

GENERAL PURPOSE STANDING COMMITTEE No. 3

Monday 19 June 2000

Examination of proposed expenditure for the portfolio area

FAIR TRADING

The Committee met at 5.30 p.m.

MEMBERS

The Hon. Helen Sham-Ho (Chair)

The Hon. M. J. Gallacher
The Hon. J. Hatzistergos
The Hon. J. R. Johnson

The Hon. A. B. Manson
Ms Lee Rhiannon

PRESENT

Department of Fair Trading

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

Mr J. Schmidt, *Assistant Director-General*

Mr B. Given, *Assistant Director-General*

CHAIR: I welcome you all to the public hearing of General Purpose Standing Committee No. 3. First, I wish to thank the Director-General and the two Assistant Directors-General of the Department of Fair Trading for attending. At this meeting the Committee will examine the proposed expenditure from the Consolidated Fund for the portfolio areas of Fair Trading. Before questions commence, some procedural matters need to be dealt with. As you would be aware, part 4 of the resolution referring the budget estimates to the Committee requires the Committee to hear evidence on the budget estimates in public.

Under Standing Order 252 of the Legislative Council, this Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings held tonight. The Committee's resolution conforms with the guidelines governing the broadcast of proceedings adopted by the Legislative Council on 11 October 1994. The attendant on duty has a copy of those guidelines. I emphasise that only members of the Committee and the witnesses before them may be filmed or recorded. People in the public gallery are not considered to be part of the proceedings and, therefore, should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, as with reporting the proceedings of both houses of Parliament, you must take responsibility for what you publish or what interpretation is placed on anything that is said before the Committee.

While there has been provision in previous years' budget estimates resolutions for members of a Committee and substitute members to refer directly to their own staff at any time, there is no such provision in the current resolution. Members and the staff are advised, therefore, that any messages should be delivered through the attendant on duty or the Committee clerks. For the benefit of members and Hansard and the effective operation of this Committee, it is very important that departmental officials identify themselves by name, position and department or agency before answering each question. There is wide latitude allowed in the asking of questions on any of the budget estimates and related documents before the Committee. However, where a member is seeking information in relation to a particular aspect of a program or a subprogram, it will help the Committee and Hansard if the program or subprogram is identified.

The Committee has agreed to the following format for the hearing. The Committee has agreed not to allocate specific blocks of time to individual parties or members. Members will be provided with an opportunity to pursue specific lines of questioning until such time as they have exhausted questions relating to that issue. I will endeavour to ensure that this process is as equitable as possible and that all members are given an opportunity to ask questions. As you are aware, a period of one hour has been set aside for tonight's public hearing. If at the conclusion of the hearing, members have not exhausted the questions to which they require answers, the Committee may decide to hold additional hearings before it is required to report on 23 June 2000. I declare the proposed expenditure open for examination.

I will ask the first question: Mr O'Connor, I refer to the rising problems of credit card fraud in New South Wales. Last year more than 1,800 charges were laid for credit card fraud in this State alone at a cost to the Australian credit card industry of approximately \$10 million. Given that this problem is expected to increase during the September Olympic Games when thousands will pour into New South Wales, can you indicate what action is being taken in order to combat the problem of credit card fraud?

Mr O'CONNOR: The matter of credit card fraud is a matter for the police. The department has had discussions with the police and it is a matter which the police will be handling during that period or, in fact, at any other period.

CHAIR: You do not have any education program or strategies to educate people?

Mr O'CONNOR: We do not have any particular plans, no.

CHAIR: Are you going to?

Mr O'CONNOR: There is nothing planned at this stage. But, of course, that would depend on the Minister. It is a matter that should be taken on notice and referred to the Minister.

CHAIR: The department has no proposal to acquaint retail or business people with the potential risk associated with this fraud?

Mr O'CONNOR: That would be a question for the Olympics. We do not have anything planned at this stage.

CHAIR: Would it not be your department's responsibility to look after credit card fraud?

Mr O'CONNOR: If it is a Fair Trading issue related to credit cards, of course we would have an interest in it. Maybe Mr Given would like to respond to that.

Mr GIVEN: Yes. Obviously, consumer credit is a significant issue. In relation to credit cards in particular, the department has continually sought to educate consumers in the wise use of credit. But specifically in relation to credit card fraud where somebody might copy somebody's PIN number and use other devices such as that—which is, in effect, stealing or fraud—it really is a police issue. Where we would come across that, we would refer those matters to the police. Where it is a more general Fair Trading issue, we would investigate such matters ourselves.

Mr O'CONNOR: The department, Madam Chair, in fact has a general brochure in relation to the Olympics—particularly for visitors attending Sydney who are either from overseas or interstate—who attend the Olympic Games and the Paralympic Games. It is on the department's web site and is called "Have a Nice Stay". It is in both English and Japanese. We have a dedicated toll-free telephone number, 1300 552 001, which is known as the Consumer Travel Helpline. That will be available for all people who are in Sydney during the Games. That answers all the questions that consumers may have in relation to matters during the Olympics. The department is actively educating and preparing people for any issues that might arise during the Games.

Ms LEE RHIANNON: How many people do you have staffing the phones for all those inquiries during the Olympics?

Mr O'CONNOR: I do not have the exact number at the moment but our plan is that whatever number of people are required to answer the phones they will be there. We have staff ready to go. We have staff who will be trained. This hotline will operate from Wollongong and the staff will be trained at Wollongong. The hotline will be going 24 hours a day so it will be on an as-needs basis. If we need two people or if we need 202, they will be available to answer inquiries.

Ms LEE RHIANNON: Is it a call centre or your own departmental staff?

Mr O'CONNOR: We are looking after our own department.

The Hon. M. J. GALLACHER: I will leave credit cards and move to the home owners' insurance scheme. I hand over to the Hon. J. F. Ryan to lead on behalf of the Opposition.

The Hon. J. F. RYAN: Mr O'Connor, how many times this year have you used the powers under section 23 (2) of the Home Building Act which allows you to issue warnings to builders who are seen to have a history of unreasonable delay in completing work, or supplying kit homes, or inadequately supervising work, doing defective work or failing to ensure work in accordance with the Act?

Mr O'CONNOR: I understand that on 7 June the Hon. J. F. Ryan asked a question without notice regarding the same matter in the Legislative Council. I would believe that in accordance with normal practice I will defer to the Minister to answer that question.

CHAIR: Do you have an answer at this point in time?

Mr O'CONNOR: I understand the answer will be provided by the Minister.

The Hon. J. F. RYAN: I understand that this is something that you do. It is the use of your power!

Mr O'CONNOR: I still believe that as it was put on notice in the Legislative Council that is the way it should be answered. I would ask that it be put on notice accordingly.

The Hon. J. F. RYAN: I wrote to senior officers of the Department of Fair Trading and the former Minister for Fair Trading and alerted the department specifically of the risks posed by a builder known as Rocco Vitalone. I indicated to you that there would be about 17 other matters, and I attached details of those 17 other matters. Would Mr Vitalone be exactly the sort of builder against whom it might have been appropriate to use those provisions?

Mr GIVEN: In relation to Vitalone and, indeed, other matters which are under investigation, obviously there needs to be some decision taken as to when it is appropriate to go public with information which in the

process of doing that might jeopardise an investigation. Indeed, in relation to Mr Vitalone the matter is now before the Fair Trading Tribunal, and that is public information. Disciplinary procedures are being taken there.

The Hon. J. F. RYAN: I asked the Minister how many times had he used section 23 (2). Has section 23 been used in reference to builders at all this year?

Mr GIVEN: Yes, it has been used.

The Hon. J. F. RYAN: I understand that an audit of the Home Building Insurance Scheme is being undertaken by the Department of Fair Trading. Will you supply the Committee with details of who is doing that audit and when it is expected to be completed?

Mr O'CONNOR: I assume the honourable member is referring to the audit to which reference was made in the last annual report?

The Hon. J. F. RYAN: I am also referring to a review mentioned in a letter which the Minister wrote to a constituent of mine. He said, "The department has retained an independent consultant with a depth of experience in the insurance industry to conduct a review of the scheme's operation".

Mr O'CONNOR: Sorry, I was referring to another.

Mr SCHMIDT: A review is being undertaken at the moment. An insurance consultant, Mr Frank Hoffman, following discussions with the Insurance Council of Australia, was recommended to us as an appropriate person to bring on board. We are having a series of forums at this stage looking at the relationship between the legislation, the insurers and the building industry. We have had a meeting with building industry groups. We have had a meeting with insurance groups and, in the near future, there will be a forum where all three groups, including the department, will get together and discuss those issues of mutual interest regarding the operation of the scheme. Mr Hoffman is advising the department regarding specific issues about the operation of the scheme as they arise.

The Hon. J. F. RYAN: The Minister said in his letter, "As part of the review a number of forums will be conducted between the department, insurers, contractors and other key industry groups". Surely one key industry group with whom you would consult would be consumers? How do you intend to consult with consumers in regard to the scheme?

Mr SCHMIDT: How consultation proceeds as a result of those forums is obviously a matter for the Government. But having in mind the normal practice that reviews have consistently been done within the department, and I think the Minister has already indicated this in his answer to one of the questions before the Committee on the previous occasion, as proposals are refined, as a matter of course the department takes proposals to the whole range of groups—consumer, industry, and government agencies—who would be interested in it. That is reflected in the way we have conducted our National Competition Policy reviews. As a matter of course, as the Government makes a decision either to introduce a reform or to bring a reform forward for consultation, we consult as widely as we can.

The Hon. J. F. RYAN: Is there value in consulting with community groups beforehand to get some idea as to the difficulties they have experienced with the insurance scheme before proposals are developed?

The Hon. J. R. JOHNSON: Do you have any in mind?

The Hon. J. F. RYAN: The building action review group [BARG].

Mr SCHMIDT: In answer to the first part of the question raised by the honourable member, I note that the department and the Minister have the Home Building Advisory Council which has a number of members. The previous council as constituted had representatives from the Australian Consumers Association, individual members of the public and members of industry groups so there was and still is a forum where such consultation can take place. But as a proposal is developed, yes, there will be consultation.

The Hon. J. F. RYAN: Why not have consultation before the proposal is developed? I have in front of me letters from members of the public who tell me regularly that the Building Insurance Scheme basically never seems to pay claims. Every claim is referred to the Fair Trading Tribunal where it is subject to a very lengthy

and litigious outcome and very few claims are paid. Correspondence has been tabled which shows that certainly statutory warrants are almost never honoured. The only time they ever pay insurance claims—and even then there seem to be some doubts—is when the builder disappears or is insolvent. They honour none of the other objects. In my view there are important matters about which you ought to know before you even kick off.

Mr SCHMIDT: To pick up on the very point raised by the honourable member. In relation to consultation with BARG, as the Minister indicated when he was here on the previous occasion, prior to being elected to the Legislative Assembly in 1995 he met some of the members of BARG and has spent time with them, as I understand it, in his electorate. I understand the Minister has had meetings with them.

The Hon. J. F. RYAN: Why would you not meet with them?

Mr SCHMIDT: When proposals are developed, I have no doubt we will.

The Hon. J. F. RYAN: Why is it that the insurers get a chance to have a look at the proposals before they are developed, and builders get a chance to consult before proposals are developed, but the people who pay for the scheme are not consulted until everything is almost finalised or crystallised?

Mr O'CONNOR: Madam Chair, Mr Schmidt did mention that the Home Building Advisory Council, which is a council of some 16 members, advises the Minister, and they represent consumer groups, independent groups and industry groups. It is from that body that the Minister takes his advice on what community attitudes might be for things that are happening in the home building industry.

The Hon. J. F. RYAN: You are telling me that forums have been conducted, or are about to be conducted, before proposals are developed with builders and members of the building industry, and that forums have been conducted with insurance industry representatives—which, I presume, are representatives of FAI Insurance, Home Owners Warranty, and so on. I do not imagine that proposals have been finalised yet. It gives the impression that consumers are regarded as third-rate in this whole process.

Mr SCHMIDT: Perhaps I slightly misunderstood the thrust of your question. The answer is, yes, we will consult before any proposals have got to the stage of being finalised or crystallised. We intend to consult consumer groups as well.

Ms LEE RHIANNON: In what way do you plan to consult? What are your plans?

Mr SCHMIDT: It depends on the nature of the proposal that we are developing, and how broad ranging it is. As the department's recent history with the national competition policy shows, there are a huge range of possibilities. It may be that the Government comes out with some specific options that it wants to take out to people. That would be a more developed proposal than one along the lines that Mr Ryan was talking about earlier. It may be that we have a broad outline, as we are doing in discussions now, and we will go to individual groups, sit down with them individually or in a forum of consumer groups, and talk them through the options. This is a process that unfolds during the development of the proposal.

The Hon. J. F. RYAN: During the last financial year how many disciplinary actions were commenced by the Department of Fair Trading in the Fair Trading Tribunal against licensed home builders for breaches of the Home Building Act?

Mr O'CONNOR: Could I take that question on notice?

CHAIR: Certainly.

The Hon. J. F. RYAN: Could you give the Committee some details on exactly what information is required of insurers such as HIH Insurance, Home Owners Warranty, Mercantile Mutual, Zurich and other insurers who sell home warranty insurance policies? What information is routinely provided by those insurance companies to the department?

Mr SCHMIDT: The protocols under which the insurers operate have a range of reporting requirements. Some require immediate notification to the department, some require monthly notification, and some require annual notification. Those which are required immediately, as I understand it—and I am waiting for the full details to appear before me—include where a builder is detected as having been engaged in unsafe or

dangerous work. If a builder's insurance is for some reason withdrawn, that is brought to the attention of the department immediately.

On a monthly basis, I understand that insurers are required to give details to the department of the number of claims that have been paid, and the number of claims that have been paid pursuant to tribunal decisions. On an annual basis, there is a general reporting requirement regarding their perspective of the operation of the scheme to date and an update of the information they might have given in the course of the year. There are various other matters that are set out in a public document, in the protocols that govern the operation of the scheme. I would also mention that this is one of the reasons that we have engaged Mr Hoffman—to give us advice on the existing requirements and whether they should be changed or altered in any way.

The Hon. J. F. RYAN: Are the results of those returns ever published?

Mr SCHMIDT: There is no requirement for the results to be published. I honestly do not know whether they have been.

The Hon. J. F. RYAN: Results similar to that for the Motor Accidents Insurance scheme are on the public record as part of the annual report of the Motor Accidents Authority. Are any details taken from insurers with regard to premiums paid?

Mr SCHMIDT: It is interesting to compare the Motor Accidents Authority and the Home Building Insurance scheme. They are somewhat different. Risk in the motor vehicle industry is somewhat uniform, being spread across the community, and it can be assessed using the number of motor vehicles in general transport and accidents that flow from that. In the home building area the insurers will take into account a much wider range of issues when setting premiums. Those include the past history of an individual business, the size of the operation, the financial set up at the time, and disciplinary history if that is a relevant factor.

One of the requirements of the protocol is to give us some information regarding their premiums. I cannot think of the exact wording, but it is an average premium for jobs valued within certain fields. I think that the decision at that time to ask for that information was made because of the risk factors. To just pluck a premium out of the air does not necessarily reflect the true nature of what is happening within the scheme.

The Hon. J. F. RYAN: Do you have information about the total value of the premium collected by each insurer?

Mr SCHMIDT: I do not believe we do.

The Hon. J. F. RYAN: Can you provide, perhaps on notice, details of premiums collected, according to information received?

Mr SCHMIDT: I will take that question on notice, if I may.

The Hon. J. F. RYAN: I am happy for you to do that.

CHAIR: Certainly.

The Hon. J. F. RYAN: I would like to ask a couple of questions about the Fair Trading Tribunal. Has something occurred recently in the Fair Trading Tribunal which is significantly delaying the commencement of new matters brought before the tribunal on home building matters? At least three or four constituents have written to me saying that they lodged complaints in March and do not expect even the first hearing to be held until July. By the way, who is here from the Fair Trading Tribunal?

Mr O'CONNOR: The departmental representatives are myself and my two colleagues. We will be answering all questions in relation to the department and the Fair Trading Tribunal.

The Hon. J. F. RYAN: Is there some reason that the Committee do not have before it a representative from the Fair Trading Tribunal itself, given that we specifically asked for one?

CHAIR: I think the director-general should have ultimate responsibility for his department.

The Hon. J. F. RYAN: But he does not. He is not actually responsible for the Fair Trading Tribunal.

Mr O'CONNOR: Mr Given, in particular, is available to answer questions in relation to the tribunal.

The Hon. J. F. RYAN: But he is not from the tribunal, is he?

Mr GIVEN: No.

The Hon. J. F. RYAN: There is no staff member from the tribunal present today?

Mr O'CONNOR: That is correct.

The Hon. J. F. RYAN: Despite the fact that we asked for one.

Mr O'CONNOR: The department, I am sure, is capable of answering questions. If not, we will take them on notice, Madam Chair.

The Hon. J. F. RYAN: Is there some reason why, despite the fact we asked for one, no member of staff of the Fair Trading Tribunal arrived?

CHAIR: I thought Mr Given would be able to answer the questions.

The Hon. J. F. RYAN: We asked for the Registrar, the Chairman or their nominee.

The Hon. J. R. JOHNSON: Or their nominee!

The Hon. J. F. RYAN: Meaning someone from their staff. The department is an entity that is separate from the Fair Trading Tribunal. The department is not responsible for the tribunal. It provides information to it, but it has no responsibility at all for its administration.

CHAIR: Why not ask the question? If it cannot be answered, perhaps it can be taken on notice.

The Hon. J. F. RYAN: I was interested in why we do not have a representative here. Are they not willing to come?

CHAIR: If they cannot answer the question, we can always take it on notice.

The Hon. J. F. RYAN: Is some reason offered for the delay?

Mr O'CONNOR: That is a question that could be directed to the Minister. My understanding of a response from the director of the standing committee is that the Committee was advised that I would attend, that Mr John Schmidt, Assistant Director-General, would attend in relation to home building matters and others, and that the other Assistant Director-General, Mr Brian Given, would attend in relation to the Fair Trading Tribunal. I understand that was the advice given to the Committee through the Minister's office.

CHAIR: You are right. But the Committee did resolve that an appropriate senior representative of the Fair Trading Tribunal should attend if the others were not able to attend.

The Hon. J. F. RYAN: We resolved that an appropriate representative of the Fair Trading Tribunal would attend. We do not have one before us. The Minister is not a member of the Legislative Council, so it is not for the Minister to decide. We decide.

CHAIR: The fact is that the Minister for Fair Trading has indicated that Mr Given is the person who will be present.

The Hon. M. J. GALLACHER: The Minister does not have the right. As the Chair of this Committee, you called for the attendance of a member of the tribunal, and they have gone against your request.

CHAIR: No. The Minister has specifically said that the Assistant Director-General, Mr Brian Given, will attend in relation to the Fair Trading Tribunal.

The Hon. J. F. RYAN: I am happy to be reasonable, but I specifically asked for a representative of the Fair Trading Tribunal to be present. I had a specific reason for doing so. I suspect that all that these officers can do is to give second-hand and not direct information from the tribunal.

CHAIR: The Hon. J. F. Ryan should ask his question. He should then determine whether the answer is satisfactory before he jumps to a conclusion.

Mr GIVEN: I have some information which is relevant to waiting times in the tribunal. The average waiting time between the receipt and listing of an application in the Fair Trading Tribunal varies according to the type of matter under review. That can be a period of between five to 20 weeks, depending upon the division in which the application is lodged and the complexity of the case. In the home building and commercial divisions, which have no monetary jurisdictional limit, and where matters may involve claims in the millions of dollars, hearings are preceded by case conferences. In case conferences options for settlement are explored and all procedural and evidentiary issues are discussed and determined prior to a hearing to ensure the smooth conduct of the final hearing. Hearings of these matters are generally more formal than matters in the consumer claims and motor vehicle divisions. In all matters the tribunal informs parties how the hearing will proceed. The tribunal is currently reviewing all procedures. It has published information for effectiveness and understandability by applicants and respondents.

The Hon. J. F. RYAN: Mr Given appears to be giving general information, of which I am well aware. I am seeking details about whether or not there have been some recent delays, given the experience of the constituents to whom I referred.

CHAIR: Can the honourable member be more specific? Is he seeking information relating to the last three months?

The Hon. J. F. RYAN: I am seeking information since the beginning of this year.

Mr GIVEN: I would need to take on notice that part of the honourable member's question that refers to the reason for any delays concerning his constituents.

The Hon. J. F. RYAN: I am not asking you to inquire on behalf of each of those four constituents; I am saying that the delays to which I referred seem to indicate a pattern. Previous annual reports have indicated that a first hearing usually takes place within eight weeks. Four of my constituents—I would not be surprised if they were in the public gallery—lodged applications in March and those matters will not be dealt with until July. That is more than eight weeks. Is that a general pattern or is it a one-off situation?

Mr GIVEN: I am not aware of any general issue which has caused delays in recent times. I will take that question on notice.

The Hon. J. F. RYAN: That is another reason why we should have had a representative present from the tribunal. A number of other constituents have told me that they have experienced difficulties in relation to part-time members. Some matters might involve a two-day or three-day hearing, whereas part-time members work only one day a week. Some applicants have had to wait a considerable time before hearing dates are set. Sometimes they have had to wait a month or two in between each hearing date to have matters finalised. What action is the Fair Trading Tribunal taking to deal with those matters?

Mr GIVEN: Current Fair Trading Tribunal case management procedures provide for an initial assessment to be made as to the complexity and length of time that may be required to hear and determine a matter prior to the case being listed before a particular member. If it is evident that a case may proceed for more than one day, it is either listed before one of the full-time members or allocated to a part-time member who has indicated that he or she is available for the required period. In those instances when a part-time member has been allocated a case that proceeds unexpectedly for more than the allocated time, that member determines appropriate procedures and how best to proceed with the hearing and determination of the matter. Some of the options available to members, when dealing with such cases, include adjourning the case for further hearing to a mutually convenient date or requesting the parties to provide written documentation in support of their case. Although in relation to the latter point that is usually only in cases where more complex matters are involved.

The Hon. J. HATZISTERGOS: That would mean that the case would go to a part-time member only if it was complex and a part-time member was able to hear it. A case would be adjourned only in the event that the estimated time limit given to it when it was allocated was exceeded?

Mr GIVEN: That is right. In a general case the Fair Trading Tribunal would have hoped to have assessed the matter correctly and determined that it could be dealt with expeditiously by the member to whom it was allocated. If unexpected problems arose that member would have to look at adjourning the matter to a mutually convenient time.

The Hon. J. F. RYAN: As I said earlier, it is a pity that we do not have present a representative from the Fair Trading Tribunal. I know of many people struggling with part-time members who are dealing with complex matters. Some matters are often deliberately made complex because of representations by insurance companies or because deals are done. No action of the sort that you have described has been taken to deal with many of those matters. I would have appreciated an opportunity to discuss that matter in more detail with somebody from the Fair Trading Tribunal. How many members of the Fair Trading Tribunal are part-time members? What is the equivalent full-time staff complement?

Mr GIVEN: There are 51 part-time members of the Fair Trading Tribunal. Of course, the use of the time of those part-time members varies due to their workload and availability. Tonight I do not have information which will show the effective full-time application of those members.

CHAIR: How many full-time members are there?

Mr GIVEN: There are 10 full-time members.

The Hon. J. F. RYAN: On a number of occasions I have contacted the registrar of the Fair Trading Tribunal, or someone working with him, such as the deputy registrar, and I have been told that it was impossible to do something immediately about an administrative matter because a member still had the file relating to a case. What does that expression mean? If a person has been severely disadvantaged as a result of a member retaining a file, why is it not possible for the member to be asked to return the file?

Mr GIVEN: I can only speculate in relation to that matter. I do not think it would be helpful to do so.

The Hon. J. F. RYAN: That is why I would have liked to have had someone present from the Fair Trading Tribunal.

The Hon. J. R. JOHNSON: You have said that seven times!

The Hon. J. F. RYAN: How many assessors have been appointed to the Fair Trading Tribunal pursuant to division 4 of the Fair Trading Tribunal Act?

Mr GIVEN: The appointment of assessors is currently in train, in particular in the motor vehicle division. Those matters are being finalised in the home building division.

The Hon. J. F. RYAN: What does that mean?

Mr GIVEN: The process of appointing assessors is well under way in relation to those two divisions.

The Hon. J. F. RYAN: So no assessors have been appointed?

Mr GIVEN: Not to my knowledge.

The Hon. J. F. RYAN: The Act is nearly three years old, yet no assessors have been appointed.

CHAIR: Have any assessors been appointed recently, or are you saying that no assessors have been appointed?

Mr GIVEN: We will take that question on notice if further information is needed.

The Hon. J. F. RYAN: Is there some reason why you cannot tell us why no assessors were appointed until now? Is it complex to appoint assessors? Would assessors not have sped up the process?

Mr GIVEN: The appointment of assessors involves two stages. The need for assessors really has to be determined on the basis of tribunal experience. It would not have been appropriate from day one to have appointed assessors.

The Hon. J. F. RYAN: I have been advised that recently officers within the home building division have estimated that the cost of legal expenses in prosecuting a show-cause disciplinary hearing against one particular licensed builder could run as high as \$250,000. I do not wish to name the builder, but is this a typical amount or is this unusual for this sort of legal action? Is the recent announcement by the Minister of the appointment of two new lawyers an initiative to manage this sort of cost of litigation? Is it a fact that the Department of Fair Trading recently issued, or intends to issue, six licensed builders with notices to show cause this year? Have additional funds been allocated to the department to fund that sort of legal expense?

Mr SCHMIDT: The honourable member has raised a number of questions. I am just trying to recall them in some order.

The Hon. J. F. RYAN: Is a quarter of a million a typical amount?

CHAIR: Perhaps the Hon. J. F. Ryan can say again what exactly he wants to find out. It is quite complex.

The Hon. J. F. RYAN: Is a quarter of a million a typical amount? Are you appointing two new lawyers as a means of managing the expense? Are you about to issue six licensed builders with a notice to show cause? Have you enough money to make sure you can prosecute all those if that is the nature of the expense involved?

Mr SCHMIDT: The appointment of the two new legal officers is not in respect of a budget issue. It is to assist the smooth, effective operation of the division. So that is not the reason why those two have been appointed.

The Hon. J. F. RYAN: I would not mind if it was.

Mr SCHMIDT: It is not. As to the cost of a particular proceeding, I would have to take that on notice, but I do not believe that amount would be typical, to be honest.

The Hon. J. F. RYAN: Are you about to issue or have you issued this year notices to six licensed builders?

Mr O'CONNOR: I will have to take that question on notice.

The Hon. M. J. GALLACHER: I refer Mr O'Connor to the Department of Fair Trading's annual report for 1998-99. It states:

... commissioning research into the feasibility of using petrol buying co-operatives to promote competition in the petrol industry.

When was that research commissioned?

Mr SCHMIDT: The research was commissioned late last year following the Minister taking a 10-point action plan to the ministerial council of his fellow consumer affairs Ministers in Hobart. I think that meeting took place in August. One of the proposals out of that was that New South Wales undertake research of this kind. I cannot recall the exact date. The research establishment was the Charles Sturt University and the co-operative body engaged in two different reports following the announcement at the Ministerial Council of Consumer Affairs Ministers.

The Hon. M. J. GALLACHER: Can you give us the cost of the research?

Mr SCHMIDT: I will take that on notice.

The Hon. M. J. GALLACHER: Can you tell us when that research will be publicly released?

Mr SCHMIDT: The Minister released it by way of response to a question in the lower House the week before last.

The Hon. M. J. GALLACHER: Was that a complete release of all research?

Mr SCHMIDT: The reports are available on our web site.

The Hon. M. J. GALLACHER: The Department of Fair Trading's annual report for 1998-99 states:

... exploring the possibility of the legislation to ensure that fuel shrinkage in cold weather is accounted for at the wholesale level
...

Can you outline what stage you are up to in regard to that?

Mr GIVEN: In relation to that issue of temperature compensation for petrol, the matter is subject to ongoing consideration by a working party of national officers that will be reporting back through to the ministerial council.

The Hon. M. J. GALLACHER: When was it commenced? It was in the 1998-99 annual report.

Mr GIVEN: Yes, and those working party investigations have been ongoing and are continuing.

The Hon. M. J. GALLACHER: When did they commence?

Mr GIVEN: I cannot answer that question specifically; it was in the middle of last year or early last year.

CHAIR: Is there any timeframe for when you will finish?

Mr GIVEN: I understand that legislation was introduced into the Australian Capital Territory Legislative Assembly and a working party has been looking at how that legislation is being implemented to see what kinds of problems there are in addressing the issue of temperature compensation, and there are variable problems depending on what part of the country you are looking at.

The Hon. M. J. GALLACHER: So, in essence, we will be following the Australian Capital Territory?

Mr GIVEN: Yes, in terms of looking at how that is done and what problems, if any, arise in relation to that.

The Hon. M. J. GALLACHER: When did the Australian Capital Territory commence its inquiry?

Mr GIVEN: I do not know about its inquiry, but its legislation was passed some time last year.

The Hon. M. J. GALLACHER: So it acted much quicker than we have in New South Wales?

Mr GIVEN: It acted last year, and the issue is being looked at by this national working party, of which New South Wales is a member.

The Hon. M. J. GALLACHER: When did the Australian Capital Territory become aware of the shrinkage problem—at the same time as New South Wales?

Mr GIVEN: I do not know the answer to that. We can take that question on notice.

The Hon. M. J. GALLACHER: So you have had no discussion with its department about where it is going with its research?

Mr GIVEN: I am aware that an officer of our equivalent in the Australian Capital Territory is a member of the working party.

The Hon. M. J. GALLACHER: If a member of your department is on the working party, why are we dragging the chain in New South Wales?

Mr GIVEN: I will take any further questions in relation to that on notice. I have already said the national working party is looking at the matter.

The Hon. M. J. GALLACHER: I am just interested to find out why the Australian Capital Territory is leading the way and why New South Wales is dragging the chain.

Mr GIVEN: I have answered that question as much as I can.

CHAIR: Mr Given said that he will take the question on notice.

The Hon. M. J. GALLACHER: How many inspectors were involved in identification of petrol retailers who were adding toluene to fuel?

Mr GIVEN: I do not have the specific number of inspectors who have been involved in that matter, but I can say that there are ongoing investigations in relation to the information that was obtained earlier in the year which identified a number of service stations and, at the Minister's direction, continuing testing is being done throughout the State.

The Hon. M. J. GALLACHER: How many retailers have been inspected up until this point?

Mr GIVEN: There have been ongoing inspections; the number would exceed 70, but I do not have the exact number.

The Hon. M. J. GALLACHER: How many prosecutions have been instigated in New South Wales?

Mr GIVEN: There have been no prosecutions, but matters are still under investigation.

The Hon. J. R. JOHNSON: Does it have any standing as an offence?

Mr GIVEN: In some circumstances, if misleading conduct is involved in representations about the petrol that is available at a bowser, that could constitute a breach of the Fair Trading Act.

The Hon. M. J. GALLACHER: You have no prosecutions at this stage?

Mr GIVEN: That is right.

The Hon. M. J. GALLACHER: Mr O'Connor, why did it take your department 36 days to announce that you have the power under the Fair Trading Act to take action against service stations that have supplied petrol with high levels of toluene?

Mr O'CONNOR: Can you explain exactly what you mean?

The Hon. M. J. GALLACHER: The information that has come to our attention is that you were aware of the matter and it took 36 days before your department made an announcement in relation to toluene.

Mr O'CONNOR: Until we have investigated the information we have no indication as to whether high levels of toluene or any other aromatics might be in petrol. When we get information we have to judge when we will investigate, and as soon as we have the appropriate staff available the matter is investigated. It is not a question of time; it is a question of when the information comes to us, and from then on we carry out the investigation.

The Hon. M. J. GALLACHER: I remind you of the answer given by Mr Given a few minutes ago that we are mid way through the year and as yet no prosecutions have been instigated. The first six service stations were named on 29 February, yet the four mentioned in the Parliament on 4 April were not named so as not to jeopardise any future prosecutions. But as yet there have been no prosecutions.

Mr O'CONNOR: The matters are still under investigation.

CHAIR: Are they still under investigation at the moment?

Mr O'CONNOR: They are still under investigation at the moment and there is no resolution, but any further information in relation to that investigation I will ask to take on notice.

The Hon. M. J. GALLACHER: You might well ask to take it on notice. Have you put down deadlines in terms of when you want these prosecutions instigated?

Mr O'CONNOR: Again, it is difficult to put deadlines on things because it depends on the investigation and the gathering of evidence, and often going back to where tests have already been carried out.

The tests are not carried out by the department; they are carried out independently. Gathering evidence does not necessarily happen within a few days. Before the department launches any prosecution it needs to be very careful—in fact, it is very careful—that it has proper briefs of evidence and sufficient information on which to launch a prosecution.

The Hon. M. J. GALLACHER: What is the statute of limitations for offences under the Fair Trading Act?

Mr GIVEN: Three years is the general limitation.

The Hon. J. F. RYAN: To return to the home building matter, program 44.1.2, Marketplace Performance, on page 8-15 of Budget Paper No. 3 appears to be the only place that refers to investigations and inspections among its outputs. The equivalent full-time [EFT] staff in that area are shown as rising by only two, from 158 to 160. As this appears to be the relevant program pertaining to additional investigations and lawyers, as announced by the Minister in Parliament on 1 June, why does this program show an increase of only two staff and not 12?

Mr GIVEN: The average EFT staffing figures which appear in the papers were provided to Treasury in early April 2000 as per the normal process in preparing the budget papers. At that time they did not include the additional investigators and lawyers that are to be appointed within that program area in 2000-01. These additional staff were announced by the Minister in June, after the figures were given to Treasury for putting together the budget papers. That is why the figures may appear to be somewhat different.

The Hon. J. F. RYAN: Can you supply the Committee with the revised figure? I imagine that the announcements made by the Minister in June have been budgeted for in this year's budget. Can you give us a revised EFT figure showing those new people?

Mr SCHMIDT: I will take that question on notice and give you the figures.

The Hon. J. F. RYAN: How much money is granted to individuals for legal assistance to pursue litigation against home builders for breaches of the fair trading legislation in the Fair Trading Tribunal or the Local Court, the District Court or the Supreme Court? What are the criteria for granting such assistance to individuals?

Mr O'CONNOR: The department has granted legal assistance to pursue litigation against a home builder in one matter where there was a breach of the Home Building Act and the Legal Aid Commission is acting on behalf of a legally assisted party in the Fair Trading Tribunal. To date, \$8,599 has been paid out for the preparation. The commission has advised that should the matter go to hearing cost recovery could exceed \$30,000. However, the department will pursue its own costs if the proceedings are successful. The department considers each application for legal assistance, whether it is made under the Home Building Act or any other Act administered by the department, on its merits. The criteria for the grant of legal assistance by the department are set out in the Fair Trading Act and apply to all applications. In fact, the department has published guidelines, which are a public document.

The Hon. J. F. RYAN: Can you supply a copy to the Committee?

Mr O'CONNOR: I am sure that copies can be made available to the Committee through the Minister.

The Hon. J. F. RYAN: Only \$8,000? In a number of cases lodged in the Fair Trading Tribunal customers have extreme difficulty in competing with the firepower that is launched against them by insurers and frequently on behalf of builders. What frequently happens is the builder makes almost no representations or says nothing in the Fair Trading Tribunal and most of his action is taken over by an insurer. One way perhaps to speed up the process in strategic cases would be if the department made some funding available to individuals to assist them in that.

CHAIR: What is the question?

The Hon. J. F. RYAN: Would that be a reasonable use of that resource? Has consideration been given to doing that?

Mr O'CONNOR: It might be helpful if I briefly indicate what the criteria are before the department can grant legal assistance.

The Hon. J. F. RYAN: If that can be done briefly.

Mr O'CONNOR: First, any claimant must be a consumer within the meaning of section 5 of the Act. That is fairly important. The proceedings must arise out of the supply of goods or services or the disposal of a person in relation to the land, the person wishes to appeal or seek judicial review in relation to such proceedings, the person is a party to such proceedings or an appeal, and an application must be in an approved form, include the prescribed particulars and be verified in the required manner.

The Hon. J. F. RYAN: That would apply to just about everything in the Fair Trading Tribunal.

Mr O'CONNOR: The grant of legal assistance can be made if the director-general is satisfied that the applicant has reasonable grounds for bringing or being a party to the proceedings, the director-general is of the opinion that it is desirable in the general interest of consumers or of any class of consumers that assistance be granted, and the director-general needs the assistance of the Minister before bringing proceedings. They are the guidelines but, as mentioned earlier, we are prepared to make those guidelines available to the Committee through the Minister.

The Hon. J. F. RYAN: But the guidelines do not describe how you make the decision as to whether it is desirable in the general interest.

Mr O'CONNOR: I believe that is getting into an area of policy and I think that matter should be taken on notice and referred to the Minister.

The Hon. J. F. RYAN: Are there guidelines as to how you exercise your judgment with regard to whether it is desirable and in the interests of consumers to grant assistance?

Mr O'CONNOR: We will be happy to make them available through the Minister.

The Hon. J. HATZISTERGOS: Is this provision in the Fair Trading Act the only avenue for legal assistance that is available to potential claimants?

Mr GIVEN: Applicants involved in tribunal matters can also apply to the New South Wales Legal Aid Commission for assistance.

The Hon. J. HATZISTERGOS: Community legal centres?

Mr GIVEN: Yes, they can approach community legal centres. It is important to recognise also that the tribunal has an obligation to ensure that parties are not disadvantaged in the procedures of the tribunal.

The Hon. M. J. GALLACHER: Mr Schmidt, are you aware of any concerns or complaints raised by the Retirement Villages Association about the conduct of your officers during seminars held on the new Act?

Mr SCHMIDT: Yes. I will take that question on notice.

The Hon. M. J. GALLACHER: Are you aware of such complaints?

Mr GIVEN: No. I am aware of concerns having been raised.

The Hon. M. J. GALLACHER: You may take that question on notice. Is an investigation into those complaints under way?

Mr GIVEN: I will take the question on notice.

The Hon. M. J. GALLACHER: How many officers were complained of, Mr Schmidt?

Mr SCHMIDT: Only one officer was complained of, and the officer is an excellent officer and a valued member of my team.

The Hon. M. J. GALLACHER: You are forming that opinion prior to an investigation being completed, is that correct?

Mr SCHMIDT: No, I am just referring to his general standing within my division.

The Hon. M. J. GALLACHER: I would hate to think that you made your mind up on a complaint before the matter has even been investigated.

Mr SCHMIDT: I note your concerns.

The Hon. J. F. RYAN: Mr O'Connor, have you consulted with the Minister prior to coming today, in preparation for these estimates hearings?

Mr O'CONNOR: I do not understand the question, but the answer is no.

The Hon. M. J. GALLACHER: Mr O'Connor, a matter that received a degree of concern last week relates to \$50,000 to fund four television information commercials about fair trading rights and responsibilities, including home renting, credit and buying a car. Could you outline which television stations are contracted to run these commercials?

Mr O'CONNOR: I cannot answer the question; we can give you the information on notice. It was country television, but I do not have the answer.

CHAIR: Will you take the question on notice?

Mr O'CONNOR: Yes.

The Hon. J. F. RYAN: Do you remember that in last year's annual report you undertook to commence a marketing program to educate consumers and traders to reduce risks and to minimise risk in home building disputes? It was reported that that campaign would commence in early 2000 and it would incorporate advertising across a range of newspapers, trade and consumer publications. Has that campaign started or been initiated?

Mr O'CONNOR: Advertisements commenced in September 1999. As far as printed material was concerned, that took place in May this year. Contracts for the completed material will be completed at the end of this financial year, and the campaign information, including new brochures, facts sheets, et cetera, will be progressively released by the Minister from June this year.

The Hon. J. F. RYAN: Is that a response to that specific campaign that was referred to in the annual report with regard to home building disputes, where it was reported that that would commence in early 2000? I am quoting directly from the annual report. You are talking about something that happened in September, which would have been after the report had been published.

Mr O'CONNOR: I will have to take that on notice.

The Hon. M. J. GALLACHER: Mr Given, can you outline the exact nature of "processing delays" that may occur if applicants for claims before the Fair Trading Tribunal do not provide three copies of their application at the time of lodging? That follows a complaint that I received.

Mr GIVEN: I will have to take that question on notice.

The Hon. M. J. GALLACHER: Mr O'Connor, can you outline the reasons for the relocation of the Register of Encumbered Vehicles [REVS] from Liverpool to Parramatta? How many staff are participating in the relocation?

Mr O'CONNOR: The registry is currently accommodated in premises in Liverpool, at an annual cost of approximately \$206,000 for rent and outgoings. REVS' current accommodation in Liverpool is in need of substantial refurbishment to address operational staffing, and occupational health and safety issues. The cost of refurbishing the existing premises at Liverpool is in the order of \$735,000. The relocation of REVS to the department's corporate headquarters, which is at Parramatta, has been identified as a priority in the department's accommodation facility planning, in order to integrate REVS systems more closely with those of the department. This will result in reduced overheads and infrastructure costs in the order of \$300,000 per annum.

The figures I have just referred to clearly demonstrate that the relocation of REVS will actually save the department close to \$485,000 in the next financial year alone. That is why REVS' relocation is taking place and will take place in August this year. All the REVS staff have been consulted in relation to the relocation. I

can advise that there will be no staff reductions as a result of the relocation. All current staff will continue to have jobs in the new location. The move therefore will have no impact on employment in the department or, I understand, in Liverpool, because I also understand—and it is only an understanding—that a Federal government department is now considering relocation to the building in Liverpool that we have just vacated for REVS.

The Hon. J. F. RYAN: Last May I asked the following question on notice: How many building licences have been cancelled as a result of show-cause actions brought against builders by the Department of Fair Trading since 1 May 1997, which was when the Act commenced? The response was that under the Home Building Act—which I think has a wider area of operation—the Department of Fair Trading has cancelled 237 building licences. Is it correct to say that a much smaller number would have been cancelled as a result of disciplinary hearings brought under show-cause actions and, if so, how many have been cancelled?

Mr SCHMIDT: I will take that question on notice.

The Hon. J. F. RYAN: Is it correct that the Home Building Act describes a wider group of cancellations than the one section that I asked about, which was section 63 of the Home Building Act? That would be a fairly defined number, which would be much less than 237, which sounds like every builder that has ever had his licence cancelled since the scheme started.

Mr SCHMIDT: I believe it would be a smaller category, but I would have to take the question on notice.

CHAIR: If members have questions that have not been answered they may be placed on notice.

The Committee proceeded to deliberate.
