

Better Regulation and Innovation portfolio

Wednesday 27 October 2021

Responses to Questions taken on Notice

Question
<p>The Hon. COURTNEY HOUSSOS: Good afternoon, Minister, Mr Chandler and Ms Hogan. Thanks for your time. Minister, under the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, the secretary can issue prohibition orders, including the withholding of the occupation certificate [OC]. That is correct, is it not?</p> <p>Mr KEVIN ANDERSON: Good afternoon. That is correct,</p> <p>Ms Houssos. The Hon. COURTNEY HOUSSOS: Nine prohibition orders have been issued. Is that correct?</p> <p>Mr KEVIN ANDERSON: I will just check on those numbers for you, Ms Houssos. I will ask Mr Commissioner if he has those numbers handy.</p> <p>Mr CHANDLER: In prohibition orders, there were eight prohibition orders issued as at 20 October, and one more has been issued since.</p> <p>The Hon. COURTNEY HOUSSOS: What was the date of that last one that was issued?</p> <p>Mr CHANDLER: I do not have that date in front of me, but I will provide it to you. I think it was in the last week.</p>
<p>ANSWER</p> <p>As at 29 October 2021, 11 Prohibition Orders (PO) have been issued and nine remain in force. The last PO issued was dated 22 October 2021.</p>
<p>The Hon. COURTNEY HOUSSOS: Mr Chandler, how many interim occupation certificates are there in force in New South Wales?</p> <p>Mr CHANDLER: I do not have that number. I can look it up. I do not have that number but I would say there would be many, Ms Houssos—really, many.</p>
<p>ANSWER</p> <p>The issue of interim Occupation Certificates (OC) was removed under the <i>Environmental Planning and Assessment Act 1979</i> in 2019. This question would need to be referred to the Department of Planning and Industry who may hold this data.</p>
<p>The Hon. COURTNEY HOUSSOS: Thank you very much. Minister, I am going to give you two documents. I have copies here for the Chair and the Minister. There are currently two properties that are for sale in the Atmosphere building—and I am providing you examples of their advertisements—which do not disclose that they are subject to prohibition orders. There is nothing that shows any mention of prohibition orders and I can let you know that I spoke to the real estate agent this morning and he made no disclosure of the prohibition orders. Minister, what efforts are you going to make sure that first homebuyers—or homebuyers in general—are being informed of these prohibition orders?</p> <p>Mr KEVIN ANDERSON: Ms Houssos, under the Property and Stock Agents Act, vendors and agents have an obligation to disclose material facts relating to the property, including if it is on the asbestos register, has combustible cladding, or has a prohibition or building works rectification order in force. So I would be happy to take this particular situation on notice and have it investigated</p> <p>The Hon. COURTNEY HOUSSOS: Minister, this is only the latest example. A series of apartments was raised with you four months ago—properties that were for sale that were not disclosing this important information. What steps did you take then to ensure that homebuyers were informed?</p> <p>Mr KEVIN ANDERSON: I will take that on notice, but in relation to the issue that you just brought forward, certainly there is an obligation under the Property and Stock Agents Act for vendors and agents to disclose material facts, so I will have that looked at.</p>

The Hon. COURTNEY HOUSSOS: It is all very well for you to point them to their requirements, Minister, but I am interested to know what action you are taking. Because it is all very well to issue a prohibition order but if it is not being communicated to apartment owners and it is not being communicated in the advertisements or by the real estate agents—what action are you taking as the Minister

(interposed by point of order)

Mr KEVIN ANDERSON: Madam Chair, I am happy through the secretary to the Fair Trading Commissioner to look at what action has been taken.

The Hon. COURTNEY HOUSSOS: Ms Webb?

Ms WEBB: I do not have any information to hand on that particular matter. We will try to see what we can find by the end of the hearing or otherwise take it on notice, as the Minister mentioned.

ANSWER

From 1 September 2021, real estate agents have been required by the Property and Stock Agents Regulation 2014 (the Regulation) to disclose Orders under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* as a material fact to prospective purchasers.

Since 29 October 2021, Orders have been issued in respect of three developments and all developers have been issued correspondence requesting disclosure of all units that are unsold and currently for sale, and the real estate agents that they are using. Education letters are issued to the real estate agents reminding them of their obligations to disclose the Order as a material fact.

It is not a requirement to disclose the material fact in the advertisement of the sale of the property.

The Order for Atmosphere was issued prior to the amendments; however, NSW Fair Trading wrote to the developer and real estate agents reminding them of their obligations under the Regulation (rules of conduct).

Five properties in this development are currently listed for sale. NSW Fair Trading has written to the relevant real estate agents reminding them of their obligation under the Regulation. Since the Order was issued, and prior to 1 September 2021, NSW Fair Trading will be contacting the agents to confirm if they disclosed the Order.

The Hon. COURTNEY HOUSSOS: I might press you on that further, Mr Chandler. Minister, what is happening? I am passing you three further examples. We now have two properties in the Atmosphere building, another property in the Aya Eliza building, a second property in the Aya Eliza building that is up for lease and we have another property in the Asquith building, which has also been well publicised, that is being specifically marketed to first homebuyers. None of those advertisements actually disclose that there are serious defects on the properties. In fact, as I said to you, I spoke to the real estate agents this morning and it was not disclosed. What are you doing about it, Minister?

Mr KEVIN ANDERSON: They will be investigated, Ms Houssos, because clearly under the Property and Stock Agents Act they should be disclosing on the bill of sale if there is a prohibition order on that. But I will go back through the secretary and through the Fair Trading commissioner, Madam Secretary, in relation to that.

Ms HOGAN: Ms Webb?

The Hon. COURTNEY HOUSSOS: Ms Webb, how many investigations have been launched?

Ms WEBB: Into breaches of that provision of the Property and Stock Agents Act? I would have to take that on notice.

The Hon. COURTNEY HOUSSOS: Minister, this is not the first time that it has been brought to your attention. This is the front page of The Sydney Morning Herald four months ago. What has changed since then?

Mr KEVIN ANDERSON: As part of the Property and Stock Agents Act, Ms Houssos, they are required to do that. We will take that on notice in terms of those properties you have just brought to our attention. Certainly we will go back through and make sure that if they have done the wrong thing then they will be in breach and they will face penalties. So we will take action against those if they have breached the Property and Stock Agents Act.

The Hon. COURTNEY HOUSSOS: Yes, but this is not about individual agents, Minister. Clearly there are prohibition orders that are out there. There are prohibition orders that you are saying are supposed to be cleaning up the industry and they are not being communicated with homebuyers. What are you doing as the Minister to actually make sure that homebuyers know about these prohibition orders and know about the serious defects?

Mr KEVIN ANDERSON: We are doing everything we can in informing agents of their obligations.

The Hon. COURTNEY HOUSSOS: Okay, what is "everything we can"?

Mr KEVIN ANDERSON: There are education programs, there are campaigns, it has been talked about through the building commission and it is online and lots of social media outlets. These are areas that you have highlighted here, Ms Houssos, that we will take on notice and we will look at if they have breached the Property and Stock Agents Act under the vendors and agents sections. We will certainly take them on notice and look at that.

ANSWER

Orders in respect of The Asquith were issued prior to 1 September 2021, that is, prior to the changes in the Regulation. Correspondence was issued to the developer, which provided a list of units for sale and the names of the real estate agents managing these sales. NSW Fair Trading wrote to the agents reminding them of their obligations under the Regulation (rules of conduct).

There are currently nine units for sale and correspondence has been issued to the relevant agents reminding them of their obligations under the Regulation.

Orders in respect of Auburn Rd (aka Harrow Rd) were also issued prior to 1 September 2021. There are currently eight units for sale and correspondence has been issued to the relevant agents reminding them of their obligations under the Regulation.

Hassall St Parramatta has six units for sale. Correspondence has been issued to the relevant agents reminding them of their obligations under the Regulation.

The CHAIR: How many dogs did Greyhounds As Pets (GAP) euthanise in the last financial year?

Mr KEVIN ANDERSON: I will ask Mr O'Brien. Do you have those numbers, please?

Mr O'BRIEN: I do not have that figure to hand, but I can probably take that on notice.

The CHAIR: You do not know how many? So we know how many dogs they rehomed—which was way below what they should have—but you do not know how many dogs they killed?

Mr O'BRIEN: Not specifically through GAP. The commission reports quarterly on retirement and end-of-life outcomes for greyhounds in New South Wales. I am happy to provide those figures, but I do not have specific ones for GAP.

The CHAIR: The licence also requires Greyhound Racing NSW to make available to GWIC on request the verified outcomes of a reasonable representative sample of rehomed greyhounds. Has that ever been undertaken, do we know?

Mr KEVIN ANDERSON: Mr O'Brien?

Mr O'BRIEN: I would need to take that on notice and ask the commission the details of what has been provided by GRNSW.

The CHAIR: Thank you. In relation to the number of dogs that have been euthanised by GAP, if you could let us know not just for the last financial year but also in the previous three years, that would be very useful.

Mr KEVIN ANDERSON: Sorry, Chair, are you saying euthanised by GAP or just euthanised generally?

The CHAIR: Both of those figures would be useful, but I am particularly interested in the numbers that are being euthanised by GAP. Minister, are you aware of the recent disciplinary findings against three different greyhound industry participants for pin-firing?

Mr KEVIN ANDERSON: I do not have that information in front of me, Chair. But if you would like to elaborate on those three individuals then, certainly, we can take those on notice for you.

The CHAIR: Pin-firing, for anyone who does not know, is illegal under the Prevention of Cruelty to Animals [POCTA] Act. It involves sticking a red-hot needle into a tendon or ligament to cause tissue damage and then scar tissue to supposedly tighten the joint for racing, presumably to make the dog race quicker. There were three warnings, as reported in *The Greyhound Recorder*—perhaps I could give them to you separately, rather than naming those individuals here. But I could name them if you would like me to. The practice has been prohibited for 24 years.

ANSWER

I am advised by Greyhound Racing NSW (GRNSW) that the following figures are for Greyhounds As Pets necessary euthanasia in the past three financial years:

- 2018-19: three greyhounds (two on medical grounds and one on behavioural grounds)
- 2019-20: zero
- 2020-21: three (one on medical grounds and two on behavioural grounds)

GRNSW noted that necessary behavioural euthanasia relates to human-aggressive greyhounds that had bitten and would be considered dangerous by Council.

I am advised by the Greyhound Welfare & Integrity Commission (the **Commission**) that the following figures are for euthanasia in the past three financial years, including medical euthanasia, at the racetrack, behaviourally unsuitable and failed rehoming attempts:

- 2018-19: 635
- 2019-20: 520
- 2020-21: 471

The Statutory Review of the *Greyhound Racing Act 2017* (Statutory Review) included a review of GRNSW's Operating Licence, which found that GRNSW demonstrated compliance with a majority of its specific obligations under the Operating Licence.

This question should be directed to Greyhound Racing NSW.

The CHAIR: In October 2020 you stated that then new Code of Practice had the highest welfare standards in the country and you have said that New South Wales can "take the lead". Do you consider a 44 per cent increase in deaths on tracks taking the lead?

Mr KEVIN ANDERSON: Chair, I do not believe those numbers are correct. I am happy to take them on notice. But the numbers that I have significantly point toward a downward trend when it comes to those numbers over the last couple of years. That is on the back of the track safety standards. That is on the back of the welfare and integrity that Greyhound Racing NSW and the whole industry and participants are embracing. These people love their dogs. They love their greyhounds, Chair, and they would not want to see them injured. So anybody who does go down that path, they should be banned. They should face the full force of the law and should not be allowed to participate in the industry

The CHAIR: Are you aware that from January to March 2021—the first quarter of this year—GWIC reported, "The catastrophic injury rate this quarter is the highest reported since Q1 2019"? Catastrophic injury is that which results in sudden death or requires euthanasia. What are we doing wrong that this is still occurring on our tracks?

Mr KEVIN ANDERSON: In 2019-20, and when you look at other jurisdictions, Greyhound Racing NSW reported 69 racing fatalities compared to 52 injuries in New South Wales. That is trending downward. That is as a result of the welfare and integrity and the track safety standards that are being put in place now, given the work that is being done right across New South Wales. We are seeing some of that work now with the straight track at Richmond, which is a much safer option. We are seeing tracks being upgraded where the corners are being fixed to adjust the camber. You need to understand, Chair, as you do—

The CHAIR: I do.

Mr KEVIN ANDERSON: —that these animals are the Formula Ones of the—

The CHAIR: Well, we may disagree on that. Sorry, because time is limited, can I just point out to you that New South Wales has had the highest number of deaths for 2020-21 so far, up until 26 October 2021. New South Wales has had 54 greyhounds die this year already. The next highest is Victoria with 37. How do you marry that up with the idea that we have the highest welfare standards in Australia

Mr KEVIN ANDERSON: I do not have the veracity of those numbers, Chair. But I am happy to take your numbers and put them against mine and we will try to see if we can find the right answer. But I firmly believe, just lastly, that the track safety standards that Greyhound Racing NSW is implementing, whether it be through Grafton

all the way to Broken Hill and all places in between, significant work is being done, like the whole of life electronic tracking that we announced not so long ago.

The CHAIR: Which we may talk about, because it does not actually do the trick. But we will come back to that.

Mr KEVIN ANDERSON: Thank you, Chair.

ANSWER

These questions were answered on pages 12 and 13 of the hearing transcript.

The Hon. JOHN GRAHAM: Thank you, Chair. Minister, I might return to where we were when my colleague was putting to you those five properties—all examples of places where buyers, including first home buyers, might not have been made aware of the condition of those properties. I just want to be clear, firstly, what you have agreed you will do. You variously indicated you would have it investigated, or you would have it looked at, or you would take it on notice. Just to be clear, we do not want you coming back in 21 days just saying, "Look, I'm providing an answer on notice." Who will investigate this? What will they do, given the evidence that has been put in front of you by my colleague?

Mr KEVIN ANDERSON: Thanks, Mr Graham. If people are in breach of the Property and Stock Agents Act in relation to notification then they will be investigated. I will ask the Fair Trading Commissioner what can be done. But I agree with you, Mr Graham. If they are doing the wrong thing, then agents do need to be held to account.

The Hon. JOHN GRAHAM: What I want to know is, what have you committed to today? You have said you "will have it investigated", not "if they are doing the wrong thing we will investigate". You will have the evidence that has been put in front of you investigated. Is that what you have committed to today?...

...**The Hon. JOHN GRAHAM:** That is what you will do. Now I want to ask: What have you done? Here are some new examples, but this has been referred to in the media very publicly in relation to other cases. Some of these were four months ago. What did you do? Were those investigated? What action did you take at that point? Separate to what you will do, what have you actually done when these have been public?

Mr KEVIN ANDERSON: I will ask the Fair Trading Commissioner to respond to that if I can, Mr Graham.

Ms WEBB: I have asked my team for some information just to see if we are already looking at these monies, and if I can get that before the session finishes I will certainly let you know. I do not have any information to hand about specific investigations but, as the Minister previously mentioned, we have been alerting real estate agents to the fact that they would be in breach of the Act if they continue not to inform purchasers, and we will continue to do that.

The Hon. JOHN GRAHAM: Ms Webb, if you can come back in the session with some information, that would be good. These were in the paper very publicly. Minister, to your knowledge, there has been no investigation commenced that you have requested. You made no request when these were public.

Mr KEVIN ANDERSON: I will get that information to you, Mr Graham. But, again, this is why the property services commissioner's role will be so important—

The Hon. JOHN GRAHAM: You would remember if you had requested it though, would you not?

Mr KEVIN ANDERSON: We will make sure that if there is an investigation underway we will come back to you on that, but the property services commissioner's role is part of that process to make sure that real estate agents continue to do the right thing

ANSWER

This question has been answered above.

The Hon. COURTNEY HOUSSOS: You do not need to engage someone else. The peak body for real estate agents is telling you there is a problem. It was raised four months ago on the front page of a major metropolitan newspaper, and it appears that your Government's response to protect apartment owners from buying into deeply defective buildings is to say, "We'll send a couple of emails to real estate agents." Minister, do you know how many apartments have been sold in these buildings over the past four months?

Mr KEVIN ANDERSON: I do not have those numbers, Ms Houssos, but we can take it on notice and come back to you.

The Hon. COURTNEY HOUSSOS: Are you tracking those numbers?

Mr KEVIN ANDERSON: I do not have that information, Ms Houssos, but I will take it on notice and come back to you on that.

The Hon. JOHN GRAHAM: You should have it though, shouldn't you? Is that not the sort of information you should have at your fingertips, Minister?

Mr KEVIN ANDERSON: I can ask the Fair Trading Commissioner if she has those numbers at her fingertips.

Ms WEBB: The numbers of apartments sold, I don't have. I have now got some information about letters having been written to estate agents in relation to the Residential Apartment Buildings (Compliance and Enforcement Powers) [RAB] Act orders. It was done by requesting details from all agents that were selling property in the developments from the developer, and then we wrote letters to all of those advising them of the requirements. We continue to write that information out, specifically to those agents. But we can find some details of how many properties have in fact been sold since the orders were made and provide that on notice

ANSWER

As at 29 October 2021:

- Atmosphere – five units have been sold since Orders were issued
- Auburn Rd/Harrow Rd – two units have been sold since Orders were issued.

Mr CHANDLER: There is an obligation on vendors that if there are known defects in the properties for sale they disclose those properties for sale. I can go and find the exact wording of the legislation for you. I do not have it at my fingertips. But vendors are required to disclose if they have known defects in their properties that are for sale. My first port of call on the questions you have raised is that I will have a look at the contracts for sale to see what is in the contracts for sale. So before I jump in, I am just going to have a look at a couple of the contracts for sale as a starter.

The Hon. COURTNEY HOUSSOS: Mr Chandler, you mentioned earlier that you were talking to someone about this yesterday.

Mr CHANDLER: Yes, I was involved in another project yesterday where there was an agreement developed between the developer and the owners corporation to settle a litigation. It is not a matter that I was specifically called into, but I went and had a look by way of interest. I wanted to make sure that the owners corporation understood that they should note that agreement that they had just reached with a developer, and that they should acknowledge that agreement on the next minutes of the executive committee and make that available to all of the owners so there is no way of avoiding it in the event of an incoming purchaser. Their solicitor should be able to do a due diligence. What they do is they call in all the body corporate documents. I just wanted to emphasise to that particular committee that in fact make sure that you record this agreement that you are entering into on the executive committee minutes and make sure that is available to every owner.

The Hon. COURTNEY HOUSSOS: Minister, you might need to take this on notice. Can you see whether the agents in those five examples were notified?

Mr KEVIN ANDERSON: I will take that on notice, Ms Houssos, and I think the Fair Trading commissioner is also trying to look at expanding on that last answer.

ANSWER

The following developments had Orders issued prior to 1 September 2021, however the developers were contacted to request any selling agents or units for sale they currently had:

- Asquith, 79 Pty Ltd as trustee for Asquith 79 Unit Trust – 417 Pacific Hwy Asquith
- SOPA, Australia Ave & Icon Co – Opal Tower
- Hassall Developments - 9 Hassall St, Parramatta
- Maryland Developments – 9A Cooper Park Rd Bell
- JKN Hills - 299 Old Northern Rd, Castle Hill
- Atlas Capital & Equities – 259 Condamine St Manly Vale

Where units were listed for sale in those developments, NSW Fair Trading issued letters to the agents reminding them of the obligations under the Regulation (Rule of Conduct).

Since the reforms to the Regulation came into effect, three developments have had orders issued: on 15 October 2021 (occupied building), 21 October 2021 and 22 October 2021.

These developers have been contacted to request a list of units for sale and the selling agents. The agents will also be contacted by NSW Fair Trading.

Mr KEVIN ANDERSON: So, Mr Banasiak, the property services commissioner will report directly to me and through to the secretary. What they will be able to do will be, first and foremost, look at the role of the regulator, look at the real estate industry, which is a significant economic contributor right across New South Wales, to basically look at some of those issues that we have talked about here today—just like the model that was built on the Building Commissioner where the Building Commissioner came in, set up a small team and then looked at that problem. We will be doing the same model with the property services commissioner. This is a very important role, Mr Banasiak. We are taking this very seriously.

The Hon. MARK BANASIAK: Yes, but that is not a power. Looking at something is not really a power. So once they have finished looking at it, what specific powers or enforcement actions will they be able to take, like the Building Commissioner has now: He can issue prohibition orders, stop work orders, and a whole range of things. What specific powers, regulatory powers, will the commissioner have, other than looking at things?

Mr DAVID SHOEBRIDGE: X-ray vision.

The Hon. MARK BANASIAK: Perhaps X-ray vision.

Mr KEVIN ANDERSON: Well, they might have X-ray vision. That would be good.

The Hon. MARK BANASIAK: Yeah.

Mr KEVIN ANDERSON: What that person will be doing in the first instance—let us get their feet under the desk and then we will look at what is required. And, just like the commissioner, they will be given the resources to do that role. So they will report directly to me. They will sit as a commissioner. They will have the powers that will be required to do the work they need to do. That will evolve as time goes on.

The Hon. MARK BANASIAK: Will it be legislated?

Mr KEVIN ANDERSON: It does not need to be legislated, Mr Banasiak. Again, this is a role that we take very seriously. We will let the commissioner look at what needs to be done, the resources, the work, the plan and we will appropriately resource.

The Hon. MARK BANASIAK: Okay. What will be your remuneration for this commissioner?

Ms HOGAN: I have to take the number on notice, but it is a deputy secretary level role

(discussion)

The Hon. MARK BANASIAK: Will part of the role be to work with the expert panel or act as an intermediary between you and the expert panel?

Mr KEVIN ANDERSON: That person will sit on the Property Services Expert Panel where there are approximately 15 or 16 organisations across the real estate property sector in New South Wales who currently sit on that panel, chaired by Chris Duggan. The property services commissioner will sit on that panel and will work with them.

ANSWER

The Property Services Commissioner (Commissioner) will be remunerated in line with the *Government Sector Employment Act 2013* (the GSE Act).

The GSE Act provides that the remuneration package of a Public Service senior executive must be within the range determined under the *Statutory and Other Offices Remuneration Act 1975* (the SOORT Act) for the band in which the executive is employed.

The Commissioner will be employed as a Band 3 senior executive. The range for Band 3 senior executives is \$354,201 to \$499,250 per annum.

The Hon. DANIEL MOOKHEY: It is still helpful that you are hiring 40 new inspectors. When do you expect these inspectors to be in place?

Mr KEVIN ANDERSON: That recruitment process is underway at the moment and they are coming on board as they graduate. So those positions will be filled as they graduate.

The Hon. DANIEL MOOKHEY: But when?

Mr KEVIN ANDERSON: I will get Madam Secretary to—

Ms HOGAN: I think we have already commenced recruitment for those particular roles but I am not sure where we are up to with it. Ms Webb?

Ms WEBB: We have commenced recruitment and identified a number of really good candidates. They will start their training courses quite soon. We have to do them in batches; so people will come on over the coming months as we get the training sorted out for them and they can be ready and available to start work.

The Hon. DANIEL MOOKHEY: That is helpful but it still does not answer my question. When will all 40 be in place?

Mr KEVIN ANDERSON: How long does the training take, Ms Webb?

Ms WEBB: Mr Williams is probably best placed to answer exactly that. I think the plan is to have some of them, depending on their experience, start some work either while they are still doing their training; others might need to finish their training first. So it will be quite—

The Hon. DANIEL MOOKHEY: On notice, can you tell us when you expect the last of the 40 inspectors to be out?

Ms HOGAN: Are you looking for completion?

Mr KEVIN ANDERSON: Completion, yes.

The Hon. DANIEL MOOKHEY: That would be really helpful.

Ms HOGAN: Okay, we can do that.

The Hon. DANIEL MOOKHEY: Are they going to be put into the SafeWork inspectorate or are they also going to be included in the sort of general secretariat that has been formed by Better Regulation? Are they going into your general division as per your restructure or are they being dedicated purely to SafeWork-style inspections?

Ms HOGAN: My understanding is they would be dedicated to SafeWork inspections, with the exception that all of our inspectors, regardless of division at the moment, are making a contribution to COVID-safe inspections

ANSWER

The 2021 SafeWork NSW recruitment campaign commenced on 30 July 2021 and closed on 13 September 2021. Over 1,200 applications were received during the campaign.

Following the completion of a thorough assessment process, offers will be made to successful candidates in December 2021 for commencement in January to May 2022. There will be multiple cohorts of new starters, all of whom are expected to be authorised as Inspectors by the start of the September 2022.

The Hon. MARK BANASIAK: Has your office specifically been told by the Real Estate Institute that they need to be filled with confidence that this new panel that you have set up is going to be more than what the Real Estate Reference Group was?

Mr KEVIN ANDERSON: I can tell you that under a previous regime of the Real Estate Reference Group—it is quite different to the Property Services Expert Panel that we have put up now, with chair Chris Duggan, in relation to providing advice. That is why the property services commissioner will sit in on that panel and look to address some of those issues that the Hon. Courtney Houssos and the Hon. John Graham addressed earlier.

The Hon. MARK BANASIAK: Okay. Picking up on that, and through you, Minister, can I just direct questions to Ms Webb? In previous budget estimates, in line with questioning from the Hon. John Graham around continuing professional development being able to be completed within three-and-a-half minutes, Ms Webb stated something to the effect of, "We have certainly found nothing that suggests that you could do it in that sort of time frame." However, Ms Webb, were you not sent an email on 28 July 2020 from the Real Estate Institute, which included a link to a YouTube video showing a registered training authority or organisation actually performing this training within three-and-a-half minutes?

Ms WEBB: I think my previous evidence was that we needed evidence that the training could be done. We certainly looked at that YouTube video, but that, we would believe, was not conclusive of what the allegation was there.

The Hon. MARK BANASIAK: What further investigation did you do beyond looking at that video? Given that video showed that it could be done, what investigation did you do to ascertain whether it extended beyond that registered training organisation?

Ms WEBB: I think I was just trying to say that we did not accept that the video showed that it could be done. I will have to take it on notice and ask the investigation team exactly what other steps they take and let you know

ANSWER

NSW Fair Trading conducted a 'sample of 12 Registered Training Organisations (RTOs) offering online CPD training to real estate agents in NSW. The assessments were based on criteria set out by NSW Fair Trading in the Director General's Guidelines for Continuing Professional Development and the Units of Competency identified by the Australian Skills Quality Authority (ASQA).

Assessments identified the majority of RTOs are providing courses with content that satisfies criteria. However, five RTOs were identified as providing courses that could easily be completed in less than 30 minutes. One RTO with a course may not have appropriate learning outcomes was identified.

Issues identified with the electronic learning systems used by listed RTOs were raised with the operator. The operator gave assurances that it would review its systems and endeavour to introduce appropriate mechanisms to address these issues.

The CHAIR: I turn now to the Subsidence Advisory NSW in relation to mining subsidence, which I flagged in an earlier session. Let me know who to direct these questions to. I have got a number of questions about—sorry?

Mr KEVIN ANDERSON: Fire away.

Ms HOGAN: Sorry, I was just saying go to Ms Webb initially.

The CHAIR: Sure. I will start with Ms Webb. By all means, Minister, if you want to cut in, please do. Ms Webb, who is the chief executive of Subsidence Advisory NSW?

Ms WEBB: That is Mr Joe D'Ermilio.

The CHAIR: How were they appointed?

Ms WEBB: I think he was appointed laterally for that position when we had the reorganisation of the Better Regulation division.

The CHAIR: But he is effectively a public servant, yes? He is within the department employees, not a separate—

Ms HOGAN: That is right.

Ms WEBB: He is a departmental employee, yes.

The CHAIR: How long is he appointed for? Is he appointed just as an employee or is he appointed for a period of time?

Ms WEBB: It is a permanent appointment

The CHAIR: What is the minimum amount that is required in the mine subsidence fund?

Ms WEBB: I would have to take that level of detail on notice.

The CHAIR: And also whether the minimum amount required in the fund has increased or decreased over time.

Ms WEBB: It depends what time frame. I will take it on notice, but it might just be helpful because there was quite a substantial change to the fund in 2017-2018. Would you like it since that date?

The CHAIR: Since the date that it changed. That would be useful. Since Subsidence Advisory NSW took over from the NSW Mine Subsidence Board, the total leviable contribution has decreased by what looks to be just over \$750,000. Can you explain why that is?

Ms WEBB: Again, I will elaborate on notice. Very briefly, my understanding was that when the law changed, the requirements for the amount we needed in the fund changed as well. Therefore, the levy could be decreased.

The CHAIR: The levy has been decreased just recently in a new regulation. Would you be aware of that?

Ms WEBB: Yes, that is right. It is reviewed regularly.

The CHAIR: It would be useful to know why that was and on what basis that gets reviewed, because it does not seem clear from the regulation or the enabling Act either. Are you able to tell me how many times the chief executive has made payments from the fund to reimburse Tahmoor Coal for compensation payments for mine subsidence?

Ms WEBB: I do not think I have got that exact number here. I would have to take that on notice.

The CHAIR: Are you able to also tell me how many properties have been purchased as a result of subsidence claims?

Ms WEBB: Overall?

The CHAIR: Overall or by year. If you are taking it on notice, it would be useful.

Ms WEBB: I think we will take it on notice, if we can do it by year.

The CHAIR: If you could tell me how many have been acquired through a compulsory acquisition process and how many of those properties have been sold, that would be useful. I take it you will have to take that on notice.

Ms WEBB: Yes, I would.

The CHAIR: Importantly, how many properties have been sold at a profit?

Ms WEBB: Yes, we can definitely add that in.

The CHAIR: Minister, are you aware that the coal mine subsidence fund makes a profit not just from investments that it makes using money from the fund in various places but also through basically flipping properties? The chief executive will purchase a property that is impacted by subsidence, fix it up and then sell it for a profit. Are you aware of that happening?

Mr KEVIN ANDERSON: No, I am unaware of that happening.

The CHAIR: Perhaps I could ask you to have a look at that. As I understand it, although the profit gets booked to the total amount of the fund, so do the losses from the investments. The end impact of that is that the coal mining companies who are required to pay into that fund are then required to pay less because of that property flipping. I think you can probably understand where I am going with this, but perhaps I will leave it there for today and ask you to have a look at it. Perhaps we could have a chat at some point separately. I will separately put in some detailed questions as supplementary questions.

ANSWER

Levy reviews and minimum amount

All coal mine operators are still required to pay a levy towards the Mine Subsidence Compensation Fund. Subsidence Advisory NSW (SA NSW) continues to use the fund to compensate claims caused by subsidence from legacy mining activity.

The levy applied to NSW coal mines and the projected fund balance is informed by actuarial reports. Actuarial studies are commissioned every three years to provide updated projections and evaluation of later years' levy requirements. The levy is subject to change to adapt to findings detailed by the actuarial studies. The most recent actuarial report was completed on 15 March 2021.

Changes to the Fund

Following the passage of the Coal Mine Subsidence Compensation Bill 2017 in the NSW Parliament, reforms to the *Mine Subsidence Compensation Act 1961* took effect, including the enactment of the *Coal Mine Subsidence Compensation Act 2017*.

The most significant change is that operators of active underground NSW coal mines are financially accountable for the subsidence damage they cause.

As a result of the 2017 reforms, which introduced the responsibility for mine operators to directly compensate for subsidence damage caused by their operations, the levy was reduced as it primarily funds compensation claims in historical mining areas. Following the 2017 changes, the level of the fund has decreased. The level to be held in

future will be informed by actuarial studies and will be informed by variability of fund payments and investment income.

Since the commencement of the *Coal Mine Subsidence Compensation Act 2017* (Act) on 1 January 2018, the Chief Executive SA NSW has made payments to Tahmoor Coal Pty Ltd for 58 claims in accordance with the transitional provisions provided by Clause 11 of Schedule 1 of the Act.

The Coal Mine Subsidence Compensation Bill 2017 identified that for mine operators who would now need to meet compensation costs for damage caused by their operations, the costs will outweigh the savings accruing from the reduced levy. As a result, transitional arrangements were introduced.

NSW Government was committed to supporting industry during the changes, which is why transitional arrangements allow payments from the Fund to reimburse these mines for compensation payments over a five-year transitional period.

The transitional period was intended to allow mine operators to prepare and put in place the necessary arrangements for the new compensation framework.

Properties purchased as a result of subsidence claims

Since 2017, 12 properties have been purchased because of mine subsidence damage.

Year	Number of properties purchased
2017	2
2018	4
2019	2
2020	2
2021	1

Compulsory acquisition

Properties are not acquired through compulsory acquisition. SA NSW manages claims in accordance with the Approved Procedures under Act.

In circumstances such as extensive damage or circumstance, homeowners may be offered the option of demolition and rebuild, or to sell the property to the NSW Government. Where properties are to be demolished and rebuilt, homeowner's retain ownership of the property and receive monetary compensation via staged payments. Where purchasing the property is considered, the Australian Property Institute is engaged to complete an independent property valuation. In addition to property value, there are supplementary costs associated with the purchase of a property, including remediation works and relocation costs to assist property owners.

Where the property is purchased, the damaged structure is generally demolished, and ground remediation works completed. The property is then sold via Property NSW as vacant land. Where a property is purchased that does not require demolishment, repairs are based on a like for like principle, to restore the property to its condition pre-subsidence impacts. These properties are also sold via Property NSW.

Profit/loss arising from the sale of properties

Of the 12 properties purchased by SA NSW since 2017, six have been divested. The net loss of purchasing the six properties is negative \$2,005,519.82.

No profit has been accrued from any properties purchased since 2017.

The Chair: In relation to the minimum track standards for greyhound racing, I understand that Greyhound Racing NSW undertook a statewide safety audit of all of the greyhound racing tracks against the New South Wales greyhound track minimum standards. In February of this year you advised via questions on notice that you expect all of the tracks to be compliant by 2023. Are you able to tell me which tracks are not yet compliant?

Mr KEVIN ANDERSON: I do not have those tracks at hand, but I can certainly get them to you. What I can say is that there are a significant number of tracks that have been slated for upgrade to cater for the capital grants program of \$30 million. In addition to that, as part of the operating licence of Greyhound Racing NSW, there will be an extra \$5 million over the next five years for infrastructure of grounds around as well. Participants will be able to at least have upgraded modern facilities, such as kennels and things like that, to look after not only the welfare of animals but it is important that people also have good facilities—so significant investment in those tracks as well as the infrastructure around the tracks to provide a better experience for participants, as well as the welfare and integrity of the greyhounds.

The CHAIR: Can you tell me when the results of that audit are to be released publicly?

Mr KEVIN ANDERSON: I will come back to you on that.

The CHAIR: If you could give us, on notice, an update of the progress of all track upgrades that have been funded through the Greyhound Racing Capital Grants Programs, that would be great. If the tracks are not compliant prior to 2023, what are the consequences for those tracks?

Mr KEVIN ANDERSON: It is my expectation that they will be. There are sufficient funds in the capital grants program to be able to undertake that. There is that track strategy that has been released by Greyhound Racing NSW. It is my expectation that will be done in that time frame.

ANSWER

I am advised by Greyhound Racing NSW (GRNSW) it is their intention that all upgrades will be completed by the end of 2023.

Following the finalisation of the minimum track standards, track audits were completed by GRNSW in early 2021. Any publication of the audit results is a matter for GRNSW.

GRNSW is currently undertaking a number of minimum track standards upgrades, prioritised in order of importance.

Of the projects approved under the Capital Grants Program as at 30 September, GRNSW has provided the following status updates:

- Gosford track remediation – Completed
- Gunnedah track remediation – Completed
- Gunnedah (variation) – Completed
- Tamworth track remediation – Completed
- Wentworth Park track and infrastructure remediation – Completed
- Taree air conditioning – Completed
- Wauchope air conditioning – Completed
- Kempsey air conditioning – Completed
- Grafton track re-development – Completed
- Bathurst track irrigation works – Completed
- Kempsey infrastructure works – Completed
- Richmond straight track development – Completed

Future funding will be rolled out in line with Greyhound Racing NSW's Strategic Plan.