



2008/09 financial review of the Department of Building and Housing

Report of the Social Services Committee

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Department of Building and Housing

Recommendation

The Social Services Committee has conducted the financial review of the 2008/09 performance and current operations of the Department of Building and Housing and recommends that the House take note of its report.

Introduction

The Department of Building and Housing is responsible for policy, regulation, and dispute resolution services for the building and housing sector. It manages occupational licensing, provides information and advice for the industry, and provides policy advice on building and housing issues. The department also provides monitoring advice to the Government on the Housing New Zealand Corporation, and works with the corporation towards various policy outcomes, including the Government's priorities for social housing and the housing market. It monitors the supply, quality, and affordability of housing, and seeks to ensure the effective use of State assets and an appropriate return on the Government's investment in housing.

Financial management

We note that the department's total income and surplus in 2008/09 fell from the previous year, mainly as a result of deteriorating economic conditions and reduced activity in the sector. However, the department nevertheless made some significant financial savings as a result of its value-for-money review in 2008/09, and plans to make similar or greater savings in 2009/10. The department told us that in 2008/09, it found savings of \$3.2 million by reviewing its operating model and specifically its approach to service delivery. We look forward to observing the progress of the department's value-for-money review in the coming year.

We were concerned to hear that the department breached the provisions of the Public Finance Act 1989 and the 2008 Treasury Instructions during the year under review. The department contravened the Public Finance Act by allowing its operating account to go into overdraft in November 2008, and the 2008 Treasury Instructions by not returning its 2007/08 surplus by the due date of 31 October 2008. Although these breaches were not significant enough to affect the department's audit opinion, we believe they are still a cause for concern, and we were pleased to hear that the department is taking steps to prevent such errors in future.

Weathertight Homes Resolution Service

The department is responsible for advice, assessment, and dispute resolution services for owners of non-weathertight homes. In the 2008/09 year the department failed to meet some of its quality and timeliness goals regarding the Weathertight Homes Resolution Service; we heard that the department recognises its timing problems and is changing its approach in this area. It now assigns teams of assessors, rather than individuals, to

apartment buildings, which it believes has shortened the time it takes to complete such assessments by three to five months. The department believes it has improved the quality of its assessments (some of which have been challenged and have proven to be accurate), and is working to improve its capacity and capability in this area. We therefore expect to see better and more timely assessments in the 2009/10 year.

The department told us that it sees an end to the “leaky home” problem in New Zealand, which it believes reflects a complete system failure resulting from a combination of design failure, lack of capacity and skills in the building sector, substandard inspections, and deregulation; once these issues are dealt with, weathertightness problems should not reappear. The department also told us that because building techniques and materials have changed since the 1990s, the problem has peaked, and weathertightness problems should now need to be fixed only in buildings from that era. The department said that solving the problem depends on affected people’s willingness to come forward, noting that the Weathertight Homes Resolution Service is only one avenue of redress alongside private negotiations or prosecution.

We understand the department tracks its clients through the Weathertight Homes Resolution Service process, and asked whether clients receive value for money from the process; that is, whether their settlements exceed their costs throughout the process. The department told us that monitoring has allowed it to build up a picture of the obstacles that prevent people from resolving their claims; we heard that a number of people stall in the middle of the process because the next level is too costly for them to continue, mostly because of a lack of available credit to finance repairs, and the costs of the dispute resolution processes.

We were interested to learn that the department advises its clients to undertake repairs first and then claim refunds, rather than the other way around; however the economic downturn has made this very difficult for many people. We were informed that taking a case to the Weathertight Homes Resolution Service typically incurred costs between \$20,000 and \$40,000, while the cost of having a case heard by the High Court is significantly higher.

Development of new policies

We were interested in progress on the development of new policies for resolving issues about leaky houses in 2008/09, to reflect changes in Government policy. Although the department could not give us a timeframe for the formal announcement of the new policies, it said the Government has made it clear it wants the department to focus on supporting and encouraging people to resolve their situation by undertaking repairs rather than dispute resolution, to reduce delays and therefore the overall costs of repairs. We also learnt that the department has been asked to consider alternative approaches to this problem, and is discussing the matter with a number of territorial local authorities, including the five councils most affected by the weathertightness problem. They are seeking a simpler approach, possibly including alternatives to dispute resolution, as local authorities incur proportionally higher costs than others involved because of the bankruptcy of a number of third parties to disputes.

We are concerned that many owners of non-weathertight homes may be unable to finance repairs or dispute resolution processes, and hope that any new policy will address this important issue.

The majority of us look forward to observing progress on the development and implementation of new policies on resolving weathertightness problems in the near future.

Building Act 2004 review

We discussed the department's progress with the review of the Building Act 2004, and its intended outcomes. The department informed us that the Act was originally intended to deal with issues that arose in the industry in the 1990s, and it now required updating to provide a more effective response to the issues currently facing the sector. We learned that the review is seeking ways of simplifying and streamlining the Act for the benefit of the sector and stakeholders, and is about finding ways to reduce the costs of regulation rather than regulation itself. The department told us the regulation introduced by the Act had lifted the overall performance and quality of buildings and operators in the industry, and that initiatives such as product certification and builder licensing have greatly strengthened the sector.

The department said it believes problems with the Act relate to its "one size fits all" approach, which is not appropriate for the sector, and some unnecessary costs that the regulatory regime imposes. We are also aware of concerns relating to the complexity of the building consent process, the implementation of the Act by local government, and consumers' confidence in the capability of sector practitioners. The department also noted that the review will look at the allocation of risk and liability, and specifically whether risk falls too heavily on territorial local authorities, and will endeavour to ensure that no inappropriate trade-offs result from simplifying and streamlining the Act.

We look forward to monitoring this review as it progresses in the 2009/10 financial year.

Appendix A

Approach to financial review

We met on 18 November and 16 December 2009 to consider the financial review of the Department of Building and Housing. Evidence was heard from the Department of Building and Housing and advice received from the Office of the Auditor-General.

Committee members

Katrina Shanks (Chairperson)
Sue Bradford (until 27 October 2009)
Chester Borrows
Hon Annette King
Tim Macindoe
Todd McClay
Hekia Parata
Dr Rajen Prasad
Su'a William Sio
Metiria Turei (from 25 November 2009)

Evidence and advice received

Department of Building and Housing, *Annual Report 2009*.

Department of Building and Housing, Response to financial review questions, received 13 November 2009.

Department of Building and Housing, Response to additional financial review questions, received 4 December 2009.

Department of Building and Housing, *Statement of Intent 2009/12*.

Office of the Auditor-General, Briefing on the Department of Building and Housing, dated 18 November 2009.

Organisation briefing paper, prepared by committee staff, dated 16 November 2009.

Appendix B

Corrected transcript of hearing of evidence 18 November 2009

Members

Hekia Parata (Deputy Chairperson)
Chris Auchinvole
Chester Borrows
Tim Macindoe
Todd McClay
Dr Rajen Prasad
Su'a William Sio
Phil Twyford

Witnesses

Katrina Bach, Chief Executive

[Introductions]

Bach I might just introduce Nigel Bickle, Deputy Chief Executive Sector Capability and recently appointed as Deputy Secretary at the Department of Labour responsible for the Immigration Service, Ann Clark Deputy Chief Executive Corporate, and the rest of my Strategic Leadership Team are in the seats behind. Briefly, really just to talk very briefly about the 2008-09 financial year. It would be fair to say that it was a challenging year for the department with the need to adapt very rapidly to changing economic circumstances largely because the department's two-thirds third party funded. A lot of our revenue comes from levies and fees and also from interest earnings on the tenancy bond fund—the trust fund—so with falling interest rates and also a considerable downturn in economic activity in the building sector it had quite an significant impact on our income.

The key areas of work that we progressed during the year were related to the Building Amendment Act which was passed in August. That simplified and streamlined, and began a process of actually simplifying and streamlining, the regulatory framework around building. In particular it introduced what we are calling national multi-use building consents, which is going to be a centralised national service for scale and volume builders' to obtain pre-approval of designs which then can be applied across multiple sites as opposed to having to get consent for every single building. We also introduced streamlined processes, through the legislation, for making variations to building consents that had been approved, so you didn't have to go back through the loop and the hoops again for variations that didn't impact on the structure and integrity or were not substantial changes to the

design of the buildings. We also began a more substantive review of the Building Act which is designed to look at streamlining and simplifying that piece of legislation. Largely it's about trying to reduce costs, but not at the expense of the quality and performance of buildings. We finalised the Licensed Building Practitioner Scheme, which has been a long time coming but is now fully in place, and the primary decisions on the scope and application of the scheme have now been taken. We began a review of the approach to weathertightness issues, which is clearly an ongoing focus. These were some quite major pieces of work that we were able to deliver.

I mentioned the revenue pressures. Our forecast reduction in revenue that we made at the beginning of the Budget process in March this year was that we would have almost a 25 percent reduction in revenue from the tenancy bond fund, and that we projected a shortfall of 6.4, up to \$18 million that's over the next 5 years—we predicted a shortfall of \$6.4 million at that time. This is something that we monitor obviously very closely and our more recent forecasts are looking a bit more positive. We still might have a shortfall, but certainly not at the extent we were previously forecasting. Nevertheless, off the back of that and the work that the new Government has done around value for money and the need to change the way of thinking in the current economic circumstances, we put in place a very substantial value-for-money programme and delivered up \$3.2 million in savings last year. We're well on track to deliver \$3 million or \$4 million in savings this year, which does not sound a lot but off a budget of \$68 million it's not inconsequential.

Also, as part of that value-for-money programme we've commenced very substantial reviews of our operating model, particularly around service delivery. The key focus on that is to start driving some different changes off the back of the investment we've made in business support and IT systems to deliver a lot more online and to really look at how we deliver services if we put the client at the centre and they can access us 24/7. The expectation is that we'll be able to deliver a lot more with less going forward off the back of that review.

Looking ahead, for this year and ongoing, obviously there's the completion of the review of the Building Act, and the completion of our review of our operating model. We've committed as an organisation to really being able to demonstrate to those who fund us, which is largely the sector and then also the tenants, that we can and are able to deliver real value for money. There's work to be done on streamlining the Licensed Building Practitioners Scheme, and again we'll be using technology to assist us do that. We'll be implementing the Unit Titles Bill and Residential Tenancies Amendment Bill once they've passed through the final stages in the House. We have a new electrical workers licensing and registration system to kick in, and, of course, we'll be completing the review of weathertightness. So a busy year ahead of us but an exciting one.

Parata Thank you very much for that. You've described a year of many challenges, and many more to come. I just wanted to explain: if you've not been before an e-Portal committee before, we are now in a paperless environment. Lest you think that these are distracted MPs doing other work, they are actually consumed with the report around the Department of Building and Housing. But is it a little disconcerting because we're looking at screens and then looking up and down, so I apologise for that. Now we will open for questions.

Twyford Thank you. I appreciate that there's a lot of change going on at the moment—a lot of projects underway. I wanted to ask first about the Weathertight Homes Resolution Service, and to ask really if you'd like to comment on the quality and timeliness indicators that we see in the report here, where targets haven't been met, and what you are doing to address that. I want to ask also whether you measure the ratio of the service's clients' expenditure on legal fees against the benefits that they receive.

Parata OK, maybe we'll start with the quality and timeliness.

Bach In terms of the performance against the quality and timeliness measures, there has been—some issues arose in terms of how the timeliness of the assessment process. In part that reflects the complexity of some of the issues that we are confronting particularly for multi-unit complexes. Doing an assessment of an individual stand-alone home is relatively straightforward. Doing an assessment of a multi-block apartment building is, I think, a lot more complex.

There were a range of issues involved in that, and this will be assisted by the changes underway or proposed in the Unit Titles Bill where, because there are multiple owners, you could have one owner, potentially, in a block that would withhold or could stall processes, which made it difficult for us to complete and undertake assessments, and to get that underway.

Also the manner in which we were going about that, because we hadn't had as much experience in that area, I think that the approach to undertaking those assessments wasn't particularly efficient and effective in the first instance. There was a review done of that when we saw we were slipping below our performance indicators. A review was undertaken of how we were going about that, so what we do now—the process has been changed—is we actually put a whole team of assessors in, rather than having one assessor trying to do all the work. It was just simply too slow, and it also raised questions about having the complete skill sets for complex building structures. So now in each case there's a team that goes in for an apartment building. I think better attention is paid to aligning skills and capacity to what is the scope and nature of the problem. As a result of that we've improved performance, and the assessment period particularly for multi-units has been reduced by up to 2 months; from 6 months down to four to five. While we've lifted the end performance we're still going to have a drag effect in terms of our overall numbers that we reach.

I also think that the quality has been improved. There have been instances where some of the assessments have been challenged and tested, and I think we're looking a lot harder at what is the capacity and capability of the particular assessors on the job where the building is complex. Always people have a right—the assessment is a preliminary assessment. It is our assessment, and owners always have the right to get a second opinion. We take it only so far in order to provide them some sense of scope, scale, and cost. Many also do a more in-depth follow-up assessment to obviously test that because they want to be certain around planning, and they have some options around about how they might wish to approach that.

Sio Do you see an end to the whole weathertightness/leaky homes situation, and when is that?

Bach The answer to your first question is yes. The answer to your second question is it really depends on people's willingness to come forward and resolve disputes, or to settle them in their own time and in their own way, because the resolution service is only one of the options on the table. People can choose to negotiate privately themselves just with lawyers. They can choose to go to the High Court. They can choose to use the Weathertight Homes Resolution Service, or they can choose to simply rid themselves of the property and discount it, in which case then they basically take a write-off.

In terms of why do I see an end to the problem, I think it was a problem that reflects a particular time and place, and a failure within the total system. So it's not about one person or one institution being to blame; it's a combination of design failure, a lack of skills and capacity in the sector to operate new building systems, a time of deregulation so some of the previous checks and balances that might have drawn attention to it weren't there or were being applied differently. So it was a more permissive regime, and there was a failure or inadequacy at the inspection level to pick up some of these problems.

But work that's been done more recently indicates that there is kind of a peak where we can see, because we're monitoring the rate of claims coming in. There's a peak of where a lot of the problems emerge from and then there's quite a steep tail-off. More recent information would suggest that the homes with that kind of problem are no longer being built. I mean to be fair, though, you can always build a house that leaks, and you can always have poor building work, but this particular problem on this scale and of the systemic nature that it is, I think is not continuing in the way that it was in the 1990s.

Parata Thank you. Can I just go back to Mr Twyford, who had a two-part question and got the first part answered. Could you repeat the second part of your question, please.

- Twyford I am interested to know whether or not the service analyses and tracks the value for money, if you like, that clients get when they engage with the service, and the financial value of any resolution that you help to facilitate compared to what they pay in the costs.
- Bach The answer is, in part, yes, but I can't give you full details, because mediated settlements are confidential to the parties. What information we do have, though, is that we know that on average going through the tribunal people will incur between \$20,000 and \$40,000 in legal fees, which is considerably less than what you would experience in the High Court. But it's still a substantial amount of money. We are monitoring actively progress of claimants, and we seek feedback from them via surveys about how they have found the service—the quality, the timeliness, and so forth. And people have given us input about what we could do to improve the process for them.
- We monitor and track how people are going through the process, because a lot of people do the front end and then stall, and we engage actively with them as to why that is. So anecdotally we have quite a lot of data about what it is that stops people going forward. The key focus—or the key rationale or explanation—that we receive from people in those circumstances is that to go to the next stage they need to be able to access funding to do repairs, and they have difficulty accessing that. They are put off by the whole dispute resolution process and find the conflict—even though in the resolution service it's relatively mild, it's still a dispute resolution process—off-putting. Others have a different view, and they have said: "I'm going to transfer my claim to the High Court." or, in fact: "I already have, but I'd like to hold it here." Others simply have been—some we have found are sort of overwhelmed by the size of the problem that they are facing and the cost, and others are simply undertaking repairs so they can get an actual cost, they will then progress with their claim.
- Prasad Still on weathertightness issues, you've been doing some major policy work. To what extent you are at liberty to talk about that policy advice you've given, and perhaps you can give us some time frame about announcements of those policies.
- Bach I can't give you time frames about the announcements, but I think I can indicate, because I think Ministers have been reasonably clear in terms of the parameters, the instruction to us and the parameters that we're working within. I think it is important to understand that, perhaps off the back of what I said was causing people to stall, the Government asked us to look at taking a different approach—what might that look like, and some options for doing that—where the focus shifted more from dispute resolution to actually supporting and encouraging people to get their homes repaired. Because in these instances the problem doesn't stay still; it's dynamic and the house will disintegrate to the point where you've got very substantial decay. So the sooner you identify the problem and look to repair and do something about it, the less cost—it might be expensive but less cost is

incurred. The Government asked us to look at some alternative approaches. We had recommended these were worth exploring.

You'll be well aware that there are discussions under way at the moment with territorial authorities in particular—the five major territorial authorities that have the greatest number of claims and are potentially facing the greatest costs. One of the issues that emerges—particularly through the High Court decisions, but we also know through mediated solutions—is that other parties are no longer standing, and because of joint and several liability, territorial authorities are carrying a higher proportion of costs than they might otherwise do. So they have an interest in looking to find a more streamlined and straightforward way, perhaps an alternative to dispute resolution. They've put some options before Government, and Government is developing options that it is discussing with territorial authorities.

Prasad Can we please ask you about the logic of what you seem to have recommended. I mean, it's still a long way to getting the issue resolved if the homeowner, who probably has a mortgage or two, has to come up with 60-plus percent of the costs to repair I mean, what was your thinking in terms of how far this will go, and who is likely to benefit from the policy change you are recommending?

Bach Well, the outcome that is claimants currently, at the moment, homeowners don't have access to assistance to help them with repairs.

Prasad Except for the weathertightness service.

Bach They have the weathertightness service, but that doesn't give them financial assistance to assist them with repairs. So they can choose to undertake repairs prior to progressing their claims, and we encourage people to do that if they are able. In times of plenty, when people had a high degree of equity in their home, it was easier to borrow against your existing home. In the current financial situation that has become increasingly difficult for people. Banks have become more risk-aware, and so access to funding to undertake these repairs has become more difficult, and also people in an economic downturn have become a little more cautious about taking on debt—I think that is a way of describing it. So the existing service is there, and it does assist them.

One of the barriers, though—on of the biggest barriers—that we have identified was people's ability to access funding to undertake those repairs so they can get that matter sorted, and then they could continue to pursue a claim if they so wished to have that money reimbursed. Many people have done that and do still do that, but there are a number of people who have limited capacity to take on more debt without some further assistance.

Prasad So those who avail themselves of this new policy would not give up their right to sue?

- Bach It is important that I put a caveat here. I am talking about what the issues are, rather than the decisions Government has made. These are the issues it is considering, and there are options being explored with territorial authorities, but no decisions have yet been made.
- Sio Can I just follow up on that. You talk about claimants being able to choose whether to discard the property or fix it up or take legal action, but I've got a case in Mangere of several homeowners—about seven or nine—on Sequoia Avenue. They have all been evicted from their homes because of the unsafe nature of the homes. They do not have the choice of borrowing more money, because they have no asset—or the asset has no value. They do not have the choice of taking legal action. They do not have the choice—well, they have no choice in discarding this property because there is nothing. What additional support can you provide to those homeowners, if any?
- Bach Can I clarify, where these people are owners of the homes or tenants?
- Sio Some of them are tenants; some of them are owners.
- Bach. Yes. I think the case that you're speaking about is actually tenants in accommodation that was deemed to be unsafe, and clearly they can't remain—I mean, that would be true of anybody in any circumstances—in that property, and my understanding is, also, that alternative accommodation was found for them.
- Sio For a limited time. They are not all tenants; some of them are homeowners. A few of them are homeowners. But what support can you provide? That's the question.
- Parata Can I just interrupt and be clear that we can talk about the principle of that kind of situation rather than the specifics.
- Sio But I'm giving the specific example, and the question is: what additional support does—
- Parata No, that's fine. I'm just saying that the answer needs to be around those kinds rather than that specific situation.
- Bach I'm aware of some of the circumstances about this because of the way that councils will be informed around the potential danger—and there are many instances of buildings that may have become structurally unsound, or part of them may be questionable. It comes through the assessment process, and we provide notices to the city council that they need to take a look at particular buildings or homes because of potential problems around structural integrity. When that's the case, the council check them and if there is a danger to people, they will issue a notice to fix, and in certain circumstances people will not be able to remain in the building while that work is being undertaken.

I'm not sure whether it's this particular case, but I know that some people were rehoused—they were Housing New Zealand tenants that were actually moved to alternative accommodation. In one particular instance, it wasn't so much that the problem was with the building but the requirement to put up considerable scaffolding, and a lot of work being undertaken meant that it was a worksite. I'm sure that some of you have probably done housing renovations that have been of such a scale that, in fact, it's not possible for you to continue to live on site while that work is going on.

Sio I don't think you've answered my question about additional support that's to be provided by your department to the clients in helping them make progress with their particular claim.

Parata So in terms of owners rather than in terms of tenants?

Sio Yes.

Parata Do you have anything further you could add?

Bach I think your question really relates to whether the Government provides benefit assistance to people who find themselves in that situation, in which case—I mean, putting aside weathertightness, anybody that found themselves not able to stay in their home because of some structural problem and they had to take temporary accommodation, if that had a substantial financial impact on them, might arguably be able to seek some assistance, not from the department, because we don't provide assistance of that nature. Our job is to certainly assist them progress their claims so that they can get the matter resolved as quickly as possible.

Twyford What I'd like to do is devote the rest of the time, if we could, to the review of the Building Act. There's a lot of concern in the public about an intention to simplify and streamline the Act, and the potential for that to lead to some of the deregulation that was at the root of so many of the problems in the 1990s. Can you explain how you're approaching the task of simplifying and streamlining while navigating around that particular minefield?

Bach It's something that we're very mindful of because we deal with the manifestation of system failure elsewhere, and certainly the Minister is very clear in his thinking that it is about simplifying and streamlining; it's not about a diminution of the quality of buildings. So those are the parameters within which we are working. The Building Act was designed in a different time and place, and very much off the back of quite substantial failure. I think that it did a good job, and certainly we can see from the consent data and the claim data that we have coming through now that the work that was done at that time has addressed a lot of the issues that manifest through the 1990s. So I think it has gone some way to really lifting overall performance and quality of both buildings and those operating within the sector.

What it is, though, in having worked with it and now having some of those different planks in place—like the licensing of building practitioners, the product certification scheme, the accreditation of building consent authorities—it's quite possible now to adjust the settings of the dials on the dashboard, because I think we now have a much stronger system with better component parts. I think that one of the other learnings is that to some extent we need to think about how risk is allocated across the parties, because it falls too heavily, I think, in one particular area, particularly on territorial authorities.

So it is around really recalibrating the settings to make sure that they are appropriate and fit for purpose for here and going forward. And we've learnt from experience that some things in there are a bit clunky and cumbersome, and they have been pretty much designed on a one-size-fits-all basis, so the way that a simple building is progressed through a consent process is exactly the same as a 40-storey multiplex, very complex design, building. There is no ability in the legislation to enable you to distinguish between that which is simple, using well-known building systems and designs with competent licensed practitioners, and something that is, you know, the Sky Tower. And I think it is important as the regulatory framework evolves that, in fact, we do get a bit more sophisticated around that. But your caution, and the fact that we need to be very cognisant of, is making sure that there aren't inappropriate trade-offs. That is something we need to keep front of mind.

Sio It was just one of your performance improvement actions, and it had to do with reducing regulation. Do you think that's going to undermine what you're attempting to do to fix up the weathertightness, leaky homes?

Bach Just looking at the actual wording, and responding to the question I think it's important to not just reduce regulation; it's about reducing costs of regulation. So I think it's entirely appropriate to set standards for building, it's entirely appropriate for there to be regulation in the sector. Licensing is a form of regulation, and the Government has actually finalised the design of that system and implemented it, and been quite clear about what it's looking to achieve, which is around competency and skills and a consumer being able to make a decision about whether the person that they've got doing a job on their most important asset is actually competent to do so. So it's not just about reducing regulation per se; it's about looking at the effectiveness and appropriateness of regulation, and making sure that it's not imposing unnecessary and unwarranted cost. That's where we start from.

But I go back to the point that I made to Mr Twyford before. I said that I think there are some learnings for us coming out of the implementation of the Building Act, and also where we are now relative to where things were 5 years ago in terms of the performance and maturity of the building sector, and I think we can refine and streamline that legislation and still achieve

good outcomes. So it is a balance, it's not just about removing regulation and turning it into some kind of free-for-all.

Parata Thank you very much. Thank you very much, Ms Bach, and your department. That concludes our hearing for today.

conclusion of evidence