

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

Organisation: Building Action Review Group

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Position: President

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Date received: 15/08/2007



BUILDING ACTION REVIEW GROUP, INC.

Associated with Property Owners' Association NSW

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11th August 2007

The Director
General Purpose Standing Committee
Macquarie Street
SYDNEY NSW 2000

Re; General Purpose Standing Committee No.2 Inquiry into the Operations of the Home Building Service of the Office of Fair Trading.

We write on behalf of the Building Action Review Group, regarding your advice that your Committee will be seeking agreement from the House in September 2007, to the evidence generated by the former Inquiry (GPSC 4) being available for use by your GPSC 2 in undertaking the new inquiry.

We assume that the evidence sought, would include all written evidence and oral submissions, which were recorded at the hearings of the GPSC 4. We seek permission to;

- (a) To reply to the Office of Fair Trading supplementary submissions lodged in December 2006, this contains allegations detrimental to our organization
- (b) To lodge supplementary submissions supporting evidence relating to the Terms of Reference.

The Building Action Review Group Inc. is a volunteer and self – funded organization, which provides assistance to home building consumers in their plight against unscrupulous builders. As such, it is the only real independent voice for building consumers.

In November 2006, we provided detailed submissions about the operations of the Home Building Service of the Office of Fair Trading to the GPSC 4 Inquiry. Our submissions drew attention to the crisis in the regime of Consumer Protection in the Home Building Industry due to deficiencies and ineffectiveness of the Home Building Service and related entities of the Office of Fair Trading.

Although numerous Inquiries into the Home Building Industry have been held since 1992, the most extensive was the Campbell Inquiry into the Quality of Buildings in 2002. The Campbell Inquiry, Joint Select Committee "the Committee" concluded that the Office of Fair Trading did not perform "an effective leadership in the Home Building Industry". The Committee did not see the Office of Fair Trading as the "appropriate

vehicle to implement the required change” and then delivered a set of 55 strong recommendations with a clear message to the Parliament of New South Wales.

Unfortunately, the Government did not effectively implement many of the Campbell and Grellman inquiries recommendations, with the result that the systemic problems of the Home Building Industry are now intractable.

Presently, the substantive Terms of Reference of the former GPSC 4 need to be investigated \ assessed and the findings reported as the crucial issues remain to be resolved. In particular, the inappropriate implementation of the following Campbell inquiry’s recommendations;

Recommendation No.1

- **A Home Building Compliance Commission** be established forthwith to oversight home building regulation in New South Wales. The Commission is to be separate from the Department of Fair Trading and responsible directly to the Minister for Fair Trading. The Commission’s functions are to include;
 - (i) builder and other practitioner licensing, disciplining and auditing, to include private certifier registration and auditing; other functions listed (ii) to (vii).

The State Government did not appropriately and effectively implement the above recommendation, as it created the Home Building Service within the Office of Fair Trading on the 17th February 2003, in total disregard of the recommendation of the Campbell Inquiry.

Attached please find a copy of figure 3.1, which is an extract from the submission by the NSW Office of Fair Trading to the GPSC 4 dated November 2006. The figure speaks for itself and shows that although the Home Building Service deals with day –to –day operational management, the overall responsibility rests with the Commissioner for Fair Trading. Thus, the Home Building Service is not an independent and separate entity from the Office of Fair Trading.

The failure of the Home Building Service to stand alone, independent and a separate entity from the Office of Fair Trading is causing the systemic problems to recur to this day.

Recommendation No.2

The Committee recommends that a performance audit of the Commission be undertaken by the NSW Audit Office after two years of operation.

To-date, four and half years later, no performance audit has been carried out and the Campbell inquiry’s recommendation No.2 has still not been completed.

Recommendation No.3

The Committee recommends that a **Home Building Advice and Advocacy** centre be established as a non-government organization to provide one-stop advice on home building disputes, funded by the Commission. The centre will;

- have a consumer education role,
- provide access to licensed building consultants ; and
- be able to charge on a fee-for –service basis for advocacy and specific legal advice.

Unfortunately, the recently established Macquarie Legal Centre, as the pilot project for the Home Building Advisory Centre has limited powers to meet current advisory needs. In particular, the Centre is only available to consumers from one geographical area; it is means tested and cannot represent consumers who have complex matters and/or in matters where the builder has initiated legal proceedings.

In November 2006, BARG submitted to the GPSC 4 that the Home Building Service does not appropriately carry out its statutory functions of Licensing, inspections, investigation, prosecution and disciplinary action, etc.

Grievances and impairments in the Home Building Service

- The erosion of Homeowners' rights due to changes to the Home Warranty Insurance Scheme and in the prosecution and disciplinary processes of the Home Building Service.
- The non- resolution of many long –standing Consumer claims of first resort dating back to 1999. Consumers' being adversely affected by the Building Insurance Guarantee Corporation's protracted delays in resolving insurance claims. The Corporation's harsh and oppressive conduct in its rejection of claims including recommendations from such independent bodies as the Ombudsman.
- The Home Building Service proceedings in relation to prosecution and disciplinary action being conducted with undue secrecy and in reliance of oral evidence unilaterally given by the builder. Unscrupulous builders receive protection and minimal penalties for their wrongdoing. There is a perceived reluctance by the Home Building Service to enforce the legislation and the regulations hence creating an apprehension that the Home Building Service is not free to make decisions, which are objective.
- The new Home Warranty Insurance Scheme Board disowning responsibility for monitoring the progress of the claims of the former scheme of the first resort.

- The ineffective token representation of Consumers' interests in the Home Building Advisory Council of the Office of Fair Trading in conjunction with the Advisory Council lack of objectivity.
- The entities of the Office of the Fair Trading disowning the three core pillars, which underpin the recommendations of the Campbell inquiry, for the protection of consumers in the administration and regulation of the Home Building sector. The pillars or themes highlight the burdens of Responsibilities – Accountability- and Liability to be discharged by those carry out the wrongdoing.

We would welcome the GPSC 2 inquiry to assess the intractable situation in which victims of shoddy and unscrupulous builders find themselves through no fault of their own. The damage and losses suffered by the victims could have been avoided by a strict and rigorous enforcement of the Home Building legislation and the regulations.

Yours Sincerely,

Executive Committee
Building Action Review Group

Please be advised our contact details are;-

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Encl; 1 page

C.C.

Hon. Lee Rhiannon MLC	Hon. Greg Donnelly MLC	Hon. Robyn Parker MLC
Hon. Rev.Dr.G. Moyes MLC	Hon. C. Robertson MLC	Hon. Maria Ficarra MLC
Hon. Tony Cantanzariti MLC		
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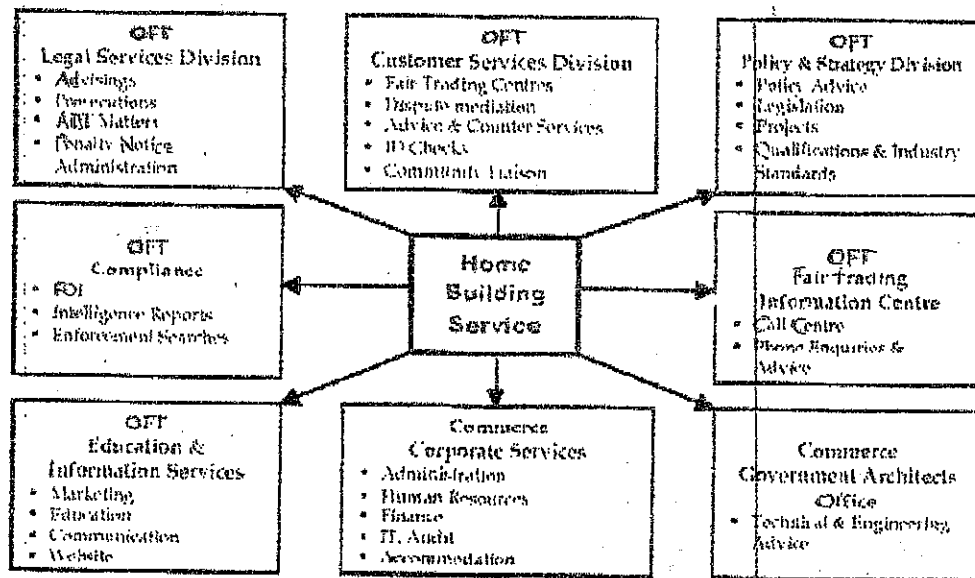


Figure A.1. The Home Building Service's relationships within the Department of Commerce.