

Home Building Advocacy Service

# FUNDING GUIDELINES

Funding Period: 1 November 2008 to 30 June 2012

## 1. HOME BUILDING ADVOCACY SERVICE

NSW Fair Trading (operating within the Department of Services, Technology & Administration) oversees the Home Building Advocacy Service (HoBAS) that is funded to provide legal advice, advocacy services and assist or represent NSW residential home building consumers before the Consumer, Trader and Tenancy Tribunal.

There is a range of information, mediation and advice services already available for home building consumers, but if a dispute should become protracted, some consumers face disadvantage in their capacity to resolve disputes between themselves and their home building contractor. Many consumers cannot afford to engage legal counsel to act on their behalf or provide advice and this can sometimes result in an uneven playing field in dispute resolution.

The NSW Government is committed to ensuring that dispute resolution is more equitable to NSW residential home building consumers. Fair Trading's role in providing consumer protection and marketplace regulation means that it provides services which promote the rights and responsibilities of *both* home building consumers and contractors. HoBAS only provides services to consumers.

HoBAS assists consumers in resolving residential building disputes in a cost effective manner. HoBAS targets those consumers who have an ongoing dispute with a building contractor despite prior involvement by NSW Fair Trading.

Funding of HoBAS contributes to the achievement of Fair Trading's strategic intent, that NSW will be recognised for value and fairness in the marketplace. It also assists the Government to achieve its consumer protection and social justice policy objectives and assists in ensuring that the community has access to information and consumer help.

## 2. ELIGIBILITY CRITERIA

### 2.1 Who can apply

Applications can be made by:

- New South Wales not-for-profit incorporated or registered organisations;

Note: this does not preclude profit making organisations from applying, providing they do not operate HoBAS on this basis.

Joint applications, where two or more organisations pool resources and expertise, will also be accepted.

Applications **cannot** be made by:

- organisations intending to use the funds for a project in a State/Territory other than NSW;
- Universities, TAFE and other academic institutions;
- Government agencies; or
- NSW Fair Trading, including the Consumer Trader and Tenancy Tribunal, or their employees.

## **2.2 Selection Criteria**

Applications must be able to demonstrate the following:

- a) Applicant's organisation is financially viable, as demonstrated by its last two audits and most recent annual report;
- b) Provision of a comprehensive workplan which meets HoBAS Guidelines;
- c) Demonstrated achievements in service delivery, planning, development & evaluation, including responsiveness to emerging needs;
- d) Proven record of effective financial, staff & organisational management;
- e) Demonstrated commitment to providing equitable and accessible services;
- f) Proven commitment to accountability, including use of mechanisms for ongoing monitoring and evaluation, and timely submission of prescribed reports which comply with relevant funding requirements;
- g) Experience in providing legal advice and effective advocacy services
- h) Commitment and experience in effective dispute resolution mechanisms;
- i) Understanding, expertise and knowledge of NSW Home Building legislation;
- j) Proven ability in the development and provision of effective community education;
- k) Demonstrated understanding of the requirements of working within a court /tribunal environment;
- l) Demonstrated experience in promoting and participating in inter-agency liaison and collaboration; and
- m) Proven capacity to develop and present policy positions to government agencies and other relevant forums in relation to Home Building law issues.

## **2.3 HoBAS Objectives**

**The objectives of HoBAS are to provide:**

- Advice to NSW residential home building consumers on their rights, responsibilities and on what action can be taken to resolve their home building dispute;
- Advocacy to builders or relevant parties on behalf of residential home building consumers via telephone calls, letters or personal representation;
- Negotiation of disputes between consumers and builders or relevant party;
- Assistance to residential home building consumers in the preparation of cases for Tribunal hearings;
- Representation of residential home building consumers at Tribunal hearings where considered appropriate;
- Referrals to relevant authorities; and
- Community education activities.

## **3. GRANT APPLICATION**

### **3.1 Advertisement**

NSW Fair Trading invites applications, through newspaper advertisements and through NSW Fair Trading's website. The funding period is from 1 November 2008 to 30 June 2012.

## **4.7 Applications**

To apply for funding assistance from NSW Fair Trading, applicants must:

- i) fill out an application; and
- ii) provide any supplementary documentation, which may be requested to clarify specific application details.

Incorporated organisations are required to submit their applications through their Management Committee, Board of Directors or delegate authority.

Written applications must be lodged with NSW Fair Trading no later than close of business on the day indicated on the application form and in the advertisement. Applications may be submitted by post, fax or email. Please ensure if submitting application by email that a scanned copy of the application form is submitted showing the original signatures. Unsigned application forms will not be accepted.

## **4. HoBAS SERVICE OPERATIONS**

HoBAS assists consumers in resolving residential building disputes in a cost effective manner. HoBAS targets those consumers who have an ongoing dispute with a building contractor despite prior involvement by NSW Fair Trading.

While the day to day operation of HoBAS is the responsibility of the funded organisation, Fair Trading is responsible to monitor HoBAS operations to ensure accountability for the funds and that the organisation complies with agreed performance requirements.

### **Advocacy Role**

#### **4.1 Definition of Advocacy in Terms of HoBAS**

Advocacy in relation to the HoBAS means the provision of support services for consumers of the home building industry which aim to achieve the best possible outcome for the consumer.

This advocacy service will be unique to HoBAS, given that NSW Fair Trading's role is to provide *impartial* services which promote the rights and responsibilities of both home building consumers and contractors.

#### **4.2 Advocacy in Terms of Seeking Progress Updates**

The service will seek updates on a consumer's behalf on the progress of building disputes already in the system with:

- the local Fair Trading Centre; or
- the Home Building Service; or
- the Consumer, Trader and Tenancy Tribunal, if approval to represent the consumer has been granted.

It should be noted that if a consumer's home building complaint is already being dealt with by NSW Fair Trading, the HoBAS must not become involved beyond seeking updated information on behalf of

the consumer. Duplicating the complaint handling process will waste limited resources and create confusion, as well as unnecessarily exacerbating tensions between the consumer and the contractor.

Staff of the HoBAS must check with the relevant Fair Trading Centre to establish whether the consumer's dispute is already being dealt with by Centre staff and / or the Home Building Service prior to agreeing to any course of action on behalf of a consumer.

If NSW Fair Trading is unsuccessful in its endeavours to resolve a dispute to the consumer's satisfaction, the consumer may then approach the HoBAS for assistance.

In enquiring about the progress of a dispute, the HoBAS will be able to make representations on behalf of the consumer about any matters of concern, but will not have the authority to pursue complaints against the three bodies (Home Building Service, a Fair Trading Centre or the Consumer, Trader and Tenancy Tribunal) or their staff. If a consumer wishes to make a formal complaint about these bodies, the HoBAS will provide consumers with referral details to the appropriate Office – for example, the Commissioner, Ombudsman or Independent Commission Against Corruption.

### **4.3 HoBAS Support for Consumers Who Have a Contractual Dispute With a Home Building Contractor**

If consumers approach the HoBAS for assistance with a residential building dispute, the service should firstly ascertain if they have approached NSW Fair Trading for assistance. If they have, and confirm that Fair Trading is no longer involved, then the HoBAS can apply its best endeavours to resolve any issues which the consumer states are outstanding. If consumers have not previously lodged a complaint with Fair Trading, the Service will, in the first instance, provide them with referral details so that they may do so.

The advantage of this referral is that consumers then have access to the procedures under Part 3A Division 2 of the *Home Building Act 1989*, enabling an inspection, a written report from a home building inspector, and possibly a rectification order. In addition, if the dispute dealt with by Fair Trading's Home Building Service is subsequently the subject of an application to the Tribunal, the application will automatically be accepted by the Registrar under section 48J(a) of the *Home Building Act 1989*.

Section 48J(a) stipulates that the Registrar must reject an application to the Tribunal's Home Building Division if it has not first been investigated by a Fair Trading inspector. Although Section 12(4) of the Consumer, Trader and Tenancy Tribunal Act 2001 permits some exceptions to the requirements of section 48J(a), it is obviously in a consumer's interest to have their complaint investigated by Fair Trading first, because if their complaint subsequently becomes a Tribunal application it will automatically be accepted for lodgement by the Tribunal.

When a consumer has approached the HoBAS for assistance in resolving a building dispute and there are a number of issues involved, the HoBAS will case manage the complaint by pooling the staff's legal, building, and dispute resolution skills and experience to map a resolution strategy.

Once it is confirmed that the building contractor is licensed, the HoBAS will negotiate by phone or make an on-site visit with a view to resolving the dispute. If this negotiation process is unsuccessful, in a small number of cases, a more formal mediation process may be considered appropriate, utilising the expertise of the HoBAS staff.

The HoBAS will report any instances of apparent breaches of the *Home Building Act* to NSW Fair Trading. The HoBAS is not an alternative to Fair Trading in terms of disciplinary procedures.

#### **4.4 What happens when the HoBAS is unsuccessful in resolving the dispute?**

If the best endeavours of the Service have failed to resolve the residential building dispute and the matter has not been lodged in the Consumer, Trader and Tenancy Tribunal, the consumer should be advised that lodging a Tribunal application is an option that is open to both consumers and building contractors.

It should be noted that while the HoBAS may conduct on-site visits as part of the dispute resolution process, these visits will not be recognised as investigations under Division 2 of the *Home Building Act 1989*, and any HoBAS report written in relation to the visit will not be recognised as definitive by the Tribunal. The reports prepared by the HoBAS will represent an internal record of work undertaken on the consumer's behalf and its outcome.

The HoBAS staff will not provide expert reports for consumers, but if a consumer wishes such a report to be prepared, the HoBAS will assist in locating a recognised building expert, preferably in the consumer's local area. The consumer is to be advised about the potential cost of such reports.

#### **4.5 Advocacy in Terms of Assisting a Consumer to Prepare for a Consumer, Trader and Tenancy Tribunal Hearing**

Consumers may seek assistance from the Service to prepare their evidence for a hearing in the Home Building Division of the Consumer, Trader and Tenancy Tribunal. They may seek this assistance before or after an application has been lodged with the Tribunal. Consumers should be made aware of the legal obligation of the Tribunal to attempt conciliation of a dispute prior to a matter being heard.

In matters involving less complex issues, consumers can be advised by staff as to the merits of their case and the types of evidence which could be taken to the hearing.

Complex matters should be dealt with on a casework basis, with the legal, building, and dispute resolution expertise of HoBAS staff being utilised to advise consumers on the types of evidence to present to the Tribunal, how to present their case and the contractual and technical issues on which they should rely.

#### **4.6 Advocacy in Terms of Representing a Consumer in a Consumer, Trader and Tenancy Tribunal Hearing**

Under section 36 of the *Consumer, Trader and Tenancy Tribunal Act 2001*, a party must seek leave to be represented in the Tribunal. The Tribunal must give approval before any party, whether consumer or contractor, can be represented in a hearing. The *Consumer, Trader and Tenancy Tribunal Regulation 2002* sets out the circumstances under which the Tribunal may consider approving representation.

When considering the issue of representation, HoBAS staff will need to consult the Consumer, Trader and Tenancy Tribunal Regulation and the Chairperson's Directions on: *Acceptance of Building Claims and Home Building Division Claims or Disputes over \$25,000* (both found at the CTTT website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au))

Notwithstanding the legislative limitations on representation, given the intensive nature of this support, it is obvious that representation cannot be made available by the HoBAS for all consumers involved in home building matters in the Tribunal. HoBAS staff will therefore need to rationalise available resources to ensure support is provided to the maximum number of consumers.

The Service should develop its own guidelines as to which consumers will be eligible for representation. Details of proposed guidelines should be provided with applicant's application. These will need to be approved by NSW Fair Trading. The Office may request amendments if the representation guidelines are considered inadequate in terms of access and equity in service provision.

When considering how its representation guidelines will operate, an applicant organisation may, for example, limit representation to consumers whose disadvantage would seriously impact on their ability to represent themselves e.g. those with literacy difficulties, non-English speaking background consumers, Aboriginal consumers, aged consumers, those with disabilities, or those who are financially or intellectually disadvantaged. The HoBAS may also wish to consider the value of a Tribunal application and / or the value of the building contract to gauge the potential financial impact of a cross claim from a building contractor or a Tribunal order on a consumer. The financial impact already experienced by a consumer as a result of a building dispute may also need to be taken into account.

If the HoBAS service reviews and amends its Tribunal representation guidelines, NSW Fair Trading must be provided with details of amended guidelines to ensure that principles of access and equity are maintained.

#### **4.7 Fees for Service**

It is expected that the HoBAS will provide basic negotiation and advocacy services free of charge (progress checks or an initial telephone call to a contractor, for example). It is also expected that a consumer's income source will be considered if fees are to be charged for specific services. For example, if a disadvantaged consumer is in receipt of a government benefit, perhaps s/he should receive *all* services without charge.

It is considered reasonable that fees be charged by the HoBAS for dispute resolution services, assistance in preparing for a Tribunal hearing, and representation at a Tribunal hearing.

#### **4.8 NSW Fair Trading to Have Final Say on Fee Structure**

Organisations applying to operate the HoBAS are asked to submit a Schedule of Fees with their application. To ensure that the HoBAS is cost effective for consumers, NSW Fair Trading reserves the right to stipulate alternative fees to the successful applicant.

#### **4.9 Application of Fees Collected**

All fees collected by the HoBAS will be used to assist with the operational costs of the HoBAS. This will be a requirement under the funding agreement between the successful organisation and the Commissioner for Fair Trading.

#### **4.10 Hours of Business**

Decisions about specific hours of business will be the responsibility of the management, however it is expected that as a minimum, the service will be available Monday – Friday during normal business hours. Should the need arise and resources permit, thought may also be given to extended hours during the week and /or the service being available at some time on the weekend.

#### **4.11. Staffing of the HoBAS**

Staff employed to work in the service will be employees of the organisation(s) approved for funding. While their employment conditions must comply with relevant Commonwealth and State laws, as required in the HoBAS funding agreement, the service management has responsibility for the day to day working conditions of the Service's employees.

The number of staff positions and their respective roles is a decision for the organisation funded to provide the HoBAS service. The positions will need to encompass the three compulsory areas of expertise (home building, law, and dispute resolution). Consideration could be given to some positions being part-time, casual, job shared, or paid on a consultancy basis.

As a guide, the annual budget should allocate a minimum of around 65% of the total grant to staff salaries and salary on-costs. Additional financial support to meet the cost of operational overheads will be available through fees for service.

#### **4.12 Target Group for the HoBAS**

The principles of access and equity in service provision should be applied to the operation of the HoBAS.

Where staff and time resources need to be rationalised, priority is to be given to those consumers who are disadvantaged by the circumstances outlined in 4.6 of these Guidelines.

HoBAS staff will provide advocacy service in the form of Tribunal representation to those home building consumers who meet the approved guidelines.

#### **4.13. Promotion of the HoBAS**

Promotion of the HoBAS service may be through advertising in the press, website promotion and if wider promotion proves necessary, radio interviews or interviews with local print media could be considered. Promotion of the HoBAS will contribute to create a client base for the HoBAS.

NSW Fair Trading will also have information on the funded service on its website.

#### **4.13. Independence of the HoBAS**

The organisation(s) chosen to operate the HoBAS will provide its day to day services completely independently of government and special interest groups.

In keeping with accepted standards of transparency and probity for the use of public funds, there will be reporting requirements which must be met and a funding agreement which ensures those

standards are met. Providing there is compliance with the agreement and these Guidelines which form part of the agreement, the funded organisation(s) will operate autonomously.

Staff employed by the management of HoBAS are employees of the organisation(s) operating the HoBAS.

#### **4.12. Development of Protocols**

The organisation which is approved to operate the HoBAS will need to liaise with NSW Fair Trading and the Consumer, Trader and Tenancy Tribunal regarding appropriate referral protocols.

### **5. APPROVAL PROCESSES**

Funding applications to the Home Building Advocacy Service are assessed by a Grants Assessment Committee which includes representatives from NSW Fair Trading, the Department of Services, Technology & Administration and industry representatives. All applications are assessed against the aims and objectives of the program, the selection and eligibility criteria as set out in these guidelines. Recommendations will then be made through the Commissioner for Fair Trading seeking the approval of the Minister for Fair Trading.

Applicants will be informed in writing of the decision regarding their application.

#### **5.1 Nature of Grants**

Grants will be provided for the operations and management of the Home Building Advocacy Service to provide legal advice, advocacy services and assist or represent NSW residential home building consumer at the Consumer, Trader and Tenancy Tribunal.

Grants to assist with an organisation's operational costs are not normally available. Grants funding for capital items will not normally be available. However, exceptions may be made where the applicants demonstrate that a capital item is essential for the successful conduct of the project.

Funding will be for a period of three years. There will be no automatic re-funding, any proposal for further funding will need to be subject to a new application. Continued funding of the Home Building Advocacy Service is dependant on the continued need and availability of funds.

#### **5.2 Consultants**

If a consultant is to be contracted, the applicant should prepare terms of reference for the project, send these to at least three suitably qualified consultants seeking their expressions of interest, and arrange interviews to determine the most suitable consultant for the project.

The applicant will then be in a position to include in the application:

- a copy of the quotation and qualifications of the preferred consultant;
- quotations and qualifications from at least two other consultants; and
- a copy of the terms of reference supplied to the consultants.

### **6. FUNDING**

## **6.1 Funding Arrangements**

If the funding is approved, the organisation will be informed of the funding arrangements in writing and be provided with two copies of a funding agreement, one copy of which must be signed and returned. Only when the organisation and the Commissioner for Fair Trading have both signed and one copy has been returned to Fair Trading, will the first payment be made.

## **6.2 Payments**

Funding grants will be paid in instalments for the duration of the funded period. Continued funding is dependent on compliance with the requirements of these guidelines and the funding agreement.

All payments are made via electronic funds transfer.

If at any time during the grant period a funded person has not spent any part of the grant:

- the next grant instalment may be reduced by up to the unspent amount; or
- an amount up to the unspent amount may be required to be repaid. The required amount must be repaid within 21 days of repayment being sought.

The grant recipient must also submit, within two months of the end of the funding period, an audited financial statement covering the entire funding period, as required by the funding agreement.

Both parties must keep a copy of the funding agreement. These guidelines form part of the agreement between grant recipient and NSW Fair Trading.

## **6.3 Variations**

Variations to funded project budgets, activities or timeframes must be approved by NSW Fair Trading. All such requests from grant recipients must be made in writing to the Commissioner.

Generally, variations may be considered for events which were unforeseen at the time of the project application and where costs cannot be met from within existing funding assistance. Variations with increases to funding levels will only be approved subject to availability of funds and will not exceed more than 5% of the original amount granted unless special circumstances arise.

# **7. ACCOUNTABILITY**

## **7.1 General Conditions**

NSW Fair Trading is responsible for ensuring that government funds are appropriately accounted for, both in terms of effectiveness of outcome and financial management. Therefore any individual or organisation receiving a grant will be required to accept certain conditions generally related to how the money should be spent and how the grant recipient will report.

Failure to continue to meet the program's eligibility criteria or to meet any aspect of the funding agreement or financial accountability requirements may lead to withdrawal of the grant. In such cases, the funded body will be advised and consulted prior to any action being taken. No further funding will be provided.

## **7.2 Copyright**

NSW Fair Trading reserves the right to claim copyright ownership in certain circumstances. In such cases, successful applicants will be advised of Fair Trading's claim on ownership when they are informed of funding approval for their project.

## **7.3 Home Building Advocacy Committee**

At the end of the funding period, grantees will be required to present an overview of the outcomes and benefits of the funded project to NSW Fair Trading.

## **8. SUBMITTING YOUR APPLICATION**

Forward applications by post to:

The Manager  
Community & Industry Grants  
NSW Fair Trading  
PO Box 972  
PARRAMATTA NSW 2124  
Fax: 9777 8810  
E-mail to: [grants@services.nsw.gov.au](mailto:grants@services.nsw.gov.au)

For further information or assistance contact:

The Manager  
Community & Industry Grants  
Ph: 9619 8798