

INQUIRY INTO IRONBRIDGE HOLDINGS PTY LTD AND OTHER MATTERS REGARDING RESIDENTIAL LAND AND PROPERTY DEVELOPMENTS

Recommendations	Government Response	Comments
<p>Recommendation 1</p> <p>The Consumer Protection Division of the Department of Commerce consider the appropriateness of referring the dividend declarations of Ironbridge Holdings Pty Ltd for financial years 2009 and 2010 to the Australian Securities and Investments Commission (ASIC) to investigate for possible breaches of sections 588G and s254T of the <i>Corporations Act 2001</i>.</p>	Implemented	<p>The Consumer Protection Division of the Department of Commerce (Consumer Protection) referred the matter to ASIC for their consideration on 26 March 2012. The ASIC have subsequently informed Consumer Protection that they are considering the matter.</p>
<p>Recommendation 2</p> <p>The Consumer Protection Division of the Department of Commerce should actively monitor the ongoing operations of Ironbridge Holdings Pty Ltd. Should similar complaints emerge against the company for contracts signed after 1 January 2011, the Commissioner for Consumer Protection should act swiftly using her expanded powers to either seek and enforce undertakings from Ironbridge, or to instigate a group action for failing to supply contracted items within a reasonable time.</p>	Support in principle	<p>Consumer Protection has not received any new complaints against Ironbridge Holdings Pty Ltd (Ironbridge) since September 2011. Consumer Protection continues to monitor its complaints database to identify complaints related to Ironbridge and runs monthly reports against all Ironbridge entities to ensure that any complaints against the company are identified.</p> <p>The Commissioner for Consumer Protection will act accordingly should future complaints be received.</p> <p>Consumer Protection contacted Ian Wallace, Director of Ironbridge on 23 April 2012 requesting he provide details of customers awaiting landscaping, reimbursements and court judgments.</p>

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		<p>Mr Wallace responded on 24 April 2012. Consumer Protection will maintain regular contact with Mr Wallace in order to monitor the operations of Ironbridge.</p>

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<p>Recommendation 3</p> <p>The Consumer Protection Division of the Department of Commerce revise the information it provides to consumers about making claims in the Magistrates Court to ensure that consumers are aware of all the steps involved and options available to enforce a judgement.</p>	<p>Supported</p>	<p>Consumer Protection is developing a Consumers Guide to the Magistrates Court in conjunction with other agencies, which will be available for general use.</p> <p>All conciliation complaints that are not able to be resolved by Consumer Protection already receive information about the Magistrates Court. The new Consumer Guide, or a link to the Guide, will also be provided at this time.</p> <p>Updated information about proceedings in the Magistrates Court will be provided to all Consumer Protection staff with specific training to be undertaken by all customer contact staff.</p>

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<p>Recommendation 4</p> <p>If there is evidence by the end of March 2012, that Ironbridge Holdings Pty Ltd is failing to meet the undertakings given to the Committee on 31 January 2012 or has failed to pay outstanding judgements from the Magistrates Court, the Consumer Protection Division of the Department of Commerce should consider pursuing a civil action for breach of contract on behalf of all affected residents.</p>	Supported	<p>Consumer Protection contacted Ian Wallace, Director of Ironbridge on 23 April 2012 and requested he provide details of customers awaiting landscaping, reimbursements and court judgments.</p> <p>Mr Wallace confirmed that as of 24 April 2012:</p> <ul style="list-style-type: none"> • Ironbridge has paid two outstanding court judgments with another two claims currently being defended by Ironbridge; • Of the 24 reimbursement claims, 7 have been paid with the remaining 17 still to be paid. • Of the 74 landscaping jobs outstanding; work is progressing however, 51 still remain to be completed. Mr Wallace anticipates they will all be completed by the end of June 2012 with the fence painting commencing in July 2012. The undertakings given to the Committee on 31 January 2012 were that all landscaping and fence painting would be completed within six months (31 July 2012). <p>It appears that the Commissioner does not have the statutory power to enforce Mr Wallace's undertakings to the EISC with regards to court judgments. The principal remedy for wilful disobedience to undertakings provided to a Parliamentary Committee is contempt of Parliament.</p>

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		<p>For any outstanding court judgments consumers can take enforcement action under the <i>Civil Judgments Enforcement Act 2004</i> or issue a statutory demand.</p> <p>Consumer Protection will continue to monitor Ironbridge's progression to finalising the reimbursement and incentive packages promised to clients. In cases where no satisfactory progress is made, the Commissioner proposes to enforce the rights of consumers by entering into enforceable undertakings with Ironbridge and senior management of the company to complete works within in a finite time or pay damages in lieu of non completed work.</p>
<p>Recommendation 5</p> <p>The Minister for Commerce considers the implementation of a code of conduct for the land and property development industry under the <i>Fair Trading Act 2010</i>.</p>	<p>Support in principle</p>	<p>Consumer Protection has scheduled an examination into a Code of Conduct into their 2012 – 2013 business plan. This work is currently scheduled to commence in early 2013.</p>

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<p>Recommendation 6</p> <p>The Department of Commerce propose an amendment to the <i>Real Estate and Business Agents Act 1978</i> to ensure that the identities of the owners and directors of land and property development companies are lodged with the Commissioner for Consumer Protection. Following this, the Consumer Protection Division of the Department of Commerce should conduct bi-annual searches of its registers to determine whether any former failed developers have re-entered the market under a different business name.</p>	Partly supported	<p>Consumer Protection currently has a registration form (Developer's Registration of Principal Place of Business) which identifies owners and directors of land and property development companies. The form is available on the Consumer Protection website. In this regard, all developers who register with Consumer Protection supply the information that the recommendation seeks. Consumer Protection also produces a Fact Sheet (Obligations of property developers) which details the legal requirements and obligations of developers.</p> <p>The <i>Real Estate and Business Agents Act 1978</i> (the Act) currently requires that developers register their principal place of business with the Commissioner. With the finalisation of a National Licencing scheme, it may not be possible to amend the Act, as it is likely that any amendment would be in breach of the COAG Intergovernmental Agreement.</p> <p>Consumer Protection has developed a proactive compliance program to ensure that developers register their business details.</p> <p>In response to this recommendation, Consumer Protection has liaised with the Department of Local Government (DLG) to ensure that developers who should be registered are registered. The following process has been agreed:</p> <ul style="list-style-type: none"> • The DLG will provide a list of all local government authorities (LGA) to Consumer Protection; and

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		<ul style="list-style-type: none"> • Consumer Protection will contact all LGAs and ask for a list of developers in their shire to enable cross checking against the existing register; and • Consumer Protection will provide all LGAs with relevant information about registration of developers; and • LGAs will provide Consumer Protections ‘Obligations of property developers’ Fact Sheet and Registration Form to all prospective developers who contact them. <p>With regard to bi-annual searches, what constitutes a “failed developer” cannot easily be determined. A “failed” developer could be taken to mean one that is insolvent or bankrupt. A regular search of the register can be made to identify such persons however, as there is no licensing regime for developers, there is nothing to prevent a bankrupt or former bankrupt developer from registering as a developer.</p> <p>There is no capacity for Commerce to prevent such people from being registered under the Act.</p> <p>However, Consumer Protection may take enforcement action under the Australian Consumer Law to meet consumer protection and fair trading objectives where there is significant risk to the community. Available enforcement methods include:</p> <ul style="list-style-type: none"> • the public naming of problem traders; • enforceable undertakings for a person to do or refrain from

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		<p>specified acts;</p> <ul style="list-style-type: none">• the application for an injunction against a trader in the event of a breach of legislation.