



Fair  
Trading

Home Building Advocacy Service (HoBAS)

# PROGRAM and APPLICATION GUIDELINES

**2023 – 2027**

Community Grants  
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NSW Department of **Customer Service**  
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## 1. INTRODUCTION

This document provides information on the requirements for applying to provide services under the Home Building Advocacy Service Program (HoBAS). HoBAS is administered and funded by NSW Fair Trading

The HoBAS Program Guidelines provide detailed descriptions of the operation of the program, performance standards, funding and budgetary processes and reporting requirements.

NSW Fair Trading operating within the Department of Customer Service 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 NSW Civil and Administrative 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.

### 1.1 Eligibility Criteria

To be eligible to apply for HoBAS funding to operate a service an organisation must

- be based in NSW and be prepared to operate the service within the regional boundaries stipulated for the relevant service;
- be an incorporated community based, not - for - profit organisation.

### 1.2 Sub-contracting

If any services are proposed to be sub-contracted, the organisation must supply as an attachment, details of the:

- activities and value of the work to be sub-contracted; and
- name, address, qualifications, and experience of the proposed sub-contractor(s).

If the application is successful, Fair Trading will enter into a Funding Agreement with the applicant organisation who remains responsible for:

- properly accounting for funds allocated to sub-contractors; and
- ensuring that all legal liabilities, including liabilities to clients and staff are met through sub-contracting arrangements



### 1.3 Consortiums

Applications may be submitted by consortiums which might include, for example, community legal centres or Aboriginal services.

If the application is submitted on behalf of a Consortium an attachment must be provided with the Application Form which sets out:

1. the name, experience, and role of all Consortium members;
2. how the Consortium will be set up including the nature of the legal relationship between the parties; and
3. how the Lead Agency (if applicable) will co-ordinate service delivery by Consortium members.

The application must also include as attachments “Letter(s) of Intent” or a “Memorandum of Understanding” showing the signed agreement of the proposed members to enter into a Consortium arrangement.

## 2. 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.

Considering the limited resources available, the operator of HoBAS should prioritise those 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;
- those who are financially or intellectually disadvantaged.



### 3. 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

##### 3.1 Definition of Advocacy in Terms of HoBAS

Advocacy in relation to 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.

##### 3.2 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 NSW Civil and Administrative 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 HoBAS must check with the relevant Fair Trading business area to establish whether the consumer's dispute is already being dealt with by Fair Trading staff 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 HoBAS for assistance.

In enquiring about the progress of a dispute, 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 NSW Fair Trading or the NSW Civil and Administrative Tribunal or their staff. If a consumer wishes to make a formal complaint about these bodies, HoBAS will provide consumers with referral details to the appropriate Office – for example, the Commissioner, Ombudsman or Independent Commission Against Corruption.



### 3.3 HoBAS Support for Consumers Who Have a Contractual Dispute with a Home Building Contractor

If consumers approach 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 confirmed that Fair Trading is no longer involved, then 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 NSW Civil and Administrative 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 HoBAS for assistance in resolving a building dispute and there are a number of issues involved, 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, 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 HoBAS staff.

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

### 3.4 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 NSW Civil and Administrative 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 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 HoBAS will represent an internal record of work undertaken on the consumer's behalf and its outcome.



HoBAS staff will not provide expert reports for consumers, but if a consumer wishes such a report to be prepared, 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.

### **3.5 Advocacy in Terms of Assisting a Consumer to Prepare for a NSW Civil and Administrative Tribunal Hearing**

Consumers may seek assistance from the Service to prepare their evidence for a hearing in the Home Building Division of the NSW Civil and Administrative 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.

### **3.6 Advocacy in Terms of Representing a Consumer in a NSW Civil and Administrative Tribunal Hearing**

Under section 36 of the *NSW Civil and Administrative 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 *NSW Civil and Administrative 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 NSW Civil and Administrative Tribunal Regulation and the Chairperson's Directions on: *Acceptance of Building Claims and Home Building Division Claims or Disputes over \$25,000*

Notwithstanding the legislative limitations on representation, given the intensive nature of this support, it is obvious that representation cannot be made available by 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.

If 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.



### **3.7 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.

### **3.8 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 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 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 70-75% 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.

### **3.9 Target Group for the HoBAS**

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

Priority is to be given to those consumers who are disadvantaged by the circumstances outlined in section 2 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.

### **3.10 Promotion of the HoBAS**

Promotion of 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 HoBAS will contribute to create a client base for HoBAS.





### **3.11 Independence of the HoBAS**

The organisation(s) chosen to operate 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 HoBAS.

### **3.12 Development of Protocols**

The organisation which is approved to operate HoBAS will need to liaise with NSW Fair Trading and the NSW Civil and Administrative Tribunal regarding appropriate referral protocols.

## **4. FUNDING**

### **4.1 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.

### **4.2 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.



### **4.3 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.

## **5. ACCOUNTABILITY**

### **5.1 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.

### **5.2 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.

### **5.3 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 NSW Civil and Administrative 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.



#### 5.4 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. BENCHMARKS

As part of its ongoing performance-based funding model, Fair Trading has begun to implement a benchmark system to validate key aspects of the performance information it receives from service providers and improve assessment of service performance and client demand.

During the 2023-2027 triennium, these benchmarks will be refined in consultation with service providers to define key data fields/metrics. Reporting templates will be reviewed and updated to capture these benchmarks.

Benchmarks established via consultation between the provider and NSW Fair Trading will form part of the Program Guidelines and the related funding agreement.

### 7. HOW TO APPLY

Please email Community Grants at: [grants@customerservice.nsw.gov.au](mailto:grants@customerservice.nsw.gov.au) to receive an application package. Or visit NSW Government Grants and Fund Finder via <https://www.nsw.gov.au/grants-and-funding>.



## 8. ASSESSMENT PROCESS

Applications will be assessed and ranked on the basis of them meeting the Eligibility Criteria, their fulfilment of the requirements of this document and compliance with the ranked Selection Criteria.

Applications will be assessed against the eligibility criteria which outline the minimum requirements an applicant must meet to be eligible for funding. Applicants who meet the eligibility criteria will then be assessed against the assessment criteria and comparatively against other applicants considering the consistency of the proposal with program objectives and the capability, experience, and skills of the applicants.

The process for the receipt and assessment of grant applications can be summarised as follows:

- **Eligibility Cull** - Grant applications will be assessed against the eligibility criteria. Ineligible applications will not proceed in the assessment process.
- **Assessment against assessment criteria** - An Application Assessment Team will assess the applications against the assessment criteria, and document their decisions, including reasons for decisions.
- **Recommendation** - The Application Assessment Team will make recommendations to the Grants Assessment Committee. The Committee will review, and where appropriate, ratify the recommendations of the Application Assessment Team.
- **Decision-making** - The Grants Assessment Committee will submit its recommendations for the consideration and approval of the Minister. If approved, successful applicants will be informed in writing and the decisions published on NSW Fair Trading's website and NSW Government Grants and Fund Finder via <https://www.nsw.gov.au/grants-and-funding>.



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