

## **GENERAL PURPOSE STANDING COMMITTEE No. 3**

**Monday 24 June 2002**

**Examination of proposed expenditure for the portfolio area**

### **FAIR TRADING**

**The Committee met at 4.00 p.m.**

#### **MEMBERS**

The Hon. Helen Sham-Ho (Chair)

The Hon. R. H. Colless  
The Hon. J. Hatzistergos  
The Hon. A. B. Kelly

Ms Lee Rhiannon  
The Hon. J. F. Ryan  
The Hon. I. W. West

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#### **PRESENT**

**The Hon. J. J. Aquilina**, *Minister for Land and Water Conservation, and Minister for Fair Trading*

**Department of Fair Trading**

**Mr D. O'Connor**, *Director-General*

**Mr M. Silk**, *Director, Management Services*

**Mr B. Given**, *Assistant Director-General, Operations*

**Mr J. Schmidt**, *Assistant Director-General, Policy and Strategy*

**Ms L. Baker**, *Assistant Director-General, Property and Licensing*

**CHAIR:** I welcome the Minister and everyone else to this public hearing of General Purpose Standing Committee No. 3. I want to thank the Minister and departmental officers for attending today. At this meeting the Committee will examine the proposed expenditure for the portfolio area of Fair Trading. Before questions commence, some procedural matters need to be dealt with. Paragraph 4 of the resolution referring the budget estimates to the Committee requires evidence to be heard in public. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of these public proceedings.

I point out that, in accordance with the Legislative Council's guidelines for the broadcast of proceedings, only members of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any film or photos. In reporting the proceedings of this Committee, the media must take responsibility for what it publishes or what interpretation it places on anything that is said before the Committee.

There is no provision for members to refer directly to their own staff while at the table. Witnesses, members and their staff are advised that any messages should be delivered through the attendants on duty or the Committee clerks. For the benefit of members and Hansard, could departmental officers identify themselves by name, position and department or agency before answering any question referred to them. When a member is seeking information in relation to a particular aspect of a program or subprogram it would be helpful if the program or subprogram is identified. I declare the proposed expenditure open for examination. I ask the Minister whether he would like to make an opening statement?

**Mr AQUILINA:** No, thank you, Madam Chair.

**CHAIR:** I would like to ask the Minister a question on retirement villages. I would like to know if the Minister or departmental officers can provide to the Committee information on how many people employed in the Department of Fair Trading have responsibility for dealing with retirement village matters and how much money is allocated for that sort of work? Is it considered that there are enough people dealing with retirement village matters? If the delays and inefficiency of the department with respect to retirement village issues are not due to lack of resources, what do you think is the source of the problem?

**Mr AQUILINA:** I might ask Brian Given to give a response on that initially.

**Mr GIVEN:** The resources that we have to investigate retirement village issues primarily are in the real estate investigations branch of the department, and I can give you some information about the number of investigative staff in that branch but I will come back to that, if I may. In addition to that, the inspectors located within the regional network of the department from time to time get involved in looking into local retirement village matters. I think the Committee is probably generally aware of the particular emphasis that has been given by the Department of Fair Trading to retirement villages in light of the relatively recent amendments to the retirement villages legislation and our concern to ensure that operators are complying with the requirements of that legislation.

**Mr AQUILINA:** In relation to specifics that you raised concerning numbers of persons and the detailed allocation of funding, I would have thought that the allocation of funding was actually explicit in terms of the budget papers, but we will undertake to give you on notice the details in relation to the specific number of persons involved in dealing with retirement villages. The impact of the recent legislation is that the villages are now moving towards compliance with new legislation, including such things as preparation of disclosure statements, village documentation and also the involvement of residents in the conduct of villages. The department is requiring this work to be done by village management and has sought to undertake some training so as to educate and work with the operators, giving sufficient time and assistance to come to terms with the requirements of the Act. It needs to be remembered, however, that this is a relatively new Act and we are obviously keen on ensuring that all those involved with retirement villages have ample time to be involved with it. Since becoming Minister I have had a number of meetings with representatives of various retirement villages and they are at the moment looking at how the new Act is affecting them and how it can be made to work on their behalf.

**CHAIR:** You are talking about the very thing I want to look at, which is compliance and investigation. I refer you to Fernbank Retirement Village at St Ives. I have actually written to your predecessor and yourself a couple of times since October last year. You replied in January to say that 47 elderly residents had problems with the new service contract. Up until now I have not had a reply

and you supposedly had a representative from the department facilitate this new service contract, and in your letter to me you actually said you had consulted the residents. I want to know when were the residents involved, when were they consulted and who was consulted.

**Mr AQUILINA:** Brian Given is the person who has been dealing specifically with that, so I might request that he give a more detailed response in relation to Fernbank.

**Mr GIVEN:** The Fernbank Retirement Village has been an issue that the Department of Fair Trading has been dealing with for some considerable number of years and residents were previously assisted with litigation by the department.

**CHAIR:** No, I think at their own cost.

**Mr GIVEN:** I am sorry, there was earlier litigation in the Supreme Court. The residents subsequently have undertaken their own litigation trying to establish, I think, that the conduct of the operator is unconscionable.

**CHAIR:** That is right, and it has been ruled as unconscionable and unenforceable as well.

**Mr GIVEN:** Yes. The department, as I mentioned, did assist in earlier litigation. That ended up with an appeal being lodged in the High Court from a decision in relation to the operator which was not ultimately continued with. The residents were left with a ruling from the Supreme Court that the contracts that they had entered into were not challengeable on conscionability grounds, but nevertheless there were other related issues that were left up in the air in terms of issues raised by the operator which related to the operator not being paid certain amounts.

**CHAIR:** The fees are too high, that is the problem, because the elderly just cannot afford to pay those high fees.

**Mr GIVEN:** The department's concern in that litigation was that the strata titles legislation was not being complied with. Ultimately the Supreme Court ruled on that issue in favour of the residents but did not rule in favour of the residents on the unconscionability argument. The department tried to assist the parties to come to some mediated agreement, and I am still going back several years.

**CHAIR:** I would like information about recent times, not a long history. I just want information about this year, in fact.

**Mr GIVEN:** Yes, but it is part of the context.

**CHAIR:** Since then the Minister has replied to me to say that the department actually has tried to assist those elderly residents. Two of them have died. I just want to know what happened this year. The village management has ignored all approaches from the residents.

**Mr GIVEN:** Yes; well, the residents group has been in contact with the department and vice versa from time to time over a lengthy period, including recently in relation to concerns that the residents have that a number of them still do not have a management agreement signed with the operator. There was a matter taken before the then Residential Tribunal, which ruled that the—

**CHAIR:** The Supreme Court judgment and the tribunal ruling were both in favour of the residents, but you have not enforced the order. This is the problem; it is a problem of compliance. How do you enforce the tribunal order as well as the Supreme Court judgment?

**Mr GIVEN:** The issue was whether parties could be made to enter into an agreement, and of course there is the fundamental difficulty, if parties do not agree, of getting an agreement settled. It is not within the department's ability to impose an agreement either on the operator or on the residents.

**CHAIR:** Cannot the department find a way of capping those fees, because they are just exorbitant? Those deferred management fees are just impossible. I believe that some of them are over 3.5 percent of the real estate value.

**Mr GIVEN:** It is a very complex matter. It is quite difficult to explain it on that basis, but the

department's continuing interest in the matter has been put to both parties, the operator and the residents. We have tried to assist any coming together that they can achieve to get an agreement in terms of a new management agreement. Several years ago, I think in excess of half the residents in the village did enter into new agreements.

**CHAIR:** That was the one that went to the Supreme Court. I do not want to go back to that. We have a new order from the Supreme Court and the tribunal has ruled in favour of the residents. In January this year Minister Aquilina wrote to me and said the department has tried to do something. I want to know what did the department do?

**Mr GIVEN:** The department has offered its assistance to both parties to try to get a resolution of what is a very complex and difficult matter.

**CHAIR:** When? Up to 21 June, last week, none of the residents has actually been contacted by the department.

**Mr GIVEN:** The residents proprietors group has been in contact with the department from time to time. I cannot say that we have received any correspondence from them.

**CHAIR:** Can you tell the Committee who is the departmental officer dealing with this matter?

**Mr GIVEN:** An officer in our legal division and myself are probably the two main contacts that residents have had with the department. There is also an officer within the real estate investigations branch who has had some contact with them.

**CHAIR:** If the department cannot deal with it, is there any way that the department can assist them by nominating a mediator or facilitator of some sort to resolve the issue, because they now have no service contract, and as you know to comply with the Act you have to have that. So how do you resolve that? Are there anomalies in the legislation?

**Mr GIVEN:** We would be willing to offer any assistance of that sort, getting a facilitator or a mediator involved, and indeed we have in fact offered that in the past.

**CHAIR:** I am not very clear on this. These 47 elderly people can actually approach the department to ask for a mediator to be provided?

**Mr GIVEN:** Most of the contact up to now has been through the residents proprietors group, and there is a gentleman there who has been involved for many years now in contact with the department. In the individual contact that we have had from representatives of some of the residents in more recent times, the department has made it clear to both residents and the operator that we are prepared to assist in that mediation sort of role. If that means appointing, getting somebody else involved, then that would be fine as well.

**CHAIR:** I just would like to know because Ms Nola Bennett has actually approached me many times about having this new service contract resolved. It has gone on for more than 12 months but the department has done absolutely nothing. They have not heard from the department. They have approached the village management people but they actually ignore them. They are not doing anything. So at the moment it is a stalemate.

**Mr GIVEN:** I am sorry, I cannot agree the department has done nothing. What it has done is try to offer its assistance to both the residents and the operator.

**CHAIR:** This is my last question. I will ask it again. Is it possible for the department to nominate a facilitator or mediator for the residents so the residents can resolve this difficulty with the retirement village operator?

**Mr GIVEN:** If the parties are prepared to come together in some kind of framework of that sort, the answer is yes.

**The Hon. RICHARD COLLESS:** Minister, how has the reinsurance subsidy that is being provided to Dexta Corporation been accounted for in the budget papers? What is the expected cost of this assistance and what is the impact of the 31 December extension on this cost?

**Mr AQUILINA:** Thank you for your question. Basically, in relation to the Government's underwriting of Dexta, a substantial amount of work was undertaken by Cabinet giving approval for that to occur. Pricewaterhouse were engaged to do a substantial degree of modelling of the Government's outlay and the Government's exposure in relation to that. It is calculated that in relation to the original undertaking to underwrite Dexta to 30 June the exposure of the taxpayer to that would not be significant.<sup>1</sup> If the claims were to continue at the rate at which they had been say over the previous 12 months, then the premiums that were obtained for the underwriting would in fact adequately cover the number of claims being made. It needs to be remembered, of course, that the Government actually does receive premiums for the underwriting of Dexta.

The decision to extend it to 31 December was along the same lines. So that in actual fact, given that the rate of claims is along the same lines as in the past, the Government would not be substantially exposed in terms of its budget. I am advised that even if the claims were received at twice the rate allowed for in the premium, the Government's exposure would be less than \$7.5 million for the period until the end of December, but that is if for some unexplained reason the level of claims were to rise to twice the rate of what they are now or what they have been in the past 12 months.

**The Hon. RICHARD COLLESS:** You have referred to some figures. Can you tell the Committee what the Government expected to receive in premiums and what the Government expected to have in claims for the two periods, that is, to the first stage of the scheme and then the extension?

**Mr AQUILINA:** No, we do not have those figures available.

**The Hon. JOHN RYAN:** You just referred to a calculation involving a \$7 million difference if one had twice the rate of claims. One imagines that to make a statement like that you would have to have some figures. I cannot imagine how you could make a statement that there would be \$7 million difference, a specific amount, if you did not have some figures to start with.

**Mr AQUILINA:** In actual fact the Government's exposure would be less than \$7.5 million for the period until the end of December. That was the precise advice given. I was also advised that the same actuarial advice includes the fact that this liability would be offset by the premiums charged and received by the Government in its role as reinsurer. Those figures were determined by calculations worked out by Pricewaterhouse on behalf of the Government and tendered to Cabinet at the time. I might just hand over to John Schmidt to elaborate on that response.

**Mr SCHMIDT:** Mr Ryan, the basis of the figures is that the total combined pool of premiums on an annual basis in New South Wales was estimated by Pricewaterhouse as being between \$80 and \$100 million, and of course the actual figures to be received would depend on the dollar value of work written by Dexta during that period. As the Minister pointed out, Pricewaterhouse has calculated using those figures, and having in mind that the premiums we picked up are the commercially based ones which the other re-insurers and insurers had agreed upon themselves, if the claims history as predicated in those premiums continued, then the Government would not have an exposure. If the claims history was double that provided for in those premiums, then the exposure would be along the lines the Minister has alluded to.

I think a point that needs to be stressed from the earlier question is: What is the subsidy? The point is of course that there is no money that the Government is required to put up front in this because we are in a business, we are receiving an income based on the premiums. It will only be over the period of the tail of the policies written during this period that it will be ultimately determined whether in fact any money whatsoever has to pass from the Government back to the insurer.

**The Hon. JOHN RYAN:** You have talked about a number now of \$80 million in pool premium. Is that the money that the Government is expecting to receive from Dexta?

**Mr SCHMIDT:** No. That is the entire pool estimated for private home warranty insurance in Victoria and New South Wales for all the insurers.

**The Hon. JOHN RYAN:** Yes, but the Minister said something about the Government receives premium.

**Mr SCHMIDT:** Yes.

**The Hon. JOHN RYAN:** How much money is the Government receiving in premium?

**Mr SCHMIDT:** That money is being paid into Treasury accounts. We do not have that in our accounts.

**The Hon. JOHN RYAN:** I cannot imagine that somebody does not know how much it is. How is it accounted for in the budget paper?

**Mr AQUILINA:** The point is it does not come under our budget. It is a Treasury matter.

**The Hon. JOHN RYAN:** Well, where is it in the budget papers generally? You are the only Minister that makes comments about these things. I think it would be fair to say to us where in the budget papers they are.

**Mr AQUILINA:** We could obtain that from Treasury, but that basically is a Treasury matter. It is not a matter that comes within my budget.

**The Hon. JOHN RYAN:** Well, the Treasury estimates have already been completed, Minister.

**The Hon. TONY KELLY:** The Minister answered your question on that.

**The Hon. JOHN RYAN:** He did not answer the question about home warranty insurance, nor Dexta.

**Mr AQUILINA:** Again, I make the point, it is not an issue that comes within the ambit of my budget.

**The Hon. JOHN RYAN:** What is the value of the exposure to the Government in extending the scheme to December?

**Mr AQUILINA:** Again I make the point that I will take that question on notice and ascertain to obtain it from Treasury, but that basically is the Treasurer's issue, it is not an issue of mine. This matter was the subject of a report that was conducted by Pricewaterhouse. I think I am correct in saying that that was at the request of Treasury. The matter was reported to Cabinet, whereupon a Cabinet decision was taken on that, but the whole issue in relation to subsidies and claims does not come within my budget portfolio. It is not something my budget is exposed to or that I make payments out of. It is straight out of Treasury.

**The Hon. JOHN RYAN:** I only ask you, Minister, because you are the Minister who announced the scheme. I cannot imagine that you, as the Minister who announced the scheme, did not know how much it was going to cost.

**Mr AQUILINA:** Again, I am not the Minister who signs the papers with the insurer; the Treasurer is.

**The Hon. JOHN RYAN:** Minister, the whole point of doing this was to have other insurers entering the home warranty market. When do you expect that is going to happen?

**Mr AQUILINA:** There are lots of talks going on at the moment, and as I have indicated on a number of other occasions, the situation keeps changing from day to day. No-one has given any undertaking—and I certainly have not—that we can at this stage point with great certainty to long-term security. However, we have been able to bring about a great degree of stability and security in the short term. Again, though, it has been an incremental situation, a situation which has changed from day to day. Maybe you recall that when I announced the Government's underwriting of Dexta until 30 June, concerns were raised then as to what would happen beyond 30 June and that we were actually making statements that only gave builders short-term hope. I said then that at least the underwriting of Dexta until 30 June enabled us to continue to explore further other avenues and other possibilities, and there was some hope at that stage that there would be an extension beyond 30 June. Dexta has now agreed to stay in the market until 31 December, and the Government has continued the underwriting of that.

In addition, there have been other responses to the Government's reforms, particularly through Royal & Sun Alliance and HIA. We have seen substantial improvements in the opportunities given through Royal & Sun Alliance, going back to 19 December last year and again to 16 May this year, and it was indicated only as recently as last week by Mr Kirk, General Manager Specialty for Royal & Sun Alliance, that the improvements that have been provided have been specifically in response to the Government's reforms, and that they intend to make further announcements on 8 July that will see Royal & Sun Alliance insurance being offered to builders other than those who are members of HIA, again widening the opportunities even further. NRMA in the meantime has been holding discussions and is making substantial overtures that it would look favourably towards entering this market to complement the home contents insurance market that it currently has. The NRMA sees it as an opportunity to perhaps also enter this field.

**The Hon. JOHN RYAN:** Is it possible that no-one will enter the field? Is that a possibility?

**Mr AQUILINA:** Hypotheticals are hypotheticals. At the end of the day what we are doing is providing insurance to keep builders in the job of building and that has been responded to favourably. That question could have been asked six months ago, it could have been asked nine months ago, and I suppose the answer could have been yes or no on those occasions. At the moment the situation is substantially better than it was a month ago and substantially better to a greater degree than it was six months ago. The situation is continuing to improve and the expectation is that that will continue to be the case.

Professor Percy Allan is at the moment presenting his report to the Commonwealth Government in relation to this matter. I have had meetings with Professor Percy Allan about the way we are heading and those meetings have been sufficient to encourage me that we are heading in the right direction with this. Also I have requested Professor Percy Allan to chair a round table meeting this Thursday. That round table meeting will have representatives of all of the major organisations. Insurers, builders, associations, as well as consumers, BARG and BICO will be represented at that round table gathering. Again the idea of that meeting is to discuss as many options, as many proposals, as can be discussed so as to see further what opportunities are available in order to assist builders and consumers.

**The Hon. RICHARD COLLESS:** Minister, do you recall the Premier saying in February that no one should persist with the argument that it is the duty of the State Government to subsidise insurance premiums? Do you recall the Premier saying that?

**Mr AQUILINA:** I do not specifically, but I would be keen to find out where this is taking us.

**The Hon. RICHARD COLLESS:** I understand that it is in *Hansard*. Do you agree that providing insurance subsidies to Dexta makes that statement of the Premier sound a little hypocritical?

**Mr AQUILINA:** If the honourable member looks closely at exactly what we are doing, he will see that it is not a subsidy. We are not subsidising premiums to insurance companies. What we are doing is underwriting an insurer in order to be able to provide insurance to builders. The Government is collecting a premium for that and the expectation is that the premium will cover whatever costs there may be by the Government in payment of claims.

**The Hon. RICHARD COLLESS:** Why are you not providing similar reinsurance cover for other insurance companies?

**Mr AQUILINA:** They have not asked for it.

**The Hon. JOHN RYAN:** How is the Government collecting premiums? I imagine that customers go to Dexta and pay their premium to Dexta. How does the Government collect it?

**Mr SCHMIDT:** The Government is sitting at the table as a reinsurer. Allianz is the insurer; Allianz is the company which writes the policies and Dexta is its agent, so think of it in terms of there being an insurance policy out there which has Allianz on the letterhead. The way they have structured their financial affairs is that they would normally have, with the insurer Allianz, a number of other reinsurers who would take a proportion of the risk. What happened around April was that one of the major reinsurers withdrew and one of the existing reinsurers who had previously indicated it was going to expand the proportion of the risk that it would take had directions from its head office not to proceed

with that deal. So the Dexta-Allianz arrangement had a certain number of reinsurers at the table, but there was a gap because unless they had 100 percent coverage they could not offer the product in the market.

What happens is that a builder or a broker comes to the Dexta's front door and pays over \$100 in premium. Agreements are in place between the insurer and its reinsurer or reinsurers that the insurer keeps a certain percentage of that premium. The reinsurers get a certain percentage of that premium in return for taking a certain percentage of the risk. The Government is one of the reinsurers at the table and it will get its percentage according to the share of risk that it is taking on. It is just a simple commercial operation in the insurance field where the Government is now one of the other reinsurers at the table.

**The Hon. JOHN RYAN:** So the Government is getting a commercial fee for its underwriting?

**Mr SCHMIDT:** The premium we are receiving is based on the premium that was negotiated between Allianz and the reinsurers at the time in the market place. The Government has engaged a former reinsurer called Swiss Re, which I understand is one of the largest in the world, to provide advice to the Government and act as its agent in the arrangements.

**The Hon. JOHN RYAN:** Is the Government getting a commercial premium?

**Mr SCHMIDT:** Yes.

**The Hon. JOHN RYAN:** And that is a known amount? That is an amount of money which can be known?

**Mr SCHMIDT:** Well, take it up with Treasury. As the Minister pointed out, the Treasurer is the person who has the authority to sign the reinsurance agreement and it is Treasury to whom the moneys are paid.

**The Hon. JOHN RYAN:** Who determines the price of the premium?

**Mr SCHMIDT:** At the moment we are working on the basis of the previously struck commercial premiums which had been entered into by the other players at that table.

**Mr AQUILINA:** When we say "we", that is not this department. Those matters are handled by Treasury. In terms of the financial arrangements in relation to all of that, my department has no involvement whatsoever.

**The Hon. JOHN RYAN:** Does the Government have an influence on what the price of future premiums will be for home warranty insurance?

**Mr AQUILINA:** Not in a direct sense, in that the premiums are determined by the insurance companies as a way of ensuring that the builders stay in the business of building. Yes, there has been an increase in recent times. The premiums have been passed on to consumers. It needs to be recognised, of course, that there are substantial reasons for the increase in those premiums, as had been said many times, including the collapse of HIH and the September 11 events that led to a dramatic rise in premiums right around the world. In essence, the premiums being paid by builders in New South Wales are not out of the ballpark of what is being paid elsewhere around Australia, given that each State has a slightly different set-up in terms of the amount of cover being provided.

**The Hon. JOHN RYAN:** Has the Government estimated additional resources that the Consumer, Trader and Tenancy Tribunal will need now that the insurance scheme in New South Wales will be a last resort insurance scheme that will only be invoked when the builder is either insolvent or deceased or has disappeared? That means that the consumers are going to have to go through a legal process of one sort or other. All the work that used to be done previously by insurers and others will have to be done at some other point, either within the Department of Fair Trading or the Consumer, Trader and Tenancy Tribunal [CTTT]. Has the Government calculated how much additional cost will be incurred because we have to do some of that work that used to be done by insurers?

**Mr AQUILINA:** I am not quite sure where this question is taking us, but the advice I have is that there should not be any additional cost to the CTTT.



**The Hon. JOHN RYAN:** Once upon a time you could go to the insurer first and use the insurer as a mediator between you and your builder. That is not possible any more, so one imagines there will be a flood of complaints. The only other available option for mediating disputes with a builder will be the Consumer, Trader and Tenancy Tribunal.

**Mr AQUILINA:** Again, the advice that I have is that there should not be any major impact. This is a matter which, I have just been told, is being examined by the Honourable Ron Dyer's committee, the House Committee.

**The Hon. JOHN RYAN:** But we imagine that it would have been examined by you too, Minister. Whilst I accept that there is another parliamentary committee that might do so, we are still able in this Committee to ask you questions. Obviously a last resort scheme has to involve more inquiry and effort by the consumer at the front end, and the only front end process that is available is the Consumer, Trader and Tenancy Tribunal.

**Mr AQUILINA:** That has not been the experience that we have encountered to date. I might ask John Schmidt to provide additional detail, but when we carried out this analysis and went through to provide the changed reforms in relation to this process it was not anticipated that there would be any substantial increase in claims being made upon the time of the CTTT, and in fact that has not been shown to be the case to date, but I will ask Mr Schmidt to respond.

**Mr SCHMIDT:** The change involved in going to a last resort, as the Minister has said, we do not anticipate will have a major impact on resources, and there is a simple reason for that. The insurers have advised us over time that between 70 and 80 percent of all claims—the figures vary—historically under the scheme arise because of insolvency anyway. So the vast bulk of claims were already last resort because it was the insolvency of the builder that led to the claim being made. In respect of the remaining claims, a large number of those relate to what could be called contractual disputes. What has happened in contractual disputes is that the builder is still on foot, but a dispute arises between the consumer and the builder.

Even though Percy Allan's report is not yet public, one thing that he has said in discussions with us, and I believe with others, is that given the practical operation of the current scheme, to have it described as anything other than last resort is a cruel hoax on consumers. When asked to explain what he meant by that, Professor Allan said that the reality is that if the builder is dead or insolvent or has disappeared it is very clear cut, and that applies to the vast majority of claims. In other disputes where the builder is alive and contests the matter, the insurers found it extremely difficult and have not made decisions on those claims because they have asked, quite rightly on many occasions, how can they quantify the loss that will arise under that claim because the builder is still there and is contesting liability. The contract may be on foot or may have been terminated. There may be a fundamental threshold question about whether the contract was validly terminated. How can they make that determination when the parties usually are in conflict before a tribunal or court anyway?

What happens is that not just the builder and the consumer appear at the court or tribunal. The next thing you know the insurer is joined as well, so there is another set of solicitors or lawyers sitting at the table while everybody argues about the intricacies of the case. That made it impossible for those matters to be resolved early. However, it is interesting to hear that with the establishment of the Building Conciliation Service, that certainly in respect of low value claims—we are talking about matters up to \$12,000 which Mr Ryan mentioned a moment ago—I cannot remember the exact percentage but I believe that in one of the sessions before the Joint Select Committee on the Quality of Buildings the chairman of that tribunal said that approximately 80 percent of those lower dollar value claims are being successfully resolved and mediated before the tribunal. Experience suggests, and there is no reason to be surprised, that as the dollar value of the claim rises and people's interests become far more animated with more money involved, it is less likely to reach an early resolution of the matter and it will go on to be disputed. Under the current system and before the 1 July changes, the insurers are merely another party at the table and are very reluctant or find it impossible to make a decision on that claim until it is resolved. As Percy Allen said, it is a cruel hoax to suggest it was the last resort.

**The Hon. JOHN HATZISTERGOS:** How will the Government's increased funding for the Tenancy Advice and Advocacy Program benefit tenants across the State?

**Mr AQUILINA:** Over the next few days 23 organisations across the State will receive notice that they have been chosen by the Government to provide advice and advocacy services for local tenants. The first part of the answer is that the advice will be available from a number of sources that are widely established across the State, not just from a limited number of sources based in Sydney. The funding under the Tenancy Advice and Advocacy Program also has increased, by \$2.2 million to a total of \$6.4 million.

The program will fund local services to provide tenancy information, advice and advocacy for tenants through case work and community education. Local groups to receive funding include organisations such as the Wyong Gosford Community Legal Centre, the Orange Community Resource Organisation, the Canterbury Bankstown Migrant Resource Centre, the Dubbo Aboriginal Medical Co-operative, and a number of others like this. Services include face-to-face and telephone advice to tenants, negotiation of disputes between tenants and landlords, advice on tenancy rights and representation at tenancy tribunal hearings. Special services will also be provided to Aboriginal tenants, tenants in residential parks and older tenants.

The funding increases will enable the various services to employ more staff and in the case of rural and regional services to cover travel costs associated with servicing large geographic areas. This service will be of particular benefit to low income renters, who will no doubt have the need to achieve access to this service far greater than others. More than half of the Tenancy Advice and Advocacy Program clients are in receipt of a pension or a benefit. The 23 successful applicants were chosen on the basis of a number of criteria, including a proven track record in management of service provision. Madam Chair, I can give you substantial additional advice if required, but I would be happy to table that information.

**CHAIR:** How is tenancy advice given to the non-English speaking background group?

**Mr AQUILINA:** There are some organisations, such as the Bankstown Migrant Resource Centre, that actually have opportunities to give advice to people from non-English speaking backgrounds using personnel who are involved with those centres.

**CHAIR:** Are you going to table the further information?

**Mr AQUILINA:** Yes, I would be happy to table additional information, so as not to take up the time of the Committee.

**[Document tabled]**

**The Hon. TONY KELLY:** You mentioned earlier the Consumer, Trader and Tenancy Tribunal. Can you give us a bit more information particularly about the improvements to that new tribunal?

**Mr AQUILINA:** The issue was raised earlier in relation to possible further encumbrance of the Consumer, Trader and Tenancy Tribunal and whether or not recent changes, particularly in the home warranty insurance market, would end up causing delays in matters being dealt with. In actual fact, the advice I have is that the Consumer, Trader and Tenancy Tribunal is catching up on a backlog of some 1300 cases that it inherited from two tribunals when it came into being on 25 February. Of those cases 1100 have been finalised and procedures have been put in place to finalise the remainder. So 1300 were inherited as a backlog. Since 25 February we have caught up with 1100 of those, and there are about 200 cases remaining. We are addressing those issues and catching up with those as well.

I would like to think that this signifies, despite it being very early days for the CTTT, a dramatic example of the improved efficiency of the new tribunal. That efficiency has benefited consumers and traders right across the State every working day, and there are a number of reasons for that. One reason is that more members are available for hearing the various cases. Secondly, the tribunal is to a significant degree decentralised, so it is able to provide more immediate assistance in the various localities around the State. In the next 12 months the CTTT expects to deal with about 63,000 cases and conduct hearings at around 140 venues throughout New South Wales. So instead of having people travel substantial distances to various venues, we are actually taking the venues of the CTTT to the people under the new arrangements.

The CTTT was established to replace the old Residential Tribunal and Fair Trading Tribunal following an independent report into the efficiencies of the old tribunals. This single tribunal provides

a number of efficiencies, including doing away with duplication of registries. Since its establishment other improvements have been made to streamline its operations and to ensure its services are available to everyone in New South Wales. The biggest improvement is the creation of the Building Conciliation Service which is attached to the tribunal. It is dedicating funding solutions to building disputes before they reach the formal hearing stage. I think that also goes in some measure towards answering the question posed earlier by the Hon. John Ryan. The Building Conciliation Service is now successfully finding solutions to 75 percent of building disputes where both parties participate, without the need for a tribunal hearing. That is helping to reduce substantially the backlog on previous occasions under the old tribunal.

Other improvements include an increase in the number of tribunal members to 33 full-time and 101 part-time, whereas the old tribunal had only 18 full-time and 85 part-time members. The service has also established registries in Sydney, Parramatta, Penrith, Liverpool, Hurstville, Newcastle, Wollongong and Tamworth. There is a new telephone system to reduce the delays for callers. There is also an upgrading of the web site to increase client access to tribunal services Statewide. It has improved IT services through reduced duplication in resources and administrative systems.

The expansion of the CTTT services and also the work of the Building Conciliation Service has led to reduced waiting times for the disputes to be heard. Not only are we hearing more disputes, but we are hearing them at the local level, closer to the source of the dispute, instead of requiring people to travel substantial distances, and also we are able to deal with them more quickly so that people do not have to wait as long for their disputes to be resolved. The tribunal is providing one-off services for regional and rural areas, with some 65 percent of its work being conducted outside Sydney. So that again emphasises the decentralised operation of the tribunal. More than 50 percent of matters are now being finalised within 35 days of the initial dispute lodgment, which I think people will find is a vast improvement on past performance. Again, Madam Chair, I would be happy to provide additional details by tabling this document.

**[Document tabled]**

**CHAIR:** How does the tribunal enforce its decisions? In many disputes in the past an order was made but the builder did not comply. What do you do with the tribunal's decisions these days?

**Mr AQUILINA:** Basically, it is not our experience. I have been advised by the department that there is a large number of non-compliance matters, but where it does occur then the department can take further action to ensure compliance. As everyone would be aware, there is the opportunity for the department to make use of the courts as well. Perhaps I could ask John Schmidt to give further details on what other avenues are available to the department.

**Mr SCHMIDT:** If the consumer has a money order, for example, and that is not satisfied, if time is given by the tribunal to pay, the consumer can go to the tribunal and ask for an order to be issued. That is taken to the Local Court, depending on the dollar value, but if the Local Court is the right court to go to, that is registered there and automatically operates as a judgment of that court. All the court proceedings that are available through the Local Court are available to consumers as if they had gone to that court and had a decision made there. As you would all know from your own experience, there are occasions when people take court action and have difficulty enforcing a decision made by a court or tribunal. One of the reforms that was passed by the Parliament last year relates to clearly linking the non-compliance with an order by the tribunal in respect to a building matter and a disciplinary matter.

**CHAIR:** What about a simple rectification of a building defect?

**Mr SCHMIDT:** If the builder has an order issued against him to rectify and a time limit is given, regardless of what the builder does—put the builder aside for a minute—the tribunal automatically notifies the department. If the builder does not come back to the department and tell us that they have complied with that, that non-compliance goes on our public register against the builder's licence. So if a consumer rings up they would be told it would appear that that builder has failed to comply with the tribunal order. That also would give a ground for disciplinary action against the builder. We follow up to find out what has happened. My understanding is that the experience to date is that on a number of occasions the order has been complied with or the builder asserts it has been complied with but they have not got around to notifying the department, for whatever reason. We would look at that to see what happened.

**CHAIR:** Do you have a link between the tribunal order and the compliance of the department?

**Mr SCHMIDT:** Well, yes and no. Yes, in the sense that non-compliance with the order triggers the compliance action, but we do not ourselves, as with any other order made by any court or tribunal, necessarily go out on behalf of the consumer or trader, if they have had a dispute in the tribunal, to try and have that enforced. That is what the court process is about.

**CHAIR:** No, I am talking about a CTTT matter.

**Mr SCHMIDT:** The way it works is that if the tribunal makes an order, and if the work is not rectified—and the money order is the clearest one because it has a dollar figure—that acts as an order of the relevant court in the future.

**CHAIR:** I am talking about a building defect. It is not a matter of money. It is a matter of compliance with the tribunal's order.

**Mr SCHMIDT:** That would be a disciplinary matter if there was non-compliance with that order.

**CHAIR:** What kind of disciplinary action?

**Mr SCHMIDT:** Action carried out by the department. In the worst case, we would go to the builder and take their licence away or suspend, or apply a monetary penalty or whatever.

**CHAIR:** That leads to my next question. You have new power to suspend a licence. How many suspensions of licence have you carried out for defective building since you have had that power, since the new Act came into force?

**Mr AQUILINA:** Since the introduction of the new powers 13 building licences have been suspended. There has been a total of 29 suspensions as in most cases the suspension has been extended beyond the initial 60 days. Four licensees sought a review by the Administrative Decisions Tribunal of the decision to suspend their licence, so the department is moving and acting and is using its new powers.

**Ms LEE RHIANNON:** Minister, you might remember that on January 1 this year and on subsequent days there were a number of reports in the papers about a big dance party and how a number of people had been not admitted even though they had tickets. Subsequently I understand that the entrepreneur actually argued that he had not done anything wrong, that he believed that people would come at staggered times. I am interested in your response to that. Did you think that the entrepreneur had done anything wrong? If he had, how would you have planned to rectify the situation for coming events?

**Mr AQUILINA:** In relation to that particular instance, as a consequence of the department's intervention you may recall that the promoters, Dakota Creative Marketing, agreed to provide refunds for ticket holders who could not enter the venue as well as for those who had paid for drink tokens that could not be used. A full refund was made. The initial arguments were as you stated, but we eventually wore him down, I think. The department's investigation into the activities of the promoter is continuing, in cooperation with New South Wales Police. Basically we were able to obtain restitution for all of those who were affected on that occasion, although that does not compensate them for having a very special night wrecked.

**Ms LEE RHIANNON:** That is certainly the case. Looking to the future, are you looking at the expanding entertainment industry? Are you considering holding meetings with any of the stakeholders to work out protocols about how these events are put in place?

**Mr AQUILINA:** I think I made an announcement at that time, and that is some time ago now, that one of the things we would be doing is reviewing the entertainment industry code of fair practice and in fact that is actually what is taking place. The entertainment industry code of fair practice is a voluntary industry code endorsed by the Minister. The code applies to promotion, ticket sales, and staging of events where an entry charge is made, and it aims to promote and give guidance to entertainment providers and patrons in relation to fair standards of practice and fair resolution of

complaints that may arise.

This code was recently reviewed by the department. The review covered a range of issues, including those relating to quality of performance, charging of seats for children of a certain age, further clarification of when a consumer should be provided with a refund, and the level of consumer detriment when a production does not proceed, such as happened with Aida, for example, which I think was last year or the year before. A reference group was established to assist with the review. Meetings were held with a number of peak consumer and industry bodies, including the Australian Entertainment Industry Association, the Australia Council, the Media Entertainment and Arts Alliance and the Redfern Legal Centre.

An issues paper was released late last year, on November 7, and although submissions closed on December 21 late submissions were accepted until January 31. I made an announcement early in January in relation to that, and that was specifically to accommodate the Harbour Beat event on New Year's Eve. A short survey was also placed on the department's web site aimed at those consumers who wished to make their views known without preparing a formal submission, and everybody was more or less encouraged to make a submission on this important review. The department has prepared a report canvassing a number of options. This is currently under consideration. I have not as yet seen that report, but it is something we are very much actively pursuing.

**Ms LEE RHIANNON:** Could you explain your timeline on that? Obviously I am looking to see if the protocols will be in place prior to tickets going on sale for next New Year's Eve.

**Mr AQUILINA:** Certainly one would hope so, but I might ask Director-General David O'Connor to respond with details in relation to timing.

**Mr O'CONNOR:** The Minister gave a very comprehensive answer about associations and groups. There has been quite a lengthy report prepared. The department has been through the report. There are quite a number of recommendations and it will soon be in a position to make a recommendation to the Minister with a view to taking a document to Cabinet, but all I can say is we would hope that would happen fairly soon and certainly would hope it could be in place before the new year.

**The Hon. IAN WEST:** Minister, I note that the department has allocated some \$6 million for spending on information technology services. Could you advise how this spending would improve services for consumers in New South Wales?

**Mr AQUILINA:** As the Honourable Ian West has mentioned, the \$6 million has been allocated in the coming year for electronic systems aimed at improving and enhancing services provided through the department's Statewide network of Fair Trading centres. This new information technology opportunity opens up possibilities for improving the delivery of government services. We at the Department of Fair Trading would like to think that we are up to the mark with other departments, if not substantially ahead of a number of them. We are keen to utilise this technology to streamline the department's procedures. That is not to say that we do not recognise the importance of face-to-face communication. The emphasis is still very much on face-to-face communication and personal services provided by telephone and over the counter at all of the department's 22 Fair Trading centres. Services are also available to regional consumers through government access centres and business enterprise centres.

Among the information technology initiatives being introduced by the Department of Fair Trading is a natural speech recognition system. This service will ultimately enable clients to access information across a range of Fair Trading services. It is currently under development and will be introduced first at the Register of Encumbered Vehicles. We also have the customer assistance on-line system, which is being introduced to provide Fair Trading customers and staff with an on-line problem solving capacity to provide fast, accurate information. We have an intelligence analysis system which is being acquired to provide the department with timely intelligence information that will assist it in curtailing illegal marketplace activities, so the sooner we are able to obtain information, the sooner we are able to act upon that and hopefully prevent various illegal activities taking place.

We have an intranet project. The department's web site has recently been redesigned and in fact I launched the redesigned web site some weeks ago at Nowra. An intranet service has also been provided to provide staff with access to corporate information. Both projects include technology aimed

at improving services to customers and staff by electronic means. Work is under way also to enhance the performance of the department's network across New South Wales in corporate communications. That will help to ensure that people in remote and rural areas receive the same levels of service as their city counterparts, again expanding on the theme of decentralising our activities and making sure that we provide appropriate services through rural New South Wales so as to assist those people in remote and isolated locations, recognising the fact that in many cases, in many ways, they probably need far more help than people who reside in the cities.

**CHAIR:** When people want to make a complaint to the department do they go through this new IT process or do they still go to the department face-to-face?

**Mr AQUILINA:** They can do either. They can actually sit down and access the department through the web site or they can go to one of our 22 Fair Trading offices around the State. Despite the relatively short time I have been Minister for this portfolio, I have personally visited a number of these offices and they are located in most of our regional centres. For example, I have been to the one in Wagga Wagga twice now; I have visited the one in Albury twice as well. We have a centre in Dubbo, and a centre in Bathurst; we have them in the major centres of Newcastle and Wollongong as well as several in Sydney. One is located in Elizabeth Street.

**CHAIR:** How long does it take for initial complaints to be investigated, and how many people are in the section to deal with these complaints?

**Mr AQUILINA:** It all depends on what the complaint is. The department is a very large department with a large number of personnel and obviously there are people who work in specialised areas. It would depend on the nature of the complaint. Besides the Fair Trading centres, we also have specialist centres. We have 22 Fair Trading centres and we have specialist centres, such as for the Rental Bond Inquiry Centre, tenancy inquiries, strata schemes and mediation services, the Register of Encumbered Vehicles, and business licence information. The department has a substantial number of personnel to deal with various inquiries. What I am saying is that there are a number of ways of accessing the specialised personnel in order to be able to provide the response.

Generally speaking I have to say—and I have said this on a number of occasions publicly before—I get overwhelmingly good feedback about the courtesy, response time and level of service that Department of Fair Trading personnel provide. It is an experience to visit one of these offices, for example, to just stand and listen to staff either receiving phone calls from members of the public or indeed to see the people coming in or seeking face-to-face attention over the counter. They do get expert advice, expert assistance, and for the most part are able to leave with their inquiries resolved. If an inquiry is more complex it can be referred to one of the specialist services and they have personnel able to provide them with that response.

In relation to details, the department advises that—this is actually in a publicly available document, one of the many documents that the department provides—the aim is to satisfy or to answer 85 percent of all telephone inquiries within five minutes. The aim is to finalise 70 percent of general consumer complaints or disputes between parties within 30 days of receiving the complaint. Other complaints, may take longer because of their complexity and also because of the need to investigate a complaint further. In those cases the parties are contacted within 30 days to advise them of what action is being taken. By and large the overwhelming number of complaints are dealt with almost immediately. Where more detailed inquiries and investigations are required, those are followed through, but parties are advised within 30 days of precisely what further action the department desires to take or proposes to take to resolve those concerns.

**CHAIR:** I have to say, Minister, that we have known of some complaints for nearly four years, and they are being resolved very slowly. I am not suggesting the department is doing that generally, but in specific cases the investigation has taken a very long time to finalise, particularly insurance claims. I will take the opportunity to ask the following question. Those insurance claims that many people have for defective buildings actually have been the subject of complaints to the department a number of times. The question is whether the department realises that the more delay, the more cost to the complainant there will be. Is there any guideline? You have just read a guideline, which I am very pleased to hear. That is terrific, absolutely great, but what happens to those who complained years ago? What happened to the backlog?

**Mr AQUILINA:** Madam Chair, I understand your question and that issue was obviously

raised with me, as one would expect. Being a new Minister, people come in and want to put their cases forward again. I dealt personally with a number of those people who have had some of those longstanding complaints. I have made a point of meeting with them, seeing them and going through it. It is acknowledged that their complaints have been aired over a long period of time, but I find fairly consistently in all those complaints that the department has been responding to the complaint but the complaint ends up being prolonged because all forms of litigation and all kinds of conciliation measures are being undertaken. , and when the department quite often comes back and resolves an issue to a certain degree, people then find a fresh matter to raise, which extends that issue further. There are a number of cases like this, and probably you are aware of the same cases that I am aware of. It is not quite the same as saying that the department is slow in acting. It is a case in which, because of the complexity of the situation, no matter how fast the department acts, if there is not resolution or there is not satisfaction on the part of the complainant, then it tends to stretch the matter out further because other issues require resolution.

**CHAIR:** Can a complainant who is not satisfied with the departmental action complain to you directly?

**Mr AQUILINA:** I can assure you, Madam Chair, they do that regularly, and where possible I have undertaken to see a number of those people.

**CHAIR:** I have a couple, Glenn Martin for one. Fernbank is another one. They are all longstanding complaints that have not been resolved.

**Mr AQUILINA:** On the Fernbank one I am aware of some of the details, though not all of the details, because correspondence and various briefing notes have come across my desk over the last six months on it. I would like to make a point, in fairness to the department, that they have responded and they have acted and they have tried to keep close liaison there, but those issues are not easily resolved. What tends to happen in these cases is that if people do not get 100 percent satisfaction in their own situation, they do not want to be satisfied with the resolution proposed by the department.

**CHAIR:** Minister, I understand that, and I am not criticising any particular departmental officers. Would you like to take that on notice, specifically on Fernbank Retirement Village, where there are more than 47 very elderly residents, all over 80 years of age. I would like to know about the last six months since you became the Minister. I quote part of your letter:

The department is currently making arrangements with both the village operator and Ms Nola Bennett, the representative of the unit holders, to discuss the possible resolution of the matter. Since October 20, 2001, the Department of Fair Trading has communicated with residents and their representatives.

Which departmental officer actually visited those residents, and how many times? Who have they seen as the residents' representative? What resolution have they proposed and what was the result of the consultation?

**Mr AQUILINA:** Madam Chair, I am sure we have answers to those questions. I will take it on notice and provide them.

**CHAIR:** I would appreciate the details of all action taken by the department.

**The Hon. JOHN RYAN:** Minister, can you inform the Committee how many staff within the Department of Fair Trading are engaged in operations such as communications, media, and marketing? What positions do they hold and how much of the funds are devoted to exercises that could be regarded as marketing?

**Mr AQUILINA:** I think you are basically looking at them all, John.

**The Hon. JOHN RYAN:** I think it might be a bit more than that.

**Mr AQUILINA:** As far as a detailed response, the Department of Fair Trading has one media officer and has spent \$113,240 on media services during 2001-2002. Having said that, much of what the department does is oriented towards publicising certain aspects of activities through the media necessarily. The department's marketing branch has 18 staff and a total budget of \$1.26 million. Most of that is the provision of public information and consumer education. The sorts of publications I was

speaking of earlier are public documents that are available. I think you will probably find these at the electorate office of any member of Parliament as well as in the department's offices. We are now undertaking also to provide them to places like the migrant resource centres as well as various community centres around the State. There are publications of items that are required to be recalled, for example, and various media statements concerning dangerous goods or inappropriate or inadequate services.

This year to date I am advised that we have had 1,340,480 publications produced for distribution to consumers and traders across New South Wales; 62 publications of promotional items were produced; 13 of these were promotional items; 19 were new publication titles and 30 were reprints from revisions. Seven publication titles were translated into one to 17 languages each and translation costs to date are around \$35,700. All new and revised titles have been made available electronically on the Internet web site. Total printing and translating costs to date are just under the \$450,000 mark. So there is a lot of work in marketing and in media promotion, but much of it is vital because of the in which the Department of Fair Trading operates.

**The Hon. JOHN RYAN:** Do the figures that you have been given include the liaison officers who travel out to promote the activities of the Department of Fair Trading?

**Mr AQUILINA:** I am advised by the director-general that they are actually customer service officers and they do go out to different offices around the State. I might actually ask the director-general to give a bit more detail on that.

**Mr O'CONNOR:** Madam Chair, apart from our corporate services function, I think it is incumbent on every officer in the department in their own way to conduct the marketing activities of the Department of Fair Trading. The Minister mentioned a little while ago the customer service area where we take in excess of one million phone calls a year from that particular call centre. All our call centres combined are now approaching almost two million calls a year. I would imagine in all of that activity that officers are in fact carrying out a public relations, public education, consumer education function. We could say that all of those officers are marketing the activities of the department. One of our prime activities is consumer education and consumer information. If we were not doing that we would be derelict in our duties as officers and as a department.

The Minister referred to the number of people in what we call the marketing branch. The function of those people, as the Minister mentioned, is to produce publications and public relations strategies for our various activities. Throughout the year legislation is passed. We have to get that information out to people as quickly as possible. Under the national competition rules the department, apart from the Department of Agriculture, has the next largest number of Acts that have to be reviewed. All of that is marketing activity, in my view, to get that information across to the various stakeholders, whether they are consumers, whether they are traders, or in fact whether they are indeed members of Parliament.

**The Hon. JOHN RYAN:** Minister, I return briefly to home warranty insurance. Your press statement of 19 December 2001 indicated towards the end that there were departmental officers working in the Melbourne offices of insurers to assist with the backlog of applications for insurance. It also indicated there was Government funding to enable insurers to employ additional temporary staff to reduce backlog. Could you inform the Committee what the value of that assistance to insurance companies was in terms of cost to the taxpayers, and is it still occurring?

**Mr AQUILINA:** I would be happy to advise on some of that information. To assist in overcoming the current problems faced by contractors in obtaining home warranty insurance, the Department of Fair Trading has been working with various industry associations and insurance providers so as to ensure that applications are being processed as quickly as possible. It needs to be remembered, of course, that with the collapse of HIH, Dexta for example inherited the builders who were insured with that organisation. They did not have the infrastructure to be able to cope with very substantial additional numbers of builders. As a result of that there was substantial backlog. On top of that, because of the fact that HIH collapsed and did not have much of the prudential information that would enable an insurance company to take it on, much more information was required by Dexta than HIH had requested, and this also created a substantial backlog. We acknowledge that there is an urgency to require the processing of builders applications for insurance much more quickly than has been the case, and I think we are helping to achieve that.



In order to assist with that particular issue, the department convened several meetings with the insurance industry associations to discuss the backlog in applications and ways in which the processing of applications could be expedited. Also, the department convened three special clinics, one at Newcastle, one at Penrith and one at Gosford, with insurers and affected builders to facilitate the processing of new insurance applications. These clinics overall have been highly successful. Staff at Fair Trading centres regularly conduct seminars on building issues for the building industry in regional and rural New South Wales.

In an effort to assist with the processing of applications made by New South Wales builders and contractors for home warranty insurance, around \$500,000 was committed to enable the insurers to employ additional temporary staff. In the case of Dexta Corporation some \$286,000 has been paid covering a 12-week period. In the case of HIA Insurance Services payment has not yet been made, although documentation has now been received and the amount will be in the order of \$200,000. The department also arranged for certain of its own staff to work in the Melbourne offices of each of the home warranty insurance providers. These measures have had a positive impact in terms of reducing the number of outstanding building insurance applications.

The department also initially established the information hotline to obtain details of consumers and builders affected by the collapse of HIH. Consumers who were affected by the collapse were able to contact the hotline for information and assistance. The operation of the hotline has been extended so that consumers and builders can continue to obtain information about the changes to the legislation. The department also continues to receive around 600 to 800 calls per month from builders, specifically about home warranty insurance, and that is why of course we are keen to be able to provide the personnel so as to try to resolve those inquiries as quickly as possible.

**The Hon. JOHN RYAN:** How many officers from the Department of Fair Trading went to Melbourne to assist them, and are they still there?

**Mr AQUILINA:** The answer to the first question is two and the answer to the second question is no.

**The Hon. JOHN RYAN:** How long did they stay in Melbourne?

**Mr AQUILINA:** Five weeks in total I am told.

**The Hon. JOHN RYAN:** Very generous of the Government. I think insurers ought to pay for insurance.

**CHAIR:** Order!

**Mr AQUILINA:** Madam Chair, the point has been made by the Honourable John Ryan that the Government has been generous to the insurers. The point of course is that they were there to assist the builders, not just the insurers.

**The Hon. TONY KELLY:** And people who could not get their houses built.

**Mr AQUILINA:** I do not think there would be any builders around New South Wales who would be critical of that issue. Our aim has been to try to stopgap what was an unexpected but a very severe situation, first of all initiated by the collapse of HIH, and, secondly, compounded by the 11 September situation, where understandably insurance companies were requiring far more detailed information from builders. Particularly in the aftermath of the collapse of HIH, that was taking time, and in the case of Dexta, they also had to deal with a substantial increase in the number of builders they had to deal with. So had the department not stepped in, and again much of that was before my time as Minister, but had I been the Minister at the time I would have had no hesitation in endorsing that, and in fact I commend the department for the action taken on that occasion.

**The Hon. JOHN RYAN:** Going back to the issue of marketing, how many staff do you have in your ministerial office who are engaged in communications, media and marketing?

**Mr AQUILINA:** In my ministerial office?

**The Hon. JOHN RYAN:** Yes.

**Mr AQUILINA:** I have a senior media officer and an assistant media officer. I will just qualify that: I have a senior media officer and an assistant media officer, but my portfolio covers more than Fair Trading. I also cover Land and Water Conservation, and those two persons deal right across the board with all of those issues.

**The Hon. JOHN RYAN:** As I understand it, in 2000-2001 the Department of Fair Trading collected \$19.5 million in builders licensing fees. How much does the department expect to collect in builders licensing fees. If I could just ask a question in regard to that and interpret the budget papers, are any of those funds reflected in the "Operating Statement" on page 11-25 of Budget Paper No. 3, Volume 2, where it refers to "Retained taxes, fees and fines"? I suspect not, but I am just asking.

**Mr AQUILINA:** During 2002-2003 the department expects to collect some \$23.4 million in fees relating to the building industry. Of this, some \$19.6 million received from building licence fees will be transferred to Treasury. The balance of \$3.8 million will be retained by the department. Of this amount, \$2 million will be received from the 10 percent home building reforms levy, which has been applied to building licence fees since 1 January this year, some \$0.7 million from 1 January to the end of June this year. The proceeds of the 10 percent levy applied to home building licence fees will be deposited in the home building administration fund. The money will be applied by the director-general, with my consent, to meet the costs of operating the building disputes resolution scheme and the costs of administering the Home Building Act and any other Act prescribed by the regulations. The remaining \$1.8 million which will be retained by the department is revenue collected from fees for owner builder permits. The increase in owner-builder permits of \$0.5 million from \$1.3 million to \$1.8 million is due to the increased cost of permits to fund new functions brought about by the home building reforms.

**The Hon. JOHN RYAN:** What is the rationale of collecting such a significant amount of licensing fees from builders when the department only employs 32 people generally to license builders and, of those 32 people, only 11 have relevant building or technical qualifications? Does it not suggest that we collect a significant amount of money from the building industry and invest a fairly modest amount in return to ensure that the building industry is adequately regulated?

**Mr AQUILINA:** We have people who have technical expertise in various areas of activity, and I can provide details in relation to each one of those 11 persons as to what technical speciality they have. I do not know whether the honourable member wants me to read that.

**The Hon. JOHN RYAN:** I think we have a copy of the same document, Minister, so we will not waste the time of this Committee, but there are 11 building inspectors with technical experience. I have plenty of constituents who have building complaints that have said they have not seen anybody, sometimes in months, when they have made a complaint about building inspections. I begin to wonder whether that does not explain why it takes so long to get a response from a technical expert to visit building premises to inspect the building properly. I would have thought that 11 people with building expertise was a fairly modest investment given that you collect in excess of \$20 million in licence fees for builders' licences. One imagines that the reason you collect fees in the first place is to fund what the department does in terms of regulating the building industry. I would put to you that it is a fairly modest expenditure in building expertise for the amount of money that is collected. Given that they have to respond to 1,700 complaints and carry out 400 site inspections with regard to licensing, you would have to say that those 10 or 11 people with expertise must be flat out. There cannot be any other way of describing it.

**Mr AQUILINA:** I might add that the department is presently in the process of finalising recruitment action with respect to three additional assistant technical investigator positions, but I might request the director-general to provide some further detail on this.

**Mr O'CONNOR:** I might say they are investigators, not actually inspectors, as might be thought, but the major regulation of builders is through the licensing system and quite a considerable amount of money—we might be able to give you that figure—is actually in the licensing system itself, in the administration of licensing. We have hundreds of thousands of licences. We collect that money and, through licensing, whether or not we are putting conditions on licences or whatever, actually maintaining the licence system itself in fact accounts for a major part of the money.

You mentioned the compliance area as well, but also part of the money collected would be going across the department in various areas. Part of it would go to marketing, as do other fees we

collect; part of it would go through policy development, right across the department. A part or percentage of that money you would see allocated to customer service. So any moneys in fact that we collect go right across the department. In relation to the building licensing staff, 44 people administer and collect licensing fees, so it is not just the number of people who actually have a building qualification, there are a lot of administrative people, a lot of policy people and other people, and customer services, of course, is put across with the expenditure of those funds.

**The Hon. JOHN RYAN:** In relation to the question I asked a couple of minutes ago, in terms of the operating statement of the Department of Fair Trading, is it fair to say that, because \$18 million or \$19 million of the fees collected by builders is passed across to consolidated revenue, the line item "Retained taxes, fees and fines" on page 11-25 of Budget Paper No. 3, Volume 2, does not include those fees? That line item relates perhaps to what you collect for the Register of Encumbered Vehicles or something else? Is that right?

**Mr SILK:** In Budget Paper No. 3, Volume 2, page 11-25, "Retained taxes, fees and fines", the figure of \$28.6 million for 2002-2003 is comprised of, amongst other things, building licence fees in relation to building reforms, the building reform levy that was introduced on 1 January this year of \$2 million, and owner builder permits of \$1.8 million. The building licence fees are not contained in that figure.

**The Hon. JOHN RYAN:** So in addition to collecting \$20 million in licensing fees the department also sells a number of other products and things and generates \$28.6 million there. That is just building. One imagines that you generate a significant amount of money from real estate agents and other people that you license. As I said, building does not comprise the majority, it is a marginal part of what the Department of Fair Trading does. You have 10 or 11 people with building expertise. I think there is a strong argument that you need some more, given the waiting times that some of my constituents have complained about and your ability to go and respond to their complaints.

**Mr AQUILINA:** As I have indicated, there are three others at the moment currently being recruited, but it is just a straight-out question hypothecating funds received from a certain source in terms of undertaking specific activity. Obviously, the department has a wide range of activities, as the director-general has indicated, and the funds provided by Treasury enable us to undertake those wide ranging activities, whether they be in relation to building or other matters. It is impossible to directly relate income from a certain activity and then devote the income obtained from that activity specifically into conducting that same activity in a related way. It just does not work that way.

**CHAIR:** I am sorry, I have to stop you there because you have exhausted licensing fees.

**The Hon. JOHN RYAN:** No, I have not, Madam Chair, and I have been very patient with you in allowing the Government and yourself to take up nearly an hour of the available time. I have had 20 minutes and I have asked five questions.

**CHAIR:** If you have exhausted licensing fees, I have to stop you.

**The Hon. JOHN RYAN:** Well, I have not. You refer in the annual report of 2000-2001 to appointing 15 additional investigative positions. Six of these positions are to form a special investigative team to provide immediate response to serious and sensitive building issues. Where are the 15 extra, given that you are referring to three and there are only 32 in the branch? Where are the 15 that were promised a year ago to which you are apparently adding another three?

**Mr AQUILINA:** The director-general advises me that the 15 were included in the number given.

**The Hon. JOHN RYAN:** So before those 15 there were not 32, there were only 15?

**Mr O'CONNOR:** I think that is correct, yes.

**The Hon. JOHN RYAN:** But there would not be 15 people with building expertise.

**Mr O'CONNOR:** The Minister gave the figure for the number with building expertise.

**The Hon. JOHN RYAN:** There are 11 with building expertise in the whole unit and you

promised 15 two years ago.

**Mr AQUILINA:** I will go through it and give details, if the honourable member wishes. The building investigations branch currently comprises 32 investigator positions of which 11 positions are allocated to investigators holding building qualifications.

**The Hon. JOHN RYAN:** Or relevant technical qualifications. I have the same document, Minister. If you want to sit and waste the Committee's time by reading a document we already have, fine, but we will bring you back on another day.

**Mr AQUILINA:** I am sorry, Madam Chair, I do not have extra-sensory perception, I do not know what document the honourable member has. If he has the document with the answers in it, I suggest that he should not waste the time of the Committee by asking the questions.

**The Hon. TONY KELLY:** Why is he asking the question?

**The Hon. JOHN RYAN:** That is not what I was asking, Minister. You promised two years ago to provide 15 additional people with building expertise and there are not 15 people in that unit yet. What happened to the 15 that were provided the year before last, to which you are now saying you are going to add another three? There should be at least 18, according to the annual reports.

**Mr AQUILINA:** Well, I did not promise anything two years ago, but I am sure the director-general would be happy to respond to that question as well as he can.

**CHAIR:** I order that we have exhausted this issue.

**The Hon. IAN WEST:** Minister, what is the department doing to protect the consumer rights of people from ethnic communities in New South Wales?

**The Hon. JOHN RYAN:** Madam Chair, can I just point out that more than the majority of the time so far has been used by Government members and crossbenchers.

**The Hon. TONY KELLY:** Come on, John, it has been fair.

**The Hon. JOHN RYAN:** It has not been fair.

**CHAIR:** Order! We have plenty of time to ask questions.

**The Hon. JOHN RYAN:** Normally in most other estimates committees the Government members do not ask questions at all. You have asked three dorothy dixers, some of which have taken up to 20 minutes to answer.

**CHAIR:** The Minister has the floor.

**Mr AQUILINA:** Thank you, Madam Chair. I will try to be as brief as I can in relation to the various questions asked by Government members. Through its ethnic affairs priority statement, the Department of Fair Trading identifies the needs of ethnic consumers and develops strategies to help them operate in the market place. Currently, the Department of Fair Trading has a renting guide which is produced in 17 community languages, the "We Can Help You" fact sheet is available in 20 languages, information on the role of the register of encumbered vehicles is produced in five languages, details on strata living is available on the department's web site in both Vietnamese and Arabic, the home building check list is produced in four community languages, and there is also a comprehensive community language allowance scheme.

Staff who speak languages other than English are encouraged to join the scheme, and currently there are officers collectively covering 28 languages. There is a telephone interpreter service which is available to ethnic consumers, and people with limited English can contact the Department of Fair Trading by the telephone interpreting service, and there is a telephone number for that. Also, at a regional level the department's community liaison co-ordinators work closely with the ethnic community organisations to try to get the message across to consumers, and the New South Wales consumer protection awards for this year have also been widened to include a new ethnic category.

Having said all that, one of the things that concerned me when I took over this portfolio was that there was a wide range of information available but there was not any organised program under which that information could be disseminated. I wanted to come up with a marketing program to make sure that the excellent material the department provides was able to reach the members of the migrant community. Since then we have devised this "Think Smart" program, which basically packages a whole lot of the material and information in different community languages into a meaningful package, and we are now forming various partnerships with different ethnic community organisations around the State.

Last week, for example, I launched it at the Blacktown Migrant Resource Centre. I have also launched the program at the Illawarra Migrant Resource Centre. It is soon to be launched also at the Australian Chinese Community Association. Other organisations we have in mind are the Vietnamese Community in Australia and the Indonesian Welfare Association. The aim is to form partnerships with these various organisations. We train the members of these organisations to be able to disseminate this information, and make sure they are able to do it correctly. We also provide the packages for free to these organisations to make sure that they reach the various ethnic communities. That is a very quick analysis of what we are doing for migrant communities. The main material is currently available in seven key languages, being Arabic, Chinese, Greek, Italian, Macedonian, Spanish and Vietnamese.

**The Hon. JOHN HATZISTERGOS:** What problems have the recent natural disasters, particularly the storms and the bushfires, given rise to as far as the department is concerned? What has been the department's response?

**Mr AQUILINA:** The Department of Fair Trading has developed a recovery strategy to meet the needs of communities affected by natural disasters such as floods, bushfires and severe storms. A key component of the recovery strategy is the provision of advice to affected communities on such matters as building repairs and giving information about licensing for tradespeople carrying out repair work, consumer credit, tenancy rights and how to contact other organisations that offer assistance to consumers with matters such as mortgage assistance, financial counselling and insurance.

In actual fact, in the few natural disasters we have encountered since I have become the Minister in different parts of the State, I have been very pleased to find out that virtually within no time at all officers with the appropriate qualifications and expertise from the department are out there door knocking people, trying to find out how they can actually help them. I encountered this, for example, in the severe storms in the Port Stephens area, literally within a week of my taking over the portfolio. When I made inquiries about what the department was doing about this, they already had officers out there door knocking people and trying to assist them.

I am pleased to advise the Committee that the Department of Fair Trading has played a conspicuous role in protecting the interests of consumers during the disastrous bushfires, for example, which occurred over the 2001 Christmas and New Year period. I will not belabour that point. There is plenty of documentation and public evidence concerning this. Measures taken by the department include not only the provision of a special priority service for bushfire related matters on its general inquiry line, but also the placement of advertisements in 20 newspapers across the State, attendance at community meetings to explain to people what their entitlements are, visits to disaster recovery centres, distribution of information kits, and extended promotions of the department's traveller consumer help line to assist overseas and interstate visitors whose travel plans were disrupted as a consequence of the bushfires. These are just some examples of the sort of works which the department undertakes.

**The Hon. RICHARD COLLESS:** Minister, has the Department of Fair Trading made a submission or otherwise assisted the current national review of home warranty insurance being conducted by Percy Allan? If so, what has been your involvement in that process?

**Mr AQUILINA:** I will ask Mr Schmidt to provide some detail, but can I just say from a personal perspective I have been following that inquiry very closely. It needs to be remembered, of course, that Professor Percy Allan is conducting that inquiry under terms of reference provided by the New South Wales Government. I have had, as I indicated earlier, meetings with Professor Allan. Also, we have been constantly in touch with Professor Percy Allan at a departmental level to make sure that the actions we are undertaking by way of reform here in New South Wales mirror closely the way in which Professor Percy Allan would be advancing his report to the Commonwealth Government.

Our aim here in the situation is to find the best solution. This is not a particularly political

thing. It is a way of making sure that we are able to provide the best assistance possible, and we felt that the best way to do that is to make sure that we are working in tandem with the Commonwealth Government and also working in tandem with the other major State which has issues closely mirroring the situation here in New South Wales, and that is the Victoria. Having said that, I will hand over to Mr Schmidt to provide some more detail.

**Mr SCHMIDT:** I think it is fair to say that we have been very keen for Percy Allan's inquiry to proceed and we are awaiting with great interest the report and how it will be received. It is particularly interesting to have a person of his stature looking at this from outside. He has got no particular axe to grind as far as I am aware, so it will be very useful having a person looking at an overview across Australia from all perspectives. That is incredibly valuable.

At the outset, what New South Wales did was to try and provide Professor Allan with as much as information as possible. Our submission essentially consisted of I think more than a box load of material, which was material from the previous inquiries, the Dodd reports, the royal commissions, any material we had there, full details about the recent Government reforms over a couple of years in the home building area to show where the scheme in New South Wales had been heading. Subsequent to that, I have attended briefings with Professor Allan with officers from other jurisdictions, I have attended briefings that he has given to a range of selected industry, insurer and consumer individuals, and on a number of occasions Professor Allan, as he does with all jurisdictions, has phoned officers for information to clarify certain matters which he has been looking at. We have given him as much background material as we can as to how the system operates in New South Wales and whenever he has wanted further information we have been more than pleased to assist him in that.

**The Hon. JOHN RYAN:** On 4 June, Minister, you said you were announcing a \$1.3 million boost to the Consumer, Trader and Tenancy Tribunal. The budget papers would seem to indicate that the funding for the tribunal is falling, or at least funding for tribunals is falling, from \$24.3 million to \$23.9 million. Could you explain to the Committee where the extra money has gone to? I am referring to Budget Paper No. 3, Volume 2, page 11-37.

**Mr AQUILINA:** I trust I have the correct answer for the honourable member on this one. The funding for the former Residential Tribunal was provided from two sources. Fifty percent was provided under section 22A of the Landlord and Tenant Rental Bonds Act 1977 and the remaining 50 percent was provided from our statutory interest account funds. The former Fair Trading Tribunal was funded from consolidated funds.

From 1 January 2000 additional funds relating to the resolution of building disputes were given to the Fair Trading Tribunal. The Consumer, Trader and Tenancy Tribunal, which commenced operation on 25 February, has a mixed source of funding between consolidated funds, being 30 percent, real estate statutory interest account funds 35 percent and interest on rental bonds 35 percent. Funding is calculated using an activity-based costing process. The allocation of funds is restricted to expenses allowed for by the legislation, as I mentioned earlier, as directed by me in my capacity as the Minister for Fair Trading.

The Audit Office of New South Wales undertakes a review of the process used to determine tribunal funding sources as part of the statutory audit process at 30 June each year. In relation to the specific amounts, I might just indicate that the total retained revenue has been decreased as a recoupment of costs related to the tribunal's residential activities being split across all programs this year, as are all administrative expenses and revenues. So it is not correct to say that there has been a reduction in the service provisions. The reduction in the total retained revenue has been as a result of the recoupment of costs related to the tribunal's residential activities which have been spread around a number of other programs.

**The Hon. JOHN RYAN:** Minister, a while back you were answering a question from the Chair with regard to the use of the department's powers to suspend building licences. In the annual report for 2000-2001 there is a list of some 10 traders related to home building, and I recognise that two licences obviously are held by the same person. Westfield Concrete is for all intents and purposes the same as Mr Romulo Tomassetti. But in any event, you refer to 13 traders who have had their licences suspended since the powers commenced. Does that mean that only three other traders, since that list was produced for the annual report 2001, have been subject to licence suspension? If that is not the case, can you supply to the Committee a list that looks a bit like page 15 of your annual report so that we are at least in a position to compare one set of statistics with another?

**Mr AQUILINA:** I will ask Brian Given to give you some details in relation to that.

**Mr GIVEN:** Madam Chair, the suspension activity is only a part of the disciplinary action taken in relation to builders, and more recently we have had the capacity to issue show-cause proceedings within the department, as opposed to bringing them before the Consumer, Trader and Tenancy Tribunal. Some matters have involved suspensions and continuing or repeated suspensions in relation to traders who would have been identified in the previous annual report, particularly while matters were still before what was the Fair Trading Tribunal, now the CTTT. The number of suspensions issued is as previously indicated by the Minister and there are currently a considerable number of show-cause matters that are in the process of either being completed or have been completed since the new show-cause procedures were provided.

**The Hon. JOHN RYAN:** That does not quite answer my question. The Minister said there had been, as I understand it, 13 traders. Ten were already done before June 2001. I am after how many additional building traders had their licences suspended after 2001, whom we could put on that list because, as you say, some repeated suspensions are in fact the same trader having their licence suspended for an additional period of time, and sometimes there is a mistake. For example, I think Mr Malik Drif needed his licence suspended a couple of times, because he successfully got it back for some purpose and suspension had to be reimposed. I think most people would take the view that the best way to evaluate the effectiveness of the use of those powers or the impact those powers are having is to find out how many individual builders have been suspended since the powers were first available, and that is what that list appears to provide. Can you supply the Committee with the rest of the list that covers the next financial year after the end of the 2001 year?

**Mr AQUILINA:** I would be happy to take that on notice and provide that detail to the honourable member. Could I just emphasise again, though, that the statement I made earlier was that, since the introduction of the new powers, 13 building licences have been suspended and there have been a total of 29 suspensions, as in most cases suspension has been extended beyond the initial 60 days, so in some cases—

**The Hon. JOHN RYAN:** It is the same builder being suspended over and over again.

**Mr AQUILINA:** Yes, but that is 29.

**The Hon. JOHN RYAN:** So 29 sounds very impressive.

**Mr AQUILINA:** If you look at the total number of suspensions it is 29, but it is the case where the original suspension has gone beyond 60 days and it has been reapplied, so I will get the detailed information for the honourable member, but that would suggest to me that in actual fact the 13 applies to 13 different ones. The 29 is the figure that would apply to the repeat suspensions.

**The Hon. JOHN RYAN:** That is the point I was making. If there are 13 different ones, 10 of them were already known by June 2000. That would suggest that since June 2000—

**Mr AQUILINA:** Well, I do not know that the assumption could be made that those 10 are part of the 13.

**The Hon. JOHN RYAN:** It might not be. I am only trying to compare like with like.

**Mr AQUILINA:** That is fine, but we are happy to obtain that information.

**The Hon. JOHN RYAN:** I am not trying to be argumentative.

**CHAIR:** How are the retirement village operators licensed, and how are the character and conduct of village operators assessed?

**Mr AQUILINA:** I might hand that over to Brian Given in relation to the specifics of licensing arrangements.

**Mr GIVEN:** There is no licence required for retirement village operators.

**CHAIR:** So if people have a complaint about retirement village operators, a complaint about harassment or non-compliance with the new service contract, what do they do? What do residents do?

**Mr GIVEN:** There is the capacity to take certain matters to the tribunal. There is also capacity within the department to undertake action against operators that are not complying with the legislative requirements either of the Retirement Villages Act or other items of legislation that we administer, such as the Fair Trading Act, which prohibits misleading and deceptive conduct and unconscionable conduct.

**CHAIR:** Is there any regulation in the department against operators?

**Mr GIVEN:** There are a lot of requirements imposed on the operators of retirement villages pursuant to the Retirement Villages Act.

**CHAIR:** I want to close this inquiry now and, on behalf of the Committee, I want to thank the Minister and all the departmental officers for attending the hearing. Before you go, Minister, I want to know two things. One is in relation to the documents that you were going to table to the Committee. Can you provide those to the clerks of the Committee and identify the documents? I think the documents were about tenancy advice services and the Consumer, Trader and Tenancy Tribunal.

**Mr AQUILINA:** Yes, I would be happy to provide those.

**The Hon. JOHN RYAN:** I move that those documents be received.

**Motion by the Hon. John Ryan agreed to.**

**CHAIR:** I would also like you to confirm how long it will take for the answers that you took on notice to be provided to the Committee? I should say that 35 days is usual for questions on notice.

**Mr AQUILINA:** Whatever is the required time, but we will try to get them in as soon as we can.

**The Committee proceeded to deliberate on the recommendation of the vote.**