

THE HOUSE OF ASSEMBLY SELECT COMMITTEE ON THE COSTS OF HOUSING, BUILDING AND CONSTRUCTION IN TASMANIA MET IN COMMITTEE ROOM 3, PARLIAMENT HOUSE, HOBART, ON TUESDAY 23 AUGUST 2011.

Mr ROY ORMEROD, GENERAL MANAGER, WORKPLACE STANDARDS TASMANIA WAS RECALLED AND FURTHER EXAMINED.

CHAIR (Mr Hidding) - Roy, thank you for your time. We thought we would ask you back in to advise us as to where you're at with various things and to explore whether there is any more work for us to do in certain areas. Perhaps if we were to first explore with you the plumbers licensing scheme issue - and I am aware that one of us has had ongoing dialogue with the minister - so that we have information on the record.

Mr ORMEROD - I want to table the decision of the national licensing draft regulatory impact statement, out of which national licensing was first established. It produces in its objectives what it hopes to achieve by cutting red tape, transportability of licensing, the scope of licensing and all these sorts of things. The committee might find that useful because it gives some history behind the whole thing.

CHAIR - We'd like to test some of that work that they've done, so that would be very useful.

Mr ORMEROD - That would help. It includes things such as discipline, contingency remedies et cetera, which means that when we set a fee structure for plumbers the idea was that a fee structure would ensure cost recovery so all the costs associated with administering the scheme, which includes licensing and investigating et cetera, are covered and also our costs to the national licensing model are covered. It was built upon that and that would probably help give you an indication of how we intend to run it in the future.

As far as the State system is concerned, there have been expressions of interest in the past about numbers of complaints. We currently have 15 complaints against plumbers - that's since January. There were a number of other calls from plumbers who wanted to complain about other contractors and other people they believe are unlicensed but who would not be willing to put complaints in writing. We have 15 written complaints. There has been a degree of interest from the community, particularly from plumbers themselves.

CHAIR - Where does that interest come from?

Mr ORMEROD - The general public, and also from Plumbers Tasmania. The plumbers here are saying, 'I know someone down the road who is not licensed. He's doing unlicensed plumbing work and I want to complain about it'.

CHAIR - Has that come about because of the public discussion on this?

Mr ORMEROD - Yes, it's come out of that. They have also realised that since December we had to take on the role of taking complaints against plumbers; we didn't have it

before. Now they have a place they can go to. Prior to the Occupational Licensing Act plumbers were regulated under the old 1954 act but there was no resourcing there to take complaints. The cost of licensing barely covered the cost of one admin person to manage it. There's no capacity under the old scheme to investigate a complaint against a plumber. It was up to the individual to pursue it through the court process or in some instances a council if it relates to council infrastructure. There were limitations which now have been lifted to some degree because we now have people on the ground who can investigate these sorts of complaints. I don't have the details but I can mention that we have received 15 complaints. If the committee wishes, I can provide an indication of the type of complaints.

CHAIR - I think that would be important. I suspect it would be a bit like our Integrity Commission; they got killed in the rush with a flood of complaints that were somewhat historic because there had been nowhere to go before and now they have somewhere to go.

Mr ORMEROD - Yes, the floodgates open. You make a valid point and it could be that this is an initial surge and it could drop off.

CHAIR - I would be interested in the timing of the alleged problem and the nature of it.

Mr ORMEROD - We had no jurisdiction prior to December, so we would not tackle complaints.

Ms ARCHER - So there is a time limitation, so to speak?

Mr ORMEROD - Yes. It's not retrospective from our point of view.

Mr BOOTH - Roy, in regard to that, in one of the meetings held in my office with regard to the complaints I think Andrew Foley was making the point that it had gone from three to five to seven and nine or whatever it was. We had a response from Kerrie Crowder that indicated that although they were alleged non-compliance, they had been investigated and none of them were found to be breaches. I will find that letter. That was to do with a response to misuse of accreditation numbers and although the same sort of statement was made that there is a whole lot of complaints, the memo I got back indicates that there was no proof to any of those.

Mr ORMEROD - Up until the southern Tasmania article and there has been a flurry since then - against the same builder.

CHAIR - We'll get to that shortly, but if we can just focus on the plumbers. Could we get a synopsis of the timing and the nature of the 15 written complaints?

Mr ORMEROD - Yes, sure.

Mr BOOTH - I don't think the committee needs the name of the builder but we need the nature of the complaint, the actual details of the complaint. It's very important to know whether they are major or minor complaints so we need to know the substance of the complaints, so perhaps copies of the complaints?

CHAIR - No, I think a summary to say this is a complaint about a failure of some works. What I would be interested in is why the council inspection didn't pick it up because I think the plumber's view is that the current system they have of every job getting signed off by a council inspector is a preferred model for them. How can you have that and still have failures?

Mr ORMEROD - Good point. Firstly, there are varying degrees of what councils do, depending on the council; some don't do any inspections at all. Also, there are a lot of plumbing work that doesn't require council follow-up, and so where do you go then? This is the significant difference. A council's main aim, as I understand it, is to protect its own infrastructure. They also have a community interest with their ratepayers. They don't want their ratepayers with leaking sewage in their backyards because there is a health risk to the community.

Ms ARCHER - Their only infrastructure now is the stormwater drain because water and sewerage has been transferred to the corporations.

Mr ORMEROD - That is a good point. I assume Southern Water would be the same; they want to have protection there. If you look it in that perspective, they focus on the owner of the building. If they can't get a plumber back to rectify a faulty plumbing work, they give up chasing the plumber and go to the owner and say, 'Fix it'. They say, 'I've already paid once', and they say, 'We don't care how many times you've paid; fix it, pay it again'. That is why there is not that call-back; there is no obligation on the plumber. If the plumber is an habitual offender, when does his licence ever come to a point of being threatened? It only comes to a point of being threatened if there's somewhere a person can go to to have that person disciplined, and the council doesn't have that role.

Mr BOOTH - That might mean that the current regulatory regime might need some tweaking around the edges to enable plumbing licences to be removed, subject to a certain amount of complaints and proof of non-compliance, defect notices and so forth, rather than necessarily moving into NOLS model. A lot of these complaints have come from where there hasn't been council inspection. I think that is the nub of the issue here. It almost proves that a self-regulatory system and a NOLS isn't going to work because a bunch of complaints at the moment are ones that haven't been inspected.

Mr ORMEROD - There is no assumption because it is coming from an area where there is no plumbing inspection; I don't think there is evidence to suggest that is the problem.

Mr BOOTH - No, but what you said was that a lot of the plumbing work doesn't actually require a plumbing inspection.

Mr ORMEROD - That's right. Even when there is an inspection process in place, the council said, 'There's a problem here; can the plumber come back and fix it?', but the plumber says, 'I'm not going to come back'. You can give the council more authority if the local government said, 'We're happy to take on this extra role. Give us the money so we can employ people to do it'.

Mr BOOTH - But that's not up to their discretion. If the Government passes an act, then the councils have to comply.

Mr ORMEROD - Yes, good point.

The other point is that there needs to be an independent process from the point of view of how you deal with the licence of the actual complaint itself. Whether the council wants to do it or not is an issue we need to look at, and what's the most efficient way of doing it. If you have 29 councils; do you have 29 different inspectors chasing complaints? We believe that when dealing with a plumbing complaint, generally one FTE across the State is sufficient.

Mr BOOTH - But are you talking about a NOLS having three plumbing inspectors running around looking for -

Mr ORMEROD - The NOLS scheme is about electrical, plumbing and gas. Plumbing represents about 20 per cent of the total licensing regime over NOLS in Tasmania. It also includes real estate agents. Later on it will include other occupations too but at the moment it is four, or it will be on 1 July. We have estimated from the point of view of plumbing, gas and electrical that we need three FTEs to deal with those complaints.

Mr BOOTH - What will they actually do? What about the surveillance, because we have been given very clear advice at the meetings we have had in my office that there would be probably three inspectors who are in fact are not plumbers and who will be effectively be detectives looking for illegal work. That has been stated.

Mr ORMEROD - That has been a misunderstanding. When that point was made, it was three compliance officers for the whole three occupational groupings. Also, NOLS does not talk about self-certification.

Mr BOOTH - Let us get back to the inspection. Let us talk about plumbing. You have a single person who does what?

Mr ORMEROD - Takes complaints. At the moment, for instance, we have an electrical scheme. We have a very structured process with Aurora.

CHAIR - Tell me how that works?

Mr ORMEROD - Aurora is under contract to us to provide an inspection service for electrical work carried out in Tasmania.

Mr BOOTH - How does that contract work?

Mr ORMEROD - By a formal arrangement under legislation where we empower the inspectorate to provide inspection. They are paid by way of a levy that is imposed upon electrical consumers.

CHAIR - Where does your head of power come from?

Mr ORMEROD - It comes the Electricity Industry Safety and Administration Act of Tasmania, legislation under which we are the electrical regulator from the point of view of Workplace Standards or the Department of Justice. We licence electricians and always have done. You may recall that in the old Hydro days they did all that. We took

on the role of the licensing of electricians. But the inspection service is a specialised service and it was always kept within the old Hydro. They have been ring-fenced and they have been separated from the rest of Aurora. Their job as inspectors is to carry out inspection work on electrical work. Electrical contractors are supposed to lodge paperwork for the work they do and then they have a computer system which determines rates for the electrical contractor and determines which ones will be targeted. That will be based upon past conduct and experience. The first person in their first year will get more attention than someone who has been around a long time. Any complaints in the past and that person gets more attention. They go along and do random inspections of these places and then, if there is a problem, call them in. If the Aurora inspection service says this particular electrician has a problem, they refer the complaint to us. We will investigate it and then that person has some disciplinary process imposed upon them.

CHAIR - In terms of quantum of dollars, you contract with Aurora and you pay them?

Mr ORMEROD - Yes, pay them to do the inspection services, and that is on top of the licence fees.

CHAIR - About how much?

Mr ORMEROD - It is around \$1 million.

CHAIR - So it is your duty to try to get about \$1 million in?

Mr ORMEROD - We do not collect it. It is all done through a levy on the electrical retailer. It is done through a process -

CHAIR - When you buy a stove or something?

Mr ORMEROD - No, it is on your electrical bill - part of your bill.

CHAIR - As a user?

Mr ORMEROD - Yes. The user pays for that service. That has been going for about three years, as I understand.

CHAIR - So that is where you get cost-recovery?

Mr ORMEROD - That is right.

Mr BOOTH - Through the electricity bill?

Mr ORMEROD - That is purely for the inspection service; that is not the licensing.

Mr BOOTH - So that is a percentage of your bill?

Mr ORMEROD - Yes.

Mr BOOTH - So if you happen to be on solar, for example, producing your own power, you are not paying for the regulatory regime?

Mr ORMEROD - It is a levy on the retailer and I do not know the detail, to be quite frank.

Mr BOOTH - A levy on the retailer?

Mr ORMEROD - Yes, which is Aurora, and that levy is passed onto their consumers.

Mr BOOTH - Through the bill?

Mr ORMEROD - Yes.

Mr BOOTH - So if you are connected to the grid and you have a bugger-all bill, you do not pay much in fees in regard to the regulatory regime?

Mr ORMEROD - Which probably means you do not use electrical devices in the house either.

Mr BOOTH - No, you run it yourself because you are producing your own power with solar cells, for example.

CHAIR - We could take that up with Aurora. So in terms of the structure, electrical and new contracts - about \$1 million?

Mr ORMEROD - Yes.

CHAIR - That's where the money comes from, you pay that to Aurora to do it, and in terms of complaints, it is pretty good, is it?

Mr ORMEROD - We have some real issues with quality of electrical work in the commercial industry at the moment, major problems.

CHAIR - Commercial?

Mr ORMEROD - Yes, commercial - highlighted by the Myer fire. You will recall that the coroner said that we had to do an audit of all commercial buildings and we discovered that Aurora inspections thought that the priority should be domestic. They rightfully thought that people doing large commercial work knew what they were doing, but we're getting evidence through now to suggest there have been major compliance issues in the commercial area. We are now devoting a lot of energy in checking out some of the places and I can tell you that in one particular place there were 35 live terminations. A live termination when there is an electrical wire snipped off at the end.

CHAIR - A bit of tape around it.

Mr ORMEROD - No, nothing around it. In a supermarket in Tasmania, in one case it was under the checkout counter; others were in the roof cavity.

Mr BOOTH - Who had done the work?

Mr ORMEROD - A commercial contractor.

Ms ARCHER - Are older buildings prevalent?

Mr ORMEROD - This is a fairly new building.

Ms ARCHER - So were not just talking about trying to retrofit things?

Mr ORMEROD - The building is about 20 years old.

Mr BOOTH - But that means Aurora hasn't been doing the job it is being paid for, to check the work.

Mr ORMEROD - They believed they were focusing in an area they thought would be intense.

CHAIR - Which was?

Mr ORMEROD - Through our complaints service we've been able to pick up that the problem is elsewhere and we direct them elsewhere. This particular place had picked up three tonne of surplus wire in the roof cavity, which wasn't required, and it cost the particular organisation \$1 million to fix.

CHAIR - And it is fixed?

Mr ORMEROD - Yes. The place could have burned down.

Ms ARCHER - What about public safety? Could you have shut them down until they fixed it?

Mr ORMEROD - Yes. They took action very quickly and got their own people involved and rectified it fairly quickly, so we're happy. We were on the verge of closing the retailer down, but we didn't have to.

Mr BOOTH - So the self-regulation process hasn't worked, quite clearly?

Mr ORMEROD - That's not self-regulation -

Mr BOOTH - Well, self-certification. If they're not got inspections and Aurora is not doing it, it is effectively the same model as self-certification.

Mr ORMEROD - I guess the question is what's meant by self-certification. In the old days with electrical contracting if you put a power point in you lodged a ticket to Aurora and then someone from Aurora would come and check it; every single job was checked and there is a huge cost there to the community. If there is a community expectation that we should continue on with that role, electrical and plumbing, someone has to pay for it and it's not going to be covered by three FTEs across the industry. It has to be covered by the nine Aurora inspections because the nine inspections of Aurora are inadequate to cover the State on every electrical connection done.

Mr BOOTH - That would be an over-regulatory model. To compare a power point in a domestic dwelling with 35 live wires in a supermarket is quite different. It looks as though there haven't been sufficient inspections in those commercials. but an over-inspection system might be proposed. We need to find some sort of middle ground here where you have a reasonable level of inspection to ensure compliance.

Mr ORMEROD - Sure. That's why there has to be some level of self-certification because you're putting a power point in you're self-certifying your work. I think it's a question of what layer you put on that. It's a valid point. We think in the electrical area the layer is right, it's just the intention that has been misdirected. They haven't been putting their effort into an area they should have been putting it into.

CHAIR - They went to domestic because there were complaints coming from domestic.

Mr ORMEROD - That's right, and commercials don't complain.

CHAIR - They just suck it up and get on with the work.

Mr ORMEROD - That's right.

Mr BOOTH - That is interesting, Roy, because I can't understand how that could have occurred. When I had the sawmill, whenever I had work done by a licensed electrician - which is what we used, we had to otherwise Aurora would have disconnected our power - Aurora inspectors came out and inspected it. On occasions they condemned things they found - it was a third-party inspection and they found that the links to the main power were burnt at one stage and were too small and so they gave an upgrade notice and it had to be done.

CHAIR - Obviously not everywhere though, they just might have been in an area and decided to look at all the sawmills.

Mr BOOTH - I see what you mean but it was a requirement of the licensed electrician to put in the forms they had to put in, and then Aurora subsequently inspected it. It was a safeguard that I was always happy to have because it meant that the work of the sparky was checked by somebody else.

CHAIR - We had our own electrical licence and I don't recall commercial work being exempt.

Mr ORMEROD - Even now we have found that they will do a check on a connection in a major building site - they will check the connections, and they have the measurement. We found that they don't come back, when we would expect them to do random checks through the construction process. We are in the process of ramping up our MOU with them to ensure that we have a certain standard.

Ms ARCHER - I would have thought Aurora had sufficient employees to do that, but obviously not. It might be a question to them.

CHAIR - I suppose if you take the view that they need more, they are going to up the contract. So the power bill is going to go up more because they have an easy tap to turn to get more money.

Mr ORMEROD - That's right. This is subject to a public tender process. This particular service contract we have with Aurora is about to come to an end and then it is up to Treasury to decide whether we open it up to competition to see whether a large electrical contracting company in Tasmania decides to take on the inspection service under contract to us, rather than Aurora. That could happen.

Mr BOOTH - Is this fee that people are paying through the meter on all consumers, including commercial - major industrial, and all that stuff? Do they all pay the fee?

Mr ORMEROD - I expect they would be.

Mr BOOTH - Could you confirm that for us?

Mr ORMEROD - Yes, I can.

Mr BOOTH - Perhaps you could provide the committee with information on who does pay for those inspections. If every watt of electricity that was distributed in Tasmania incurred a fee attached to it to pay for an inspection regime, I imagine you would be able to raise a lot more than \$1 million without it even being a ripple on a bill.

Mr ORMEROD - The name of the act is Electrical Supply Industry Act 1995 - that is the act that gives the head of power. I will find out how it is funded. The money comes to us and we receive an account from Aurora. It is a funny system because Aurora itself is a retailer but because it also provides a service from a different arm, the money for the levy comes to us and then we pay it to Aurora by way of a quarterly statement.

CHAIR - You can always work that stuff out, in fact Aurora has probably been the right dealer. I like the idea of Aurora competing for it.

Mr BOOTH - Is it nett out - are the fees you collect exactly what you paid Aurora?

Mr ORMEROD - Absolutely, because they are the ones that provide the contract price. If it is someone else - let us say it is an electrical contractor in the future - they will say, 'We are going to do it for so much a year', we will then pass it on to the entity - at the moment there is only one but there could be more than one in the future - and then they will send us the money by way of a levy collection process.

CHAIR - It has been very illuminating to understand how another sector works. Gas - how does that work? You weren't hoping for that question?

Mr ORMEROD - We regulate gas as well.

CHAIR - Through legislation?

Mr ORMEROD - Through legislation. We have a gas inspectorate at the moment, inadequately resourced to deal with gas in the future. There are two aspects to this, it is

like the electrical one. Looking at the issue of the infrastructure parts of gas, these particular people we have on line for us are checking the gas rollout and liquefied natural gas. We are involved in the plant that went up in Westbury -

CHAIR - LNG?

Mr ORMEROD - Yes, we have been involved in checking all that stuff - it is the high level stuff that we have been caught up in. But as far as the gas installers are concerned most of them are plumbers and there is a high level of self-certification in that area. There is no formalised inspection process at all for gas.

CHAIR - I suppose that could well be a function of an immature market, until there is some serious rollout and take-up. There will be just as big an explosion if a house goes up but the market is not going to pay for a full-time inspector. With these three FTEs, will one be dedicated to gas?

Mr ORMEROD - The NOLS system is all about looking at conduct, the contractual relationship with the consumer, charging. If it's to do with quality of work, we'd expect someone to provide them with the expertise. For instance, at the moment it is Aurora for inspection services. If these particular people have a complaint against a plumbing installation, they would be getting a report from a qualified independent plumber to say that what they've done is wrong for certain reasons and that gives them the evidence they need.

Ms ARCHER - Does that mean that role is reactive rather than proactive?

Mr ORMEROD - It will mainly be reactive. Plumbing is a new area for us; we've only had it since December. Electrical has been a mixture of both proactive and reactive because we've had the inspection service out there. Aurora give us reports of what they find, but a lot depends also on what level of funding we get. At the moment we're looking at trying to get the funding right. The plumbers are concerned about the cost that jumped from where it was to where it's going to be. Whatever we strike upon by way of a fee for plumbers, it has to be the same for gas and electrical. We believe under NOLS it should be the same and therefore we have to pull back and the only area where we can pull back is the area of compliance. That means we will reduce our numbers of compliance back from three to two to one. That's the only area of flexibility we have under the current legislation, but if you change the legislation it's a different model.

CHAIR - Which brings us then to the situation we're in with this committee overseeing and having a look at the implications of this NOLS scheme and the fact that a House of Parliament has disallowed. Is there any possibility of, for instance, a five-year integration between the best features of the current system, and many plumbers think there are some good features, and those features of NOLS which don't impact largely on cost with a view to a review after a period of time to say we are at that point? Councils may well have made their mind up by then to not be involved. I think there are some real changes coming around councils because we're looking at surveyors legislation and making recommendations on that. I reckon councils will be ditching their surveyors, and then next thing could well be the plumbing inspectors who go. Is there a case for something like that where we integrate rather than the blunt instrument of chopping off one system and going to another?

Mr ORMEROD - If you look at where all the attention has been directed, you will see that electricians come from a different background and they're happy to move on to this. There have been some rumblings about the rise in electricians' fees.

Mr BOOTH - There are some issues with the dual licensing with electricians as well, which is a matter that I have discussed with the minister briefly, that rather than disallowing or repealing that regulation we're going to need to have a conversation about that as well. It will be the same issues as the plumbers.

Mr ORMEROD - The proposal is in a model that we've been discussing with the minister is one where if you are a licensed electrical practitioner and also a plumber, you only pay the one fee. So it would be an endorsement 'electrical practitioner and plumber'. It doesn't matter how many endorsements you get, it will be the one fee. That's the plan to take account of those concerns that people have had in the past, which are quite valid.

Mr BOOTH - There is also the issue of the dual licences and what the implications of that are, particularly with regard to the letter that came out from Workplace Standards just the other day advising plumbers who are practitioners but not contractors, who have traditionally always been a practitioner and a plumber and what everybody would regard as somebody who is running a business, that they face significant penalties under the act if they advertise in the phone book, which they are doing at the moment. So there is a warning. That is a major problem that we will have to deal with because a plumber who has been operating as a plumber in this State should not be subject to having their income cut off or their business destroyed simply because the governments at a COAG level have decided that there will be these dual registrations and that a practitioner is a different person to a contractor. They are a practitioner contractor, if you like, if they are running their own plumbing business and there are significant problems there with small businesses in Tasmania who want to sell on their business when they retire not being able to do so because nobody who wants to buy it wants to take on the odium of becoming a contractor under this new system, whereas before they did and they always have and there have not been issues with those people running a business.

Mr ORMEROD - Firstly, the issue with contractors that people were concerned about was the qualification requirements of contractors and that has been removed. There will be no qualification requirements to be a contractor. All you need to do is to ensure that you have someone on your staff who is licensed to do the work.

Mr BOOTH - Yes, but that is the problem at the moment, plumbers who are practitioners and have always been contractors. There is this artificial dissection of the role of a tradesperson who has operated their business in plumbing or whatever. Now they cannot advertise for their plumbing anymore unless they have somebody licensed to do the work as a practitioner. We have to get to a system where those people are able to hang up a shingle and advertise their work as a practitioner contractor without having to go through the odious requirements of NOLS to become a contractor because that then saddles you with a whole lot of the insurance issues.

Mr ORMEROD - Yes. I guess the only bit that I think you can regard as being restrictive in that now is the insurance issues. The other parts of it have been taken away. The only thing that stops a practitioner becoming a contractor is that they have to have insurance.

I want to also clarify the point about the letter that was sent out. It was not meant in any way to be a threat. It was there to state the law. It is not NOLS, it is to state the law as it is; the law under occupation licensing.

CHAIR - Is that Tasmanian legislation?

Mr ORMEROD - Tasmanian, which came into effect in December for plumbers.

Mr BOOTH - That is new legislation which came into effect in December?

Mr ORMEROD - It is the Occupation Licensing Act under which we are operating now and came into effect in December, and this a consumer protection issue. It says that if you want to advertise - and you do not have to advertise - you have to put the licence number in. Therefore if they can see Joe's Plumbing in the Yellow Pages, they can see the licence number and they can check to see whether Joe's Plumbing is licensed. It is purely an information aid to consumers, nothing more than that.

CHAIR - Does this mean that to put the licence number in you need to be a contractor?

Mr ORMEROD - Yes.

CHAIR - So you need the insurance?

Mr ORMEROD - Yes.

CHAIR - What is the penalty? What are we talking about? How much is the insurance?

Mr BOOTH - There are a couple of things there. It is not just the cost of the insurance, it goes back to the same stuff that we had with builders who had to leave the industry because they could not get the insurance required, audited books for the last five years, your auntie's clothing drawer or whatever; they need to know everything about you and a lot of people say, 'I'm not going to insure. Piss off'. And that's it. You cannot be a contractor unless the insurance industry regulates it.

Mr ORMEROD - I understand where you are coming from with respect to the past because it is related to housing indemnity; there were all sorts of issues in housing indemnity. But this is a different type of insurance that is being asked for now, contract workers insurance and two other components. My recollection is that two plumbers who have been talking to you, Mr Booth, have said that they have no problem getting insurance because any reputable builder would have the insurance because they need to protect their own interests.

Mr BOOTH - No, but that is a different requirement. I think they are talking about a different type of insurance. We can get some further detail on that.

CHAIR - We will because I think that gets down to it, doesn't it?

Mr BOOTH - It does, absolutely.

Mr ORMEROD - Do you want me to clarify what the insurance requirements are under this?

CHAIR - Yes, if you wouldn't mind. Tell us what you understand the insurance requirements are and then we will have to, separately from the market, get some evidence on how onerous it is to get this insurance.

Mr ORMEROD - I can probably get some ideas roughly of what the cost is as well.

Mr BOOTH - Yes, that would be good, Roy, any information like that.

I know it is under builders rather than plumbers - I am not sure whether the plumbers operate it like this in Queensland - but the insurance for work is on a per job basis and you simply ring up and say, 'I'm starting a \$300 000 project'. They say, 'What's your building number?' and a couple of details. 'Give us your credit card; it is \$350 for the insurance for that job' and that covers insurance for it. So it is a State-administered system that actually ensures every single job has insurance on it, but it is a very small fee compared to the old system we are operating here with compulsory homeowner warranty. It is first resort, not last resort. A system like that might operate where you apply for a plumbing permit. Just like on an electricity bill, so much of the power consumed is a fee for compliance, surveillance and so forth. It could be that when you apply to do the plumbing work, as part of your permit there is a 1 per cent, or a percentage, fee.

CHAIR - That's got some attraction, hasn't it, particularly for a plumber, for instance. We have had evidence from two practitioners who are multi-practitioners who don't do that much plumbing.

Mr BOOTH - That's right.

CHAIR - If they have to get the same level of insurance as a full-time plumber then that is very onerous. I like that job-based one; it is a bit like pay-as-you-go. It might in the end cost you a bit more, but at least it is on that job and if you choose not to do any plumbing, or things get a bit tight, you haven't paid anything. You've just paid the base rate.

Mr ORMEROD - Yes, contract-work insurance is what they call it.

Mr BOOTH - It is part of the building act in Queensland if you want to do building works there. They were one of the States outside the last resort, compulsory homeowners warranty. They have a system where you ring up the building authority. You say, 'Here's my licence number; here's the value of the job; this is the address', and they ring you back almost instantly and deduct the fee out of your credit card. So that at the point of entering the job you have paid for your insurance and it is on the basis of so many cents in the dollar of the project. From approaches I have had from people it is a brilliant system and it works really easily. There is no annual fee and, as Rene said, if you are somebody who is sliding out of the industry, there is no tail insurance associated with it. You have to be an accredited builder. There are also disciplinary measures associated with the Queensland building regulatory regime, too, that drums you out of the trade. If you start any problems, they have an investigatory and disciplinary role and your licence can be taken and you can have all sorts of things required of you to comply. I understand

that it actually encourages compliance in the industry because it is relatively cheap and easy and so people tend to do stuff under regulation rather than trying to avoid it.

Mr ORMEROD - Basically it is a government insurance scheme in Queensland. The Treasury boffins in all States pulled out of that, so you actually need a change in culture for that to occur. I have no opinion either way.

Mr BOOTH - Parliament might decide that the Treasury boffins have to change their culture; it's not run by them, surely.

CHAIR - Surely.

Laughter.

CHAIR - When we changed the sewerage and water arrangements in this State, a lot of work and policy went into price-shock management. In other words, it was not done properly before, we are going to put it in properly now, so it's going to cost. We are going to have to manage the ability of the new sewerage and water corporations in saying, 'You're going to these standards and everybody's water and sewerage bill is going to triple in the first year. We mustn't do that, we need to ease them into it.' So there is a period of time there. So the regulator, GPOC, actually spends a lot of time dealing with price-shock management. There are teams of people working on this stuff - options for price-shock management.

Mr BOOTH - Is that where they have a triage team that arrives when you get your bill and they just go in and resuscitate you?

Laughter.

CHAIR - That seems to be the problem here. A lot of the plumbers of Tasmania were more briefed so they weren't shocked, but others were terribly shocked. They've gone from that to that and all hell was going to break loose, and it has. It seems to me that in five years that industry's thinking about NOLS will be entirely different because there has been a gradual movement to it. We've just finished an inquiry into sewerage and water which was almost all about this price-shock management. It seems to me that if we could have some elements of working towards it rather than just jump straight to it. There is massive push-back. The push-back is visceral; when they were before us they were not happy.

Mr ORMEROD - Our staff have been coping it as well. You're right, it is that price-shock from one figure to another figure. It is very difficult to explain why you're going from there to there. I know we've had a lot of discussion with the minister's office as to how we deal with softening the price shock, but at the end of the day there is also this issue of transparency of pricing. At the moment we're not charging plumbers and with the plumbing complaints we have we have compliance people doing it but they're probably being paid for by the electricians. Whether you delay plumbers onto NOLS until later is a good question.

Mr BOOTH - But the price-shock management also has to make sure, even if we have a transition that ends up looking something like either a hybrid or a NOLS with some

amendments or whatever, that you don't put barriers to entry into the trade to prevent people who are bona fide, qualified, capable practitioners to not be in the industry, because then you restrict the supply of people to a point where people can charge what they like. They can treat consumers with contempt because they're the only people around to do it. It really is getting to the point in rural areas where you cannot get a plumber anymore, unless you want to pay at least \$90 an hour to get something done, which is ridiculous. These people who have provided these services should not be driven out of the industry by a pricing schedule or compliance problem with having to have tail insurance or the things we try to regulate in the building industry. They should be driven out of the industry because they don't perform the work properly. That has to be the major focus.

CHAIR - Can you tell me about tail insurance? We fixed that in the building industry with a 10-year cap?

Mr BOOTH - I don't have details to give the committee but we can look at that. What we've heard from people in Victoria, for example, is that the same sort of situation is arising where people don't want to become a contractor because of the odium of complying with the insurance industry's requirements. They don't mind doing it to a standard; it's just about the insurance industry. That's where the State-run scheme in Queensland with the Government becoming the provider of insurance comes in. It is cost-neutral to the Government because they collect enough fees to cover claims. They are dealt with in 30 days. It's not this rubbish where you go through arbitration and lose your house and your grandmother's house trying to fight to get a claim and then find that the builder has run off. It's a rapid dispute resolution. I think it's a 30-day turnaround and it ought to be the same with any regime. If you have a building, electrical or plumbing problem, a third party comes in, checks it out and adjudicates on it straightaway. You get a 30-day turnaround rather than years of disputation and court action.

CHAIR - Which leads us into the next issue - dispute resolution. On the plumbers, we will continue to think about that. When you give us that advice we will look into it. It is a fact that in the middle of this select committee in the costs of housing, building and construction in Tasmania this new regime came in and the plumbers have told us directly that if you are looking at the costs of the building, this is one that you will pay; a consumer is going to pay here. We are vitally interested in this to make sure that it is as low as it can possibly be, while still fulfilling the needs of consumer protection.

Mr BOOTH - Briefly, we have a whole lot of matters at the moment that my office is working with the minister on and discussing with his staff. For the record, the United Plumbers of Tasmania proposal A, which is to do with plumbing and gasfitting registration in Australia, is that it remains the same, a \$54 registration fee, no OLA, no NOLS, no change of registration numbers, no CPD, no self-certification and, in effect, nothing changes; or proposal B, a registration fee increase to \$110, card photo identification type, no OLA, NOLS and CPD, no self-certification, it stays the same, except that there is 100 per cent increase in fees and photo cards.

CHAIR - Will Mr Ormerod get that from the minister's office?

Mr BOOTH - I have given these to the minister's office today and he has them so if you have a look at that. Currently, that is a fairly strong position from them. We need to be

having a look, which we will be doing outside this committee but also bringing that back to the committee and I have undertaken to work with the minister. I think he is being very reasonable and cooperative.

CHAIR - Thank you. I want to spend 10 minutes, if you do not mind, seeking some advice from Mr Ormerod as to where he and his office are at on dispute resolution. In the course of this committee inquiry there has been one case, for instance, where an elderly couple in Perth bought a house that an owner-builder built. He sold it and took off to Queensland. The statement that I am going to make now is that everybody seems to agree that the inspection by the council was signed off and it did not in fact happen, or if it did happen, he had his eyes closed. It is a very clear and obvious thing and everybody has accepted that and that this couple is down the tube on the value of their house for tens of thousands of dollars. The next step is that everybody is looking at each other saying, 'What do we do now?' The next step is that this elderly couple have to sue someone, the council, the inspector or whoever, and they do not have any money. That is self-evident. They have spent their last money on the house. How are they going to sue someone? That is clearly a breakdown in public policy in Tasmania and these things, in our view, have the potential to add to the costs of building construction, and set aside the horrendous pain and drama for this elderly couple who did everything right, didn't they?

Mr ORMEROD - Yes.

CHAIR - That is what we are looking at and as a committee, we are very interested in this and I would like to know where you are going with it.

Mr ORMEROD - The Housing Indemnity Act would have covered that, of course, because the owner-builder would have been required to have a policy in place before selling it and therefore those people would not be out of pocket. The act no longer exists in that regard. Therefore that protection is gone.

You mentioned the licence lending issue.

CHAIR - Yes, that has also come up and we did get a letter from Kerrie Crowder. She has addressed some of that and she gives us the stats, but you can address that now too.

Mr ORMEROD - Yes, there is a document that I can give you but this has to be done in camera because it identifies individuals and it is information that is subject to further investigation.

CHAIR - I will take advice. As I understand it, if it is not referred to publicly now on *Hansard*, we can simply take this. If you can give evidence without naming, then we can have the discussion. But we will take the document in under full protection.

Mr ORMEROD - Thank you very much.

Mr BOOTH - Point of order with regard to that document, is the concern that the document contains names?

Mr ORMEROD - Correct.

Mr BOOTH - Couldn't we simply have it with the names deleted because if it forms part of the evidence we want to report on, we really do need to append the document to our report. If it is only the names, wouldn't it be better to just give us a copy?

Mr ORMEROD - It would identify a particular builder.

CHAIR - Is it because of a sub judice issue or a fairness issue, an equity issue?

Mr ORMEROD - Potentially sub judice, yes.

CHAIR - Can I propose to the committee that we take the evidence verbally and take this document on the basis that we will take it under full protection and, having looked at it, if we want to use any of it, we will get back to Mr Ormerod? That's how we did it in Public Accounts with Don Challen on the Wrest Point deal.

Mr ORMEROD - I can cover it without going -

CHAIR - If you can cover it without those issues, we don't need to clear the room.

Mr ORMEROD - I will just table the document.

CHAIR - We will take the document now into evidence and after you leave, we will resolve that it be taken under full protection.

Mr ORMEROD - It's timely because it highlights an issue that you found with your people in Perth. There are three people who entered into a contract who suffered almost \$250 000 in personal losses to them - total, not individually. It's a lot of money. The important thing is that for these three individuals - a retired couple, a young couple coming out of a business, and one was getting a first home built - it highlights clearly that in a regulated industry you need a dispute resolution process in place. There will always be a problem - and it is the same with your constituents in Perth, and with some of these people here - you're dealing with people who have gone. You can have a dispute resolution process that says, 'Yes, Mr Builder, you need to pay this person \$100 000' and if you can't find the builder or he says, 'Bad luck, mate, I've got no money. Sue me', that's the issue we have to try to address.

Mr BOOTH - Just to clarify, you said this has resulted in \$250 000 worth of losses. What are those losses? Can we have a breakdown of where the losses are? Are they for arbitration and legal fees or is it actual losses?

Mr ORMEROD - No, no legal costs. They have entered into a contract with a builder and as a result of that contract falling down through incompetence on the part of the builder, the place is incomplete.

CHAIR - So it's reparation costs?

Mr ORMEROD - Yes, reparation costs. They can't move in; they have paid more than they should have paid - all these sorts of issues. It is purely contract - strict cash loss. We have been working with these individuals and giving them advice. We got the three

individuals together to help each other and as best we could to try to minimise their losses. One is in a retirement home and has a house they can't live in now. These are serious problems but, so far as these people are concerned, the builder concerned is broke.

Mr BOOTH - How did it come to pass that the work was done without being compliant?

Mr ORMEROD - In one instance the builder said to the consumer, 'I need a big deposit up front' and he gave it to him. It's illegal but it's done anyway because people are naïve and trust the builder.

Mr BOOTH - There needs to be a mechanism to prosecute the builder under the Criminal Code perhaps rather than simply requiring the owner to go to the civil court.

CHAIR - We have some work to do there.

Mr ORMEROD - In the Criminal Code you have to prove intent of not delivering the service and I think the builder in this case will argue that he always intended to build it because he did do something.

Mr BOOTH - But if the law said you are not allowed to take a large deposit on the building job, if that is illegal then they have broken the law.

Mr ORMEROD - They have broken the Housing Indemnity Act because that act determines progress payments. We will be taking action under the act against these particular builders, which could result in their being fined, but at the end of the day you still have the consumer suffering a loss. That is always going to be a problem.

CHAIR - Just going back to the Perth people who gave evidence here - and we are aware through other evidence that unwittingly referred to that case because it is such an open-and-shut current case - this elderly couple still don't have a tribunal, a process or an inexpensive way to say, 'Everyone agrees; we've been ripped off. They're responsible; who do I get money from?'. The council is not in a position to say, 'Listen, through the actions of this council we've ripped someone off for \$40 000; could we just write a cheque?'. The council would say, 'That's inappropriate. That's not how we use public money'. Somebody needs to trigger a finding that they owe it.

Mr BOOTH - That's how that works in the Queensland model that I was talking about. With the 30-day turnaround, where you have a problem like that it is almost justice by sundown. The appropriate regulatory authority simply adjudicates, steps in and fixes the problem and then sorts out the builder. The consumer gets a very quick turnaround in terms of resolution. If there are any arguments to do with the person who has done the job, if the work is found to have been non-compliant, shoddy or there was some problem, that is fixed straightaway for the consumer to move into the house and the builder is sorted out. If they lose their licence they're not allowed to operate anymore; they can't build without the insurance they get when they ring up with the job number, which is immediately charged to their credit card. It seems to be a very intelligent system that delivers a real result immediately in terms of consumer justice.

Ms ARCHER - Other than three years through court, which nobody can afford because they've all gone broke.

Mr ORMEROD - That's right. We've been given the task of developing a dispute resolution service. The time line we have given to the minister is that we will have a system up and running by 1 July 2012, and that's what we are walking towards.

Mr BOOTH - Are you looking at the Queensland model, Roy?

Mr ORMEROD - The Queensland model is a scheme that is underwritten by government and that's not part of our brief.

Ms ARCHER - Is it intended to have teeth as opposed to dispute resolution where both parties have to agree on the outcomes, as opposed to someone saying, 'Clearly there's a finding here'?

Mr ORMEROD - The intention is to build it on a model of mediation initially but if mediation fails - and most often mediation will work - then there are other processes and there will be an enforceable undertaking which can be enforced in court.

CHAIR - These lawyers took me to mediation and I was the only non-lawyer in the room and I was done like a turkey.

Laughter.

Mr ORMEROD - The instructions to us are that it be quick, inexpensive and effective.

Ms ARCHER - I wouldn't like to see them go through that process and the mediation fail. That's on the cards in a lot of cases where the builder gets advice that they have a stronger case. If something can't be established or proved, then they are going to dig their heels in and not agree to an outcome at mediation.

Mr BOOTH - That's right. That's where I don't think even mediation or arbitration works. Ultimately you have to have adjudication where you put yourself before a tribunal or an assessment system.

Ms ARCHER - Arbitration will do that.

Mr BOOTH - But can they make that unappealable final determination?

Mr ORMEROD - Yes.

Mr BOOTH - Even if there is no agreement between the parties?

Ms ARCHER - Yes, they can make a final determination.

Mr BOOTH - There needs to be an imposed solution so you don't end up spending your life in court, wasting your money on things you can't recover out of it. It has to be a quick turnaround.

CHAIR - On the basis there is general agreement anyway as to all the elements.

Mr BOOTH - If you had the system where the builder was fighting the building service commission, not the poor homeowner, that then became the person they were fighting to determine the payments et cetera that would be recoverable from the builder. I understand you must have been instructed not to have a government system.

Mr ORMEROD - When the regulatory impact statement was written, it was written around a dispute-resolution model which gives the powers of this arbitrator court where it directs the person to make a payment. The Queensland model is a guarantee scheme, much like housing indemnity. You go to the authority and say, 'I have a problem', and 30 days later, 'Here's your cheque. Now we're going to do the builder'. I think that is a fantastic idea.

Ms ARCHER - It creates another level of bureaucracy.

CHAIR - On the matter of the recent case involving allegations about a builder's licence, I think a letter we received from the Director of Building Control covers it.

Mr ORMEROD - Okay, thank you for that.

CHAIR - We don't need to go into that. I think we're covered in that.

Mr ORMEROD - Actually it was useful because it brought it to a head, which is good.

CHAIR - That's right, it does - judicious use of publicity. Thank you very much.

THE WITNESS WITHDREW,

Ms DIXIE EMMERTON, MANAGING DIRECTOR, CENTRE FOR TASMANIAN INDUSTRY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Committee hearings are proceedings in parliament and that means it receives a protection of parliamentary privilege. It is important legal protection that allows individuals giving evidence to a committee to speak with complete freedom without fear of being sued or questioned in any court or place outside of parliament. It is important to be aware that this protection is not accorded to statements outside the confines of this parliamentary proceeding.

We have a certain matter before us on this question of long service leave and we are interested to seek an industry view of where this is all heading. We have, as a committee, evidence that it is heading somewhere. Evidence before this committee spoke about a number of things. One was an obvious increase in the number of surprise visits by officers of the organisation to companies to say, 'Guess what? You owe us money'. When we looked into it further, we found that this organisation had lost a substantial number of millions through the global financial crisis and therefore its rate had to go up. It was 0.02 and it went to 0.2 or something.

Mr BOOTH - Yes, 0.25 or something incredible.

CHAIR - It was a massive increase. Also, evidence was given that they felt they had to go out and make sure that everybody who should be paying was paying. Evidence was then given that the Government was considering legislation to deal with this. It was also provided to us that there was a deal of consternation out there about how far this would go and it went wider and wider. We asked for a look at the legislation and we have sent you, I understand, the schedule for that element of legislation which is draft legislation out there for commentary from various sectors, not the least of which of course is the TasBuild. Clearly, they are very interested as the key stakeholder and they are quite desperate for somebody to resolve this because they do not want to be in a conflict situation, they want to simply say, 'Our legislation says this.' We then went through it and we realised that it was planned to sweep people working on the dredging of rivers, for instance, into this.

Mr BOOTH - And people putting in security systems.

CHAIR - That is right. Not only security - here in Parliament House, the people putting in the television systems.

Mr BOOTH - Or the *Hansard* system or something.

CHAIR - Yes, it is all part of it and therefore it was all swept in. We thank you very much for coming to talk to us about this and I wonder whether you have any opening remarks before we ask you some questions?

Ms EMMERTON - Probably not. I am aware of the background and I do have some specifics with regard to that and, if necessary, for the committee, I have a certain employer who is willing to come forward with documentation on the letters and the

background. He has documentation back to the 1970s. From that perspective, we do have someone who can back-up information.

CHAIR - You have had exposure to these kinds of cases?

Ms EMMERTON - Yes. We work across about 16 sectors, many of which are some of the ones that would come under this new change and who are not currently under that change.

CHAIR - Who is 'we'?

Ms EMMERTON - The Centre for Tasmanian Industry. I am the managing director for that. We basically look after employers. We are an advocate for anything that they need to do. Many of the sectors like landscaping, builders' manufacturers, we look after all of those groups.

Mr BOOTH - How would you be different from the TCCI or the TBI?

Ms EMMERTON - We do a lot more external services than they do. We do not concentrate on the industrial side, we do HR and personnel management, mediation and dispute resolution, health and safety - everything.

Mr BOOTH - So it is a private organisation set up as a business?

Ms EMMERTON - Yes.

Mr BOOTH - Owned by an individual?

Ms EMMERTON - Myself. We then have specialists in various areas, such as a lawyer, an accountant, a mediator, psychologists, all of that.

CHAIR - We wanted to talk to business and we have it, so that is great. I think that is a good find. So what you are saying is that you have a knowledge of the background of this, with cases going back to the 1970s? What kind of case was that?

Ms EMMERTON - We have a glazier who has kept meticulous records over a period of time and he was first brought in when the scheme commenced. He was still in it in the 1960s when the scheme started and that is probably one of the major issues, if you lead into it, in that when the scheme started, it was run by the Government. He felt that was pretty good and that they had a nice, independent watchdog managing the situation and a lot of ability to get information whenever they needed it. But the issue in start-up was the legislation because what it meant was that all his employees that he had onboard at that time, he was then required to put in place the payment for them for the period of employment they had with him. One of the concerns with this for your consideration is that employer A, for example, got rid of all their employees and closed their business down. Once the scheme came in, they started up as employer B with new employees and therefore had no reciprocal requirements for payment, whereas he had employees already and it cost him around the \$32 000 mark.

Mr BOOTH - In what year was that?

Ms EMMERTON - That was going back to when it first started. I think it was the late 1960s.

Mr BOOTH - That is a lot of money. In today's terms that would be a fair bit of dough.

Ms EMMERTON - They made an agreement with him, and everyone who started at that time, that they could pay an amount. He believes he paid about \$10 000, and then the rest was paid off over a period of time to the scheme to bring those employees up to -

Ms ARCHER - But he still had to pay it?

Ms EMMERTON - He still had to pay it, yes.

We deal mostly with small- to medium-sized businesses, probably with 200 to 300 employees, in these areas and so a major worry in this time when cash is tight would be how the legislation actually starts because it doesn't necessarily start on 1 December, or whenever you have commenced it.

CHAIR - So you are saying when it starts for a new player?

Ms EMMERTON - Yes.

CHAIR - For instance, with Acme Pile Driving Company, if this bill was to become law, are you suggesting that somehow they were meant to pay for something in the past?

Ms EMMERTON - That is the concern.

Ms ARCHER - It's retrospective too.

Ms EMMERTON - It is retrospective. If I have three employees who have been working with me for five years, are you going to make me pay my percentage for those three employees for five years before the scheme actually kicks off and I get new employees in?

Mr BOOTH - The reason for that or the concept, I suppose, would be that there is an implied liability for long service were those people to remain long enough in your employ to ever get long service leave, whereas what they are doing now is saying, 'You've got an implied liability, we'll take that money off you now' as if they have actually reached the entitlement, and I think that the committee is probably contemplating -

CHAIR - I guess that's where we are coming from, and that's why we want to talk to business. In this day and age, is it the concept that somebody has to stay a pile driver for 10 years? It is much more portable than that these days, isn't it.

Ms EMMERTON - Yes.

CHAIR - They go to Queensland and drive a truck for a mine for a year, they come back again and go into this or that.

Ms EMMERTON - The argument way back when he started was already in place to say why are we having a portable scheme and why should it be set up this way? So there was quite a long and sustained argument between the Government, when they decided to set it up in the first place, and business because it also has created a real issue over whether or not they are in the business of building and construction or not. So if I have my employees sitting in my factory building the frames, are they part of the building and construction if I don't let them go on site? Then there was the issue of administrative, clerical - there is a wide-ranging effect on this. I would see the nervousness from business is whether you are going to widen that and how it is going to be implemented right at the start from a legislative point of view.

Mr BOOTH - Do you have a view in regard to some of the provisions in the act that enable people to opt in and out of the industry, to accumulate 10 years or nine years, or whatever it is, as a result of doing a year in the industry and then some years out, then coming back for a few years and going out, doing other jobs in the meantime, going on extended holidays and then coming back and asking for long service leave suddenly?

Ms EMMERTON - Which the employers get very frustrated with. As far as we are aware in the act, the four years is the limit, so they need to be back and forward in that time. The issue is, from what we have seen, that they have come back; for example using your term, it may take 25 years to get their 15 years. We only keep our records for seven on the whole and for an employer to try to remember who worked for them for two months 21 years ago is an almost impossible ask. So it has really been quite difficult for some of them. For example, my employer in glazing had them come back after a long period of time and it was only because he had the records for the 1970s - because he didn't remember this person who worked with him for about two weeks who now decided to claim long service leave. It's a really difficult process for an employer and you have to understand that many of our employers here don't keep excellent records.

Mr BOOTH - They're not required to anyway.

Ms EMMERTON - They're getting better.

Ms ARCHER - For the previous seven years you have fat chance.

Ms EMMERTON - They are not particularly excellent for the first seven. There is that kind of issue where you have a records-based scheme that their concern seems to be loosely managed.

Mr BOOTH - Would you have a comment on a proposition then that rather than trying to broaden the scheme and include a lot of extra people in it and therefore have the problems that that will impose on the industry, it might be better to simply abolish the whole scheme and where workers are not working in an industry that has, as part of its award, a long service leave component - you simply qualify if you're there for the period of time you have to be and if you don't and you move on you don't get it, which is what a lot of industries are based on - people in, say, the building and construction industry simply get another 1 per cent, or whatever the cost of providing that is, directly into their pay packet so that you completely remove all the bureaucracy - the compliance stuff, the record keeping, the administration, the whole nonsense associated with trying to

administer the scheme - and just put that money into the pocket of the worker at the time that they're working?

Ms EMMERTON - There are comments from employers along the lines that they don't particularly feel the scheme has been set up properly; they don't feel that the board necessarily has the skills for this type of scheme. My concern is that if you extend the scheme and make it bigger, you really can't have a group of people who have all good intentions. It really needs to be a very professionally managed board because you are talking about an awful lot of money.

CHAIR - That's the point. It seems to me that with the board the only skills required are money management skills.

Ms EMMERTON - Or being part of a particular association.

CHAIR - Yes, but in terms of what you bring to the board, a decision as to what to do with the money. The only decision they make is to go with this banker or that banker and take their advice. You do not need a paid board to make that decision. In order to pay that board and/or the staff they have to rely on people going away from the industry for four years and one month because then they can knock the money off. They live on the four-year default and that is somebody else's money.

Ms EMMERTON - That is very frustrating to employers because under normal circumstances an employer could run their business for 20 years and never pay long service leave because they have a rolling area. The argument at the time was, 'Why is the building industry so different to automotive, tourism, the restaurant trade?' The same kind of principles could apply, and I agree with you. It's one of the things we have been talking about for a long time, whether the scheme as it sits is currently required or is there another option? It is not really long service in the true sense of which long service leave was set up. For your background, in 1999 the fund was 0.07 - that's what they paid into it. When the good times came, by July 2006 it went to 0.03 and our members were arguing to keep it up so that the money was still rolling and if there were tough times, it could even out. In October 2008 it went to 0.06 and my employers' increase went from \$115 a month to \$230. In April 2009 they were advised that it was going to be 1 per cent. One month later they received a letter - and they hadn't even incorporated their cheque - and it was doubled. In October 2009 they were paying \$710 a month and they are now paying \$889 a month.

CHAIR - That is why we this the Select Committee is looking into the cost of housing - that is precisely what is going on.

Ms EMMERTON - We really work at the coalface, so I very much know what is happening to them. The issue that they are having is that they do not necessarily have the money sitting there to go and pay.

Mr BOOTH - To interrupt, the other issue there is that the current fee which is 2.5 per cent -

Ms EMMERTON - It is a bit of a funny one, that, because it is 2.5 per cent, but if you pay it exactly before the required date, they give you 0.5 per cent off. When they write in their

letter, they say, we are only at 2 per cent but that is actually not true. We are at 2.5 per cent which puts us right up there with the likes of -

CHAIR - That is a bit strange because 0.5 per cent is a substantial amount of money.

Ms EMMERTON - It puts us only behind Victoria

CHAIR - It is a penalty.

Mr BOOTH - It is a 20 per cent discount.

Ms ARCHER - If you pay on time.

CHAIR - For one day late, it is a massive penalty.

Mr BOOTH - Yes and the other thing about it too is that, I understand that the penalty for a business that suddenly gets roped in and deemed - 'You should have been paying this because you were fixing up electrical fittings or putting in a recording system.' is that they go back on the 2.5 per cent.

Ms EMMERTON - It is retrospective, yes.

Mr BOOTH - But if you have not been paying for 10 years, it goes back at today's rates.

Ms EMMERTON - Yes.

Mr BOOTH - A business could potentially be bankrupted by a massive fee. This guy only had to pay \$30 000 but they let him pay \$10 000 and then the rest over a period of time. But today, you would pay at 2.5 per cent right back to when they deem that you should have been paying.

Ms ARCHER - I suppose the principle is that employers are supposed to have that money put aside but we all know that is far from reality.

CHAIR - It used to be doable in 2008, you did not mind too much. But now, at \$800, you put that money in and you think, all right, at least that is for my nice employee. But in four years and one month's time, that is a heck of a lot of money that they then knock-off that belonged to that employee.

Ms EMMERTON - The other thing that affects them, which people often do not think about, is that not everybody is in it. So a lot of the scheme is based on you going forward, filling out the form and telling them, I am now a business, I have x employees. If you do not do that, the only way they are going to catch you is the spot check, usually by the union, to say, where is your card or where is your TasBuild? But what has happened over the time -

CHAIR - The union does that?

Ms EMMERTON - Some of them do. They will ask them for their TasBuild cards. For example, one of my employers missed out on a job for \$7. His payment is nearly \$900 a

month for his long service leave. So the difference of the long service leave cost him a job because the other person, we believe - and he cannot recall who it was - is not part of TasBuild. It is not a fair playing field at the moment.

CHAIR - We had evidence from one company that a car pulled up outside and a couple of heavies, if that is what you call them and that was his description, knocked on his door and they came in and said, 'You should be paying.' He was shocked at that and they worked out it was \$15 000. Whether he paid it or not, I do not know but last month he went into liquidation and he was very frustrated by the whole thing and absolutely furious about it and we have had a number of those.

Ms EMMERTON - It will certainly happen if many of these are put in because if you are talking about landscapers -

CHAIR - If it is new, I doubt the Parliament would allow it to be retrospective. In other words, Acme Pile Driving would announce to their workers that there is new legislation and we have to start paying on your behalf now.

Mr BOOTH - I do not think it is going to require new legislation, it is simply that they broaden it out and they rope you in.

Ms ARCHER - If you think about it, I think it has to be retrospective because that employee will have been working from a certain date and entitled to long service leave in any event, during that prior period. I think that is the issue.

Mr BOOTH - That is right or that percentage, if they were.

Ms EMMERTON - It moves from State to State.

Ms ARCHER - The other issue I am concerned about is this widening of all of these types of businesses. I can sort of understand the concept of portable long service leave in the initial phase for the building and construction industry, conceptually. What would industry's view be of - I don't know whether the Chair can give me one of the sillier examples - capturing a business that we once wouldn't have identified in any way connected on a 100 per cent basis of their work, building and construction.

Ms EMMERTON - The current members are still questioning who's meant to be within the scheme, let alone the next lot.

CHAIR - Because you have landscaping and construction services, brick paving, fence construction but then streetscape planting, garden sprinkler systems, installation.

Ms EMMERTON - A lot of them aren't in it because they come under the State legislation. Our landscapers don't pay into this scheme.

CHAIR - Don't they?

Ms EMMERTON - No.

CHAIR - Well, they going to.

Ms EMMERTON - Yes. For example, we look after the Nursery and Garden Association for Tasmania - this is the group that you're talking about - and many of them would close. They do not have the cash sitting there. One of the main issues is that if someone is looking for long service under a normal scheme, and I'm cash strapped but I have my equity, it may be that I have something to sell, so I'll say, 'Please don't take long service leave, it doesn't fit my business now but in two months I'm fine'. So you will work out a negotiation of a time. I sell my product, I've got the money, I pay long service leave, everything works okay.

In this, anybody can walk off the street and say, 'I want my long service leave now'. That means the employers, TasBuild, has to find that money. If they say they have worked for various areas, which has happened to my employer, TasBuild then has to go back and say, 'Hey, I think you've missed paying such-and-such in 1984, and you owe us \$780 for him'. If you can't disprove that, and the employee can't prove that, this is where we get into an issue of arbitration - not a good place to be.

Mr BOOTH - The other thing of course is the fact with that the person with the inferred liability that you were talking about a moment ago, Elise, it would have to be retrospective, that's true, except that with long service leave certainly when I first worked at a place, I knew that if I stayed there for, I think it was nine years in that industry, I would get a certain amount of time off on full pay as a reward for being a faithful employee who contributed by being with that business and helping it for that period of time, whereas if you wanted to be a fly-by-nighter and just work there for six months and bugged off, you didn't get that incentive. So small business is able to plan for long service leave because they know that this employee has been there for another year, they are going to need long service leave, and they have made that provision. Many people don't ever want to work that long, they want to have the ability to move around the place and get the luxury of doing that, they don't want to commit for that period of time and then there is an argument that they are not entitled to long service leave because they haven't actually done it with that company.

Ms EMMERTON - And had no intention of when they signed on. Hence we get back to the fact that after 15 years under the State you get long service leave, and then 10 and 10. Many people don't take their long service at 15 years - that's their retirement fund - so when they retire at 25 years, they get their nice amount and because they are there in a small group, the employer will keep those records because it is in their business profiles. These records are not necessarily in their business information and they are not necessarily keeping them for that period of time so there are some real issues with how it is being managed.

CHAIR - Some evidence that we received indicated that. The culture that gave rise to this legislation in the first place was that a diligent worker, a carpenter who worked for Booths, then Hiddings, then Archers over 10 years, and moved around a bit, was able to take a nice three-month holiday and then come back refreshed, get back to work, and get on with it. I think that was fine then but we had some evidence - and I don't think it was jocular, I think it was fairly given - that many of these workers are aware of their status; they are coming up to eight years and they say, 'You've got two more years of this' and they will actually buy a boat, they will use the money to buy an asset that they've been hoping to have, which is great for them.

Mr BOOTH - They cash out rather than take the leave.

CHAIR - They cash out, they take the dough and buy the boat that they have always wanted and keep working. If there is a fair bit of that going on, it doesn't fix the problem, which is a nice, refreshed, relaxed worker who has had three months off.

Ms ARCHER - Also, the concept of long service leave is that it is your reward for staying with the one employer. That is my concept and understanding of long service leave, but we are making an exception to that with the building and construction industry.

CHAIR - Personally, coming from the building industry, I think it wasn't a bad idea back then for the chippies.

Mr BOOTH - Working on projects had ceased so they couldn't have permanent employment. I think that's the reality.

CHAIR - And I think that was good but it's got out now, as this often does, and you say, 'Why isn't this person in?' - you have equity issues, which is where we are now. At what point is everybody in?

Ms EMMERTON - That's our question: 'What about automotive or tourism?', because the same applies to them. They follow the requirements of their work and when the work slows down they move on. The other issue that people don't think about is that after seven years in the scheme it is much like the State one; you can take it pro rata, which again creates more issues.

CHAIR - Can you do that with this scheme after seven years?

Ms EMMERTON - Yes. The issue for employers is how that is being monitored. It is much like the State scheme where they have to be terminated, which is not hard in some States, where they have to prove a family requirement or a medical illness. That is difficult enough in a State scheme where we have the requirements. There is concern that that is not being monitored at all as part of this scheme, so they go to them and say, 'I need the time off. My mother has just died' and they say, 'Okay, we'll give you the pay'. A lot of the questions that I have had from employers over all of these groups over all these years is the concern about the management of the scheme. One of the big questions with the role of the money is, 'If it's meant to be put into blue chip, you can't blame the GST for that'. Under normal circumstances we are currently paying 1.67 per cent and they are currently really paying 2.5 per cent, unless you're really good with the money and you can pay it on time. It is high up -

CHAIR - So who's paying 1.67 per cent?

Ms EMMERTON - We are under the State scheme.

CHAIR - That's what it works out to?

Ms EMMERTON - Yes, about 1.67 per cent. There is an added cost and their concern is how that added cost is justified and where is the added cost going rather than just

administration. We are not really getting much back for it. When the Government ran it they would ring up and the guys would work it out for them; there was that consultation. Now there is not. There is a concern that we have this group looking after whatever and the employers are not getting much out of it. There is not really give and take between the two so there are major issues.

CHAIR - As a former employer in the building industry, I recall people sitting around a management table saying, 'In the scheme of things it's not a lot to pay for what the employee gets, so this is a good thing. There is a lot of money in the bank and our employees are getting the benefit of that, so suck it up and let's pay'. But now when we are getting to 0.25 per cent, we are getting from \$115 through to -

Ms EMMERTON - We're only behind Victoria. Victoria is 0.27 per cent; New South Wales, 0.35 per cent; Queensland, 0.3 per cent. Queensland, the Northern Territory and New South Wales have a levy on their building and construction projects so the employers don't really pay it; it is based on the projects that they do. Western Australia varies. South Australia is 2.25 per cent and we are 2.5 per cent, so we are second. We are only behind Victoria. My members say to me, 'Victoria has a lot of building works' and when you have a lot of work and a lot of ability to plan your work you don't mind paying 2.5 per cent, if you have to, because you have the work rolling in. Here it is very tight.

CHAIR - Particularly when you go to landscaping. Things like landscaping become discretionary. When things are a bit tight you look at your own house and you think, 'The landscaper earns \$16 000. With a few working bees, it won't be as good but I'll do it myself'.

Ms EMMERTON - And a lot of them are undercutting each other. For example, in glazing and construction we have members here who are losing jobs not by a small amount of money but sometimes by hundreds of thousands of dollars. They are losing jobs to people from the north whom they've never competed against before, or from interstate. We cannot fathom how someone bringing their people from interstate can undercut the local market. There has to be some particular issue, but we're not finding it. This all forms part of their costing so it is very important for them.

Mr BOOTH - There is another problem, too, now that we're getting a lot more prefabrication of things like kitchens, completed windows -

CHAIR - Flat-pack stuff.

Mr BOOTH - Yes, flat-pack stuff coming in from China. They're not paying any of this stuff at all, apart from the wages, and they're not sluggish with this additional bureaucracy to run or transport a long service system. So it does make, I suppose, local people involved in that aspect of construction even less competitive.

I asked the question earlier on whether there is an industry that is deemed to not generally be eligible for long service leave. You did mention, of course, tourism and hospitality. In fact in most industries now, even the public service, people don't spend their dying days working just for the Government. They tend to transfer their skills into the private sector, backwards and forwards. Would it be better, if there is a need for this,

to just have, say, 0.3 per cent of salary paid additionally to the person, who gets the wage directly in their pocket? If they choose to buy a boat with it over a period of years or they choose to soak it up and go on a holiday, they control their own destiny rather than the complex system where this board manages it and controls all of this money, and the employer has to come back and provide records from 10 years ago.

Ms EMMERTON - In my discussions with business over time, I think they would find that much more palatable than what we have in the current scheme, as long as it can be something that is reasonable and they can wind it into the wages. It would be easier to administer. If you take the administration costs and the board costs out of it, it would have to be cheaper for them to deal with their employees.

Mr BOOTH - It's no burden for the employer, then, because it's a once-off thing. You've paid it every week in their wages and you never have to go back and drag out your old records.

Ms EMMERTON - You could add it as an allowance.

Mr BOOTH - Yes.

Ms ARCHER - It still doesn't scope for the fact that we have such a wide ambit now of types of industries that come under this.

Ms EMMERTON - One of the things that has been mooted even from some of the other areas is that they would like to have an ability to either offer the money to the employee or -

CHAIR - At least he gets it.

Ms EMMERTON - to have it as a normal long service scheme. So can people, if you're going to extend this to a portable long service, lock in or out? So can I, as an employer running my landscape business, determine that I'm going to pay everyone 0.5 per cent more for their long service leave? It never comes back to bite to me; it's in my MYOB slips so it's nice and simple and I don't have to follow the State one. It's a determination that's made by the business. That would be a much more palatable idea because as long as I have a business -

CHAIR - When you say he doesn't have to follow the State one, he's required to, isn't he, if that worker stays with him?

Ms EMMERTON - Yes, but what they're looking at is, 'Can I opt out of the State and give it' -

CHAIR - Who's looking at that? Your people?

Ms ARCHER - Do you mean their choice or the employee's choice?

Ms EMMERTON - I don't know that you could move it to the employees. I think that their business would have to make a decision and run it, and whether it's in line with the State amount. As long as the employees aren't missing out. They can't be worse off. If

everyone has to pay long service, then at least we have an even playing field when these guys go to do their tenders. It would obviously involve a change of the long service leave act for the State but the requirement is to make sure the employees pay it.

CHAIR - Workplace Standards do inspections of pay records.

Ms EMMERTON - Yes, Fair Work and so on come in. If I have a clerical person and he or she is getting 1.65 per cent, but I have a builder who is getting 2.5 per cent, they don't see that as fair to the people in their business when they are all building that business. Then there is issue of the guys in the factories who never go out. They want to go out because they get this; if they stay in they get 1.67 per cent, or do they? There is current confusion on how it is run.

CHAIR - This has been excellent evidence. Is there any information you could provide to this committee, even that material you have from the other States?

Ms EMMERTON - I am happy to give you my file notes, if they are of any use. I have broken down the issues about expense, the board and the consistency issue.

There are some real issues with the building and construction long service. The predominant ones that we keep coming back to are: How is it run? Where is the money going. Why has it tripled in a couple of years?

Mr BOOTH - And does it deliver what it was intended to do in the first place?

Ms EMMERTON - Yes, especially when people are moving State to State. Finding those records is no mean feat.

CHAIR - Thank you very much for coming along.

THE WITNESS WITHDREW.