

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 2

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

Uncorrected Proof

**Public Hearing at Parliament House on
Friday 2 November 2007**

The Committee met at 10.00 a.m.

PRESENT

The Hon. R. M. Parker (Chair)

The Hon. C. M. Robertson

The Hon. A. Catanzariti

The Hon. G. J. Donnelly

The Hon. M. A. Ficarra

Reverend the Hon. G. K. M. Moyes

Ms Sylvia Hale

LYN BAKER, Commissioner, Office of Fair Trading;

STEVE GRIFFIN, General Manager, Home Building Service, Office of Fair Trading;
and

ROD STOWE, Deputy Commissioner, Office of Fair Trading, sworn and examined:

CHAIR: Do you have a brief opening statement that you would like to make?

Ms BAKER: I do.

CHAIR: Thank you very much for coming back. It is a year since this inquiry commenced under a different committee and there have been some developments since then, so we appreciate an update and we have some more questions to ask.

Ms BAKER: We at the Office of Fair Trading welcome the opportunity to appear here today and hopefully get a final outcome on these matters. I understand the Committee is aware that the Director General of the Department of Commerce, Mr John Lee, will not be appearing before the Committee today. Mr Lee's wife has just had a baby and he is about to proceed on parental leave and has asked me to apologise that he is unable to be here today. Further to that, I wanted the Committee to note that since last year's hearing of these matters the legislative arrangements have changed. Previously the Minister for Commerce had responsibility for the home warranty insurance aspects of home building.

Following the administrative changes after the March election it was agreed between the two Ministers that all aspects of home building would be the responsibility of the Minister for Fair Trading, Ms Linda Burney, and in line with this the Director General of the Department of Commerce has in fact delegated to me, as Commissioner for Fair Trading, his role as a member of the home warranty insurance scheme board and also as chair of the building coordination committee. I also understand that the Committee has asked for a representative of the Department of Commerce to appear here today and I can inform the Committee that, in addition to my role as Commissioner for Fair Trading, I am a deputy Director General of the Department of Commerce, so I do in fact represent Commerce. Also appearing before you today is my Deputy Commissioner Rod Stowe and the General Manager, Home Building Service, Steve Griffin and I think these senior officers and I are best placed to answer your questions.

With your agreement I would like to make a couple of other opening statements. As you know, the Office of Fair Trading presented evidence at the General Purpose Standing Committee No. 4, which conducted an inquiry into operations of the Home Building Service on 20 November 2006 and also lodged a supplementary submission to that inquiry pointing out the substantial reforms and service level improvements achieved by the Home Building Service over the past three years. I think it is relevant based on this morning's evidence to also note that many of the cases put before you this morning are in fact pre-2003 matters, that is, pre-Campbell inquiry report.

The Office of Fair Trading Home Building Service has, over the past few years, been completely overhauled and numerous enhancements have been made, including the implementation of the majority of the Campbell report recommendations. For example, the Office of Fair Trading provides an early intervention building dispute resolution process, which is a quick and effective way of resolving building disputes between consumers and contractors. The dispute resolution system has been very successful since its introduction in 2003 and the results are that almost 80 per cent of all complaints received are resolved through the Fair Trading dispute resolution process at no cost to either party, meaning that consumers and traders have disputes dealt with amicably and in a timely fashion, and they do not have to go through a court process.

Fair Trading also investigates any possible breaches of home building legislation that come to its attention through the dispute resolution process. We have had significant results during 2006-07. We did 646 investigations; we carried out 1,784 mediations in response to building complaints; we finalised 63 disciplinary determinations where there were 16 disqualifications and fines to the value of \$116,250; we issued penalty notices for 813 offences to the value of just over half a million dollars; we undertook successful prosecutions for 141 offences totalling fines of just over \$300,000; and we conducted 3,391 audit field inspections as part of compliance activities within the building industry. So a number of campaigns have been held during the past year.

Since members of the Office of Fair Trading last gave evidence to the Committee there have been a number of developments of note. While these are covered in detail in the responses we have made to the questions that you have put to us, I would like to briefly highlight a couple of the significant achievements: Firstly, the commencement of the rewrite of the Home Building Act to include the Moss report recommendations. When I say the "commencement of the rewrite", that means we are commencing consultation with all stakeholders.

Secondly, the introduction of an option of three-year licences for home building licensees; some enhancements to the home warranty insurance scheme; the establishment and continued operation of the Home Building Advice and Advocacy Service pilot; a new communication channel with licensees through e-newsletters, in particular *Foundations*, which is a free Fair Trading e-newsletter for the home building industry, and more importantly *Fair Comment*, a general e-newsletter for all of Fair Trading's industry and community stakeholders. In addition, work has been progressed towards a November 2007 implementation of home building licensing going on to the government licensing system.

I would like to add a couple of things that I think flow from this morning's evidence, if that is okay. First of all, I would like to comment on the notion that a home building regime can completely eliminate risk altogether for consumers. It is a major purchase that consumers make, building a home, and there is an element of risk. We at Fair Trading do everything we can to let consumers know what their risks and obligations are. For example, since the Campbell report, it has been mandatory to provide a consumer checklist with the contract, which ensures that consumers do not go down the path of engaging with an unlicensed builder or a builder that does not have insurance, and so on. That is just my overall comment and no doubt it will come up in questions.

Secondly, I would like to say that certification, which also came up a lot this morning, is not the responsibility of the Office of Fair Trading but the Department of Planning; however, we do actually have the Department of Planning on our building coordination committee, which I chair, in an effort to get all of the government agencies involved in residential building together to talk about some of the cross-agency issues.

The third thing that I would like to comment about from this morning is complaints going on to the public register. This has come up a number of times over the years while I have been in Fair Trading. It is simply not possible to put complaints on to a public register when they have not been investigated, when they have not been proved and when they could indeed be vexatious, so that is why on our public register we only put prosecutions that have been proven.

Finally, a comment about the Consumer, Trader and Tenancy Tribunal in that there is a difference when a case goes before the tribunal. The evidence that is presented to the tribunal is, of course, very different to the evidence that is presented to a home building inspector on site when trying to mediate, so it is a different regime and the tribunal must look at all of the evidence from all sides and make its determination.

CHAIR: Thank you, Ms Baker. I also note we have supplied you with some questions, and we appreciate you have given us some lengthy answers, and all Committee members have a copy of them. However, as we have had issues raised today we will no doubt need to address some of those answers in a formal way and ask further questions. Members of the Committee also have some of their own questions. Certainly today we have been presented with quite a few submissions as well about the inquiry into residential building that seemed to point to an unfair disadvantage over consumers, that the system is weighted against consumers. Builders may say they are not able to buy into the complaints system in the way they would like to as well. I wonder whether you have some comments about how you perceive things?

Ms BAKER: My colleagues might also want to comment in more detail, but we would argue that the system is in a sense a three-tiered system, where an initial building complaint is dealt with by staff at our Fair Trading centres, and a lot of those are resolved administratively. Those staff are not just taking the side of the consumer. They will often say to the consumer, according to your contract you have shown me, you have a point or your builder has a point. They look at the objective facts and can often broker a resolution at that point. Then of course it goes to the Home Building Service where we need technical mediation, and then finally to the CTTT. In all cases both sides are open to get their views and their evidence in.

Mr GRIFFIN: You have to look at the whole context of the dispute resolution process in New South Wales as it is today. As we were saying to you people previously, it is a vastly different model that existed before Campbell. Since July 2003, when the Home Building Service was established, there were a number of tragic cases that we heard about today and we heard of back in November last year, that when we produced the dispute resolution processes we produced less than optimal outcomes or certainly outcomes that we would not reasonably expect to be the case. I think it is generally acknowledged that further reform is required. However, before proceeding to talk about some of the issues, I would like to make a few brief points if I may, just to give things a bit more context.

Firstly, many cases brought forward to this Committee predate the establishment of the Home Building Service. I think that needs to be acknowledged. But the regime has changed markedly since 2003. We now have an extremely effective dispute resolution service, which has a success rate of 89 per cent, and I direct your attention to the submission we made in November last year, and Commissioner Baker has raised those again. We now have a more robust licensing regime with qualification requirements that did not exist prior to 1 January last year, and we also have proof of identity. All of these things have come in in recent times, so it is a completely different model that we are looking at

We have unprecedented compliance efforts and outcomes. We have achieved jail terms for some serious recidivist offenders. These things never happened prior to 2003. We have a radically different home warranty insurance regime. We can talk about that a bit more, but there have certainly been a lot of changes since the collapse of HIH back in 2001. The single point I wish to bring to the attention of the Committee is my experience being general manager of the Home Building Service in many of these matters is that unfortunately some consumers get bad advice, and that is a particular problem. When they have a dispute with a builder they get advice be it from a friend, be it from a lawyer, be it from a building consultant or someone else. This sends them down the path of protracted disputes and often litigation. We have heard the stories recounted to you here today, of cases that have ended up in protracted litigation and financial loss. We saw the emotion today; that really does affect them. That is why it is so important that consumers come to Fair Trading first. As I said earlier, these things do not help those people who predate Fair Trading and the dispute resolution service, but it is important they come to us first and come through the dispute resolution process and hopefully we can resolve the matter without going through a protracted dispute with the builder.

Finally, as unpalatable and unpleasant some of these cases have been today, and those presented 12 months ago—and I do not want to detract from those cases either because they are quite terrible and what people have gone through—it needs to be placed in the context of the industry. I am not advocating on behalf of the industry but I am going to reel out some statistics for you. There are 45,000 new homes built in New South Wales every year. There are over 150,000 registered renovations done on homes every year. Today, in essence, we end up getting around 5,000 complaints of which only 100 or 200 are of any substantial matter involving, perhaps, structural elements of a home. So, I am saying to you it is quite apparent that for the vast majority of the citizens of New South Wales the system is working to some degree. Having said that, it is acknowledged that further reform to our system is required, and dispute resolution. Having been the chair of Building Australasia, as I have been for the past two years, I have been privy to looking at other jurisdictions in Australia and New Zealand as to their dispute resolution schemes. We do have the best. I am not saying it is not without its faults and can be further refined but it is the best, and Tasmania and Victoria visited us recently and they will be implementing the same dispute resolution regime in those States.

CHAIR: Thank you for that explanation. In saying disputes predate the Home Building Service, we have had a number of examples today that have continued through the system and clearly they have given us time lines and all sorts of examples where they are continuing their issues up until now. It would seem from today's evidence that they

are not being assisted to resolve those issues quickly enough. I wonder what happens to those people?

Mr GRIFFIN: I dispute that. As I said, if people come into Fair Trading we have guarantees of service for us, and I am not speaking on behalf of the tribunal, but I am sure it also has guarantees of service. We have guarantees of service that we will deal with a dispute within 30 days at a Fair Trading centre. Our inspectors have a guarantee of service of conducting an on-site field inspection within 20 days of receiving a complaint, and a guarantee of service of finalising the complaint within 40 days. So, we have a guarantee of service and performance monitoring in place to make sure that once consumers come in and engage themselves in the dispute resolution process that we deal with it as quickly as humanly possible to achieve those outcomes.

Ms BAKER: Can I just that a small bit to that? We acknowledge that some of these may predate 2003 but they are still here. I acknowledge that. It is not true to say we have not been trying to assist them to achieve resolution. In some cases offers have been made, there have been disputes with insurers and we have been trying to broker deals with many of these cases. So we have been attempting to bring them to finalisation.

Reverend the Hon. Dr GORDON MOYES: Each of you has said in part that complaints were made before the 2003 Campbell inquiry as if that had absolved the office now of any responsibility. It does not, because it was still the office.

Mr GRIFFIN: We can see that.

Reverend the Hon. Dr GORDON MOYES: The point I want to ask is why can some of those outstanding complaints that go back five or seven years not be completed, handled with some sense of dignity and sympathy by the office?

Mr STOWE: In some cases I understand that ex-gratia payment offers have been made to some of the people affected, and they have not accepted those offers.

Reverend the Hon. Dr GORDON MOYES: Why do you believe they have not accepted those offers? Were those offers too inadequate?

Mr STOWE: I cannot speak for the people concerned. All I can say is that offers have been made and I think they have been rejected for a variety of reasons.

Reverend the Hon. Dr GORDON MOYES: Would it be the practice of the department to find that many of the offers that are made are rejected?

Mr STOWE: I cannot say that. There are not many ex-gratia payments made. It is extraordinary situation that would lead to such an offer being made in the first place. The other thing to be said about resolving some of these matters is that they are currently the subject of tribunal and court action and there is nothing the Office of Fair Trading can do when those cases are in those forums.

Reverend the Hon. Dr GORDON MOYES: Based on the evidence given today and on other occasions, a number of builders have committed fraudulent and

criminal acts. Does the office take any particular interest in ensuring that there is a prosecution?

Mr GRIFFIN: Yes, we do. We actually have mounted many criminal prosecutions over the last two or three years.

Reverend the Hon. Dr GORDON MOYES: What are the results?

Mr GRIFFIN: One particular painter—I will not mention the name—got a nine months jail sentence. Others have received monetary penalties through the courts. That is in addition to their licences being either cancelled or disqualified.

Reverend the Hon. Dr GORDON MOYES: But that is not a great penalty when you simply open up a new company under your son's name?

Mr GRIFFIN: There are close associate provisions within the Act. If that is the case, and the individual involved in the fraud, which is proven, exercises some element of control over the company, we can exercise the right to cancel that licence.

Ms SYLVIA HALE: Ms Baker, earlier you suggested that there have been 16 disqualifications and penalties of something like \$116,000, and you went on to nominate other figures. Compared with the losses that have been suffered by people such as the people who have given evidence today, those fines for individuals appear to be rather paltry—certainly not enough to dissuade any of these builders from continuing with their behaviour. Do you acknowledge that this is a source of ongoing pain for many people, such as those who are here today?

Ms BAKER: What I would acknowledge is that people often confuse the disciplinary or prosecution process with the process of recompense for consumers. It is of concern to us. I understand that it is difficult to understand, but the recompense for consumers is by way of insurance usually. The fines, penalties and prosecutions are part of our regulatory regime; the two are not connected.

Ms SYLVIA HALE: But surely the purpose of the fine is to act as a deterrent, and when fines are laughably small they do not really act as a deterrent?

Mr STOWE: May I say that the Government actually increased the level of penalties not so long ago, as an election commitment before the last election, and that has been put in place. The penalties were increased significantly.

Ms SYLVIA HALE: How significant is the increase?

Mr GRIFFIN: They have gone from \$11,000 for an individual to \$22,000, and from \$55,000 to \$110,000 for a company.

Ms SYLVIA HALE: We are hearing instances of people whose losses are up to \$700,000, and even more.

Mr STOWE: The other point that needs to be made is that often it is not the Office of Fair Trading who is the final arbiter in this. There have been certain examples of where penalties and disciplinary action have been imposed but there has been an

appeal to the Administrative Appeals Tribunal, which has subsequently decided that the penalties were too harsh. We are not the last arbiter in these matters.

Ms SYLVIA HALE: Ms Baker, you said that people often fail to distinguish between penalties and insurance claims, and proper recompense for the people concerned. Do you agree that it is extraordinarily difficult for people to achieve a satisfactory outcome from the Home Warranty Insurance Scheme?

Ms BAKER: No, I do not accept that. I think what I would refer to is the fact that Steve mentioned before. The vast number of people who now have complaints in the home building area are able to achieve a resolution, get insurance. We are trying to make further improvements to the home warranty insurance, and I think the vast majority of people who get into trouble and come to us are able to achieve an outcome.

Ms SYLVIA HALE: But it is true, is it not, that you can only make a claim if the builder is dead or insolvent, or has disappeared?

Ms BAKER: That is right.

Ms SYLVIA HALE: In fact, this morning we have heard of one example of the many thousands of dollars that one person was exposed to as a result of being obliged to make the builder bankrupt. Given that most of these people are home owners and they cannot claim any of these expenses against their tax, for example, do you not find that this disadvantages vast numbers of people who have problems?

Ms BAKER: I will ask Steve to respond to that.

Mr GRIFFIN: We would have to agree with that, certainly. The Home Warranty Insurance Scheme board, which is comprised of insurance industry people with that sort of background, has done a lot of research into this issue. It does come up where people are in the unfortunate position of having a tribunal or court order and money ordered to satisfy, as we have heard today, and unfortunately they have to try to enforce that order, either through bankruptcy or by filing for a winding up in the Supreme Court. The scheme board has done research into that and it has found that it is definitely an issue, and it has made recommendations to government to address the issue.

Ms SYLVIA HALE: How is it proposed to address it?

Mr GRIFFIN: I do not want to go into detail, but I can tell you that it has been acknowledged by the scheme board as an issue, and proposals will be put to government to address that issue. "Additional triggers" is the term that is used. While you have only death, disappearance and insolvency at the moment, the scheme board is looking at an additional trigger that will allow a consumer access to the home warranty product without having to go through that process of bankruptcy and insolvency.

Ms SYLVIA HALE: Is there any proposal to make any of these additional triggers retrospective?

Mr STOWE: That is a question for government. It is a government policy issue that we cannot possibly respond to.

Ms SYLVIA HALE: In the submissions we have had a lot of reference to the Queensland system. My understanding of the Queensland system is that the person who has a complaint goes immediately to the insurance body, which happens to be a government insurer, that body determines whether the complaint is valid—presumably after doing appropriate inspections—then that body recompenses the insured person, and then the government itself or the insurance body pursues the builder, and the ultimate sanction it has against the builder is that it can withdraw the licence. Do you not think that that system is far more advantageous from the point of view of the consumer than the current system we have?

Mr GRIFFIN: The funny thing is that if we implement the new changes that were just outlined, the two schemes would not be vastly different. In Queensland, the Building Services Authority is like the Home Building Service: You will come to the authority and make your complaint; they will do a dispute resolution with their building inspector, the same as we do in New South Wales; and they will then issue a rectification order which, unlike in New south Wales, the builder in Queensland can appeal. Nevertheless, once they get to a point where they can see that the builder is insolvent, because they are also the insurer, or the builder is technically incapable of completing the work or rectifying the work, that is when they have the ability more quickly than our regime to step in, as the insurer, to rectify the home or complete the work. As I said earlier, with this initiative put forward by the scheme board to create an additional trigger, that will close that gap. That is the main difference between New South Wales and Queensland. So we are not vastly different, as people will sometimes put forward.

Ms SYLVIA HALE: It was said earlier this morning in evidence that the average premium was something like \$700 but that in any claim it excluded all on-costs, GST, the builder's margin and stamp duty. Is there any suggestion that those additional elements are able to be claimed for?

Mr GRIFFIN: Those figures were in our initial report and we took on board feedback from stakeholders about the data that is released. The next data, due to be released in the next couple of weeks, will contain that information, so that people can see the size and level of those commissions and so forth, and they can make their own assessments from the actual cost to the consumer of the home warranty product. What I can tell you is that certainly since our last hearing in November last year premiums have continued to come down. I think the average was \$806 and they have come down to \$724. So they are continuing to decline with competition.

Ms SYLVIA HALE: But the decline in premiums is of limited benefit to people if they find that they cannot get an outcome from that insurance?

Mr GRIFFIN: Yes, and we spoke about that earlier. One thing I forgot to mention is that we have had a decline in premiums at the time when we have actually increased cover. Not that that is retrospective, but cover has now gone from \$200,000 to \$300,000, to try to accommodate the worst case scenario in terms of knockdown-rebuild.

Ms BAKER: May I add something in respect of your comments about the Queensland system. I think it should be said that the Queensland system is basically a replication of the old Building Services Authority in New South Wales, which was

roundly discredited by the Crawford inquiry in the late 1990s. The reason for that was the conflict of interest between the Building Services Authority being the insurer, the licence regulator, and the person looking after the consumer. So our regime has put the insurance into the hands of the private sector, but the levers to get builders to comply are still there because an insurer can withdraw its insurance cover to a builder if it gets lots of claims—and certainly we still pursue builders for the debt in the old schemes, as do the insurers in the new schemes. I think it is important to note that.

Ms SYLVIA HALE: But it is not beyond the wit of man to devise a system whereby those conflicts of interest can be addressed, yet a first-records system of insurance can still be retained?

Mr STOWE: Again, it is a policy decision of government that we cannot comment on.

Ms SYLVIA HALE: I understand that since 11 March 2002 the building warranty insurance is not subject to any scrutiny by any authority, such as the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission, is that correct?

Mr STOWE: No.

Ms SYLVIA HALE: What scrutiny is it subject to?

Ms BAKER: It is subject to the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority.

Ms SYLVIA HALE: The features common to many of the cases about which the Committee has received submissions are that there are repeat licence offenders; one builder may have multiple insurance claims; there is the practice of allowing licences to expire, which allows the builder to apply under a different name; there is the leniency aspect, in the form of reprimands or cautions; there are the serious offences; there is the failure to prosecute; and there is the protracted delay in resolving complaints that have been lodged, or a failure to investigate those complaints. What procedures are you now proposing to put in place to ensure that those common features will no longer be a feature of the system in the future?

Mr GRIFFIN: In relation to a whole range of issues, as I said earlier, it is a vastly different model. With regard to a lot of the issues you have thrown up about licensees, those licensees existed well before the Home Building Service. It is a completely different regime when it comes to licensing. So we really need to demonstrate that that is more robust. We have a performance measurement in place, we have guarantees of service, and we have monitoring of referees' statements of practical experience. All those checks and balances are now there, and they are finely tuned. With compliance, there are guidelines. It is up to the courts to make decisions in respect of prosecutions; that is out of our hands. With disciplinary action, they are matters where we are guided by Administrative Decisions Tribunal decisions, and we have our own guidelines in respect of those matters.

Ms SYLVIA HALE: In evidence to the former Committee, I think in answer to questions from the Hon. David Oldfield, you indicated that only 10 per cent of

licences were checked. Is it still the case that only 10 per cent of licences are subject to random checks?

Mr GRIFFIN: I think at that estimates committee I was quite strong—perhaps not strong enough—in disavowing people of that belief. We check all applications for building licences and trade licences—indeed, any licences we get for Fair Trading. We certainly check all the qualifications that are received from TAFE colleges and the Roads and Traffic Authority. We do criminal history checks on all those individuals that declare that they have got a criminal history.

Ms SYLVIA HALE: I am sorry to interrupt but is that only when the initial application is made or do you do this on a regular basis?

Mr GRIFFIN: On renewal we do 10 percent—that is when the 10 per cent comes in—we do 10 per cent of renewals; we do random checks on criminal history and bankruptcy and insolvency. So, those people that are already in the system are immune from us monitoring their change in circumstances over time. The commissioner outlined earlier the government licensing system that we are about to go live with; that has built into it the capacity in the future to give us the ability to request automatically criminal history checks for all licensee applications. So that will be an increase built into the system.

Having said that, what we do in New South Wales—and, again, I know this from being the chair of Building Licensing Australasia—that we are the only jurisdiction in this country that does that level of additional risk management. If I can finally say, it is not 10 per cent of checking applications, we check vigorously every application; we decline or refuse one quarter of the applications made for licences in New South Wales: that is not endemic of a system that only checks 10 per cent.

Ms SYLVIA HALE: But it is the ongoing checks rather than just the initial checks—

Mr GRIFFIN: They certainly do occur and they do occur in 10 percent of those people. If you remember, there are 168,000 people in the system; 110,000 renew every year. So 10 per cent, given the amount of work that would be involved, the impost upon other agencies to provide some of that information we think is an acceptable risk management process.

CHAIR: Have Government members got questions?

The Hon. GREG DONNELLY: Mr Griffin—but the other witnesses might care to comment—in terms of the dispute resolution system of the Office of Fair Trading you have given some testimony about how that has been refined and improved and continues to go down that track. Can you give us a sense about how best practice that system is that we currently have in New South Wales compared with some other jurisdictions?

Mr GRIFFIN: Certainly. In the sense that our dispute resolution process is done at many levels, the people are triaged and placed in the best possible position. They are dealt with over the phone, and that deals with 30 per cent of matters over the phone very quickly, and then it comes into our building inspectors, and then at the very

end of the process there is the tribunal, and at the very, very end of the process is HomeLine Insurance. We have already discussed where there is that gap between the tribunal and the court system in home warranty that we acknowledge we need to resolve and fix up, but our system is superior in that it presides in one organisation. Fair Trading and the Home Building Service have this synergy of services that no other agency in Australia can deliver.

Queensland is delivering a similar system, but particularly Victoria, Tasmania, Western Australia and other places, they have come to us looking for a way forward because we have over the last four years developed and refined a system which I think is the best. We certainly need to refine it further but it is delivering the outcomes. As I said, in 89 per cent of cases we are resolving the dispute for the consumer and letting them move on with their lives. Unfortunately, some of these people we have heard from today have not benefited from that.

The Hon. CHRISTINE ROBERTSON: I will put this question to whoever wants to answer it. The question relates to the pilot Home Building Advocacy Service [HOBAS]. Has it actually made any real difference in terms of options consumers currently have in obtaining assistance with building disputes, or does it just look good?

Mr STOWE: I would not want to pre-empt the report, of course, but there is a review to take place of the pilot shortly, so my comments will not reflect decisions that obviously our Minister will have to make. But it is fair to say we have been very pleased with the operation of the HOBAS system. We have had a number of progress reports. It is being run by a professional organisation that has a track record of good outcomes when it comes to providing legal advice and assistance to consumers. Importantly, it works with the Office of Fair Trading. So, we see it as a complementary service that works with us, but independently.

One of the things that has been interesting in talking to the case managers is that they have found they have been able to negotiate with the legal representatives of builders and get results without having their clients going into the court. They have made the comment to us, as I think Mr Griffin made, that many of the clients they are seeing are presenting with problems that have really accumulated because of poor advice and poor decisions that have been made. People, I think, are well meaning but they have paid out extraordinary amounts of money for engineering reports and legal advice, possibly quite unnecessarily. But the HOBAS system, as I say, has been able to get resolution without having to go into the court. By the same token, HOBAS has also been able to do something that Fair Trading cannot do, and that is act as an advocate for people in the tribunal and in courts.

I think it is fair to say it has been delivering something that has not existed before and the service will be evaluated fairly shortly so that the Government can make decisions about what happens going forward.

The Hon. CHRISTINE ROBERTSON: So, Fair Trading believes it is probably worth an extension? I know you are not allowed to pre-empt the report but I am interested in where you are at.

Mr GRIFFIN: What we have done, because we are anxious to make sure that the system continues, we have approved of its continuation into the new year so that

there will be time for their Minister to receive a report and make a decision. Then we can work to continue into the new year. So there has been an extension, yes.

The Hon. GREG DONNELLY: We have heard today, and I recall when I was on the Committee dealing with it last year, some pretty serious allegations that officers of the Office of Fair Trading have repeatedly ignored consumer complaints about defective work and have shown some, if I could use the word, bias towards the builder involved in some of these disputes. Could you explain what systems the Office of Fair Trading has got in place to prevent perceived bias by its officers and to deal with such allegations when they are made?

Mr GRIFFIN: Certainly. We did hear that again today. It is one of those things where we get just as many complaints from the building industry saying we are too consumer centric. I guess when I hear that I think we must be doing okay because we must be getting the balance right. Having said that, we do not want to bury our heads in the sand, so we certainly do pay attention when consumers raise such issues. A couple of strategies we have in terms of making sure there is no perception of bias is our officers are in uniform so they can be distinguished from the builder, because often they talk the same jargon and language and that puts the consumer at odds with those two parties and it is very difficult to do dispute resolution.

We have a system of checking by senior inspectors of an inspector's inspection report to make sure that they have not shortcut or under-defined some defects or incomplete work for the home. We have a system of review: if the consumer remains unsatisfied we will review an inspection report and perhaps send out, if circumstances require, a more senior inspector. We even have offered on several occasions, if the inspector's report is so divergent from a consultant's report the consumer has obtained, to get an independent report from the Government Architect's office—a senior engineer from a senior government agency to come in to give an independent report so that at the end of the day we can be rest assured that we have the defects properly tabled and recorded.

Mr STOWE: I should also mention that all of our staff from the commissioner down have recently undergone code of conduct training, so everybody's understanding of what is expected of them in terms of dealing with consumers and our clients and any allegation of corruption is immediately made known to the commissioner and passed on to ICAC.

The Hon. CHRISTINE ROBERTSON: I am sorry to go backwards but to go back to my earlier question—because this business of the Home Building Advocacy Service applies directly to one of the causes in our terms of reference—from my preliminary examination of the multitudinous papers that this inquiry has collected together, I do not think we have got a descriptor or the aims of the process. Could you take on notice to send this back to us, recognising we still have to wait for the report?

Ms BAKER: Yes.

The Hon. CHRISTINE ROBERTSON: A further claim we heard today is that penalties imposed against builders for breaches of the law are entirely inadequate. What discretion does the regulator have in these matters—you have answered this

question in part already—and that role is played by courts in the Administrative Appeals Tribunal?

Ms BAKER: I would just make a comment about that. You are right, we have addressed that in another question. In terms of our fines and penalties, when Fair Trading matters go to the court—and this is not just in home building—we often find that if it is in the local court our matters are heard next to domestic violence and other serious matters and it is sometimes difficult to have the judiciary understand the seriousness of our matters, and that could apply to all levels of courts. But we have contact with the Attorney General's department and try to get our position across and educate the judiciary about the importance of our matters.

We can understand why they do not always seem as important as other matters in the higher courts but, nevertheless, we know they affect consumers greatly, and that is why we increased the penalties a couple of years ago, and that is why we try to make inroads into the judiciary to try and encourage them to set higher penalties. But, of course, we can only suggest—it is up to the judiciary to set the penalties.

Mr GRIFFIN: If I could just add to what the commissioner was saying there. I think in more recent times, because we have spoken to the Attorney General's office and we have also been targeting the more serious offenders within the marketplace, we have been getting some significant fines in the hundreds of thousands of dollars. That is pleasing, but it has taken some time, and I guess it takes some work for the judiciary to get an appreciation of where we are coming from with these serious matters. They should be viewed as seriously as some of the frauds they are seeing on a daily basis.

The Hon. CHRISTINE ROBERTSON: These people here would tell you that.

CHAIR: There are a couple of things I would like clarified. You said in your submission that the pilot program would be reviewed in October 2007, which would have been helpful for our inquiry and our terms of reference. You now say that that has not been undertaken. Could you say why and when we can expect to see that report?

Mr STOWE: I think it was always intended that the review process would be undertaken at the end of the year in October. That review process has commenced: HOBAS has submitted its report on its activity; a relevant body is being organised to make those assessments, and that is all in place and it is happening now. But our concern, of course, was that we did not see a very useful service not continue on while that discussion and that determination is taking place. So, we have extended its life past the review period so that there is no discontinuation—particularly as they have current clients and we do not want those people to be disadvantaged in any way. What will happen is, there will be a recommendation made to the Minister and the Minister will be able to make a decision. But, in the meantime, the service will continue on.

CHAIR: So that is not going to be a public report from that review then?

Mr STOWE: No. The Minister has requested us to report to her and we will be reporting to her.

CHAIR: What date would that be then?

Mr STOWE: There is a timetable but I do not have the information.

CHAIR: Could you take that on notice?

Mr STOWE: I would be happy to pass it on to you, yes.

CHAIR: The other issue I would like a very short clarification on is that builders are not able to initiate actions through the Home Building Service, is that correct?

Mr GRIFFIN: Yes, that is ostensibly correct. However, we are looking at widening the dispute resolution service because we know that at present if final payment is withheld a builder has got no other alternative but to head off to the tribunal. Simultaneously, the consumer comes to us for assistance and because the trader has lodged an application in the tribunal that stops us from doing the dispute resolution process. So that is something we are looking at to try and see if we can bring the parties together and keep them out of the need to go straight to the tribunal. We may get to that point early in the new year. Certainly we are looking at it and the feasibility of doing that.

Mr STOWE: We should mention though that this is not unique to what Fair Trading does. We do not act on complaints in terms of complaint resolution in any of the other areas of the marketplace that we are involved with. As Mr Griffin said, we are looking at a pilot to see how that might work in the building area. But it is not an unusual arrangement in terms of adequate resources being applied to the consumer interest, and that is what we are interested in doing.

CHAIR: We have received submissions and heard evidence today from people who have not had a contract with the builder—that is, they might be next-door neighbours. What are you doing to make the situation better for those people? It seems to me that they are in a perilous situation.

Mr GRIFFIN: I think Reverend the Hon. Dr Gordon Moyes broached that question with me during estimates.

Reverend the Hon. Dr GORDON MOYES: I asked that question because what happens to the innocent neighbour is a very important issue.

Mr GRIFFIN: Indeed, it is. As I said at that time—and I repeat it now—in the rare instance that there has been a breakdown of communication certainly the Home Building Act allows for our building inspectors to mediate a resolution of those issues for the consumer. So I am disheartened to hear that people have brought forward similar claims today. They certainly can come to us and we will mediate disputes between them and the builder next door. The contract is certainly a basis in terms of statutory warranty. But this is certainly a matter where the legislation, when drafted, makes provision for anyone to make a complaint about a builder and have it resolved through the dispute resolution process.

Reverend the Hon. Dr GORDON MOYES: So people like the Condes should get back to you now.

Mr GRIFFIN: Yes.

Mr STOWE: Although it must be made clear that we do not have power over councils. One of the things we heard today was about the conduct of councils. That may well be a good issue for our Building Coordination Committee to look at but it is certainly not something that Fair Trading has jurisdiction over.

Ms BAKER: I might add that since that matter—a neighbour having a difficulty—came to our attention we have reissued instructions to all front-line staff so that they all understand what the correct answer to that inquiry is.

The Hon. MARIE FICARRA: To follow up what Mr Stowe just said, that would be a very good recommendation to go forward—that you coordinate with the Department of Local Government—because ultimately it should have some say in the resolution of these matters. Given the system is not perfect and given you have said that you have improved it since the last hearing, if you had a magic wand what further legislative changes would you require? I would like to hear from each one of you. What would you like to tighten up in the legislation so that we can protect these poor consumers, such as the ones we have heard from today?

Ms BAKER: I think we must say that that is a matter of government policy that we cannot really comment upon.

The Hon. MARIE FICARRA: That is not particularly helpful.

Ms BAKER: It may not be helpful but—

The Hon. MARIE FICARRA: It is not particularly helpful at all. Do you comment to government?

Ms BAKER: We are not the Government.

The Hon. MARIE FICARRA: No, but do you let your expertise be known to the Government?

Mr STOWE: These are policy questions. I think you well know that we are not allowed to proffer policy determinations at meetings of this sort.

The Hon. MARIE FICARRA: In other words, you are just here apologising for the current Government but have no suggestions for the future.

The Hon. CHRISTINE ROBERTSON: That is most unfair.

The Hon. GREG DONNELLY: That is completely inappropriate and I ask that the statement be withdrawn. We have public servants before us who are carrying out their responsibilities correctly. I asked that that comment be withdrawn. It is quite inappropriate.

The Hon. MARIE FICARRA: I will withdraw it in that sense. However, I express my disappointment that we cannot get some ideas and recommendations for

improving the legislation. I will go on, as I am cognisant of the time. Given that some of the complaints aired today are in the tribunal, what action will be taken on them? What exactly will happen to these people?

Ms BAKER: There are probably two parts to that question. There may be matters that came forward today that we were not involved in or aware of, and we will consider those. As to others that we are aware of, as Mr Stowe said before, if they are in the tribunal or we have made offers that have been rejected, in some cases there is not anything further we can do. We can just take on board that if there is anything further that we can do with these matters, we will. If we are in other processes that stall us from taking any further action then we will not.

The Hon. MARIE FICARRA: We heard a submission today from Mr George Vardas about the increased use of mediators. You have made some comments about that. What is your opinion about the tribunal's use of mediators and getting mediation before people incur legal expenses?

Mr STOWE: It is the responsibility of all members of the tribunal to ensure that conciliation occurs before any formal determination is made. It is not true that there is not already an onus on conciliation and mediation at the tribunal. That happens up front before any evidence is given. There is an attempt made between the parties to resolve the matter before the next step. That is a legislative requirement.

The Hon. MARIE FICARRA: Is there a need for increased mediation?

Mr STOWE: I cannot speak for the tribunal. That is not my area of responsibility.

Ms BAKER: I can probably comment that, out of a number of reviews that have been carried out recently around the tribunal, they are looking at all kinds of processes to improve the flow-through of matters to the tribunal and to deal with matters in a manner proportional to the size of the actual dispute. Conciliator and mediators are one of the ways they do that.

The Hon. MARIE FICARRA: Do you believe there is enough consumer awareness of people's rights? I know there is the Internet but not everybody is computer and Internet literate. What are you currently doing to inform consumers about the pitfalls and the checks and balances they should be undertaking?

Mr STOWE: One of the things we have mentioned already is that if you are engaging with a builder or contractor there is now a requirement that you see a checklist that ensures that you ask the right questions of the builder: whether they are licensed, whether they have home warranty insurance and the other things we have heard about today. If they are not present that is one of the reasons we have problems. The same document also requires that there is a guide provided for consumers so that they know what their rights and responsibilities are. Right up front, when you get involved in that process, there is some advice and assistance to consumers. In addition, we are involved in a lot of public education activities. We have dedicated client liaison coordinators who go out into the community to give advice about people's rights and responsibilities. We do that on a regular basis. We do not wait for people to come to us; we go to shopping centres.

We are working very hard with people from culturally and linguistically different communities to make sure that they are also aware because we know that those people have special disabilities. We work with seniors as well. We see as one of our major responsibilities getting that information across. But to answer your question, no, there is not enough consumer awareness about consumer rights across consumer affairs and Fair Trading agencies. We recognise that. I do not think it will ever be possible to have everybody properly informed. We do our very best. There is an enormous amount of information out there but, regretfully, consumers often enter into contracts and negotiations without asking questions. They focus on the purchase and it is not until they run into trouble that they start asking questions.

The Hon. CHRISTINE ROBERTSON: Will you send us a description of the Building Coordination Committee? Will you take that question on notice?

Mr STOWE: Certainly.

CHAIR: We are running short on time. Is there a final short question?

Ms SYLVIA HALE: Referring to some of the evidence that was given today, how would you propose to resolve the situation where the tribunal has found building work to be adequate when it does not comply either with the development consent or the building code of Australia and, as a result of that inadequacy, the house cannot be certified but the insurance company will not come to the party because the tribunal has found the work to be adequate? How is such a situation to be resolved?

Mr GRIFFIN: In those sorts of circumstances there are a couple of things. First, obviously the individual concerned can seek a rehearing in the tribunal of the original decision. Secondly, as to the issue with the home warranty insurer, we have within the Home Building Service in the insurance services area people who mediate disputes. We have claims handling guidelines that insurers must comply with as part of their conditions of approval. As part of that process consumers can come to us and make complaints to us about how that dispute has been handled or how the claim has been handled, but not the claim itself. We will certainly make attempts to try to mediate with the insurer and the consumer concerned.

Ms SYLVIA HALE: But if the insurer plays hardball and says, "That's the CTTT's finding; we're sticking by it", what is the outcome at the end of the day?

Mr GRIFFIN: At the end of the day the tribunal is the arbiter of the insurance claim at the moment.

Ms SYLVIA HALE: So it is just tough luck.

Mr GRIFFIN: Of course, that then can be appealed on a point of law to the Supreme Court.

Ms SYLVIA HALE: If you have the money.

CHAIR: I must clarify one point in order to assist us with our report. We heard quite a bit of evidence during the inquiry by General Purpose Standing Committee No.

4 that the Home Building Service was not resourced adequately in order to do its job properly. Do you have a comment to make about that?

Mr GRIFFIN: In response to some of the questions that the Committee has put to us we have already given you some answers. We have increased the establishment—that is, the number of staff who work in the Home Building Service, particularly in the licensing area. We have put additional staff into that area, acknowledging the need to put extra resources into focusing on licensees who change their circumstances over time in addition to those people trying to get licences. As to the next step, we have restructured the Home Building Service to make more efficient use of our resources. That is now near completion. It has taken us 12 or 18 months to get to this point but now we have restructured to make better use of our existing resources. We have increased somewhat the resources that the Home Building Service has and we are now moving to look at the better use of technology to free up more resources to be more focused and proactive, certainly in monitoring the licensing regime.

CHAIR: Do you keep data about the Home Building Service and the CTTT in terms of how long it takes for claims to be received, processed and resolved? Is there a waiting list?

Mr GRIFFIN: I cannot speak for the tribunal, but we certainly do.

CHAIR: Can you provide that information to the Committee?

Mr GRIFFIN: Yes.

Ms BAKER: The tribunal also provides that information so we can submit it also.

CHAIR: Thank you very much. We probably have lots more questions and no doubt the people in the gallery have questions they would love to ask. We have a facility whereby people can provide us with further information if they want to respond to any evidence. However, they must do that by written submission and the cut-off date is 7 November. So you have to get that to us quickly. We are on a time line to conclude this inquiry and write the report as quickly as we can.

Thank you very much to the departmental officers for their presentation today. Thank you to everyone who participated in the forum and for the way in which you conducted yourselves. We look forward to the speedy resolution of your issues and hope that you will be able to get on with your lives. I thank the departmental officers for taking the time today to listen to the issues that were raised.

(The witnesses withdrew)

(The Committee adjourned at 1.27 p.m.)