

Subject: Inquiry into Australia's Mandatory Last Resort Home
Warranty Insurance Scheme - Senate Inquiry

> Dear Committee Secretary
> Senate Economics Committee
>
> Attached please find Building Action Review Group Inc (BARG) letter
to
> the Senate Economics Committee dated 19 April 2008 and submissions to
> the above Senate Inquiry - refer to above four attachments.
>
> We have numerous other valuable documents and correspondence which
are
> attachments to these submissions and relate to the
conduct/misconduct
> of Home Owners Warranty Insurers and relevant authorities who should
> be monitoring the insurers as prescribed under the Home Building Act.
>
> We regret that we have missed the opportunity to personally address
> the Committee. However, we will be pleased to assist the inquiry by
> making available documentary evidence which support our claims.
>
> Yours faithfully
>
>
>
> Building Action Review Group Inc

The Secretary
Building Action Review Group, Inc
PO Box 503
Drummoyne NSW 2047

19th April 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via e-mail; economics.sen@aph.gov.au

Re: Inquiry into Australia's Mandatory Last Resort Home Warranty Insurance Scheme

We have just been informed of your inquiry and regret that this is a very late submission. However, we trust you will understand that its significance cannot be overstated.

BARG is a voluntary, unfunded consumer advocacy which has been operating and assisting vulnerable building consumers in New South Wales for the past 20 years.

We welcome the Senate Economics Committee inquiry into Australia's Mandatory Last Resort Home Warranty Insurance Scheme (HWI) and hope that there will be a positive outcome in the interest of Consumers, builders and the economy.

Due to time constraints, BARG provides you with a copy of relevant chapters it submitted to the New South Wales Legislative Council, General Purpose Standing Committee (GPSC No.2) Inquiry into the operations of the Home Building Service.

If requested, BARG will provide you with a copy of our submission to the Joint Select Committee on the Quality of Buildings (Campbell Inquiry July 2002). Attachments of the above submissions to these inquiries can also be mailed on request.

Yours Sincerely

Building Action Review Group Inc.
Executive Committee

Encl;

PREFACE

Purpose of this Submission

The Building Action Review Group Inc. (BARG) thanks the General Purpose Standing Committee for the opportunity to address the Committee and seek leave to give sworn evidence of its' members experience on the operations of the Home Building Service of the Office Fair Trading, and in particular:

- a) The builder licensing system,
- b) The Home Warranty Insurance Scheme,
- c) The resolution of complaints,
- d) The exercise of disciplinary powers,
- e) The enforcement of relevant legislative and regulatory provisions,
- f) The establishment of a Home Building Advice and Advocacy Centre, and
- g) Any other relevant matters.

This inquiry is sincerely welcomed and it is hoped that there will be a positive outcome in the interests of building consumers, builders and the economy.

This submission is by the Building Action Review Group Inc. (BARG) an association of consumers concerned about residential building problems. BARG is a voluntary, non-funded organisation and due to the very limited time and resources available to prepare this submission, it should only be treated as a preliminary overview.

Any information omitted is due to the limited time available to enable us to put all matters to the table and should not affect the overall endorsement or otherwise of this submission.

The purpose of this submission is to indicate to the General Purpose Standing Committee the areas that need to be investigated and to identify the inadequacies and inefficiencies which do not as a consequence result in an appropriate level of protection for consumers, and impacts on the Home Building Service and Home Warranty Insurance Scheme.

BARG's submission is based on information obtained from consumers (BARG members) who have had first hand experience with the complete lack of enforcement of regulation in the building industry, the non compliance and non enforcement of legislation by the regulatory authorities.

Houses, units and town houses are sold and occupied despite serious structural defects, inappropriate building standards and inadequate certification.

The purchase of the home is the most significant purchase a consumer makes involving the largest financial obligation during a person's lifetime.

The effect on the consumer of shoddy workmanship is therefore far greater than the impact of other purchases.

The need to protect consumers from unscrupulous or inefficient builders was recognised in the 1971 Builders Licensing Act, which established the New South Wales Licensing Board and despite all the amendments which have been made and all of the legislation which exists, **the HBA 1989 and Building Regulations are not strictly adhered to and enforced.**

Regulations governing home building and homeowner's building insurance are failing to protect people building, renovating and/or buying their home.

BARG will provide some examples in this submission, of the deficiencies in the systems and processes used in administering the legislation, particularly the irregularities and inappropriateness in the licensing of unqualified builders and Companies. It is clear that the criteria for obtaining and renewing licences is too open...licences are too easy to obtain.

BARG finds it difficult, almost impossible, due to the lack of resources and daily workload to advise and assist the many consumer victims to prepare appropriate submissions, bearing in mind many consumers are of ethnic background and cannot speak and write English fluently.

BARG is happy to provide all the evidence in our possession to support each of the claims it makes, including the names of members affected by each problem and BARG has the authority from those.

1.0 INTRODUCTION

Building Action Review Group Inc. (BARG) is the **only real voice of building consumers, formed** to assist and help consumers to fight the unjust building system.

Most consumers are unaware of their rights and entitlements in building matters and have nowhere to go to be assisted when in need of help.

1.1 Origin of BARG

BARG came into existence through the efforts of several consumers who lost hundreds of thousands of dollars through arbitrations on building disputes, without gaining the money needed to rectify their homes.

These individuals sought to bring to the attention of the public and the Government the injustices of the unconscionable/mandatory arbitration clauses in residential building contracts and the unjust arbitration system and in doing so found many other people had suffered a similar fate.

As more and more people told their stories a pattern began to emerge that extended beyond arbitration to the building system in general.

BARG informally came into existence when these consumers banded together in October 1988.

1.2 Legal status

BARG was formally incorporated on August 20, 1990.

1.3 Membership

BARG receives numerous calls daily from building victims, not only from NSW, but from other states predominantly from Victoria.

BARG Members are a small proportion of the people of New South Wales who have been adversely affected by the building industry. (Refer to the Office of Fair Trading Annual Report and CTTT total number of complaints registered).

BARG's overwhelming need to respond to consumers pleas for help, to confer and assist consumers, answer telephone queries, attend to incoming and outgoing urgent correspondence, prepare and organize weekly BARG meetings, attend on site meetings, assist consumers in Tribunal hearings, Quarterly Meetings with HBS, Meeting with Chair of Scheme Board, etc. such work load does not allow us enough time to cater for and assist a large number of consumers. Often we have referred consumers to contact directly

the HBS, former General Manager, Mr. Le Compte and Acting General Manager Mr. Steve Griffin and or/ the investigation manager, Mr. Les Wrigley, solicitors, expert consultants, their MP's and other relevant authorities for assistance.

Many people do not pursue complaints because they don't even know about the existence of the OFT, others are advised by solicitors *"that's just the way the system operates and therefore better to pay and get on with your life"*.

A number of people are too scared to talk. Others such as university lecturers, doctors, a retired judge and even a couple of solicitors have contacted us to support BARG, but wish to remain anonymous. BARG members who have contacted the OFT are advised to lodge a claim to the CTTT.

1.4 Past Activities and Summary of Events

Since its inception in October 1988, BARG has sought to fairly represent the interests of building consumers in a wide variety of problems.

It has been forced into this role due to the shortcomings in protecting consumers by the former Building Services Corporation, Department of Fair Trading, today re-named Office of Fair Trading and the operations of Home Building Services.

The name of the regulatory bodies has changed, but unfortunately not the inadequate infrastructure.

Despite an absence of representation on relevant bodies, BARG has worked hard for changes in the building industry that has and will benefit all Australians.

BARG has made submissions to a series of NSW and Federal building industry inquiries:

- The Inquiry into Arbitration Clauses in Residential Building Contracts (1989).
- The Roger Gyles Royal Commission into Productivity in the Building Industry in New South Wales (1992).
- The Dodd Inquiry into NSW Building Services Corporation (1993).
- The Nationwide Building Industry Review by the Trade Practices Commission (1993)
- The Ministerial Inquiry into Outstanding Grievances with the Building Services Corporation (1995). Refer to the Crawford Inquiry Report.
- The National Review of Home Builders Warranty Insurance and Consumer Protection 2002.
- The Joint Select Committee on the Quality of Buildings July 2002

- Legislative Council Standing Committee on law and justice.
Report No 20 on the Home Building Amendment (Insurance) Act 2002
- The Richard Grellman NSW Home Warranty Insurance Inquiry September 2002

Although, over the years the Government has acknowledged the need of Reforms to better protect consumers by commissioning the above inquiries into the building industry, it is clear that very little has changed, if anything **it has become even worse.**

Why?

We believe the failure of the various inquiries lies in their failure to set clear and achievable objectives and in failing to act on the recommendations, investigate the complaints and to obtain clear sworn evidence and act on it.

The above inquiries and reports have cost taxpayers millions of dollars but have failed because some recommendations were **completely ignored or sparingly implemented.**

Why??

Let's examine some Recommendations of recent Inquiries and how the **Home Building Service (HBS) was established.**

1. The Inquiry into the Quality of Buildings (Campbell Inquiry) - July 2002.

The Joint Select Committee on the Quality of Building found: -

“ As the Committee has already observed, it does not believe the Department of Fair Trading is performing an effective leadership role in the home building industry.....the Committee does not see that it is an appropriate vehicle to implement the required changes.

The only way to give this paramount consumer item the focus it warrants is through a dedicated public sector unit, to be called The Home Building Compliance Commission”. (Refer Page 26 of the Report)

Therefore, some of the Inquiry's key recommendations were:-

Recommendation No: 1

“That a Home Building Compliance Commission be established to oversee Home Building Regulations.” Refer Attachment 1.

The Commission was to be **separate from the Office of Fair Trading** and responsible to the Minister for Fair Trading.

Recommendation No: 2

“The Committee recommends a performance audit of the HBS be undertaken by the NSW Audit Office after 2 years of operation.” Refer Attachment 1.

- It is now **three years** since the establishment of the HBS, and although the HBS performance has been inefficient and ineffective, **NO AUDIT** has been carried out as yet. (We are sure that you are aware of OFT/HBS ineffective and inefficient performance through the numerous copies of letters you receive from consumers victims.)

Recommendation No: 3

“The Committee recommended that a Home Building Advice and Advocacy Centre be established as a non-government organisation to provide a one-stop advice centre on home building disputes funded by the Commission (HBS)”. Refer Attachment 1

- To date **NO** Home Building Advice and Advocacy centre has been established.

2. A further inquiry (June 2002)

The National Review of the Home Builders Warranty Insurance and Consumer Protection by Professor Allen has also recommended the following:-

Priority: High

a) A Home Owner’s Advocacy Group. (Refer page 46)

“Fund a national consumer advocacy group (for example, ACA or BARG) to establish a small dedicated office to help home buyers complainants.....” **Refer Attachment 2.**

This has also been completely ignored.

b) Investigate BARG allegations.

“..... Investigate and reply to BARG’s allegations... of say a dozen BARG case studies and what could be done if anything to avoid such episodes in the future.”

Refer page 38 Attachment 3.

This investigation has NOT been carried out. Why?

3.0 TERMS OF REFERENCE

3.1 (a) The Builder Licensing System

The Office of Fair Trading (OFT) and Home Building Service (HBS) are the Regulatory Authorities in New South Wales and have powers to licence and discipline builders to protect consumer rights.

These powers are designed to minimise risk and prevent losses to consumers.

There is complete reliance among consumers that licensing of builders is based on competence and therefore affords the predicated protection against sub-standard building works.

The OFT is the principal axis with the express objects and functions of the Director-General under the Home Building Act (HBA) 1989.

The purposes of government regulation of the building industry are essentially those stated in section 106 of the HBA Act 1989 namely:-

- (a) To promote and protect the interests of owners and purchasers of dwellings including the purchases of kit homes) and users of water supplies, sewerage systems gas, electricity, refrigeration, and air conditioning.
- (b) To set, assess and maintain standards of competence of persons doing residential building work or specialist work.
- (c) To complement the work of industry organisations, public authorities and educational institutions in promoting standards.
- (d) To give general advice and guidance to the public.
- (e) To monitor the operation of insurance provided for the purpose of this Act.

The above objectives of the OFT need to be maintained and complied with if appropriate consumer protection is to be achieved.

Is the Director General effectively administering section 106 of the HBA 1989?

The questions that need to be thoroughly examined and assessed are: -

- 1. Is the OFT/ HBS properly discharging its statutory duties to protect consumers under the HBA 1989 and the Home Building Regulation 2004?**
- 2. Are consumers receiving their entitlements under the HBA 1989?**

3. **Have consumers suffered loss or damage as a result of the failure of the Department to properly discharge its duties to consumers under the HBA 1989?**
4. **Are competence and standards met and/or are consumers rights prejudiced from the outset?**

Australia has one of the highest home ownership rates in the world. According to the Australian Bureau of Statistics, 72% of Australian families live in their own house.

Yet too often this 'Australian dream' turns sour.

Why?

A simple answer - **The building laws and regulations are not complied with and more importantly are not effectively and rigorously enforced as evidenced by the experience of many aggrieved families with building complaints and the findings of previous inquiries.**

Where is the promised consumer protection and the guarantee of services?

The Government must uphold and honour their commitment as pledged.

BARG has serious concerns and considers that the dreadful problems of the past are not only reoccurring but are becoming significantly and alarmingly more critical.

Regulations governing home building and homeowners' building insurance are not effectively policed with the result that builders continue to produce substandard work and consumers cannot afford to litigate or have the work rectified.

3.2 Quality of licensed builders

The first and most important element to be considered and examined by the Committee is the quality of building practitioners, the skills and qualifications, experience and conduct required for the licensing of people who build our residential buildings; as well as the assessment and adequacies of builders licensing regime.

Part 3 - Section 20 and 21 of the HBA 1989, and Home Building Regulation 2004 Part 4 sec. 25, 26, 28, 29, prescribe and deal with the Licenses and Certificates.

Consequently, the Office of Fair Trading's licensing process must be thorough.

The fitness, ability and capacity of the licensed applicant to perform licensed work must be adequately assessed.

Is the scrutiny of Builders' licence applications and licence renewals thorough and adequate?

We refer the committee to evidence given by senior members of the building industry to the recent Joint Select Committee on the Quality of Buildings (Campbell Inquiry) in July 2002. At pgs 42-43 – point 2.6.2. Refer Attachment 21.

Comments received by the Committee, include that licences are too easy to obtain and the entry level too low:

“Builder’s licences have become easier to obtain and to a broader cross section of backgrounds, personally I have encountered builders who were journalists, brickies, labourers, scaffolders and handyman.

Mr HEARN (April Showers Waterproofing, Director): ... the licensing system is a joke...

The Hon. HELEN SHAM-HO: That is the problem.

Mr HEARN: Yes

ACTING-CHAIR: But why is it a joke?

Mr HEARN: Because they can give up one licence one day and two or three weeks later get another one.

Mr VILES (April Showers Waterproofing, Director): You can be Billy the brick cleaner one week and Wally the waterproofer the next.

Mr HEARN: That applies to builders as well.

Licensing standards have been relaxed to such an extreme degree that new licensees cannot necessarily read drawings, set out accurately, conduct estimates, understand building sequencing or in some cases, write legibly”.

In particular, it appears that formal training is being too easily substituted for experience, which is less stringently monitored:

Mr LEWER (Australian Institute of Building- NSW): “Those people can get a licence because the requirements of Fair Trading are not such that they need to be able to show they have done three years apprenticeship and a journeyman year and that they have a ticket from TAFE or an independent authority. They do not have to do that. What they generally do is provide references from people they have worked with - you talk of about cronyism - and somebody has to say they have been doing this for five years ... and bingo they get a licence...”

Views were expressed by consumers, builders and Council alike that there was a huge variation in quality of licensed builders:

“They range from craftsmen to predators who think they have a licence to take money and get away with it.

Council's experience with licensed builders in the areas is that the quality has decreased over the last 20 years. The buoyancy in the building industry has resulted in more fluctuation in the quality of works carried out".

(From Campbell Inquiry Report July 2002)

The purpose of licensing is to protect the consumer from unscrupulous builders and the consequences of sub-standard work by requiring a level of competency. This cannot be done unless the HBS is thorough in its' screening processes and in enforcing compliance from builders.

Although the Government has acknowledged the need of reforms **to better protect consumers** and has enacted several packages of **Reforms and Home Building Legislation Amendments from 1997 to 2004**, the latest Amendments included :-

- **Tightening up the licensing system**
- **Speeding up the disciplinary process** with new process with new powers for immediate suspension;
- **Doubling penalties** for non- compliance with the Act;
- **Making the insurance system scheme fairer and more accountable;**
- **Establishing an early intervention dispute resolution system CTTT;**
- **A cooling off period for building contracts**

To date BARG can demonstrate that **no** progress has been evidenced in terms of the above critical reforms.

3.3 FOI Applications

BARG received complaints by numerous BARG members, who have applied under the FOI Act to obtain copies of the OFT/HBS file of their builders.

It is of great concern to note the conduct of this Government Agency and the inconsistency in complying with the FOI Act by requesting such excessive application fees. Refer to personal consumers' submissions L. Berg, Gerard Nicol, A Falzon, Kalavati Magan, Con Papanatasiou, Yasmin Fahri etc.

The question to be asked is why?

Many members were able to obtain files containing substantial documents for the \$30 application fee – no extra or additional charges were requested ie. Mr & Mrs Zohrabi, Mrs J Nix, Mrs C Frantzis, Ms L. Chakouch to mention a few. But other consumers who lodged FOI applications they received letters demanding excessive fees. These consumers strongly complained and felt that it was obvious that the very excessive fees are nothing but a deterrent to obtain the builder's licence documentation.

BARG feels obliged to submit the statement made to a BARG member by the FOI officer Mr Wallace, when she rang to discuss the status of her application he said:-

“Not to push it, you should understand as you worked there you were part of the establishment.” This statement was tabled at a BARG meeting and it is recorded in BARG’s Minutes.

Furthermore, we advise that on 12 July 2005, we were invited to meet with the members of the Licensing Review, Prof. Rice and Ms I Moss. At this meeting we tabled this information and provided copy of letters by BARG members. BARG wishes to request the Committee to please subpoena relevant OFT files to independently assess and determine whether the Director General has satisfied himself that certain applicants for a licence authorising its holder to contract to do residential work and/or specialist work have accompanied their applications by such particulars as required by the HBA 1989.

3.4 10% of Builders’ licence applications only are checked by HBS

On 28 August 2006, during the “GPSC No 4” Proceedings Ms Baker, Commissioner for Fair Trading, replied to the Hon. David Oldfield questions in relation to licence checks: -

Ms BAKER: “Yes”- “...only 10% of all applications – that is in home building - are checked...”

The Hon DAVID OLDFIELD: *How do you select who the 10% are?*

Ms BAKER: *That is a random selection*

The Hon DAVID OLDFIELD: - *Okay. So is there just a random check?*

Ms BAKER: - *There is a random selection, but also if anybody identifies a criminal record they will be investigated.*

The Hon DAVID OLDFIELD: - *So if you are a crook you have got nine chances out of ten of slipping through the system*

Ms BAKER: - *Well, you could look at it that way*

The Hon DAVID OLDFIELD *Well, mathematically I could not look at it any other way, could I?*

Refer page 10 of Hansard.

This process alone is the most single destructive element of consumer protection.

The OFT/ HBS is putting consumers at great risk by not complying with their Statutory functions.

This principle of **“10% selection at random to assess and check builders’ licence application”** it is not legislated; it is not found, nor prescribed anywhere in the HBA 1989 and Home Building Regulations. On the contrary, there is complete reliance among

consumers that licensing of builders is based on competence and therefore affords the Government's predicated promised protection against sub-standard building work. We refer you with emphasis to HBA 1989 sec 106 functions of Director-General under Act.

Consumers are outraged. Consumers believed and trusted implicitly the Government representations in relation to the validity of builders licence and certificates issued by the Statutory Regulatory Authorities DFT, OFT/HBS.

Qualifications, experience and conduct required for the licensing of the people who build our residential buildings are prescribed in the Home Building Act 1989 Part 3 sec 19 and 20 where it is stated that:-

"An application for a licence is to be accompanied by such particulars as are required by the Director-General concerning:

- (a) the fitness, ability, capacity of the applicant to carry out contracts for which the licence is required, and
- (b) the arrangements made or proposed by the applicant to ensure that all work done or supervised by appropriately qualified individuals" etc Refer to the HBA 1989.

Although the HBA 1989 has been amended the latest version being 1/9/06 sec 19 and Home Building Regulation 2004 sec 28, it does not specify the minimum qualifications, or what examinations must be passed by builders who are going to build houses and going to deal with the public.

Furthermore, the Director-General, as prescribed in the HBA and Building Regulation above, **is the sole arbiter of the principal qualifications for an applicant for a licence.** He determines the standards or any other requirements that must be met before any licence is issued or renewed.

Home Building Regulation 2004 sec 28 Additional requirements for obtaining certificates states:

- (1) Before a certificate is issued, the Director General must be satisfied that the applicant:
 - (a) has such qualifications or has passed such examinations or practical tests, or both, as the Director-General determine to be necessary to enable the applicant to do, or to supervise, the work for which the certificate is required, and
 - (b) has had experience of such a kind and for such a period, as the Director- General considers would enable the applicant to do, or to do, or to supervise, the work for which the certificate is required,
 - (c) is capable of doing or supervising work for which the certificate is required.

The builders licensing scrutiny by the regulatory authorities is a demonstrable failure on the part of the OFT/HBS and its predecessors Department of Fair

Trading in properly performing their statutory duties. This is the single most destructive consumer exposure to great risk. Again, the question is:-

- Why has this occurred? and
- Is this going to continue?
- How is the HBS going to correct the 90% of licenses issued unchecked.

At BARG's Quarterly meeting with HBS on the 24th May 2006, licensing was discussed and our President asked:-

IO; "We have great trust in the new licensing procedures, what about the existing licences issued by the old licensing criteria?"

LW (Les Wrigley): 'We are satisfied the licensing met the criteria back then..'

Refer to page.5 of the above meeting Attachment 9 of this submission.

Furthermore, why hasn't such serious non-compliance been disclosed to the 4 recent inquiries mentioned above?

NB: There are 180,000 licensed traders in NSW, 10 percent is 18,000 licence applications that the OFT \HBS only checks and is continuing to check and renew and that is at RANDOM! The balance of the unchecked licence applications is 162,000 builders who are going through the system unchecked. Further to that, Licences and certificates are renewed (and often varied with additional trades) every year!

To embrace the Hon D. Oldfield valid reasoning wherein he said: -

"if you are a crook you have nine chances out of ten of slipping through the system"

We can only conclude that "if you are a crook you have 162,000 chances out of 180,000 of slipping through the system!"

The OFT/HBS have the responsibility to avoid or prevent damage to consumers. The law has firmly established a duty of care on public authorities.

The OFT/HBS is subject to a common law duty of care in the functions it performs, or should it fail to perform them.

Particularly, where consumers have relied or depended on the authority's performance of its statutory functions with due care and it is a reasonable expectation for consumers to do so.

The OFT/HBS is liable and must be held accountable as it is reasonably foreseeable that its acts, words, omissions or silence would injure innocent consumers that had implicit trust and reliance on them.

The OFT/HBS knowingly and willingly is putting consumers at great risk.

BARG believes that consumers should be made aware, that even though a builder has a licence, it does not mean that he/she has the appropriate skills and qualifications to build your house.

How can a consumer check a builder's licence and capabilities?

The advice provided by the OFT/HBS to check your builder's licence is as follows: -

- To ring **Specialist Services HBS 1300 554 668**, or
- Visit www.fairtrading.nsw.gov.au

How reliable is the information provided by the above sources?

Well, in addition to the unreliable process of the 10% checking of licence application, the HBS Web site licence check register is not assisting consumers to thoroughly check builders' licences. HBS has recognised these deficiencies and has discussed them at the Quarterly meetings. BARG's President, IO provided 3 examples of 3 builders [REDACTED] and how it was impossible to access correct information. Refer to BARG Quarterly meeting minutes of 19/10/2005 At pages: 2, 3, 4, 5 with particular emphasis to Mr Newton's comments at page 4 and 6 where he stated:-

Page 4:- Discussion of OFT Web Site

IO. *Website needs improving.*

Newton: improving the website will cost thousands

SG: the issue is that there is no link to the company because an individual holds the licence

Page 6:

*Irene gives example of how no information resulted when name of Builder is punched in
No mention of any company and/or partnership*

SG: no linkage to Peter? .

Newton: Mr Le Compte recognized deficiency in the website, needed to correct problems. Le Compte had it in his agenda to correct.

The HBS advised that **only 10% of all the licence applications are checked**. Is this a thorough and adequate procedure to scrutinize the people who build the roofs over our heads?

The HBS Licence check web site is **deficient**. (as recognised by HBS!)

"Improving the web site cost a lot of money" Mr Newton stated!

The OFT/HBS reveals an organisation that reflects general lack of focus and directions and a complete misinterpretation of its primary role.

We request the Committee to seriously consider this paramount impropriety which is the most fundamental element of consumer protection.

3.5 OFT/HBS Further Failures.

BARG is submitting the following three examples as being representative of demonstrable failure on the part of the OFT/HBS in performing their statutory functions and further endangering consumers' protection.

BARG and many consumers are unable to obtain copy of original files of builders' licence applications to enable them to assess and verify builder's credentials and qualifications. Therefore we cannot assess how widespread is the above conduct.

The following documents have been provided by the consumers to BARG and were obtained by summons from the builders' OFT files.

The following 3 examples demonstrate commonalities in strategies used by licensed builders to mislead and deceive consumers, but more importantly it is to be noted the OFT/HBS misconduct in failing to recognise this and carry out their functions.

BARG will provide irrefutable evidence to demonstrate that although the OFT/HBS were aware of criminal records and other serious breaches they have renewed the builders licence without taking the appropriate action.

EXAMPLE 1

[REDACTED]

On the 8 October 2001, [REDACTED] signed a building contract with Con Papanastasiou to build a dual occupancy as per D/A approved plans and specifications by Gosford City Council.

Vero Insurance Certificate was issued in the name of [REDACTED]

The owner noted numerous serious defects and withheld the final payment.

The Builder lodged a claim to the CTTT for monies owing.

The owner applied under the FOI Act to obtain copy of the OFT Builders file.

The Home Building Service provided the owner an estimate of \$1110.00 to process his application. This was disproportionate, high and unfair. It is obvious that this process and the very excess fee deters inquires about builders licenses. This is not in the public interest nor in accordance with the relevant legislation. The owner could not afford to go ahead with his application.

During the CTTT proceedings the Owner was advised to summon the OFT file of the builder, [REDACTED]. Documents in this file revealed:-

A. Criminal Record documents in OFT file.

On 31/8/2005 – Jeff Golding, OFT Authorising officer made an application requesting the criminal history of [REDACTED]. Refer to:-

(i) Search Information Application – RTA and Criminal history dated 31/8/05 – the applicant was OFT Officer Jeff Golding.

ii) On 8/9/2005, NSW Police Service Application for Criminal Record provided the criminal record check related to NSW arrests detailing the recorded result of search against [REDACTED]

NB: Applicant Coordinator, Intel Unit OFT

(iii) Record summary in relation to [REDACTED] (this record is of great concern)

The above documents speak for themselves. **Refer Attachment 22**

N.B. On 21/5/2006 HBS renewed [REDACTED] licence despite the knowledge of the above record.

B. Misrepresentation that [REDACTED] held a licence.

Sec 17. of the HBA provides that:

(1) A person must not represent that an individual, a partnership or a corporation:

(a) Is the holder of a licence, knowing that the individual, partnership or corporation is not the holder of a licence, or

(b) ...

Maximum penalty: 200 penalty units

(2) ...

(3) For the purposes of this section, a licence or certification is appropriate only if it authorises its holder to do, the work that is the subject of the representation.

██████████ had misrepresented that ██████████ held a licence when it did not do so. The Licence number on the letterhead is that of ██████████
Refer Attachment 23.

The quote, the contract and tax invoices and other business documents in respect of the building works show the name of the builder as ██████████ Gold licence number. No. ██████████ Again, this is ██████████ Licence number. ██████████ by using his Licence number on all relevant documents had represented that ██████████ ██████████ was the holder of Lic. No. ██████████ knowing that it was not the case.

As such ██████████ is guilty of improper conduct for the purpose of sec 62 of the Act.

Further, BARG has great concerns about the process involved in the conduct and actions of the OFT/HBS as: -

- (i) At BARG's quarterly meetings with HBS on 19/10/05, 1/3/06 and 24/5/06 this matter was tabled and discussed. Refer to relevant Minutes. Attachments 7, 8 and 9 of this submission and cross reference with evidence given under oath by Mr S Griffin at GPSC No 4 proceedings and answers to the Budget Estimates. Refer Hansard.

We refer to BARG minutes of 24/5/06 with emphasis at page 12 and quote:

*IO: looked at the licence application documents, the trader's profile in your files it was obtained under FOI and summons, numerous complaints ..NSW Police criminal file – violence, drugs, 10 years jail...
How did he get a licence? And why is he allowed to still hold one?*

SG: Where did you get this documents?..

IO: from your files, summons issued HBS files. (Please refer minutes)

- (ii) ██████████ conduct of misrepresentation was well known to the OFT/HBS since 4/8/05: - Refer to:

- copy of document marked File Note Id 550206 – Creation dated 4/8/05 3:25pm where it is stated:-

"The Deed of Financial Settlement states that all work is to be done by ██████████ of which ██████████ is a Director. I stated he was not allowed to contract with a Company licence as his licence was in his individual name. ██████████ stated that he would be putting in an application this week".

Refer Attachment 24.

There are rips of paper in the OFT file noting the above HBA breach, and numerous complaints by consumers refer only to a few. Attachment 25.

Unfortunately, due to time constraints and costs involved, we cannot evaluate, list, photocopy and attach all documents to this submission.

We are sure that there is enough evidence any way to support our statements, the Committee, if see fit, can request HBS to produce any of the relevant files.

Please not and refer to Mr. S Griffin evidence provided at the Budget Estimates on 28/8/06.

At page 13 of the Hansard, Mr Griffin is reply to the Deputy Chair's question in relation to [REDACTED] criminal records ...did Mrs Onorati then raise a question of a licence that had been issued to a [REDACTED] or concerns about [REDACTED]

Mr Griffin replied: - "I can't recall."

BARG ask: - How is this possible? Such serious issue ...such short memory Mr. Griffin, despite all the above discussions at the 3 BARG Quarterly meetings.

Refer to BARG Minutes of 19/10/05, 1/3/06 and 24/5/06 including sworn affidavits by Mr Russo and other BARG members present.

N.B. To date the HBS has not taken any action against [REDACTED] for the above breaches (the owner advised us) The owner, Con Papanastasiou, an honest senior of this community, has been in CTTT disputing the defective work for over 4 years, he is financially, physically and emotionally destroyed with his wife and children. Why? Because he signed a contract with a licensed builder!! Meanwhile this builder despite his non compliances, misrepresentations and criminal record is continuing to work being a danger to the community at large.

NB: [REDACTED] stated that he is going to apply for a Licence for [REDACTED] now!! Refer attachment.24

EXAMPLE 2

[REDACTED]

On the 1 November 1998, [REDACTED] signed a building contract with Mr & Mrs Salih to build a two storey full brick house for a total of \$250, 000, but on the 11 /05/ 99 this was amended to \$340,000 as per D/A approved plans and specifications by Kogarah City Council.

(N.B. In the OFT file, licence application of [REDACTED] there are special notes recorded in 2 documents stating:-

"Building contracts to \$150.000"

Also on the status of Licence number [REDACTED] it is stated at:-

Conditions: Maximum value \$150,000 per contract from 11/7/1995 to 10/4/1997.

Refer Attachment 26.

Therefore as the contract price to build the Salih's house was \$340,000, this sum is well over and above the maximum value of \$150,000, this builder was allowed to build under his licence, [REDACTED] have further breached seriously this condition!! Attachment. 27

Miss Dilber Salih has advised BARG that she has seen [REDACTED] working at a construction site at 3-5 Anderton Street Marrickville.

We advise Miss Salih to ring Mr Les Wrigley HBS Investigation Manager to advise him. Refer to Miss Salih's Statutory Declaration. Attachment 28.

The Salih's complaint was lodged in April 2003. To date the investigation of Mrs Salih's complaint against [REDACTED] has not been completed as yet!! The Salih's are in CTTT dispute resolution for over 2 years and is still ongoing. Refer Salih's personal submission to this Committee. This family and the sick aged father, are suffering grossly financially, physically and emotionally only because they relied on a licence issued to this unqualified and unscrupulous trader!

The owner noted numerous defects and a dispute arose between the builder and the insurer. Vero Insurance Certificate was issued to [REDACTED] only.

During the CTTT proceedings the owner was advised to summon the OFT file of the builders [REDACTED] The documents in this file revealed:-

A. Misrepresentation that [REDACTED] and [REDACTED] held a licence

NB: Sec 17 of HBA provides that:-
Refer to sec 17 of HBA as in example 1 above.

[REDACTED] had misrepresented that [REDACTED] and a partnership of [REDACTED] were the holders of a contractors Licence when it did not do so.

The licence number on the letterhead of quote number 1729 is [REDACTED] This is the licence of [REDACTED] no [REDACTED] Similarly, the contract dated 8/10/01 with respect to the works shows the name of the builder as, [REDACTED] and the Builders licensed number as [REDACTED] Again, this is [REDACTED] Licence number. [REDACTED] by using his licence number on the quote

and the contract had represented that [REDACTED] was the holder of licence number [REDACTED] knowing that was not the case.

The evidence is irrefutable proof that [REDACTED] by displaying his own licence on [REDACTED] letterhead, represented that [REDACTED] and or the partnership held that licence. The fact that he used his own licence number, is evidence that he made that representation knowing that [REDACTED] was not the holder of that licence.

[REDACTED] breached s.23 (a) of the HBA knowingly represented that [REDACTED], a partnership, held a Licence, when it did not do so.

As such [REDACTED] is guilty of improper conduct for the purposes of sec. 62 of the Act.

[REDACTED] LICENCE Number [REDACTED]

Copy of the original licence application file as obtained under summons from OFT/HBS demonstrate that the assessment of his qualifications have not been thorough and adequate. Refer to Attachment 29.

C. Practical Experience Employment Record

From copy of the OFT file obtained by summons during the CTTT proceedings it has been established that:-

On the 19 May 1998 [REDACTED] applied for a builder's Licence. Attached to his licence application there was a practical experience employment record signed by [REDACTED] on a letterhead of [REDACTED] number [REDACTED]. Again, this is [REDACTED] Licence, Peter Harb by using his licence number on the letterhead of [REDACTED] [REDACTED] had represented that [REDACTED] was the holder of Licence number [REDACTED] knowing that was not the case. [REDACTED] has mislead and deceived the OFT for the purpose of providing not legitimate reference of practical experience employment record to obtain a licence for his brother [REDACTED] Refer Attachment 30.

N.B. It is to be noted that on the first page of the Licence Application there is a notation in bold letters stating:-

DECLARATION BY APPLICANT

I declare that the information contained in or attached to this application is complete and true to the best of my knowledge. There is a maximum penalty of \$1,000 for making a statement or supplying documentation in connection with this application which is false or misleading. Attachment 31.

N.B. [REDACTED] Practical experience record above provided to the OFT for the reference of his brother [REDACTED] as well as the his own licence application record of qualification etc. must be carefully assessed to determine the seriousness of such misconduct in respect to the applicant and the scrutiny of the Regulatory Authority. As demonstrated the consequences of these licence holders are catastrophic to consumers and the reputation of the good builders.

D. BARG has great concerns in the operation, conduct, actions and integrity of the HBS as -

(i) At BARG's quarterly meetings with HBS on 19/10/05, 1/3/06 and 24/5/06 these matters were discussed. Refer to BARG Minutes Attachments 7, 8 and 9 in this submission and cross reference with the evidence given under oath by Mr. Steve Griffin, HBS A/General Manger at the "GPSC No. 4" proceedings and answers to the Budget Estimates. Refer Hansard.

(ii) [REDACTED] conduct of misrepresentation was well known to the OFT/HBS since 21/7/03 updated 24/10/03. Refer to: -

Precedents in relation to OFT/HBS files where such conduct has been prosecuted

[REDACTED]
Refer Attachment 32.

"The administrator found that [REDACTED] has misrepresented that [REDACTED] a partnership, was a holder of a contractors licence. Dated 21/8/03 and updated 2/8/05.

EXAMPLE 3

[REDACTED]
On the 6 October 2004, [REDACTED] provided a quote to "Michael" to supply a colour concrete driveway at 5 Raglan St Drummoyne.

Attachment 33

The owner noted numerous defects and a dispute arose between the owner and the builder.

The owner applied and obtained under the FOI Act copy of the OFT builder's original licence application file. Documents revealed that:-

A. Misrepresentation that [REDACTED] held a licence

NB: Sec 17 of HBA provides that:-

Refer to sec 17 of HBA as quote in example 1 above.

The licence number on the contracting quote dated 6/10/04 issued to Michael in respect of works to the concrete driveway is [REDACTED]. **This is the licence of [REDACTED] not [REDACTED].** Similarly, tax invoices in respect to the works show the name of the builder as [REDACTED]. Licence number [REDACTED]. Again, this is [REDACTED] Licence number. [REDACTED] by using his licence number on the quote and tax invoices had represented that [REDACTED] was the holder of Licence number [REDACTED] **knowing that was not the case.**

This evidence satisfied the consumer that [REDACTED] was licensed. It is clear and there is irrefutable evidence that [REDACTED] by displaying his own Licence number on [REDACTED] letterhead represented that [REDACTED] held the licence knowing it did not do so.

NB. The fact that he used his own licence number is evidence that he made representations knowing that [REDACTED] was **not the holder of that licence.** [REDACTED] **breached s 23 (a) of the HBA knowingly represented that [REDACTED] held a licence when did not do so.**

As such [REDACTED] is guilty of improper conduct!!

BARG is aware that there are precedents in the OFT/HBS files where such conduct has been shown and prosecuted. Refer OFT show cause dated 11/10/2002 of [REDACTED]. Also refer to [REDACTED]. Refer attachment 23 above.

“The administrator found that [REDACTED] has misrepresented that [REDACTED] a partnership, was a holder of a contractors licence. Dated 24/10/03 and updated 2/8/05.

The OFT/HBS was well aware of such misrepresentation and how this conduct is a breach of HBA.

The home owner has repeatedly brought this misconduct to the personal attention of the A/ General Manager HBS in many letters.

Furthermore, BARG at the meeting with HBS on **19.10.05, 1.3.06 and 24.5.06** brought this conduct to the attention of HBS. Refer BARG Minutes

The owner is in the CTTT for over 2 years and is still ongoing suffering financially, physically and emotionally. (The owner is terminally ill, divorcee with 3 children)
Why is she in this position?

Documentary and visual evidence proves only because she relied and trusted the licence of this trader. **Who had no concreting qualifications at all refer to ‘B’ below.**

Please note Mr Sal Russo’s comment at the quarterly meeting of BARG with the HBS on 1/3/2005 at page 4, in relation to [REDACTED] qualifications i.e.:-

Sal: [REDACTED]

"His capacity of doing concrete, he may be a carpenter, but not a concreter. Process used by HBS allows people like this to continue to carry on this way"

B. Trade qualifications [REDACTED] Licence Application

The owner applied under the FOI Act for copy of the OFT file of [REDACTED] licence application Documents in this file revealed that:-

[REDACTED] applied for his licence on 26/9/1991, for trade work Carpenter & joiner and also General Concreter. There is no doubt that these are 2 separate categories of work requiring different skill and qualifications. See OFT folio Attachment 34

On 3/10/1991 [REDACTED] was issued with Licence No [REDACTED] authorising the holder to do and supervise: **CARPENTRY & JOINERY and GENERAL CONCRETING.**

The only qualification document attached to [REDACTED] application is:-
A CRAFT Certificate which is only a vocational certificate signed by Commissioner for Vocational Training and has a critical note printed on it in bold stating:-

- Note: This does not certify that a prescribed course has been completed"

Refer Attachment 35

This demonstrates that [REDACTED] has only satisfied the Vocational Training Board or the Commissioner for Vocational Training but only for CARPENTRY & JOINERY.

NB; There is no qualifications \ skills for General Concreter attached at all in Mr Callas licence Application.

Has [REDACTED] complied with the HBA and has he such qualifications or has he passed such examination or both as the Director-General determine to be necessary to enable the applicant to do, or to supervise the work for which the certificate is required? and

Has the Director General complied with his function sec.106 (a) and (b)?

- (a) to promote and protect the interests of owners...
- (b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work??

It is of critical importance to note that documentary evidence demonstrates that [REDACTED] is working under three separate entities-

- i) [REDACTED] licence contractor Licence [REDACTED]
- ii) [REDACTED] – Licence No [REDACTED] – ABN quoted on the letterhead of Tax Invoices produced to obtain payment from the consumer the same ABN as the one of [REDACTED] licensed partnership [REDACTED] (this is illegal) Again as it is the letterhead of [REDACTED] No [REDACTED]
- iii) [REDACTED] licensed Partnership Licence number [REDACTED] ABN number [REDACTED]

Please note that;-

- [REDACTED] has 2 authorities;-
Licence No [REDACTED], his individual contractors licence, and
- [REDACTED] partnership Licence No. [REDACTED]

We ask: why has he created the [REDACTED] letterhead which is an unlicensed entity and he has made such misrepresentations using his own licence on [REDACTED] letterhead knowing that was not the holder of that licence?

[REDACTED] has 2 licensed authorities: - one under his own name Licence No [REDACTED] and the other a licensed partnership Licence number [REDACTED] which allows him to operate legally without any need to create illegally a third entity..

Further.ASIC searches demonstrated that he has been engaged in multiple entities in the past i.e.

- [REDACTED] specialis Attachment 36
- [REDACTED] Attachment 37
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] Attachment 38
- [REDACTED] – ABN [REDACTED] has GST status – no current or historical GST registrations Attachment 39

N.B. On the 19/10/2005 at BARG Quarterly Meeting with HBS at page 5 of BARG's minutes when our president was discussing Licence misrepresentations about the builder of Con Papanastasiou 2nd example. She stated:-

“..I spoke to Mr Wrigley, this is identical to [REDACTED] individual licence only, licence was not in the Company's name,”

Mr Sal Russo made a comment to which Mr Griffin had agreed and we wish to quote: i.e.

***SR: it must be a way of avoiding prosecution and tax evasion”
SG.: Tax evasion”***

Similarly, at the BARG Quarterly meeting with HBS on 1/3/2006 at BARG Minutes from page 11 to page 15 the 3 examples are tabled, once again, the commonalities and the serious misrepresentations, emphasizing consumer suffering from HBS inaction.

The commonality of breaches in these 3 examples, which we had the opportunity to obtain copy of the builder's original licence application files, has enabled us to verify inappropriate qualifications and \ or any other improper documents/conduct. This is of great concern and we ask:-

How widespread is this conduct?!

Refer to [REDACTED] “Traders Profile” Attachment 39a

BARG was able to assess and discover such improper conduct only through the 3 files which were obtained by the relevant consumers. Many other individual consumers were not able to obtain HBS files, as already stated in page 16 of this submission.

The FOI applications were/are excessively priced by the HBS. Thus preventing consumers to obtain the files for financial reasons. To summon files, one can only do it during CTTT or court proceedings. Many consumers are not in CTTT and/or are not advised to do so. Therefore, documents relating to builders licence applications/conduct etc cannot be obtained by consumer to enable them to check their builder's record and credentials.

BARG's copious correspondence and minutes are comprehensive records of the issues tabled and discussed at the quarterly meetings with HBS. These statements have been made in the presence of several witnesses, particular emphasis to the honorary solicitor Mr Sal Russo. Please refer to minutes Attachment 7, 8 and 9 of this submission and supporting documents. which clearly demonstrate the action, if any, the efficiency and effectiveness of the operations of the Home Building Services of the Office of Fair Trading.

Consumers believe this conduct is unacceptable. We request the Committee to please continue to read BARG Minutes, in particular page 12 of the meeting on 1/3/06 where it is stated:-

Steve: Section 43 misrepresentation, supply evidence to me

Irene Onorati reads minutes of last meeting 19/10/05 about the Salih's case. This information is already been supplied.

Sal: Irene has investigated, spoke about itRefer page 12 of the minutes. And

At page 13 *IO. Triggers, just look at [REDACTED] as 3 examples You can't say you don't have enough evidence?*

Steve SN: How is the information wrong?

Sal: How he obtained his licence, application on different letterheads

IO: How he obtained his licence misrepresentation and misleading [REDACTED] doesn't exist.. etc etc

BARG 3 Quarterly Minutes demonstrate the efforts and hard work of such a dedicated unfunded, volunteer organisation in trying so honestly and desperately to assist the HBS to note consumers plights, investigate and comply with the HBA 1989 to protect consumers, the poor innocent victims and more importantly the public at large that can become the future victims of such unscrupulous predators.

To date, BARG is in greater distress to see how the A/General Manager, Mr S. Griffin has denied BARG's representations submitted at the 3 Quarterly HBS Meetings. The record of BARG Minutes can be supported undeniably by documentary and sworn affidavits.

Mr Steve Griffin's evidence can be found in the Hansard of 28/8/2006 of the GPSC No 4 proceedings, as well as in the answers of the Budget Estimates.

The above conduct is **not** the only concern, BARG's aims and objectives are in succeeding to stop these unscrupulous builders in continuing to perpetrate such conduct which is destroying not just houses, but innocent families.

The Regulatory Statutory Authority OFT/HBS must comply with the legislative provisions acts and must strenuously enforce them.

BARG apologises for the lengthy submission of part a) of the term of reference, but please believe that these pages are still barely covering the whole of the inadequacies and the many examples of BARG member case studies.

4.0 b) The Home Warranty Insurance Scheme (HWI)

4.1 What is Home Warranty Insurance?

- **Protection for Homeowners against loss caused by builders!!**
The Richard Grellman Inquiry Report stated at page 7
- **Cold comfort since claims are only recognised if their builder has died or gone out of business.**
Prof. Percy Allen stated in his Report (National Review of Home Builder Warranty Insurance and Consumer Protection)
- **Although, the Committee, it acknowledged that the changes would have a negative impact of consumer protection the changes were made to prevent insure from withdrawing from the market.**
The Standing Committee on Law and Justice Inquiry stated.
- **Insurance in name only – ACA – Choice Magazine stated!**
Interesting article on Home Warranty Insurance (HWI).
Attachment 40
- **It makes a mockery to consumer protection ... indeed! Should I go on?**
- **A donation to the insurers etc etc.....**

Home owner's case studies speak for themselves

The purchase of a home involves a large outlay of funds and a financial burden over a great part of one person's life.

Since 1971 Parliament established mandatory insurance provisions to protect consumers from loss in the event of a builder carrying out defective work or becoming insolvent.

Insurance was provided by the Government until **May 1997**.

Home Building Act 1989 Sct 106 prescribes the functions of the Director –General:

“to monitor the operations of insurance provided for the purpose of the Act”

To date we have seen many amendments of this Act strengthening consumer protection, but alas, it is with the greatest concern that the recent amendments affecting HWI have plagued intensively and extensively consumers lives. There has never been such regression in building insurance!!

Consumers and Builders are outraged

The problems identified to date are of such magnitude and urgency that immediate action is required.

4.2 The Home Warranty Insurance Scheme.

On **1 May 1997**, the Carr Government enacted the Home Building Act 1989 (NSW) which ostensibly:

- represented major overhaul of consumer protection
- gave a guarantee of service to consumers
- was to make provision for speedy and fair process of complaint handling and dispute resolution
- it also privatised home owners' insurance, again supposedly to provide **BETTER CONSUMER PROTECTION**

“ New Era and Fairer Go for NSW Consumers” The Hon Fay Lo Po', the then Minister for Consumer Affairs announced, by setting new standards of consumer protection and guaranteeing fair and equitable trading by introducing the compulsory Home Warranty Insurance Scheme.

“We intend to make sure these dreadful problems never arise again” Mrs Lo Po' said (Media Release dated 18 April, 1996)

2/06/99 Home Building Amendment Bill introduced.

The **Hon John Watkins**, former Minister for Fair Trading re-iterates Ms Lo Po's announcement of a major overhaul of the Government's full range of consumer services.

Refer to Legislative Assembly 2/6/99 – Second Reading

Mr Watkins stated: (we quote a few relevant statements which raise serious questions that need to be considered.

“...the major change was the replacement of the government-operated insurance scheme with a scheme provided by approved insurance companies. The new scheme commenced in May 1997. It has provided increased protection for consumers as well as opening up the provisions of insurance to competition. After two years of operation, the system has shown itself to be an effective alternative to a government – operated scheme, while the Government retains a critical role in regulation.

The Department of Fair Trading is responsible for monitoring of the operation of the insurance scheme. The department meets regularly with insurers to discuss

administration and issues impacting on consumers. Industry, insurance providers and consumers provide the department with valuable feedback on the schemes operations. The government requires the Department of Fair Trading to liaise with these groups to ensure that the legislation operates well. As a result of this ongoing liaison, and the department's monitoring of the scheme, the Government considers it necessary to make a number of changes to the HBA.

The changes will ensure that consumers are provided with even better protection against faulty and incomplete work while giving those in the industry greater confidence that the scheme is operating fairly from their perspective...etc.

The Government believes the public is entitled to expect that a licence – holder is not only technically qualified and experienced but also that he or she has the financial capacity to undertake the work. To improve industry awareness of the insurance provisions and to give consumers greater confidence in the licensing system. In this regard the Director- General of the Department of Fair Trading will not be able to approve an application for, or renewal of, a licence unless satisfied that the applicant has or is eligible to obtain insurance for future work... etc.” Mr Watkins said.

What is really happening in real life to consumers while Ministers are delivering such promising and reassuring statements?

The true facts speak for themselves.

It is clear that the Government objectives had not been achieved.

Documented cases are legion about people's homes, health and savings being destroyed. Many wait in vain for years for Tribunal decisions and private insurance to salvage their homes.

4.3 15/3/2001 HIH Insurance Collapse – Refer to 52nd Parliament HIH Insurance Debate.

We wish to refer to and quote relevant portions of the speeches from HIH debate:

The Hon M Gallagher stated:-
(former Fair Trading Shadow Minister)

“The fiduciary responsibility lay with the Minister for Fair Trading to ensure that HIH was financially sound enough to be accredited insure. Equally clear is the Minister's responsibility to ensure the financial viability of the Home Warranty Insurance Scheme”

Mr Gallagher revisited the second reading, speech of the then Minister, the Hon Faye Lo Po', to get a sense where the government wanted the scheme to go:

“Private sector insurers will be able to manage the risks far better than a government scheme. The Government will, however, continue to play a key role by setting the minimum conditions of the insurance scheme and by closely monitoring its operation. The condition set by the Government for the private scheme will also give NSW home owners significantly improved cover compared to those which operated in the past.”

The Former Minister went on further to say:

“...so that insurance is only provided by sound and reputable companies, the Minister will approve insurers who operate. The Minister may revoke or vary an approval...”

The coalition sounded warning bells when the scheme came into force in May 1997 in relation to concerns about two of three insurance companies accredited by the then Minister for Fair Trading and issued a press release which stated:

“The Minister put out a document yesterday, just 24 hours before the Act came into force, announcing the approval of insurance providers under the new act.

The document does not contain any information about the location of the insurance companies, and only contains, in one case, a 1300 number and, in other case, and 1800 number, for two of the companies. For the obscure HIH Casualty and General Insurance Ltd, even the Minister’s office appears not to know the telephone number, as per circular says “Contact your local insurance broker”.

“Surely the Minister must realise that the home building industry cannot possibly continue to function with such limited insurers available”.

These were the words of the Opposition, the Former Shadow Minister for Fair Trading in 1997.

BARG is at a loss to understand and cannot accept the Government’s action, firstly in approving such insurance companies, secondly after the warning of the Opposition Former Shadow Minister for Fair Trading.

It is quite evident from the above comments that since the outset of the home warranty insurance scheme, we have never had an adequate number of providers, nor could have it been expected since the setting up of this scheme to be an efficient competitive market and to provide appropriate consumer protection.

The above statements are of great concern to BARG and building consumers and cannot be ignored. What becomes loud and clear is government mismanagement and turning a blind eye to the home warranty insurance scheme. The facts and the examples stated, demonstrate that the Government has failed to address the needs and concerns of building consumers with regard to the administration of the legislation since the outset.

The Minister and the department have failed to carry out their statutory duties.

The Hon John Ryan stated with firm conviction during the debate:

“The scheme has been a crock from the start because of the way in which it was set up. My colleagues and I have been drawing to the attention of the Government the enormous problems associated with it...”

The Greens called for the Government to come clean on how this whole issue is playing out and suggested three courses of action. Please refer to Hansard **Ms Lee Rhiannon** page 8- 12.

The Upper House Democrat Leader **Hon. Dr Arthur Chesterfield- Evans** supported the opposition and said

“Many of the problems stemmed from the Government’s unwillingness to regulate the building industry”

To date BARG has still current members victims of HIIH who are still in Tribunal proceedings desperately fighting to get their rights, several consumers victims of Building Insurer’s Guarantee Corporation, Fair Trading Administration Corporation, many first resort, but only a few members of last resort.

- **21 October 2001** The Ministerial Council of Consumer Affairs had agreed to review Home Builders Warranty Insurance Scheme across Australia looking at improving the operation compulsory HWI Scheme. Refer to Prof Percy Allens’ Report

He stated:-

“Should the Government try to enforce “first resort” legislation Private Insurers would quickly withdraw from the market”.

- **May 2002 - NSW Parliamentary Inquiry Joint Select Committee on Quality of Buildings** . (Refer to the Campbell Inquiry Report)

The Committee stated:-

The Greatest form of consumers’ protection is prevention and getting the right outcome at the beginning. (50 Recommendations were established).

- **September 2002 - Legislative Council Standing Committee on Law and Justice Report on Home Building Amendment (Insurance Act) 2002 Report 20**

BARG addressed the Committee raising many issues of concerns with HIW Scheme and stated that this reform is a regression and recommended that **it be abandoned**.

The Committee also noted the similar view of the Law Society that the Amendment Act represented a significant down grading of the rights of consumers. Refer to pages 64-65 point 4.100 of the Report.

Although, the Committee acknowledged the views of BARG that the Amendment Act would have deleterious impact on the consumer protection, the Committee took the view that this situation must be assessed in light of the intention of the changes *to prevent insurers from withdrawing from the market.*

From the insurer's perspective the reforms had been successful; **they reflect the reforms that the insurers lobbied for.** (The Committee stated).

BARG urges the Hon Members of the Committee to consider the history of the enquiries, statistics of Amendments Act – implementation of recommendations in particular we emphasize:-

Recommendation 14, (of the above enquiry).

The committee recommends that the New South Wales Government examine the possibility of a supplementary catastrophic fund to consider claims from Consumers who had received full payment of \$200,000 from home warranty insurance policy and still require additional funds to demolish rectify or reinstate a building that was constructed for the purposes of being their principal residence.

And

Recommendation 15

The Committee that the New South Wales Government take the issues raised in relation to the experiences of consumers of the NSW of the home warranty scheme, as set out in paragraph 4.110-4.118 of this Report, into consideration of part of any future review of the scheme that it may undertake (Refer Report No.20 – dated September 2002).

The Government once again, has not implemented the above recommendations.

September 2003 NSW Home Warranty Insurance Inquiry Richard Grellman.

The Government stated, it was determined to ensure that they have a stable and viable scheme that provided protection for home owners.

Consumers' protection regressed further with negative impacts. The amended Act further downgraded a scheme that already failed to protect consumers' interests.

It is evident that privatisation is a big failure.

4.4 The Home Building Amendment Act 2004

The Government's further wide-ranging reforms and covered two main areas; but did **not** taken into consideration the issues raised in relation to paragraph 4.110-4.118 **recommendation 14 and 15 of the Legislative Council, have not been implemented.**

The Government undertook with the new arrangements to bring greater accountability on the part of insurers and a more transparent and efficient scheme for consumers and traders. ie

- The establishment of a Home Warranty Insurance Scheme Board of high level specialist advisory body focusing on Home Warranty Insurance to continue the work already started by the Interim Board.
- Its role will be to monitor the operation of the scheme and to make recommendations to the Minister on possible changes and advice on the operating conditions for insurance.
- **Sounds good? NOT really!**

This has not and will NOT fix it, because it is evident that the Board has merely an advisory and consultative function. It does not provide an **independent** function in considering grievances and complaints and there is no consumers' representative on this Board. (Refer to BARG's minutes of the meeting with the Chair of the Scheme Board, Mr Greg McCarthy (this is discussed later in this submission).

The Government's amendment of the establishment of HOW Advisory Scheme Board is only a band-aid to pull the wool over consumers' eyes.

We re-iterate that it is evident that the privatisation of insurance is a **BIG failure**. Builders and consumers repeatedly voiced strenuously their concerns and disappointment.

Consumers and Builders are united and are calling the Government to adopt the scheme similar to that of Building Services Authority in Queensland.

4.5 Insurance Scheme Board

BARG has raised many issues with Mr Le Compte, former General Manager of HBS, in relation to Home Warranty Insurance. (HWI)

Since the 10/6/04 at the BARG Quarterly Meeting with HBS, BARG expressed concerns in relation to HWI's conduct and requested a meeting between

Vero's General Manager, Mr Timothy and HBS, to table consumer cases, which needed to be investigated. **This meeting was not organised by HBS.**

On 29/7/04 BARG met with HBS, Former General Manager Mr. Le Compte for the sole purpose to discuss Vero's conduct and policy clauses, in particular clauses 21 and 29, which were of great concern ie;

Mrs Salih's insurance claim was denied on the basis that she breached Clause 29 of the Policy. Vero advised that the rule of '*res judicata*' (estoppel) applied to this matter. This is supported by the High Court case of Onorati v Phillips Construction.

Refer to Attachment 41

Mr Sal Russo, BARG's honorary solicitor attended this meeting to discuss relevant and critical issues. It was agreed that:

- BARG prepare ten cases studies demonstrating the insurer's misconduct, inaction and non compliance with the HBA 1989
- Organise a Meeting with Paul Jamieson from Vero
- HBS approvals and how they work with compliance
- HBS draft of claims handling to be provided to BARG
- Look at development of memorandum of insurance by insurer to consumer.

NB: BARG prepared a submission attaching the ten case studies as agreed, but the HBS'S Manager has **not** organised the meeting with Paul Jamieson from Vero, **nor** provided us with the 3 documents as agreed above.

Please note; to date Mrs. Salih is still in the CTTT. On the 24/ 10/ 06 an eminent Senior Counsel, argued all day this point of law (costing the Salih's an arm and a leg).

There are many other consumers, BARG Members, in this situation. (CTTT or Court proceedings). Clause 21 and 29 in the insurers' policy are also enforced under the "Last Resort" insurance process. Refer to Mr. Gerard Nicol case study, as discussed later when we met with the Chairman of the Scheme Board.

Further at the above meeting with HBS General Manager Mr Le Compte on 29/7/04, BARG's President asked:-

IO: *"What disciplinary actions are implemented if the insurer has **not** complied with HBA?"*

Mr Le Compte: *"Disciplinary action includes sanction and/or Fined \$50,000 Conditions are placed on approval of the circumstances."*

We are not aware whether the Government has ever implemented any disciplinary action against an insurer for not complying with the HBA 1989,

Questions that need to be asked:-

- Who is investigating complaints and grievances of Insurers, what action, if any, is the Government going to take when insurers breach the HBA?
- Is the HBS monitoring the operation of Insurance provided for the purpose of the Act?

The following chronology and attachments will demonstrate and provide the answers to the above questions.

On 17/9/04 BARG hand delivered to HBS our submission (two lever arch files) in relation to the unconscionable conduct of HOW insurers as agreed at the meeting of 29/7/04. **Attachment 42**

We refer herewith to some of BARG's relevant contemporary correspondence in relation to our HWI submission which demonstrates the **monitoring of the operation of insurance provided has not achieved the purpose of the Act.**

The following chronology and attachments support our statements and demonstrate that HBS former General Manager's, Mr Le Compte and A/ General Manager's, Mr Griffin conduct in relation to HWI has been improper and deplorable.

On 8/10/04 BARG's letter to Mr L Le Compte referring to several BARG letters and in particular the HOW submission dated 17/09/04, which remained **unanswered.**
Attachment 43

On 18/12/04 BARG letter to Mr L Le Compte expressing concern regarding numerous BARG correspondence which had **not been replied** emphasis on 17/9/04 BARG's submission re: HOW insurer. **Attachment 44**

Since BARG's submission to the HBS, there has been additional catastrophic attacks due to the unconscionable clauses in the insurers' policy forcing consumers to appeal insurance decisions, causing protracted delays and exorbitant legal and experts costs (refer to Mr & Mrs Salih, Ms L Chakouch, Strata Plan SP58994, Mr C Tran, Mr A Falzon, Mr C Papanastasiou, L Berg, K Boules etc).

On 10/01/05 Mr. Griffin's letter to BARG advising that; -

“..... examination of the concerns raised by the group has been undertaken by OFT and have identified a number of issues that will be referred to the Scheme Board for consideration as part of it’s general review of the operation of the HOW Insurance Scheme...and the issues raised by a group were considered valid”. **Attachment 45**

On **14/01/05** BARG’s letter to Mr. Griffin. Please note at page 2 great emphasis on HOW Insurance misconduct. Refer **Attachment 46**

On **21/01/05** BARG’s letter to Mr Le Compte in relation to the letter by Steve Griffin dated 10/1/05 regarding the HOW insurance, recording BARG’s concerns ie:-

a) delay in responding to such paramount significant urgent matter

b) The inaction by NSW Government to such unconscionable insurers’ misconduct, which is contrary to the Statute.

c) Your belated response indicating that: “an examination of the concerns raised by the group has been undertaken by the OFT and have been undertaken by the OFT and have identified a number of issues.....” Refer **Attachment 47**

On **29/01/05** BARG’s letter to Mr. Le Compte again referring to our submission. Refer **Attachment 48**

On **28/03/05** BARG’s letter to Mr. Le Compte putting on record BARG’s numerous unanswered correspondence. Refer **Attachment 49**

On the **19/10/05** at the BARG’s Quarterly Meeting with HBS. The Scheme Board and the Last Resort insurance problems were discussed, in particular the effect of policy clauses 21 and 29 have on consumers.

On **1/03/06** at the BARG’s Quarterly Meeting with HBS. At page 4 of the HBS “Notes of the Meeting” provided to BARG, it was stated;-

“Steve Griffin to arrange for BARG to meet with Greg McCarthy, Chairman of the Scheme Board and himself.” Refer to **Attachment.8**

And again on **24/05/06** at the BARG’s Quarterly Meeting with HBS. At page 3 of the HBS “Notes of the Meeting” provided to BARG it is stated;-

“Mrs. Onorati asked Steve Griffin were arranging for her to meet with the Chairperson of the Scheme Board. Steve Griffin assured Mrs. Onorati that a meeting would be held in the next few weeks.” Refer to **Attachment.9**

On the **12/07/06**, finally, after two years, of BARG’s efforts in continuously and earnestly requesting to meet and discuss HWI misconduct, a meeting with the Chairperson of the Scheme Board Mr.Greg McCarthy, took place. This meeting was attended by Mr. Steve

Griffin (HBS A\ General Manager), Mr. Sal Russo BARG's honorary solicitor and 3 BARG Office Bearers (Irene Onorati, Lydia Chakouch and Yasmin Fakhri).

The Minutes of this meeting are of great concern as it undermines the trust and confidence in the OFT\HBS Statutory Authority and its' functions. Refer Attachment 50

It is imperative for the Committee to carefully assess and consider all BARG's contemporary correspondence and the Minutes of meetings with HBS since the 29/07/04 special meeting, when the HWI misconduct was submitted. (BARG's submissions, 2 lever arch files), to ascertain what has really occurred and whether the HBS has complied with section 106 (e) of the Home Building Act.

15/07/06 BARG's letter to Mr. Griffin for your assessment of the HBS conduct. Refer Attachment 51

18/07/06 Mr. Griffin's response to BARG's letter of the 15/07/06 is ludicrous and incorrect. He states:-

"Contrary to the impression that may have been given at our meeting, the group's submission was referred to the HWI Scheme Board. The matter was formally considered by the Scheme Board at its meetings of the 12 October and 21 December 2004."
Refer Attachment 52

22/07/06 BARG's letter to Mr. Griffin setting the actual facts as occurred at the meeting. Refer Attachment 53

05/08/06 BARG's letter to Mr. McCarthy enclosing Minutes of the meeting and letters to and from Mr. Griffin. Refer Attachment 54

11/09/06 Mr. Kel Nash A/Manager Secretariat Home Warranty Insurance Scheme Board, **for Commissioner for Fair Trading**, replies to the letter addressed to Mr. McCarthy. BARG was surprised. Why didn't Mr McCarthy reply himself? Is the Scheme Board operating under the umbrella of the OFT?
Refer Attachment 55

07/10/06 BARG letter to Mr. McCarthy in relation to Mr. Kel Nash correspondence
Refer Attachment 56

BARG has prepared some questions which need to be asked to Mr. Griffin and Ms Lyn Baker in relation to numerous statements they made during the Budget Estimates Proceedings on **28/8/06**, which we believe are misleading. If the Committee sees fit to ask to ascertain the true facts.

The following questions have been prepared in an effort to assist the Committee.

Questions that beg to be asked :-

Scheme Board

1. **Mr Griffin, was BARG's submission dated 17/09/04 referred to and considered by the Scheme Board?**

NB: Mr Griffin stated in his letter of **18/7/06** that he did. Refer Attachment 14.

NB: Mr Carthy has stated in the Minutes of the Scheme Board on **12/7/06** that:-
"the Scheme Board has not looked at these files". Refer page 2 of the Minutes Attachment 50.

2. **Mr Griffin, why have you referred BARG's submission to the Scheme Board?**

NB: Mr McCarthy has stated at the meeting that:-

"The Scheme Board deals only with the Last Resort Insurance Scheme"
(Refer pg 1 of the Minutes of the Scheme Board Attachment 50).

3. **Mr Griffin, as A/General Manager of the HBS shouldn't you have been aware that the Scheme Board dealt only with the Last Resort Insurance Scheme?**
4. **Mr Griffin, why hasn't the HBS taken any action for two years in relation to the conduct of HWI, although you, Mr Griffin were well aware that BARG's submission and the ten cases attached were not Last Resort, furthermore you stated in your letter to BARG dated 18/7/06 that:-**

"...examination of the concerns raised by the group has been undertaken by the OFT and have identified a number of issues that will be referred to the Scheme Board for consideration as part of its general review of the operation of the HOW Insurance Scheme."

".....and the issues raised by the Group were considered to be valid"
(Refer Attachment 14).

5. **Has the Director General monitored the operations of Insurance monitored for purposes of the Act?**

The above documentary evidence speaks for itself!!!

BARG strongly re-iterates that;-

"Consumers and Builders are united and are calling the Government to adopt the scheme similar to that of Building Services Authority in Queensland."

5.0 c) The Resolution of Complaints.

The current dispute resolution processes do not encourage efficient and fair dispute.

Consumers are completely unaware that there are different mechanism in place to deal with their problems, what are the respective roles of certain organizations, what to do and where to turn.

The confusion and difficulties consumers have in dealing with the intricacies of regulations and administrative mechanism in the building industry impacts and extends in many directions. The cost incurred in trying to resolve their dispute leads to significant debt even bankruptcy some consumers must be informed and become aware about their rights . **To-date there is no consumer advice and advocacy centre.**

The complicated avenues for consumers complaints and dispute resolution further erodes consumers livelihood.

Disputes Tribunals and Courts are complex, slow and costly and tend to favour builders and Insurers who are better resourced and more knowledgeable about disputes procedures than consumers.

What consumers do when they discover defective work?

The first reaction is;-

- To ring and talk to the builder to ask him to come and fix it.
- The builders' conduct varies. Some builders completely ignore and even dare consumers by saying;- "*Go ahead, go to the Department, you won't win* " page .11 BARG Quarterly Meeting minutes of the 19\10\05.
- Some come back and patch up problems, which re-occur after a few months.

If the dispute occurs during construction it becomes even more difficult. The builder refuses to rectify. The consumer stops progress payments. The builder abandons the construction site and lodges a claim in the CTTT to recover the money owing, even though the work is incomplete and defective.

That's where the roller coaster startsthe Disputes Resolution process becomes an unending nightmare and a bottomless pit affecting consumers.

- **What are the current Dispute Resolution processes? and**
- **Who do consumers approach about their building problems?**

A. Primarily, the Office of Fair Trading (OFT)

Most consumers when concerned with the building defects they discover and consider to be faulty workmanship ring the OFT.

NB: Consumers do **not** and **cannot** distinguish defective work from 'Non Compliance' problems or contractual.

The flaw is that, when a consumers complains about home building problems, they do **not** always receive the correct advice. Furthermore, there are 2 separate processes which consumers are not aware of, nor are the options clearly explained to them.

The 2 processes are very complex and the consumers unawareness does **not** assist, but confuse them further and harms their position.

BARG Members have stated that they have received unclear advice when they ring the OFT\HBS about where to take their dispute. In many instances consumes report that the OFT refer them to CTTT.

NB: At the BARG Quarterly Meeting with HBS on 19/10/05 at page 6, Mr Sal Russo stated:-

SW: OFT advisory centre doesn't provide assistance in lodging a complaint. Consumers are told it's a contractual dispute go to CTTT. People are told "not a matter for OFT", Consumers have major defects, they interface firstly with the OFT and are put off.

The problem is that the current dispute arrangements contain a major systemic flaw!

NB: A consumer complains about building problems, two separate processes are set in place: one by the OFT \ HBS and the other by the Tribunal.

The HBS advise consumers that it does not investigate contractual matters – these are matters for the Tribunal.

Almost, all consumers complaints are triggered by a perceive problem in the building contract, the OFT, does therefore refer the consumers to the CTTT for action on this contractual matter.

On the other hand, the OFT \HBS must commence its own investigation of the builder on compliance matters which consumers need to obtain experts reports to prove their defects. In some instances if the building report is disputed, a second report is needed, and if that is disputed a third report is obtained to try and address all the issues again.

Therefore, the HBS process ensures that almost all disputes are directed to the Tribunal, because the majority of complaints are contractual not licensing matters. Further, Mr. Le Compte (Former General Manager of HBS) at a Quarterly Meeting with BARG advised us that **not all complaints are investigated** due to insufficient funds and number of inspectors.

Exacerbating this problem, is the over reliance on dispute resolution (rather than ensuring problem avoidance). For those consumers with problems the dispute resolution process has become a nightmare – a revolving door from which they cannot get out, they become caught between the OFT\HBS and the Tribunal (CTTT).

Just refer to the consumers' case studies. Case after case study demonstrates a dispute process typified by protracted delays, confusion and jurisdictional buck-passing. These case studies highlight the extraordinary periods of time consumers have been suffering bleeding financially while their homes deteriorate as their health and family lives.

Delays cause massive financial hardship to consumers.

NB: At the BARG Quarterly Meeting with HBS on 19/10/05 at page 6, Mr Sal Russo stated:-

SR: *“Clients are suffering, the time it takes for an inspector to inspect and to hear the complaint causes delay, nobody has come out in 6 months or more!”*

IO: *“Longer in some cases, in a 2nd inspection, as in Luisa and Gerard’s case, the consumer had to tell the inspector what were the defects”.*

The OFT \ HBS actions demonstrate that the OFT \HBS exacerbate this consumers problems because its intervention, skills are such that it does not take control of the dispute to try and resolve it. It does not take the proactive position of dealing with the builder.

As a consequence consumers are basically left to fend for themselves in circumstances in which the OFT\HBS insulates itself from the consumers.

The OFT \HBS notes that the problem cases are in the minority. (Refer Budget Estimates Hansard 28/09/06).

However, for this minority of consumers with problems the situation degenerates into a personal and family disaster.

The existing consumers protection is complaint driven, aimed in trying to rectify faults rather than acting as a regulator for improved performance in the first place.

Early dispute intervention will prevent disputes festering and becoming acrimonious protracted and expensive.

The 2 processes are distinct and work along different time frames which can be problematic and inconsistent for example, the Tribunal could order the builder to undertake rectification whilst the investigators unit is considering removing the builders licence.

Consumers may lose a case against the Builder in the Tribunal because the consumer has not had the resources to provide effective evidence against a better resourced builder or some other procedural issue. However, subsequently, the same builder is investigated by the HBS which determines that disciplinary action shouldn't take place.

B. Home Building dispute resolution – mediate settlement

A new statutory regime for dealing with Home Building disputes commenced on the **1st July 2003**. The key additional features are designed to achieve a quick dispute Resolution between the Builder and the Consumer i.e

- Home Building Services team of inspectors will make on-site inspections and try to assist parties to a building dispute to reach a mediate settlement.
- Where agreement cannot be reached the inspector has the power to issue a Rectification Order for which the Builder must comply by the date set.
- If the builder doesn't comply with the Rectification Order the HBS can start investigation and prosecution.

This early intervention if successful can prevent the matter to proceed to the Tribunal (CTTT).

Unfortunately there are several problems;

- a) The consumer is **not** aware of this process.
- b) The rectification order cannot be enforced if the builder has lodged a claim to the Tribunal to be paid by the consumer, even through, the work is defective and incomplete.
- c) Consumers have advised BARG that not always the HBS inspector has tried to mediate and \or issued rectification order.

Questions

- 1. Why doesn't the HBS Inspector always comply with assisting the parties to reach and mediate settlement? and;**
- 2. Why doesn't the HBS Inspector when agreement is not reached, issue a rectification order?**
- 3. What are the basis for a HBS Inspector not to issue a rectification order?**

NB: Some BARG Members advice us that this new HBA statutory regime for dealing with building disputes is not always complied with.

C. Consumer, Trader and Tenancy Tribunal

Is it, a simple non legalistic alternative?

Consumers and Builders answer:- definitely not.

BARG members case studies will demonstrate that the CTTT is taking years to resolve and costing thousands of dollars, this is hardly a determination which is 'expeditious and inexpensive'.

To date BARG members' case studies raise great concerns not only for the legalistic functioning, but for the protracted delay (it takes over 2 years to resolve matters, the cost is prohibited and unaffordable).

The CTTT as its predecessor have not been meeting its objectives. Please refer to:-

- Copy of BARG's 3 page submission to the CAMPBELL Inquiry July 2002. Attachment 57
- Copy of BARG's CTTT Survey of cases dated Nov. 2003 Attachment 58
- BARG's and the Greens Media Release dated 30/03/04 Attachment 59
- BARG 's survey of CTTT cases dated 8/11/06 Attachment 60

To date consumers, BARG Members, are still suffering by identifying problems with the process applied by the former and current Tribunal. Refer to above surveys.

We ask:- Has a CTTT performance audit been carried out within the 3 years as per Campbell Inquiry recommendation?

The Joint Select Committee (Campbell Inquiry) stated;-

“Under section 91 of the Consumer, Trader and Tenancy Act, the objectives of the Act are to be reviewed after 3 years of the Tribunal’s commencement (early 2005)”

Refer to Recommendation No. 50 Attachment 61

BARG is unaware whether this audit has been carried out!

The CTTT has not contacted BARG for consumers’ consultation.

What is clear and demonstrable by documentary evidence is, that the Government has landed consumers in desperate financial, emotional and physical trauma once again.

We refer to a recent CTTT proceeding on 24/10/06 of Mr. And Mrs. Salih, where an eminent Senior Barrister, Frank Corsaro, joined the junior Barrister Steve Goldstein and Solicitor Sal Russo before presiding member G. O’Keefe to argue a point of Law in this matter.

The Senior Barrister, Mr Frank Corsaro representing Mrs. Salih stated at the Tribunal:-
" 2 years arguingit is scandalous "

This matter is still ongoing and this is not the only example. Refer to survey.

Another problem is the Tribunal (and HBS) settle for the lowest possible resolution by arguing that the "Building won't fall down".

This decision is unjust, relieves the builder from meeting basic code requirements and ignores the serious fact that the work is technically defective and non-complying with the Council Condition of Consent, BCA and AS leaving the poor consumer penniless and in utter ruin.

NB: The BCA is not referenced in the statutory warranties of the Building Contract.

Why are the relevant legislative and regulatory provisions prescribed, if when breached are disregarded and not enforced?

We request the Committee to assess and consider this serious anomaly and non-compliances with the regulatory provisions by the HBS and the CTTT.

The Tribunal judgement must assess defective works in accordance with the prescribed E.P & A Act, Council Conditions of Consent, BCA and AS.

Consumers pay in full the contract price to the builder and should not made to accept an inferior product, which does not comply with the prescribed regulatory provisions.

The CTTT Members have absolute power to accept, omit or reject evidence as they see fit, these are the same characteristic of the voided arbitration.

The consumers are too exhausted and financially destroyed to appeal the CTTT decisions.

BARG regrets that time constraints preclude us to provide the Committee with detailed BARG Members' case studies to demonstrate more effectively the inefficiency and ineffectiveness of the Tribunal and or the OFT dispute resolution.

We conclude with a statement by a former Fair Trading Minister Hon. John Watkins:-

"...these alterations will enhance for the better the powers and the operations of the new super Tribunal, as a result, the efficiency, incompetence and delays in the current Tribunal will disappear".

6.0 d) The exercise of disciplinary powers

The Building Investigation Branch in OFT/HBS is responsible for the enforcement of the HBA which includes disciplining and prosecuting licensees for breaches and non-compliances of the Act.

Timeliness of Investigation

Refer to BARG's submission dated 22/08/06 provided to "GPSC No.4." Attachment 17 in this submission.

Questions

1. What is the average time from complaint to commencement of Investigation?
2. What priority is given to cases assessed urgent? and; How is 'urgency' determined?
3. How does the Investigation Branch assess Defective Work?
4. What are the HBS Inspectors' qualifications/expertises?
5. How can an Inspector without Engineering Qualifications assess building structural inadequacies and/or determine engineer's plans and reports?

Evidence by an OFT/HBS inspector was provided to BARG by Mr C Papanastasiou. Refer to 3 pages from OFT Building Inspectors Report dated 12/7/05 by Mr. Donald Van Keimpema, which states:-

"During my inspection of the alleged defects raised in the Frasca Report....there are some items mentioned by Mr. Frasca that are not considered defective or beyond the qualifications of myself."

(Refer Attachment 62)

NB: We draw the attention of the Committee to the OFT covering letter dated 13/3/06, signed by Steve Newton A/Deputy General Manager, Home Building Service for Commissioner for Fair Trading.

This report was only provided to the consumer because of BARG's representations at the BARG's Quarterly Meeting with HBS on 1/3/06. It took 7 months for OFT to release this report to the consumer and only occurred because of BARG's persistence.

How does the HBS define Building Problems?

NB: The definition of building problems or defective work set by the OFT/HBS, the local council, CTTT and Insurers are not consistent. The varying terms used in assessment (or the non qualifications of HBS Inspector) creates a very subjective basis on which to attempt to identify a serious legitimate status of defective construction

This is a recipe for disputes. This is a fundamental issue that complicates the process for Consumers in working out their building problems and of course the success of their legal action proceedings in CTTT or Courts. Refer to Kalavati Magan's case study and the recent assessment of defective work.

Example 1. Builder: [REDACTED]

Kalavati Magan – 120 Riverside Rd, Chipping Norton

OFT/HBS on 14/9/06 advised that:- *“There is no evidence of defective work.”*
Refer Attachment 63.

On 20/9/06 Mrs Magan commissioned an independent engineer to assess and reply to the OFT's above decision. See relevant additional brief report which support the serious structural inadequacies and other major defects. **Refer Attachment 64.**

On 26/9/06 Liverpool City Council wrote a letter to [REDACTED] seeking information on several matters relating to structural and architectural issues.
Refer list in Attachment 65.

To date the Builder has not replied to Liverpool Council. Liverpool Council has not provided Mrs Magan with any response on the status of Council's assessment.

Vero Insurance on 9/10/06 advised that:- *“After careful consideration of all information, we advise your claim has been determined as outlined in the attached inspection report.”*

NB: The items approved are only 5 out of 135 listed defects. **Refer Attachment 66.**

Example 2. Builder: [REDACTED]

There are 3 BARG Members victims of the above builder:-
We have been advised today that Paul Dengate, OFT Inspector informed Mr. Tran that there is a fourth consumer victim of this same builder.

a) Charlie Tran – 124 Hughes St, Cabramatta

OFT/HBS On 30/8/03 Mr Tran lodged a complaint to the OFT. To date his investigation and disciplinary action is not completed as yet
Refer letters 30/8/03 and 30/8/06 to OFTHBS Attachment 67
These correspondence speak for itself

At the BARG Quarterly Meetings with HBS of 19/10/05, 1/3/06 representations were made by BARG and Sal Russo in relation to this complaint. Also at the meeting of 24/5/06 we re-iterated the 3 case victims of [REDACTED]

Mr Tran has provided BARG to-day a copy of one page which appears to be from a HBS report where is concluded that :- *"Accordingly there is insufficient evidence to allege the builder is guilty of an improper conduct."*

We have not been provided with the full report, we assume this comment is only relevant to the issue discussed in this page.

On the other hand Mr Tran referred us to his letter page marked # where he is himself explaining the facts as occurred. Attachment 68

Fairfied City Council on 8/11/06 issued an order under the EP&A Act 1979 Part 6 Divison 2A Section 121B as the premises are not in a safe condition and need to be made safe for the occupants. Attachment 69

Vero Insurance and Charlie Tran are in District Court Proceedings.

b) Alex Le Bon – 135 Huntingdale Drive, Denham Court

OFT/HBS paid Mr Le Bon the maximum \$100,000 BSC insurance after BARG's representations.

Mr Alex Le Bon attended the BARG Quarterly Meetings with HBS on 1/3/06 and stated:- (Refer to pages 8, 9 and 10 of these minutes).

"HBS says can't do anything for me, in May 2005 they advised me to go to Tribunal to preserve my rights, deal with the claim. OFT said will do nothing with them until CTTT is over. No acknowledgment by HBS."

Steve (Newton): will look into that, may take action against [REDACTED]

Sal: You have current case with Charlie Tran, trigger is there to fix Alex's case.

IO: Tran has not heard anything from HBS since 2003.

At page 9 of the same meeting IO stated:-

IO: Prosecution of [REDACTED], there are now 3 victims of this builder

1. Alex Le Bon
2. The Hartzenburgs
3. Tran

If action had been taken they would not be in this position. Why this delay?

Steve: When did you build?

Alex: 1998, had to get builder back, to fix problems.

IO: cracks so bad that you can put your hand through. There are 3 victims.

Sal: Number of complaints, audit of this commonality of the 3 cases, same engineer same builder?

Steve: Statutory warranties 7 years? Time of compliance?

At the BARG Quarterly Meetings with HBS on 24/05/06 representations were made by BARG. At page 15

SN: Alex Le Bon

IO: There are 3 people with the same builder. As we already submitted on the 1/3/06 meeting. I was advised by Alex Le Bon you've approved and offered him the maximum BSC insurance \$100,000 and a deed of release to sign. Do you think that \$100,000 will fix there home.

MC: (Micheal Cooper) Yes I have spoken to him...

IO: Alex home is breaking down, all three cases have the waffle slab. Waffle slab has problems, generic problems in design.

MC: Inaccurate, soil test is required. Nothing wrong with actual slab design.

IO: The engineers' report demonstrate the structural inadequacies etc. Tran has the same builder and the same design engineer who provides generic designs for every house they build.

Irene reads from minutes 1/3/06 page 9 Sal Russo speaks for Tran

IO: HBS to regulate and enforce the HBA. There are a lot of builders using the waffle slab, you would have heard of Ian Dawson his builder used the same engineer and waffle slab design and had serious problems.

c) Hugh and Inga Hartzenberg – 16 Lee Ave, Beverly Hills

BARG made representations at the above meetings in relation to this elderly couple. It is unfortunate that this people were unable to lodge an official complaint as critical health issues have prevented them from doing so.

Mr Hartzenburg is hospitalised with severe heart condition. We are well aware of the serious structural inadequacies, as we have on hand a structural engineer's report assessing the defective construction. This house has been constructed by the same builder carrying out exactly the same defective workmanship as in Charlie Tran and Alex Le Bon.

We believe it is imperative that the definition of defects should be comprehensive and reconciled to include the common terms used in Statutory Warranties and BCA. The HBS, the Tribunal, Council and Insurers should apply the same interpretation of the BCA, the Statutory Warranties and Quality as prescribed in the relevant legislative and regulatory provisions.

If the Government is serious when it professes consumer protection, the definition of building defects must be reconciled.

Further, BARG's members' case studies demonstrate that the HBS is not taking effective consideration of the impact of its approach to Investigation.

The response to consumers' complaints must be prompt in Home Building matters and effectively completed. Refer examples quoted in the table of our submission to "GPSC No: 4" dated 22/08/06 Attachment 17 in this submission.

Questions extracted from evidence given to "GPSC No: 4" Budget Estimates Proceedings. Refer to pg 11 of Parliamentary Hansard.

1. Ms Baker can you advise which are the BARG "clients" cases, which you stated are indeed of the more complicated end of the spectrum and why?
2. Ms Baker can you confirm:- Why the Group indicated at the 24th of May meeting that it was considering no longer participating in those quarterly meetings?
3. Ms Baker have you read BARG's Minutes of the 24th May and the correspondence of the 29/06/06, 22/07/06 and 28/07/06 in particular Mr. Sal Russo's letter dated 27/06/06?
3. Did you, Ms Baker receive BARG's correspondence dated 29/06/06 and 22/07/06 and 28/07/06 and given the seriousness of issues raised in these letters you indicated that you will examine those issues and respond to BARG in the near future?
4. Have you, Ms Baker examined and assessed those issues raised in BARG's correspondence and replied to BARG as yet?
5. Can you provide Ms Baker, the names of the ten matters with the HBS relating to this group, BARG? and
6. Which are the five matters raised for the first time?

7. Can you please Ms Baker provide the names, which are the significantly older matters on your list for Building Action Review Group which have already been subject of previous regulatory determinations by Courts and Tribunals and the Building Action Review Group finds it difficult to accept those determination? and

So, Ms. Baker, as you stated, can you advise us, which are the cases that you might think you are finished, but the Building Action Review Group does not accept that they are finished?

(Refer to pg 12 of "GPSC No: 4 Hansard 28/08/06).

8. Isn't BARG making representation on behalf of BARG members and if those cases are already determined, have you advised BARG and/or the actual homeowner of such determinations. Please provide notice?

Mr Griffin's replies to Hon. D. Oldfield at pg 12 GPSC No: 4.

Mr. Griffin stated that HBS has undertaken 209 disciplinary actions resulting in disqualifications, supervisions or cancellations of 34 licences in the past **three years?**

BARG Comment: - 34 Licence cancellations in 3 years it seems inadequate.

9. How many complaints were received by HBS in those 3 years? and

10. How many were investigated?

11. Can you, Mr Griffin provide the number of many of those that resulted in substantial fines and conditions imposed on their licence and/or education courses and the like?

12. Mr. Griffin are the minimum fines of \$1500 and or \$10,000 or \$15,000 issued and up to the maximum of 22 allowable for any disciplinary matter according to the HBA 1989 and in particular according to the latest Amendments of the HBA 2004?

NB; The Amendment of the HBA 2004, prescribe doubling penalties with non-compliances of the Act, up to \$110,000 for corporations and \$22,000 for individuals?

13. Mr Griffin what kind of representations were made from [REDACTED] Solicitor to cause HBS to suspend the disciplinary action from April to June 2006?

14. Is the conduct of [REDACTED] Solicitor proper and acceptable under the HBA 1989?

15. How reliable is the information that [REDACTED] had any complaints recorded against them in Australia?
16. Who issued the Show Cause against [REDACTED] and his partnership [REDACTED]?
17. Why was the licensed partnership of [REDACTED] required to pay a penalty of \$3000.00 and its nominated qualified Supervisor, [REDACTED] to pay \$1500.00?
18. Why did the HBS held this partnership liable? If so, Why wasn't this same entities been prosecuted by the OFT in the Local Court?

Other problems

Experts Reports; it is clear from the many consumers that contact BARG that the HBS ask the consumers;-

"You have defects, which ones are they ?show them to us."

So the consumer starts to get reports from Building Experts. When these reports are submitted to the HBS, the Inspector criticises the consultant and \ or Engineer by stating;-

" Your consultant is biased, he is not independent " .

Further, please refer to BARG Quarterly meeting of the 24th May 2006 at page.10:-

Yasmine; *Mr. Burns called Mr. Frasca 'the demolition man' and that I should not put too much weight into Frasca's report."*

IO; *" to hear such comments from an OFT Officer is unacceptable."*

The end result is after the consumer has spent \$10,000 to \$20,000 or even \$30,000 on expert reports the HBS inspector appointed to go and assess the defects comes up with his own report often minimising the defective work and in some cases completely absolving the builder and determining there is no evidence of defective works.

But Council opinion's often varies as well as the insurers.

BARG Members case studies evidence indicates that policing is simply not always taking place or the complaints are not treated with the vigour they deserve.

We request the Committee to assess and consider the degree of leniency of the disciplinary action \ prosecution and penalties imposed by the HBS.

Example .1.

[REDACTED]
(also held another licence [REDACTED]

[REDACTED] qualified supervisor licence No [REDACTED]

The Strata Plan SP;58994 consisting of 4 townhouses were purchased by 4 individual Owners , who trusted the licensed builder believing he built them according to the legislative and Regulatory Provisions.

On 26/09/03 Strata lodged a complaint to the HBS defective work attaching the following reports .

On 9/12/03 3 months later, the first inspection by the HBS occurred but the inspection was left incomplete, will come back the inspector stated.

On March 2004 3 additional months later, HBS Second inspection – again this inspection was never completed.

On April 2004 HBS letter advised Strata that they have completed their investigation although the inspections were still incomplete.
HBS further advised they will commence disciplinary action in 14 days.

On May 2004 the Notice of Show Cause was issued to the builder and he had until the 18/06/04 to respond.

On the 28/10/04 Six months later, the Manager of HBS advised Strata that [REDACTED] and its' nominated supervisor has issued a monetary penalty of \$10,000 for the company and \$7500 to the supervisor.

NB; The penalty imposed is for the complex of 4 townhouses and common property.
(No satisfactory final certificate, defective work and recommendation for demolition)

January 2005 the HBS advised that due to the builder providing an oral submission on the 11th November 2004, the matter and decision will be now reviewed.

NB; Show Cause Notice in May 2004. The Builder, under the HBA 1989 has 14 days to reply. [REDACTED] stated to the HBS that his reply was lost in the mail, therefore HBS allowed him a further 6 months instead of 14 days to provide his response.

NB; January 2006 (This is 15 months since the HBS decided to review the previous disciplinary decision in October 2004) . HBS Officer contacted Strata advising that they have completed their review and have disqualified [REDACTED] and its' supervisor for 2 years. The monetary penalty was removed.

██████████ allowed his Licence No. ██████████ to expire in **September 2004** and he allowed his supervisor's Licence No. ██████████ to expire in **September 2005** prior to the imposed disqualification being which was in **January 2006**.

Delay of 36 months caused by strategies of the builder and leniency by the HBS
NB; This builder had previously 8 complaints, refer to Submission by Ms. L. Chakouch..

Has the HBS\OFT complied with the HBA?

EXAMPLE .2

██████████ licence ██████████

Project home – Structural work defective and non-compliances with E.P & A Act, BCA, HBA , recommended part demolition.

Lodged complaint to OFT on **9/08/02**

On **15/01/03** – HBS inspector G. Christie inspected the defective work.
5 months since he lodged the complaint

On **24/2/2003**- HBS inspector G Christy returned to inspect the defects again

██████████ \$10,000 and \$7,500 to its supervisor.

2 years and 4 months since he lodged the complaint

If you compare this penalty with Strata SP;58994 (4 townhouses and common property), the monetary penalty to ██████████, who built the 4 town houses was the same as ██████████ who built just the one house. This comparison is obviously very inconsistent and too poor. But after the builder requested a review HBS withdrew this monetary penalty and replaced by disqualifying for 2 years his licences which had been already allowed to expire since September 2004.

We question how could the HBS be so inconsistent?

Prosecution for defective work and \or demolition of 4 townhouses should definitely be a more rigorous penalty than that of a one single storey house!

Furthermore, we are aware of many other BARG members where inadequate penalties were imposed and of others who their builders were just “reprimanded”.

EXAMPLE 3

[REDACTED] - Licence No. [REDACTED]

Mr Griffin gave evidence on 28/8/06 at the General Purpose Standing Committee No 4 (GPSC No 4) Budget Estimates at pg 22 of the Hansard; we quote the following paragraph which is of great concern and must be assessed and questioned by the Committee and we hope answers will be provided:-

“ In relation to defective work disciplinary action was commenced against [REDACTED] and he issued a Show Cause Notice to himself and his partnership, [REDACTED] and [REDACTED] was the nominated supervisor on 10/03/06. A response was initially due in April, but following representation from his Solicitor it was suspended to June 2006. On the 11th July a Notice of Decision was issued which required the partnership [REDACTED] to pay a penalty of \$3000 and the nominated supervisor [REDACTED] to pay a penalty of \$1,500.”

Although BARG has prepared some questions at page 56 of this submission, in an effort to assist the Committee, we re-iterate in point form the issues of concern in Mr Griffin's above statement and request clarification as to:-

- **Who** issued the Show Cause and **to whom** was issued.
- Why was the HBS action **suspended** and the seriousness of the trader's solicitor representations
- Leniency of the penalties imposed in comparison to the many serious breaches and non compliances.

We will briefly list the serious breaches and non compliance by this Trader in accordance with the 'Terms of Reference'

a) The builder licensing system

Refer to pgs 27-31 of this submission, where details are submitted with attached supporting evidence of:-

- **misrepresentation**.(breach of sec, 23 (a) of HBA
- **inappropriate trade qualifications attached to licence application**
(Craft certificate - only vocational clearly stating:-
“ **this does not certify that a prescribed course has been completed “**

NB This certificate was only for carpentry & joinery, **there is no qualifications/skills for concreter although they are 2 separate categories of work requiring different skills and qualifications.**

This complaint is for concreting residential building work.

- **[REDACTED] working under 3 entities.** Refer pg 30-31 of this submission
Etc.

b) The Home Warranty Insurance Scheme. - This Trader failed to provide the consumer a certificate of insurance - and received payment under the contract without a contract of insurance .- Breach HBA 1989 s.92(1) and (2)b

c) Resolution of complaint - HBS and CTTT

This trader well versed in the system, lodged a claim to CTTT immediately, thus preventing the HBS to enforce the Rectification order. Although the HBS inspector's report dated 4/2/05 was very damning - a 12 pages listing serious defects the contractor refused to comply and return to rectify, as he relied on the CTTT proceedings and his barrister to absolve him.

NB; The HBS Dispute Resolution. The above example demonstrates how the HBS Dispute Resolution is voided and becomes ineffective. The Consumer is denied the possible success of preventing the matter to proceed to the Tribunal. It is evident that builders have the power and control in this process and the HBS becomes powerless to assist consumers.

Furthermore, the HBS Inspector is prevented from carrying out his functions at an early stage and to enforce a Rectification Order (RO) to resolve the dispute. It is disappointing that this process cannot be enforced.

The Dispute Resolution would be effective if the HBS inspector would have a mandatory first option.

We recommend an amendment to this legislation.

NB. The CTTT from January 2005 till to day and is still ongoing.

Protracted delay and strategies by the trader to wear out and bleed the consumer. Some of the trader's tactics are: he went overseas twice for long periods, refuse to produce summoned documents etc .legal cost and suffering is destroying consumers.

d) Exercise of disciplinary power

The HBS is well aware of all the above as there has been copious correspondence by the owner and her legal representative. After assessing correspondence and transcripts we will only say that the Local Court Proceedings were incredibly and transparently trivialised in so many ways. Refer to Mr S. Russo's letter of 30/6/06 and owner's of 21/6/06. Attachment 70.

e) The enforcement of relevant legislative and regulatory provisions.

We will only ask one question:- Have the relevant legislative and regulatory provisions been enforced and how effectively?? The answers speak loud and clear and not only in this case.

Just few critical dates for your reference.

On 25th January 2005, a complaint was lodged against [REDACTED] Licence [REDACTED] for serious non compliances and defective work attaching 2 expert reports
The contracting entity is [REDACTED]

The investigation was concluded in June 2005.
The HBS took 5 months to investigate.

Mr Griffin's evidence to the Budget Estimates Committee at page 22 of the Hansard, revealed that:- "following representations by [REDACTED] solicitor the disciplinary action was suspended until June 2006"

This statement is of great concern. Mr Griffin had not advised the owner nor BARG. regarding this action. We do not understand what kind of representations could have been made on behalf of a trader who has breached the HBA to manage to suspend and delay the function of a Regulatory Authority.

The Decision of prosecution was issued on the 11 July 2006.
13 months since the investigation was concluded, but 18 months since the lodgement of the complaint.

It is to be noted that HBS commenced prosecution in the local court on the 13/02/06.

On 15/03/06 [REDACTED] was convicted in relation to his failure to provide written contract and was fined \$700.00. [REDACTED] was also convicted in relation to receiving payment before having Home Warranty Insurance in place and was fined \$2000.

In relation to the third offence of doing work without having issued HWI, although the Magistrate found the offence proved, the Magistrate only placed him on a good behaviour bond for 12 months.

Why was such a marginal prosecution?

The pleadings prepared by the OFT were deficient raising very serious questions. The OFT Solicitor's conduct clearly showed a complete lack of knowledge of the proceedings, no objection to tendering of material, he asserted that home warranty insurance takes some 6-8 months to be issued etc.

Refer Mr Russo's letter of 30/6/06 and Lia Onorati's Letter of 21/6/06

Attachment 70 above

It is to be noted that BARG was unclear about the exercise of disciplinary process. Why some builders are show caused and others are taken to court. Therefore, at the BARG's quarterly meeting with HBS on 19/10/2005 we asked what is the difference?

Mr Steve Griffin and Mr Steve Newton answered:-

*“ If the builder is unlicensed they are taken to court
If they are licensed they are given a show cause”*

We must now question: why was [REDACTED] taken to the Local Court?
He was personally licensed. The company [REDACTED], although was unlicensed it had on the letterhead printed directly under the [REDACTED] Lic No [REDACTED] Mr. Callas personal individual licence. But none of all of this was brought before the Court. OFT/HBS is further confusing consumers? And \ or has provided incorrect information at the quarterly meeting?

On 11 July 2006 a decision was made to fine [REDACTED] \$3000 and [REDACTED] as the nominated supervisor, \$1,500. In addition [REDACTED] was issued with only a warning in relation to the misleading letterhead.

Why HBS has fined [REDACTED] when this company had nothing to do and was not the contracting Trader?

If the HBS believed this was the correct Company, why didn't the HBS prosecute this Company in the local court?

The decision was issued 18 months since the lodgement of the complaint.

There are many other consumers' case studies, but BARG, unfortunately barely had time to complete this submission properly. Although it seems lengthy, we have only scratched the surface.

We apologize for the delay and for being unable to complete the remaining points.

In reference to this chapter, “the exercise of disciplinary powers”, we shall conclude by questioning further evidentiary issues mentioned already before this Committee in:
a) licensing.

BARG's concern is the danger exposure to the innocent consumers at large.

Licensed builders who HAVE NOT BEEN PROSECUTED TO DATE are:-

- [REDACTED] Licence No [REDACTED]
C. Papanastasiou lodged his complaint Nov 2004 to HBS
- [REDACTED] Salih's contract lodged complaint in April 2003
- [REDACTED] “ “ to HBS
- [REDACTED] “ “
- [REDACTED] Lic No [REDACTED]

4 victims - C. Tran lodged complaint December 2003

**N B; This builder on 13/3/06 has applied and obtained a new licence.
The NEW Company name is [REDACTED] licence No [REDACTED]**

See Attachment 71

Of course he allowed his licence No [REDACTED] to expire—this is a strategy used by many builders, one that comes to mind is [REDACTED]. Refer to Ms L Chakouch submission. This strategy is to avoid prosecution; HBS cannot prosecute an expired licence?

Further, the register of Licence is clean and we are sure also the Insurer would start with a clean record as it is a new company.

We regret not to have adequate time to further research and provide the Committee with more information and/or evidence.

BARG had several complaints against Harvey Norman bathroom renovation.
One current complaint in our hands is Ms. Ann Akerman – 17 Auld Ave Eastwood.

“A bathroom from hell” – it is unbelievable!

It has been rectified 3 times and now needs a 4th. There are no words to describe the suffering of this elderly lady using portable toilet and shower for years!! What has the HBS done for this lady???

Rectification orders issued but not complied.

We regret that time constraints and unavailability of secretarial assistance prevents BARG to provide the Committee with detailed case studies.

BARG members' case studies are examples of system failure with drastic and catastrophic examples impacts on people's property values, peace of mind and even their own safety.

BARG on behalf of all members and building consumers thanks the GPSC No 4 for this enormous task ahead of you.

Addendum to BARG's Submission lodged to the General Purpose Standing Committee No.4 Inquiry into the Operations of the Home Building Service

Further to BARG's original submission (volume 1 & 2) we wish to lodge an addendum (volume 3) and request the Committee to please:-

1. Retract the "Private and Confidential" endorsement from BARG's above submission to facilitate a meaningful discussion with key individuals and organisations etc.

As BARG was not given the right to reply, we believe that we must clarify certain important issues to set the record straight in an effort to assist the Committee Members to assess appropriately the true facts.

Although we appreciate that the Hon Jan Burnswoods at page 24 of the transcript of the proceedings stated:-

"...I think myself and Mr Donnelly, can I point out to everyone that no question was raised at all about Mrs Onorati's integrity or anything else."

we must clarify and stress emphatically by re-iterating that:-

2. BARG is a **non-profit**, voluntary organisation and it does not lodge Tax Returns as testified at page 16 of the transcript of the Proceedings

This is a very well known fact to all, especially to Members of the Government.

We decided to table some of the documentary evidence in support of our claim i.e:-

- **28/10/1990** The Hon. Bob Carr, Leader of the Opposition opens BARG's Defective Home Exhibition. (refer to attached photograph) - Attachment 1
- **19/11/1993** Mr. R. Amery Hansard, 2 pages (Government should support BARG). - Attachment 2
- **24/2/1994** Media release Mr. R. Amery, Shadow Minister for Consumers Affairs. - Attachment 3
- **1/3/1994** In line for award Richard Amery MP nominated BARG. - Attachment 4

- 23/3/1995 Parramatta Advertiser Boral bricks made donation to BARG - Attachment 5
- 4/1994 Certificate of Recognition to I Onorati by the Hon J McHugh MP Federal Consumer Minister - Attachment 6.
- 1/6/1995 Testimony by John Murray, BA MP - Attachment 7.
- 12/3/1995 News cutting (Mr & Mrs A. Rubino - house demolished) **Not on Mr A Frasca's recommendation but on the recommendation of another engineer.** Mr. R. Amery officially opened this Defective Home Refer to photo. - Attachment 8.
- 7/8/2000 letter from I. Cohen. The Greens will use every opportunity to assist people who have been disadvantaged... - Attachment 9.
- 31/5/2001 **Mr Watkins (Minister for Fair Trading)** in the second reading of Home Building Legislation Amendment Bill, "extends special thanks to BARG...their input is most valued and ..." - Attachment 10.
- 5/5 /2001 News cutting – Mr. Vogels – Renovator from hell (house demolished) Attachment 11
- 21/6/2001 **Mr Watkins acknowledging publicly the fine work that Irene Onorati has done on behalf of many people throughout Sydney...** - Attachment 12.
- 8/7/2001 Hon Richard Jones, hansard BARG is a collective of individual home owners that runs **a purely voluntary basis with little funds...** **And the Hon Dr Arthur Chesterfield-Evans** congratulating BARG Attachment 13.
- 9/5/2002, N.H. Janette – notes of thanks.
- Also Defective Home Exhibition No 19 Opened by the Hon J Aquilina former Fair Trading Minister refer to - Attachment 14 (photo)
- 11/12/02 Extracts of 52nd Parliament – comments from Dr. Peter Wong, Dr. Arthur Chesterfield-Evans and Hon Ian Cohen. Refer to Hansard - Attachment 15.
- **June 2002**, Report for the Ministerial Council on Consumer Affairs by Prof. P. Allan. (6 pages) "outside NSW there is no organised consumer lobby group...**BARG, the NSW lobby group, would not survive but for the existence of a self-funded (Ms Irene Onorati) and a group of dedicated** members with strongly felt grievances about their own building experiences.

1. Investigate BARG allegations
 2. Require high rise insurance
 3. Dispute Resolution timelines
 4. Ensure that qualified and competent personnel perform all home building jobs. Attachment 16
- **10/12/2002**, Extract from **Democrats re: establishment of the Home Building Advocacy Centre.** - Attachment 17
 - Martin Bonsey, Official Secretary to the Governor-General confirms to Mrs I Onorati the award of the Centenary Medal. The citation reads:- *For the services to the Community* – Attachment 18
 - **9/4/2003**, letter from John Howard congratulating Mrs I Onorati on being approved for the award of *Centenary Medal*.
 - **I do by this warrant award to Irene Onorati the Centenary Medal. Whereas her Majesty the Queen Elizabeth the Second, Queen of Australia, has instituted an Australian Medal to commemorate the centenary of federation of Australia**
Attachment 19
 - **30/4/2003**, letter from J. Murphy, Federal representative, delighted invites Mrs I Onorati to attend the presentation ceremony for the medal that honours her contribution to the Australian Community. - Attachment 20
 - **1/5/03**, Senator S. Macdonald congratulations re. Centenary Medal
Attachment 20
 - **8/5/03**, Mayor Angelo Tsirekas, City of Canada, re: Centenary Medal
Attachment 20.
 - **23/12/03**, Mr Lindsay Le Compte, General Manager, Home Building Service, letter to thank BARG for the invaluable assistance to him
Attachment 20.
 - **26/7/04**, Mr M.& Ms G Smallcombe from San Francisco CA USA appointed BARG to act on their behalf for their house in NSW.
Attachment 21
 - **2005**, **Letter of recognition from Mrs. N. Scuderi.** - Attachment 21
 - **6/2005**, **letter of thanks from Ms. Lydia Chakouch.** - Attachment 21
 - **2/07/2005**, letter of thanks from Mr. Gerard Nicol. - Attachment 21

- 30/6/2005, The Hon. Peter Breen,. BARG as a non-profit organisation. I would consider BARG to be a worthy recipient..." - Attachment 21
 - 1/07/2005, Extract from Joint Select Committee on the quality of buildings on 19/03/02 (comments from Ian Cohen, Rev. Fred Nile, Richard Jones, Helen Sham-Ho) - Attachment 21
 - 01/07/2005, extract from Google- Irene Onorati. - Attachment 21
 - News cutting – Mr & Mrs M. Pedlingham (St. Clair couple) Attachment 21
 - a few news cutting regarding the bad experience of building a house by shonky builders. - Attachment 21
3. Please find enclosed copy of Mr Sal Russo, BARG's honorary solicitor Statutory declaration in relation to the contents of BARG's Quarterly meetings with HBS. Refer to BARG's Submission page 8 and page 10 second paragraph. - Attachment A
4. In relation to the structural Engineer Mr Alfred Frasca and Associates, The Hon Jan Burnswoods at page 20 of the transcript of the proceedings stated:-

"My information is that Mr Frasca costs between \$11,000 and \$17,000 and some people would say that it is a lot of money for people with a building problem to pay. In addition to that, it seems from looking at the submissions and the detail, that his reports almost always or usually recommend the total demolition of a property. Would that be true?"

Mrs Onorati answered:- "not always".
(unfortunately, Mrs Onorati was not allowed to continue to provide the evidence of the facts as occur, nor sadly enough, was she permitted to call the BARG members present sitting in the room to testify as the relevant witnesses to reply and satisfy the above question).

Once again, to assist the Committee Members and clarify the issues, we submit better and further particulars of few case-studies, as examples to demonstrate the true facts:-

- The cost for a report is a direct transaction between Mr Frasca and his clients (as it is with any other consultants). We understand it varies, depending on the extent of time and investigative/exploratory work any consultant has to do for the particular job.
BARG has no involvement whatsoever with the cost of reports.

- BARG is aware, from BARG members case studies, that an expert consultant often is requested to carry out further additional inspections and assessments during the protracted delay of a dispute and to assess if any deterioration has occurred during the span of time. Therefore, additional reports are prepared, according to the circumstances.
- Not all BARG members have lodged a submission to the General Purpose Standing Committee No 4 Inquiry into the operations of the Home Building Service. Therefore, the assessment by the Hon J Burnswoods, as stated in the above question “...*from looking at the submissions and the detail, that his reports almost always or usually recommend demolition of a property.*” It is not an adequate and correct assessment.

We must re-iterate that most definitely, it is not accurate, as stated that ‘just from looking at the number of BARG members “submissions and the detail” before the Committee Members. As you can appreciate and please, verify, this is not the full spectrum of BARG members to enable anyone to draw such an analysis and/or deduction.

- Most, if not all, BARG members, obtain reports from several expert consultants on their own volition. It is their own choice, prerogative and decision.
- Not every BARG member commissions and obtains reports from Alfred Frasca and Associates.
- Alfred Frasca’s and other consulting engineers’ reports, in many instances have been accepted by HBS inspectors and their recommendations in many cases have been upheld by Local Councils, Insurers and HBS General Manager Mr L. Le Compte. Refer to the following examples.

BARG efforts are in assisting consumers in the preparation of their files with chronological and relevant attachments for their solicitor, CTTT, HBS/OFT etc. Please refer to BARG members’ statements and/or submissions (at least the ones before the Committee).

FEW EXAMPLES:- (At random)

EXAMPLE 1. Mr & Mrs Vogel, 9 Meridian St. Eastlakes – Second floor addition

10/3/2000 - Alfred Frasca’s latest additional report dated 18/4/2001 (4 pages) attached herewith for your assessment. This report demonstrates that several inspections were carried out from 19/2/2000 to 14 April 2001 and his recommendations were:-

- a) **that immediate measures be undertaken to provide approved temporary**

- propping to the northern wall and the garage and the store room.
- b) **immediate measures be undertaken to demolish the garage and store room walls and roof.** Refer attachment B

On 5 May 2001- the Garage collapsed (thank God it occurred during the night, crushing only the contents in the garage) Council also had ordered demolition. The house was fully demolished and covered by current affair. \$200,000 maximum insurance was paid out, but this was eroded by the protracted delay and CTTT/District Court legal and experts' costs. (no submission has been lodged to this inquiry)

EXAMPLES 2. Mr and Mrs Frantzis, 113 Mariott St Redfern- Renovation kitchen/bathroom/laundry (victims of 3 builders-original plus 2 rectifying builders) Mrs Frantzis now needs a 4th builer. Although, she had obtained previous building consultant's report she needed to commission a structural engineer. A victim of 13 years Refer submission lodged to this inquiry.

- 30/9/2001 – A Frasca's report findings:-

“ The constructed works do not match the council approved amended architectural plan at some locations The amended council approved architectural plan does not provide any details with respect to the occurrence of a common sewer line known to be located at the rear of the property. Council B/A conditions of approval Nos 1,2,3,4,8 have not been satisfied by the builder during construction. We note that the owner still has not had a satisfactory final Council inspection. Refer to Council letter dated 24 August 2000 Attachment C

Mr Frasca's recommendations:-

The rectification works for the building shall be carried out in accordance with architectural and structural plans prepared by suitably qualified architectural consultant and structural engineer.

The existing building works, including the support footings, ground floor concrete Slab and inner leaf brickwork construction shall be certified by a practising Consulting structural engineer.

The builder shall comply with all the outstanding council conditions of approval etc.

On the 14/2/2004, Mr. L. Le Compte, former HBS General Manager, sent a letter confirming that the Fair Trading Administration Corporation **is prepared to meet the cost of demolition and reconstruction** (up to a maximum of \$100,000). After 3 years the HBS approved demolition and reconstruction. Please refer to Mr and Mrs Frantzis submission to assess up to date's developments and conduct of HBS and HOW insurance. Attachment C.

EXAMPLE 3. Mr and Mrs. Colin Campbell – 30 Kwarra St., BASS HILL – second floor addition.

12/12/2002 – Alfred Frasca Report. Please note this consumer had 8 reports, these are listed in Mr Frasca's letter of 19/2/2003. Mr Frasca in this letter demonstrates that there is no benefit or purpose in rectifying the building if unconditional structural certificates cannot be issued. And recommended demolition and reconstruction. Refer attachment D

On 5/1/2004 Mr Rod Elliott, HBS - Director of Insurance Services Building Insurers' Guarantee Corporation determined that Mr Campbell is to obtain quotation for demolition and reconstruction of the extension. Refer Attachment D

**EXAMPLE 4. Mr Charlie M Ai Tran - 24 Hughes Street, Cabramatta
First Inspection 12/7/2003. A. Frasca 41 page Report – 22/9/2003
further inspections on 31 May 2005, January 2006 and 30/8/2006 Refer A. Frasca
Supplementary Report conclusion and recommendations:- **It is evident that the cracking is not only continuing to occur, but is also increasing in width. Therefore, we recommend that the building be monitored at regular six monthly intervals to determine if any further building movement is continuing as this is a safety consideration for the building and the occupants. Attachment E.****

On 6 November 2006 the Fairfield City Council issued an Order stating “..there has been structural distress observed with substantial cracking to the internal walls. The premises are not in a safe condition and need to be made safe for the occupants. Refer Council order also attachment E

N.B. The builder is [REDACTED] Licence No. [REDACTED] – same as Mr A. Le Bon hereunder.

**EXAMPLE 5. Alex Le Bon. 135 Huntingdale Drive Denham Court
Engineer commissioned was not Mr A. Frasca**

Clark Engineering Consultants Pty Ltd. 12/11/2004 – issued a report. The building has significant structural problems, the problems emanate from the footing system which we believe is inadequate for the geotechnical conditions applying on the site. Reference to the Code shows that the waffle slab raft is not deemed-to-comply system for a full masonry building... the movement are clearly large, the damage severe and the solution complex.

We were advised by Mr Le Bon that Liverpool City Council issued an order stating the house is unsafe Mr Le Bon is moving out. Refer to Mr Le Bon Submission. The Builder is [REDACTED]

**EXAMPLE 6 Mr & Mrs Hartzenberg – 16 Lee Ave Beverly Hills
Engineer commissioned was not Mr A. Frasca**

Capaldi King Building Consultants – issued a report on 28 May 2004 which States:-

It is not recommended to use a waffle raft system on a full masonry structure with concrete slab. The entire area taken by the ground floor of the building should have been pierced to ensure the building is bearing on similar and uniform foundations. It is required that [REDACTED] to satisfy the construction method by providing details on piers, their bearing, depth, Diameter, location and concrete used. It is also required that a certificate be provided by either Local Council, PCA or the Structural Engineers sighting of the piers prior to filling with concrete.

N.B. Structural Plans in Example 4, 5 & 6 are designed by the same engineer employed by the builder, [REDACTED]

All 3 examples, although have 3 different independent expert consultants, in the assessment of the defective works, all 3 agreed and concurred to the structural inadequacy of the buildings and the reasons why. In case 4 and 5 Council has issued orders. This case as we have already mentioned in our submission at page 54 the owner is critically ill and is hospitalised

N.B. The situation which is of greatest concern is that the builder [REDACTED] [REDACTED] has now allowed his licence to expire. On 13/3/06 applied and obtained a new licence for a new company [REDACTED] Licence No [REDACTED]

**EXAMPLE 7 Mr & Ms A Falzon – 40 Risdon Crescent Kariong NSW.
2nd Floor Addition.**

On 26/6/02 the owner entered into a contract with licensed builder "Homes by Us" to build a second floor addition according to the D/A approved plans and council conditions of consent, within 6 months.

A family of 6, (4 children school age) have been living in a 2 bedroom incomplete and defective building ever since and are suffering.

HOW Insurance Certificate was issued. Mr Falzon paid \$2,372.00 premium.

A dispute arose in relation to defective work. The builder abandoned the site and lodged a claim to the CTTT to recover contract payment.

The CTTT dispute has been going on for over 2 years. Conclusion of the matter very damning, Mr and Mrs Falzon have been sent into bankruptcy by the builder. It is to be noted that this occurred prior to Mr Falzon's cross claim for defective work was heard and adjudicated by the court.

This family may be homeless by Christmas. We are not aware if a submission has been lodged as yet to this inquiry. (Both husband and wife have full time jobs, Mr Falzon's health has been badly impaired by the above events.)

On 3/12/2003 Mr Falzon lodged a complaint against the licensed builder with the HBS attaching relevant reports.

A. Frasca's First report dated 16 May 2003.

On 28 May 2003 a letter from Mr A Frasca referring to the Appraisal report dated 16/5/03 and reports by others. Based on the findings rectification of the constructed work cannot be recommended. The existing alterations and additions shall be demolish and reconstructed. - Attachment F.

Additional inspections were carried out on 2/2/04, 20/11/03, 19/6/04 and Supplementary Building reports were issued and are attached on the supplementary report dated 4/10/2005. Attachment F

Mr Falzon obtained 14 reports by different expert consultants in an effort to prove the continuous defective work emerging. Emphasis on the NSW Forest report condemning the roof etc. (which is a health hazard endangering the life of the inhabitants) Refer Attachment F, Falzon's letter dated 21/09/05.

In this example, we wish to concentrate and discuss the Home Building Service Inspection report. We request the Committee to please examine the HBS conduct and assess whether the action taken by the HBS has been appropriate and according to the HBA

On January 2004 – Mr Peter Stubbs, HBS inspector carries out an inspection of the building works. The owner wrote to the HBS advising new defects and providing supplementary reports.

On the 6/8/2004 the HBS commissioned an independent building consultant Mr John Lewer instructing him to review Alfred Frasca's report 16/5/03 and Peter Stubbs report dated 19/7/04. We attach copy of Mr J Lewer's report dated 8 December 2004 **Attachment F**

Please note that since **8/12/04**, the issuing of this report, 39 pages very damning report, no action has been taken to discipline the breaches and non compliances by the licensed builder, up and until August 2006. (20 months later)

Emphasis to the disciplinary penalty 6 months disqualification of his licence.

Is this penalty adequate? In comparison to the breaches, non compliances and misconduct by this licensed builder?

We request the Committee to please examine and assess Mr John Lewer's report. The expert commissioned by the HBS to assess and review Mr A. Frasca's report.

Mr Lewer's report was provided to the homeowner on 6/4/06, only after BARG requested officially at the Quarterly meetings with HBS – why isn't HBS providing copy of inspection reports to homeowners? Refer to BARG minutes and HBS notes of 1/3/06.

N.B. Mr John Lewer, is a consultant commissioned and instructed by the HBS:-
“ to review and provide an opinion of the work, particularly where the writer’s
opinion may differ from those expressed in both the reports provided”. (being
1. Alfred Frasca and 2. Peter Stubbs. Refer to page 5 of this report.

We draw the Committee Members’ attention to the following:-

Point 4.0 FINDINGS (aligned to Mr Frasca’s numbering) at page 10

4.1 Brickwork

4.1.1 Mortar Joint Quality

a **Mr Frasca’s observations are correct.**

4.1.2 Mortar Joint thickness at page 11

a **Mr Frasca’s observations are correct.**

Similarly in Mortar Match a) Mr Frasca is correct (page 14)
Wall Ties a) Mr Frasca is correct etc

4.1.7 a Mr Frasca is correct. And b

4.1.8 a Brick Veneer overhang – Mr Frasca rightly point out that... Pg.15

4.1.9 Garage Brick Wall overhang – page 17

a Mr Frasca’s description of the overhang is substantially correct

4.1.10 Weep Holes

a Mr Frasca’s observation is correct – page 17

etc. etc. pages: 18, 19,20, 21, 22, 23, 24, 25, 28 30,31,32,33 etc

It is very interesting as Mr Lewer concurs with Mr Frasca in practically all defects,
especially in the Structural issues at page 32, 33 etc.

The summary pg 36 - 37 lists the many items that represent those defects raised by the
experts that are proven to the writer’s satisfaction and at

8.0 OPINION – page 37 – 38 it is stated:-

a *“...the deck slabs must be removed and rebuilt for this reason alone. But there
are other reasons also which are listed and please refer to:-
i and ii*

b *i, ii and iii, c and d*

h It is recommended that:-

iii *“ the builder, the bricklayer and the concreter should be asked to show cause
why their licences should not be revoked”. (p 38)*

At page 39 – emphasis on:-

iv A course of advance training be instituted that will bring the inspection staff to a level of expertise commensurate with the responsibilities.

Mr Lewer's above comment and recommendations in relation to the HBS/OFT inspection staff that ***"a course of advance training be instituted that will bring the inspection staff to a level of expertise commensurate with the responsibilities"*** is very appropriate, extremely urgent and more importantly must be taken in consideration as the damning effect that had on the Falzon's family, and can continue to have on other innocent consumers livelihood. We question whether is only due the expertise or is it also bias?

Another current case where Mr Peter Stubbs has been the "principal inspector involved is the one of **Mrs Kalavati Magan** where he stated that "there is no evidence of defective work" at all. Please refer to Mrs Kalavati's submission, We must concentrate here on Mr Peter Stubb's assessment on the Falzon's property as reviewed by Mr John Lewer, which is of greatest concern.

The HBS former General Manager, Mr L.Le Compte had some doubts as he so fit to commission Mr John Lewer, another independent expert consultant to review this report. It is evident that Mr Lewer did not take it too lightly, he found at least 34 instances (we assessed) where Mr Stubbs has either **"accepted the builders excuse, and in other places the builder's idea"** Refer page 12 (d) e (i) (iii) 4.1.3 a
Page 13 - c, page 14 - d, 4.1.7 - b and c,
Page 17 - 4.1.10 – b. etc, etc. we marked the relevant point with a cross.

And finally the last paragraph in

- i This report does not comment on council matters which may more properly be directed to the Department of Local Government or the Department of Infrastructure, Planning and Natural Resources.**

Has the HBS considered this report and taken any action as recommended?

NO! The documentary and visual evidence speaks for themselves.

It is of greatest concern and a sad commentary to realise that another innocent family of 6 has been completely destroyed only because they have trusted the LICENCE of a BUILDER believing he had the skills and qualifications to build according to the relevant laws, and had relied completely on the OFT/HBS thorough check of his qualifications prior issuing or renewing his licence and to enforce appropriate, timely and commensurate disciplinary action.

This family is a victim not only of the licensed builder, but as demonstrated by the documentary and visual evidence of the statutory regulatory authorities. With due

respect we must ask the Committee Members, if it is within their powers and/or jurisdiction to recommend that appropriate investigation be undertaken into at least 10 BARG case studies (as Prof Percy Allen recommended in his report refer to attachment 16 of this document).

BARG has no time nor the resources to appropriately provide to the Committee with more detailed documented case studies.

EXAMPLE 8 - Rob Siebert – 18 Ross Street, LISMORE NSW 2480

Mr Siebert is an employee of the Department of Commerce. We have been advised from Mr Siebert that his house has been recommended for demolition by his engineer in Lismore – **Not Mr Frasca** As evidenced in his submission, Mr Siebert and his young family, after 3 and a half years the house should have been finished and 2 and a half years since he lodged the dispute with the Tribunal, he has now a house in which his family cannot live nor can it be provided with a certificate of occupation, even after the repairs identified by the Tribunal are completed. He spent \$90,000 on legal cost and rent. The cost to demolish and rebuild his house is \$495,000. This is another innocent family completely destroyed for no fault of their own. Please refer to his submission to the Inquiry.

This is a further case that demonstrates that it is not just Mr Frasca who must order demolition when a house does not comply with the relevant legislative and regulatory provisions.

EXAMPLE 9 – Yasmin Fakhri – 25 Yarrabung Rd St Ives 2075

22/5/2006 - A Frasca Report - the building work completed to-day is illegal as the work has been carried out without council approval, without construction certificate prior to commencement of work, without any critical inspections by PCA and the issue of a structural certificate by a structural engineer as required by EP & A Act.

Mr Frasca's recommendation is that a site meeting be held with Ku-ring-gai Council so that council can assess and determine that the building works as constructed are illegal and issue appropriate orders regarding the illegal and non complying construction works as built do date.

On 1 August 2006 – Ku-ring-gai Council issued a Notice of intention to serve an Order that pursuant to Environmental Planning and Assessment Act 1979 (Section 121H0) will require to demolish the unauthorised work. Refer Attachment G

As evidenced in the above examples the relevant legislative and regulatory provisions are breached and are not complied by the licensed builders. The Regulatory Statutory Authorities do not enforce the prescribed laws and this is the reason why builders continue like 'King Herod in *the massacre of the innocents*'. The strictest laws are worthless if not enforced.

We hope to have clarified and assisted further the Committee Members with this addendum. Any further information can be provided on request.

***BUILDING ACTION REVIEW GROUP
Inc.***

Supplementary Submission

to the

General Purpose Standing Committee No 2

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

In response to

***NSW Office of Fair Trading
Supplementary Submission
Dated December 2006***

To the

***General Purpose Standing Committee No.4
dated December 2006***

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ATTACHMENTS

- A** NSW Office of Fair Trading Supplementary Submission December 2006
- B** BARG's letter to GPSC No 2 dated 11/8/07 to GPSC No 2.
- 1** BARG's comments Budget Estimate conduct of Proceedings of 28/8/06
- 1a** BARG's Comments to further Budget Estimate answers
- 2** Licence of Janko Ugljesa
- 3** OFT letter to Mr and Mrs Ivaniov dated 24/3/04
- 4** Garry Wells Documents
- 5** [REDACTED] ABN problem and Licence
- 6** [REDACTED] and [REDACTED] ABN problem
- 7** Homeowner's letter to Mr. S. Griffin re complaint [REDACTED]
- 8** Russo & Partners letter to Mr Griffin dated 30/6/06 re [REDACTED]
- 9** Campbell Inquiry Recommendations
- 10** Building Certifier at work despite fines

SYNOPSIS

Review of Home Building Service

The Home Building Services (HBS) was established in February 2003 following the NSW Parliamentary Joint Select Committee on the Quality of Buildings (The Campbell Inquiry).

Despite the Campbell Inquiry coming to the conclusion that this “new unit” should stand alone, separate from the Department of Fair Trading, regrettably this was not thoroughly implemented by the Government.

The HBS is not an independent organization as recommended by the Campbell Inquiry, but simply is an extension of the Office of Fair Trading (OFT) which was heavily criticized by the Campbell Inquiry. (Refer page 26 of the Campbell inquiry report).

On 14/02/03 BARG had its first introductory meeting with Mr. L. Le Compte, the New HBS General Manager. This meeting was attended by BARG’s President Mrs. I. Onorati and Pro Bono Solicitor, Mr. Sal Russo, who proposed that 10 case studies be provided as a sample of the problems encountered by consumers for the HBS examination and investigation.

After the meeting with the General Manager Mr. Le Compte, we believed that the HBS would achieve an effective outcome as recommended by the Campbell Inquiry and we looked forward to our future meetings.

In fact, Mr. Le Compte in December 2003 wrote and thanked BARG “..for bringing to my attention this year a number of instances where consumers had suffered significantly as a result of the activities of various builders”.

Mr. Le Compte further stated in the above letter:-

“The information you have provided has been of invaluable assistance to me in developing the operations of the HBS, I have also appreciated the frankness of your comments at the various meetings we have had.”

He suggested establishing a Quarterly Meeting program to enable us to review the progress of various matters, to diarise meetings for 4 hours and he provided 4 available dates.

This restored faith and hope in the BARG’s members and in the Executive Committee.

Mr. Le Compte was the HBS appointed General Manager from February 2003 to July 2005.

During this period BARG had 8 Quarterly Meetings which are recorded in correspondence and minutes of the meetings held.

From October 2005, Mr. Steve Griffin was appointed HBS A/General Manager.

Mr. S. Griffin held 3 Quarterly Meetings with BARG, these were held On 19-10-05, 01-03-06 and 25-05-06

At the first Quarterly Meeting with Mr. S. Griffin, on 19-10-05, BARG confirmed its agenda concerning "the most important elements of Consumers protection" i.e

Builders Licensing,
Complaints Investigation,
Home Owners Warranty Insurance,
Consumers Traders & Tenancy Tribunal, and
Consumer education

At the Meeting with Mr. Griffin, BARG supported each element of consumer protection with relevant cases of consumers' complaints.

BARG emphasized the case studies of 3 BARG members which exemplify the systemic misconduct of 3 licensed traders' and reflect on the lack of diligence and due care of the OFT.

These case studies are [REDACTED] and [REDACTED] and are particularized at pp.20 - 24 of this submission

All the above three cases display a pattern of repetitive conduct which the HBS has condoned when it was aware of its existence from its own records.

BARG wishes to deal with the last 3 meetings with HBS to demonstrate how and why this Inquiry was spearheaded. Refer to Minutes of the 19/10/2005 Meeting attachment No.7 of BARG's submission to GPSC No 4 Inquiry into the Operations of Home Building Service (GPSC No4)

At the Meeting on 01/03/06 – BARG re-iterated to HBS the same items as discussed at our First Quarterly meeting with Mr. Griffin, re confirming, inter alia, the 3 above named cases. Refer attachment No.8 of BARG's submission to GPSC No 4

The Meeting on 24/05/06, was our third and last Quarterly Meeting with HBS. At this meeting BARG believed that it was very important to re-confirm what were the objectives and aims of the Quarterly Meetings with HBS in an effort to adhere and move forward to reach resolution.

BARG's Objectives and Aims of Quarterly Meetings with HBS are:-

- (i) Compliance and enforcement of Home Building Act (HBA) 1989;
 - License issues
 - Investigation
 - Prosecution
 - Disciplinary Action
 - Delay
- (ii) Aims;
 - Assist the OFT\HBS to resolve consumers complaints by bringing to its attention;-
 - (a) The serious misconduct and breaches of the Home Building Act by traders
 - (b) The action\inaction\ delays and conduct of HBS and its officers etc as demonstrated by BARG Members case studies.

At the above Meeting Mr. Griffin confirmed his support to the BARG's objectives and aims.

Mr. Griffin replied:- *" I accept the objectives and the aims and I agree that some cases will be resolved, but some won't, there must be a compromise "*.

At this meeting Mr. Michael Cooper, Director Insurance Services Branch, provided a report in relation to Mr. & Mrs. Frantzis' complaint. The subject report was contrary to the specific representations Mr. and Mrs. Frantzis requested BARG to make on their behalf. i.e. 'about the delay and inaction in the handling of their complaint by the HBS'.

Mrs. Frantzis had given to BARG a copy of a letter dated 23 May 2006 to be tabled at this meeting.

However, Mr. Cooper objected to the letter and forbade Mrs. Onorati from reading and tabling it.

Mr. Cooper's conduct in preventing BARG from tabling critical consumers' representations caused an impasse that prevented further communication. This behavior was contrary to the agreed purpose and objectives of BARG's Quarterly Meetings with HBS. Thus, the meeting concluded in order to defer the matter to another forum.

Consequently, on 22/08/2006 – BARG submitted a report to the Hon. Members of Parliament in relation to the serious concerns about the current state of Home Building including the Home Warranty Insurers. Refer attachment 17 of BARG's submission to GPSC No 4. This document was tabled at the GPSC No.4 Budget Estimate meeting on 28/08/06 where questions were asked by the Hon Committee Members to the former Minister for Fair Trading, Hon Diane Beamer and Ms L. Baker, Commissioner for Fair Trading. Refer to attachment 17 of BARG's

submission to the GPSC No.4 Inquiry into the operations of the HBS and relevant transcript.

On the 19/09/06, BARG briefed the Legislative Council's Hon Members of the Cross Bench in relation to the failure of the Home Building system and the negative impact on consumers. Refer to 8 critical points and brief in attachment 18 of BARG's submission to GPSC No 4.

On 27/09/06, the N.S.W. Legislative Council General Standing Committee No 4 announced the inquiry into the operations of the Home Building Services of the Office of Fair Trading.

The above is only a brief review of the operation of the HBS since its inception.

BARG has been provided with NSW Office of Fair Trading Supplementary Submission dated December 2006. See attachment "A"

Set out below is BARG's reply to the above OFT Supplementary Submission as requested in our letter to the General Purpose Standing Committee No 2 dated 11/08/07. See attachment "B"

1. Builder licensing System

1.1. Licensing processing.

BARG notes with great concern that the NSW Office of Fair Trading (OFT) in the above named supplementary submission has in hindsight revised the statements made to the GPSC No. 4 on 28th August 2006;- "*in relation to the manner in which applications for the builder licenses are processed by the Home Building Service (HBS).*"

The OFT in its supplementary submission contends, inter alia, that "*many stakeholders have misconstrued the manner in which checks of licenses are conducted*" and that "*the suggestions made during the Inquiry are misleading and untrue*".

BARG's Response.

This OFT statement is incorrect

BARG strongly objects to the above allegations and suggestions and emphatically rejects that the OFT allegations and suggestions to the GPSC No 4 Inquiry are true and correct.

BARG relies on the representations to the GPSC No 4 by the OFT own representatives made in four separate occasions, viz:-

- a) **OFT replies provided on the 28th of August 2006** at the Budget Estimate Committee Meeting (GPSC No 4) in replies by:-
- Ms Baker, Commissioner for Fair Trading – at pp 9 - 10 of the transcript
 - The Hon D. Beamer, former Minister for Fair Trading at p 9 “
 - Mr. Steve Griffin, A/General Manager HBS at p 13 of the transcript

The Question asked by Hon David Oldfield was:-

“Does the Office of Fair Trading take into account all criminal records, bankruptcy and such issues when considering the issue of licence to traders”
Answer by Ms Baker:- **Yes.**

And Ms Baker continued later:-

“A preliminary check is made on applications to ensure the application is complete with all relevant documents and fees...we check against TAFE record now ..In addition to these, 10% of all applications – that is in home building – are checked against bankruptcy with the Australian Security and Investment Commission. We also do criminal history checks to ensure that applicants do not have financial problems or extensive criminal history.” And that is:- “At random selection, But also if anybody identifies a criminal record they will be investigated.”

Refer to the transcript of proceedings of 28/8/3006.

- b) **Further Budget Estimate answers** by the Hon Diana Beamer, former Minister for Fair Trading in reply to the document tabled by the Deputy Chair, Ms Sylvia Hale on 28/8/2006 pp 3 to 8 plus an additional set of specific questions relating to individual cases as well as to broader concerns.

Question 127 - same as in (a) above.

Answer by former Minister for Fair Trading, Hon. Diana Beamer to the above document:

“ I am advised by the Office of Fair Trading, Yes, criminal and bankruptcy records are taken into account”.

Refer to BARG’s letter dated 7/10/06 (attach. 20) to the GPSC No 4 in regards to the answers by the Minister. Also, BARG’s comments (attachs. 1 & 1a) on the Budget Estimate proceedings dated 22/8/06 and detailed comments on the lack of substantive and considered answers by the Minister to the above document

- c) **The OFT submission dated November 2006** to the GPSC No.4 Inquiry into the operation of the HBS.

This submission discloses at page 28 the following information:-

“The HBS currently undertakes a random audit of 10% of license applications to check the veracity of referee’s statements and probity issues such as criminal history and insolvency. However in 100% of cases where an applicant discloses a criminal history, then a criminal record check is requested. This means that in reality 13% of the applications have criminal checks made.”

In addition, the OFT at page 31 Renewals and Restorations states its concern that :-

“It is essential that the annual renewal of licenses be fast and efficient to ensure that the livelihood of authority holders is not jeopardized...”

- d) **The OFT Supplementary Submission dated December 2006 to the GPSC No.4 Inquiry into the Operation of the HBS.**

The OFT in the above submission at page 3 advises as follows:-

“For the sake of clarity, that the license assessment process involves:-

- (i) *100% check of TAFE or University qualification of the applicant; and 100% of criminal record, bankruptcy and insolvency checks of those who disclose that they have a criminal history or have previously been bankrupt or involved with an insolvent company.*
- (ii) *In addition to this, as a risk management strategy, the Home Building Service also carries out criminal record, bankruptcy and insolvency checks on a 10% random selection on those applicants that have not declared a criminal record or a problematic financial history.*

These random checks are also applied to 10% of the renewals received by the Home Building Service each year.

BARG’s Comments

- The OFT above statements support BARG’s submission about the accuracy of its representations to the GPSC No 4.
- BARG points out that the OFT statements are inconsistent with its own statements at a), b) and c) above. Clearly, if there was a correct process, this process should have been disclosed at the appropriate time in answer to the questions from the GPSC No 4 Committee Members on 28 August 2006, and in the OFT’s first submission. By concealing such relevant information, the OFT is not communicating in a transparent manner and this reflects further on the OFT’s diligence and integrity.
- Although the OFT’s answers in the above four occasions are inconsistent, the answer by Lyn Baker is a clear and indisputable:- **“Yes”**
Viz:-
“Yes! 10% of all applications - that is in home building—are checked against bankruptcy with the Australian Security and Investment Commission. We also do criminal history checks to ensure that applicants do not have financial problems or extensive criminal history. And that is at random.”
Also *“if anybody identifies a criminal record they will be investigated”*
Refer pp 9 and 10 of GPSC No 4 transcript of proceedings dated 28/08/06.
- **BARG** notes that the OFT did not investigate [REDACTED] criminal record when BARG identified and tabled his criminal history at the HBS Quarterly Meeting of 24/5/06? Refer to Search information application – RTA &

Criminal history documents attachment No 22 of BARG's submission to GPSC No 4, also BARG's Quarterly Meeting with HBS Attachments 9 of BARG's submission to the GPSC No 4.

- v) The OFT in its supplementary submission dated December 2006, disclosed for the first time that:- *"these random checks are also applied to 10% of renewals received by the Home Building Service each year"*. Thus, 90% of the licence applications and renewals are not checked. This leaves 90% of builders whose licenses renewals have not been checked open to considerable risk and abuse being perpetrated to consumers.

It is therefore open to ask:-

- i) How long has the above license assessment been in place? and
- ii) Why hasn't the OFT disclosed this information to the previous inquiries in particular to the Campbell inquiry?

It is observed that the licensing of application and renewals significantly exposes consumers to abuse by those builders included in their 87-90% group of builders whose licenses are not checked. Given that as stated by the Hon David Oldfield:-

"If you are a crook you have got nine chances out of ten of slipping through the system". Refer to transcript of Budget Estimate proceedings 28/8/06. The ratio of 10% checks falls well below, the required statutory functions and duty of care to protect consumers from unscrupulous builders.

Further, the OFT at page 3 paragraph 3 states:-

"Every application for a license received by the Home Building Service is thoroughly assessed against the requirements of the Home Building Act 1989 and the Home Building Regulation 2004, in particular clause 25 of the regulation, to ensure that only well-qualified and appropriate people obtain building licenses."

BARG's Response - This OFT statement is incorrect and contradictory

- It is evident from the OFT's answers to the Budget Estimate Committee Meeting on 28/8/06, and from the two OFT's submissions to the GPSC No 4 Committee dated November and December 2006, that not every application received by the HBS is thoroughly assessed.

In fact, the OFT advised the Committee:(see pp 9-10 Transcript Budget Estimate on 28/8/06) and in the 2 above mentioned submissions that:-

- i) *10% of all applications are checked against bankruptcy and criminal history That is at random selections*
- ii) *But also if anybody identifies criminal record they will be investigated*
- iii) *These random checks are also applied to 10% of the renewals by the Home Building Service each year*
- iv) The licence applications lodged and assessed before the HBS was established, have been classified by the HBS as “**Old**” Licenses and unjustifiably the OFT is renouncing those applications.

Notwithstanding the above exceptional disclosures, the OFT affirms at paragraph 3 of p.3 that every application for a license received by HBS is thoroughly assessed and refers the Committee to clause 25 of the regulation, which ensures that only well-qualified and appropriate people obtain building licenses.

BARG Requests:-

The Committee to ascertain the veracity of the OFT statements and its process and compliance with the Home Building Act 1989 and Home Building Regulations 2004. In addition, whether the OFT/HBS are giving effect to the Parliament’s intentions of providing an effective and efficient safety net for consumers who are falling victims to incompetent or unscrupulous builders.

BARG points out that clause 25 of the Regulation 2004 prescribes that:-

- (1) *Before an Authority is issued, the Director General must be satisfied that:*
 - (a) *Each relevant person in relation to the application for an authority: (Refer to clause 25 of the Regulations for the requirements)*

BARG’s further comments:

The first point that needs to be made here, is that the Director-General is the sole decider that must be satisfied before “ **each relevant person in relation to the application for an authority (licence) is issued.** (see list of 13 requirements)

N.B. Clause 25 of the Regulations does not prescribe that a 10% of all applications should be checked against bankruptcy and criminal history and at random. The regulations clearly state that **each relevant person** must satisfy the requirements before the Authority (license) is issued.

It is open to ask:-

How can the Director-General be satisfied before an Authority/Licence is issued that **each person** in relation to the application for an Authority complies with every requirement in particular that the person is not a bankrupt and/or has criminal record, in the light that only 10% of all applications are checked against bankruptcy and criminal history and at random?!

Is the Director-General complying with his statutory functions?

The Director-General has the following functions:-

- (a) *to promote and protect the interests of owners and purchasers of dwellings*
- (b) *to set, assess and maintain standards of competence of persons doing residential building work or specialist work.*

It is submitted that there is a clear case of failure by the Home Building Service to discharge its statutory responsibilities to protect consumers against certain building industry risks.

It is now four years and eight months since the establishment of the HBS and although the HBS performance is unsatisfactory as far as the protection provided to consumers, no audit has been carried out as yet,

BARG is concerned that the Campbell Inquiry Recommendation No 2 has not been implemented:-

“The committee recommends that a performance audit of the commission be undertaken by NSW Audit Office after two years of operation.”

The information relied upon by the OFT is not verifiable without an audit of the system and indeed time for the audit is long overdue. This is the only way to ascertain the extent of problems and difficulties experienced by consumers and the impact of the systemic culture of the regulatory authorities.

The OFT has not provided appropriate answers in relation to the matters raised in BARG's letters to GPSC No 4 Budget estimate dated 22/8/2006 and 7 October 2006 Refer to attachments 17 and 20 of BARG's submission to the GPSC No 4.

BARG Requests:-

the Hon. Members of GPSC No 2 Inquiry to obtain considered and appropriate responses to all the questions raised in the document tabled by the Deputy Chair, Ms Sylvia Hale on 28/8/06 at the Budget Estimate Meeting. In particular to the additional set of specific questions which the Minister has completely omitted to answer.

1.2 Old licence Application

BARG notes that the OFT states:-

- a) *“All of the licence applications referred to by BARG were lodged and assessed years before the HBS was established.”*

BARG’s Response:-

This OFT statement is incorrect.

- BARG notes that the OFT makes a distinction between old licence and new licence applications and deliberately only concerns itself with the processing of new applications. This is an affront and injustice to the victims of the builders malpractice, who rely on the OFT’s performance of its licensing enforcement and disciplinary powers to protect consumers rights.
- The age of a licence is irrelevant, as all licences are renewed every year. Although the licensing process has changed over the years considerably since it was administered by the BSC, the present Regulatory Statutory Authority is not absolved from its responsibility for the actions of its predecessor.
- Indeed, the age of the licence is irrelevant, as all licences are renewed every year. Therefore, **the Statutory Authority (i.e. the OFT\HBS) is under a duty of care to ensure that all applications for renewal of licences, especially old licences, are in compliance with the current legislation.** This duty of care is to be carried out in respect of **all licence application renewals each year**, particularly, where the licensee has a history of claims irrespective of the age of the licence and not just as the OFT stated since the HBS was established.
- As already mentioned, BARG is a voluntary unfunded organization and finds it difficult, almost impossible, due to the very limited time and lack of resources available to employ staff to assist with the daily workload and/or to prepare a comprehensive submission to submit searches, investigations of every builder’s licence application.

BARG’s submission is based on information and documents obtained from consumers who have suffered as a result of the inadequate regulation in the building industry and the non compliance and non enforcement of the current legislations.

Examples of Licensing Process since the Establishment of HBS

To exemplify the HBS conduct in the processing of “new” licence applications, since the Home Building Service was established, BARG submits the following cases in relation to traders whose application were assessed and approved by the HBS after it was established in February 2003.

- a) **The Ivanov’s case.** In this case, the OFT issued Licence No [REDACTED] to [REDACTED] on 20\07\04. This licence authorized the holder to contract to do, do and supervise joinery, aluminium windows and doors. See attachment 2.

At this time the OFT should have been aware that Mr. Stanley and Elizabeth Ivanov had lodged a complaint against [REDACTED] to the HBS for residential building work not complying with the Home Building Act in February 2004 for the following:-

- # residential building work carried out **without a licence**, breach of sec. 4 HBA 1989
- # obtained 35% of the contract price as deposit, breach of sec. 8 of HBA 1989
- # did not provide a contract in a proper form, breach of sec. 7 of HBA 1989
- # did not provide a home warranty insurance certificate, breach of sec.92 of HBA
- # Not carrying work in a proper and workmanlike manner in breach of sec 18B of HBA 1989.
- # Improper conduct, breach of sec 51 of the HBA 1989.

The OFT replied to the above homeowners: complaint lodged on or about 24/3/04, stating:-

“I refer to your complaint regarding residential building work. Intervention by the Office of Fair Trading has not resulted in a resolution of this dispute and you may wish to pursue this matter through the Consumer, Trader and Tenancy Tribunal...” Refer to OFT letter attachment 3.

The OFT enclosed a claim form to lodge their claim to the CTTT and return copies of all documents the Ivanovs had attached to their complaint. (plans, contract, reports, and other documents and correspondence in relation to the dispute)

Mr. and Mrs. Ivanov approached BARG in September 2004, further searches were carried out which disclosed:-

The builder, [REDACTED] was a director of a number of companies. All companies were liquidated and he has been made bankrupt. i.e.

- Liquidated companies: [REDACTED] and [REDACTED]
- Bankrupted [REDACTED] in 1991
- Deregistered Companies – [REDACTED] and [REDACTED]
- Various civil claim judgment were made against [REDACTED] in courts.

- [REDACTED] does not hold a driver's licence and allegations of criminal records.
- Despite the above conduct [REDACTED] was practicing as a sole trader as [REDACTED] and he has been provided with a Contractor's Licence No [REDACTED] on 27/7/04.

Yet, in spite of the HBS having on hand a complaint since February 2004 against Mr. [REDACTED] relating to many serious breaches, it issued a licence to this trader in July 2004 (5 months after the complaint was lodged)

b) Garry Wells case.

This is another example of a licence issued to [REDACTED] Licence No. [REDACTED] issued 24/01/07 in relation to residential work carried out by this Company.

The homeowner, Mr. Wells had problems with his insurance claim for fire damages to his property, the licensing, the Contract with the repairer and the Home Warranty Insurance.

According to Mr. Wells, the insurer's nominated repairer [REDACTED] had 2 licences numbers, but the name of the companies were not in accordance with the description in the business cards provided to the homeowner". Mr. Wells provided BARG with the 2 business cards and a copy of 3 contracts issued by the repairer. See attached photocopy of each relevant document in attachment No.4.

BARG advised Mr. Wells to:

- Lodge a complaint to the OFT/HBS
- Search this trader's Licence numbers
- Search the Company Pty Ltd with ASIC
- Search the business registration with Fair Trading
- Commission a specialized expert in asbestos identification to prepare an assessment report.

Mr. Wells will address the Committee and hopefully have the time to prepare a submission to hand in.

BARG in assessing the documents on hand noted:-

Business Card No 1.

Name: [REDACTED]

fully insured work of the highest quality Licence No [REDACTED]

A check of the Licence No [REDACTED] shows:-

the name of the Company to be:- [REDACTED]

Further, the licence contains a special condition to the effect that it applies:-
"only for contracts **not requiring home warranty insurance from 24/1/07 to the date of this certificate**' and authorizes the holder to do: building work from 24/1/07.

Supervisors: [REDACTED] with licence number [REDACTED] was the nominated supervisor for this licence from 1/9/2006 up to and including the date of this certificate. ([REDACTED] was the nominated supervisor nearly 4 months prior to the issue of the licence to this company)

Comment: the Business Card No 1, is in a different name from that quoted in Licence No [REDACTED]. Further, this licence number cannot fully insure building work, as it is a restricted licence. Refer to licences and other documents in attachment 4.

Business Card No 2 states:-

Name: [REDACTED]

Licence No [REDACTED]

Fully insured work of the highest quality.
[REDACTED]

A check of licence No [REDACTED] shows that [REDACTED] is the holder of this licence and not [REDACTED] as stated in the business card No 2.

In this case the relevant issue is that Garry Wells was furnished 3 contracts for the rectification of the same fire damage to his property by the same repairer.

First contract dated 30/5/07 for \$11,957.83. Mr. Wells refused to sign it as following an OFT licence check, he was advised that the licence No. [REDACTED] on the business card was not held by [REDACTED] but by [REDACTED] as an individual licensee. This licence, however, had expired. Thus, [REDACTED] could not sign a contract as he was not the nominated supervisor for this company.

On 25/6/07 Mr. Wells was then furnished with 2 contracts by [REDACTED] [REDACTED] - one for \$11,957.83; and another for \$1,648.00. Thus, on same day, with the same parties, for the same work (damage by the fire) 2 contracts had been issued instead of one only. Mr Wells refused to sign once again as he saw this as an attempt by the repairer to avoid the home warranty insurance.

On 17/7/07 [REDACTED] called on site with his workers ready to start work. He provided Mr Wells with a 2 pages final contract. However, although all the details on page one of the contract were correct, this was not the case for page 2 of the contract. In fact page 2 provided a different business name from that shown in page 1. i.e.

(Page 1 licence No [REDACTED] correct name, correct licence number.

Page 2 description of scope of work is on a letterhead of [REDACTED] this is a different name than the trader in p.1 of contract).

In this case the trader issued 2 contracts to keep the total of the contract price under the \$12,000, as his licence is only for contracts not requiring Home Warranty Insurance. This is a serious breach of HBA 1989.

BARG is stating the facts according to statements and documents provided by Mr. Wells.

On 19/11/07 the HBS building inspector Mr. B Jovanovski has attended the site in response to Mr. Wells complaint and issued a Complaint Inspection Advice, File No. 3798361 stating that:-

The building work was inspected on the 19/11/07, at the Meeting were the contractor, operation manager, [REDACTED] Contractor's office manager, and owner. The complaint items were inspected and discussed. The work had been suspended due to conflict between the parties and payment to the contractor.

The parties agreed that the work would continue on approval by the insurer and the contract would be completed. Parties were informed of recourse to the CTTT if disagreement occur the contractor agreed to:-

- 1. complete the work as per contract*
- 2. do issues as per HAL Report (expert)*
- 3. Supply a Home warranty insurance certificate.*

Work to be completed by 30/11/07

The owner is very concerned and more confused than before as he could not follow nor understand the position taken by the HBS inspector. Refer to Mr Wells's submission.

In relation to this case BARG observes that:-

The HBS building inspector did not list any defective or incomplete work and he did not record the relevant issues of non compliances/breaches of the HBA i.e. critical fibro/asbestos left in the cavities, the trader's ploy of splitting the contracts. He directed the contractor to provide now a Home Warranty Insurance Certificate ignoring that his licence was and still is for contracts not requiring home warranty insurance.

According to Mr Wells, the rectification work plus damages exceeds the allowed limit of \$12,000. It appears the inspector was aware of the value of rectification work being in excess of the allowed limit for home warranty insurance, and thus asked the trader to provide a certificate of insurance, ignoring the trader's conditional licence.

BARG Requests

The Committee:- has this HBS building inspector assessed appropriately this complaint?

BARG's Comments

In the Ivanov's case No 1, above. Clearly, the HBS didn't check appropriately the Licence application, qualifications and history of the licensee, nor carried out checks against bankruptcy and/or criminal history and most importantly its own records of complaints!

Upon becoming aware of the above conduct, BARG questioned Mr. L. Le Compte, HBS former General Manager, how a person with such character and business practice can be issued with a licence and a certificate of registration from the OFT.

The Ivanovs is another unfortunate case where the OFT referred it to CTTT prior investigating it as required by the Home Building Act. The OFT/HBS owed a duty of care to consumers in the exercise of its consumer protection functions, including its power to inspect premises, investigate complaints and to police unreliable and unfit traders.

The Ivanovs, leaving aside the financial loss, the personal cost, in terms of the effect on their health, emotional well-being and the years absorbed by this conduct and the CTTT proceedings, is considerable.

We note, that after BARG's representations to the HBS quarterly meeting, the former HBS General Manager, Mr. Le Compte, took the appropriate action and cancelled Mr Janko Ugljesa licence on 14/3/2005.

With respect to Garry Wells' case No 2, it is clear from the above that the representations made by the trader were misleading and in breach of the legislation. The Complaint Inspection Advice issued by the HBS building inspector is inadequate.

How widespread is the "new" licence applications anomalies since the HBS was established? BARG cannot assess nor provide to the Committee a survey for the obvious reasons already mentioned.

In respect to the OFT claimed "enhancements" made to the system, BARG notes that these occurred only recently in January, March and August 2006 as a result of numerous submissions made by BARG over a period of 20 years.

However, the enhancements made to the licensing regime since the establishment of the HBS, do not go far enough and do not address the renewals of all licences "the old licences" nor check all licence applications for criminal records. This OFT conduct proves and supports that the previous licensing system was flawed.

Nevertheless, the OFT delay in effecting changes has not only prejudiced homeowners rights but also jeopardized any real opportunity of having major defects rectified. This is evident in the outstanding and unresolved homeowners grievances provided as examples in the submissions to the GPSC No 4. We stand by the truism “**Justice delayed is justice denied**”.

The case studies indicate the OFT’s reluctance to intervene and to enforce the legislation. The OFT was and is well aware that renewals of licences should be checked as it has finally disclosed this in its supplementary submission dated December 2006. Notwithstanding this concession, the OFT has tried to displace its responsibility by defining “old licence applications” and blaming its predecessors.

BARG notes that the OFT at page 4 of its supplementary submission refers to BARG’s claims of *‘licensing anomalies’ to be:-*

b) “*“few” in number when placed into the context of more than 165,000 licensees and 13,000 applications per annum.*” and that: *“This relatively low number of licensing issues is clearly not evident that there are systematic problems with the licensing regime. To the contrary, the significant enhancements made to the licensing Regime since the establishment of the HBS...”*

BARG’s Response

These OFT statements are incorrect.

The OFT comparison data is inappropriate and unfair.

The OFT sample of 165,000 licensees is not comparable with BARG’s samples. Further any inference from the OFT statistical data is meaningless as it does not disclose the relevant issues and results, which emerged from its random sample.

The OFT is attempting to displace responsibility by criticizing BARG and alleging that the “few” claims made of licensing anomalies cannot be evidence that there are systemic problems.

- i) The first point that needs to be made here is that, whilst it is not conceded the anomalies are few, the real issue to be identified and considered is rather the OFT’s serious conduct and failure to discharge its statutory responsibilities in the licensing process and in policing the systemic problems under the current legislation:- e.g.
- to **check all** licence applications and **all renewals** especially the ‘old’ Licences to ascertain that are in compliance with the current legislation, and have the appropriate qualifications as prescribed by the HBA 1989:-
“*to set, assess and maintain standards of competence of persons doing residential building work or specialist work*” (sec.106 (b) and clause 25 of the Regulations 2004.
 - To impose adequate penalties as amended HBA 2004.

In particular to check 100% of (all) applications and all renewals against bankruptcy, criminal history with the relevant authorities.

- To comply with its statutory duties and to police improper conduct when a holder of a contractor's licence breaches a statutory warranty (section 51 of the HBA 1989) and;
 - To investigate complaints received (section 60 HBA)
 - To show cause; conduct any investigation and determine whether or not to take disciplinary action (sections 61-62 HBA) notwithstanding what the number of anomalies may be one or more.
- ii) Further, in relation to the nature of the 'anomalies' characterized in the various examples provided by BARG there is evidence of systemic problems with the licensing regime such as:-
- recurring in a series of breaches by more than one trader
 - with methodical regularity
 - pertaining to an irregular and improper method specifically denoting a process of systemic problems; and
 - in each trader's contract such conduct is multiplied to an unlimited number as this misconduct continues without prosecution (emphasis), in breach of the HBA 1989.

In particular the case studies of 3 BARG members exemplify systemic misconduct by 3 licensed traders and reflect on lack of diligence and due care of the OFT are as follows:-

1.(a) License misrepresentation – [REDACTED]

[REDACTED] License No [REDACTED] letterhead. Refer to attachment No 30 of BARG's Submission to the GPSC No 4.

In this case the Licence number [REDACTED] on the letterhead belongs to [REDACTED] not to [REDACTED]. At this relevant time [REDACTED] was not licensed. Thus, [REDACTED] has misrepresented that [REDACTED] was the holder of a contractor's license as at May 1998. This was in respect of a trade reference he gave to his brother Steven Harb to support his license application.

[REDACTED] has repeated this misrepresentation in the contract with Mr and Mrs. Salih, where the same letterhead was used in several documents e.g. quotations, invoices etc. Refer to Mrs. Salih's submission to the GPSC No 4.

(b) Inappropriate TAFE qualifications

[REDACTED] has attached to his original license application a Transcript of academic

qualifications not a diploma and/or a certificate. (an academic record is not qualifications). Refer attachment 29 of BARG's submission to the GPSC No 4.

The OFT failed to take notice of this error in granting his licence.

2. (a) License Misrepresentation - [REDACTED]

[REDACTED] License No [REDACTED] letterhead. Refer attachments 23-25 BARG's submission to the GPSC No 4.

As indicated in case No.1 above, the license No 15163C on the letterhead belongs to [REDACTED] not to [REDACTED]

[REDACTED] this entity was and is not licensed. This pattern of conduct has been carried out since 28 October 1997 as recorded in the OFT files, where 6 complaints are registered. Refer to Trader's Profile at Page 2 in attachment No 25 of BARG's submission to GPSC No 4.

It is evident from documents summoned from the OFT files that the OFT was aware of this continuous pattern of misrepresentative conduct in breach of the legislation.

This is shown in the following OFT documents referred in attachment 25 of BARG's submission to the GPSC No 4 which are detailed as follows:-

- Trader: [REDACTED]
Details for transaction # 2804556 -- Slotwinski doc (complainant)
Administrative details
Breach Comment *license different from contract (2/08/2005)*
- Complaint Assessment -- Home Building
Breach detected - *Yes*
Nature of breach -- *Work outside scope of license*
Date: 5/08/05
- OFT Transaction Cover Sheet -- (Mr Mark Slotwinski)
Trader details [REDACTED] date 5/08/05
Handwritten comment at bottom of the page:-
Refer for breach -- Needs Company License
- Building Inspection Report -- 12 July 2005
Complaint File No C2005/1962
Complainants name -- Con Papanastasiou
Contractors Name -- [REDACTED]
Name of Inspector Donald Van Keimpema
At page 37 -- Summary paragraph 5 states:-
"The contractor has used his individual contractors license to conduct the work. He is also using a company, Blue Print Developments Pty Ltd as a consultant

Company. The Company is used to organize the plans and associated engineers details and to lodge the plans and associated documents with the local council authority. During the inspection of the alleged defective work Mr. Con Kalantzis was considering obtaining a Company license for Blue Print Developments Pty Ltd.

Further, in this case, the OFT file records show 6 complaints against [REDACTED] License No [REDACTED] during the period of October 1997 to August 2005. However, the OFT, only noted the trader's breach and misrepresentation as late as 2/8/2005. Furthermore, it continued to renew Mr. Constantine [REDACTED] license every year, notwithstanding the breaches noted in the file. Refer Trader's Profile at pg 2 Complaints details (BSS) Also in attachment 25 of BARG's submission to the GPSC No 4.

(b) Criminal History

Documents in the OFT file show that [REDACTED] has a serious criminal history. Refer to NSW Police Service Application criminal record check i.e. dishonesty, violence, sexual, drug, 10 years conviction (3 pp) Attachment 22 of BARG's submission to GPSC No 4

(c) ABN Number improprieties.

The Certificate of Insurance issued to [REDACTED] for the building work for Mr C Papanastasiou is showing ABN No [REDACTED] but the Building Contract for Mr C Papanastasiou is showing ABN No [REDACTED]. This is for the same homeowner's building work, Con Papanastasiou and the same trader. Refer to attachment 5 of this submission.

The four OFT internal documents referred to in the above attachments 25, and the criminal history search record in attachment 22 of BARG's submission to GPSC No 4, show that the OFT although it was aware since August 2005 of the above breaches and misrepresentations, took no action. Refer to [REDACTED] Register Section 120 of the Home Building Act Status of Licence No [REDACTED] which currently shows no penalties. Attachment 5 above.

Mr. Con Papanastasiou has advised BARG that the OFT has finally taken disciplinary action against [REDACTED] as at 27/8/07 and required him to pay to the Commissioner for Fair Trading a penalty of \$3,000. The HBS lenient prosecution does not adequately reflect the serious breaches and the damages suffered by the victims when one takes into account the protracted delay and the systematic repetition of the offences by this repeat offender.

The OFT's process is clearly not in accordance with recommendation No.9 of the Campbell Inquiry, which recommends inter alia, " increased use of licence suspension/cancellation for repeated serious breaches."

3.(a) Licence Misrepresentation - [REDACTED]

[REDACTED] License No [REDACTED] letterhead. (Third example)
Refer attachment No. 33 of BARG's submission to GPSC No 4.
As indicated in examples 1 and 2 above, the license No [REDACTED] on the letterhead belongs to [REDACTED] and not to [REDACTED]. [REDACTED] is not licensed. The fact that [REDACTED] used his own license number is evident that he made the representation knowing that [REDACTED] was not the holder of that license.

[REDACTED] is also a qualified supervisor for the licensed partnership of [REDACTED]. [REDACTED] Licence No [REDACTED] however he did not use on this letterhead the correct name of the parties owning the trading name nor the appropriate license number!

(b) Inappropriate trade qualifications

[REDACTED] has attached to his license application a Craft Certificate which is only a vocational certificate and has printed on it this statement:-

"Note: This does not certify that a prescribed course has been completed." Refer to page 29 and attachment 35 of BARG's submission to the GPSC No 4

It is clear that this is not an appropriate and acceptable trade qualification.

(c) ABN Number improprieties

It is noted that [REDACTED] is trading under the following identities:-

- [REDACTED] licensed contractor, Licence No [REDACTED]
Registered ABN No is [REDACTED]. Refer to historical details extract. Attachment 6.
- [REDACTED] licensed partnership Licence No [REDACTED]
[REDACTED] entity historical details show:-
registered ABN No is [REDACTED]
- [REDACTED] shows Licence No [REDACTED] on its letterhead.
- Tax Invoice No 1528 and 1529 letterhead show:-
Licence No [REDACTED] ABN [REDACTED]
Refer attachment 6

Please note the Licence number on these tax invoices belongs to [REDACTED] while the ABN number belongs to [REDACTED]. This conduct is inappropriate and illegal.

This conduct has been brought to Mr. S. Griffin's attention numerous times by the homeowner, in particular refer to copy of letter dated 7/8/2006. Attachment 7.

The Home Building Act makes provision for the regulation of residential building work and other specialist work. Section 4 of the Act provides: "that a person is prohibited from contracting to do residential building work "on behalf of an individual, partnership or corporation" unless that person is the holder of a license authorizing that person to contract to do that work.

Section 17 of the Act provides that a person must not represent that "an individual, a partnership or a corporation is not the holder of a license.

The above evidence shows that in each of the 3 named cases the individual trader [REDACTED] knowingly and willingly displayed their individual license on letterheads and various documents representing that a particular entity held a license knowing that was not the case. The fact that they used their own license number, is evidence that they made that representation knowing that entity was not the holder of the stated license.

How widespread is this pattern of particular conduct? How are consumers affected by this conduct? and; we further question:- Has the OFT/HBS exercised appropriate responsibility and accountability to avoid liability to the victims and the public at large?

The 3 individual homeowners involved in the above cases are not the only consumers who are victims of these builders' misconduct. These letterheads are used continuously by each trader for each and every building job they undertake during each year.

There could be more victims of these three traders of which we are not aware.

Consumers are unaware of builders previous conduct unless they obtain the OFT files. These files can only be obtained under FOI Act and/or summons during CTTT proceedings. Many consumers have applied under the FOI Act but were unable to obtain them as the fees were excessive. (Refer to page 16 of BARG submission to GPSC No 4,) others are not in the CTTT or are not aware and/or are advised to do so

Further features common in other BARG cases are:-

- Repeat licence offenders ([REDACTED] etc
- Multiple insurance claims by one builder i.e. [REDACTED]
- allowing licence to expire and re-apply under a different name:- [REDACTED] etc.
- Reprimand/caution and leniency for serious offences [REDACTED] etc.
- Failure to prosecute i.e [REDACTED] etc.
- Protracted delay in resolving complaints lodged and/or failure to investigate.

Searching of the register of builders' licences show that the regime adopted by the OFT with respect to the sanitizing of "old" licences allows them to expire or to be surrendered. These "old" licences are then replaced with new licences, (with different numbers and/or identities) which are clear of warnings about past infringements, suspension, imposition of fines, paid statutory claims, and encumbrances. This process is beneficial to both the builder and the insurer; the builder by being given a fresh start, with an unblemished record and the insurer by not having to pay for homeowners claims, particularly those relating to "old" licences. The OFT has a real problem justifying how and why the licensing process is circumvented to permit licences to be renewed clear of their past history.

The sanitizing of licences deprives homeowners of crucial information about their reliance on the builder's licence and erodes the protection afforded by the licensing system to homeowners.

- iii) The third point that needs to be made is in relation to "the significant enhancements made to the licensing regime" in January March and August 2006 as stated by the OFT (page 4),

BARG submits that the claimed "enhancements" do not deter traders from continuing their misconduct unless more stringent licensing checks and more rigorous investigation and policing are carried out by the OFT.

Indeed, **the strictest laws in any country are worthless if not strenuously enforced.**

- iv) A fourth point that needs to be made is in relation to the OFT claim that BARG's cases are statistically "few". It is submitted that this "*minority viewpoint*" defence is used because the OFT has a vested interest in the status quo.

BARG relies on the concrete evidence it has provided on the numerous inquiries over the years to support that this "minority" viewpoint has been upheld by the findings of the previous inquiries.

As already mentioned, BARG is a voluntary unfunded organization and finds it difficult, almost impossible, due to lack of resources and daily workload to assist all the consumers who have complaints against the building industry.

Whilst the OFT expenses allocations as per p.5 of the OFT Year in Review Book are:-

Program Allocation Year 2004 – 2005

Fair Trading 85% \$129M CTTT 15% \$23M

Program Allocation - average staff

Fair Trading 83.3% - \$889M CTTT 16.7% 140 staff

It is of great interest to note that, notwithstanding the large funds allocated to the OFT and the 24 Fair Trading Centres, the OFT is unable to process to finalization all the complaints as claimed in their Year Book i.e.

“During 2004-2005 some 6,313 complaints were received by the Home Building Service. Of the complaints received:

- *1,737 (30%) were resolved through intervention by Fair Trading centre staff.*
- *2,284 were referred to the Home Building Service where 1,960 were resolved through technical assessment by building inspectors.*
- *2,236 (37%) were either referred to another part of the Fair Trading; the Consumer Trader and Tenancy Tribunal; another agency; or required no further action.*
- *280 matters are still undergoing the resolution process.*

Not all disputes can be resolved by Fair Trading Centre or Home Building Service staff and approximately 20% of matters are ultimately referred to the Consumer, Trader and Tenancy Tribunal” (This is an extract from NSW Office of Fair Trading, A Year in Review 2004-2005 pg 35.)

According to page 35 of the Year Book the OFT does not investigate and resolve all complaints lodged by consumers. Consequently this means that not all the traders involved in the remaining balance of unresolved special complaints are investigated and prosecuted. Thus these traders remain in the system to continue their misconduct.

1.3 Continuing Professional Development

BARG supports mandatory continued professional development (CPD).

BARG’s concerns in relation to the CPD are:-

- a) The protracted delay and reluctant implementation by OFT of such an important and critical requirement. and;
- b) The CPD restricted scope and agenda has been introduced by the OFT. It is noted that the CPD only includes the two trades, **builders and pool builders**. This is **not** to the recommendations of the Campbell Inquiry, point 2.6.3 which states:-

“The evidence put to the Committee suggests that there is a view by both builders and consumers that there has been a decline in builder skills, and in turn, a resulting decline in the quality of builders and building. A high proportion of building licences holders have not been trained correctly, and do not have adequate knowledge of the required building practices”

and at page 44 the Campbell Inquiry states:

“Licensed builders and tradesmen also need to have some sort of meaningful training. This training must be linked to their yearly licenses so that any builder not doing the training will have not their licence renewed”

We note the Department of Fair Trading has indicated to the Campbell Inquiry in 2002 that:-

“A program for CPD has been in development for some time but has yet to be introduced”.

There was overwhelming support from builders and their representative bodies for mandatory continuing professional development (CPD). We refer to the Newcastle Master Builders Association statement made to the Campbell Inquiry at p. 44: -

”[The Association] recommends introduction of mandatory Continuing Professional Development for all licensed operatives in the industry. CPD should be targeted at the top ten dispute issues with mandatory attendance at approved training courses being a condition of renewal of license and pre-requisite for obtaining Home Warranty Insurance.”

Further, the Campbell report at page 52 point 2.6.7 states:-

“Various submissions have called for licensing to be extended to all building practitioners. The key elements of such licensing would be to impose compulsory continuing professional development, apply complaints management, disciplinary and audit and mandate professional insurance.” (emphasis)

BARG’s Response

The Campbell Inquiry Recommendation No 7 should be implemented in its totality as stated and not fragmented. The Campbell report has not specified that the Continuing Professional Development (CPD) requirement should only be confined to builders and pool builders to the exclusion of other trades. On the contrary at 2.6.3 specifically it recommended that *‘builders and tradesmen also need (refer above) and ‘This training must be linked to their yearly licences’* (Emphasis.)

BARG concurs with the Newcastle Masters Builders Association recommendation to the Campbell Inquiry which emphatically states:-

- a) CPD should apply for all licence operative in the industry.
- b) CPD should be targeted at the top ten dispute issues.
- c) Mandatory attendance at the approved training courses being a condition of renewal of licence and pre-requisite for obtaining Home warranty insurance.

As quoted above, there are numerous trade categories of building contractors and qualified supervisor certificates to carry our residential building work (A to Z) who do not have to comply with the CPD requirements. e.g. bricklayers, carpentry and Joinery, general concreting, tiling, roofing, waterproofing etc.

BARG refers to the 2 examples of traders previously named in this submission, who have been allowed by the OFT to continue trading without having acquired the recommended CPD i.e.

- i) [REDACTED] with Carpentry and Joinery qualifications. Refer to Cón Papanastasiou complaint. This trader's licence was originally issued on 25/01/1991 and has been since renewed yearly despite the OFT files having registered 6 complaints since 1997. No requirement to undertake CPD was applied by the OFT to [REDACTED]
- ii) [REDACTED], with a Carpentry and Joinery and general concreting qualifications Licence first issued on 3/10/1991. He is also a qualified supervisor for the partnership of [REDACTED] Licence [REDACTED] issued on 19/06/2002. He has been prosecuted by the Court for failure to provide a written contract ss 7A and 7 and a certificate of insurance under s.92 (1) and s. 92 (2) of the HBA.

In addition, in March 2006 the HBS issued a notice to [REDACTED] and [REDACTED] calling on him and his partnership to show cause why disciplinary action should not be taken against them for failing to build a concrete driveway in accordance to their statutory responsibilities. In July 2006 HBS imposed a fine of \$3,000 against [REDACTED] partnership, and a fine of \$1,500 against [REDACTED], as the nominated supervisor. No requirement to undertake CPD was applied by the OFT to [REDACTED]

BARG's Comment

It is of great concern, to see that the OFT is allowing such traders to continue practicing without having the appropriate skills with disastrous consequences to consumers as demonstrates in the BARG case studies before this Committee.

There are a high proportion of building licence holders who have not been trained correctly and do not have adequate knowledge of the required building practices who need to comply with mandatory continuing CPD. e.g. the so called "old" licences by the OFT.

BARG Requests:-

The Committee to recommend that mandatory CPD requirements be implemented for all licensed operatives in the industry and to be a condition of renewal for licence and pre-requisite for Home Warranty Insurance.

3. The resolution of complaints

3.1 Resolution of BARG matters

- a) The OFT acknowledges that:- “ during the course of the public hearings BARG brought forward some extremely unfortunate cases”. The HBS continues to attempt to assist them. These cases are relatively few when compared with the number of matters successfully resolved by the OFT, HBS and CTTT since the HBS was established only three years ago”

BARG’s Response:-

The above OFT statement is incorrect.

- a) Firstly, the HBS has been established in February 2003, therefore when the OFT lodged its submission in December 2006, it was almost 4 years (3 years and 10 months exactly). To date is 4 years and 8 months since the HBS was established.

Secondly, the “minority viewpoint” has been already discussed at pg 23 iv) above

Thirdly, the cases brought forward by BARG during the course of the inquiry are only some of the case-studies that have been used to demonstrate and support BARG’s claims. Those cases are indeed extremely unfortunate, (as OFT stated) however, the question that needs to be asked is what has caused and contributed to such extremely unfortunate position!! Why does the OFT (as stated above) only attempt “to assist” the victims instead of resolving their problems as per HBA 1989?

BARG makes the following Urgent request:-

The Committee to obtain the OFT files of these unfortunate cases to assess how and what caused these consumers’ to become victims of the system.

Unfortunately, as mentioned at page 16 of BARG’s submission to the GPSC No 4, these consumers did not obtain access to their OFT files under the FOI Act due to the harsh and excessive fees imposed by the OFT for the supply of their files.

- b) At Page 9 the OFT states:- “Fair Trading considers that only five Building Action Review Group matters have compliance or other action continuing. All Other matters have been finalized. Since its establishment the Home Building Service has successfully resolved over 7000 building dispute disputes between consumers and traders.”

The above OFT statement is incorrect and BARG rejects it outright as follows:-

- i) Since the HBS was established in February 2003, as previously stated, BARG agreed at the first meeting with Mr Le Compte, (former HBS General Manager) to provide him with 10 case studies as a sample of problems encountered by consumers for his attention and investigation.

Refer to BARG's letter dated 29 May 2003, handed by Russo and Partners, Solicitors, to the GPSC No 4 on the 17/11/06. To date, 4 and a half years later, out of those 10 original cases, there are still 4 cases continuing i.e. Kemal Boules, Goulson Salih, Carol Frantzis and Narelle Peters.

It is noted that at page 2 of the above BARG letter the Department had provided to Mr. Le Compte with 15 names and case notes.

- ii) Further, on the 17/11/06 Russo & Partners handed to the Committee another letter dated 25/10/04, in respect to an additional 17 cases provided to HBS by BARG. Out of this lot there are 5 additional cases still continuing i.e.

Con Papanastasiou, Ken Quin, M Schein. A Falzon.

- iii) Since October 2005. BARG has provided 15 additional cases to HBS i.e. Diana Cornwell, Anna Akerman, Cala Megan, Yasmin Fahri, Luisa Berg, Gerard Nichol, Charlie Tran, Alex Le Bon, Mr. & Mrs. Hildebran, Ian Dawson, John Chabulick, Mr Andrew Goodman, Mrs Chui, Katherine Perrin, Rob Siebert, Connie Koutsoubos, Mr. and Mrs. H. Stanojavic, Mr. & Mrs. G. Wells.

Out of this lot there are 10 cases still continuing. Thus, having regard to the above i), ii), iii) items, we strongly object and disagree with the OFT calculations and assumptions.

- c) Page 9 of the OFT supplementary submission, further states:- *"If we compare this number with the 50 cases BARG suggests it has had some involvement in over the years this represents only 0.7% of the total building disputes.."*

BARG's Response

This OFT statement is incorrect.

On the 17 November 2006, at the hearing of the GPSC No 4, the Hon Jan Burnswood, Committee member asked BARG's secretary Ms Chakouch:-
"Can you tell me how many members the group has?"

Ms Chakouch replied:- *"around 50 on top of my head"*. Refer transcript.

It is apparent the OFT has misconstrued Ms Chakoush answer by suggesting to the Committee that:- *“the 50 cases BARG suggests it has had some involvement in over the years”*

The OFT’s statement is patently misleading, untrue and ludicrous.

It is obvious the question asked relates to the present, thus the **correct number is 50 members as at the 17/11/2006.**

The number of members BARG has had is verifiable. BARG’s submissions and its members are recorded in the numerous inquiries reports documenting the characteristics of the modus operandi of the Building Services Corporation (BSC) the Department of Fair Trading (DFT), the Office of Fair Trading (OFT) and last but not least the Home Building Service (HBS). The OFT is well aware as all this information as it is in their files and it is also mentioned in the numerous inquires reports. Let’s not forget that, one single builder i.e. ██████████, caused BARG to make representations for over 150 victims of this builder alone!

BARG’s reputation and tireless work over the last 20 years is a public knowledge, recognised and commended in the numerous inquiries reports and Parliament Hansard.

Even Mr. Le Compte, HBS former, General Manager, in his letter dated December 2003, recognized and thanked BARG for the information provided which was of invaluable assistance in developing the operation of the HBS and how he appreciated the frankness of our comments at the various meetings. Refer to the relevant letter. This was the reason Mr. Le Compte established the Quarterly Meetings with BARG.

In respect to the statement in item 3.1 (b) above regarding the OFT having successfully resolved 7000 complaints compared to BARG having only 5 continuing complaints, this is a preposterous allegation as the Inquiry by now is clearly aware that this is not the case.

Accordingly, BARG objects and rejects the implications in the OFT supplementary submission.

The OFT claims that it has successfully resolved 7000 complaints since the establishment of the HBS, that is for a period of almost 4 years (but say 3 as the OFT stated). If we compare this number with the number of building consumer complaints stated in each of the relevant OFT year books, as lodged each year since the establishment of the HBS, i.e.

Year 03 -04 = 6,275 Year 04 – 05 = 6,313 Year 05 -06 = 5,891

The total of complaints is 18,407.

Thus, the OFT claim that it has successfully resolved 7,000 complaints since the establishment of the HBS (whilst not conceded) if true, when compared to the 18,407 complaints lodged, this OFT claim casts a serious question in relation to the balance of the 11,407 complaints remaining unresolved. This is of great concern to BARG because it leaves 11,407 consumers and their families seriously aggrieved, and 11,407 traders involved in these complaints which have not been investigated and/or prosecuted.

3.3 Expertise of Home Building Inspectors

The OFT states that:- “*BARG suggested to the Committee that the building inspectors employed by the Queensland Building Service Authority were of a superior quality to those of NSW*”.

BARG’s Response

This OFT statement is incorrect.

BARG denies emphatically that any suggestions were made to the Committee regarding the building inspectors employed by the Queensland Building Service Authority and demands that the OFT provides evidence to support its statement.

Therefore, BARG’s submits that the documentary evidence provided to the Committee is undeniably true and correct.

- In relation to the expertise of HBS inspectors, the evidence BARG submitted was extracted from documents issued by the NSW HBS inspectors’ report, see OFT files summoned in the CTTT in relation to:-
 - i) **Mr Donald Van Keimpema**, HBS Building inspector’s report provided to Mr. Con Papanastasiou. Refer to page 51 volume 2 of BARG’s submission, and attachment 62 – where the NSW Office of Fair Trading Inspector issued a Building Inspection Report dated 14/11/05 p. 37, in Summary at paragraph 3, inspector, Van Keimpema’s concedes:-

*“There are some items mentioned in Mr Frasca’s that are not considered defective or beyond the qualifications of myself.” **Emphasis “beyond the qualifications of myself”** (Mr Frasca is the independent engineer commissioned by the Homeowner to prepare an appraisal report of defective work in his property.)*

- BARG simply asked:-: What are the HBS inspectors’ qualifications?

The NSW homeowners are entitled to know what are the qualifications of inspectors used by the HBS who investigate and assess their homes.

It has been demonstrated that most HBS building inspectors have no engineering qualifications to meet the multitude of requirements in dealing with structural plans and

specifications to assess if the building work as constructed complies with the D/A approved plans and is structurally adequate. In fact, the classification of some of the defective items were not considered defective by inspector Van Keimpema's as his qualifications were beyond Mr Frasca's!

In light of this, Mr Papanastasiou's house has not been appropriately assessed by the HBS inspector.

In the majority of the case studies, because of the inadequate HBS building inspectors' qualifications, the building report provided by the HBS is disputed, thus the consumer needs a second report. If that is disputed again, the homeowner has gone to a third report to try to prove and get the HBS to address the issues.

To date, Mr Con Papanastasiou's building has not been appropriately rectified nor has, his builder [REDACTED] been 'vigorously investigated' as recommended by the Campbell recommendations No 10.

Another example occurs with the building reports of HBS building inspector which concerns three different and separate complainants (Falzon, Cornwell and Magan).

BARG in its addendum to the submission has referred the Committee to serious evidence in relation to the expertise of HBS Building Inspectors. Once again these are the recommendations made by an independent expert consultant Mr. John Lewer, commissioned by NSW – Home Building Services. i.e.

At pp 9 -11 of the Addendum to BARG's submission to GPSC No 4. Consumer case study is Mr. & Mrs. Falzon's. (family of 4 children)

Mr. John Lewer, an independent building expert commissioned and instructed by the HBS to review and provide an opinion of the work particularly where the writer's opinion may differ from those expressed by both the reports provided by Mr. Peter Stubbs, HBS inspector and Mr. Frasca, independent engineer commissioned by the owner.

BARG wish to reiterate herewith that at page 38 of his report Mr. Lewer recommended-
At 8.0 *Opinion (h)*

- and iii " *the builder, the bricklayer and the concreter should be asked to show cause why their licences should not be revoked*" and at page 39 –
iv) *A course of advance training be instituted that will bring the inspection staff to a level of expertise commensurate with the responsibilities*"

BARG asks:- Has the HBS/OFT carried out the above recommendations?

The expertise of Building inspectors is of great importance and must be commensurate with their responsibilities to appropriately assess the building work as constructed and to find whether it complies with the relevant D/A conditions of approval, BCA, AS and EP & A Act. An inadequate assessment especially of serious structural defects is of grave consequences to consumers as it creates massive delays and financial hardship.

To date Mr. & Mrs. Falzon's house has not been rectified nor the licensed builder effectively prosecuted.

It is to be noted that the assessment of defective work by a building inspector impacts on the investigation of compliance and prosecution of the licensed trader. It is on the building inspectors' report and the assessment of the breaches found that the Regulatory Body will decide whether it will be taking any action at all. Therefore, if builders with serious compliance problems are not effectively disciplined and remain in the system they will continue to carry out unsatisfactory work because they have not been told differently. This is a major concern to consumers.

BARG Requests:

The Committee to take serious consideration whether the OFT/HBS's Inspectors' level of expertise and current approach to investigation is prompt and satisfactory. Especially when the defects are major and the ramifications of delayed and appropriate investigation are much greater. Please refer to homeowners submissions before the Committee. Also to BARG's original submission pp 51-64 and BARG's supplementary submission pp. 5-13 to the GPSC No 4.

Two further complainants' cases involving HBS building inspector, Mr. Peter Stubbs, are those submitted by Mrs. Cala Magan and Ms Diana Cornwell. Please refer to their submissions.

There are many other examples where consumers have complained about HBS inspectors' assessment of defective work and suffered massive financial hardship, protracted delay and human tragedy.(physical, mental and emotional) e.g.

Luisa Berg, wrote to Mr. Le Compte requesting a second inspection by an inspector with engineering qualification. Although, HBS building inspector, Mr. Steve Masters carried out a second inspection, Ms Berg was unable to obtain his report as he was no longer in the employ of HBS. However, this should not have impeded the HBS from requesting him to provide his report. Mrs. Berg's house remains incomplete deteriorating and at great risk of fire and other damages as no insurance would cover a house which is defectively built and incomplete.

Lydia Chakouch (Strata Plan; 58994 of 4 town houses) lodged their complaint to HBS on 26/09/2003.

This case study is relevant in reply to the OFT's statement in relation to the HBS advising the Committee that:-

"In attempting to mediate extremely complex matters, the HBS has time to time engaged the services of other experts from the private sector of the Government Architect's Office"

The following example will demonstrate that the OFT's additional efforts 'to mediate the extremely complex matters' was unsuccessful to say the least.

On 9th December 2003 HBS sent Mr. Chris Nicholson to investigate and assess the defective work by [REDACTED] to 4 townhouses and common area. The Inspection was incomplete and Mr. Nicholson advised he would return.

In February 2004, after Ms. Chakouch wrote several letters to the former HBS General Manager, Mr. Le Compte regarding incomplete and unsatisfactory inspections and how this protracted delay was causing deterioration of defects and to the 4 families' life.

In March 2004, HBS sent Mr. C. Nicholson and Mrs. Janina Vieri (who, we were advised had structural Engineering expertise). However, even this inspection was not completed nor satisfactory according to the 5 independent engineers commissioned by the owners .

On 1st March 2006 during a BARG Quarterly Meeting with HBS, the Strata matter was discussed in relation to the incomplete and inadequate investigation reports. Mr. Griffin undertook to send a consultant Engineer from the Government Architect's Office.

On the 24th May 2006 at BARG's Quarterly Meeting with HBS, Mr. Steve Griffin provided Mrs. Chakouch with the Report by Mr. Woodcock (Government Architect's Officer).

It is of great concern to note the paucity of this expert's report. The assessment of the major structural defects was inadequate and its conclusion minimized and trivialized the defects to the point that the Strata Lawyer, Russo & Partners, wrote to HBS requesting that this report not be provided to the Insurer as it would be detrimental to the matter.

Refer to this report to see the inadequacies of Mr. Woodcock's assessment. Particular emphasis should be given to the current rectification work which was determined by a mediation settlement between the 2 structural engineers (the insurer's and homeowner's) Refer to Ms. Chakouch's submission which details and demonstrates the extent of serious defective work which was not identified by the HBS's expert from the Government's Architect's Office.

The Campbell Inquiry was very critical of the resourcing and timeliness of the investigation as a large proportion of consumers submissions to the Committee referred to the failure by the Department of Fair Trading to deal with investigations promptly and satisfactory.

The Campbell Inquiry Committee believed that 3 months wait from a complaint to the commencement of investigation was intolerable particularly given the potential severity and hardship that building problems involve.

Further, the above Committee stated that: having examined particular cases and visited sites; the investigations branch's assessment of priority and urgent cases did not reflect either the Committee's nor the community expectations. Refer to:- Campbell Inquiry's

Recommendations No. 10

"The Committee recommends that a vigorous investigations unit be established in the Commission. It should be staffed by industry experts and be resourced to be pro-active and responsive to complaints and to conduct prompt investigations".

The above examples demonstrate that this situation is persisting despite recommendation No. 10 of the Campbell Inquiry, Refer to Attachment 17 of BARG's submission to the GPSC No 4, dated 22/8/2006 where at p. 6 there is a table showing 9 complaints which were lodged after the establishment of HBS.

This table of few examples speaks for itself.

In light of the above, the Consumers of New South Wales demand that the Inquiry address the failure by the OFT to uphold the legislation passed by the NSW Parliament for consumer protection and that it be appropriately and strenuously enforced.

4. The exercise of Disciplinary Powers

The OFT at page 10 states:-

"During the course of the public hearings.....the Building Action Review Group suggested that the Home Building Service was not effective in its use of disciplinary powers under the Home Building Act 1989."

BARG's Response

BARG's submission pp 51 to 64, and attachments referred to, relied on the OFT/HBS files and documentary evidence provided by consumers.

Although not all of BARG's case studies have been submitted to this inquiry, much of the case study evidence indicate that policing is simply not taking place; there is lack of accountability and failure to police the system to ensure that "shoddy" practitioners are rigorously prosecuted.

Whilst we are aware that there have been recent reforms in the legislation relating to improving disciplinary procedure and raising penalties for offences under the Home Building Amendment Act 2004 i.e maximum are 200 penalty units or \$22,000 for an individual, and 1000 penalty units or \$110,000 for a corporation, BARG members experience is that the OFT/HBS disciplinary action is too lenient and policing of

licences insufficient. Furthermore, when builders appeal against the lenient penalties to the Administrative Decisions Tribunal, the OFT is reluctant to pursue the builder and to act in an adversarial manner.

There is a need for revised offences and stronger penalties. The large majority of the case studies in front of you which have lodged complaints with the OFT, some of them have taken up to three years and still there is no result. There is no explanation as to why the OFT and its officers have taken as long as they have. There is no explanation as to why once reports have been prepared and the OFT has appraised the defects with the building construction, that the OFT does not commence an immediate prosecution against the individual builder and take control of the situation.

You can see in the cases before you the extraordinary periods of time that people have had to endure problems with the builders. There does not appear to be, even with the current legislation and the changes that have occurred, any real and noticeable improvement in dealing with complaints.

This is not satisfactory as the delays in investigations create significant impacts on consumers which are totally avoidable by prompter response. Furthermore, it does not send a strong enough message to the traders.

Further, there are numerous examples as to the inadequacy of penalties and disciplinary proceedings by the OFT/HBS, however BARG once again will refer the Committee to the Campbell Inquiry's recommendation which has not been implemented adequately;

Recommendation No 9

"The Committee recommends that the system of licence breaches and penalties be reviewed to include:

- *use to warnings limited to minor licence breaches and inadvertent errors*
- *application of on the spot penalties;*
- *increase use of licence suspension/cancellations for repeated serious breaches ; and*
- *scaled penalties to apply in relation to business turnover.*

To demonstrate further the licence breaches and inadequate penalties imposed by the OFT, (especially repeat licence offenders) BARG provides once again details of the 3 examples previously quoted:-

- a) ██████████ and ██████████ both held a contractor's licence under the Act, we have seen earlier the improprieties in the documents attached to their application for a licence, and the licence misrepresentation of ██████████

N.B. On 12/8/2002 the Director-General of the Department of Fair Trading, now the Commissioner of Fair Trading had issued show cause notices to ██████████ and

██████████ in relation to a previous home building claim made by Mr and Mrs Daniels. The work involved was an upper storey addition to the house. The work was done by ██████████, and that of ██████████'s association, if any, is as a partner in the business, ██████████ which the Administrator maintained was the contracting party with Mr. and Mrs. Daniels with respect to that work.

There were several allegations made against ██████████ that were found to be sustained by the Administrator first, and a further allegation was also sustained against both ██████████ and ██████████. e.g.

- Failing to notify a change of Particulars with respect to a Business Name
- Misrepresentation that ██████████ held a Licence (when knowingly represented that ██████████ held a licence when it did not do so)
- Doing Residential work without insurance
- Installing timber flooring other than agreed
- Not carrying out work in a Proper and Workmanlike Manner
- Carrying out work that did not comply with the Building Code of Australia
- Not being fit to hold a contractor Licence

ORDERS:- 1. In ██████████ case disqualified from obtaining a licence for a period of 3 years from the 1 August 2005 being any of the following:-

- i) the holder of any authority
 - ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of an authority
 - iii) an officer of a corporation that is a holder of an authority
2. In ██████████ case, the Tribunal set aside the determination of the Commissioner and substituted that decision with a finding that ██████████ is guilty of improper conduct within the meaning of s.51(2)(c) of the Act, and determines that he:-
- a) is to be reprimanded for that improper conduct; and
 - b) is to pay a penalty of \$1650.00 to the Administrator

The above is an extract from the NSW Administrative Decision Tribunal (ADT)
Dated 1/08/ 2005 – Attachment 32 of BARG's submission to the GPSC No 4.

N.B. In the case of Mr and Mrs Salih's the current complaint which was lodged against ██████████ and ██████████ officially on the 10/9/2003 with the HBS (this was one of the 10 cases provided to Mr Le Compte in April 2003) Refer to BARG's letter dated 29/5/03 handed in to the Committee on the 17/11/06. This is one of the extremely unfortunate cases that has compliance and other action continuing against the builder and home warranty insurers to date.

Although the Salih's have similar serious complaints against the above traders, to date, 4 years later, we have been advised by Mr. Bullent Salih that the HBS has not issued disciplinary action against ██████████ and ██████████ as yet for the breaches of Salih's complaint.

N.B. Salihs lodged their complaint to the HBS on 10/9/03 to date we have been advised by Salih that the HBS have not advised of any prosecution taken.

Further, please note that [REDACTED] and [REDACTED] are repeated offenders of serious breaches.

b) [REDACTED] Licensed Trader – Licence misrepresentation, criminal record, serious defective work, repeat offender ([REDACTED] has 6 previous complaints) to day we have been advised by Mr. Con Papanastasiou that the OFT advised him on 27/8/07 that the HBS has finally taken disciplinary action against [REDACTED] and he was required to pay the Commissioner for Fair Trading a penalty of \$3,000. Although the homeowner cannot equate the leniency of this penalty, to add insult to injury, the OFT advised Con Papanastasiou that [REDACTED] has made an application to the Administrative Decision Tribunal for a stay of the monetary penalty imposed on him.

The protracted delay in prosecution and the leniency of penalty in this case is extraordinary to say the least.

As already mentioned BARG made several representations during the Quarterly Meetings with HBS for Mr Papanastasiou. (refer letter dated 25 October 2004 to Mr Le Compte, handed to the Committee on 17/11/06)

On 12 July 2005, Mr Donald van Keimpema, HBS building inspector, inspected the building works from 8.00am to 12-15pm and issued a Building Inspection Report, dated 14 November 2005. The protracted delay in this case is extraordinary. This is one of the “extremely unfortunate” cases which caused massive financial losses and underscribed human suffering to the elderly couple and family.

N.B. The Occupation Certificate has not been issued by Gosford Council as D/A conditions have not been complied with.

Is the penalty of \$3,000 adequate for a repeat offender? It is definitely not as the Campbell Inquiry recommendation “to increase use of licence suspension/cancellation for repeated serious breaches”

Mr. Con Papanastasiou has also been a victim of the exorbitant and traumatic experience of several years in the CTTT until his funds and health run out. The building stands idle and deteriorates daily as the homeowners health.

c) [REDACTED] Licensed Trader – licence misrepresentation. The work involved was to carry out a concrete driveway for \$19,360 in October 2004. [REDACTED] **failed to provide a certificate of Home Warranty Insurance, although he included the premium in his quote**, failed to provide a proper contract and carried out serious defective work not in a proper workmanlike manner, control joints and key joints not in accordance with AS and manufacturers recommendations etc. Reports by HBS Building inspector, Structural engineer and key joint manufacturer all demonstrate the defective work.

The complaint was lodged to OFT on 25/1/2005 –

To date this matter is still ongoing in the CTFT. The legal cost (over \$50,000), the stress is exacerbating the homeowner’s health as she is terminally ill, a single mother with 3

children, there is no amount of money that one could put on the traumatic health condition of nearly 3 years of this dispute.

The HBS commenced prosecution action against ██████████ on 13/1/06 in the Local Court at which time ██████████ entered a plea of guilty in relation to the charges. On 15th March 2006 ██████████ was convicted for his failure to provide a written contract and he was fined \$700 for that offence. ██████████ was also convicted in relation to receiving payment before having home warranty insurance in place was fined \$2000. In relation to the third offence of doing work without having home warranty insurance in place the Magistrate found the offence proved, but did not record a conviction against ██████████ and placed him on a good behavior bond for 12 months.

The Department's prosecution by the OFT raised some very concerning elements which we believe, it is important for the Committee to see how the HBS conducts its prosecution. After receiving the transcript of the proceeding on 20 June 2006, Russo & Partners, solicitors, wrote a letter to Mr. Steve Griffin advising him: *“the manner in which this case was prosecuted and in particular the failure by the Department to progress the matter as slow as it has been, is a systemic failure in the system which permeates not only through this matter but through many matters of which the writer is aware.*

For the system to be effective and for it to have the proper impact as a deterrent on those that breach the system, it is imperative that matters are dealt with in a timely fashion.” Mr. Russo said. Copy of Mr. Russo's letter is attachment No 8.

Separate to the prosecution proceedings, in March 2006 the HBS issued a notice to Mr. ██████████ and to ██████████ calling on he and his partnership to show cause why disciplinary action should not be taken against them for failing to build the driveway in accordance with their statutory responsibilities.

On the 11 of July 2006, the OFT decision was made to fine ██████████ \$3000 and ██████████, as the partnership's nominated supervisor, \$1500.

The OFT/HBS issued a warning letter in relation to the use of misleading letterhead, for the misrepresentation that ██████████ held a licence.

Complaint lodged on 25/1/2005 – HBS prosecuted the trader on 11/7/06 (18 months).

The homeowner cannot understand firstly, why ██████████ was prosecuted and fined by the HBS when this entity was not involved in the contract with the driveway.

Secondly, if ██████████, the licensed partnership, was involved in this contract (as implied by OFT) then ██████████ should have been also in breach of failing to provide a contract and to provide home warranty insurance. These are the same charges as were made in the case of ██████████, who is the nominated supervisor, for ██████████ partnership.

In that case, why hasn't the HBS issued prosecution notice also against ██████████

BARG's research of the OFT Year in Review publications in relation to Home Building Compliance- Disciplinary results and Home Building Compliance Prosecutions results Reveals the following:-

Year 2003-2004

Home Building Compliance- Disciplinary Results = 37 licensed traders

Home Building Compliance- Prosecutions Results = 41 traders

Fair Trading complaints lodged – 6275

Year 2004-2005

Home Building Compliance- Disciplinary Results = 29 licensed traders

Home Building Compliance- Prosecutions Results = 28 traders

Fair Trading Complaints lodged – 6,313

Year 2005-2006

Home Building Compliance- Disciplinary Results = 32 licensed traders

Home Building Compliance- Prosecutions Results = 21 traders

Fair Trading Consumer Complaints lodged 5891

BARG has no available information as to year 2006-2007

BARG comments

The above results of disciplinary and prosecution action by the HBS are extremely low in comparison to the number of complaints lodged yearly by consumers.

BARG Requests

The Committee to please assess whether the OFT/HBS does effectively administer and rigorously enforce the legislated Home Building Act 1989 and whether the Campbell Inquiry's recommendations have been complied with and adhered to effectively.

6. CONCLUSION

The OFT states:-

a) *"It is our evidence that the factual evidence to the Committee, when viewed objectively, reveals that the establishment of the HBS has delivered the service level improvements sought by the Campbell inquiry in 2002"*

b) *"The factual evidence as presented to the Committee provides no evidence of systemic failure of either the HBS, the dispute resolution or the home warranty regimes in operation in NSW"*

The OFT statements are incorrect.

BARG's Response

The factual evidence before the Committee when assessed will determine and establish beyond a shadow of doubt that:-

a) The HBS has not complied with all the Campbell inquiry recommendations to provide consumers any level of improvement. Refer to Campbell's Inquiry recommendations and BARG submissions supported by documentary and visual evidence.

BARG has attached herewith copy of the Campbell Inquiry's recommendations. Attachment 9.

b) BARG's submissions and case studies demonstrate a variety of ways in which the OFT/HBS has failed to discharge its statutory responsibilities and what appears to be clear evidence of generic features of systemic failure.

BARG's submission cannot even be called the tip of the iceberg, because every case is a repetition of the experience of another. Every case involves a human tragedy whether a break up of a marriage, physical/psychological impact and financial ruin.

Each complaint involves a failure by the OFT/HBS to discharge its statutory responsibilities to protect consumers.

Consumers are prejudiced from the outset. There is complete reliance among consumers that licensing of builders is based on competence and therefore affords the predicated protection against substandard works

When problem arise consumers ring the OFT assuming that the OFT will intervene to assist resolve their complaint and pursue the licensed trader who has not complied with the legislation.

Governments have, over several decades, effected major amendments in the legislation. The purpose of those changes was always to provide better protection for the consumer.

The OFT's objects, functions and its statutory responsibilities as a licensing authority are:-

a) to promote and protect the interest of owners and purchasers of dwellings (including the purchasers of kit homes) and users of water supplies, sewerage system, gas, electricity, refrigeration and air conditioning,

b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work,

d) to give general advice and guidance to the public,

e) to monitor the operation of insurance provided for the purpose of this Act.

It is clearly evident that the OFT/HBS through its management and system of inspectors is in breach of its statutory duty and the intent of Parliament, in that the OFT/HBS has:-

- Failed to assess thoroughly every licence and renewal application against the requirements of the HBA 1989 and Home Building Regulation 2004 (in particular clause 25 of the regulation)
- Many provisions of the Act and Regulations ultimately place the responsibility on the “Director- General.” By stating that:- “The Director-General must be satisfied”. We know that the Director- General, in practical terms, delegates his authority to officers within the Department. We have read in the Hansard that Honorable Members have effectively said to that:-

“ Director- General that he is omnipotent and that he can determine with absolute discretion..... ”

Refer to NSW Legislative Assembly Hansard 18/11/04 Home Building Amendment Second reading.

As disclosed by the OFT representatives and OFT submissions to the Committee:-

- **10%** of all licence applications **only** are checked against bankruptcy and criminal history and at random.
- These random checks are also applied to **10% of the renewals** by the HBS each year.

and; as demonstrated in BARG’s submissions and case studies to the Committee:-

- Repeat licence offenders are reissued with a renewal licence every year, without previous licence history been taken into account or CPD.
- Expired licence over a year are renewed without updated documents attached.
- Builders allow their licence to expire and reapply under a different name. And/or are issued with licences with new numbers.
- Failure to assess appropriately trade qualifications and documents attached to the licence applications, in particular “old” licences to comply with the current legislation
- Failure to conduct and assess complaints promptly when they arise. and;
- Failure to investigate **all** complaints.
- Failure to conduct proper initial inspections leading to mishandling of complaints. (inspectors lacking adequate expertise to detect major structural defects).
- Failure to police and sanction unreliable builders within a reasonable time.
- Failure to impose adequate/maximum penalties as per HBA amendment 2004
- Over reliance on caution/reprimands (as it is first offence)
- Failure to monitor the operations of insurers

- Failure to give general advice and guidance to the public.
- The OFT makes a distinction between old licence and new licence application this is an affront and injustice to the victims of builders malpractice who rely on the OFT's performance of the licensing enforcement.

We submit that Parliament established the various OFT functions, designed to afford consumers meaningful and prompt remedies against unscrupulous builders.

The cases referred to the Committee demonstrate conduct by the OFT/HBS which is unsatisfactory and which attracts legal liability.

This is particularly the case, where the OFT/HBS has a responsibility to take care to avoid or prevent damage to consumers, who have relied or depended on the authority's performance of its statutory functions with due care. The law has firmly established a duty of care on public authorities.

The OFT owes an explanation to the GPSC No 2 Inquiry for its failure to comply with its statutory functions and the effect and consequences to consumers.

There is a long list of other problems leading to decreased consumers protection :-

- PCA – Council certification (see article PCA continues to practice after 18 counts of unsatisfactory professional conduct were found against him) dated **21/6/2007**. See Attachment 10.

Final occupation certificate. Most consumers are unaware of the importance of this certificate. Thousand of consumers live in illegal defective premises. BARG has numerous case studies, especially of project builders with such problems. Although Council conditions are not complied with, Council orders are issued under section 121B of EP & A Act. and; Campbell Inquiry recommendations 33-39 are not complied with.

- the CTTT – significant delays (2-3 years) mass of claims against builders and home warranty Insurers, the cost is prohibitively high.
- the CTTT does not take into consideration and abide by Council's orders and/or non compliances of D/A conditions of consent, BCA and AS and HBS Building Inspectors reports and Rectification orders.
- The objects of the CTTT Act are not complied with:- (see the following)
 - # to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair.
 - # to enable the proceedings to be determined in an informal, expeditious and inexpensive manner.
 - # to ensure the quality and consistency of the Tribunal's decision making.
 BARG refers the Committee also to the Functions and responsibilities of the Chairperson according to the Act. The Campbell Inquiry Recommendations 48-50 have not been complied with.
- Home Owners Warranty Insurance. The present system substantially reduced the

level of consumers protection by the introduction of “last resort”

(There are still outstanding claims of victims of the HIH and BIG insurers)

The constitution of the Home Warranty Scheme Board does not fully account for the Grellman’s Inquiry recommendations, which outlined the establishment of a Scheme Board modelled on the Motor Accidents Authority. The Board is merely taking an advisory and consultative function.

We hoped that the Board would, in the absence of an independent warranty insurance ombudsman, provide an independent function in considering grievances and complaints.

- BARG raised many issues forwarded to the Interim Scheme Board that still wait response. Please refer to the Minutes of the Meeting with the Insurance Scheme Board Chairperson and BARG held on 12/7/06.
Attachment 12 of BARG’s submission to the GPSC No 4. and relevant correspondence attachments 13, 14, and 15 of BARG’s submission to the GPSC No 4.
- The OFT/HBS is responsible for monitoring the operation of the insurance scheme. The OFT meets regularly with insurers to discuss administration and issues impacting on consumers. The legislation provides for linking of licensing with insurance. In this regard, the Hon John Watkins (a former Minister for Fair Trading) stated:-
“..The Director General of the Department of Fair Trading will not be able to approve an application for, or renewal of, a licence unless satisfied that the applicant has or is eligible to obtain insurance for future work..”
Refer to Home Building Amendment Bill – Legislative Assembly 2/6/99 – Second Reading.
- Independent consumer advice and advocacy centre. Campbell Inquiry recommendations Nos. 3, 29, 30 and 31. Unfortunately, the recently established Macquarie Legal Centre, is not adequate to the consumers needs. In particular the centre is only available to consumers from one geographical area, it is means tested and cannot assist consumers who have complex building matters and where the builder has already initiated legal proceedings. This Centre is not operating as per Campbell Inquiry recommendations.

BARG has recommended the need to educate consumers of their rights and entitlements of the 3 important stages of building namely:-

- pre construction
- during construction
- post construction

- BARG believes that the Licensing Authority’s failure to perform their statutory obligations to assess the suitability and competency of licence holders to hold and continue to hold various licences is causing the majority of problems.

As the Committee is well aware, over the years there have been a number of inquiries and reports into the building industry, but it is clear that very little has changed, if anything it has become even worse.

Why? It is evident that the failure of the various inquiries lies in the failure to appropriately and fully implement their recommendations.

BARG submits that it is necessary to comply with **all** the Campbell Inquiry recommendations and to ensure that these are appropriately implemented.

It is evident that the Government did not effectively implement many of the Campbell and Grellman Inquiries recommendations and in particular placed the HBS under the umbrella of the OFT, contrary to the Campbell Inquiry's recommendation No 1, which required it "*..to be separate from the OFT*".

The failure of the HBS to stand alone, independent and as a separate entity from the OFT is causing the systemic problems to recur to this day.

This accounts for the OFT's reluctance to implement the Campbell Inquiry recommendations since the inception of the HBS.

Therefore, it is essential that a Committee representing all stakeholders be set up to ensure that all the Campbell Inquiry's Recommendations are appropriately implemented and to continue monitoring that they are vigorously enforced by the Regulatory Authorities.

BARG thanks the Committee for the opportunity to reply to the OFT's supplementary submission dated December 2006. We regret and apologize for the lengthy submission, however, this could not be avoided. The problems are so numerous and complex that it is not possible to cover all aspects in great detail. Regrettably we may have unintentionally overlooked some and/or repeated others. BARG claims are supported by documentary and visual evidence which can be found in the OFT/HBS files and other relevant authorities files. Please do not hesitate to request further details.

Sincerely yours,

Building Action Review Group Inc.
Executive Committee