

**GOVERNMENT RESPONSE**

to

**Inquiry into the operation of the Home Building Service**

Legislative Council  
General Purpose Standing Committee No. 2

Government response  
General Purpose Standing Committee No. 2: Inquiry into the operation of the Home Building Service

## Background

General Purpose Standing Committee No. 4 of the Legislative Council announced an inquiry into the operations of the Home Building Service on 27 September 2006. The Committee received submissions and held public hearings towards the end of 2006. The proroguing of Parliament in the lead up to the 2007 General Election meant the Inquiry expired and was unable to provide a report to Parliament.

On 27 July 2007, the Inquiry was reconstituted by the Legislative Council's General Purpose Standing Committee No. 2. All papers submitted to the previous Inquiry were transferred to the new Committee and a further public hearing was held on 2 November 2007.

The Committee tabled its report on 14 December 2007. The Committee made twenty one recommendations which mostly focused on builder licensing, compliance with legislation, dispute resolution, consumer information and support, home warranty insurance and interaction with the Consumer, Trader and Tenancy Tribunal. One of the recommendations related to the building certification system administered by the Minister for Planning.

The majority of recommendations have been implemented or are in the process of being implemented. Recommendations which have been implemented include introducing improvements to the continuing professional development scheme for builders, ensuring that consumers have access to simple information about their rights and information about dispute resolution, using customer surveys and service delivery performance standards to ensure the Home Building Service has an effective client focus. Some of the recommendations which need to be addressed in legislation are being implemented through a current project to rewrite the *Home Building Act 1989*.

Some recommendations are not supported. These recommendations deal with changes to the building licence public register, establishing an independent building commission, establishing objectives for the Home Building Service, reviewing penalties for breaches of the *Home Building Act 1989* and providing additional resources to the Home Building Service.

Responses for each recommendation by the Committee are set out in the following table.

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
1	<p>That the Home Building Service review its performance standards in relation to the licence assessment system and the public register, in order to maximise the:</p> <ul style="list-style-type: none"> <li>• Rigor of licence assessments</li> <li>• Accuracy and timeliness of information on the public register.</li> </ul>	<p><b>SUPPORTED &amp; IMPLEMENTED</b></p> <p>Home Building performance standards are under constant review. Performance standards at present are delivering timely licence assessments which are of a high standard. Performance Standards of 48 hours are in place and being met. Qualification pathway requirements are now ensuring greater rigor in terms of entry requirement standards. The home building public register is now provided through the Government Licensing System which provides rapid access to correct data errors.</p>
2	<p>That the Office of Fair Trading investigate potential changes to the public register to alert consumers to builders who are the subject of not yet resolved complaints, whilst also taking account of the need for procedural fairness.</p>	<p><b>NOT SUPPORTED</b></p> <p>A complaint made to the Commissioner for Fair Trading may be frivolous, unfounded or vexatious. It would not be appropriate to publicly disclose a complaint until it has been adequately investigated and the affected licence or certificate holder has been afforded the required standards of procedural fairness. When investigating complaints, the Commissioner for Fair Trading complies with requirements for procedural fairness established in the <i>Home Building Act 1989</i>. If disciplinary action is proposed, a notice is issued to the licence or certificate holder inviting them to show cause why disciplinary action should not be taken. The notice specifies the grounds on which disciplinary action is being considered and invites the affected person to make submissions and provide evidence by a specified date. Further investigation may be undertaken in response to evidence provided through this process. In urgent circumstances where there is a danger of significant harm, loss or damage result from the continuing actions of a licence or certificate holder, the Commissioner for Fair Trading can suspend the licence or certificate for up to 60 days while investigations are made. Any such suspension is disclosed in the public register.</p>

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
3	<p>That the NSW Government take immediate steps to implement Recommendations 3 and 5 of the Moss Review of Licensing in NSW that:</p> <ul style="list-style-type: none"> <li>• The Government require only individuals to be licensed.</li> <li>• The Government issue a unique license number to licensees to be kept by the licensee for life.</li> </ul>	<p><b>UNDER CONSIDERATION</b>                      The benefits of issuing home building licences to individuals only will be explored as part of the re-write of the Home Building Act.</p> <p><b>UNDER CONSIDERATION</b>                      Issuing a unique licence number for the lifetime of the licensee will also be explored as part of the re-write of the Home Building Act.</p>
4	<p>That the NSW Government examine ways to improve co-ordination in building industry regulation, including the establishment of an independent building commission.</p>	<p><b>NOT SUPPORTED</b>                      In 2007 the Building Industry Co-Ordination Committee (BICC) was re-constituted with member agencies comprising Department of Commerce, Office of Fair Trading, Work Cover, Department of Planning, the Building Professionals Board, Department of Local Government, Department of Education &amp; Training and Premier's Department. The BICC is chaired by the Director-General of Commerce and reports against its work plan to the Premier each quarter. The BICC has proven more than adequate in ensuring effective co-ordination of industry regulation. Areas of duplication have been identified and targeted for elimination.</p> <p>Establishing an independent building commission would have significant start up costs. As the Building Industry Co-ordination Committee is already improving the co-ordination of industry regulation, the establishment of an independent building commission is not supported.</p>

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
5	<p>That in re-writing the Home Building Act, the NSW Government:</p> <ul style="list-style-type: none"> <li>• Explicitly consider the need to make the licensing system cohesive and user- friendly</li> </ul>	<p><b>SUPPORTED</b></p> <p>One of the main objectives of re-writing the Home Building Act is to remove ambiguities and simplify the language to enable consumers and traders to better understand their rights and responsibilities. The requirements of the licensing system will be more clearly defined and scopes of work and qualification requirements will be more clearly articulated. These changes in addition to streamlined application forms (introduced July 2007); 3 year licence renewal option (introduced in July 2007); and on-line renewals via the Government Licensing System (introduced in March 2008) will ensure that the licensing system is cohesive and user- friendly.</p>
	<ul style="list-style-type: none"> <li>• Implement Recommendation 25 of the Moss Review of Licensing in NSW that the Government establish clear objectives for the Home Building Service to assist consumers and the building industry in understanding its role as the licensing authority in NSW.</li> </ul>	<p><b>NOT SUPPORTED</b></p> <p>The Home Building Act 1989 clearly articulates the functions and responsibilities of the Director-General (Commissioner) with respect to regulation of the residential building sector. Through instruments of delegation many of these functions are vested in the Home Building Service. In terms of its performance within the regulatory framework the Home Building Service already has clearly stated objectives. The function, service standards and roles performed by the Home Building Service are aligned with the objectives articulated in the NSW State Plan, Department of Commerce Corporate Plan (2006-2010) and the Office of Fair Trading Strategic Plan.</p>

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
6	<p>That in reforming the continuing professional development scheme, the Office of Fair Trading ensure that the scheme is evidence based, relevant, accessible and easily complied with.</p>	<p><b>SUPPORTED &amp; IMPLEMENTED</b>                      Following an independent review carried out in 2006, the Office of Fair Trading has made substantial changes to the operation of CPD in NSW.</p> <ul style="list-style-type: none"> <li>• The points system has been simplified from 25 points per year and 100 over three years to a simple 12 points per annum;</li> <li>• Activities where an identifiable learning outcome can not be demonstrated have been removed from the regime. Under the new regime CPD points can only be accrued by undertaking verifiable learning activities;</li> <li>• An industry reference group established in early 2007 has developed 8 core learning areas that form the basis for future CPD training activities;</li> <li>• During 2007 Home Building grants were approved for the establishment of CPD training courses by various private sector Registered Training Organisations, development of on-line training programs and further development of the Construction Industry Training Advisory Board's (CITAB) website;</li> <li>• The Office of Fair Trading will conduct 24 free CPD seminars each calendar year;</li> <li>• A CPD booklet was mailed out to every builder and pool builder in December 2007 fully explaining the changes to the regime and how the requirements can be met;</li> <li>• The Office of Fair Trading will continue to update builders and pool builders on CPD events via its e-newsletter <i>Fair Comment</i> and <i>Foundations</i>.</li> </ul>
7	<p>That the Office of Fair Trading develop and implement a strategy for further improving education for community members about early dispute resolution processes.</p>	<p><b>SUPPORTED &amp; IMPLEMENTED</b>                      The consumer information guide required to be supplied with all home building contracts provides consumers with information on the dispute resolution process. The Office of Fair Trading, through its Fair Trading Centre network, conducts consumer information nights where the dispute resolution service is outlined. Fair Trading's website has been re-designed to make it easier for consumers to locate information on dispute resolution.</p>

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
8	That the Office of Fair Trading improve early dispute resolution by ensuring the highest performance standards in this area, both among Fair Trading Centre and staff, including in relation to the provision of information to the public.	<p><b>SUPPORTED &amp; IMPLEMENTED</b></p> <p>Service delivery performance standards are in place and customer surveys are used to check on the quality of the service being provided.</p>
9	That the Home Building Service work to further increase the industry competencies of its building inspectors to ensure that they are better able to investigate and resolve complex building disputes.	<p><b>SUPPORTED &amp; IMPLEMENTED</b></p> <p>Building Inspectors in the Home Building Service are all technically qualified to undertake the roles they perform and are subject to Continual Professional Development requirements. Historical records since 2005 show that on average, each Building Inspector has received 17.5 days (122.5 hours) training each year. With the current emphasis on industry based training, it is envisaged that this level of training will continue in the future. Each inspector is trained in mediation by LEADR, a not-for-profit membership organisation that promotes alternative dispute resolution. Many have obtained accreditation. The Home Building Service has in the past, and will do so again in the future, call upon specialist consultants to assist with dispute resolution and investigation as required. It is not considered necessary to retain these specialised skills in-house as they are infrequently required.</p>
10	That the Office of Fair Trading enable builders to initiate early dispute resolution through the Home Building Service.	<p><b>UNDER CONSIDERATION</b></p> <p>The Office of Fair Trading will conduct a pilot during 2008 to assess the feasibility of allowing traders to initiate the dispute resolution process.</p>

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
11	That the Minister for Planning take note of consumer concerns in respect of building certification.	<p><b>SUPPORTED</b></p> <p>The Minister for Planning notes the concerns raised by forum participants regarding building certification. On 3 April 2008, the NSW Government released two draft exposure Bills outlining wide-ranging improvements to the State's planning system, the Environmental Planning and Assessment Amendment Bill 2008 and the Building Professionals Amendment Bill 2008. The release of these Bills follows a comprehensive NSW government planning reform consultation process, including exhibition of a detailed discussion paper <i>Improving the NSW planning system</i> in November 2007.</p> <p>The Bills contain a number of measures to improve the NSW certification system including:</p> <ul style="list-style-type: none"> <li>• Increased powers for the Building Professionals Board to discipline accredited certifiers including fines up to \$110,000.</li> <li>• Limitations on the amount of income accredited certifiers can receive from any one client.</li> <li>• Requirements for accredited certifiers to give written directions to builders where unauthorised work is identified.</li> <li>• Additional mandatory site inspection requirements prior to the issue of construction certificates and complying development certificates.</li> <li>• Increased powers for councils to take enforcement action against builders undertaking unauthorised work (stop work orders, enforcement bonds, compliance cost notices) whether or not an accredited certifier is appointed as the certifying authority.</li> <li>• Increased \$ value and range of on-the-spot fines which can be issued on builders and accredited certifiers.</li> <li>• Clearer requirements that building work is consistent with a council's development consent.</li> </ul> <p>New requirement for council staff undertaking building certification work to be accredited.</p>



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No.	RECOMMENDATION	GOVERNMENT RESPONSE
12	That the Office of Fair Trading initiate discussions with the Consumer, Trader and Tenancy Tribunal about the need for substantial and timely action to fully implement the recommendations of its 2006 Operations Review and the Ipsos Top Ten Tips Research Report and thereby ensure that the Tribunal meets its objective of resolving disputes in an accessible, informal, efficient and inexpensive manner.	<p><b>SUPPORTED &amp; IMPLEMENTED</b></p> <p>The Consumer, Trader and Tenancy Tribunal has ongoing discussions with the Commissioner for Fair Trading regarding implementation of the McClelland Operations Review recommendations and implementation of the Ipsos report recommendations. The CTTT has formulated an implementation schedule for each of the McClelland Review recommendations. This schedule is reported on regularly. Subsequent to the Ipsos report the Tribunal launched a new Communications Strategy and "Ten Top Tips for Conciliation" document in January 2008. Implementation of all recommendations is ongoing.</p>
13	That the Office of Fair Trading publish the report completed in October 2007 on the pilot of the Home Building Advocacy Service operated by the Macquarie Legal Centre.	<p><b>SUPPORTED</b></p> <p>The October report referred to was an internal report from the Macquarie Legal Centre as required under the funding arrangements. A report outlining the review of the Home Building Advocacy Service pilot will be made publicly available in 2008.</p>
14	That the Office of Fair Trading establish a home building advice and advocacy service on a long term basis which is affordable and accessible for home building consumers throughout New South Wales. In doing so, it should investigate models to enable the service to have a regional presence, for example on a rotating or mobile basis.	<p><b>IN PRINCIPLE SUPPORT</b></p> <p>A decision about continuing an advice and advocacy service will be made after the final review report into the Home Building Advocacy Service pilot. Any continuation of the service would include delivery to consumers in regional NSW.</p>
15	That the Home Building Service further improve its results in meeting performance standards in relation to the discipline of builders.	<p><b>SUPPORTED &amp; IMPLEMENTED</b></p> <p>Whilst the committee has incorrectly defined 'disciplinary action' to include all compliance investigations undertaken, a significant proportion of compliance investigations do not have disciplinary action as an outcome. Completion of 70% of investigations on time is considered within service standards.</p>

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
16	<p>That the Office of Fair Trading review the current system of breaches and penalties to establish how it might be further improved. The review should include consideration of the use of:</p> <ul style="list-style-type: none"> <li>• Warnings.</li> <li>• On-the spot penalties.</li> <li>• Licence suspensions and cancellations for repeated serious breaches.</li> <li>• Scaled penalties according to business turnover.</li> </ul>	<p><b>NOT SUPPORTED</b></p> <p>Compliance outcomes and options are already regularly reviewed and assessed by the Office of Fair Trading to ensure the right compliance response is utilised in responding to each investigation undertaken. Warnings and on-the-spot penalties are already widely used and have assisted in improving compliance levels within the industry. Licence suspensions and cancellations are used where appropriate. It needs to be borne in mind that all compliance decisions, save for warnings, are reviewable by the Administrative Decision Tribunal (as is the case for licensing and disciplinary decisions) and the Local Court (as is the case for penalty notices and prosecutions).</p> <p>In terms of penalties to be applied, a distinction is already made in the Home Building Act between individual licence holders and partnerships and companies. Any further segmenting of the penalty system as suggested is not supported as it would be relatively easy for licence holders to circumvent.</p>
17	<p>That in the re-writing of the <i>Home Building Act</i> the NSW Government consider whether individual builders responsible for breaches of the Act, and not just the contractors overseeing the work, should be subject to disciplinary processes.</p>	<p><b>SUPPORTED</b></p> <p>The statutory warranty provisions already place an implied requirement on sub-contractors (tradespeople) to perform their work in a proper and workman like manner. This makes them equally subject to disciplinary action where breaches of statutory warranties occur. Fair Trading has in the past, and will continue in the future, to take disciplinary action against sub-contractors for breaches of statutory warranty. Notwithstanding, the making of these responsibilities more explicit in the Home Building Act will be explored as part of the re-write of the legislation.</p>
18	<p>That the NSW Government adopt the recommendation of the Home Warranty Insurance Scheme Board to introduce an additional trigger to enable consumers to access insurance without having to pursue a builder's bankruptcy or insolvency.</p>	<p><b>SUPPORTED</b></p> <p>A Bill amending the Home Building Act to create the additional trigger for lodging a home warranty insurance claim will be introduced into the Parliament during 2008.</p>

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No.	RECOMMENDATION	GOVERNMENT RESPONSE
19	<p>That the Home Warranty Scheme Board and the Office of Fair Trading consider additional mechanisms in relation to home warranty insurance to further:</p> <ul style="list-style-type: none"> <li>• Increase consumer protection.</li> <li>• Promote early and fair dispute resolution.</li> <li>• Promote the accountability of insurers and the transparency of the scheme.</li> </ul>	<p><b>SUPPORTED &amp; IMPLEMENTED</b></p> <p>The Home Warranty Scheme Board is currently exploring further reforms to the home warranty regime that are designed to increase the protection afforded to the consumer by home warranty insurance and will report its finding to the Minister for Fair Trading.</p> <p>As part of the rewrite of the Home Building Act ways of simplifying the claims process and clearly setting out what is and is not covered by a policy will be explored. The re-write will also look to addressing situations caused by recent Court decisions.</p> <p>The Home Warranty Insurance Scheme Board and Office of Fair Trading have developed an extensive governance regime in NSW. Conditions of approval, market practice and claims handling guidelines and an industry deed with insurers ensures the future accountability of the scheme to the builders and consumers of NSW.</p>
20	<p>That the Home Warranty Scheme Board and the Office of Fair Trading develop a strategy to improve consumer information about the home warranty insurance scheme.</p>	<p><b>SUPPORTED</b></p> <p>In March 2007, the Home Warranty Insurance Board commenced providing data on the operation of the home warranty scheme on a quarterly basis. The information in these reports opens up the scheme to closer scrutiny from both builders and consumers. Additional communication strategies are being explored.</p>
21	<p>That the NSW Government provide additional resources to enable the Home Building Service to effectively fulfil its licensing, complaints resolution and disciplinary roles.</p>	<p><b>NOT SUPPORTED</b></p> <p>A recent restructure of the Home Building Service has already seen an increase in establishment. Re-allocation of resources under that restructure together with the use of better technology will allow the Home Building Service to further improve its ability to deliver.</p>