

Submission
No 27

INQUIRY INTO INQUIRY INTO THE OPERATIONS OF THE HOME BUILDING SERVICE

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Partially Confidential



BUILDING ACTION REVIEW GROUP, INC.

Associated with Property Owners' Association NSW

SUBMISSION TO

**THE GENERAL PURPOSE STANDING
COMMITTEE NO. 4**

into

**THE OPERATIONS OF THE HOME
BUILDING SERVICE**

by

**BUILDING ACTION REVIEW GROUP INC.
(BARG)**

November 2006

Private and Confidential

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PREFACE

Purpose of this Submission

The Building Action Review Group Inc. (BARG) thanks the General Purpose Standing Committee for the opportunity to address the Committee and seek leave to give sworn evidence of its' members experience on the operations of the Home Building Service of the Office Fair Trading, and in particular:

- a) The builder licensing system,
- b) The Home Warranty Insurance Scheme,
- c) The resolution of complaints,
- d) The exercise of disciplinary powers,
- e) The enforcement of relevant legislative and regulatory provisions,
- f) The establishment of a Home Building Advice and Advocacy Centre, and
- g) Any other relevant matters.

This inquiry is sincerely welcomed and it is hoped that there will be a positive outcome in the interests of building consumers, builders and the economy.

This submission is by the Building Action Review Group Inc. (BARG) an association of consumers concerned about residential building problems. BARG is a voluntary, non-funded organisation and due to the very limited time and resources available to prepare this submission, it should only be treated as a preliminary overview.

Any information omitted is due to the limited time available to enable us to put all matters to the table and should not affect the overall endorsement or otherwise of this submission.

The purpose of this submission is to indicate to the General Purpose Standing Committee the areas that need to be investigated and to identify the inadequacies and inefficiencies which do not as a consequence result in an appropriate level of protection for consumers, and impacts on the Home Building Service and Home Warranty Insurance Scheme.

BARG's submission is based on information obtained from consumers (BARG members) who have had first hand experience with the complete lack of enforcement of regulation in the building industry, the non compliance and non enforcement of legislation by the regulatory authorities.

Houses, units and town houses are sold and occupied despite serious structural defects, inappropriate building standards and inadequate certification.

The purchase of the home is the most significant purchase a consumer makes involving the largest financial obligation during a person's lifetime.

The effect on the consumer of shoddy workmanship is therefore far greater than the impact of other purchases.

The need to protect consumers from unscrupulous or inefficient builders was recognised in the 1971 Builders Licensing Act, which established the New South Wales Licensing Board and despite all the amendments which have been made and all of the legislation which exists, **the HBA 1989 and Building Regulations are not strictly adhered to and enforced.**

Regulations governing home building and homeowner's building insurance are failing to protect people building, renovating and/or buying their home.

BARG will provide some examples in this submission, of the deficiencies in the systems and processes used in administering the legislation, particularly the irregularities and inappropriateness in the licensing of unqualified builders and Companies. It is clear that the criteria for obtaining and renewing licences is too open...licences are too easy to obtain.

BARG finds it difficult, almost impossible, due to the lack of resources and daily workload to advise and assist the many consumer victims to prepare appropriate submissions, bearing in mind many consumers are of ethnic background and cannot speak and write English fluently.

BARG is happy to provide all the evidence in our possession to support each of the claims it makes, including the names of members affected by each problem and BARG has the authority from those.

1.0 INTRODUCTION

Building Action Review Group Inc. (BARG) is the only real voice of building consumers, formed to assist and help consumers to fight the unjust building system.

Most consumers are unaware of their rights and entitlements in building matters and have nowhere to go to be assisted when in need of help.

1.1 Origin of BARG

BARG came into existence through the efforts of several consumers who lost hundreds of thousands of dollars through arbitrations on building disputes, without gaining the money needed to rectify their homes.

These individuals sought to bring to the attention of the public and the Government the injustices of the unconscionable/mandatory arbitration clauses in residential building contracts and the unjust arbitration system and in doing so found many other people had suffered a similar fate.

As more and more people told their stories a pattern began to emerge that extended beyond arbitration to the building system in general.

BARG informally came into existence when these consumers banded together in October 1988.

1.2 Legal status

BARG was formally incorporated on August 20, 1990.

1.3 Membership

BARG receives numerous calls daily from building victims, not only from NSW, but from other states predominantly from Victoria.

BARG Members are a small proportion of the people of New South Wales who have been adversely affected by the building industry. (Refer to the Office of Fair Trading Annual Report and CTTT total number of complaints registered).

BARG's overwhelming need to respond to consumers pleas for help, to confer and assist consumers, answer telephone queries, attend to incoming and outgoing urgent correspondence, prepare and organize weekly BARG meetings, attend on site meetings, assist consumers in Tribunal hearings, Quarterly Meetings with HBS, Meeting with Chair of Scheme Board, etc. such work load does not allow us enough time to cater for and assist a large number of consumers. Often we have referred consumers to contact directly

the HBS, former General Manager, Mr. Le Compte and Acting General Manager Mr. Steve Griffin and or/ the investigation manager, Mr. Les Wrigley, solicitors, expert consultants, their MP's and other relevant authorities for assistance.

Many people do not pursue complaints because they don't even know about the existence of the OFT, others are advised by solicitors *"that's just the way the system operates and therefore better to pay and get on with your life"*.

A number of people are too scared to talk. Others such as university lecturers, doctors, a retired judge and even a couple of solicitors have contacted us to support BARG, but wish to remain anonymous. BARG members who have contacted the OFT are advised to lodge a claim to the CTTT.

1.4 Past Activities and Summary of Events

Since its inception in October 1988, BARG has sought to fairly represent the interests of building consumers in a wide variety of problems.

It has been forced into this role due to the shortcomings in protecting consumers by the former Building Services Corporation, Department of Fair Trading, today re-named Office of Fair Trading and the operations of Home Building Services.

The name of the regulatory bodies has changed, but unfortunately not the inadequate infrastructure.

Despite an absence of representation on relevant bodies, BARG has worked hard for changes in the building industry that has and will benefit all Australians.

BARG has made submissions to a series of NSW and Federal building industry inquiries:

- The Inquiry into Arbitration Clauses in Residential Building Contracts (1989).
- The Roger Gyles Royal Commission into Productivity in the Building Industry in New South Wales (1992).
- The Dodd Inquiry into NSW Building Services Corporation (1993).
- The Nationwide Building Industry Review by the Trade Practices Commission (1993)
- The Ministerial Inquiry into Outstanding Grievances with the Building Services Corporation (1995). Refer to the Crawford Inquiry Report.
- The National Review of Home Builders Warranty Insurance and Consumer Protection 2002.
- The Joint Select Committee on the Quality of Buildings July 2002

- Legislative Council Standing Committee on law and justice.
Report No 20 on the Home Building Amendment (Insurance) Act 2002
- The Richard Grellman NSW Home Warranty Insurance Inquiry September 2002

Although, over the years the Government has acknowledged the need of Reforms to better protect consumers by commissioning the above inquiries into the building industry, it is clear that very little has changed, if anything it has become even worse.

Why?

We believe the failure of the various inquiries lies in their failure to set clear and achievable objectives and in failing to act on the recommendations, investigate the complaints and to obtain clear sworn evidence and act on it.

The above inquiries and reports have cost taxpayers millions of dollars but have failed because some recommendations were **completely ignored or sparingly implemented**.

Why??

Let's examine some Recommendations of recent Inquiries and how the Home Building Service (HBS) was established.

1. The Inquiry into the Quality of Buildings (Campbell Inquiry) - July 2002.

The Joint Select Committee on the Quality of Building found: -

“As the Committee has already observed, it does not believe the Department of Fair Trading is performing an effective leadership role in the home building industry.....the Committee does not see that it is an appropriate vehicle to implement the required changes.

The only way to give this paramount consumer item the focus it warrants is through a dedicated public sector unit, to be called The Home Building Compliance Commission”. (Refer Page 26 of the Report)

Therefore, some of the Inquiry's key recommendations were:-

Recommendation No: 1

“That a Home Building Compliance Commission be established to oversee Home Building Regulations.” Refer Attachment 1.

The Commission was to be separate from the Office of Fair Trading and responsible to the Minister for Fair Trading.

Recommendation No: 2

"The Committee recommends a performance audit of the HBS be undertaken by the NSW Audit Office after 2 years of operation." Refer Attachment 1.

- It is now **three years** since the establishment of the HBS, and although the HBS performance has been inefficient and ineffective, **NO AUDIT** has been carried out as yet. (We are sure that you are aware of OFT/HBS ineffective and inefficient performance through the numerous copies of letters you receive from consumers victims.)

Recommendation No: 3

"The Committee recommended that a Home Building Advice and Advocacy Centre be established as a non-government organisation to provide a one-stop advice centre on home building disputes funded by the Commission (HBS)". Refer Attachment 1

- To date **NO** Home Building Advice and Advocacy centre has been established.

2. A further inquiry (June 2002)

The National Review of the Home Builders Warranty Insurance and Consumer Protection by Professor Allen has also recommended the following:-

Priority: High

a) A Home Owner's Advocacy Group. (Refer page 46)

"Fund a national consumer advocacy group (for example, ACA or BARG) to establish a small dedicated office to help home buyers complainants....." **Refer Attachment 2.**

This has also been completely ignored.

b) Investigate BARG allegations.

"..... Investigate and reply to BARG's allegations... of say a dozen BARG case studies and what could be done if anything to avoid such episodes in the future."

Refer page 38 Attachment 3.

This investigation has **NOT** been carried out. Why?

2.0 Home Building Service (HBS)

In February 2003, the State Government established, the “Home Building Service” “(HBS)”, to “regulate, mediate and investigate the operation of the Home Building industry in NSW and “[bring] major improvements [to] the Home Building industry for both consumers and builders”. Yet the Office of Home Building has been and is “under the Department of Fair Trading umbrella” totally contrary to the Inquiry recommendation and assessment.

A chronology with attachments is provided herewith to assist the Committee in examining the HBS operations and performance since its inception.

On 14 February 2003, BARG and honorary Solicitor Sal Russo had the first introductory meeting with the newly appointed HBS General Manager, Mr. Lindsay Le Compte. It was proposed that 10 case studies be provided to the HBS as a sample of problems encountered by consumers for his attention and investigation.

On 17 April 2003, Second meeting with Mr Le Compte. BARG provided a 4 page submission and 11 case studies.

On 29 May 2003, we wrote to Mr Le Compte confirming our meeting and the issues discussed. Further, BARG Executive Committee (BEC) requested Mr Le Compte to please advise the impending changes in the administration of Fair Trading.

“BEC” and its members hoped and shared Mr Le Compte’s confidence that the HBS will achieve an effective outcome. Refer to copious correspondence, in particular HBS letter dated 23/12/03 and BARG’s letter dated 16/02/04. Refer to Attachment 4.

On the 3 February 2004, we wrote a letter to Mr Le Compte summarizing the events since his appointment as General Manager of HBS. It was 12 months since HBS’s inception, very little action had occurred in respect to the ten cases as yet. Refer Attachment 5.

On the 29 July 2004, BARG’s special meeting with HBS General Manager to discuss HWI conduct. Refer to point 4.5 page 40 of this submission at b) HWI Scheme.

On the 17 September 2004, BARG hand delivered to HBS the submission in relation to the unconscionable conduct of HWI.

Copious correspondence was exchanged. BARG had a good communication with Mr Le Compte, who was trying very hard to resolve the critical issues submitted by BARG.

Unfortunately, the process was very slow. BARG members’ case studies demonstrated the problems of the past were recurring and the same problems of non compliances and non enforcement of the legislation by statutory authorities was occurring.

On or about July 2005, we were informed that Mr Le Compte was no longer the HBS General Manager, he was transferred and Mr Steve Griffin was the Acting General Manager now.

Steve Griffin HBS Acting General Manager

On 14 June 2005 at a Meeting with Hon Hatzistergos, former Minister for Fair Trading, we met Mr. Steve Griffin for the first time .

BARG had 3 Quarterly meetings with the new HBS A/General Manager, Mr Steve Griffin.

On 19/10/05 BARG had the first Quarterly Meeting with HBS.

This meeting was attended by:- A/General Manager, Mr.. Steve Griffin, (SG), Mr. Les Wrigley, (LW) and Mr. Newton, (Newton) representing HBS. BARG's honorary solicitor Sal Russo and BARG Members: - Irene Onorati, (IO), Natasha Scuderi, (Natasha), Lydia Chakouch, (LC), Albert Falzon, (AF) and Luisa Berg, (LB) representing BARG.

At this meeting the same items in the agenda of the Hon. J. Hatzistergos, former Minister for Fair Trading, were reiterated. Refer Attachment 6.

These items are the most important elements of consumer protection i.e.:- builders licensing, complaints investigation, HOW Insurance, CTTT and consumers education. Refer to BARG minutes of 19\10\ 05 (15 pages). Attachment 7.

BARG used relevant examples to support each statement made in relation to consumer complaints and builders non compliances. Particular emphasis to revised.

On 01/03/06 BARG had the second Quarterly meeting with HBS.

This meeting was attended by: -Mr. Steve Griffin, (SG), Mr. Les Wrigley, (LW) and Mr. Newton, (Newton) and Pamela Renneburg. (Secretary) representing HBS. BARG's honorary solicitor Sal Russo and BARG Members: - Irene Onorati, (IO), Ms. Dilber Salih (Salih), Mr. Con Papanastasiou (Con), Ms. Luisa Berg (LB), Mr. Alex Le Bon (Alex), Ms. Kala Magan (CM), Mr. Albert Falzon (AF) and Ms. Lydia Chakouch (LC).

Agenda: we reiterated the same items as at our first Quarterly meeting 19/10/05 and quoted issues from minutes taken adding a short summary of the past events. Emphasis on the three examples mentioned above. Refer BARG Minutes 20 pages and HBS Notes 4 pages. Attachment 8 .

On 22/5/06 Mr Griffin called Irene Onorati BARG's President to request that only 3 people attend the next meeting as too many people create too much confusion. BARG's President agreed as she believed it could be more productive to get into the crux's of the problems and resolve them.

On 24/5/06 BARG had the third Quarterly meeting with HBS. This meeting was attended by: -Mr. Steve Griffin, (SG), Mr. Les Wrigley, (LW) and Mr. Newton, (Newton) and Pamela Renneburg (Secretary), (PR) and Mr. Michael Cooper (MC) representing HBS.

Irene Onorati, (IO), Ms. Lydia Chakouch (LC) and Yasmin Fakhri (YF) representing BARG. At this meeting BARG believed it was very important to confirm what were the aims and objectives of the Quarterly meetings with HBS. We believed that we should specify them and to clearly follow them. Otherwise what was the purpose to continue meeting. Refer to BARG minutes 19 pages and HBS Notes 7 pages. Attachment 9.

Mr Griffin response to BARG's aims and objectives was without hesitation as follows:-

"SG: 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."

Agenda:

BARG minutes of the meeting of 1/03/06 were taken verbatim by one of the Executives, 21 pages

HBS – notes of the same meeting were only 4 pages, we refer to our letter 13/05/06 advising to table our concerns at our next meeting.

We believe it is of utmost importance to take minutes verbatim.

- Today as BARG minutes are too long we propose going through the minutes and deal simultaneously and discuss in the same sequence as they appear in the agenda items 1, 2, 3 and 4, do you agree?

SG: I agree and we should articulate action items. The minutes need to go to the participants before they get circulated.

The examples discussed during our meetings were based on BARG's member case studies and used to demonstrate the misconduct and breaches of the HBA by licensed builders. It is evident through the 19 pages of comprehensive notes taken by two BARG office bearers at this meeting, as well as the two previous meetings, that there was no moving forward nor action taken by OFT/HBS.

It became apparent towards the end of this meeting that HBS Officer Michael Cooper's mannerism was so antagonistic in preventing to table the letter of Mrs. Franztis which revealed statements in conflict with what he was asserting. Although Mr. Cooper was not the chairman of this meeting, he abruptly prohibited any further discussion on the subject matter, by saying:-

"No. I don't want you to read it, this matter is moving forward".

At this point in time, there was no purpose to continue with any matters arising from representations by BARG members as Mr. Steve Griffin, the A/General Manager and chairman of the meeting did not take any action to control his officer and bring the meeting to order. Refer to pages 18 and 19 of the minutes, sworn statements and letters to Mr S.. Griffin by the two BARG office bearers who attended this meeting, Ms L Chakouch, Ms Y Fahri and Mrs Frantzis letter in question. **Attachment 10.**

Copious correspondence and Copy of BARG Minutes were sent to Mr Steve Griffin by the Executive Committee, in an effort to resolve our issues in particular the brief summary HBS Notes containing insufficient and inaccurate record of the facts as occurred. We could provide copy of letters if required. We attach only a few for your information i.e. 18/6/06, 29/6/2006, 1/7/06, and 22/9/06 and Mr S Russo's 2 letters. dated 5/6/06 and 27/6/06. **Attachment 11.**

On 12/7/2006 BARG meeting with Chair of the Scheme Board, Mr Greg McCarthy. Mr Steve Griffin and BARG representatives Irene Onorati, Ms L Chakouch, Ms Y Fahri and honorary solicitor, Sal Russo. Refer Minutes taken by the 2 BARG office bearers Ms L Chakouch and Ms Y Fahri. **Attachment 12.**

This meeting was organised on BARG's request to discuss the status of BARG's submission dated 17/09/04, in relation to the insurers' conduct and problems which occurred under the first resort and are ongoing and recurring under the current last resort process.

It has to be noted that BARG's concerns in relation to HOW conduct, were submitted to HBS since 10/6/04. Please refer to item b) The Home Warranty Insurance Scheme in this submission for the detailed chronology. We will only deal in this chapter since the appointment of Mr S Griffin as HBS A/General Manager.

On 15/7/06 BARG wrote to Mr Griffin confirming one issue of great concern in relation of the meeting with the Chairman Scheme Board on 12/7/06 and BARG's submission of 17/9/04. **Attachment 13**

On 18/7/06 Mr S Griffin reply to our letter of 15/7/06. **Attachment 14.**

On 22/7/06 BARG's letter to Mr Griffin in reply to his letter of 18/7/06. **Attachment 15.**

On 3/8/06 we received Mr Griffin's letter advising us that:-

"Given the seriousness of the issues you have raised the Commissioner for Fair Trading has indicated that she will examine those issues and respond to you in the near future."

On 5/8/06 BARG confirmed Mr Griffin's advice to Ms L Baker.

On 15/8/06 Mr Griffin's letter advising us that the Quarterly meeting scheduled for the 23 August 2006 has been deferred until the Commissioner for Fair Trading will complete the examination of those issues and respond.

On 26/8/06 BARG replied to Mr Griffin's letter expressing regret that this action had to be taken and the issues could not be resolved between ourselves. Attachment 16.

As by the 28/8/06 BARG had not received any communication from Ms L Baker, BARG provided additional questions in the submission tabled by Ms Sylvia Hale at the General Purpose Standing Committee No 4 – Budget Estimates. Refer to additional questions.

To date 4 months later we still have not received the response as undertaken by Ms L Baker after she had examined the issues:-

“...in the near future “as advised

BARG concerns came to head when the HBS Quarterly meetings deteriorated. BARG and its members after much time and efforts spent in attempting to resolve and clarify the issues in question, BARG lost complete trust and confidence in HBS and decided to get some assistance elsewhere. Consequently, BARG provided a submission to the GPSC No. 4 Budget Estimates and afterwards briefed the Hon Members of the Cross Bench.

On the 28 August 2006, BARG provided a submission and questions for the General Purpose Standing Committee No 4 “GPSC No 4”. OFT Budget Estimates Refer to our Submission dated 22nd August 2006 and relevant Hansard of the proceedings. Attachment 17.

During this proceeding a number of questions were asked by the GPSC No.4 Members. Given the limited time, the Deputy Chair, Ms Sylvia Hale tabled this document and requested the Hon D Beamer to reply within 21 days.

On 19 September 2006, BARG briefed and addressed the Hon members of the Cross Bench referring to the ‘GPSC No 4’ proceedings and the catastrophic effects on building consumers requesting for yet another inquiry. Refer Attachment 18.

On 25 September 2006, BARG received the answers from the Budget Estimates. Refer Attachment 19.

On 27 September 2006 the NSW Legislative Council General Standing Committee No 4 has announced an inquiry into the operations of the Home Building Service of the Office of Fair Trading.

BARG welcomes this inquiry and congratulates "GPSC No 4" Committee Members for this prompt initiative and acknowledgment to inquiry into the operations of the HBS of the OFT.

On 7 October 2006, BARG has written to the Secretariat of the "GPSC No 4" advising the Committee of concerns we had in appraising the answers from the Budget Estimates. **Refer Attachment 20.**

If time permits, BARG intends to provide detailed comments to the answers of the Budget Estimate document above.

These submissions are made to the Committee on behalf of all the members of Building Action Review Group Inc. (BARG) in relation to the operations of the Home Building Service of the Office of Fair Trading according to the Terms of Reference.

It is the effect of personal experience of BARG members that will drive the conclusions contained in this submission.

Unfortunately the time span allowed is insufficient. BARG and its members find it difficult to prepare detailed and appropriate submissions on the numerous issues on the operations of HBS; bearing in mind many consumers are of ethnic background and cannot speak and write English fluently. In addition most of the BARG Members must work, have families and children to support and are involved in the preparation of their building disputes.(CTTT – District Court)

The only way to ascertain the profound extent of problems and improprieties experienced by consumers and to explore the systemic culture of the operations of the regulatory authorities is to carry out a comprehensive investigation of case studies to assess the documentary evidence in the individual relevant (HBS) files, to determine and ascertain the extent the regulatory authorities are failing to enforce Acts as legislated and are depriving consumers of their statutory rights.

3.0 TERMS OF REFERENCE

3.1 (a) The Builder Licensing System

The Office of Fair Trading (OFT) and Home Building Service (HBS) are the Regulatory Authorities in New South Wales and have powers to licence and discipline builders to protect consumer rights.

These powers are designed to minimise risk and prevent losses to consumers.

There is complete reliance among consumers that licensing of builders is based on competence and therefore affords the predicated protection against sub-standard building works.

The OFT is the principal axis with the express objects and functions of the Director-General under the Home Building Act (HBA) 1989.

The purposes of government regulation of the building industry are essentially those stated in section 106 of the HBA Act 1989 namely:-

- (a) To promote and protect the interests of owners and purchasers of dwellings including the purchases of kit homes) and users of water supplies, sewerage systems gas, electricity, refrigeration, and air conditioning.
- (b) To set, assess and maintain standards of competence of persons doing residential building work or specialist work.
- (c) To complement the work of industry organisations, public authorities and educational institutions in promoting standards.
- (d) To give general advice and guidance to the public.
- (e) To monitor the operation of insurance provided for the purpose of this Act.

The above objectives of the OFT need to be maintained and complied with if appropriate consumer protection is to be achieved.

Is the Director General effectively administering section 106 of the HBA 1989?

The questions that need to be thoroughly examined and assessed are: -

1. Is the OFT/ HBS properly discharging its statutory duties to protect consumers under the HBA 1989 and the Home Building Regulation 2004?
2. Are consumers receiving their entitlements under the HBA 1989?

3. **Have consumers suffered loss or damage as a result of the failure of the Department to properly discharge its duties to consumers under the HBA 1989?**
4. **Are competence and standards met and/or are consumers rights prejudiced from the outset?**

Australia has one of the highest home ownership rates in the world. According to the Australian Bureau of Statistics, 72% of Australian families live in their own house.

Yet too often this 'Australian dream' turns sour.

Why?

A simple answer - **The building laws and regulations are not complied with and more importantly are not effectively and rigorously enforced as evidenced by the experience of many aggrieved families with building complaints and the findings of previous inquiries.**

Where is the promised consumer protection and the guarantee of services?

The Government must uphold and honour their commitment as pledged.

BARG has serious concerns and considers that the dreadful problems of the past are not only reoccurring but are becoming significantly and alarmingly more critical.

Regulations governing home building and homeowners' building insurance are not effectively policed with the result that builders continue to produce substandard work and consumers cannot afford to litigate or have the work rectified.

3.2 Quality of licensed builders

The first and most important element to be considered and examined by the Committee is the quality of building practitioners, the skills and qualifications, experience and conduct required for the licensing of people who build our residential buildings; as well as the assessment and adequacies of builders licensing regime.

Part 3 - Section 20 and 21 of the HBA 1989, and Home Building Regulation 2004 Part 4 sec. 25, 26, 28, 29, prescribe and deal with the Licenses and Certificates.

Consequently, the Office of Fair Trading's licensing process must be thorough.

The fitness, ability and capacity of the licensed applicant to perform licensed work must be adequately assessed.

Is the scrutiny of Builders' licence applications and licence renewals thorough and adequate?

We refer the committee to evidence given by senior members of the building industry to the recent Joint Select Committee on the Quality of Buildings (Campbell Inquiry) in July 2002. At pgs 42-43 – point 2.6.2. Refer Attachment 21.

Comments received by the Committee, include that licences are too easy to obtain and the entry level too low:

"Builder's licences have become easier to obtain and to a broader cross section of backgrounds, personally I have encountered builders who were journalists, brickies, labourers, scaffolders and handyman.

Mr HEARN (April Showers Waterproofing, Director): ... the licensing system is a joke...

The Hon. HELEN SHAM-HO: That is the problem.

Mr HEARN: Yes

ACTING-CHAIR: But why is it a joke?

Mr HEARN: Because they can give up one licence one day and two or three weeks later get another one.

Mr VILES (April Showers Waterproofing, Director): You can be Billy the brick cleaner one week and Wally the waterproofer the next.

Mr HEARN: That applies to builders as well.

Licensing standards have been relaxed to such an extreme degree that new licensees cannot necessarily read drawings, set out accurately, conduct estimates, understand building sequencing or in some cases, write legibly".

In particular, it appears that formal training is being too easily substituted for experience, which is less stringently monitored:

Mr LEWER (Australian Institute of Building- NSW): "Those people can get a licence because the requirements of Fair Trading are not such that they need to be able to show they have done three years apprenticeship and a journeyman year and that they have a ticket from TAFE or an independent authority. They do not have to do that. What they generally do is provide references from people they have worked with - you talk of about cronyism - and somebody has to say they have been doing this for five years ... and bingo they get a licence..."

Views were expressed by consumers, builders and Council alike that there was a huge variation in quality of licensed builders:

"They range from craftsmen to predators who think they have a licence to take money and get away with it.

Council's experience with licensed builders in the areas is that the quality has decreased over the last 20 years. The buoyancy in the building industry has resulted in more fluctuation in the quality of works carried out".

(From Campbell Inquiry Report July 2002)

The purpose of licensing is to protect the consumer from unscrupulous builders and the consequences of sub-standard work by requiring a level of competency. This cannot be done unless the HBS is thorough in its' screening processes and in enforcing compliance from builders.

Although the Government has acknowledged the need of reforms to better protect consumers and has enacted several packages of Reforms and Home Building Legislation Amendments from 1997 to 2004, the latest Amendments included :-

- **Tightening up the licensing system**
- **Speeding up the disciplinary process with new process with new powers for immediate suspension;**
- **Doubling penalties for non- compliance with the Act;**
- **Making the insurance system scheme fairer and more accountable;**
- **Establishing an early intervention dispute resolution system CTTT;**
- **A cooling off period for building contracts**

To date BARG can demonstrate that **no** progress has been evidenced in terms of the above critical reforms.

3.3 FOI Applications

BARG received complaints by numerous BARG members, who have applied under the FOI Act to obtain copies of the OFT/HBS file of their builders.

It is of great concern to note the conduct of this Government Agency and the inconsistency in complying with the FOI Act by requesting such excessive application fees. Refer to personal consumers' submissions L. Berg, Gerard Nicol, A Falzon, Kalavati Magan, Con Papantasiou, Yasmin Fahri etc.

The question to be asked is why?

Many members were able to obtain files containing substantial documents for the \$30 application fee – no extra or additional charges were requested ie. Mr & Mrs Zohrabi, Mrs J Nix, Mrs C Frantzis, Ms L. Chakouch to mention a few. But other consumers who lodged FOI applications they received letters demanding excessive fees. These consumers strongly complained and felt that it was obvious that the very excessive fees are nothing but a deterrent to obtain the builder's licence documentation.

BARG feels obliged to submit the statement made to a BARG member by the FOI officer Mr Wallace, when she rang to discuss the status of her application he said:-

“Not to push it, you should understand as you worked there you were part of the establishment.” This statement was tabled at a BARG meeting and it is recorded in BARG’s Minutes.

Furthermore, we advise that on 12 July 2005, we were invited to meet with the members of the Licensing Review, Prof. Rice and Ms I Moss. At this meeting we tabled this information and provided copy of letters by BARG members. BARG wishes to request the Committee to please subpoena relevant OFT files to independently assess and determine whether the Director General has satisfied himself that certain applicants for a licence authorising its holder to contract to do residential work and/or specialist work have accompanied their applications by such particulars as required by the HBA 1989.

3.4 10% of Builders’ licence applications only are checked by HBS

On 28 August 2006, during the “GPSC No 4” Proceedings Ms Baker, Commissioner for Fair Trading, replied to the Hon. David Oldfield questions in relation to licence checks: -

Ms BAKER: “Yes”- “...only 10% of all applications – that is in home building - are checked...”

The Hon DAVID OLDFIELD: *How do you select who the 10% are?*

Ms BAKER: *That is a random selection*

The Hon DAVID OLDFIELD: - *Okay. So is there just a random check?*

Ms BAKER: - *There is a random selection, but also if anybody identifies a criminal record they will be investigated.*

The Hon DAVID OLDFIELD: - *So if you are a crook you have got nine chances out of ten of slipping through the system*

Ms BAKER: - *Well, you could look at it that way*

The Hon DAVID OLDFIELD *Well, mathematically I could not look at it any other way, could I?*

Refer page 10 of Hansard.

This process alone is the most single destructive element of consumer protection.

The OFT/ HBS is putting consumers at great risk by not complying with their Statutory functions.

This principle of “10% selection at random to assess and check builders’ licence application” it is not legislated; it is not found, nor prescribed anywhere in the HBA 1989 and Home Building Regulations. On the contrary, there is complete reliance among

consumers that licensing of builders is based on competence and therefore affords the Government's predicated promised protection against sub-standard building work. We refer you with emphasis to HBA 1989 sec 106 functions of Director-General under Act.

Consumers are outraged. Consumers believed and trusted implicitly the Government representations in relation to the validity of builders licence and certificates issued by the Statutory Regulatory Authorities DFT, OFT/HBS.

Qualifications, experience and conduct required for the licensing of the people who build our residential buildings are prescribed in the Home Building Act 1989 Part 3 sec 19 and 20 where it is stated that:-

"An application for a licence is to be accompanied by such particulars as are required by the Director-General concerning:

- (a) the fitness, ability, capacity of the applicant to carry out contracts for which the licence is required, and
- (b) the arrangements made or proposed by the applicant to ensure that all work done or supervised by appropriately qualified individuals" etc Refer to the HBA 1989.

Although the HBA 1989 has been amended the latest version being 1/9/06 sec 19 and Home Building Regulation 2004 sec 28, it does not specify the minimum qualifications, or what examinations must be passed by builders who are going to build houses and going to deal with the public.

Furthermore, the Director-General, as prescribed in the HBA and Building Regulation above, **is the sole arbiter of the principal qualifications for an applicant for a licence.** He determines the standards or any other requirements that must be met before any licence is issued or renewed.

Home Building Regulation 2004 sec 28 Additional requirements for obtaining certificates states:

- (1) Before a certificate is issued, the Director General must be satisfied that the applicant:
 - (a) has such qualifications or has passed such examinations or practical tests, or both, as the Director-General determine to be necessary to enable the applicant to do, or to supervise, the work for which the certificate is required, and
 - (b) has had experience of such a kind and for such a period, as the Director- General considers would enable the applicant to do, or to do, or to supervise, the work for which the certificate is required,
 - (c) is capable of doing or supervising work for which the certificate is required.

The builders licensing scrutiny by the regulatory authorities is a demonstrable failure on the part of the OFT/HBS and its predecessors Department of Fair

Trading in properly performing their statutory duties. This is the single most destructive consumer exposure to great risk. Again, the question is:-

- Why has this occurred? and
- Is this going to continue?
- How is the HBS going to correct the 90% of licenses issued unchecked.

At BARG's Quarterly meeting with HBS on the 24th May 2006, licensing was discussed and our President asked;-

IO; *"We have great trust in the new licensing procedures, what about the existing licences issued by the old licensing criteria?"*

LW (Les Wrigley): *'We are satisfied the licensing met the criteria back then..'*

Refer to page.5 of the above meeting Attachment 9 of this submission.

Furthermore, why hasn't such serious non-compliance been disclosed to the 4 recent inquiries mentioned above?

NB: There are 180,000 licensed traders in NSW, 10 percent is 18,000 licence applications that the OFT \HBS only checks and is continuing to check and renew and that is at RANDOM! The balance of the unchecked licence applications is 162,000 builders who are going through the system unchecked. Further to that, Licences and certificates are renewed (and often varied with additional trades) every year!

To embrace the Hon D. Oldfield valid reasoning wherein he said: -

"if you are a crook you have nine chances out of ten of slipping through the system"

We can only conclude that "if you are a crook you have 162,000 chances out of 180,000 of slipping through the system!"

The OFT/HBS have the responsibility to avoid or prevent damage to consumers. The law has firmly established a duty of care on public authorities.

The OFT/HBS is subject to a common law duty of care in the functions it performs, or should it fail to perform them.

Particularly, where consumers have relied or depended on the authority's performance of its statutory functions with due care and it is a reasonable expectation for consumers to do so.

The OFT/HBS is liable and must be held accountable as it is reasonably foreseeable that its acts, words, omissions or silence would injure innocent consumers that had implicit trust and reliance on them.

The OFT/HBS knowingly and willingly is putting consumers at great risk.

BARG believes that consumers should be made aware, that even though a builder has a licence, it does not mean that he/she has the appropriate skills and qualifications to build your house.

How can a consumer check a builder's licence and capabilities?

The advice provided by the OFT/HBS to check your builder's licence is as follows: -

- To ring **Specialist Services HBS 1300 554 668**, or
- Visit www.fairtrading.nsw.gov.au

How reliable is the information provided by the above sources?

Well, in addition to the unreliable process of the 10% checking of licence application, the HBS Web site licence check register is not assisting consumers to thoroughly check builders' licences. HBS has recognised these deficiencies and has discussed them at the Quarterly meetings. BARG's President, IO provided 3 examples of 3 builders (Steven & , Con Papanastasiou's builder and) and how it was impossible to access correct information. Refer to BARG Quarterly meeting minutes of 19/10/2005 At pages: 2, 3, 4, 5 with particular emphasis to Mr Newton's comments at page 4 and 6 where he stated:-

Page 4:- Discussion of OFT Web Site

IO. *Website needs improving.*

Newton: improving the website will cost thousands

SG: the issue is that there is no link to the company because an individual holds the licence

Page 6:

Irene gives example of how no information resulted when name of Builder is punched in No mention of any company and/or partnership

SG: no linkage to Peter? .

Newton: Mr Le Compte recognized deficiency in the website, needed to correct problems. Le Compte had it in his agenda to correct.

The HBS advised that **only 10% of all the licence applications are checked**. Is this a thorough and adequate procedure to scrutinize the people who build the roofs over our heads?

The HBS Licence check web site is deficient. (as recognised by HBS!)

"Improving the web site cost a lot of money" Mr Newton stated!

The OFT/HBS reveals an organisation that reflects general lack of focus and directions and a complete misinterpretation of its primary role.

We request the Committee to seriously consider this paramount impropriety which is the most fundamental element of consumer protection.

3.5 OFT/HBS Further Failures.

BARG is submitting the following three examples as being representative of demonstrable failure on the part of the OFT/HBS in performing their statutory functions and further endangering consumers' protection.

BARG and many consumers are unable to obtain copy of original files of builders' licence applications to enable them to assess and verify builder's credentials and qualifications. Therefore we cannot assess how widespread is the above conduct.

The following documents have been provided by the consumers to BARG and were obtained by summons from the builders' OFT files.

The following 3 examples demonstrate commonalities in strategies used by licensed builders to mislead and deceive consumers, but more importantly it is to be noted the OFT/HBS misconduct in failing to recognise this and carry out their functions.

BARG will provide irrefutable evidence to demonstrate that although the OFT/HBS were aware of criminal records and other serious breaches they have renewed the builders licence without taking the appropriate action.

EXAMPLE 1

On the 8 October 2001,
signed a building contract with Con Papanastasiou to build a dual occupancy as per D/A approved plans and specifications by Gosford City Council.

Vero Insurance Certificate was issued in the name of

The owner noted numerous serious defects and withheld the final payment.

The Builder lodged a claim to the CTTT for monies owing.

The owner applied under the FOI Act to obtain copy of the OFT Builders file.

The Home Building Service provided the owner an estimate of \$1110.00 to process his application. This was disproportionate, high and unfair. It is obvious that this process and the very excess fee deters inquires about builders licenses. This is not in the public interest nor in accordance with the relevant legislation. The owner could not afford to go ahead with his application.

During the CTTT proceedings the Owner was advised to summon the OFT file of the builder, . Documents in this file revealed:-

A. Criminal Record documents in OFT file.

On 31/8/2005 – Jeff Golding, OFT Authorising officer made an application requesting the criminal history of . Refer to:-

(i) Search Information Application – RTA and Criminal history dated 31/8/05 – the applicant was OFT Officer Jeff Golding.

ii) On 8/9/2005, NSW Police Service Application for Criminal Record provided the criminal record check related to NSW arrests detailing the recorded result of search against

NB: Applicant Coordinator, Intel Unit OFT

(iii) Record summary in relation to (this record is of great concern)

The above documents speak for themselves. **Refer Attachment 22**

N.B. On 21/5/2006 HBS renewed licence despite the knowledge of the above record.

B. Misrepresentation that held a licence.

Sec 17. of the HBA provides that:

(1) A person must not represent that an individual, a partnership or a corporation:

(a) Is the holder of a licence, knowing that the individual, partnership or corporation is not the holder of a licence, or

(b) ...

Maximum penalty: 200 penalty units

(2) ...

(3) For the purposes of this section, a licence or certification is appropriate only if it authorises its holder to do, the work that is the subject of the representation.

had misrepresented that Blue held a licence when it did not do so. The Licence number on the letterhead is that of Refer Attachment 23.

The quote, the contract and tax invoices and other business documents in respect of the building works show the name of the builder as . Again, this is Licence number. by using his Licence number on all relevant documents had represented that was the holder of knowing that it was not the case.

As such is guilty of improper conduct for the purpose of sec 62 of the Act.

Further, BARG has great concerns about the process involved in the conduct and actions of the OFT/HBS as: -

- (i) At BARG's quarterly meetings with HBS on 19/10/05, 1/3/06 and 24/5/06 this matter was tabled and discussed. Refer to relevant Minutes. Attachments 7, 8 and 9 of this submission and cross reference with evidence given under oath by Mr S Griffin at GPSC No 4 proceedings and answers to the Budget Estimates. Refer Hansard.

We refer to BARG minutes of 24/5/06 with emphasis at page 12 and quote:

'IO: looked at the licence application documents, the trader's profile in your files it was obtained under FOI and summons, numerous complaints ..NSW Police criminal file – violence, drugs, 10 years jail...

How did he get a licence? And why is he allowed to still hold one?

SG: Where did you get this documents?

IO: from your files, summons issued HBS files. (Please refer minutes)

- (ii) conduct of misrepresentation was well known to the OFT/HBS since 4/8/05: - Refer to:

- copy of document marked File Note Id 550206 – Creation dated 4/8/05 3:25pm where it is stated:-

"The Deed of Financial Settlement states that all work is to be done by , of which is a Director. I stated he was not allowed to contract with a Company licence as his licence was in his individual name. stated that he would be putting in an application this week".

Refer Attachment 24.

There are rims of paper in the OFT file noting the above HBA breach, and numerous complaints by consumers refer only to a few. Attachment 25.

Unfortunately, due to time constraints and costs involved, we cannot evaluate, list, photocopy and attach all documents to this submission.

We are sure that there is enough evidence any way to support our statements, the Committee, if see fit, can request HBS to produce any of the relevant files.

Please not and refer to Mr. S Griffin evidence provided at the Budget Estimates on 28/8/06.

At page 13 of the Hansard, Mr Griffin is reply to the Deputy Chair's question in relation to criminal records ...did Mrs Onorati then raise a question of a licence that had been issued to a or concerns about ?

Mr Griffin replied: - "I can't recall."

BARG ask: - How is this possible? Such serious issue ...such short memory Mr. Griffin, despite all the above discussions at the 3 BARG Quarterly meetings.

Refer to BARG Minutes of 19/10/05, 1/3/06 and 24/5/06 including sworn affidavits by Mr Russo and other BARG members present.

N.B. To date the HBS has not taken any action against for the above breaches (the owner advised us) The owner, Con Papanastasiou, an honest senior of this community, has been in CTTT disputing the defective work for over 4 years, he is financially, physically and emotionally destroyed with his wife and children. Why? Because he signed a contract with a licensed builder!! Meanwhile this builder despite his non compliances, misrepresentations and criminal record is continuing to work being a danger to the community at large.

NB: stated that he is going to apply for a Licence for now!! Refer attachment.24

EXAMPLE 2

On the 1 November 1998,

signed a building contract with Mr & Mrs Salih to build a two storey full brick house for a total of \$250, 000, but on the 11 /05/ 99 this was amended to \$340,000 as per D/A approved plans and specifications by Kogarah City Council.

(N.B. In the OFT file, licence application of there are special notes recorded in 2 documents stating:-

"Building contracts to \$150.000"

Also on the status of it is stated at:-

Conditions: Maximum value \$150,000 per contract from 11/7/1995 to 10/4/1997.

Refer Attachment 26.

Therefore as the contract price to build the Salih's house was \$340,000, this sum is well over and above the maximum value of \$150,000, this builder was allowed to build under his licence, , have further breached seriously this condition!! Attachment. 27

Miss Dilber Salih has advised BARG that she has seen working at a construction site at 3-5 Anderton Street Marrickville.

We advise Miss Salih to ring Mr Les Wrigley HBS Investigation Manager to advise him. Refer to Miss Salih's Statutory Declaration. Attachment 28.

The Salih's complaint was lodged in April 2003. To date the investigation of Mrs Salih's complaint against has not been completed as yet!! The Salih's are in CTTT dispute resolution for over 2 years and is still ongoing. Refer Salih's personal submission to this Committee. This family and the sick aged father, are suffering grossly financially, physically and emotionally only because they relied on a licence issued to this unqualified and unscrupulous trader!

The owner noted numerous defects and a dispute arose between the builder and the insurer. Vero Insurance Certificate was issued to only.

During the CTTT proceedings the owner was advised to summon the OFT file of the builders . The documents in this file revealed:-

A. Misrepresentation that and held a licence

NB: Sec 17 of HBA provides that:-
Refer to sec 17 of HBA as in example 1 above.

had misrepresented that and a partnership of were the holders of a contractors Licence when it did not do so.

The licence number on the letterhead of quote . This is the licence of , not . Similarly, the contract dated 8/10/01 with respect to the works shows the name of the builder as, / and the Builders licensed number as . Again, this is Licence number. by using his licence number on the quote

and the contract had represented that was the holder of licence number knowing that was not the case.

The evidence is irrefutable proof that by displaying his own licence on letterhead, represented that and or the partnership held that licence. The fact that he used his own licence number, is evidence that he made that representation knowing that was not the holder of that licence.

breached s.23 (a) of the HBA knowingly represented that , a partnership, held a Licence, when it did not do so.

As such is guilty of improper conduct for the purposes of sec. 62 of the Act.

Copy of the original licence application file as obtained under summons from OFT/HBS demonstrate that the assessment of his qualifications have not been thorough and adequate. Refer to Attachment 29.

C. Practical Experience Employment Record

From copy of the OFT file obtained by summons during the CTTT proceedings it has been established that:-

On the 19 May 1998 applied for a builder's Licence. Attached to his licence application there was a practical experience employment record signed by on a letterhead of . Again, this is Licence. by using his licence number on the letterhead of had represented that was the holder of Licence number knowing that was not the case. has mislead and deceived the OFT for the purpose of providing not legitimate reference of practical experience employment record to obtain a licence for his brother Refer Attachment 30.

N.B. It is to be noted that on the first page of the Licence Application there is a notation in bold letters stating:-

DECLARATION BY APPLICANT

I declare that the information contained in or attached to this application is complete and true to the best of my knowledge. There is a maximum penalty of \$1,000 for making a statement or supplying documentation in connection with this application which is false or misleading. Attachment 31.

N.B. Practical experience record above provided to the OFT for the reference of his brother , as well as the his own licence application record of qualification etc. must be carefully assessed to determine the seriousness of such misconduct in respect to the applicant and the scrutiny of the Regulatory Authority. As demonstrated the consequences of these licence holders are catastrophic to consumers and the reputation of the good builders.

D. BARG has great concerns in the operation, conduct, actions and integrity of the HBS as -

(i) At BARG's quarterly meetings with HBS on 19/10/05, 1/3/06 and 24/5/06 these matters were discussed. Refer to BARG Minutes Attachments 7, 8 and 9 in this submission and cross reference with the evidence given under oath by Mr. Steve Griffin, HBS A/General Manger at the "GPSC No. 4" proceedings and answers to the Budget Estimates. Refer Hansard.

(ii) HARB Construction conduct of misrepresentation was well known to the OFT/HBS since 21/7/03 updated 24/10/03. Refer to: -

Precedents in relation to OFT/HBS files where such conduct has been prosecuted HARB v Commissioner [2003] NSW ADT 185 (21 August 2003).
Refer Attachment 32.

"The administrator found that Mr has misrepresented that a partnership, was a holder of a contractors licence. Dated 21/8/03 and updated 2/8/05.

EXAMPLE 3

P N C CONCRETING LIC No. 25917C

On the 6 October 2004, provided a quote to "Michael" to supply a colour concrete driveway at
Attachment 33

The owner noted numerous defects and a dispute arose between the owner and the builder.

The owner applied and obtained under the FOI Act copy of the OFT builder's original licence application file. Documents revealed that:-

A. Misrepresentation that held a licence

NB: Sec 17 of HBA provides that:-
Refer to sec 17 of HBA as quote in example 1 above.

The licence number on the contracting quote dated 6/10/04 issued to Michael in respect of works to the concrete driveway is **This is the licence of** , not . Similarly, tax invoices in respect to the works show the name of the builder as **Licence number** . Again, this is **Licence number** by using his licence number on the quote and tax invoices had represented that **was the holder of Licence number** **knowing that was not the case.**

This evidence satisfied the consumer that **was licensed.** It is clear and there is irrefutable evidence that **by displaying his own Licence number on letterhead represented that** **held the licence knowing it did not do so.**

NB. The fact that he used his own licence number is evidence that he made representations knowing that PNC Concreting was **not the holder of that licence.** **breached s 23 (a) of the HBA knowingly represented that** **held a licence when did not do so.**

As such **is guilty of improper conduct!!**

BARG is aware that there are precedents in the OFT/HBS files where such conduct has been show caused and prosecuted. Refer OFT show cause dated 11/10/2002 of **Also refer to** **(21 August 2003).** Refer attachment 23 above.

"The administrator found that **has misrepresented that** , a partnership, was a holder of a contractors licence. Dated 24/10/03 and updated 2/8/05."

The OFT/HBS was well aware of such misrepresentation and how this conduct is a breach of HBA.

The home owner has repeatedly brought this misconduct to the personal attention of the A/ General Manager HBS in many letters.

Furthermore, BARG at the meeting with HBS on 19.10.05, 1.3.06 and 24.5.06 brought this conduct to the attention of HBS. Refer BARG Minutes

The owner is in the CTTT for over 2 years and is still ongoing suffering financially, physically and emotionally. (The owner is terminally ill, divorcee with 3 children) Why is she in this position?

Documentary and visual evidence proves only because she relied and trusted the licence of this trader. **Who had no concreting qualifications at all refer to 'B' below.**

Please note Mr Sal Russo's comment at the quarterly meeting of BARG with the HBS on 1/3/2005 at page 4, in relation to **qualifications i.e.:-**

Sal:

" His capacity of doing concrete, he may be a carpenter, but not a concreter. Process used by HBS allows people like this to continue to carry on this wa"y

B. Trade qualifications

Licence Application

The owner applied under the FOI Act for copy of the OFT file of licence application Documents in this file revealed that:-

applied for his licence on 26/9/1991, for trade work Carpenter & joiner and also General Concreter. There is no doubt that these are 2 separate categories of work requiring different skill and qualifications. See OFT folio Attachment 34

On 3/10/1991 was issued with authorising the holder to do and supervise: CARPENTRY & JOINERY and GENERAL CONCRETING.

The only qualification document attached to application is:-
A CRAFT Certificate which is only a vocational certificate signed by Commissioner for Vocational Training and has a critical note printed on it in bold stating:-

- Note: This does not certify that a prescribed course has been completed"

Refer Attachment 35

This demonstrates that has only satisfied the Vocational Training Board or the Commissioner for Vocational Training but only for CARPENTRY & JOINERY.

NB; There is no qualifications \ skills for General Concreter attached at all in licence Application.

Has complied with the HBA and has he such qualifications or has he passed such examination or both as the Director-General determine to be necessary to enable the applicant to do, or to supervise the work for which the certificate is required? and

Has the Director General complied with his function sec.106 (a) and (b)?

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

It is of critical importance to note that documentary evidence demonstrates that
is working under three separate entities-

- i) licence contractor
- ii) – ABN quoted on the letterhead of
Tax Invoices produced to obtain payment from the consumer the same ABN
as the one of licensed partnership (this is
illegal) Again as it is the letterhead of
- iii) licensed Partnership Licence number

Please note that;-

- has 2 authorities;-
his individual contractors licence, and
- partnership Licence No.

**We ask: why has he created the letterhead which is an unlicensed
entity and he has made such misrepresentations using his own licence on
letterhead knowing that was not the holder of that licence?**

has 2 licensed authorities: - one under his own name and
the other a licensed partnership which allows him to operate
legally without any need to create illegally a third entity..

Further.ASIC searches demonstrated that he has been engaged in multiple entities in the
past i.e.

- Attachment 36
- Attachment 37
-
-
-
- Attachment 38
has GST status – no current or historical GST
- registrations Attachment 39

N.B. On the 19/10/2005 at BARG Quarterly Meeting with HBS at page 5 of BARG's
minutes when our president was discussing Licence misrepresentations about the builder
of Con Papanastasiou 2nd example. She stated:-

*"..I spoke to Mr Wrigley, this is identical to individual licence only, licence
was not in the Company's name,"*

Mr Sal Russo made a comment to which Mr Griffin had agreed and we wish to
quote: i.e.

SR: it must be a way of avoiding prosecution and tax evasion”

SG.: Tax evasion”

Similarly, at the BARG Quarterly meeting with HBS on 1/3/2006 at BARG Minutes from page 11 to page 15 the 3 examples are tabled, once again, the commonalities and the serious misrepresentations, emphasizing consumer suffering from HBS inaction.

The commonality of breaches in these 3 examples, which we had the opportunity to obtain copy of the builder's original licence application files, has enabled us to verify inappropriate qualifications and \ or any other improper documents/conduct. This is of great concern and we ask;-

How widespread is this conduct?!

Refer to

“Traders Profile” Attachment 39a

BARG was able to assess and discover such improper conduct only through the 3 files which were obtained by the relevant consumers. Many other individual consumers were not able to obtain HBS files, as already stated in page 16 of this submission.

The FOI applications were/are excessively priced by the HBS. Thus preventing consumers to obtain the files for financial reasons. To summon files, one can only do it during CTTT or court proceedings. Many consumers are not in CTTT and/or are not advised to do so. Therefore, documents relating to builders licence applications/conduct etc cannot be obtained by consumer to enable them to check their builder's record and credentials.

BARG's copious correspondence and minutes are comprehensive records of the issues tabled and discussed at the quarterly meetings with HBS. These statements have been made in the presence of several witnesses, particular emphasis to the honorary solicitor Mr Sal Russo. Please refer to minutes Attachment 7, 8 and 9 of this submission and s supporting documents. which clearly demonstrate the action, if any, the efficiency and effectiveness of the operation s of the Home Building Services of the Office of Fair Trading.

Consumers believe this conduct is unacceptable. We request the Committee to please continue to read BARG Minutes, in particular page 12 of the meeting on 1/3/06 where it is stated:-

Steve: Section 43 misrepresentation, supply evidence to me

Irene Onorati reads minutes of last meeting 19/10/05 about the Salih's case. This information is already been supplied.

Sal: Irene has investigated, spoke about itRefer page 12 of the minutes. And

At page 13 *IO. Triggers, just look at Con Papanastasiou, examples You can't say you don't have enough evidence?*

as 3

Steve SN: How is the information wrong?

*Sal: How he obtained his licence, application on different letterheads
IO: How he obtained his licence misrepresentation and misleading
doesn't exist.. etc etc*

BARG 3 Quarterly Minutes demonstrate the efforts and hard work of such a dedicated unfunded, volunteer organisation in trying so honestly and desperately to assist the HBS to note consumers plights, investigate and comply with the HBA 1989 to protect consumers, the poor innocent victims and more importantly the public at large that can become the future victims of such unscrupulous predators.

To date, BARG is in greater distress to see how the A/General Manager, Mr S. Griffin has denied BARG's representations submitted at the 3 Quarterly HBS Meetings. The record of BARG Minutes can be supported undeniably by documentary and sworn affidavits.

Mr Steve Griffin's evidence can be found in the Hansard of 28/8/2006 of the GPSC No 4 proceedings, as well as in the answers of the Budget Estimates.

The above conduct is not the only concern, BARG's aims and objectives are in succeeding to stop these unscrupulous builders in continuing to perpetrate such conduct which is destroying not just houses, but innocent families.

The Regulatory Statutory Authority OFT/HBS must comply with the legislative provisions acts and must strenuously enforce them.

BARG apologises for the lengthy submission of part a) of the term of reference, but please believe that these pages are still barely covering the whole of the inadequacies and the many examples of BARG member case studies.

4.0 b) The Home Warranty Insurance Scheme (HWI)

4.1 What is Home Warranty Insurance?

- **Protection for Homeowners against loss caused by builders!!**
The Richard Grellman Inquiry Report stated at page 7
- **Cold comfort since claims are only recognised if their builder has died or gone out of business.**
Prof. Percy Allen stated in his Report (National Review of Home Builder Warranty Insurance and Consumer Protection)
- **Although, the Committee, it acknowledged that the changes would have a negative impact of consumer protection the changes were made to prevent insure from withdrawing from the market.**
The Standing Committee on Law and Justice Inquiry stated.
- **Insurance in name only – ACA – Choice Magazine stated!**
Interesting article on Home Warranty Insurance (HWI).
Attachment 40
- **It makes a mockery to consumer protection ... indeed! Should I go on?**
- **A donation to the insurers etc etc.....**

Home owner's case studies speak for themselves

The purchase of a home it involves a large outlay of funds and a financial burden over a great part of one person's life.

Since 1971 Parliament established mandatory insurance provisions to protect consumers from loss in the event of a builder carrying out defective work or becoming insolvent.

Insurance was provided by the Government until May 1997.

Home Building Act 1989 Sct 106 prescribes the functions of the Director –General:

“to monitor the operations of insurance provided for the purpose of the Act”

To date we have seen many amendments of this Act strengthening consumer protection, but alas, it is with the greatest concern that the recent amendments affecting HWI have plagued intensively and extensively consumers lives. There has never been such regression in building insurance!!

Consumers and Builders are outraged

The problems identified to date are of such magnitude and urgency that immediate action is required.

4.2 The Home Warranty Insurance Scheme.

On 1 May 1997, the Carr Government enacted the Home Building Act 1989 (NSW) which ostensibly:

- represented major overhaul of consumer protection
- gave a guarantee of service to consumers
- was to make provision for speedy and fair process of complaint handling and dispute resolution
- it also privatised home owners' insurance, again supposedly to provide **BETTER CONSUMER PROTECTION**

"New Era and Fairer Go for NSW Consumers" The Hon Fay Lo Po', the then Minister for Consumer Affairs announced, by setting new standards of consumer protection and guaranteeing fair and equitable trading by introducing the compulsory Home Warranty Insurance Scheme.

"We intend to make sure these dreadful problems never arise again" Mrs Lo Po' said (Media Release dated 18 April, 1996)

2/06/99 Home Building Amendment Bill introduced.

The Hon John Watkins, former Minister for Fair Trading re-iterates Ms Lo Po's announcement of a major overhaul of the Government's full range of consumer services.

Refer to Legislative Assembly 2/6/99 – Second Reading

Mr Watkins stated: (we quote a few relevant statements which raise serious questions that need to be considered.

"...the major change was the replacement of the government-operated insurance scheme with a scheme provided by approved insurance companies. The new scheme commenced in May 1997. It has provided increased protection for consumers as well as opening up the provisions of insurance to competition. After two years of operation, the system has shown itself to be an effective alternative to a government – operated scheme, while the Government retains a critical role in regulation.

The Department of Fair Trading is responsible for monitoring of the operation of the insurance scheme. The department meets regularly with insurers to discuss

administration and issues impacting on consumers. Industry, insurance providers and consumers provide the department with valuable feedback on the schemes operations. The government requires the Department of Fair Trading to liaise with these groups to ensure that the legislation operates well. As a result of this ongoing liaison, and the department's monitoring of the scheme, the Government considers it necessary to make a number of changes to the HBA.

The changes will ensure that consumers are provided with even better protection against faulty and incomplete work while giving those in the industry greater confidence that the scheme is operating fairly from their perspective...etc.

The Government believes the public is entitled to expect that a licence – holder is not only technically qualified and experienced but also that he or she has the financial capacity to undertake the work. To improve industry awareness of the insurance provisions and to give consumers greater confidence in the licensing system. In this regard 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... etc.” Mr Watkins said.

What's is really happening in real life to consumers while Ministers are delivering such promising and reassuring statements?

The true facts speak for themselves.

It is clear that the Government objectives had not been achieved.

Documented cases are legion about people's homes, health and savings being destroyed. Many wait in vain for years for Tribunal decisions and private insurance to salvage their homes.

4.3 15/3/2001 HIH Insurance Collapse – Refer to 52nd Parliament HIH Insurance Debate.

We wish to refer to and quote relevant portions of the speeches from HIH debate:

The Hon M Gallagher stated:-
(former Fair Trading Shadow Minister)

“The fiduciary responsibility lay with the Minister for Fair Trading to ensure that HIH was financially sound enough to be accredited insure. Equally clear is the Minister's responsibility to ensure the financial viability of the Home Warranty Insurance Scheme”

Mr Gallagher revisited the second reading, speech of the then Minister, the Hon Faye Lo Po', to get a sense where the government wanted the scheme to go:

"Private sector insurers will be able to manage the risks far better than a government scheme. The Government will, however, continue to play a key role by setting the minimum conditions of the insurance scheme and by closely monitoring its operation. The condition set by the Government for the private scheme will also give NSW home owners significantly improved cover compared to those which operated in the past."

The Former Minister went on further to say:

"...so that insurance is only provided by sound and reputable companies, the Minister will approve insurers who operate. The Minister may revoke or vary an approval..."

The coalition sounded warning bells when the scheme came into force into May 1997 in relation to concerns about two of three insurance companies accredited by the then Minister for Fair Trading and issued a press release which stated;

"The Minister put out a document yesterday, just 24 hours before the Act came into force, announcing the approval of insurance providers under the new act."

The document does not contain any information about the location of the insurance companies, and only contains, in one case, a 1300 number and, in other case, and 1800 number, for two of the companies. For the obscure HIH Casualty and General Insurance Ltd, even the Minister's office appears not to know the telephone number, as per circular says "Contact your local insurance broker".

"Surely the Minister must realise that the home building industry cannot possibly continue to function with such limited insurers available".

These were the words of the Opposition, the Former Shadow Minister for Fair Trading in 1997.

BARG is at a loss to understand and cannot accept the Government's action, firstly in approving such insurance companies, secondly after the warning of the Opposition Former Shadow Minister for Fair Trading.

It is quite evident from the above comments that since the outset of the home warranty insurance scheme, we have never had an adequate number of providers, nor could have it been expected since the setting up of this scheme to be an efficient competitive market and to provide appropriate consumer protection.

The above statements are of great concern to BARG and building consumers and cannot be ignored. What becomes loud and clear is government mismanagement and turning a blind eye to the home warranty insurance scheme. The facts and the examples stated, demonstrate that the Government has failed to address the needs and concerns of building consumers with regard to the administration of the legislation since the outset.

The Minister and the department have failed to carry out their statutory duties.

The Hon John Ryan stated with firm conviction during the debate:

"The scheme has been a crock from the start because of the way in which it was set up. My colleagues and I have been drawing to the attention of the Government the enormous problems associated with it..."

The Greens called for the Government to come clean on how this whole issue is playing out and suggested three courses of action. Please refer to Hansard Ms Lee Rhiannon page 8- 12.

The Upper House Democrat Leader Hon. Dr Arthur Chesterfield- Evans supported the opposition and said

"Many of the problems stemmed from the Government's unwillingness to regulate the building industry"

To date BARG has still current members victims of HIIH who are still in Tribunal proceedings desperately fighting to get their rights, several consumers victims of Building Insurer's Guarantee Corporation, Fair Trading Administration Corporation, many first resort, but only a few members of last resort.

- 21 October 2001 The Ministerial Council of Consumer Affairs had agreed to review Home Builders Warranty Insurance Scheme across Australia looking at improving the operation compulsory HWI Scheme.
Refer to Prof Percy Allens' Report

He stated:-

"Should the Government try to enforce "first resort" legislation Private Insurers would quickly withdraw from the market".

- May 2002 - NSW Parliamentary Inquiry Joint Select Committee on Quality of Buildings . (Refer to the Campbell Inquiry Report)

The Committee stated:-

The Greatest form of consumers' protection is prevention and getting the right outcome at the beginning. (50 Recommendations were established).

- September 2002 - Legislative Council Standing Committee on Law and Justice Report on Home Building Amendment (Insurance Act) 2002
Report 20

BARG addressed the Committee raising many issues of concerns with HIW Scheme and stated that this reform is a regression and recommended that it be abandoned.

The Committee also noted the similar view of the Law Society that the Amendment Act represented a significant down grading of the rights of consumers. Refer to pages 64-65 point 4.100 of the Report.

Although, the Committee acknowledged the views of BARG that the Amendment Act would have deleterious impact on the consumer protection, the Committee took the view that this situation must be assessed in light of the intention of the changes *to prevent insurers from withdrawing from the market.*

From the insurer's perspective the reforms had been successful; **they reflect the reforms that the insurers lobbied for.** (The Committee stated).

BARG urges the Hon Members of the Committee to consider the history of the enquiries, statistics of Amendments Act – implementation of recommendations in particular we emphasize:-

Recommendation 14. (of the above enquiry).

The committee recommends that the New South Wales Government examine the possibility of a supplementary catastrophic fund to consider claims from Consumers who had received full payment of \$200,000 from home warranty insurance policy and still require additional funds to demolish rectify or reinstate a building that was constructed for the purposes of being their principal residence.

And

Recommendation 15

The Committee that the New South Wales Government take the issues raised in relation to the experiences of consumers of the NSW of the home warranty scheme, as set out in paragraph 4.110-4.118 of this Report, into consideration of part of any future review of the scheme that it may undertake (Refer Report No.20 – dated September 2002).

The Government once again, has not implemented the above recommendations.

September 2003 NSW Home Warranty Insurance Inquiry Richard Grellman.

The Government stated, it was determined to ensure that they have a stable and viable scheme that provided protection for home owners.

Consumers' protection regressed further with negative impacts. The amended Act further downgraded a scheme that already failed to protect consumers' interests.

It is evident that privatisation is a big failure.

4.4 The Home Building Amendment Act 2004

The Government's further wide-ranging reforms and covered two main areas; but did not taken into consideration the issues raised in relation to paragraph 4.110-4.118 recommendation 14 and 15 of the Legislative Council, have not been implemented.

The Government undertook with the new arrangements to bring greater accountability on the part of insurers and a more transparent and efficient scheme for consumers and traders. ie

- The establishment of a Home Warranty Insurance Scheme Board of high level specialist advisory body focusing on Home Warranty Insurance to continue the work already started by the Interim Board.
- Its role will be to monitor the operation of the scheme and to make recommendations to the Minister on possible changes and advice on the operating conditions for insurance.
- Sounds good? NOT really!

This has not and will NOT fix it, because it is evident that the Board has merely an advisory and consultative function. It does not provide an independent function in considering grievances and complaints and there is no consumers' representative on this Board. (Refer to BARG's minutes of the meeting with the Chair of the Scheme Board, Mr Greg McCarthy (this is discussed later in this submission).

The Government's amendment of the establishment of HOW Advisory Scheme Board is only a band-aid to pull the wool over consumers' eyes.

We re-iterate that it is evident that the privatisation of insurance is a BIG failure. Builders and consumers repeatedly voiced strenuously their concerns and disappointment.

Consumers and Builders are united and are calling the Government to adopt the scheme similar to that of Building Services Authority in Queensland.

4.5 Insurance Scheme Board

BARG has raised many issues with Mr Le Compte, former General Manager of HBS, in relation to Home Warranty Insurance. (HWI)

Since the 10/6/04 at the BARG Quarterly Meeting with HBS, BARG expressed concerns in relation to HWI's conduct and requested a meeting between

Vero's General Manager, Mr Timothy and HBS to table consumer cases which needed to be investigated. **This meeting was not organised by HBS.**

On 29/7/04 BARG met with HBS, Former General Manager Mr. Le Compte for the sole purpose to discuss Vero's conduct and policy clauses, in particular clauses 21 and 29 which were of great concern ie;

Mrs Salih's insurance claim was denied on the basis that she breached Clause 29 of the Policy. Vero advised that the rule of '*res judicata*' (estoppel) applied to this matter. This is supported by the High Court case of *Onorati v*

Refer to Attachment 41

Mr Sal Russo, BARG's honorary solicitor attended this meeting to discuss relevant and critical issues. It was agreed that:

- BARG prepare ten cases studies demonstrating the insurer's misconduct, inaction and non compliance with the HBA 1989
- Organise a Meeting with Paul Jamieson from Vero
- HBS approvals and how they work with compliance
- HBS draft of claims handling to be provided to BARG
- Look at development of memorandum of insurance by insurer to consumer.

NB: BARG prepared a submission attaching the ten case studies as agreed, but the HBS'S Manager has **not** organised the meeting with Paul Jamieson from Vero, **nor** provided us with the 3 documents as agreed above.

Please note; to date Mrs. Salih is still in the CTTT. On the 24/ 10/ 06 an eminent Senior Counsel, argued all day this point of law (costing the Salih's an arm and a leg).

There are many other consumers, BARG Members, in this situation. (CTTT or Court proceedings). Clause 21 and 29 in the insurers' policy are also enforced under the "Last Resort" insurance process. Refer to Mr. Gerard Nicol case study, as discussed later when we met with the Chairman of the Scheme Board.

Further at the above meeting with HBS General Manager Mr Le Compte on 29/7/04, BARG's President asked:-

IO: *"What disciplinary actions are implemented if the insurer has not complied with HBA?"*

Mr Le Compte: *"Disciplinary action includes sanction and/or Fined \$50,000
Conditions are placed on approval of the circumstances."*

We are not aware whether the Government has ever implemented any disciplinary action against an insurer for not complying with the HBA 1989,

Questions that need to be asked:-

- Who is investigating complaints and grievances of Insurers, what action, if any, is the Government going to take when insurers breach the HBA?
- Is the HBS monitoring the operation of Insurance provided for the purpose of the Act?

The following chronology and attachments will demonstrate and provide the answers to the above questions.

On 17/9/04 BARG hand delivered to HBS our submission (two lever arch files) in relation to the unconscionable conduct of HOW insurers as agreed at the meeting of 29/7/04. Attachment 42

We refer herewith to some of BARG's relevant contemporary correspondence in relation to our HWI submission which demonstrates the **monitoring of the operation of insurance provided has not achieved the purpose of the Act.**

The following chronology and attachments support our statements and demonstrate that HBS former General Manager's, Mr Le Compte and A/ General Manager's, Mr Griffin conduct in relation to HWI has been improper and deplorable.

On 8/10/04 BARG's letter to Mr L Le Compte referring to several BARG letters and in particular the HOW submission dated 17/09/04, which remained **unanswered.**
Attachment 43

On 18/12/04 BARG letter to Mr L Le Compte expressing concern regarding numerous BARG correspondence which had **not been replied** emphasis on 17/9/04 BARG's submission re: HOW insurer. Attachment 44

Since BARG's submission to the HBS, there has been additional catastrophic attacks due to the unconscionable clauses in the insurers' policy forcing consumers to appeal insurance decisions, causing protracted delays and exorbitant legal and experts costs (refer to Mr & Mrs Salih, Ms L Chakouch, Strata Plan SP58994, Mr C Tran, Mr A Falzon, Mr C Papanastasiou, L Berg, K Boules etc.

On 10/01/05 Mr. Griffin's letter to BARG advising that; -

“..... examination of the concerns raised by the group has been undertaken by OFT and have identified a number of issues that will be referred to the Scheme Board for consideration as part of it's general review of the operation of the HOW Insurance Scheme...and the issues raised by a group were considered valid”. Attachment 45

On 14/01/05 BARG's letter to Mr. Griffin. Please note at page 2 great emphasis on HOW Insurance misconduct. Refer Attachment 46

On 21/01/05 BARG's letter to Mr Le Compte in relation to the letter by Steve Griffin dated 10/1/05 regarding the HOW insurance, recording BARG's concerns ie:-

a) *delay in responding to such paramount significant urgent matter*

b) *The inaction by NSW Government to such unconscionable insurers' misconduct, which is contrary to the Statute.*

c) *Your belated response indicating that: “an examination of the concerns raised by the group has been undertaken by the OFT and have been undertaken by the OFT and have identified a number of issues.....”* Refer Attachment 47

On 29/01/05 BARG's letter to Mr. Le Compte again referring to our submission. Refer Attachment 48

On 28/03/05 BARG's letter to Mr. Le Compte putting on record BARG's numerous unanswered correspondence. Refer Attachment 49

On the 19/10/05 at the BARG's Quarterly Meeting with HBS. The Scheme Board and the Last Resort insurance problems were discussed, in particular the effect of policy clauses 21 and 29 have on consumers.

On 1/03/06 at the BARG's Quarterly Meeting with HBS. At page 4 of the HBS “Notes of the Meeting” provided to BARG, it was stated:-

“Steve Griffin to arrange for BARG to meet with Greg McCarthy, Chairman of the Scheme Board and himself.” Refer to Attachment.8

And again on 24/05/06 at the BARG's Quarterly Meeting with HBS. At page 3 of the HBS “Notes of the Meeting” provided to BARG it is stated:-

“Mrs. Onorati asked Steve Griffin were arranging for her to meet with the Chairperson of the Scheme Board. Steve Griffin assured Mrs. Onorati that a meeting would be held in the next few weeks.” Refer to Attachment.9

On the 12/07/06, finally, after two years, of BARG's efforts in continuously and earnestly requesting to meet and discuss HWI misconduct, a meeting with the Chairperson of the

Scheme Board Mr. Greg McCarthy, took place. This meeting was attended by Mr. Steve Griffin (HBS A\ General Manager), Mr. Sal Russo BARG's honorary solicitor and 3 BARG Office Bearers (Irene Onorati, Lydia Chakouch and Yasmin Fakhri).

The Minutes of this meeting are of great concern as it undermines the trust and confidence in the OFT\HBS Statutory Authority and its' functions. Refer Attachment 50

It is imperative for the Committee to carefully assess and consider all BARG's contemporary correspondence to HBS and the Minutes of meetings with HBS since the
* 29/07/04 special meeting, when the HWI misconduct was submitted. (BARG's submissions, 2 lever arch files), to ascertain what has really occurred and whether the HBS has complied with section 106 (e) of the Home Building Act.

* Attachment 50 a (Very Important)
15/07/06 BARG's letter to Mr. Griffin for your assessment of the HBS conduct.
Refer Attachment 51

18/07/06 Mr. Griffin's response to BARG's letter of the 15/07/06 is ludicrous and incorrect. He states:-

"Contrary to the impression that may have been given at our meeting, the group's submission was referred to the HWI Scheme Board. The matter was formally considered by the Scheme Board at its meetings of the 12 October and 21 December 2004."

Refer Attachment 52

22/07/06 BARG's letter to Mr. Griffin setting the actual facts as occurred at the meeting.
Refer Attachment 53

05/08/06 BARG's letter to Mr. McCarthy enclosing Minutes of the meeting and letters to and from Mr. Griffin. Refer Attachment 54

11/09/06 Mr. Kel Nash A/Manager Secretariat Home Warranty Insurance Scheme Board, for Commissioner for Fair Trading, replies to the letter addressed to Mr. McCarthy. BARG was surprised. Why didn't Mr McCarthy reply himself? Is the Scheme Board operating under the umbrella of the OFT?
Refer Attachment 55

07/10/06 BARG letter to Mr. McCarthy in relation to Mr. Kel Nash correspondence
Refer Attachment 56

BARG has prepared some questions which need to be asked to Mr. Griffin and Ms Lyn Baker in relation to numerous statements they made during the Budget Estimates Proceedings on 28/8/06, which we believe are misleading. If the Committee sees fit to ask to ascertain the true facts.

The following questions have been prepared in an effort to assist the Committee.

Questions that beg to be asked :-

Scheme Board

1. **Mr Griffin, was BARG's submission dated 17/09/04 referred to and considered by the Scheme Board?**

NB: Mr Griffin stated in his letter of 18/7/06 that he did. Refer Attachment 14.

NB: Mr Carthy has stated in the Minutes of the Scheme Board on 12/7/06 that:-
"the Scheme Board has not looked at these files". Refer page 2 of the Minutes Attachment 50.

2. **Mr Griffin, why have you referred BARG's submission to the Scheme Board?**

NB Mr McCarthy has stated at the meeting that:-

"The Scheme Board deals only with the Last Resort Insurance Scheme"
(Refer pg 1 of the Minutes of the Scheme Board Attachment 50).

3. **Mr Griffin, as A/General Manager of the HBS shouldn't you have been aware that the Scheme Board dealt only with the Last Resort Insurance Scheme?**

4. **Mr Griffin, why hasn't the HBS taken any action for two years in relation to the conduct of HWI, although you, Mr Griffin were well aware that BARG's submission and the ten cases attached were not Last Resort, furthermore you stated in your letter to BARG dated 18/7/06 that:-**

"...examination of the concerns raised by the group has been undertaken by the OFT and have identified a number of issues that will be referred to the Scheme Board for consideration as part of its general review of the operation of the HOW Insurance Scheme."

".....and the issues raised by the Group were considered to be valid"
(Refer Attachment 14).

5. **Has the Director General monitored the operations of Insurance monitored for purposes of the Act?**

The above documentary evidence speaks for itself!!!

BARG strongly re-iterates that;-

"Consumers and Builders are united and are calling the Government to adopt the scheme similar to that of Building Services Authority in Queensland."

5.0 c) The Resolution of Complaints.

The current dispute resolution processes do not encourage efficient and fair dispute.

Consumers are completely unaware that there are different mechanisms in place to deal with their problems, what are the respective roles of certain organizations, what to do and where to turn.

The confusion and difficulties consumers have in dealing with the intricacies of regulations and administrative mechanisms in the building industry impacts and extends in many directions. The cost incurred in trying to resolve their dispute leads to significant debt even bankruptcy some consumers must be informed and become aware about their rights. **To-date there is no consumer advice and advocacy centre.**

The complicated avenues for consumers complaints and dispute resolution further erodes consumers livelihood.

Disputes Tribunals and Courts are complex, slow and costly and tend to favour builders and Insurers who are better resourced and more knowledgeable about disputes procedures than consumers.

What consumers do when they discover defective work?

The first reaction is;-

- To ring and talk to the builder to ask him to come and fix it.
- The builders' conduct varies. Some builders completely ignore and even dare consumers by saying;-" *Go ahead, go to the Department, you won't win* " page .11 BARG Quarterly Meeting minutes of the 19\10\05.
- Some come back and patch up problems, which re-occur after a few months.

If the dispute occurs during construction it becomes even more difficult. The builder refuses to rectify. The consumer stops progress payments. The builder abandons the construction site and lodges a claim in the CTTT to recover the money owing, even though the work is incomplete and defective.

That's where the roller coaster startsthe Disputes Resolution process becomes an unending nightmare and a bottomless pit affecting consumers.

- **What are the current Dispute Resolution processes? and**
- **Who do consumers approach about their building problems?**

A. Primarily, the Office of Fair Trading (OFT)

Most consumers when concerned with the building defects they discover and consider to be faulty workmanship ring the OFT.

NB: Consumers do not and cannot distinguish defective work from 'Non Compliance' problems or contractual.

The flaw is that, when a consumers complains about home building problems, they do not always receive the correct advice. Furthermore, there are 2 separate processes which consumers are not aware of, nor are the options clearly explained to them.

The 2 processes are very complex and the consumers unawareness does not assist, but confuse them further and harms their position.

BARG Members have stated that they have received unclear advice when they ring the OFT\HBS about where to take their dispute. In many instances consumes report that the OFT refer them to CTTT.

NB: At the BARG Quarterly Meeting with HBS on 19/10/05 at page 6, Mr Sal Russo stated:-

SW: *OFT advisory centre doesn't provide assistance in lodging a complaint. Consumers are told it's a contractual dispute go to CTTT. People are told "not a matter for OFT", Consumers have major defects, they interface firstly with the OFT and are put off.*

The problem is that the current dispute arrangements contain a major systemic flaw!

NB: A consumer complains about building problems, two separate processes are set in place: one by the OFT \HBS and the other by the Tribunal.

The HBS advise consumers that it does not investigate contractual matters – these are matters for the Tribunal.

Almost, all consumers complaints are triggered by a perceive problem in the building contract, the OFT, does therefore refer the consumers to the CTTT for action on this contractual matter.

On the other hand, the OFT \HBS must commence its own investigation of the builder on compliance matters which consumers need to obtain experts reports to prove their defects. In some instances if the building report is disputed, a second report is needed, and if that is disputed a third report is obtained to try and address all the issues again.

Therefore, the HBS process ensures that almost all disputes are directed to the Tribunal, because the majority of complaints are contractual not licensing matters. Further, Mr. Le Compte (Former General Manager of HBS) at a Quarterly Meeting with BARG advised us that not all complaints are investigated due to insufficient funds and number of inspectors.

Exacerbating this problem, is the over reliance on dispute resolution (rather than ensuring problem avoidance). For those consumers with problems the dispute resolution process has become a nightmare – a revolving door from which they cannot get out, they become caught between the OFT\HBS and the Tribunal (CTTT).

Just refer to the consumers' case studies. Case after case study demonstrates a dispute process typified by protracted delays, confusion and jurisdictional buck-passing. These case studies highlight the extraordinary periods of time consumers have been suffering bleeding financially while their homes deteriorate as their health and family lives.

Delays cause massive financial hardship to consumers.

NB: At the BARG Quarterly Meeting with HBS on 19/10/05 at page 6, Mr Sal Russo stated:-

SR: *"Clients are suffering, the time it takes for an inspector to inspect and to hear the complaint causes delay, nobody has come out in 6 months or more!"*

IO: *"Longer in some cases, in a 2nd inspection, as in Luisa and Gerard's case, the consumer had to tell the inspector what were the defects".*

The OFT \ HBS actions demonstrate that the OFT \ HBS exacerbate this consumers problems because its intervention, skills are such that it does not take control of the dispute to try and resolve it. It does not take the proactive position of dealing with the builder.

As a consequence consumers are basically left to fend for themselves in circumstances in which the OFT\HBS insulates itself from the consumers.

The OFT \ HBS notes that the problem cases are in the minority. (Refer Budget Estimates Hansard 28/09/06).

However, for this minority of consumers with problems the situation degenerates into a personal and family disaster.

The existing consumers protection is complaint driven, aimed in trying to rectify faults rather than acting as a regulator for improved performance in the first place.

Early dispute intervention will prevent disputes festering and becoming acrimonious protracted and expensive.

The 2 processes are distinct and work along different time frames which can be problematic and inconsistent for example, the Tribunal could order the builder to undertake rectification whilst the investigators unit is considering removing the builders licence.

Consumers may lose a case against the Builder in the Tribunal because the consumer has not had the resources to provide effective evidence against a better resourced builder or some other procedural issue. However, subsequently, the same builder is investigated by the HBS which determines that disciplinary action shouldn't take place.

B. Home Building dispute resolution – mediate settlement

A new statutory regime for dealing with Home Building disputes commenced on the 1st July 2003. The key additional features are designed to achieve a quick dispute Resolution between the Builder and the Consumer i.e

- Home Building Services team of inspectors will make on-site inspections and try to assist parties to a building dispute to reach a mediate settlement.
- Where agreement cannot be reached the inspector has the power to issue a Rectification Order for which the Builder must comply by the date set.
- If the builder doesn't comply with the Rectification Order the HBS can start investigation and prosecution.

This early intervention if successful can prevent the matter to proceed to the Tribunal (CTTT).

Unfortunately there are several problems;

- a) The consumer is not aware of this process.
- b) The rectification order cannot be enforced if the builder has lodged a claim to the Tribunal to be paid by the consumer, even through, the work is defective and incomplete.
- c) Consumers have advised BARG that not always the HBS inspector has tried to mediate and/or issued rectification order.

Questions

1. Why doesn't the HBS Inspector always comply with assisting the parties to reach and mediate settlement? and;
2. Why doesn't the HBS Inspector when agreement is not reached, issue a rectification order?
3. What are the basis for a HBS Inspector not to issue a rectification order?

NB: Some BARG Members advice us that this new HBA statutory regime for dealing with building disputes is not always complied with.

C. Consumer, Trader and Tenancy Tribunal

Is it, a simple non legalistic alternative?

Consumers and Builders answer:- definitely not.

BARG members case studies will demonstrate that the CTTT is taking years to resolve and costing thousands of dollars, this is hardly a determination which is 'expeditious and inexpensive'.

To date BARG members' case studies raise great concerns not only for the legalistic functioning, but for the protracted delay (it takes over 2 years to resolve matters, the cost is prohibited and unaffordable).

The CTTT as its predecessor have not been meeting its objectives. Please refer to:-

- Copy of BARG's 3 page submission to the CAMPBELL Inquiry July 2002. Attachment 57
- Copy of BARG's CTTT Survey of cases dated Nov. 2003 Attachment 58
- BARG's and the Greens Media Release dated 30/03/04 Attachment 59
- BARG 's survey of CTTT cases dated 8/11/06 Attachment 60

To date consumers, BARG Members, are still suffering by identifying problems with the process applied by the former and current Tribunal. Refer to above surveys.

We ask:- Has a CTTT performance audit been carried out within the 3 years as per Campbell Inquiry recommendation?

The Joint Select Committee (Campbell Inquiry) stated:-

"Under section 91 of the Consumer, Trader and Tenancy Act, the objectives of the Act are to be reviewed after 3 years of the Tribunal's commencement (early 2005)"

Refer to Recommendation No. 50 Attachment 61

BARG is unaware whether this audit has been carried out!

The CTTT has not contacted BARG for consumers' consultation.

What is clear and demonstrable by documentary evidence is, that the Government has landed consumers in desperate financial, emotional and physical trauma once again.

We refer to a recent CTTT proceeding on 24/10/06 of Mr. And Mrs. Salih, where an eminent Senior Barrister, Frank Corsaro, joined the junior Barrister Steve Goldstein and Solicitor Sal Russo before presiding member G. O'Keefe to argue a point of Law in this matter.

The Senior Barrister, Mr Frank Corsaro representing Mrs. Salih stated at the Tribunal:-
" 2 years arguingit is scandalous "

This matter is still ongoing and this is not the only example. Refer to survey.

Another problem is the Tribunal (and HBS) settle for the lowest possible resolution by arguing that the "Building won't fall down".

This decision is unjust, relieves the builder from meeting basic code requirements and ignores the serious fact that the work is technically defective and non-complying with the Council Condition of Consent, BCA and AS leaving the poor consumer penniless and in utter ruin.

NB: The BCA is not referenced in the statutory warranties of the Building Contract.

Why are the relevant legislative and regulatory provisions prescribed, if when breached are disregarded and not enforced?

We request the Committee to assess and consider this serious anomaly and non-compliances with the regulatory provisions by the HBS and the CTTT.

The Tribunal judgement must assess defective works in accordance with the prescribed E.P & A Act, Council Conditions of Consent, BCA and AS.

Consumers pay in full the contract price to the builder and should not be made to accept an inferior product, which does not comply with the prescribed regulatory provisions.

The CTTT Members have absolute power to accept, omit or reject evidence as they see fit, these are the same characteristics of the voided arbitration.

The consumers are too exhausted and financially destroyed to appeal the CTTT decisions.

BARG regrets that time constraints preclude us to provide the Committee with detailed BARG Members' case studies to demonstrate more effectively the inefficiency and ineffectiveness of the Tribunal and or the OFT dispute resolution.

We conclude with a statement by a former Fair Trading Minister Hon. John Watkins:-

"...these alterations will enhance for the better the powers and the operations of the new super Tribunal, as a result, the efficiency, incompetence and delays in the current Tribunal will disappear".

6.0 d) The exercise of disciplinary powers

The Building Investigation Branch in OFT/HBS is responsible for the enforcement of the HBA which includes disciplining and prosecuting licensees for breaches and non compliances of the Act.

Timeliness of Investigation

Refer to BARG's submission dated 22/08/06 provided to "GPSC No.4." Attachment 17 in this submission.

Questions

1. What is the average time from complaint to commencement of Investigation?
2. What priority is given to cases assessed urgent? and;
How is 'urgency' determined?
3. How does the Investigation Branch assess Defective Work?
4. What are the HBS Inspectors' qualifications/expertises?
5. How can an Inspector without Engineering Qualifications assess building structural inadequacies and/or determine engineer's plans and reports?

Evidence by an OFT/HBS inspector was provided to BARG by Mr C Papanastasiou. Refer to 3 pages from OFT Building Inspectors Report dated 12/7/05 by Mr. Donald Van Keimpema, which states:-

"During my inspection of the alleged defects raised in the Frasca Report....there are some items mentioned by Mr. Frasca that are not considered defective or beyond the qualifications of myself."

(Refer Attachment 62)

NB: We draw the attention of the Committee to the OFT covering letter dated 13/3/06, signed by Steve Newton A/Deputy General Manager, Home Building Service for Commissioner for Fair Trading.

This report was only provided to the consumer because of BARG's representations at the BARG's Quarterly Meeting with HBS on 1/3/06. It took 7 months for OFT to release this report to the consumer and only occurred because of BARG's persistence.

How does the HBS define Building Problems?

NB: The definition of building problems or defective work set by the OFT/HBS, the local council, CTTT and Insurers are not consistent. The varying terms used in assessment (or the non qualifications of HBS Inspector) creates a very subjective basis on which to attempt to identify a serious legitimate status of defective construction

This is a recipe for disputes. This is a fundamental issue that complicates the process for Consumers in working out their building problems and of course the success of their legal action proceedings in CTTT or Courts. Refer to Kalavati Magan's case study and the recent assessment of defective work.

Example 1. Builder:

Kalavati Magan –

OFT/HBS on 14/9/06 advised that:- *“There is no evidence of defective work.”*
Refer Attachment 63.

On 20/9/06 Mrs Magan commissioned an independent engineer to assess and reply to the OFT 's above decision. See relevant additional brief report which support the serious structural inadequacies and other major defects. **Refer Attachment 64.**

On 26/9/06 Liverpool City Council wrote a letter to _____ seeking information on several matters relating to structural and architectural issues.
Refer list in Attachment 65.

To date the Builder has not replied to Liverpool Council. Liverpool Council has not provided Mrs Magan with any response on the status of Council's assessment.

Vero Insurance on 9/10/06 advised that:- *“After careful consideration of all information, we advise your claim has been determined as outlined in the attached inspection report.”*

NB: The items approved are only 5 out of 135 listed defects. **Refer Attachment 66.**

Example 2. Builder:

There are 3 BARG Members victims of the above builder:-
We have been advised today that Paul Dengate, OFT Inspector informed Mr. Tran that there is a fourth consumer victim of this same builder.

a) Charlie Tran –

OFT/HBS On 30/8/03 Mr Tran lodged a complaint to the OFT. To date his investigation and disciplinary action is not completed as yet
Refer letters 30/8/03 and 30/8/06 to OFTHBS Attachment 67
These correspondence speak for itself

At the BARG Quarterly Meetings with HBS of 19/10/05, 1/3/06 representations were made by BARG and Sal Russo in relation to this complaint. Also at the meeting of 24/5/06 we re-iterated the 3 case victims of

Mr Tran has provided BARG to-day a copy of one page which appears to be from a HBS report where it is concluded that :- *"Accordingly there is insufficient evidence to allege the builder is guilty of an improper conduct."*

We have not been provided with the full report, we assume this comment is only relevant to the issue discussed in this page.

On the other hand Mr Tran referred us to his letter page marked # where he is himself explaining the facts as occurred. Attachment 68

Fairfield City Council on 8/11/06 issued an order under the EP&A Act 1979 Part 6 Division 2A Section 121B as the premises are not in a safe condition and need to be made safe for the occupants. Attachment 69

Vero Insurance and Charlie Tran are in District Court Proceedings.

b) Alex Le Bon –

OFT/HBS paid Mr Le Bon the maximum \$100,000 BSC insurance after BARG's representations.

Mr Alex Le Bon attended the BARG Quarterly Meetings with HBS on 1/3/06 and stated:- (Refer to pages 8, 9 and 10 of these minutes).

"HBS says can't do anything for me, in May 2005 they advised me to go to Tribunal to preserve my rights, deal with the claim. OFT said will do nothing with them until CTTT is over. No acknowledgment by HBS."

Steve (Newton): will look into that, may take action against

Sal: You have current case with Charlie Tran, trigger is there to fix Alex's case.

IO: Tran has not heard anything from HBS since 2003.

At page 9 of the same meeting IO stated:-

IO: Prosecution of . . . *there are now 3 victims of this builder*

1. Alex Le Bon
2. The Hartzenburgs
3. Tran

If action had been taken they would not be in this position. Why this delay?

Steve: When did you build?

Alex: 1998, had to get builder back, to fix problems.

IO: cracks so bad that you can put your hand through. There are 3 victims.

Sal: Number of complaints, audit of this commonality of the 3 cases, same engineer same builder?

Steve: Statutory warranties 7 years? Time of compliance?

At the BARG Quarterly Meetings with HBS on 24/05/06 representations were made by BARG. At page 15

SN: Alex Le Bon

IO: There are 3 people with the same builder. As we already submitted on the 1/3/06 meeting. I was advised by Alex Le Bon you've approved and offered him the maximum BSC insurance \$100,000 and a deed of release to sign. Do you think that \$100,000 will fix there home.

MC: (Micheal Cooper) Yes I have spoken to him...

IO: Alex home is breaking down, all three cases have the waffle slab. Waffle slab has problems, generic problems in design.

MC: Inaccurate, soil test is required. Nothing wrong with actual slab design.

IO: The engineers' report demonstrate the structural inadequacies etc. Tran has the same builder and the same design engineer who provides generic designs for every house they build.

Irene reads from minutes 1/3/06 page 9 Sal Russo speaks for Tran

IO: HBS to regulate and enforce the HBA. There are a lot of builders using the waffle slab, you would have heard of Ian Dawson his builder used the same engineer and waffle slab design and had serious problems.

c) Hugh and Inga Hartzenberg –

BARG made representations at the above meetings in relation to this elderly couple. It is unfortunate that this people were unable to lodge an official complaint as critical health issues have prevented them from doing so.

Mr Hartzenburg is hospitalised with severe heart condition. We are well aware of the serious structural inadequacies, as we have on hand a structural engineer's report assessing the defective construction. This house has been constructed by the same builder carrying out exactly the same defective workmanship as in Charlie Tran and Alex Le Bon.

We believe it is imperative that the definition of defects should be comprehensive and reconciled to include the common terms used in Statutory Warranties and BCA. The HBS, the Tribunal, Council and Insurers should apply the same interpretation of the BCA, the Statutory Warranties and Quality as prescribed in the relevant legislative and regulatory provisions.

If the Government is serious when it professes consumer protection, the definition of building defects must be reconciled.

Further, BARG's members' case studies demonstrate that the HBS is not taking effective consideration of the impact of its approach to Investigation.

The response to consumers' complaints must be prompt in Home Building matters and effectively completed. Refer examples quoted in the table of our submission to "GPSC No: 4" dated 22/08/06 Attachment 17 in this submission.

Questions extracted from evidence given to "GPSC No: 4" Budget Estimates Proceedings. Refer to pg 11 of Parliamentary Hansard.

1. Ms Baker can you advise which are the BARG "clients" cases, which you stated are indeed of the more complicated end of the spectrum and why?
2. Ms Baker can you confirm:- Why the Group indicated at the 24th of May meeting that it was considering no longer participating in those quarterly meetings?
3. Ms Baker have you read BARG's Minutes of the 24th May and the correspondence of the 29/06/06, 22/07/06 and 28/07/06 in particular Mr. Sal Russo's letter dated 27/06/06?
3. Did you, Ms Baker receive BARG's correspondence dated 29/06/06 and 22/07/06 and 28/07/06 and given the seriousness of issues raised in these letters you indicated that you will examine those issues and respond to BARG in the near future?
4. Have you, Ms Baker examined and assessed those issues raised in BARG's correspondence and replied to BARG as yet?
5. Can you provide Ms Baker, the names of the ten matters with the HBS relating to this group, BARG? and
6. Which are the five matters raised for the first time?

7. Can you please Ms Baker provide the names, which are the significantly older matters on your list for Building Action Review Group which have already been subject of previous regulatory determinations by Courts and Tribunals and the Building Action Review Group finds it difficult to accept those determination? and

So, Ms. Baker, as you stated, can you advise us, which are the cases that you might think you are finished, but the Building Action Review Group does not accept that they are finished?

(Refer to pg 12 of "GPSC No: 4 Hansard 28/08/06).

8. Isn't BARG making representation on behalf of BARG members and if those cases are already determined, have you advised BARG and/or the actual homeowner of such determinations. Please provide notice?

Mr Griffin's replies to Hon. D. Oldfield at pg 12 GPSC No: 4.

Mr. Griffin stated that HBS has undertaken 209 disciplinary actions resulting in disqualifications, supervisions or cancellations of 34 licences in the past three years?

BARG Comment: - 34 Licence cancellations in 3 years it seems inadequate.

9. How many complaints were received by HBS in those 3 years? and

10. How many were investigated?

11. Can you, Mr Griffin provide the number of many of those that resulted in substantial fines and conditions imposed on their licence and/or education courses and the like?

12. Mr. Griffin are the minimum fines of \$1500 and or \$10,000 or \$15,000 issued and up to the maximum of 22 allowable for any disciplinary matter according to the HBA 1989 and in particular according to the latest Amendments of the HBA 2004?

NB; The Amendment of the HBA 2004, prescribe doubling penalties with non-compliances of the Act, up to \$110,000 for corporations and \$22,000 for individuals?

13. Mr Griffin what kind of representations were made from Solicitor to cause HBS to suspend the disciplinary action from April to June 2006?

14. Is the conduct of Solicitor proper and acceptable under the HBA 1989?

15. How reliable is the information that “ ” had any complaints recorded against them in Australia?
16. Who issued the Show Cause against and his partnership ?
17. Why was the licensed partnership of required to pay a penalty of \$3000.00 and its nominated qualified Supervisor, to pay \$1500.00?
18. Why did the HBS held this partnership liable? If so, Why wasn't this same entities been prosecuted by the OFT in the Local Court?

Other problems

Experts Reports; it is clear from the many consumers that contact BARG that the HBS ask the consumers;-

“You have defects, which ones are they? show them to us.”

So the consumer starts to get reports from Building Experts. When these reports are submitted to the HBS, the Inspector criticises the consultant and \ or Engineer by stating;-

“ Your consultant is biased, he is not independent “ .

Further, please refer to BARG Quarterly meeting of the 24th May 2006 at page.10:-

Yasmine;’ Mr. Burns called Mr. Frasca ‘the demolition man’ and that I should not put too much weight into Frasca’s report.”

IO; *“ to hear such comments from an OFT Officer is unacceptable.”*

The end result is after the consumer has spent \$10,000 to \$20,000 or even \$30,000 on expert reports the HBS inspector appointed to go and assess the defects comes up with his own report often minimising the defective work and in some cases completely absolving the builder and determining there is no evidence of defective works.

But Council opinion’s often varies as well as the insurers.

BARG Members case studies evidence indicates that policing is simply not always taking place or the complaints are not treated with the vigour they deserve.

We request the Committee to assess and consider the degree of leniency of the disciplinary action \ prosecution and penalties imposed by the HBS.

Example .1.

(also held another

qualified supervisor

The Strata Plan SP;58994 consisting of 4 townhouses were purchased by 4 individual Owners , who trusted the licensed builder believing he built them according to the legislative and Regulatory Provisions.

On 26/09/03 Strata lodged a complaint to the HBS defective work attaching the following reports .

On 9/12/03 3 months later, the first inspection by the HBS occurred but the inspection was left incomplete, will come back the inspector stated.

On March 2004 3 additional months later, HBS Second inspection – again this inspection was never completed.

On April 2004 HBS letter advised Strata that they have completed their investigation although the inspections were still incomplete.
HBS further advised they will commence disciplinary action in 14 days.

On May 2004 the Notice of Show Cause was issued to the builder and he had until the 18/06/04 to respond.

On the 28/10/04 Six months later, the Manager of HBS advised Strata that
and its' nominated supervisor has issued a monetary penalty of \$10,000 for the company and \$7500 to the supervisor.

NB; The penalty imposed is for the complex of 4 townhouses and common property.
(No satisfactory final certificate, defective work and recommendation for demolition)

January 2005 the HBS advised that due to the builder providing an oral submission on the 11th November 2004, the matter and decision will be now reviewed.

NB; Show Cause Notice in May 2004. The Builder, under the HBA 1989 has 14 days to reply.
stated to the HBS that his reply was lost in the mail, therefore HBS allowed him a further 6 months instead of 14 days to provide his response.

NB; January 2006 (This is 15 months since the HBS decided to review the previous disciplinary decision in October 2004) . HBS Officer contacted Strata advising that they have completed their review and have disqualified
and its' supervisor for 2 years. The monetary penalty was removed.

allowed his to expire in September 2004
and he allowed his supervisor's to expire in September 2005 prior
to the imposed disqualification being which was in January 2006.

Delay of 36 months caused by strategies of the builder and leniency by the HBS
NB; This builder had previously 8 complaints, refer to Submission by Ms. L. Chakouch..

Has the HBS\OFT complied with the HBA?

EXAMPLE .2

Project home – Structural work defective and non-compliances with E.P & A Act,
BCA, HBA , recommended part demolition.

Lodged complaint to OFT on 9/08/02

On 15/01/03 – HBS inspector G. Christie inspected the defective work.
5 months since he lodged the complaint

On 24/2/2003- HBS inspector G Christy returned to inspect the defects again

\$10,000 and \$7,500 to its supervisor.

2 years and 4 months since he lodged the complaint

If you compare this penalty with Strata SP;58994 (4 townhouses and common property),
the monetary penalty to , who built the 4 town houses was the same as
, who built just the one house. This comparison is obviously very inconsistent and
too poor. But after the builder requested a review HBS withdrew this monetary penalty
and replaced by disqualifying for 2 years his licences which had been already allowed to
expire since September 2004.

We question how could the HBS be so inconsistent?

Prosecution for defective work and \or demolition of 4 townhouses should definitely be a
more rigorous penalty than that of a one single storey house!

Furthermore, we are aware of many other BARG members where inadequate penalties
were imposed and of others who their builders were just “reprimanded”.

EXAMPLE 3

Mr Griffin gave evidence on 28/8/06 at the General Purpose Standing Committee No 4 (GPSC No 4) Budget Estimates at pg 22 of the Hansard; we quote the following paragraph which is of great concern and must be assessed and questioned by the Committee and we hope answers will be provided:-

“ In relation to defective work disciplinary action was commenced against and he issued a Show Cause Notice to himself and his partnership, and _____ was the nominated supervisor on 10/03/06. A response was initially due in April, but following representation from his Solicitor it was suspended to June 2006. On the 11th July a Notice of Decision was issued which required the partnership to pay a penalty of \$3000 and the nominated supervisor _____, to pay a penalty of \$1,500.”

Although BARG has prepared some questions at page 56 of this submission, in an effort to assist the Committee, we re-iterate in point form the issues of concern in Mr Griffin's above statement and request clarification as to:-

- Who issued the Show Cause and to whom was issued?
- Why was the HBS action suspended and the seriousness of the trader's solicitor representations?
- Leniency of the penalties imposed in comparison to the many serious breaches and non compliances.

We will briefly list the serious breaches and non compliance by this Trader in accordance with the 'Terms of Reference'

a) The builder licensing system

Refer to pgs 27-31 of this submission, where details are submitted with attached supporting evidence of:-

- misrepresentation.(breach of sec, 23 (a) of HBA
- inappropriate trade qualifications attached to licence application (Craft certificate - only vocational clearly stating:-
“ this does not certify that a prescribed course has been completed “

NB This certificate was only for carpentry & joinery, there is no qualifications/skills for concreter although they are 2 separate categories of work requiring different skills and qualifications.

This complaint is for concreting residential building work.

- working under 3 entities. Refer pg 30-31 of this submission
Etc.

b) The Home Warranty Insurance Scheme. - This Trader failed to provide the consumer a certificate of insurance - and received payment under the contract without a contract of insurance .- Breach HBA 1989 s.92(1) and (2)b

c) Resolution of complaint - HBS and CTTT

This trader well versed in the system, lodged a claim to CTTT immediately, thus preventing the HBS to enforce the Rectification order. Although the HBS inspector's report dated 4/2/05 was very damning - a 12 pages listing serious defects the contractor refused to comply and return to rectify, as he relied on the CTTT proceedings and his barrister to absolve him.

NB; The HBS Dispute Resolution. The above example demonstrates how the HBS Dispute Resolution is voided and becomes ineffective. The Consumer is denied the possible success of preventing the matter to proceed to the Tribunal. It is evident that builders have the power and control in this process and the HBS becomes powerless to assist consumers.

Furthermore, the HBS Inspector is prevented from carrying out his functions at an early stage and to enforce a Rectification Order (RO) to resolve the dispute. It is disappointing that this process cannot be enforced.

The Dispute Resolution would be effective if the HBS inspector would have a mandatory first option.

We recommend an amendment to this legislation.

NB. The CTTT from January 2005 till to day and is still ongoing.

Protracted delay and strategies by the trader to wear out and bleed the consumer.

Some of the trader's tactics are: he went overseas twice for long periods, refuse to produce summoned documents etc .legal cost and suffering is destroying consumers.

d) Exercise of disciplinary power

The HBS is well aware of all the above as there has been copious correspondence by the owner and her legal representative. After assessing correspondence and transcripts we will only say that the Local Court Proceedings were incredibly and transparently trivialised in so many ways. Refer to Mr S. Russo's letter of 30/6/06 and owner's of 21/6/06. Attachment 70. *ALSO OFT REPORT & EXPERTS' REPORTS Attached*

e) The enforcement of relevant legislative and regulatory provisions.

We will only ask one question:- Have the relevant legislative and regulatory provisions been enforced and how effectively?? The answers speak loud and clear and not only in this case.

Just few critical dates for your reference.

On 25th January 2005, a complaint was lodged against
for serious non compliances and defective work attaching 2 expert reports
The contracting entity is

The investigation was concluded in June 2005.
The HBS took 5 months to investigate.

Mr Griffin's evidence to the Budget Estimates Committee at page 22 of the Hansard,
revealed that:- "following representations by _____ solicitor the disciplinary action
was suspended until June 2006"

This statement is of great concern. Mr Griffin had not advised the owner nor BARG,
regarding this action. We do not understand what kind of representations could have been
made on behalf of a trader who has breached the HBA to manage to suspend and delay
the function of a Regulatory Authority.

The Decision of prosecution was issued on the 11 July 2006.
13 months since the investigation was concluded, but 18 months since the lodgement of
the complaint.

It is to be noted that HBS commenced prosecution in the local court on the 13/02/06.

On 15/03/06 _____ was convicted in relation to his failure to provide written
contract and was fined \$700.00. _____ was also convicted in relation to receiving
payment before having Home Warranty Insurance in place and was fined \$2000.

In relation to the third offence of doing work without having issued HWI, although the
Magistrate found the offence proved, the Magistrate only placed him on a good behaviour
bond for 12 months.

Why was such a marginal prosecution?

The pleadings prepared by the OFT were deficient raising very serious questions. The
OFT Solicitor 's conduct clearly showed a complete lack of knowledge of the
proceedings, no objection to tendering of material, he asserted that home warranty
insurance takes some 6-8 months to be issued etc.

Refer Mr Russo's letter of 30/6/06 and Lia Onorati's Letter of 21/6/06

Attachment 70 above

It is to be noted that BARG was unclear about the exercise of disciplinary process. Why
some builders are show caused and others are taken to court. Therefore, at the BARG's
quarterly meeting with HBS on 19/10/2005 we asked what is the difference?

*" If the builder is unlicensed they are taken to court
If they are licensed they are given a show cause"*

We must now question why was [redacted] taken to the Local Court?
He was personally licensed. The company PNC Concreting, although was unlicensed it had on the letterhead printed directly under the [redacted], Mr. [redacted] personal individual licence. But none of all of this was brought before the Court. OFT/HBS is further confusing consumers? And \ or has provided incorrect information at the quarterly meeting?

WAS
SHOW CAUSE

On 11 July 2006 a decision was made to fine [redacted] \$3000 and [redacted], as the nominated supervisor, \$1,500. In addition [redacted] was issued with only a warning in relation to the misleading letterhead.

Why HBS has fined [redacted] when this company had nothing to do and was not the contracting Trader?

If the HBS believed this was the correct Company, why didn't the HBS prosecute this Company in the local court?

The decision was issued 18 months since the lodgement of the complaint.

There are many other consumers' case studies, but BARG, unfortunately barely had time to complete this submission properly. Although it seems lengthy, we have only scratched the surface.

We apologize for the delay and for being unable to complete the remaining points.

In reference to this chapter, "the exercise of disciplinary powers", we shall conclude by questioning further evidentiary issues mentioned already before this Committee in:
a) licensing.

BARG's concern is the danger exposure to the innocent consumers at large.

Licensed builders who HAVE NOT BEEN PROSECUTED TO DATE are:-

- **C. Papanastasiou lodged his complaint Nov 2004 to HBS**
- **Salih's contract lodged complaint in April 2003**
- **" " to HBS**
- **" "**
- **4 victims - C. Tran lodged complaint December 2003**

**N B; This builder on 13/3/06 has applied and obtained a new licence.
The NEW Company name is '
See Attachment 71**

Of course he allowed his licence to expire – this is a strategy used by many builders, one that comes to mind is . Refer to Ms L Chakouch submission. This strategy is to avoid prosecution; HBS cannot prosecute an expired licence?

Further the register of Licence is clean and we are sure also the Insurer would start with a clean record as it is a new company.

We regret not to have adequate time to further research and provide the Committee with more information and/or evidence.

BARG had several complaints against

One current complaint in our hands is Ms. Ann Akerman –

“A bathroom from hell” – it is unbelievable!

It has been rectified 3 times and now needs a 4th. There are no words to describe the suffering of this elderly lady using portable toilet and shower for years!! What has the HBS done for this lady???

Rectification orders issued but not complied. **BUILDER NOT PROSECUTED!**

We regret that time constraints and unavailability of secretarial assistance prevents BARG to provide the Committee with detailed case studies.

BARG members' case studies are examples of system failure with drastic and catastrophic examples impacts on people's property values, peace of mind and even their own safety.

BARG on behalf of all members and building consumers thanks the GPSC No 4 for this enormous task ahead of you.