, Commissioner for Fair Trading. Refer to attachment 17 of BARG's



submission to the GPSC No.4 Inquiry into the operations of the HBS and relevant transcript.

On the 19/09/06, BARG briefed the Legislative Council's Hon Members of the Cross Bench in relation to the failure of the Home Building system and the negative impact on consumers. Refer to 8 critical points and brief in attachment 18 of BARG's submission to GPSC No 4.

On 27/09/06, the N.S.W. Legislative Council General Standing Committee No 4 announced the inquiry into the operations of the Home Building Services of the Office of Fair Trading.

The above is only a brief review of the operation of the HBS since its inception.

BARG has been provided with NSW Office of Fair Trading Supplementary Submission dated December 2006. See attachment "A"

Set out below is BARG's reply to the above OFT Supplementary Submission as requested in our letter to the General Purpose Standing Committee No 2 dated 11/08/07. See attachment "B"

## 1. Builder licensing System

### 1.1. Licensing processing.

BARG notes with great concern that the NSW Office of Fair Trading (OFT) in the above named supplementary submission has in hindsight revised the statements made to the GPSC No. 4 on 28th August 2006;- "*in relation to the manner in which applications for the builder licenses are processed by the Home Building Service (HBS).*"

The OFT in its supplementary submission contends, inter alia, that "*many stakeholders have misconstrued the manner in which checks of licenses are conducted*" and that "*the suggestions made during the Inquiry are misleading and untrue*".

#### BARG's Response.

##### **This OFT statement is incorrect**

BARG strongly objects to the above allegations and suggestions and emphatically rejects that the OFT allegations and suggestions to the GPSC No 4 Inquiry are true and correct.

BARG relies on the representations to the GPSC No 4 by the OFT own representatives made in four separate occasions, viz:-

a) **OFT replies provided on the 28th of August 2006** at the Budget Estimate Committee Meeting (GPSC No 4) in replies by:-

- Ms Baker, Commissioner for Fair Trading – at pp 9 - 10 of the transcript
- The Hon D. Beamer, former Minister for Fair Trading at p 9
- Mr. Steve Griffin, A/General Manager HBS at p 13 of the transcript

The Question asked by Hon David Oldfield was:-

***"Does the Office of Fair Trading take into account all criminal records, bankruptcy and such issues when considering the issue of licence to traders"***

Answer by Ms Baker:- **Yes.**

And Ms Baker continued later:-

*"A preliminary check is made on applications to ensure the application is complete with all relevant documents and fees...we check against TAFE record now ..In addition to these, 10% of all applications – that is in home building – are checked against bankruptcy with the Australian Security and Investment Commission. We also do criminal history checks to ensure that applicants do not have financial problems or extensive criminal history." And that is:- "At random selection, But also if anybody identifies a criminal record they will be investigated."*

Refer to the transcript of proceedings of 28/8/3006.

- b) **Further Budget Estimate answers** by the Hon Diana Beamer, former Minister for Fair Trading in reply to the document tabled by the Deputy Chair, Ms Sylvia Hale on 28/8/2006 pp 3 to 8 plus an additional set of specific questions relating to individual cases as well as to broader concerns.

Question 127 - same as in (a) above.

Answer by former Minister for Fair Trading, Hon. Diana Beamer to the above document:

*"I am advised by the Office of Fair Trading, Yes, criminal and bankruptcy records are taken into account".*

Refer to BARG's letter dated 7/10/06 (attach. 20) to the GPSC No 4 in regards to the answers by the Minister. Also, BARG's comments (attaches. 1 & 1a) on the Budget Estimate proceedings dated 22/8/06 and detailed comments on the lack of substantive and considered answers by the Minister to the above document

- c) **The OFT submission dated November 2006** to the GPSC No.4 Inquiry into the operation of the HBS.

This submission discloses at page 28 the following information:-

*"The HBS currently undertakes a random audit of 10% of license applications to check the veracity of referee's statements and probity issues such as criminal history and insolvency. However in 100% of cases where an applicant discloses a criminal history, then a criminal record check is requested. This means that in reality 13% of the applications have criminal checks made."*

In addition, the OFT at page 31 Renewals and Restorations states its concern that :-

*"It is essential that the annual renewal of licenses be fast and efficient to ensure that the livelihood of authority holders is not jeopardized..."*

- d) **The OFT Supplementary Submission dated December 2006 to the GPSC No.4 Inquiry into the Operation of the HBS.**

The OFT in the above submission at page 3 advises as follows:-

*“For the sake of clarity, that the license assessment process involves:-*

- (i) *100% check of TAFE or University qualification of the applicant; and 100% of criminal record, bankruptcy and insolvency checks of those who disclose that they have a criminal history or have previously been bankrupt or involved with an insolvent company.*
- (ii) *In addition to this, as a risk management strategy, the Home Building Service also carries out criminal record, bankruptcy and insolvency checks on a 10% random selection on those applicants that have not declared a criminal record or a problematic financial history.*

*These random checks are also applied to 10% of the renewals received by the Home Building Service each year.*

#### **BARG's Comments**

- The OFT above statements support BARG's submission about the accuracy of its representations to the GPSC No 4.
- BARG points out that the OFT statements are inconsistent with its own statements at a), b) and c) above. Clearly, if there was a correct process, this process should have been disclosed at the appropriate time in answer to the questions from the GPSC No 4 Committee Members on 28 August 2006, and in the OFT's first submission. By concealing such relevant information, the OFT is not communicating in a transparent manner and this reflects further on the OFT's diligence and integrity.
- Although the OFT's answers in the above four occasions are inconsistent, the answer by Lyn Baker is a clear and indisputable:- **“Yes”**  
Viz:-  
*“Yes! 10% of all applications - that is in home building—are checked against bankruptcy with the Australian Security and Investment Commission. We also do criminal history checks to ensure that applicants do not have financial problems or extensive criminal history. And that is at random.”*  
Also *“if anybody identifies a criminal record they will be investigated”*  
Refer pp 9 and 10 of GPSC No 4 transcript of proceedings dated 28/08/06.
- **BARG** notes that the OFT did not investigate criminal record when BARG identified and tabled his criminal history at the HBS Quarterly Meeting of 24/5/06? Refer to Search information application – RTA &

Criminal history documents attachment No 22 of BARG's submission to GPSC No 4, also BARG's Quarterly Meeting with HBS Attachments 9 of BARG's submission to the GPSC No 4.

- v) The OFT in its supplementary submission dated December 2006, disclosed for the first time that:- *"these random checks are also applied to 10% of renewals received by the Home Building Service each year"*. Thus, 90% of the licence applications and renewals are not checked. This leaves 90% of builders whose licenses renewals have not been checked open to considerable risk and abuse being perpetrated to consumers.

**It is therefore open to ask:-**

- i) How long has the above license assessment been in place? and  
ii) Why hasn't the OFT disclosed this information to the previous inquiries in particular to the Campbell inquiry?

It is observed that the licensing of application and renewals significantly exposes consumers to abuse by those builders included in their 87-90% group of builders whose licenses are not checked. Given that as stated by the Hon David Oldfield:-

*"If you are a crook you have got nine chances out of ten of slipping through the system"*. Refer to transcript of Budget Estimate proceedings 28/8/06. The ratio of 10% checks falls well below, the required statutory functions and duty of care to protect consumers from unscrupulous builders.

Further, the OFT at page 3 paragraph 3 states:-

*"Every application for a license received by the Home Building Service is thoroughly assessed against the requirements of the Home Building Act 1989 and the Home Building Regulation 2004, in particular clause 25 of the regulation, to ensure that only well-qualified and appropriate people obtain building licenses."*

**BARG's Response - This OFT statement is incorrect and contradictory**

- It is evident from the OFT's answers to the Budget Estimate Committee Meeting on 28/8/06, and from the two OFT's submissions to the GPSC No 4 Committee dated November and December 2006, that not every application received by the HBS is thoroughly assessed.

In fact, the OFT advised the Committee:(see pp 9-10 Transcript Budget Estimate on 28/8/06) and in the 2 above mentioned submissions that:-

- i) *10% of all applications are checked against bankruptcy and criminal history That is at random selections*
- ii) *But also if anybody identifies criminal record they will be investigated*
- iii) *These random checks are also applied to 10% of the renewals by the Home Building Service each year*
- iv) The licence applications lodged and assessed before the HBS was established, have been classified by the HBS as "Old" Licenses and unjustifiably the OFT is renouncing those applications.

Notwithstanding the above exceptional disclosures, the OFT affirms at paragraph 3 of p.3 that every application for a license received by HBS is thoroughly assessed and refers the Committee to clause 25 of the regulation, which ensures that only well-qualified and appropriate people obtain building licenses.

#### **BARG Requests:-**

The Committee to ascertain the veracity of the OFT statements and its process and compliance with the Home Building Act 1989 and Home Building Regulations 2004. In addition, whether the OFT/HBS are giving effect to the Parliament's intentions of providing an effective and efficient safety net for consumers who are falling victims to incompetent or unscrupulous builders.

BARG points out that clause 25 of the Regulation 2004 prescribes that:-

- (1) *Before an Authority is issued, the Director General must be satisfied that:*
  - (a) *Each relevant person in relation to the application for an authority: (Refer to clause 25 of the Regulations for the requirements)*

#### **BARG's further comments:**

The first point that needs to be made here, is that the Director-General is the sole decider that must be satisfied before "each relevant person in relation to the application for an authority (licence) is issued. (see list of 13 requirements)

N.B. Clause 25 of the Regulations does not prescribe that a 10% of all applications should be checked against bankruptcy and criminal history and at random. The regulations clearly state that each relevant person must satisfy the requirements before the Authority (license) is issued.

**It is open to ask:-**

How can the Director-General be satisfied before an Authority/Licence is issued that **each person** in relation to the application for an Authority complies with every requirement in particular that the person is not a bankrupt and/or has criminal record, in the light that only 10% of all applications are checked against bankruptcy and criminal history and at random?!

Is the Director-General complying with his statutory functions?

The Director-General has the following functions:-

- (a) *to promote and protect the interests of owners and purchasers of dwellings ....*
- (b) *to set, assess and maintain standards of competence of persons doing residential building work or specialist work.*

It is submitted that there is a clear case of failure by the Home Building Service to discharge its statutory responsibilities to protect consumers against certain building industry risks.

It is now four years and eight months since the establishment of the HBS and although the HBS performance is unsatisfactory as far as the protection provided to consumers, no audit has been carried out as yet,

BARG is concerned that the Campbell Inquiry Recommendation No 2 has not been implemented:-

*“The committee recommends that a performance audit of the commission be undertaken by NSW Audit Office after two years of operation.”*

The information relied upon by the OFT is not verifiable without an audit of the system and indeed time for the audit is long overdue. This is the only way to ascertain the extent of problems and difficulties experienced by consumers and the impact of the systemic culture of the regulatory authorities.

The OFT has not provided appropriate answers in relation to the matters raised in BARG's letters to GPSC No 4 Budget estimate dated 22/8/2006 and 7 October 2006 Refer to attachments 17 and 20 of BARG's submission to the GPSC No 4.

#### **BARG Requests:-**

the Hon. Members of GPSC No 2 Inquiry to obtain considered and appropriate responses to all the questions raised in the document tabled by the Deputy Chair, Ms Sylvia Hale on 28/8/06 at the Budget Estimate Meeting. In particular to the additional set of specific questions which the Minister has completely omitted to answer.

## ***1.2 Old licence Application***

BARG notes that the OFT states:-

- a) *“All of the licence applications referred to by BARG were lodged and assessed years before the HBS was established.”*

**BARG's Response:-**

**This OFT statement is incorrect.**

- BARG notes that the OFT makes a distinction between old licence and new licence applications and deliberately only concerns itself with the processing of new applications.  
This is an affront and injustice to the victims of the builders malpractice, who rely on the OFT's performance of its licensing enforcement and disciplinary powers to protect consumers rights.
- The age of a licence is irrelevant, as all licences are renewed every year. Although the licensing process has changed over the years considerably since it was administered by the BSC, the present Regulatory Statutory Authority is not absolved from its responsibility for the actions of its predecessor.
- Indeed, the age of the licence is irrelevant, as all licences are renewed every year. Therefore, **the Statutory Authority (i.e. the OFT/HBS) is under a duty of care to ensure that all applications for renewal of licences, especially old licences, are in compliance with the current legislation.** This duty of care is to be carried out in respect of **all licence application renewals each year**, particularly, where the licensee has a history of claims irrespective of the age of the licence and not just as the OFT stated since the HBS was established.
- As already mentioned, BARG is a voluntary unfunded organization and finds it difficult, almost impossible, due to the very limited time and lack of resources available to employ staff to assist with the daily workload and/or to prepare a comprehensive submission to submit searches, investigations of every builder's licence application.

BARG's submission is based on information and documents obtained from consumers who have suffered as a result of the inadequate regulation in the building industry and the non compliance and non enforcement of the current legislations.



### ***Examples of Licensing Process since the Establishment of HBS***

To exemplify the HBS conduct in the processing of "new" licence applications, since the Home Building Service was established, BARG submits the following cases in relation to traders whose application were assessed and approved by the HBS after it was established in February 2003.

- a) **The Ivanov's case.** In this case, the OFT issued Licence No \_\_\_\_\_ to Mr. \_\_\_\_\_ on 20\07\04. This licence authorized the holder to contract to do, do and supervise joinery, aluminium windows and doors. See attachment 2.

At this time the OFT should have been aware that Mr. Stanley and Elizabeth Ivanov had lodged a complaint against \_\_\_\_\_ to the HBS for residential building work not complying with the Home Building Act in February 2004 for the following:-

- # residential building work carried out **without a licence**, breach of sec. 4 HBA 1989
- # obtained 35% of the contract price as deposit, breach of sec. 8 of HBA 1989
- # did not provide a contract in a proper form, breach of sec. 7 of HBA 1989
- # did not provide a home warranty insurance certificate, breach of sec.92 of HBA
- # Not carrying work in a proper and workmanlike manner in breach of sec 18B of HBA 1989.
- # Improper conduct, breach of sec 51 of the HBA 1989.

The OFT replied to the above homeowners: complaint lodged on or about 24/3/04, stating:-

*"I refer to your complaint regarding residential building work. Intervention by the Office of Fair Trading has not resulted in a resolution of this dispute and you may wish to pursue this matter through the Consumer, Trader and Tenancy Tribunal..."* Refer to OFT letter attachment 3.

The OFT enclosed a claim form to lodge their claim to the CTTT and return copies of all documents the Ivanovs had attached to their complaint. (plans, contract, reports, and other documents and correspondence in relation to the dispute)

Mr. and Mrs. Ivanov approached BARG in September 2004, further searches were carried out which disclosed:-

The builder, \_\_\_\_\_ was a director of a number of companies. All companies were liquidated and he has been made bankrupt. i.e.

- Liquidated companies:
- Bankrupted \_\_\_\_\_ in 1991
- Deregistered Companies –
- Various civil claim judgment were made against \_\_\_\_\_ in courts.

- does not hold a driver's licence and allegations of criminal records.
- Despite the above conduct was practicing as a sole trader as and he has been provided with a Contractor's Licence on 27/7/04.

Yet, in spite of the HBS having on hand a complaint since February 2004 against Mr. relating to many serious breaches, it issued a licence to this trader in July 2004 (5 months after the complaint was lodged)

**b) Garry Wells case.**

This is another example of a licence issued to issued 24/01/07 in relation to residential work carried out by this Company.

The homeowner, Mr. Wells had problems with his insurance claim for fire damages to his property, the licensing, the Contract with the repairer and the Home Warranty Insurance.

According to Mr. Wells, the insurer's nominated repairer had 2 licences numbers, but the name of the companies were not in accordance with the description in the business cards provided to the homeowner". Mr. Wells provided BARG with the 2 business cards and a copy of 3 contracts issued by the repairer. See attached photocopy of each relevant document in attachment No.4.

BARG advised Mr. Wells to:

- Lodge a complaint to the OFT/HBS
- Search this trader's Licence numbers
- Search the Company Pty Ltd with ASIC
- Search the business registration with Fair Trading
- Commission a specialized expert in asbestos identification to prepare an assessment report.

Mr. Wells will address the Committee and hopefully have the time to prepare a submission to hand in.

BARG in assessing the documents on hand noted:-

**Business Card No 1.**

**Name:**

*fully insured work of the highest quality Licence*

A check of the Licence No shows:-

the name of the Company to be:-

Further, the licence contains a special condition to the effect that it applies:-  
"only for contracts **not requiring home warranty insurance from 24/1/07 to the date of this certificate**' and authorizes the holder to do: building work from 24/1/07.

**Supervisors:** with licence number was the nominated supervisor for this licence from 1/9/2006 up to and including the date of this certificate. ( was the nominated supervisor nearly 4 months prior to the issue of the licence to this company)

Comment: the Business Card No 1, is in a different name from that quoted in Licence No Further, this licence number cannot fully insure building work, as it is a restricted licence. Refer to licences and other documents in attachment 4.

**Business Card No 2 states:-**

Name:

Licence

Fully insured work of the highest quality.

A check of licence shows that is the holder of this licence and not card No 2. as stated in the business

In this case the relevant issue is that Garry Wells was furnished 3 contracts for the rectification of the same fire damage to his property by the same repairer.

First contract dated 30/5/07 for \$11,957.83. Mr. Wells refused to sign it as following an OFT licence check, he was advised that the licence on the business card was not held by but by as an individual licensee. This licence, however, had expired. Thus, could not sign a contract as he was not the nominated supervisor for this company.

On 25/6/07 Mr. Wells was then furnished with 2 contracts by

:- one for \$11,957.83; and another for \$1,648.00.

Thus, on same day, with the same parties, for the same work (damage by the fire) 2 contracts had been issued instead of one only. Mr Wells refused to sign once again as he saw this as an attempt by the repairer to avoid the home warranty insurance.

On 17/7/07 Mr. called on site with his workers ready to start work. He provided Mr Wells with a 2 pages final contract. However, although all the details on page one of the contract were correct, this was not the case for page 2 of the contract. In fact page 2 provided a different business name from that shown in page 1. i.e.

(Page 1 licence correct name, correct licence number.

Page 2 description of scope of work is on a letterhead of “  
this is a different name than the trader in p.1 of contract).”

In this case the trader issued 2 contracts to keep the total of the contract price under the \$12,000, as his licence is only for contracts not requiring Home Warranty Insurance. This is a serious breach of HBA 1989.

BARG is stating the facts according to statements and documents provided by Mr. Wells.

On 19/11/07 the HBS building inspector Mr. B Jovanovski has attended the site in response to Mr. Wells complaint and issued a Complaint Inspection Advice, File No. 3798361 stating that:-

*The building work was inspected on the 19/11/07, at the Meeting were the contractor, operation manager, Mr. office  
manager, and owner. The complaint items were inspected and discussed The work had been suspended due to conflict between the parties and payment to the contractor.*

*The parties agreed that the work would continue on approval by the insurer and the contract would be completed. Parties were informed of recourse to the CTTT if disagreement occur the contractor agreed to:-*

- 1. complete the work as per contract*
  - 2. do issues as per HAL Report (expert)*
  - 3. Supply a Home warranty insurance certificate.*
- Work to be completed by 30/11/07*

The owner is very concerned and more confused than before as he could not follow nor understand the position taken by the HBS inspector. Refer to Mr Wells's submission.

In relation to this case BARG observes that:-

The HBS building inspector did not list any defective or incomplete work and he did not record the relevant issues of non compliances/breaches of the HBA i.e. critical fibro/asbestos left in the cavities, the trader's ploy of splitting the contracts. He directed the contractor to provide now a Home Warranty Insurance Certificate ignoring that his licence was and still is for contracts not requiring home warranty insurance.

According to Mr Wells, the rectification work plus damages exceeds the allowed limit of \$12,000. It appears the inspector was aware of the value of rectification work being in excess of the allowed limit for home warranty insurance, and thus asked the trader to provide a certificate of insurance, ignoring the trader's conditional licence.

### **BARG Requests**

The Committee:- has this HBS building inspector assessed appropriately this complaint?

### **BARG's Comments**

In the Ivanov's case No 1, above. Clearly, the HBS didn't check appropriately the Licence application, qualifications and history of the licensee, nor carried out checks against bankruptcy and/or criminal history and most importantly its own records of complaints!

Upon becoming aware of the above conduct, BARG questioned Mr. L. Le Compte, HBS former General Manager, how a person with such character and business practice can be issued with a licence and a certificate of registration from the OFT.

The Ivanovs is another unfortunate case where the OFT referred it to CTTT prior investigating it as required by the Home Building Act. The OFT/HBS owed a duty of care to consumers in the exercise of its consumer protection functions, including its power to inspect premises, investigate complaints and to police unreliable and unfit traders.

The Ivanovs, leaving aside the financial loss, the personal cost, in terms of the effect on their health, emotional well-being and the years absorbed by this conduct and the CTTT proceedings, is considerable.

We note, that after BARG's representations to the HBS quarterly meeting, the former HBS General Manager, Mr. Le Compte, took the appropriate action and cancelled Mr licence on 14/3/2005.

With respect to Garry Wells' case No 2, it is clear from the above that the representations made by the trader were misleading and in breach of the legislation. The Complaint Inspection Advice issued by the HBS building inspector is inadequate.

How widespread is the "new" licence applications anomalies since the HBS was established? BARG cannot assess nor provide to the Committee a survey for the obvious reasons already mentioned.

In respect to the OFT claimed "enhancements" made to the system, BARG notes that these occurred only recently in January, March and August 2006 as a result of numerous submissions made by BARG over a period of 20 years.

However, the enhancements made to the licensing regime since the establishment of the HBS, do not go far enough and do not address the renewals of all licences "the old licences" nor check all licence applications for criminal records. This OFT conduct proves and supports that the previous licensing system was flawed.

Nevertheless, the OFT delay in effecting changes has not only prejudiced homeowners rights but also jeopardized any real opportunity of having major defects rectified. This is evident in the outstanding and unresolved homeowners grievances provided as examples in the submissions to the GPSC No 4.  
We stand by the truism "**Justice delayed is justice denied**".

The case studies indicate the OFT's reluctance to intervene and to enforce the legislation. The OFT was and is well aware that renewals of licences should be checked as it has finally disclosed this in its supplementary submission dated December 2006. Notwithstanding this concession, the OFT has tried to displace its responsibility by defining "old licence applications" and blaming its predecessors.

BARG notes that the OFT at page 4 of its supplementary submission refers to BARG's claims of '*licensing anomalies*' to be:-

b) "*“few” in number when placed into the context of more than 165,000 licensees and 13,000 applications per annum.*" and that; "*This relatively low number of licensing issues is clearly not evident that there are systematic problems with the licensing regime. To the contrary, the significant enhancements made to the licensing Regime since the establishment of the HBS...*"

#### **BARG's Response**

**These OFT statements are incorrect.**

The OFT comparison data is inappropriate and unfair.

The OFT sample of 165,000 licensees is not comparable with BARG's samples. Further any inference from the OFT statistical data is meaningless as it does not disclose the relevant issues and results, which emerged from its random sample.

The OFT is attempting to displace responsibility by criticizing BARG and alleging that the "few" claims made of licensing anomalies cannot be evidence that there are systemic problem.

i) The first point that needs to be made here is that, whilst it is not conceded the anomalies are few, the real issue to be identified and considered is rather the OFT's serious conduct and failure to discharge its statutory responsibilities in the licensing process and in policing the systemic problems under the current legislation:- e.g.

- to **check all licence applications and all renewals** especially the 'old' Licences to ascertain that are in compliance with the current legislation, and have the appropriate qualifications as prescribed by the HBA 1989:-  
"*to set, assess and maintain standards of competence of persons doing residential building work or specialist work*" (sec.106 (b) and clause 25 of the Regulations 2004.
- To impose adequate penalties as amended HBA 2004.

In particular to check 100% of (all) applications and all renewals against bankruptcy, criminal history with the relevant authorities.

- To comply with its statutory duties and to police improper conduct when a holder of a contractor's licence breaches a statutory warranty (section 51 of the HBA 1989) and;
- To investigate complaints received (section 60 HBA)
- To show cause; conduct any investigation and determine whether or not to take disciplinary action (sections 61-62 HBA) notwithstanding what the number of anomalies may be one or more.

C ii) Further, in relation to the nature of the 'anomalies' characterized in the various examples provided by BARG there is evidence of systemic problems with the licensing regime such as:-

- recurring in a series of breaches by more than one trader
- with methodical regularity
- pertaining to an irregular and improper method specifically denoting a process of systemic problems; and
- in each trader's contract such conduct is multiplied to an unlimited number as this misconduct continues without prosecution (emphasis), in breach of the HBA 1989.

In particular the case studies of 3 BARG members exemplify systemic misconduct by 3 licensed traders and reflect on lack of diligence and due care of the OFT are as follows:-

1.(a) License misrepresentation –

C –License letterhead. Refer to attachment No.30 of BARG's Submission to the GPSC No 4.

In this case the Licence number on the letterhead belongs to not to . At this relevant time was not licensed. Thus, has misrepresented that was the holder of a contractor's license as at May 1998. This was in respect of a trade reference he gave to his brother to support his license application.

has repeated this misrepresentation in the contract with Mr and Mrs. Salih, where the same letterhead was used in several documents e.g. quotations, invoices etc. Refer to Mrs. Salih's submission to the GPSC No 4.

(b) Inappropriate TAFE qualifications

has attached to his original license application a Transcript of academic

qualifications not a diploma and/or a certificate. (an academic record is not qualifications). Refer attachment 29 of BARG's submission to the GPSC No 4.

The OFT failed to take notice of this error in granting his licence.

2. (a) License Misrepresentation -

Ltd. License No                      letterhead. Refer attachments  
23-25 BARG's submission to the GPSC No 4.  
As indicated in case No.1 above, the license No                      on the letterhead belongs  
to                      not to

, this entity was and is not licensed. This pattern of conduct has been carried out since 28 October 1997 as recorded in the OFT files, where 6 complaints are registered. Refer to Trader's Profile at Page 2 in attachment No 25 of BARG's submission to GPSC No 4.

It is evident from documents summoned from the OFT files that the OFT was aware of this continuous pattern of misrepresentative conduct in breach of the legislation.

This is shown in the following OFT documents referred in attachment 25 of BARG's submission to the GPSC No 4 which are detailed as follows:-

- Trader:  
Details for transaction #                      doc (complainant)  
Administrative details  
Breach Comment *license different from contract (2/08/2005)*
- Complaint Assessment – Home Building  
Breach detected - *Yes*  
Nature of breach – *Work outside scope of license*  
Date: *5/08/05*
- OFT Transaction Cover Sheet – (Mr Mark Slotwinski)  
Trader details                      date *5/08/05*  
Handwritten comment at bottom of the page:-  
*Refer for breach – Needs Company License*
- Building Inspection Report – 12 July 2005  
Complaint File No *C2005/1962*  
Complainants name – *Con Papanastasiou*  
Contractors Name –  
Name of Inspector *Donald Van Keimpema*  
At page 37 – Summary paragraph 5 states:-  
*"The contractor has used his individual contractors license to conduct the work.  
He is also using a company,                      as a consultant*



*Company. The Company is used to organize the plans and associated engineers details and to lodge the plans and associated documents with the local council authority. During the inspection of the alleged defective work Mr. was considering obtaining a Company license for*

Further, in this case, the OFT file records show 6 complaints against , during the period of October 1997 to August 2005. However, the OFT, only noted the trader's breach and misrepresentation as late as 2/8/2005. Furthermore, it continued to renew Mr. license every year, notwithstanding the breaches noted in the file. Refer Trader's Profile at pg 2 Complaints details (BSS) Also in attachment 25 of BARG's submission to the GPSC No 4.

(b) Criminal History

Documents in the OFT file show that has a serious criminal history. Refer to NSW Police Service Application criminal record check i.e. dishonesty, violence, sexual, drug, 10 years conviction (3 pp) Attachment 22 of BARG's submission to GPSC No 4

(c) ABN Number improprieties.

The Certificate of Insurance issued to for the building work for Mr C Papanastasiou is showing , but the Building Contract for Mr C Papanastasiou is showing . This is for the same homeowner's building work, Con Papanastasiou and the same trader. Refer to attachment 5 of this submission.

The four OFT internal documents referred to in the above attachments 25, and the criminal history search record in attachment 22 of BARG's submission to GPSC No 4, show that the OFT although it was aware since August 2005 of the above breaches and misrepresentations, took no action. Refer to Register Section 120 of the Home Building Act Status of Licence which currently shows no penalties. Attachment 5 above.

Mr. Con Papanastasiou has advised BARG that the OFT has finally taken disciplinary action against as at 27/8/07 and required him to pay to the Commissioner for Fair Trading a penalty of \$3,000. The HBS lenient prosecution does not adequately reflect the serious breaches and the damages suffered by the victims when one takes into account the protracted delay and the systematic repetition of the offences by this repeat builder.

The OFT's process is clearly not in accordance with recommendation No.9 of the Campbell Inquiry, which recommends inter alia, " increased use of licence suspension/cancellation for repeated serious breaches."

3.(a) Licence Misrepresentation -

letterhead. (Third example)

Refer attachment No. 33 of BARG's submission to GPSC No 4.

As indicated in examples 1 and 2 above, the license belongs to \_\_\_\_\_ on the letterhead and not to \_\_\_\_\_ is not licensed. The fact that \_\_\_\_\_ used his own license number is evident that he made the representation knowing that \_\_\_\_\_ was not the holder of that license.

\_\_\_\_\_ is also a qualified supervisor for the licensed partnership of \_\_\_\_\_, however he did not use on this letterhead the correct name of the parties owning the trading name nor the appropriate license number!

(b) Inappropriate trade qualifications

\_\_\_\_\_ has attached to his license application a Craft Certificate which is only a vocational certificate and has printed on it this statement:-

*"Note: This does not certify that a prescribed course has been completed."* Refer to page 29 and attachment 35 of BARG's submission to the GPSC No 4

It is clear that this is not an appropriate and acceptable trade qualification.

(c) ABN Number improprieties

It is noted that \_\_\_\_\_ is trading under the following identities:-

- \_\_\_\_\_ licensed contractor, Licence Registered \_\_\_\_\_ 494 Refer to historical details extract. Attachment 6.
- \_\_\_\_\_ licensed partnership Licence \_\_\_\_\_ historical details show:-  
registered \_\_\_\_\_
- \_\_\_\_\_ shows \_\_\_\_\_ on its letterhead.
- Tax Invoice No \_\_\_\_\_ and \_\_\_\_\_ letterhead show:-  
Licence \_\_\_\_\_  
Refer attachment 6

Please note the Licence number on these tax invoices belongs to \_\_\_\_\_, while the ABN number belongs to \_\_\_\_\_. This conduct is inappropriate and illegal.

This conduct has been brought to Mr. S. Griffin's attention numerous times by the homeowner, in particular refer to copy of letter dated 7/8/2006. Attachment 7.

The Home Building Act makes provision for the regulation of residential building work and other specialist work. Section 4 of the Act provides: *“that a person is prohibited from contracting to do residential building work “on behalf of an individual, partnership or corporation” unless that person is the holder of a license authorizing that person to contract to do that work.*

*Section 17 of the Act provides that a person must not represent that “an individual, a partnership or a corporation is not the holder of a license.*

The above evidence shows that in each of the 3 named cases the individual trader ( ) knowingly and willingly displayed their individual license on letterheads and various documents representing that a particular entity held a license knowing that was not the case. The fact that they used their own license number, is evidence that they made that representation knowing that entity was not the holder of the stated license.

How widespread is this pattern of particular conduct? How are consumers affected by this conduct? and; we further question:- Has the OFT/HBS exercised appropriate responsibility and accountability to avoid liability to the victims and the public at large?

The 3 individual homeowners involved in the above cases are not the only consumers who are victims of these builders' misconduct. These letterheads are used continuously by each trader for each and every building job they undertake during each year.

There could be more victims of these three traders of which we are not aware.

Consumers are unaware of builders previous conduct unless they obtain the OFT files. These files can only be obtained under FOI Act and/or summons during CTTT proceedings. Many consumers have applied under the FOI Act but were unable to obtain them as the fees were excessive. (Refer to page 16 of BARG submission to GPSC No 4,) others are not in the CTTT or are not aware and/or are advised to do so

Further features common in other BARG cases are:-

- Repeat licence offenders (
- Multiple insurance claims by one builder i.e.
- allowing licence to expire and re-apply under a different name:-
- Reprimand/caution and leniency for serious offences
- Failure to be prosecute i.e
- Protracted delay in resolving complaints lodged and/or failure to investigate.

Searching of the register of builders' licences show that the regime adopted by the OFT with respect to the sanitizing of "old" licences allows them to expire or to be surrendered. These "old" licences are then replaced with new licences, (with different numbers and/or identities) which are clear of warnings about past infringements, suspension, imposition of fines, paid statutory claims, and encumbrances. This process is beneficial to both the builder and the insurer; the builder by being given a fresh start, with an unblemished record and the insurer by not having to pay for homeowners claims, particularly those relating to "old" licences. The OFT has a real problem justifying how and why the licensing process is circumvented to permit licences to be renewed clear of their past history.

The sanitizing of licences deprives homeowners of crucial information about their reliance on the builder's licence and erodes the protection afforded by the licensing system to homeowners.

- iii) The third point that needs to be made is in relation to "the significant enhancements made to the licensing regime" in January March and August 2006 as stated by the OFT (page 4),

BARG submits that the claimed "enhancements" do not deter traders from continuing their misconduct unless more stringent licensing checks and more rigorous investigation and policing are carried out by the OFT.

**Indeed, the strictest laws in any country are worthless if not strenuously enforced.**

- iv) A fourth point that needs to be made is in relation to the OFT claim that BARG's cases are statistically "few". It is submitted that this "*minority viewpoint*" defence is used because the OFT has a vested interest in the status quo.

BARG relies on the concrete evidence it has provided on the numerous inquiries over the years to support that this "minority" viewpoint has been upheld by the findings of the previous inquiries.

As already mentioned, BARG is a voluntary unfunded organization and finds it difficult, almost impossible, due to lack of resources and daily workload to assist all the consumers who have complaints against the building industry.

Whilst the OFT expenses allocations as per p.5 of the OFT Year in Review Book are:-

*Program Allocation Year 2004 – 2005*

*Fair Trading 85% \$129M CTTT 15% \$23M*

*Program Allocation - average staff*

*Fair Trading 83.3% - \$889M CTTT 16.7% 140 staff*

It is of great interest to note that, notwithstanding the large funds allocated to the OFT and the 24 Fair Trading Centres, the OFT is unable to process to finalization all the complaints as claimed in their Year Book i.e.

*"During 2004-2005 some 6,313 complaints were received by the Home Building Service. Of the complaints received:*

- *1,737 (30%) were resolved through intervention by Fair Trading centre staff.*
- *2,284 were referred to the Home Building Service where 1,960 were resolved through technical assessment by building inspectors.*
- *2,236 (37%) were either referred to another part of the Fair Trading; the Consumer Trader and Tenancy Tribunal; another agency; or required no further action.*
- *280 matters are still undergoing the resolution process.*

*Not all disputes can be resolved by Fair Trading Centre or Home Building Service staff and approximately 20% of matters are ultimately referred to the Consumer, Trader and Tenancy Tribunal" (This is an extract from NSW Office of Fair Trading, A Year in Review 2004-2005 pg 35.)*

According to page 35 of the Year Book the OFT does not investigate and resolve all complaints lodged by consumers. Consequently this means that not all the traders involved in the remaining balance of unresolved special complaints are investigated and prosecuted. Thus these traders remain in the system to continue their misconduct.

### ***1.3 Continuing Professional Development***

BARG supports mandatory continued professional development (CPD).

BARG's concerns in relation to the CPD are:-

- a) The protracted delay and reluctant implementation by OFT of such an important and critical requirement. and;
- b) The CPD restricted scope and agenda has been introduced by the OFT. It is noted that the CPD only includes the two trades, **builders and pool builders**. This is to the recommendations of the Campbell Inquiry, point 2.6.3 which states:-

*"The evidence put to the Committee suggests that there is a view by both builders and consumers that there has been a decline in builder skills, and in turn, a resulting decline in the quality of builders and building. A high proportion of building licences holders have not been trained correctly, and do not have adequate knowledge of the required building practices"*

and at page 44 the Campbell Inquiry states:

"Licensed builders and tradesmen also need to have some sort of meaningful training. This training must be linked to their yearly licenses so that any builder not doing the training will have not their licence renewed"

We note the Department of Fair Trading has indicated to the Campbell Inquiry in 2002 that:-

"A program for CPD has been in development for some time but has yet to be introduced".

There was overwhelming support from builders and their representative bodies for mandatory continuing professional development (CPD). We refer to the Newcastle Master Builders Association statement made to the Campbell Inquiry at p. 44: -

*"[The Association] recommends introduction of mandatory Continuing Professional Development for all licensed operatives in the industry. CPD should be targeted at the top ten dispute issues with mandatory attendance at approved training courses being a condition of renewal of license and pre-requisite for obtaining Home Warranty Insurance."*

Further, the Campbell report at page 52 point 2.6.7 states:-

*"Various submissions have called for licensing to be extended to all building practitioners. The key elements of such licensing would be to impose compulsory continuing professional development, apply complaints management, disciplinary and audit and mandate professional insurance." (emphasis)*

#### **BARG's Response**

The Campbell Inquiry Recommendation No 7 should be implemented in its totality as stated and not fragmented. The Campbell report has not specified that the Continuing Professional Development (CPD) requirement should only be confined to builders and pool builders to the exclusion of other trades. On the contrary at 2.6.3 specifically it recommended that 'builders and tradesmen also need (refer above) and 'This training must be linked to their yearly licences' (Emphasis.)

BARG concurs with the Newcastle Masters Builders Association recommendation to the Campbell Inquiry which emphatically states:-

- a) CPD should apply for all licence operative in the industry.
- b) CPD should be targeted at the top ten dispute issues.
- c) Mandatory attendance at the approved training courses being a condition of renewal of licence and pre-requisite for obtaining Home warranty insurance.

As quoted above, there are numerous trade categories of building contractors and qualified supervisor certificates to carry out residential building work (A to Z) who do not have to comply with the CPD requirements. e.g. bricklayers, carpentry and Joinery, general concreting, tiling, roofing, waterproofing etc.

BARG refers to the 2 examples of traders previously named in this submission, who have been allowed by the OFT to continue trading without having acquired the recommended CPD i.e.

i) \_\_\_\_\_, with Carpentry and Joinery qualifications. Refer to Con Papanastasiou complaint. This trader's licence was originally issued on 25/01/1991 and has been since renewed yearly despite the OFT files having registered 6 complaints since 1997. No requirement to undertake CPD was applied by the OFT to

ii) \_\_\_\_\_, with a Carpentry and Joinery and general concreting qualifications Licence first issued on 3/10/1991. He is also a qualified supervisor for the partnership of \_\_\_\_\_ issued on 19/06/2002. He has been prosecuted by the Court for failure to provide a written contract ss 7A and 7 and a certificate of insurance under s.92 (1) and s. 92 (2) of the HBA.

In addition, in March 2006 the HBS issued a notice to \_\_\_\_\_ and \_\_\_\_\_ calling on him and his partnership to show cause why disciplinary action should not be taken against them for failing to build a concrete driveway in accordance to their statutory responsibilities. In July 2006 HBS imposed a fine of \$3,000 against partnership, and a fine of \$1,500 against Mr. \_\_\_\_\_, as the nominated supervisor. No requirement to undertake CPD was applied by the OFT to

#### **BARG's Comment**

It is of great concern, to see that the OFT is allowing such traders to continue practicing without having the appropriate skills with disastrous consequences to consumers as demonstrates in the BARG case studies before this Committee.

There are a high proportion of building licence holders who have not been trained correctly and do not have adequate knowledge of the required building practices who need to comply with mandatory continuing CPD. e.g. the so called "old" licences by the OFT.

#### **BARG Requests:-**

The Committee to recommend that mandatory CPD requirements be implemented for all licensed operatives in the industry and to be a condition of renewal for licence and pre-requisite for Home Warranty insurance.

### **3. The resolution of complaints**

#### **3.1 Resolution of BARG matters**

- a) The OFT acknowledges that:- “ *during the course of the public hearings BARG brought forward some extremely unfortunate cases*”. *The HBS continues to attempt to assist them. These cases are relatively few when compared with the number of matters successfully resolved by the OFT, HBS and CTTT since the HBS was established only three years ago*”

#### **BARG's Response:-**

**The above OFT statement is incorrect.**

- a) Firstly, the HBS has been established in February 2003, therefore when the OFT lodged its submission in December 2006, it was almost 4 years (3 years and 10 months exactly). To date is 4 years and 8 months since the HBS was established.

Secondly, the “minority viewpoint” has been already discussed at pg 23 iv) above

Thirdly, the cases brought forward by BARG during the course of the inquiry are only some of the case-studies that have been used to demonstrate and support BARG's claims. Those cases are indeed extremely unfortunate, (as OFT stated) however, the question that needs to be asked is what has caused and contributed to such extremely unfortunate position!! Why does the OFT (as stated above) only attempt “to assist” the victims instead of resolving their problems as per HBA 1989?

#### **BARG makes the following Urgent request:-**

The Committee to obtain the OFT files of these unfortunate cases to assess how and what caused these consumers' to become victims of the system.

Unfortunately, as mentioned at page 16 of BARG's submission to the GPSC No 4, these consumers did not obtain access to their OFT files under the FOI Act due to the harsh and excessive fees imposed by the OFT for the supply of their files.

- b) At Page 9 the OFT states:- “*Fair Trading considers that only five Building Action Review Group matters have compliance or other action continuing. All Other matters have been finalized. Since its establishment the Home Building Service has successfully resolved over 7000 building dispute disputes between consumers and traders.*”

**The above OFT statement is incorrect and BARG rejects it outright as follows:-**



- i) Since the HBS was established in February 2003, as previously stated, BARG agreed at the first meeting with Mr Le Compte, (former HBS General Manager) to provide him with 10 case studies as a sample of problems encountered by consumers for his attention and investigation.

Refer to BARG's letter dated 29 May 2003, handed by Russo and Partners, Solicitors, to the GPSC No 4 on the 17/11/06. To date, 4 and a half years later, out of those 10 original cases, there are still 4 cases continuing i.e. Kemal Boules, Goulson Salih, Carol Frantzis and Narelle Peters.

It is noted that at page 2 of the above BARG letter the Department had provided to Mr. Le Compte with 15 names and case notes.

- ii) Further, on the 17/11/06 Russo & Partners handed to the Committee another letter dated 25/10/04, in respect to an additional 17 cases provided to HBS by BARG. Out of this lot there are 5 additional cases still continuing i.e.

Con Papanastasiou, Ken Quin, M Schein. A Falzon.

- iii) Since October 2005, BARG has provided 15 additional cases to HBS i.e. Diana Cornwell, Anna Akerman, Cala Megan, Yasmin Fahri, Luisa Berg, Gerard Nichol, Charlie Tran, Alex Le Bon, Mr. & Mrs. Hildebran, Ian Dawson, John Chabulick, Mr Andrew Goodman, Mrs Chui, Katherine Perrin, Rob Siebert, Connie Koutsoubos, Mr. and Mrs. H. Stanojavic, Mr. & Mrs. G. Wells.

Out of this lot there are 10 cases still continuing. Thus, having regard to the above i), ii), iii) items, we strongly object and disagree with the OFT calculations and assumptions.

- c) Page 9 of the OFT supplementary submission, further states:- *"If we compare this number with the 50 cases BARG suggests it has had some involvement in over the years this represents only 0.7% of the total building disputes.."*

#### **BARG's Response**

**This OFT statement is incorrect.**

On the 17 November 2006, at the hearing of the GPSC No 4, the Hon Jan Burnswood, Committee member asked BARG's secretary Ms Chakouch:-  
*"Can you tell me how many members the group has?"*

Ms Chakouch replied:- *"around 50 on top of my head"*. Refer transcript.

It is apparent the OFT has misconstrued Ms Chakoush answer by suggesting to the Committee that:- *"the 50 cases BARG suggests it has had some involvement in over the years"*

The OFT's statement is patently misleading, untrue and ludicrous.

It is obvious the question asked relates to the present, thus the **correct number is 50 members as at the 17/11/2006.**

The number of members BARG has had is verifiable. BARG's submissions and its members are recorded in the numerous inquiries reports documenting the characteristics of the modus operandi of the Building Services Corporation (BSC) the Department of Fair Trading (DFT), the Office of Fair Trading (OFT) and last but not least the Home Building Service (HBS). The OFT is well aware as all this information as it is in their files and it is also mentioned in the numerous inquiries reports. Let's not forget that, one single builder i.e. \_\_\_\_\_, caused BARG to make representations for over 150 victims of this builder alone!

BARG's reputation and tireless work over the last 20 years is a public knowledge, recognised and commended in the numerous inquiries reports and Parliament Hansard.

Even Mr. Le Compte, HBS former, General Manager, in his letter dated December 2003, recognized and thanked BARG for the information provided which was of invaluable assistance in developing the operation of the HBS and how he appreciated the frankness of our comments at the various meetings. Refer to the relevant letter. This was the reason Mr. Le Compte established the Quarterly Meetings with BARG.

In respect to the statement in item 3.1 (b) above regarding the OFT having successfully resolved 7000 complaints compared to BARG having only 5 continuing complaints, this is a preposterous allegation as the Inquiry by now is clearly aware that this is not the case.

Accordingly, BARG objects and rejects the implications in the OFT supplementary submission.

The OFT claims that it has successfully resolved 7000 complaints since the establishment of the HBS, that is for a period of almost 4 years (but say 3 as the OFT stated ). If we compare this number with the number of building consumer complaints stated in each of the relevant OFT year books, as lodged each year since the establishment of the HBS, i.e.

Year 03 -04 = 6,275 Year 04 - 05 = 6,313 Year 05 -06 = 5,891

The total of complaints is 18,407.

Thus, the OFT claim that it has successfully resolved 7,000 complaints since the establishment of the HBS (whilst not conceded) if true, when compared to the 18,407 complaints lodged, this OFT claim casts a serious question in relation to the balance of the 11,407 complaints remaining unresolved. This is of great concern to BARG because it leaves 11,407 consumers and their families seriously aggrieved, and 11,407 traders involved in these complaints which have not been investigated and/or prosecuted.

### ***3.3 Expertise of Home Building Inspectors***

The OFT states that:- "*BARG suggested to the Committee that the building inspectors employed by the Queensland Building Service Authority were of a superior quality to those of NSW*".

#### **BARG's Response**

**This OFT statement is incorrect.**

BARG denies emphatically that any suggestions were made to the Committee regarding the building inspectors employed by the Queensland Building Service Authority and demands that the OFT provides evidence to support its statement.

Therefore, BARG's submits that the documentary evidence provided to the Committee is undeniably true and correct.

- In relation to the expertise of HBS inspectors, the evidence BARG submitted was extracted from documents issued by the NSW HBS inspectors' report, see OFT files summoned in the CTTT in relation to:-

- i) **Mr Donald Van Keimpema**, HBS Building inspector's report provided to Mr. Con Papanastasiou. Refer to page 51 volume 2 of BARG's submission, and attachment 62 – where the NSW Office of Fair Trading Inspector issued a Building Inspection Report dated 14/11/05 p. 37, in Summary at paragraph 3, inspector, Van Keimpema's concedes:-

*"There are some items mentioned in Mr Frasca's that are not considered defective or beyond the qualifications of myself."* Emphasis "*beyond the qualifications of myself*" (Mr Frasca is the independent engineer commissioned by the Homeowner to prepare an appraisal report of defective work in his property.)

- BARG simply asked:-: What are the HBS inspectors' qualifications?

The NSW homeowners are entitled to know what are the qualifications of inspectors used by the HBS who investigate and assess their homes.

It has been demonstrated that most HBS building inspectors have no engineering qualifications to meet the multitude of requirements in dealing with structural plans and

specifications to assess if the building work as constructed complies with the D/A approved plans and is structurally adequate. In fact, the classification of some of the defective items were not considered defective by inspector Van Keimpema's as his qualifications were beyond Mr Frasca's!

In light of this, Mr Papanastasiou's house has not been appropriately assessed by the HBS inspector.

In the majority of the case studies, because of the inadequate HBS building inspectors' qualifications, the building report provided by the HBS is disputed, thus the consumer needs a second report. If that is disputed again, the homeowner has gone to a third report to try to prove and get the HBS to address the issues.

To date, Mr Con Papanastasiou's building has not been appropriately rectified nor has, his builder been 'vigorously investigated' as recommended by the Campbell recommendations No 10:

Another example occurs with the building reports of HBS building inspector which concerns three different and separate complainants ( Falzon, Cornwell and Magan).

BARG in its addendum to the submission has referred the Committee to serious evidence in relation to the expertise of HBS Building Inspectors. Once again these are the recommendations made by an independent expert consultant Mr. John Lewer, commissioned by NSW – Home Building Services. i.e.

At pp 9 -11 of the Addendum to BARG's submission to GPSC No 4. Consumer case study is Mr. & Mrs. Falzon's. (family of 4 children)

Mr. John Lewer, an independent building expert commissioned and instructed by the HBS to review and provide an opinion of the work particularly where the writer's opinion may differ from those expressed by both the reports provided by Mr. Peter Stubbs, HBS inspector and Mr. Frasca, independent engineer commissioned by the owner.

BARG wish to reiterate herewith that at page 38 of his report Mr. Lewer recommended-  
At 8.0 *Opinion (h)*

- and iii " *the builder, the bricklayer and the concreter should be asked to show cause why their licences should not be revoked*" and at page 39 –  
iv) *A course of advance training be instituted that will bring the inspection staff to a level of expertise commensurate with the responsibilities*"

**BARG asks:- Has the HBS/OFT carried out the above recommendations?**

The expertise of Building inspectors is of great importance and must be commensurate with their responsibilities to appropriately assess the building work as constructed and to find whether it complies with the relevant D/A conditions of approval, BCA, AS and EP & A Act. An inadequate assessment especially of serious structural defects is of grave consequences to consumers as it creates massive delays and financial hardship.

To date Mr. & Mrs. Falzon's house has not been rectified nor the licensed builder effectively prosecuted.

It is to be noted that the assessment of defective work by a building inspector impacts on the investigation of compliance and prosecution of the licensed trader. It is on the building inspectors' report and the assessment of the breaches found that the Regulatory Body will decide whether it will be taking any action at all. Therefore, if builders with serious compliance problems are not effectively disciplined and remain in the system they will continue to carry out unsatisfactory work because they have not been told differently. This is a major concern to consumers.

**BARG Requests:**

The Committee to take serious consideration whether the OFT/HBS's Inspectors' level of expertise and current approach to investigation is prompt and satisfactory. Especially when the defects are major and the ramifications of delayed and appropriate investigation are much greater. Please refer to homeowners submissions before the Committee. Also to BARG's original submission pp 51-64 and BARG's supplementary submission pp. 5-13 to the GPSC No 4.

Two further complainants' cases involving HBS building inspector, Mr. Peter Stubbs, are those submitted by Mrs. Cala Magan and Ms Diana Cornwell. Please refer to their submissions.

There are many other examples where consumers have complained about HBS inspectors' assessment of defective work and suffered massive financial hardship, protracted delay and human tragedy.(physical, mental and emotional) e.g.

Luisa Berg, wrote to Mr. Le Compte requesting a second inspection by an inspector with engineering qualification. Although, HBS building inspector, Mr. Steve Masters carried out a second inspection, Ms Berg was unable to obtain his report as he was no longer in the employ of HBS. However, this should not have impeded the HBS from requesting him to provide his report. Mrs. Berg's house remains incomplete deteriorating and at great risk of fire and other damages as no insurance would cover a house which is defectively built and incomplete.

Lydia Chakouch (Strata Plan; 58994 of 4 town houses) lodged their complaint to HBS on 26/09/2003.

This case study is relevant in reply to the OFT's statement in relation to the HBS advising the Committee that:-

*"In attempting to mediate extremely complex matters, the HBS has time to time engaged the services of other experts from the private sector of the Government Architect's Office"*

The following example will demonstrate that the OFT's additional efforts '*to mediate the extremely complex matters*' was unsuccessful to say the least.

On 9<sup>th</sup> December 2003 HBS sent Mr. Chris Nicholson to investigate and assess the defective work by P/L to 4 townhouses and common area. The inspection was incomplete and Mr. Nicholson advised he would return.

In February 2004, after Ms. Chakouch wrote several letters to the former HBS General Manager, Mr. Le Compte regarding incomplete and unsatisfactory inspections and how this protracted delay was causing deterioration of defects and to the 4 families' life.

In March 2004, HBS sent Mr. C. Nicholson and Mrs. Janina Vieri (who, we were advised had structural Engineering expertise). However, even this inspection was not completed nor satisfactory according to the 5 independent engineers commissioned by the owners .

On 1<sup>st</sup> March 2006 during a BARG Quarterly Meeting with HBS, the Strata matter was discussed in relation to the incomplete and inadequate investigation reports. Mr. Griffin undertook to send a consultant Engineer from the Government Architect's Office.

On the 24<sup>th</sup> May 2006 at BARG's Quarterly Meeting with HBS, Mr. Steve Griffin provided Mrs. Chakouch with the Report by Mr. Woodcock (Government Architect's Officer).

It is of great concern to note the paucity of this expert's report. The assessment of the major structural defects was inadequate and its conclusion minimized and trivialized the defects to the point that the Strata Lawyer, Russo & Partners, wrote to HBS requesting that this report not be provided to the Insurer as it would be detrimental to the matter.

Refer to this report to see the inadequacies of Mr. Woodcock's assessment. Particular emphasis should be given to the current rectification work which was determined by a mediation settlement between the 2 structural engineers ( the insurer's and homeowner's) Refer to Ms. Chakouch's submission which details and demonstrates the extent of serious defective work which was not identified by the HBS's expert from the Government's Architect's Office.

The Campbell Inquiry was very critical of the resourcing and timeliness of the investigation as a large proportion of consumers submissions to the Committee referred to the failure by the Department of Fair Trading to deal with investigations promptly and satisfactory.

The Campbell Inquiry Committee believed that 3 months wait from a complaint to the commencement of investigation was intolerable particularly given the potential severity and hardship that building problems involve.

Further, the above Committee stated that: having examined particular cases and visited sites; the investigations branch's assessment of priority and urgent cases did not reflect either the Committee's nor the community expectations. Refer to:- Campbell Inquiry's

#### **Recommendations No. 10**

*"The Committee recommends that a vigorous investigations unit be established in the Commission. It should be staffed by industry experts and be resourced to be pro-active and responsive to complaints and to conduct prompt investigations".*

The above examples demonstrate that this situation is persisting despite recommendation No. 10 of the Campbell Inquiry, Refer to Attachment 17 of BARG's submission to the GPSC No 4, dated 22/8/2006 where at p. 6 there is a table showing 9 complaints which were lodged after the establishment of HBS. This table of few examples speaks for itself.

**In light of the above, the Consumers of New South Wales demand that the Inquiry address the failure by the OFT to uphold the legislation passed by the NSW Parliament for consumer protection and that it be appropriately and strenuously enforced.**

## **4. The exercise of Disciplinary Powers**

The OFT at page 10 states:-

*"During the course of the public hearings.....the Building Action Review Group suggested that the Home Building Service was not effective in its use of disciplinary powers under the Home Building Act 1989."*

#### **BARG's Response**

BARG's submission pp 51 to 64, and attachments referred to, relied on the OFT/HBS files and documentary evidence provided by consumers.

Although not all of BARG's case studies have been submitted to this inquiry, much of the case study evidence indicate that policing is simply not taking place; there is lack of accountability and failure to police the system to ensure that "shoddy" practitioners are rigorously prosecuted.

Whilst we are aware that there have been recent reforms in the legislation relating to improving disciplinary procedure and raising penalties for offences under the Home Building Amendment Act 2004 i.e maximum are 200 penalty units or \$22,000 for an individual, and 1000 penalty units or \$110,000 for a corporation, BARG members experience is that the OFT/HBS disciplinary action is too lenient and policing of

licences insufficient. Furthermore, when builders appeal against the lenient penalties to the Administrative Decisions Tribunal, the OFT is reluctant to pursue the builder and to act in an adversarial manner.

There is a need for revised offences and stronger penalties. The large majority of the case studies in front of you which have lodged complaints with the OFT, some of them have taken up to three years and still there is no result. There is no explanation as to why the OFT and its officers have taken as long as they have. There is no explanation as to why once reports have been prepared and the OFT has appraised the defects with the building construction, that the OFT does not commence an immediate prosecution against the individual builder and take control of the situation.

You can see in the cases before you the extraordinary periods of time that people have had to endure problems with the builders. There does not appear to be, even with the current legislation and the changes that have occurred, any real and noticeable improvement in dealing with complaints.

This is not satisfactory as the delays in investigations create significant impacts on consumers which are totally avoidable by prompter response. Furthermore, it does not send a strong enough message to the traders.

Further, there are numerous examples as to the inadequacy of penalties and disciplinary proceedings by the OFT/HBS, however BARG once again will refer the Committee to the Campbell Inquiry's recommendation which has not been implemented adequately;

#### **Recommendation No 9**

*"The Committee recommends that the system of licence breaches and penalties be reviewed to include:*

- *use to warnings limited to minor licence breaches and inadvertent errors*
- *application of on the spot penalties;*
- *increase use of licence suspension/cancellations for repeated serious breaches ; and*
- *scaled penalties to apply in relation to business turnover.*

To demonstrate further the licence breaches and inadequate penalties imposed by the OFT, (especially repeat licence offenders) BARG provides once again details of the 3 examples previously quoted:-

- a)                      and                      both held a contractor's licence under the Act, we have seen earlier the improprieties in the documents attached to their application for a licence, and the licence misrepresentation of

N.B. On 12/8/2002 the Director-General of the Department of Fair Trading, now the Commissioner of Fair Trading had issued show cause notices to                      and



in relation to a previous home building claim made by Mr and Mrs Daniels. The work involved was an upper storey addition to the house. The work was done by \_\_\_\_\_, and that of \_\_\_\_\_'s association, if any, is as a partner in the business, \_\_\_\_\_ which the Administrator maintained was the contracting party with Mr. and Mrs. Daniels with respect to that work.

There were several allegations made against Mr. \_\_\_\_\_ that were found to be sustained by the Administrator first, and a further allegation was also sustained against both \_\_\_\_\_ e.g.

- Failing to notify a change of Particulars with respect to a Business Name
- Misrepresentation that \_\_\_\_\_ held a Licence (when knowingly represented that \_\_\_\_\_ held a licence when it did not do so)
- Doing Residential work without insurance
- Installing timber flooring other than agreed
- Not carrying out work in a Proper and Workmanlike Manner
- Carrying out work that did not comply with the Building Code of Australia
- Not being fit to hold a contractor Licence

ORDERS:- 1. In \_\_\_\_\_ case disqualified from obtaining a licence for a period of 3 years from the 1 August 2005 being any of the following:-

- i) the holder of any authority
- ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of an authority
- iii) an officer of a corporation that is a holder of an authority

2. In \_\_\_\_\_ case, the Tribunal set aside the determination of the Commissioner and substituted that decision with a finding that \_\_\_\_\_ is guilty of improper conduct within the meaning of s.51(2)(c) of the Act, and determines that he:-

- a) is to be reprimanded for that improper conduct; and
- b) is to pay a penalty of \$1650.00 to the Administrator

The above is an extract from the NSW Administrative Decision Tribunal (ADT) Dated 1/08/ 2005 – Attachment 32 of BARG's submission to the GPSC No 4.

**N.B. In the case of Mr and Mrs Salih's the current complaint which was lodged against \_\_\_\_\_ and \_\_\_\_\_ officially on the 10/9/2003 with the HBS (this was one of the 10 cases provided to Mr Le Compte in April 2003) Refer to BARG's letter dated 29/5/03 handed in to the Committee on the 17/11/06. This is one of the extremely unfortunate cases that has compliance and other action continuing against the builder and home warranty insurers to date.**

Although the Salih's have similar serious complaints against the above traders, to date, 4 years later, we have been advised by Mr. Bullent Salih that the HBS has not issued disciplinary action against \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ as yet for the breaches of Salih's complaint.

N.B. Salihs lodged their complaint to the HBS on 10/9/03 to date we have been advised by Salih that the HBS have not advised of any prosecution taken.

Further, please note that \_\_\_\_\_ are repeated offenders of serious breaches.

b) \_\_\_\_\_ Licensed Trader – Licence misrepresentation, criminal record, serious defective work, repeat offender ( \_\_\_\_\_ has 6 previous complaints) to day we have been advised by Mr. Con Papanastasiou that the OFT advised him on 27/8/07 that the HBS has finally taken disciplinary action against \_\_\_\_\_ and he was required to pay the Commissioner for Fair Trading a penalty of \$3,000. Although the homeowner cannot equate the leniency of this penalty, to add insult to injury, the OFT advised Con Papanastasiou that \_\_\_\_\_ has made an application to the Administrative Decision Tribunal for a stay of the monetary penalty imposed on him. The protracted delay in prosecution and the leniency of penalty in this case is extraordinary to say the least.

As already mentioned BARG made several representations during the Quarterly Meetings with HBS for Mr Papanastasiou. (refer letter dated 25 October 2004 to Mr Le Compte, handed to the Committee on 17/11/06)

On 12 July 2005, Mr Donald van Keimpema, HBS building inspector, inspected the building works from 8.00am to 12-15pm and issued a Building Inspection Report, dated 14 November 2005. The protracted delay in this case is extraordinary. This is one of the “extremely unfortunate” cases which caused massive financial losses and underscribed human suffering to the elderly couple and family.

N.B. The Occupation Certificate has not been issued by Gosford Council as D/A conditions have not been complied with.

Is the penalty of \$3,000 adequate for a repeat offender? It is definitely not as the Campbell Inquiry recommendation “*to increase use of licence suspension/cancellation for repeated serious breaches*”

Mr. Con Papanastasiou has also been a victim of the exorbitant and traumatic experience of several years in the CTTT until his funds and health run out. The building stands idle and deteriorates daily as the homeowners health.

c) \_\_\_\_\_ Licensed Trader – licence misrepresentation. The work involved was to carry out a concrete driveway for \$19,360 in October 2004. \_\_\_\_\_ **failed to provide a certificate of Home Warranty Insurance, although he included the premium** in his quote, failed to provide a proper contract and carried out serious defective work not in a proper workmanlike manner, control joints and key joints not in accordance with AS and manufacturers recommendations etc. Reports by HBS Building inspector, Structural engineer and key joint manufacturer all demonstrate the defective work.

The complaint was lodged to OFT on 25/1/2005 –

To date this matter is still ongoing in the CTTT. The legal cost (over \$50,000), the stress is exacerbating the homeowner’s health as she is terminally ill, a single mother with 3

children, there is no amount of money that one could put on the traumatic health condition of nearly 3 years of this dispute.

The HBS commenced prosecution action against [redacted] on 13/1/06 in the Local Court at which time [redacted] entered a plea of guilty in relation to the charges. On 15 March 2006 [redacted] was convicted for his failure to provide a written contract and he was fined \$700 for that offence. [redacted] was also convicted in relation to receiving payment before having home warranty insurance in place was fined \$2000. In relation to the third offence of doing work without having home warranty insurance in place the Magistrate found the offence proved, but did not record a conviction against [redacted] and placed him on a good behavior bond for 12 months.

The Department's prosecution by the OFT raised some very concerning elements which we believe, it is important for the Committee to see how the HBS conducts its prosecution. After receiving the transcript of the proceeding on 20 June 2006, Russo & Partners, solicitors, wrote a letter to Mr. Steve Griffin advising him: *"the manner in which this case was prosecuted and in particular the failure by the Department to progress the matter as slow as it has been, is a systemic failure in the system which permeates not only through this matter but through many matters of which the writer is aware.*

*For the system to be effective and for it to have the proper impact as a deterrent on those that breach the system, it is imperative that matters are dealt with in a timely fashion."* Mr. Russo said. Copy of Mr. Russo's letter is attachment No 8.

Separate to the prosecution proceedings, in March 2006 the HBS issued a notice to Mr. [redacted] and to [redacted] calling on he and his partnership to show cause why disciplinary action should not be taken against them for failing to build the driveway in accordance with their statutory responsibilities.

On the 11 of July 2006, the OFT decision was made to fine [redacted] \$3000 and [redacted], as the partnership's nominated supervisor, \$1500.

The OFT/HBS issued a warning letter in relation to the use of misleading letterhead, for the misrepresentation that [redacted] held a licence.

Complaint lodged on 25/1/2005 – HBS prosecuted the trader on 11/7/06 (18 months).

The homeowner cannot understand firstly, why [redacted] was prosecuted and fined by the HBS when this entity was not involved in the contract with the driveway.

Secondly, if [redacted], the licensed partnership, was involved in this contract (as implied by OFT) then [redacted] should have been also in the breach of failing to provide a contract and to provide home warranty insurance. These are the same charges as were made in the case of [redacted], who is the nominated supervisor, for [redacted] partnership.

In that case, why hasn't the HBS issued prosecution notice also against [redacted] ?

BARG's research of the OFT Year in Review publications in relation to Home Building Compliance- Disciplinary results and Home Building Compliance Prosecutions results Reveals the following:-

Year 2003-2004

Home Building Compliance- Disciplinary Results = 37 licensed traders

Home Building Compliance- Prosecutions Results = 41 traders

Fair Trading complaints lodged – 6275

Year 2004-2005

Home Building Compliance- Disciplinary Results = 29 licensed traders

Home Building Compliance- Prosecutions Results = 28 traders

Fair Trading Complaints lodged – 6,313

Year 2005-2006

Home Building Compliance- Disciplinary Results = 32 licensed traders

Home Building Compliance- Prosecutions Results = 21 traders

Fair Trading Consumer Complaints lodged 5891

BARG has no available information as to year 2006-2007.

#### **BARG comments**

The above results of disciplinary and prosecution action by the HBS are extremely low in comparison to the number of complaints lodged yearly by consumers.

#### **BARG Requests**

The Committee to please assess whether the OFT/HBS does effectively administer and rigorously enforce the legislated Home Building Act 1989 and whether the Campbell Inquiry's recommendations have been complied with and adhered to effectively.

## **6. CONCLUSION**

The OFT states:-

a) *"It is our evidence that the factual evidence to the Committee, when viewed objectively, reveals that the establishment of the HBS has delivered the service level improvements sought by the Campbell inquiry in 2002"*

b) *"The factual evidence as presented to the Committee provides no evidence of systemic failure of either the HBS, the dispute resolution or the home warranty regimes in operation in NSW"*

**The OFT statements are incorrect.**

***BARG's Response***

The factual evidence before the Committee when assessed will determine and establish beyond a shadow of doubt that:-

a) The HBS has not complied with all the Campbell inquiry recommendations to provide consumers any level of improvement. Refer to Campbell's Inquiry recommendations and BARG submissions supported by documentary and visual evidence.

BARG has attached herewith copy of the Campbell Inquiry's recommendations. Attachment 9.

b) BARG's submissions and case studies demonstrate a variety of ways in which the OFT/HBS has failed to discharge its statutory responsibilities and what appears to be clear evidence of generic features of systemic failure.

BARG's submission cannot even be called the tip of the iceberg, because every case is a repetition of the experience of another. Every case involves a human tragedy whether a break up of a marriage, physical/psychological impact and financial ruin.

Each complaint involves a failure by the OFT/HBS to discharge its statutory responsibilities to protect consumers.

Consumers are prejudiced from the outset. There is complete reliance among consumers that licensing of builders is based on competence and therefore affords the predicated protection against substandard works

When problem arise consumers ring the OFT assuming that the OFT will intervene to assist resolve their complaint and pursue the licensed trader who has not complied with the legislation.

Governments have, over several decades, effected major amendments in the legislation. The purpose of those changes was always to provide better protection for the consumer.

The OFT's objects, functions and its statutory responsibilities as a licensing authority are:-

*a) to promote and protect the interest of owners and purchasers of dwellings (including the purchasers of kit homes) and users of water supplies, sewerage system, gas, electricity, refrigeration and air conditioning,*

*b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work,*

d) to give general advice and guidance to the public,

e) to monitor the operation of insurance provided for the purpose of this Act.

It is clearly evident that the OFT/HBS through its management and system of inspectors is in breach of its statutory duty and the intent of Parliament, in that the OFT/HBS has:-

- Failed to assess thoroughly every licence and renewal application against the requirements of the HBA 1989 and Home Building Regulation 2004 (in particular clause 25 of the regulation)
- Many provisions of the Act and Regulations ultimately place the responsibility on the "Director- General." By stating that:- "The Director-General must be satisfied". We know that the Director- General, in practical terms, delegates his authority to officers within the Department. We have read in the Hansard that Honorable Members have effectively said to that:-

*" Director- General that he is omnipotent and that he can determine with absolute discretion....."*

Réfer to NSW Legislative Assembly Hansard 18/11/04 Home Building Amendment Second reading.

As disclosed by the OFT representatives and OFT submissions to the Committee:-

- 10% of all licence applications only are checked against bankruptcy and criminal history and at random.
- These random checks are also applied to 10% of the renewals by the HBS each year.

and; as demonstrated in BARG's submissions and case studies to the Committee:-

- Repeat licence offenders are reissued with a renewal licence every year, without previous licence history been taken into account or CPD,
- Expired licence over a year are renewed without updated documents attached.
- Builders allow their licence to expire and reapply under a different name. And/or are issued with licences with new numbers.
- Failure to assess appropriately trade qualifications and documents attached to the licence applications, in particular "old" licences to comply with the current legislation
- Failure to conduct and assess complaints promptly when they arise. and;
- Failure to investigate **all** complaints.
- Failure to conduct proper initial inspections leading to mishandling of complaints. (inspectors lacking adequate expertise to detect major structural defects).
- Failure to police and sanction unreliable builders within a reasonable time.
- Failure to impose adequate/maximum penalties as per HBA amendment 2004
- Over reliance on caution/reprimands (as it is first offence)
- Failure to monitor the operations of insurers

- Failure to give general advice and guidance to the public.
- The OFT makes a distinction between old licence and new licence application this is an affront and injustice to the victims of builders malpractice who rely on the OFT's performance of the licensing enforcement.

We submit that Parliament established the various OFT functions, designed to afford consumers meaningful and prompt remedies against unscrupulous builders.

The cases referred to the Committee demonstrate conduct by the OFT/HBS which is unsatisfactory and which attracts legal liability.

This is particularly the case, where the OFT/HBS has a responsibility to take care to avoid or prevent damage to consumers, who have relied or depended on the authority's performance of its statutory functions with due care. The law has firmly established a duty of care on public authorities.

The OFT owes an explanation to the GPSC No 2 Inquiry for its failure to comply with its statutory functions and the effect and consequences to consumers.

There is a long list of other problems leading to decreased consumers protection :-

- PCA – Council certification (see article PCA continues to practice after 18 counts of unsatisfactory professional conduct were found against him) dated 21/6/2007. See Attachment 10.

Final occupation certificate. Most consumers are unaware of the importance of this certificate. Thousand of consumers live in illegal defective premises. BARG has numerous case studies, especially of project builders with such problems. Although Council conditions are not complied with, Council orders are issued under section 121B of EP & A Act. and;

Campbell Inquiry recommendations 33-39 are not complied with.

- the CTTT – significant delays (2-3 years) mass of claims against builders and home warranty Insurers, the cost is prohibitively high.
- the CTTT does not take into consideration and abide by Council's orders and/or non compliances of D/A conditions of consent, BCA and AS and HBS Building Inspectors reports and Rectification orders.
- The objects of the CTTT Act are not complied with:- (see the following)
  - # to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair.
  - # to enable the proceedings to be determined in an informal, expeditious and inexpensive manner.
  - # to ensure the quality and consistency of the Tribunal's decision making.
 BARG refers the Committee also to the Functions and responsibilities of the Chairperson according to the Act. The Campbell Inquiry Recommendations 48-50 have not been complied with.
- Home Owners Warranty Insurance. The present system substantially reduced the

level of consumers protection by the introduction of "last resort"

(There are still outstanding claims of victims of the HIH and BIG insurers)

The constitution of the Home Warranty Scheme Board does not fully account for the Grellman's Inquiry recommendations, which outlined the establishment of a Scheme Board modelled on the Motor Accidents Authority. The Board is merely taking an advisory and consultative function.

We hoped that the Board would, in the absence of an independent warranty insurance ombudsman, provide an independent function in considering grievances and complaints.

- BARG raised many issues forwarded to the Interim Scheme Board that still wait response. Please refer to the Minutes of the Meeting with the Insurance Scheme Board Chairperson and BARG held on 12/7/06.  
Attachment 12 of BARG's submission to the GPSC No 4. and relevant correspondence attachments 13, 14, and 15 of BARG's submission to the GPSC No 4.
- The OFT/HBS is responsible for monitoring the operation of the insurance scheme. The OFT meets regularly with insurers to discuss administration and issues impacting on consumers. The legislation provides for linking of licensing with insurance. In this regard, the Hon John Watkins (a former Minister for Fair Trading) stated:-  
*"..The Director General of the Department of Fair Trading will not be able to approve an application for, or renewal of, a licence unless satisfied that the applicant has or is eligible to obtain insurance for future work.."*  
Refer to Home Building Amendment Bill – Legislative Assembly 2/6/99 – Second Reading.
- Independent consumer advice and advocacy centre. Campbell Inquiry recommendations Nos. 3, 29, 30 and 31. Unfortunately, the recently established Macquarie Legal Centre, is not adequate to the consumers needs. In particular the centre is only available to consumers from one geographical area, it is means tested and cannot assist consumers who have complex building matters and where the builder has already initiated legal proceedings. This Centre is not operating as per Campbell Inquiry recommendations.

BARG has recommended the need to educate consumers of their rights and entitlements of the 3 important stages of building namely:-

- pre construction
- during construction
- post construction

- BARG believes that the Licensing Authority's failure to perform their statutory obligations to assess the suitability and competency of licence holders to hold and continue to hold various licences is causing the majority of problems.

As the Committee is well aware, over the years there have been a number of inquiries and reports into the building industry, but it is clear that very little has changed, if anything it has become even worse.



Why? It is evident that the failure of the various inquiries lies in the failure to appropriately and fully implement their recommendations.

BARG submits that it is necessary to comply with all the Campbell Inquiry recommendations and to ensure that these are appropriately implemented.

It is evident that the Government did not effectively implement many of the Campbell and Grellman Inquiries recommendations and in particular placed the HBS under the umbrella of the OFT, contrary to the Campbell Inquiry's recommendation No 1, which required it "*..to be separate from the OFT*".

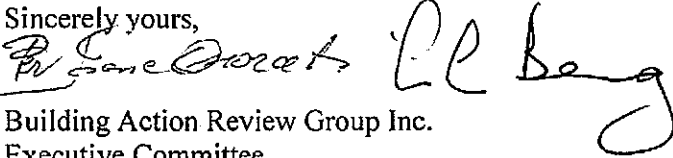
The failure of the HBS to stand alone, independent and as a separate entity from the OFT is causing the systemic problems to recur to this day.

This accounts for the OFT's reluctance to implement the Campbell Inquiry recommendations since the inception of the HBS.

Therefore, it is essential that a Committee representing all stakeholders be set up to ensure that all the Campbell Inquiry's Recommendations are appropriately implemented and to continue monitoring that they are vigorously enforced by the Regulatory Authorities.

BARG thanks the Committee for the opportunity to reply to the OFT's supplementary submission dated December 2006. We regret and apologize for the lengthy submission, however, this could not be avoided. The problems are so numerous and complex that it is not possible to cover all aspects in great detail. Regrettably we may have unintentionally overlooked some and/or repeated others. BARG claims are supported by documentary and visual evidence which can be found in the OFT/HBS files and other relevant authorities files. Please do not hesitate to request further details.

Sincerely yours,

 P. C. O'Connell

Building Action Review Group Inc.  
Executive Committee