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THE HOUSE OF ASSEMBLY SELECT COMMITTEE ON THE COSTS OF HOUSING, BUILDING AND CONSTRUCTION IN TASMANIA MET AT HENTY HOUSE, LAUNCESTON, ON MONDAY 8 OCTOBER 2012.

Ms JILL DAVEY WAS CALLED AND EXAMINED.

CHAIR (Mr Hidding) - Welcome, Jill. We last spoke to you in February 2011, we are now 18 months on, and we are keen to hear from you as to what has taken place since and what your situation is now.

Ms DAVEY - I will fill you in on what we've had to have done to the house. We had to remove all the decking to take all the cladding off the house. The house had to be stripped right back to its framework. When we did that we found there was no insulation in the house; we had an energy rating certificate to say there was. We've had to add sisalation and insulation and we've had to remove the windows, refit them and put flashings on them. We've had to fit all new glue board, re-render it, new skirtings and architraves and have them all painted. We've had to have new fascia boards and refit the gutter and the barge flashings. We've had to fit flashings to the carport, texture-coat paint and skirtings and removal of rubbish.

Still to be done on the house to bring it up to Australian standards: we need to have the roof removed - all the ridge capping - all the colorbond has to be turned up. We have to have our shed rewired because that isn't done to Australian standards.

CHAIR - Your whole roof doesn't have to come off?

Ms DAVEY - No, it has to come off because the sisalation is flapping in the breeze; it is not fitted taut.

Mr BOOTH - Is there insulation in there as well?

Ms DAVEY - It is thrown in there; it's not in properly.

Mr BOOTH - In the ceiling?

Ms DAVEY - Yes, in the ceiling, but it's not in there well.

Mr BOOTH - So you have a cavity roof and you can see that?

Ms DAVEY - Yes - it's not like the walls. We found out about the walls when the Justice Department came and took off a power point. We had the energy rating to say it was there, and he put a pencil in and it went straight through. How can they put an energy certificate in our plans to say this was an energy rating when there wasn't any, which is standard anyway?

Because our shed is all steel-framed we had Aurora out to look at it. The builder has wired it himself from the outside power point. He has put an extension cord across to the

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shed; it's not even earthed. He said we were lucky someone wasn't electrocuted - we've had it earthed and then there is an extra \$6 000 to have it redone to standard.

CHAIR - Have you had that done?

Ms DAVEY - No, Mr Hidding, just wait 'til I tell you. We have had a quote to replace all the decking which is \$6 200. To date, just fixing the house on the outside, I have spent \$41 687. Johnson, McGee and Gandy for an engineer's report was \$2 288; Protek, the building surveyors, was \$2 847; painting cost me -

CHAIR - So Protek did a report?

Ms DAVEY - I have reports about this from Protek and JMG Engineers & Planners.

Painting was \$2 300. Now this is the best bit; we have spent \$4 491 on Bishops, our solicitor - and we still have an outstanding bill. They have had this for nearly two years and now they tell us it's not their area of expertise and for us to find a solicitor in Hobart and start from scratch. A barrister we saw in Hobart cost us \$6 600 for a retainer and he now wants another \$3 000 to send the subpoenas out. My husband has to go to Hobart every two months to a psychiatrist. It is never-ending and where are we? We've got nowhere from day one. We have spent more than \$60 000. I had our house reappraised, and with all this money we've spent and what we bought it for, we will never recoup our money. We are at a loss, without losing all this money we haven't been able to get back.

I think we should have a tribunal that takes all these building disputes, instead of going through a court system. There has to be a quicker way to recover our money. I am sure I'm not the only one in this situation. We can't afford to do any more. We've had to put our house back into mortgage mode to cover all this. We have retired, for pity's sake, how do we pay for all this?

We had a carport put up and the cost of council fees was nearly as much as the carport. I can't believe it.

Ms ARCHER - How much were the council fees?

Ms DAVEY - Over \$2 000. The kit for our carport was \$2 300.

Ms ARCHER - Do you mean the fees to get it approved?

Ms DAVEY - Just the planning approval, building approval and whatever else - plumbing. It is just ridiculous.

Mr BOOTH - Plumbing?

Ms DAVEY - For a carport, just for the downpipe to be connected to the storm water. It is absolutely ridiculous.

Mr BOOTH - How big was the carport?

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Ms DAVEY - Seven metres long by the width of the driveway which is about two metres. I don't know. I am my wits end. I get so angry. This solicitor was the owner of the firm that rang me. We have had four solicitors in his company and then he said, 'This is not our area of expertise'. I said, 'Why did you take it in the first place?'. They have taken all our money, nearly \$5 000.

CHAIR - Let's unravel a couple of things at a time, if you wouldn't mind.

Ms DAVEY - Okay.

CHAIR - Don't feel at all bad about being emotional about this. That is why we have asked you to come back and give us an update because we were distressed at your situation back then and we still are. I don't know what value we can add to your situation, but you can certainly add value to ours and for other people further on. If there is any sense out of all this for you, we might get that at least.

Ms DAVEY - It should never happen.

CHAIR - That doesn't stop us from being interested in your situation, however and we will see what we can do. In terms of the carport -

Ms DAVEY - I should have brought all that in.

CHAIR - As you live at Perth, you might find an electorate office of a member of parliament or Mr Adam's office. If you wouldn't mind, go and get some things photocopied, just to show us the cost of the carport compared to the cost of the thing. It is a different issue for us, but we are still very interested in that.

Mr BOOTH - Could you give us a time log of what happened? You decided to put in a carport, and what the time line was until you had it finished and what happened in between.

Ms DAVEY - I told them that I would not have them back on my property. I had Protek back to do building surveying. I wouldn't have those surveyors that passed ours - and I am sure they didn't look - they had to go and do another course.

CHAIR - They were sent off to do a course?

Ms DAVEY - Yes, a slap on the wrist - you naughty boy, go and do a bit more paperwork. They have ruined people's lives. They wouldn't stand for it themselves. When I applied for the building permit to put the carport up, who was the assistant surveyor again? It was the same man that passed our house. I said to the woman when I rang, 'Surveyors make mistakes'. She said, 'Ours don't make mistakes'. I said, 'I am sorry, but I will not have them back on my property'.

CHAIR - It was the wrong person to say that to, Ms Davey.

Ms DAVEY - I won't go to the council chambers because I get so angry.

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CHAIR - The committee would be very grateful if you wouldn't mind documenting it. We know you are good at this stuff. You have a good mind on this. If you wouldn't mind documenting, as a separate issue, the case of your carport -

If we can discuss for a moment, again as a separate issue, the issue of your legal representation? Elise, have you any questions on that situation? Had the situation changed in terms of the kind of advice they were providing. Did it get specialised after a while?

Ms ARCHER - I wouldn't have thought so. I would have thought that, given it was a building dispute matter, someone had that type of expertise or knowledge needed to take the matter on. If they didn't have anyone in their firm, that is when you usually refer to another solicitor outside the firm.

Ms DAVEY - Not two years later. The worst part of that was, I rang the Ombudsman in Hobart when I first started to get into all this. I said, 'We live in Launceston, is there someone you could recommend?'. They recommended this firm.

Mr BOOTH - The Ombudsman recommended that firm?

Ms DAVEY - Yes, the lady I spoke to at the Ombudsman's office in Hobart.

When Steve Bishop said this is not our area of expertise - nearly two years down the track - I said, 'You were recommended by the Ombudsman, why would he do that?'. 'Oh,' he said, 'because I have been around a long time'.

CHAIR - You spent \$4 500 with them - were proceedings ever issued in any court for reparation from anyone for your building situation?

Mr BOOTH - Can I confirm that it was \$6 000?

Ms DAVEY - There is \$4 491, and I have a \$1 600 bill to pay that I am disputing.

CHAIR - You are right it is \$6 000.

Ms DAVEY - They draft letters and they charge me for folios and folios of them, but I have never seen them so I refuse to pay them this time. I have rung them and asked them. Now I get a letter from him to say that I must put it in writing to say I am disputing the account. I have to write to them and wait for them to reply.

In January this year we had a meeting with a barrister - the then solicitor we had and the one who had the case but was handing it to somebody else - so there were the two solicitors, Bruce and I, and the barrister from Hobart. We had a conference like this; a telephone conference.

CHAIR - What was the barrister's name?

Ms DAVEY - Craig Hobbs. He had done a report on what we had done so far and he wanted them to get Protek to do a costing on all our repairs; that was in January. It is just now that we have lost that solicitor and we have Mr Bishop taking over. I said to him, 'That

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needed to be done, it is eight months and you have not acted on it'. Eight months they had that and they did not go to Protek. I rang Phil at Protek and he said, 'No, I have had nothing'.

He wanted that report so that he could lodge the four claims against the two surveyors, the builder and the council. He wants to lodge them altogether - the four of them at once. So he has waited eight months, they have only just had Protek to do it because Phil has been in contact with us to check and then they say it is not their area of expertise. I could really throttle them.

Ms ARCHER - I would say that they have engaged a barrister for specialist expert advice, which is very common, obviously with the consent of the client -

Ms DAVEY - I did that. I got him myself.

CHAIR - Oh, I see.

Ms DAVEY - I found the barrister.

Ms ARCHER - Right.

Ms DAVEY - The barrister they recommended sat on it for three months and did nothing. I said, 'That is no good to me I need you to act on this'. They recommended someone here in Launceston. They gave me two names. I rang the other name and he could not take it so he gave me someone else who I rang and he said, 'Look at the moment I am really busy, I cannot work on it, but I know Craig in Hobart who hasn't a lot of work on at the moment and will be able to act on it straight away'. Here we are 10 months later and we are still no further, and he wants another \$3 000, when he gets the report, to lodge it with the court.

CHAIR - Your plan, from legal advice, is to sue whom?

Ms DAVEY - The Northern Midlands Council and the two surveyors who passed all the work -

CHAIR - They were two surveyors belonging to the Northern Midlands Council?

Ms DAVEY - Craig said to sue them all because they were all at fault, and the owner/builder - from whom we realise we will not get a cent because he has gone to Queensland. Craig said that we still serve him, but he said that the cost of chasing him up there is not worth it.

In last summer the Northern Midlands Council did say -

CHAIR - Admitted liability?

Ms DAVEY - Admitted liability, and we still are not any further than that now; that is 12 months ago.

CHAIR - Your legal adviser has that in *Hansard*.

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Ms DAVEY - They have every piece of - they have copies of it -

CHAIR - The stuff that was said here?

Ms DAVEY - Yes. All highlighted. This is what I mean, I do it all for them. I actually do all this ground work and then they still do not act on it. I am not a legal mind.

CHAIR - You are doing all right. You are learning.

Ms DAVEY - I am learning fast, I tell you.

Ms ARCHER - It shows the expense of the current system to make a dispute and the fact that there is not enough expert legal advice up here that you have had to engage a barrister which only increases the cost.

Ms DAVEY - That's right. If we have to go to Hobart to a solicitor to work with Craig, we have to start from scratch again. We have to tell him from the beginning again. I've had to do that four times. You know how good that makes you feel, when you have to tell them four times? It's like telling a child, 'You're naughty', four times.

CHAIR - It would be okay if you weren't paying for it.

Ms DAVEY - Exactly. I complained about one of the solicitors who was acting for us and Mr Bishop charged me another \$385 to tell me her work was okay. I went to the legal advocacy and asked for it to be checked and they said they shouldn't charge me for that. Mr Bishop charged me \$385 to write me a letter, because that is how much he charges an hour.

CHAIR - This committee is not set up to look at the structure of the legal fraternity and how they go about their work - and that is a company with good standing in Launceston. As Ms Archer just said, it is important for us to understand the costs and frustrations and the fact that it is the owner herself in this case who has to walk through the legal minefield. You have no idea how much it's going to cost in the end, do you?

Ms ARCHER - Or how much you might get back?

Ms DAVEY - Exactly. The barrister said we should get 85 per cent back, but whether we do, I don't know. With all the pain and suffering it should be 185 per cent. We've had two years of this.

Ms ARCHER - I think he probably was talking about the costs.

Ms DAVEY - Yes, I know he was.

Mr BOOTH - Have you had any engagement with Workplace Standards or consumer affairs?

Ms DAVEY - Yes, Workplace Standards.

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CHAIR - You said you had someone from the Department of Justice in your home; was that consumer affairs?

Ms DAVEY - No, that was the Department of Justice. Workplace Standards gave me these places to call when I first started. I rang the Justice Department - the building investigator.

CHAIR - He's from the Director of Building Control.

Ms DAVEY - He came and checked. There were two of them - David Appleby and Adrian someone. Then I got the man from consumer affairs to come because I thought we may be able to put it through the claims and he sat at the dining room table and said it would be a waste of my time to put it through consumer affairs.

Mr BOOTH - Did he give any reason for that?

Ms DAVEY - No, he just said it would be a waste of time. I said, 'Perhaps I'll get *Today Tonight* or *A Current Affair* to come and look', and he said, 'Would you want your face all over the television?'. I couldn't believe it. I thought, here is a claims court for us to use and this man told me not to pursue it. Now he is working for the Justice Department.

CHAIR - It is the same department.

Ms DAVEY - Yes, I know. I just can't believe it. I showed him all the documentation and all the things that were wrong with the house, and he said, 'no'.

Mr BOOTH - So his advice, from Justice, was to forget about it?

Ms DAVEY - No, Justice didn't; they told me to go ahead with it.

CHAIR - Consumer affairs and Justice exist in the Department of Justice.

Ms DAVEY - The consumer affairs representative told me not to pursue it, but the Justice Department did. There you go; conflicting interests in the same department. Consumer affairs said it wasn't worthwhile putting it through consumer affairs through the claims court.

Mr BOOTH - So you were advised not to go to court over it?

Ms DAVEY - Only through consumer affairs, not Justice.

Mr BOOTH - What did Justice say to you?

Ms DAVEY - They didn't advise me anything.

Mr BOOTH - What did they do?

Ms DAVEY - They said to fill out a complaint form against the surveyors who passed it, and that is all I did - to have them investigate it in the council, which they did.

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CHAIR - That resulted in them being sent off for more work? That is a professional standards thing.

Ms DAVEY - Yes. They had 12 months to do up to standard grade 4. Then I rang them and said, 'How do I know?'. Then Kerrie Crowder sent me a letter to say they had completed the course.

CHAIR - Oh, goody.

Ms DAVEY - How do I know?

Mr BOOTH - Workplace Standards - what did they suggest you do?

Ms DAVEY - They said that it would have to be fixed because I had to have it fixed. I would have all my notes at home.

CHAIR - To be fair, consumer affairs manages relationships between builders and commercial providers and consumers. In this case, were they saying to you that it was because you had bought it off a private individual that you had no recourse?

Ms DAVEY - No.

CHAIR - Didn't explain?

Ms DAVEY - He didn't explain. He said, 'It's not worth it'. It would have been better for me to go around to a tribunal like this with the surveyor or whatever and everybody saying their piece. Also having a mediator to say, 'This is wrong and pay up'.

Mr BOOTH - At that point in time, when you were told it wasn't worth pursuing, were you aware of the extent of the problems with the house?

Ms DAVEY - Yes, because we had been through our insurance company to make a claim.

Mr BOOTH - So you had the surveying?

Ms DAVEY - No. They sent a building consultant in because the water was inside the house and they couldn't find where it was coming from.

Mr BOOTH - At that point in time, where would consumer affairs have been with the issues?

Ms DAVEY - I had all that there for them. I had the building consultant's report. I had all the reports there - everything. They would have known. Our insurance knocked it back because we couldn't claim insurance on it because it was coming from outside the building and not inside the building. That is how it all started, because of the faulty work outside the building.

Mr BOOTH - We need to put down on the record about the energy-rating certificate.

Ms DAVEY - I have all those things.

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CHAIR - Who issued that to you?

Ms DAVEY - When I went to the council for the plans to see where they had passed everything, it was in there.

Mr BOOTH - That had been issued by somebody; it was an official energy-rating certificate that comprised part of the documentation about your house that the council held?

Ms DAVEY - Yes, the council has that, they gave me -

Mr BOOTH - You talk about a shed you had rewired, but that it ran from an extension cord. Was that plugged into a powerpoint or was it hard-wired?

Ms DAVEY - No. He has wired it from the outside power point, on the deck, and he has put conduit in the ground across to the shed. I know this because my son is an electrician. The conduit is not in the ground far enough. It is not at standard and because it has to go from the shed straight back to the meter box, it cannot have joins. He has joined it like an extension cord from that outside power point.

Mr BOOTH - Do you plug it in or is it hard-wired?

Ms DAVEY - No. He has joined the wiring in there. Even the house itself wasn't earthed properly. They had a join in the earth wire which we had to have corrected. It is just a nightmare.

CHAIR - I think that's all pretty clear. Your situation is worse than I had thought. We were concerned for you back then and here we are 18 months later. All I can express from this chair is that we are horrified for you.

Ms DAVEY - I am going to fight them because it should never happen here in Tasmania. We have all these standards that we are supposed to abide by. I was listening to the council today on that shipping container thing they have let them build at Bishopsbourne. Again, Northern Midlands Council. They said they would make sure you put the letterbox in the right place, which they do and they charge you all these extra things. The things that are important they do not seem to worry about; they only want your money.

CHAIR - Did you at any point, having the knowledge of what was spoken in this committee, write to or communicate with the Northern Midlands Council that you felt that they were liable?

Ms DAVEY - No. Should I?

CHAIR - We are now talking about unqualified legal advice.

Laughter.

Mr BOOTH - You could send them the *Hansard*.

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CHAIR - Certainly, it is on the record.

Ms DAVEY - I am sure they know that it is there.

CHAIR - Yours is a classic case, your civil situation in this litigation between yourself and the previous owner and the fact that there were third parties involved in why it was where it was. We were interested in it at the start and we are still interested now. Now that we are into the dispute resolution part of our inquiry I was keen to ask you back. I wish you all the best.

Ms DAVEY - If you have another one next year I will come again. I am sure I will still be here fighting again.

Mr BOOTH - You mentioned a couple of times you think there should be a tribunal?

Ms DAVEY - Yes.

Mr BOOTH - I am very interested given your experience thus far with the legal processes that are supposedly there to resolve these issues. Quite obviously it has not worked for you. Can you paint us a picture of how these things should be resolved?

Ms DAVEY - At a tribunal I think there should be someone with building knowledge, a mediator or a judge or someone, and the parties, like us, and perhaps the builder himself.

Mr BOOTH - So people who have expertise with building?

Ms DAVEY - Yes, that is right and a magistrate, judge or someone to mediate. Then say, 'Well, these things are not right', and then he makes a ruling that you pay x amount of dollars so that it does not drag out for years and people are out of pocket. What we are doing is making our solicitors and barristers rich. We are paying them; I know we need them. You probably do have to have a legal representative with you. You bring it to the attention of the head of the tribunal and they give you a hearing date. You come along with your solicitor, and these experts listen to our case, he makes a ruling and that would be it.

Mr BOOTH - So a justice-by-sundown sort of thing?

Ms DAVEY - Like mediation when your relationship breaks down, something that does not take all your money and you are still nowhere two years on. Something that can be resolved and it has to have a time frame. This should have a time frame on it; to lodge a complaint against this owner/builder we have seven years. They can drag this on for seven years if they wish. If we have a mediation or a tribunal thing, it has to be done in x amount of time. Once you have lodged your complaint you have so long for that hearing to be processed and a finding to be made.

Mr BOOTH - In terms of the building process, where has the fault happened? Is it the fact that you had a dodgy owner/builder who actually did not do what he claimed he did -

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Ms DAVEY - Yes, and the council surveyors passing it. To me, the onus has to be back on those surveyors for not doing their job. They are employed with council as surveyors. I am employed as a housewife.

CHAIR - They are actually practitioners in the building industry.

Ms DAVEY - That is right. If you do not do your job properly you could be out the door. If these surveyors do not do their job properly, why are they getting just a slap on the wrist and say, 'Well, we will do another 12 months course'. We do not know if they have done any better than they did last time. We do not know; we can't judge them. We got this paper from the Justice Department to say they've done grade 4. How many grades do they have to do? My problem is mainly with the council not making these owner/builders accountable to Australian standards. If you were a builder and I was suing you because you did it wrong, you could lose your building licence. These fellows don't; they can go out and build it all over again, can't they?

CHAIR - Yes, except that I would have thought that your legal advisers would say that your case is against this one particular inspection.

Ms DAVEY - There are two, though.

CHAIR - Two inspections?

Ms DAVEY - Two from the Northern Midlands Council. Two surveyors passed it, ticked it off and signed them. Two of them, not one.

Mr BOOTH - I have my own view on how we should be regulating building so I am interested to hear your view in regard to how you would stop this happening. Without verballing you, are you saying that the responsibility here is the council and the building surveyors not inspecting the building properly?

Ms DAVEY - Exactly, instead of sitting at a desk and ticking boxes which they haven't reviewed. They came back and took photos of the house where I showed them it was shonky - where the building consultant had showed me what was wrong. Whether he took photos or not, I don't know. He had the camera but it might not have had anything in it, who knows. When I rang for the report, do you know what they told me, 'It was wear and tear'. The house was two years old. What sort of answer is that to give a person - I know I am only a housewife - when there are great gaps where the water was getting in. How can they say that it is wear and tear? The house couldn't have moved that much. It wasn't joined in the first place because everything was cut short.

CHAIR - You have done a great job and we thank you very much for your evidence and we will keep you in contact with our final report.

Ms DAVEY - I would love to know.

CHAIR - We may call you over the next few days to indicate that *Hansard* is on the web, and therefore available - released to the public - that you might want to bring to your lawyer's attention in terms of some possibilities for legal aid. Don't get excited about it,

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but it is something that is not public knowledge and it is going to be in *Hansard*. Let us just leave it at that.

Ms DAVEY - You will let me know?

CHAIR - Yes, I will undertake to let you know when it is published.

Ms DAVEY - You think you're retired and out of debt and now they put you in debt again. When you are on a pension and you have to pay a mortgage, it is not funny.

CHAIR - No, it is not. Thank you so much for your time.

THE WITNESS WITHDREW.

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Mr FRANK GESKUS, PRESIDENT, BUILDING DESIGNERS ASSOCIATION OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Hidding) - Welcome, Mr Geskus. You've been invited in because you are the president of the Building Designers Association of Tasmania. We are in the second phase of an inquiry into the costs of housing, building and construction in Tasmania. We did bring down an interim report but have moved into the second phase, which is to investigate and consider dispute-resolution mechanisms in Tasmania because we had identified there was potentially an issue there. The department has an exposure draft of a bill that has been out for probably a year or so now and I suspect your association is aware of it. The two major building associations are aware of it and we understand negotiations between them and the department have been very productive in smoothing out and accommodating a lot of their concerns. We would like to hear from you today what you are aware of with building dispute resolutions in Tasmania, what issues you have, if any, and then we would like to explore some situations with you.

Mr GESKUS - I've been exposed to quite a few disputes in the sense of having come in as a third party to rectify them. I have found the current situation very ordinary, to say the least; no-one wins. Whether it's an owner/builder or a builder who has done the wrong thing, or a certain tradesman has done the wrong thing, there is no current mechanism that works well at all. I have some reservations in how I understand the proposed dispute resolutions. I feel there are still a few loopholes where people will not achieve satisfaction out of dodgy workmanship or people not meeting their commitments as to what was stated on the drawings. I feel that part of the problem - and I suppose starting from the very beginning of any project - is the customer having the right information, getting what they expect on the set of drawings, engineering, plumbing et cetera and getting your planning approvals. Time and time again we've seen where those documents have fallen short and disputes have come out of those. Levels are the absolute biggest problem we see, where quite a few designers, architects and the like do not take levels. We know of a certain situation where a house is hanging 1.5 metres out of the ground on a dead-flat site. Who pays for the extra brickwork or concrete involved?

Mr BOOTH - You mean it wasn't a dead-flat site?

Mr GESKUS - It was not a dead-flat site, and this is a very common problem. I can go to any council and go through the documents and show you.

Mr BEST - What should happen there? Should people inspect the site before they draw the plans?

Mr GESKUS - You do a detailed survey. You engage a surveyor or, in my case, your own staff. We go to the site, take the levels and you then know exactly what the fall is. You never do it by eye, you just can't; you have to do it by the hard data.

Mr BEST - Is that very expensive?

Mr GESKUS - We pay anywhere from \$330 to \$600.

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Mr BEST - So it's not that big a deal if you're going to do it properly.

Mr GESKUS - We go to great lengths. We pick up the house next door and all sorts of extra detail because if the planning department said, 'We'd like to see shadow diagrams and how it's going to affect the backyard', we can do that because we already have the data, and it's not falsified.

Mr BEST - I just assumed people would get someone in with an excavator.

Mr GESKUS - No, you're not allowed to.

Mr BEST - You can't level off a block?

Mr GESKUS - No, say with the west Tamar scheme, there is a maximum cut without planning approval.

Mr BEST - Really, I didn't know that?

CHAIR - It didn't used to be and there are some appalling outcomes where people would look at a block of land or the real estate agent would say it is a level block. Then the builder would come along and he would have to choose between cut and fill and then prop up the front. Then what you see out of the kitchen window is a battered wall. It is cut so deep into the wall and then you have dramas with stormwater and the rest of it.

Mr BOOTH - With regard to surveying a block, if you are a designer surely you would say this has not been surveyed and it will be built in this way and if there is a cut, you are going to have to accommodate that per regulation. That could be something that is a specification on the design, couldn't it?

Mr GESKUS - We do it as a matter of course.

CHAIR - When you say 'we do it as a matter of course' -

Mr GESKUS - Prime Design - my business.

CHAIR - So you are the principal of your company which is called Prime Design. As a matter of course, you and all your staff provide that service.

Mr GESKUS - Yes.

CHAIR - However, you are here as the president of the Building Designers Association of Tasmania which is a broader issue.

Mr GESKUS - Yes.

CHAIR - The context is that we have just passed legislation through both Houses of the parliament which, I propose to you, gives your association and your members the exclusive rights to any plans that are submitted to councils in Tasmania. That didn't used

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to be the case. I used to be able to draw my own plans if I were capable of it. You now have exclusive rights to it.

Mr GESKUS - Yes.

CHAIR - How are you going to rise to that situation?

Mr BOOTH - It's a very privileged position.

CHAIR - It is a privileged position. It is a question now of what you do with it without sending building costs through the roof. I understood the purpose behind the thing was to raise the quality of workmanship and to lower the amount of disputes. Now we are talking about quality of documentation. You have just started on the primary role - which is to shoot levels on a block. What does your association feel about that? Will you tell your clients around Tasmania that all your building designers will now have to take levels before they submit plans or produce designs?

Mr GESKUS - We obviously cannot force our members to do it. We will strongly encourage it. We had an open forum on this matter with all our members and the biggest issue that came out was that other designers that are not members of the Building Designers Association, that they are competing against, don't take levels. I am not saying all my members do because they are in a very competitive market.

CHAIR - Who has been given this privileged position of the legislation we put through?

Mr GESKUS - Building designers in general and the Building Designers Association.

CHAIR - Any building practitioner who is registered as a designer?

Mr GESKUS - Yes.

CHAIR - They are not necessarily members of your association.

Mr GESKUS - That's correct.

Mr BEST - They would have to be qualified, wouldn't they?

Mr GESKUS - Yes.

Mr BEST - But they might not be associated with you?

Mr GESKUS - That's correct.

CHAIR - Your association could, for instance, make a decision that you would see it as an appropriate code of conduct to take the required levels?

Mr GESKUS - Yes and we are working towards that.

Mr BOOTH - That will enable people who don't want to have to pay for that to get an independent building designer?

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Mr GESKUS - Yes.

Mr BOOTH - It is very concerning that there has been corporate capture of building regulations at all levels. This is another thing I see, where you have an association which has a self-interest in acquiring the work and commanding control of building and design by regulation. I think there is a responsibility to make sure that there is still competition rather than be captured under one guild, effectively, which is what your association would be. We had evidence a moment ago, a typical example of a lady who has a carport that cost more for the fees than the carport. Everyone who gets on the gravy train adds to it.

Mr GESKUS - Yes. I am very aware of it and I tell my customers that this is what we have to face and it is getting worse - those overhead costs. As I explained to a customer last week, whether you do a carport or a pergola, the actual fees to do a whole extension which could be worth \$150 000 are not that much greater yet they still have to go through the same checking procedure; not as many inspections, but still quite a few inspections. This is where the customers cannot see the difference because they are not aware of what is actually involved.

Mr BOOTH - There is a fair bit of opportunistic revenue-raising by some of these regulations. I will declare the fact that my son has put this to me that they build cabins that are identical.

Mr GESKUS - Yes.

Mr BOOTH - Every single one of those cabins has to pay you guys a design fee, but they are identical. Just run it off the photocopy and hand it over. They do not do any work, they do not put a line on it. Your association or the member or person who approves these things does absolutely nothing other than put their signature on it and write out an invoice. How can you justify that?

Mr GESKUS - I myself have done work for a company that makes cabins and we could not do that. We could not just photocopy. Yes, we use the same basis of the drawings but under the Building Code, where we have to do energy assessments, it depends on the orientation of the building -

Mr BOOTH - This is prior to energy assessments.

Mr GESKUS - Okay, prior to all that. We actually reduce the cost because of replications but our insurance, my PI insurance, actually states in there if you have replication of similar buildings or designs, then I have to cover, and I also have to declare that on my insurance because they are of a higher risk. If you make one mistake, you have replicated that same mistake right the way through so I have to declare that on my insurance.

Mr BOOTH - Is it insurance that drives that fee?

Mr GESKUS - I think so. I do a reduction in fee. Once we have the basic okay that that is where you want to head then I will reduce it to suit.

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CHAIR - So there is no lack of commerciality? There are designers and designers and designers that that person could go to.

Mr GESKUS - That is correct.

Mr BOOTH - You have agreed that the fees are an issue in terms of building cost escalation and so forth -

Mr GESKUS - Yes.

Mr BOOTH - Houses have been built since Adam was a baby. It is not like every single house is so different that you should have to engage an engineer, a surveyor, a building designer, a thermal insulation expert and it goes on and on. Can you see a situation where you ought to be able to, as you used to be able to, get a set of standard plans? You could buy them from the newsagent almost or you could get them over the internet. It is an approved, standard, well-proven plan that has been done since time immemorial and simply do a few changes - solar orientation or something like that - and not have to go through such a rigorous process with fairly heavy fees.

Mr GESKUS - Yes, and I agree with the fees. In relation to just purchasing a plan, it is whether that has been updated to the current Building Code, as you are probably aware.

Mr BOOTH - Providing it is a certified plan.

Mr GESKUS - So someone is paid to do that in the first place. The energy efficiency - we are currently at five star and go to six star in May. That will change completely in the sense that we will not be able to do a deemed-to-satisfy, so you will have to get an independent assessor to do that.

Ms ARCHER - Each time?

Mr GESKUS - Each time, because how it works is the orientation of the building and how the sun comes in through the glass. Then also the southern windows; it is the total performance. Also the topography of the site has an effect, and the type of construction. Like you say, a standard plan - I totally agree. If it is a flat site you may be able to put a concrete slab in. If it is a sloping site you have a timber floor and that affects the energy efficiency of the house.

Mr BOOTH - Sure, that is energy efficiency -

Mr GESKUS - But that has to do with the whole design.

Interestingly, though, on the mainland what you are talking about does happen a lot more. Metricon, Simonds, all those larger firms, build 5 000 to 10 000 houses a year. Tasmania is unique. If you look at Hotondo, Wilson Homes, all these larger firms, very rarely does anyone pick a plan and just run with one of their plans on which they have all the costings, everything is basic and then it is, as you say, grab that, do the engineering, take the levels, get the energy assessment done. In Tasmania for some reason everyone wants to be unique.

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Ms ARCHER - We like to fiddle.

Mr GESKUS - Whether it is shipping containers or whatever it may be, it is fascinating. We have communication with the other building design associations around Australia. They have nothing like that. All those members do high-end houses because all the low end are taken care of by larger building companies; they build *en masse*.

CHAIR - Tasmania has always been different like that.

Mr GESKUS - At least our subdivisions look interesting.

CHAIR - I can tell you from 20 years ago that a major power tool company expressed amazement after five years of sales of their commercial drop saw - a Makita drop saw was what all builders used - the penetration per head of population in Tasmania was higher than anywhere in the developed world.

Mr BOOTH - It may not be a parallel, Rene, but a similar statistic a few years ago was that Tasmania had the highest percentage per population of Harley Davidsons in the world.

Laughter.

CHAIR - Getting back to the shooting of levels, we want to drill down to the quality of documentation that designers are going to come up with. When a builder walks on site, if the levels haven't been shot by the designer, he has to shoot the levels. The first thing he has to do is set out the slab, so somebody has to pay somewhere for the levels. They may just as well be done up front, when all the designs are done, so you are able to discuss with council shade heights and all those matters.

Getting back to the quality of documentation; there has been some evidence and publicity that the building organisations in Tasmania are concerned about cost-plus contracts, or the potential changes to cost-plus contracts between builders and clients. It appears Workplace Standards, with its draft legislation, may be of a view it does not want cost-plus contracts at all. That makes a lot of sense, but I put it to you that 20 years ago a builder was able to say to a client, 'Our standard kitchen is *x*, so if you want any more than that you pay extra'. However, there is grave concern now about what a standard kitchen is. It seems to me the safest thing on a cost-plus contract is for the kitchen to be zero - in other words, let it be a completely prime cost, not above a standard kitchen, but a prime cost from zero. Then people can select their kitchens and it can be exactly what they want. We heard evidence that builders were undercutting each other by saying, 'Our standard kitchen is much less value than others'. I am interested in whether, at the design stage, those matters need work on the cost-plus contract?

Mr GESKUS - My opinion is that the owner should know exactly what he is paying for from top to bottom, including the kitchen, before a contract is entered into.

CHAIR - Is that practical, bearing in mind, once the building contract is entered into and the work starts, that the owner and his wife says, 'I love these taps', or 'I want this or that'? You think it should be resolved up front?

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Mr GESKUS - Yes.

CHAIR - Ideally that's the case, but practically it's not.

Mr BOOTH - There'd have to be a variation. Surely you would still have to allow for variations in contracts?

Mr GESKUS - That's very true. What you want to do is minimise the number of variations, which is probably the more traditional way. You start the house, you have a set of plans and then you go for it. You have chosen a brick, a roof, but they haven't gone into the carpets. Then they get a phone call, 'What colour do you want the windows?' or 'What type of architraves do you want?'. I have had friends go through that. I have tried to help them through that, and I've done it myself. It's the worst because you are under pressure. It should be an enjoyable process. During the design process, from when you decide to build a house through to the building approval, that could take anywhere from three or, in some cases, two years, but on average, three to five months to get all your approvals and all your design and engineering and everything. There is no reason why you can't get everything sorted. I know some builders that will give you a fixed price and they will itemise every item on there. Fair enough, they are slightly bigger builders, but there are no disputes. If the client comes in and says, 'I have seen these new taps', they say, 'Okay, there is a cost for the variation'. You have a look at it, it's fine, and we make that change.

CHAIR - Signed.

Mr GESKUS - Exactly.

CHAIR - It's quality documentation.

Mr GESKUS - Yes. But it is also the quality of the builder and having a system in place. The majority of disputes that I see are because of the variations. For example, they could be the levels and that has been highlighted. The customer wants to change a window, not knowing that if the design was already compliant with energy efficiency - and a lot of builders aren't aware of this - changing a window, putting in a bigger window or whatever, changes the energy efficiency of the house. Another one is, they want to put down-lights in there. You cannot put more than 1 per cent penetration through the ceiling without affecting your energy efficiency - a lot of builders aren't aware of that. It is all these variations: they want to change the carpet or the front door. They haven't chosen one and the builder has allowed a \$300 front door and then they choose some new-beaut \$1 000 front door, or a \$1 000 tap for the kitchen. I have seen it all.

At the end of the day, you need to have it sorted before the contract is signed. PC items are a bit of a joke, because customers don't understand what they are and what they are getting on the PC item. They might have \$3 500 for a kitchen, but the builder has allowed for something from the cheapest joinery place possible, with imported Chinese tops and the rest of it.

CHAIR - This is what we are getting down to now. The department was quite right in seeking to resolve this by saying, 'We won't have any cost-based contracts'. I think cost-based contracts are very valuable, particularly in Tasmania. As we have just discussed,

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there appears to be a higher percentage of understanding of this. It would be a blunt instrument to throw it out completely. It gets back to whether the documentation is good enough. All the documentation on a building project comes down to you guys, doesn't it?

Mr GESKUS - That is correct.

CHAIR - Is it your association members who determine the level and quality of documentation?

Mr GESKUS - Yes.

CHAIR - Who sets the level and quality? Is it the price?

Mr GESKUS - I'm so glad you said that. There is no accountability except for your own PI to say what level of documentation you need to meet. You can go through the archives, through all the councils, building surveyors' documentation and you would be shocked at the different levels of quality of documentation and you will understand where mistakes will happen - misunderstanding, at best. Then the builder has to go back - the laundry, we need to put a landing and three steps out there because it higher than what was shown on the plan. Plus you need to get an amendment with the building surveyor and you need to get it redrawn and checked with the timber framing code. That might cost, let us say, \$1 500. For \$1 500, to go into the plans to be done properly, you have already saved them money because you have done the right levels. You have already set the datum level and that is a critical thing as well. Not many designers put datum levels. PD4 has indicated that but no-one has followed it through.

CHAIR - Does PD4 indicate it or demand it?

Mr GESKUS - They state it in the documents but no-one follows it up. The shadow diagrams states in there 'when required' because you also have a building envelope to meet.

CHAIR - For the record; what is the importance of a datum?

Mr GESKUS - The importance of a datum is setting the floor level correctly to ensure you can drive in, it doesn't go over-height and it doesn't cast shadows over the neighbouring property. I have not seen anyone keep anyone accountable on that. This is my issue with documentation standards in the state; there is no accountability. Of late, our association has been working with Building Control, as have other associations, looking at setting a minimum standard for documentation, so the customer doesn't have these disputes at the end. I feel very strongly about that. The customer should not have to pay any extra on a house unless they have made the change. If the house is a meter out of the ground and the builder goes back and gives them a \$5 000 variation bill because they had to put extra bricks in there, that is not right and it shouldn't happen. Documentation has to be set so that doesn't happen. There is no accountability to it.

Mr BOOTH - What about rock clauses?

Mr GESKUS - Rock clauses are built into contracts.

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Mr BOOTH - That's a similar effect, isn't it?

Mr GESKUS - No, I disagree.

Mr BOOTH - It is in the sense that you know you might have to pay extra.

Mr GESKUS - Yes, but not how much. In what we do we can quantify it; with a correct survey we can get within a millimetre. There is no excuse with the technology out there. You may pay anywhere from \$330 to \$600 for a survey -

Mr BOOTH - I'm not saying you can't prevent having to pay, I'm just saying there are also surprises for a customer, in the sense you hit rock. There's no way you can say, 'This house is going to cost you this amount of money'.

Mr GESKUS - Yes, you are right in saying what is beneath the ground you can't see - that is, when fill has been put on the site or someone has buried a tree on the site, et cetera.

CHAIR - You would have to do below-ground sonography - the cost is too much, you may as well dig it out and see what's there. Soil tests would show some of that, wouldn't it?

Mr GESKUS - Yes, but only what's in that 50 ml hole, you do two over the site, you may get lucky. We had one recently, they hit the one rock on the site, the rest of it was clay. We have had to redesign on the fly.

Mr BOOTH - Getting back to the cost-plus contracts, it seems what you are suggesting is a very prescriptive thing; that you identify absolutely every single thing from the chrome finish on the taps to the size of the architraves to the types of fixings you use, but most people can't conceptualise these things. Most people have no idea what a room is going to feel like until they get in it and then they say, 'This is too small', but it was on the plan. In my experience with people who are wanting to have houses built, they like to come in and look at it and say, 'Where's this wall going to go? Can you move it another foot?'. There are certain things that don't structurally affect the building but make it a much more pleasant experience for the person who is paying the money. I think there needs to be some flexibility in there. I understand you don't want some sort of Rafferty's rules, but to remove the right of the client to make variations on the fly -

Mr GESKUS - Adjustment to the design.

Mr BOOTH - Adjustments to the design - that could fall into the nature rather than a variation - just a cost-plus contract, effectively. I am concerned there is this attempt to prevent people being able to work with their builder or building designer to create what they want and to be involved in it and have an honest relationship with the builder and developer, rather than a fixed-quote situation which can then drive the price up sometimes.

Mr GESKUS - I've had a number of situations with certain builders where they have a fixed price and the clients wants to make adjustments, and there's no problem with that. Even with that fixed price, there is a variation and they will cost it out for them to move a wall or adjust a window. The builders will call us and say, 'We need to make an adjustment.

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Can you adjust the drawings?'. We get all the prices, put it through the builder surveyor so the paper trail is there.

Mr BOOTH - So that becomes a variation?

Mr GESKUS - Yes, and I don't think that's unreasonable. I totally agree with you, I think everyone should have the right to do that.

CHAIR - It's agreed to before the wall is moved?

Mr GESKUS - That is exactly right.

Mr BOOTH - What about making an allowance for carpets, say, \$10 000?

Mr GESKUS - With some builders you pick the carpet you want. I am talking more about builders who are well set up. The guys who work out of the back of a ute do not - it is a closer relationship with the owners, but those are the ones where we have most of the disputes.

Mr BOOTH - But if in the contract it said there was a \$5 000 carpet allowance and the client then chooses \$10 000 of carpets, quite clearly they have to pay an extra \$5 000. You wouldn't want to sign a variation of the contract to that because that would be implicit in the contract, wouldn't it?

Mr GESKUS - There's a PC allowance for it. If they go over, there is a variation and you have to do the correct paperwork. There has to be a paper trail.

Mr BOOTH - Would that be like an invoice from the carpet place?

Mr GESKUS - No, it has to be a proper variation to the contract. You have to work your way through the contract.

Mr BOOTH - If you want to go to the buggery of having to go from a \$5 000 carpet to a \$10 000 carpet - you actually want to change the contract? Why would you do that?

Mr GESKUS - To keep everything fair dinkum, legal and straight at the end of the day.

Mr BOOTH - A better carpet?

Mr GESKUS - Yes, even a better tap or a better hand basin.

CHAIR - If it ends up in court they are going to say, 'Where is your documentation?'.

Mr GESKUS - Yes, that is where a lot of this stuff ends up - or it goes to a building mediator. I have seen lots of stuff like that. It gets very distasteful at the end of the day because they did not realise it cost that much more or they did not understand the contract.

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Another thing I have seen is where they put a PC item - such as for the carpet at \$3 000. We know we cannot put carpet in for \$3 000, but they have put it in low and other PC items in low, so they get the job because they have the lowest price.

CHAIR - That is precisely what we are after. We need to get this set right. It is a nonsense to put it in a PC item at \$3 000 for carpet. That is one room.

Mr GESKUS - That is right. The same with the kitchen.

CHAIR - Would you not be better off with a PC item at zero?

Mr GESKUS - Potentially, but the thing is the customers, and your average 'Joe Bloggs', do not know how much the end cost is going to be. We have had quite a few projects fall over due to finance. If they have a contract with a financial institution they want to know how much it is going to cost.

CHAIR - I see.

Mr GESKUS - They do not want it to blow-out by \$50 000 - I have seen that and more - because they have gone berserk not understanding where all the costs lies in the building. The customers do not understand and this is where they need to be hand-held through the process a little bit or be made aware.

Mr BOOTH - Isn't that a problem for the lending authority; to make sure that the contract specifies what they are lending money on? What about the person who has the cash, they do not have to get finance, they come in and they say, 'Look Frank, I want to build this house. I like you and we have worked together for 20 years, design me this house and get someone to build it for me'. Why would every single client have to be subject to - I can understand that there are times when you need to have some protection for people, but it seems that we are becoming such a nanny state with this overprotective nonsense, that even the variation in the cost of a tap is going to require a variation of the contract.

Mr GESKUS - I totally agree with you. It is becoming like a nanny nation in the sense of a house, but it is the customers that are driving it. They buy these magazines, they watch the television shows, they think a house can be renovated in 24 hours, they do not understand the regulatory authorities nor do they care; they just want to build. Fine, that is what our job is, to get that sorted, but when it comes down to cost they do not understand underlying costs such as water-proofing in your bathrooms, insulation, you cannot use second-hand windows, you have to use windows to the current standards.

When you stated, 'Frank, we have been working for 20 years ...'; that is a dream case for me. It is very rare. I deal with hundreds of families every year and I am upfront with them about costs and I sometimes lose projects because I am very upfront, 'This is what I think it is going to cost or you need to cutback your ideas'. Some appreciate it, some don't, but you need to be upfront. I am not there to win jobs that do not get built because they cannot afford it. I am not interested in that.

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Mr BOOTH - If we have proper adherence to standards and proper inspections - I am very strong on that - I think that is the point where you detect a problem by inspecting the work -

Mr GESKUS - I think there are not enough inspections.

Mr BOOTH - I do not disagree with you there. So we agree on that.

Provided the house is built to the Australian Construction Code you could have a situation where you as a designer or builder could have a standard that you did not go below. You could achieve a cheaper house that met the code, but would be unacceptable to you as a designer. There is nothing you can do about that is there? If you have a client who says you are too dear because Fred down the road can build it for me \$20 000 cheaper and it still complies; well, great, you will get a crummy house.

Mr GESKUS - Yes.

Mr BOOTH - The floor will be a bit like a trampoline.

Mr GESKUS - Hopefully not.

Mr BOOTH - It can be.

Mr GESKUS - Can be.

Laughter.

Mr GESKUS - I know what you mean. It depends on the percentage of less cost. At the end of the day we still have to meet those codes all the way through. All my associate members, when we work with builders, try to keep the cost down as much as possible - *i.e.* check on what timber they prefer to use, what glazier they use - so we get it right for them. The amount of cost you can pull out is very small; it is really hard to meet the Building Code, plus all the relevant standards. It is really tough.

CHAIR - Unless you've got shipping containers.

Mr GESKUS - Yes, and that can be done, and it can be done easily, but it has to be documented correctly. That is an alternative solution at the end of the day. There are numbers of them, but it has to be documented well, the building surveyor has to be satisfied that what you are documenting is correct, is watertight and it is going to stay up and not cause a problem. The problem is when you do these alternative solutions, and the shipping containers are a beauty, straw-bale construction, mud brick, and all that type of stuff, which all works if it is done correctly. I feel you need to have more inspections when you are looking at alternatives.

For your average 'Jo Bloggs' brick veneer, that is pretty easy for most builders, but it is very hard to trim the costs out. I think we build our houses too big, to be totally blunt. Everyone wants four bedrooms, two living areas, double garage and a shed in the backyard and they only want to spend \$200 000 - it is not going to happen.

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Mr BOOTH - Just getting back to the difference between, say, the standard construction you might choose for your own sense of self worth or design plan, or whatever, you could still meet the code. Somebody could offer a house that had double-glazed windows, still comply with the star rating for thermal efficiency by reducing the number of windows or some other mechanism like not have thermal breaks in the aluminium - I understand they are still available for sale without thermal breaks, maybe they are going to stop that, I don't know -

Mr GESKUS - They are really only coming online, and considering the bang for the buck they're not worth it at this stage.

Mr BOOTH - With?

Mr GESKUS - With the thermal break.

Mr BOOTH - You might say, 'I want all mine to have thermal breaks in them. I use a higher quality door for the furniture throughout the place and all the hinges and locks are of the highest quality', and you can have another builder who does exactly the same thing and uses complete rubbish.

CHAIR - The system is performance-based, isn't it? With the BCA performance code you have to meet a code?

Mr GESKUS - Yes, you've got to meet the minimum level.

CHAIR - So if you start with shipping containers or bales of straw, or whatever, it doesn't matter what you start with, it has to demonstrably meet the code?

Mr GESKUS - It is interesting, they don't actually fit in a code. So you are going outside the code and you have to prove how they fit within it.

Mr BOOTH - But you have to get someone to comply a certificate, so it still has to be an alternative solution.

Mr GESKUS - It has to be structurally, thermally, all the rest of it - it has to meet those things, so you have to design it and add things to it to make it comply - that's where it gets really tricky. That's where it gets expensive. When you do something alternative like that, from a design point of view and an engineering point of view - and I would say the next speakers will be able to verify it - building surveyors' costs will go up. Some people like that, and that's fine. It's their right to do that and it can be done, but don't expect to save yourself a fortune.

CHAIR - This is a good point to explore because it's contemporary - the shipping containers?

Mr GESKUS - Yes.

CHAIR - Under the new legislation that has just gone through where all plans submitted to council need to come from registered building practitioners who are registered as designers, your designer of the shipping container would be required to consider thermal matters. I read yesterday - and I am at a disadvantage because I am relying on the press,

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which is very dangerous - where he said, 'The problem with this house is that it is cold in winter and hot in summer'. So obviously he doesn't have any thermal properties in that.

Do you propose that a designer being tasked with the job of putting together seven containers into a liveable dwelling would face different circumstances than what was in place six months when this person applied?

Mr GESKUS - No, it hasn't changed. I think it has been taken out of context, because there is no way a building surveyor would allow it without insulation. If they received approval six months ago it has to R2.4 on the walls and R4.4 on the ceiling. As I understand it, he is still in the construction phase. I think we have to be a bit careful of how it has been reported in the paper.

Mr BOOTH - Can we get to that point I was trying to make when I was going through with thermal breaks in the windows and windows?

Mr GESKUS - Yes.

Mr BOOTH - You are suggesting that in that case, either of those quotes - if there were a quote from you and a quote from somebody else - would have to specify right down to every single component of the building?

Mr GESKUS - You have to look at interior door types, door handles -

Mr BOOTH - Hinges.

Mr GESKUS - Not necessarily hinges.

Mr BOOTH - Hinges and window and door furniture is really important - for a decent latch you can pay \$300 or you can pay \$5.

Mr GESKUS - Most builders put a medium level in there. Builders have to be very careful of putting in really cheap stuff, as you mentioned, purely because they have a defects liability period as well. They have to go back and repair and those \$5 handles will not last six months. You are right in what you are saying; someone can do that, but not many builders have a high specification, it is generally quite a reliable specification.

CHAIR - It's fit-for-purpose.

Mr GESKUS - Yes.

Mr BOOTH - I am very concerned about the fact that it has to be a fixed cost because you would have to price, contemporaneously, the cost of every screw, nail, piece of door furniture and stuff and specify, this is a Lockwood, 643C lock or something.

CHAIR - That's what a quantity surveyor does.

Mr BOOTH - How much is it going to cost for your quantity surveyor?

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Mr GESKUS - Not unless they get a quantity surveyor, but if you go to your hardware store, they will specify because they will know the stuff they have as standard inclusions. They will go to the hardware store, it will all be specified for them - pages and pages of items. It can be done.

Mr BOOTH - What about the consumer who doesn't want to go through a lending authority, he has the cash, knows you, has worked for Hidding builders for years and you have built them five houses before - to go and say, Rene, I want you to build me another house?

Mr GESKUS - Yes.

CHAIR - A comment on the lenders, that they ought to be responsible - they always get their dough. They have no interest in that because they only lend to 80 per cent anyway because they hardly ever lose.

Mr GESKUS - What worries me most with consumers is that when they get prices they do not know what they are looking at - whether they are getting a reasonable kitchen or they are getting rubbish, or the door handles are rubbish or whatever.

Mr BOOTH - Yes, I understand that.

CHAIR - We are back to quality of documentation -

Mr GESKUS - And customers being aware of what they are ordering.

Mr BOOTH - The question I am trying to get to is whether you think there is a place for traditional contracts, like construct and build as you go, rather than a fixed cost contract.

Mr GESKUS - I do. On your average house, like your 'Joe Bloggs' hip-roof tiles, I think fixed price, where people are literally tight for money, I think is very good because you know where you are heading with your money. With cost-plus, I think it is fantastic where you do architecturally designed houses. It is a lot harder to price because they are a bit outside the square.

CHAIR - They evolve.

Mr GESKUS - They do at times. In the Tamar Valley we have quite a few very tough sites. That is where I think it can work very well and I have seen contracts that are cost-plus from the ground up to the floor and then it is fixed-price from there up.

Mr BOOTH - Can you tell us the story of how you would like to see the contracts being available to Tasmanians who want to have something built? You've indicated that you support a fixed price in some areas and cost-plus still to be available.

Mr GESKUS - Without a doubt. I have seen many -

CHAIR - I put it to you, can save a client a lot of money?

Mr GESKUS - A considerable amount of money.

PUBLIC

CHAIR - A builder would otherwise have to build a lot of risk into his price.

Mr GESKUS - Exactly. I offer to service-in design as well at times. You build in that risk factor - we will go on an hourly rate up to this maximum. I think cost-plus in building is needed in very difficult, architecturally-designed houses and very difficult sites - and there are a lot in the Tamar Valley and down the coast; I have seen them in Hobart as well. You need that just to be fair to the customers. With architecturally designed houses, when you go out on a limb with some of these, there is a fair bit of adjustment on site as well. They become a commercial project, essentially.

Mr BOOTH - So if you outlawed cost-plus building contracts, that would effectively see the price of certain buildings go through the roof?

Mr GESKUS - Yes, definitely. You need to have an opening, but it has to be a quite open book.

Mr BOOTH - What about a situation - and I think this would still fall under the same gamut - where you sometimes have an approach where a builder will build on a cost-plus basis for a client who assists in the building process with the cooperation of the builder. In other words at the end of the day the builder effectively is charging a fee by an hourly rate to himself and then says, 'I'll come back next week when you have this part done'.

Mr GESKUS - Under his supervision?

Mr BOOTH - Yes, under his supervision and under his licence.

Mr GESKUS - It's a rare thing now due to OH&S - getting them to have a white card before they go onto a site.

Mr BOOTH - In case they poison themselves from not washing their hands after going to the toilet?

Mr GESKUS - It's a bit more like cutting their fingers.

CHAIR - Mr Booth is not a fan of the white card.

Mr BOOTH - I'm not a fan of over-regulation. It's got to the point where everybody is wandering around looking like Bob the Builder with hard hats, high-vis goggles, et cetera.

Mr GESKUS - I agree with you. The new OH&S laws coming in worry me a bit, too, with that. Where the white card falls down, I think, is you only do it once and that's it. I think you should, every three or five years, get a refresher or whatever it may be because safety doesn't change; building sites change. I can see where you're coming from with over-regulation, but there needs to be some kind of safety training for people who go on building sites.

PUBLIC

CHAIR - Back on the quality of documentation, if you believe there are no standards for your association to live up to in terms of standards of documentation, do you intend to provide to the Director of Building Control a proposed set of standards as an association?

Mr GESKUS - We already have. We are currently working with Building Control on that matter. We have also worked with the HIA and Master Builders, keeping them in the loop, and the AIBS. There has been a draft put out which we need to make comment on. That is not just surveying; it is a whole range of items we feel will make a difference. Everyone says it's going to add extra cost, but if we get the documents right at the start we are going to save money at the end and have fewer disputes.

Mr BOOTH - Frank, we've heard today from a lady who paid \$3 000-odd for a building approval for a carport that cost less than that. Where do you draw the line? That's the point I'd be interested in on a comment from you.

Mr GESKUS - In that case, I really don't know. I do a lot of carports and pergolas and it's very difficult because of the regulations that are involved. As I said before, whether it's a carport or a whole extension to a house, it's the same system we have to go through, through check lists.

CHAIR - Could the system be trimmed down so you have, for instance, a small-jobs framework to work under?

Mr GESKUS - Yes, I definitely believe so. What you're talking about are class 10 buildings and I believe there can be and it would be ideal for that, but in the legislation where the minor works are being knocked out, if it is coming down to a cost thing it should be determined on the type of work. I think it's a good point. If you do class 10s and it can go through a different system, we could drop the cost massively, but there are things we still need to meet as we go through to get proper safety and meet all Building Code. The minor works is an option as well, not so for new construction, but in maintenance and items like replacing windows. Now it has changed to a dollar figure it is not going to be used; it cannot be used. If you need to reclad a house or replace the windows you have to get a building permit now and I do not think that is right. That is how I understand it, I maybe wrong here, but it came down to a dollar figure.

Mr BOOTH - That is because of the Housing Industry Association and their successful capture of that legislation by requiring anything over \$5 000 to be something that requires permission, whereas if there was actually a higher figure on that issue -

Mr GESKUS - I may be wrong in that with the minor works.

Mr BOOTH - No, you are right. It is based on a dollar figure.

Mr GESKUS - That is certainly going to throw costs through the roof. If you have to go and replace some windows in your house, I do not know how many people would get a building permit because they do not realise they need a building permit until someone pulls them up. You could be spending \$1 000 in permit fees.

Mr BOOTH - That is right.

PUBLIC

Mr GESKUS - Which seems totally wrong when you just need to do some replacement or upgrades.

Mr BOOTH - Yes. Even painting your house; you would be lucky to paint a house for \$5 000.

Mr GESKUS - Exactly right - and replacing a kitchen, replacing your flooring or floor covering. I am not trying to be silly, but I am not sure where the line in the sand is when it comes to that legislation.

CHAIR - The line was always there.

Mr GESKUS - In the dollar figure?

CHAIR - Yes.

Mr GESKUS - I meant in the type of works, I suppose.

CHAIR - Parliament did consider an adjustment to that figure but it was -

Mr BOOTH - The upper House knocked it off because Stuart Clues went and lobbied the upper House.

CHAIR - Well, thank you -

Mr BOOTH - No, he has given evidence that he did that.

CHAIR - Yes, okay.

Mr BOOTH - Very proud of it he was.

Mr GESKUS - I am sure. I think it should come down to the actual type of work.

Mr BOOTH - Do you have some sort of submission you could give the committee with regard to the nature of the sorts of works that ought to be -

Mr GESKUS - I haven't and I don't believe the association has either. I would be happy to put one together.

Mr BOOTH - Would you like to?

Mr GESKUS - I would love to.

CHAIR - That is a very good offer so we invite a submission from your association as to how the costs for class 10 buildings could be reduced.

Mr BOOTH - And minor works on houses.

CHAIR - Class 10 and minor works - how the system could be changed to provide for an easier and cheaper approvals process.

PUBLIC

Mr GESKUS - I'm happy to help.

Mr BOOTH - That would be very good and much appreciated.

CHAIR - We appreciate that and thank you very much for your evidence.

Mr GESKUS - Thank you.

THE WITNESS WITHDREW.

PUBLIC

Mr BARRY MAGNUS, NATIONAL DIRECTOR, AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS, WAS CALLED; AND **Mr STEVE BRAMICH**, STATE PRESIDENT, AUSTRALIAN INSTITUTE OF BUILDING SURVEYORS AND BRADDON BUILDING SURVEYING, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Hidding) - Thank you for coming along, gentlemen. A committee hearing is a proceeding of parliament and you have parliamentary privilege while you're here. It applies to ensure we get the very best information when conducting inquiries. You must be aware that this proceeding is being recorded. Any statements that may be defamatory if they're repeated outside are a problem but not inside. It is a public hearing and anybody can stroll in and out during this process.

Thank you for making yourselves available for this committee and also for the submission you have provided to us. I will give you a few minutes to speak generally to your submission and I then intend to go into your stated position that 'several matters lead and contributed to this kind of drawn-out action which are the poor documentation, communication and lack of definition...', we will go through those dot points.

Mr BRAMICH - For the record, Barry currently works for the council and has worked privately. I am the managing director of my own building surveying business. We are both unrestricted building surveyors, which means you can build as big or as small as you like. My biggest project to date has been MONA here in Hobart. I have also done schools, nursing homes, little carports, or whatever. Barry is also very experienced in major projects.

One of the things driving up the cost of housing is the cost of PI insurance for building surveyors. We are required to have \$1 million PI insurance coverage. I carry \$2 million, but that's purely by choice not by legislation.

Mr BOOTH - Only \$1 million?

Mr BRAMICH - I pay about \$12 500 for \$2 million cover.

Mr MAGNUS - One of the biggest projects I have been on was \$750 million, so I am involved in some very large projects.

Mr BOOTH - Sorry, I am not trying to diminish what you're saying, it's just that I am sure my public liability insurance for the house is 20 million.

Mr BRAMICH - This is professional indemnity insurance, not public liability insurance. The number of disputes are escalating and that's just a fact of life. Unfortunately building surveyors are being targeted because we carry PI insurance. I have just renewed my insurance and it went up \$2 500 because I've have two potential claims against me. I had to notify the insurance company, and I'm talking about a week or two before my insurance was due, and it went up \$2 500. Those claims are still before the courts. The sorts of things that happen, for example, an \$86 000 low-budget cosy-cabin style dwelling of less than 100 square metres is now before the Supreme Court for \$350 000.

PUBLIC

I cannot go into the specifics of that, but it is one of the jobs I've been involved with, and my insurance company is saying that I ought to have known it was going to go to a dispute and I was going to get co-joined. While I dispute that, and have legal advice to say there was no claim, I am probably \$32 000 out of pocket and we haven't even been to court yet. God only knows what the builder is up for!

Mr MAGNUS - This is what we are getting back from a lot of our members right around Australia and in Tasmania, that the cost of PI is one of the most worrying things - driving people out and seeing massive increases. I would suggest that, since this select committee started, in some cases you have seen the doubling of the price of getting a building permit. A lot of it has to do with PI.

Mr BRAMICH - It is fair to say that some of the disputes are frivolous. The case I was just talking about is over \$6 000. The owner of this particular property is on record as saying he could see into the future using a mirror he has not yet made. His other claim to fame is that he can load a tip-truck using a normal shovel quicker than someone with a bobcat.

Laughter.

CHAIR - Can I provide a warning that matters that are before the court -

Mr BRAMICH - I am not disclosing names or anything.

CHAIR - Even something might be construed as part of that. In these proceedings if a matter is *sub judice* elsewhere, we don't go there.

Mr BEST - In a situation where there may be some sort of litigation - are you saying that you would be roped in even though it might be a builder's -

Mr BRAMICH - Based on the advice of other building surveyors, and certainly from my own experience, if there is a claim from an owner on a builder, then the builder surveyor is going to get co-joined because of the proportional liability.

Mr BEST - You inspected it to say it is clear, is that right?

Mr BRAMICH - That it is likely to comply, or whatever the case may be.

Ms ARCHER - The party is now obliged to name any possible respondent to the claim.

Mr BEST - What's your thoughts about that? Obviously you don't think you should be cited, but what is your fair view about it.

Mr BRAMICH - The point I am trying to raise here is in relation to the cost of housing, because these disputes are happening more and more and the building surveyor is getting dragged into these more and more, that these are costs that have to be covered somehow.

CHAIR - You could pass them off.

PUBLIC

Mr BOOTH - So you are saying that the PI insurance costs are across every works - the building surveyor, whether it is an inspector or builder - in sum that drives up the cost of building.

Mr BRAMICH - It is not just the cost of the insurance. If you are involved in a dispute, without naming anyone in particular, some of them can take hours and many site visits. Someone has to cover that. As an example, you might charge \$1 000, for argument's sake, to do five inspections on a house in your local area. You might end up going on a site 20 or 30 times, not to mention the hours sitting down and negotiating. Then all of a sudden, because you are trying to limit your liability, it goes legal and you are back in it again. All that is time and cost.

Mr MAGNUS - On a national level - because I am also discussing this with other states that are finding exactly the same - most of the building surveying practices on the mainland - and it is starting to be seen here because we are talking about it in Tasmania - allow for the cost of two litigations a year. Straight away you are looking at \$5 000 a claim, so you are isolating \$10 000 in fees. That is in most of the states, and it is starting to come here now. So straightaway we have to isolate \$10 000 because we have a \$5 000 minimum.

CHAIR - Innocent people have to pay that.

Mr MAGNUS - Particularly in Steve's - I am probably a little lucky with the local authorities and our PI is exactly the same, but it is done under the local authority.

Mr BRAMICH - As an example, I have five potential claims and somehow those costs have to be recovered. Unfortunately the people next year are going to cop it. It is just a fact of life.

Mr BEST - As has been said by Ms Archer, the complainant would cite anyone who has some involvement, whether or not they are involved, so to speak. For example, you may not have any liability, but you have to take steps to make sure that you are cleared, in a sense, even though it might not be anything related to you.

Mr MAGNUS - Our PI insurers need to know.

Mr BEST - Yes - but I am thinking race to a case - for example, you have inspected and then a builder has done some other things after you have inspected it and then they get someone to come in and survey it.

Mr BRAMICH - There are any number of examples I could give you. It can be undersized or defective timber that went in and wasn't picked up during an inspection. It could be smoke alarms -

Mr BEST - Because it is behind plaster or something?

Mr BRAMICH - Yes.

PUBLIC

Mr MAGNUS - Something that wasn't specified in documentation because it was a bit lacking.

CHAIR - That is true.

Mr BRAMICH - I was listening to Frank Geskus before and he is spot on when he says the level of documentation needs improving.

Mr BEST - Don't take me the wrong way on this because I am not trying to be a smart alec, but if you are the building surveyor aren't you supposed to be able to find those things, or is it just ridiculous to even think that you could?

Mr BRAMICH - You get some owners who are unreasonable. That is a fact of life when it comes to disputes. One example I know where this owner went into dispute with a builder because in her deck she wanted full-length timbers. If you are the builder and you get decking boards, it comes at random lengths. Did the builder install correctly in accordance with the timber framing code, yes.

Mr BEST - But they wanted full lengths?

Mr BRAMICH - Yes. All of a sudden it then becomes a dispute.

Mr MAGNUS - You quite often get dragged into contractual disputes and that is what PI insurers are saying: well over 50 per cent of the disputes that our members are getting dragged into are normally contractual disputes.

CHAIR - You should not have been dragged into them in the first place.

Mr MAGNUS - We shouldn't have been because we have no responsibility about the contract.

Mr BOOTH - In that sense, you would only be dragged into it in terms of compliance with the code, wouldn't you? You would get dragged in because you have approved a deck without continuous timbers; it has joined boards. You are questioned about that and you go back to the code and say there is nothing in the code that says -

Mr MAGNUS - But the solicitor is still joining us in. That is a fact at the moment because we are the ones that are carrying PI insurance.

Ms ARCHER - Plus they have to, under the act. The act requires them to - in fairness. It used to be an issue that whoever had the PI would probably get joined, but now it is in the liability act; the proportional liability component.

Mr MAGNUS - It's interesting because I can name several solicitors that will automatically join in and I can also name several solicitors that say that has nothing to do with the building surveyor and don't join them in. They are Tasmanian companies and I am quite happy to talk to you, off the record, about what names they are.

PUBLIC

CHAIR - I can understand that happening, but if there was a disputes process legislation for the building industry, as is proposed, then that could have separate specifications from normal civil -

Mr BRAMICH - That process was first stated back in mid 2007 and I can't think of the female solicitor who worked with consumer affairs, but she went to all the different jurisdictions Australia-wide. It went to public consultation in February 2008 and in mid-2010, it went to the Director of Building Control to process. From my discussions with Kerrie Crowder, about six weeks or so ago, it appears at best it is going to be in July 2013.

CHAIR - Is what?

Mr BRAMICH - The dispute resolution process.

CHAIR - That is about right. There is only a couple of weeks left of this parliament, so that would be right.

Mr BRAMICH - The unfortunate part about it is, when they got rid of house indemnity insurance -

CHAIR - There was a void.

Mr BRAMICH - Yes, and the owners have nowhere to go.

Mr BOOTH - There was always that void because you are never going to pay it out on that insurance. Maybe you can handball it into a different jurisdiction.

Mr BRAMICH - Everyone agrees that was a horrible choice. The only people who were making money out of it were the insurance companies.

CHAIR - That's their non-insurance.

Laughter.

Mr BRAMICH - Unfortunately, what should have happened then is that the dispute resolution process, which I believe was fairly close to the mark, should have been brought in because it would have given some protection and would have reduced the amount of disputes that are currently going on. If it had to be modified, it could have been done.

CHAIR - That is why this committee is doing what it is. The minute we announced that we were doing this, the department then came out with its draft legislation to demonstrate that they were too. It is also on the record that about 90 per cent of the concerns of the building industry had been able to be accommodated. We don't know what they are yet so this committee will be calling the Director of Building Control before us to explore all that.

PUBLIC

Mr BRAMICH - In all fairness the risk change to the Building Act will go some way to addressing many of those issues. In my opinion, and I think Barry would agree, the fact of life is that Director of Building Control staff are sadly under-resourced. If they are going to handle all of these disputes they are going to need a lot more people and how is that going to be paid for? That is something someone else has to accept.

Mr BOOTH - That is a really important point because regulations are only worthwhile if they can be navigated and they are cost-effective, so are the proposed changes going to put a burden on Workplace Standards that will be -

Mr BRAMICH - I would have to agree, yes.

Mr MAGNUS - I was dispute services manager with the Queensland Building Services Authority. To give you an idea, the Queensland Building Services Authority - and I realise it is a much bigger area and state - handles 9 500 complaints a year. They have five solicitors and a barrister upstairs in the office. So if we proportion that down quite a bit I do not believe that the office down there is capable of handling up to 1 000 complaints a year. I think they are going to struggle.

Mr BOOTH - You are still going to need the same expertise anyway.

Mr MAGNUS - And a good dispute service, recognising exactly what the problems are, will minimise a lot of the legal action if it is a good system.

CHAIR - You tell us in your submission that there will be a great reduction in the number of potential complaints if there is better documentation, better communication, better definition and clarity and all that.

Mr BRAMICH - I think there is very poor consumer understanding of what the role of a building surveyor is. As an example, if I came and knocked on your door and said I am a building inspector you would know what I am. Whereas if I come in and say I am a building surveyor you would go, why do I want that? Very few people understand that a building surveyor, in simple terms, is the boss of building inspectors.

CHAIR - How do we fix that?

Mr BRAMICH - It is only time and I believe the institute has a role to play in that as well. The builders are slowly getting there, but the poor old consumer does not really fully understand yet. The consumer expects us to be their quality controller on workmanship and also the supervisor of the project.

Mr MAGNUS - We have previously stated that we believe some definitions in contractual documents of who is responsible for what would go a long way because I believe that the problem with the contractual document is they are looking at who is involved in the whole thing, not that my design is wrong, so that is a problem. My building is wrong because the paint is the wrong colour. The building surveyor has endorsed the wrong specified timber. With a little bit more definition in the contract it could be directed at the correct parties for a much quicker resolution.

PUBLIC

Mr BOOTH - Rather than dragging joint -

Mr MAGNUS - Rather than dragging four or five people in and then just clouding the waters and not helping to solve. We are particularly focussed on seeing the legislation improve so that consumers -. It is very costly to us for a dispute to drag on for 12 months. If it is going to be there we would like to see it for two weeks, a month, bang, and we are on with the job because that is good for us.

Mr BOOTH - Can you paint us a picture of that dispute resolution process?

Mr MAGNUS - Good documentation, because in a lot of cases when you go back, it is because of the lack of documentation. Yes, we do admit that the building surveyors, if we refuse to pass a very poor plan, the unfortunate thing is that we see consumers shopping around then until they can find someone who will pass that poor plan, which is a shame for our own institute that we would allow that. It is a fact that not every building surveyor is a member of our institute.

CHAIR - It happens in every industry - even doctors.

Mr MAGNUS - It is the same. If there were a minimum standard of documentation to get a reasonable expectation, not to the nth degree of nominating your taps. The document that we promote is the NATSPEC, which is a fairly cheap but very extensive specification. You can get, I think, three for \$90 that you can attach to a contract. It covers all the building materials; it doesn't quite go into the finished standards, but it does talk about complying paint finishes, et cetera, to standards.

Ms ARCHER - Do you promote that to your members?

Mr MAGNUS - Yes, we promote that. We have also promoted it to the building designers and at the recent discussions with the Director of Building Control on standard of documentation which said that if they don't want to specify it then why not bring in something like the NATSPEC.

Mr BRAMICH - We suggest it should be mandatory as part of the required documentation when you submit a building permit.

Mr MAGNUS - In other words, if you don't want to draw it on the plans, at least have a standard specification. When you were building 30 years ago you got a set of plans and a standard specification at that stage. That was where you started when you started looking for disputes, so if one of the members here was in a dispute the first thing we could do was look at the documentation. The problem is you can see what's there, but you can't find what was supposed to be there in a lot of the documentation.

Mr BRAMICH - NATSPEC was done by experts and every time the Building Code is changed that is upgraded, so it is absolutely current.

Mr MAGNUS - We are quite happy to get a copy and forward it to you so you can see what the document is.

PUBLIC

CHAIR - That would be very useful, thank you.

Mr MAGNUS - I heard previously a bit of discussion on variations. Even if they're in a simple format, and that is signed variations - variations are another big thing - to follow the sequence of events of what's happened. At the end of the day what is happening is we are finding that stated in the contract is 'an independent mediator'. In some of the contracts we have seen either the consumer or the other party that is involved is specifying who the mediator is, and I don't think that is a truly independent mediator. I believe there should be a register of mediators who can very quickly look at something, go through the documentation and make a very quick call and get the job going again. It is not in the interests of the builder, the consumer, or any of the other parties to have a prolonged dispute.

Mr BOOTH - That's the point. What should the powers of the mediator be, in your view?

Mr MAGNUS - They should be able to adjudicate and make a technical finding. I suppose it comes down to whether you would need legal expertise if it's a big contractual matter. At the QBSA we found people who generally had an understanding - a lot of our guys were building surveyors, a lot of people had enormous experience in building industries - would give a finding. They would list the investigation and the documentation and give their finding.

Mr BOOTH - That's a legally binding finding?

Mr MAGNUS - Normally on technical matters, yes, it was. Back in my day you could appeal that to the Queensland Building Tribunal. I think it is also very important for all parties to have a review process, but hopefully not a lengthy one.

Ms ARCHER - What did they call it? Mediation strictly can't be a determination-type hearing.

Mr MAGNUS - When the Queensland Building Tribunal was originally set up - I believe it has a new name and I will leave you a copy of the QBSA annual report - technically that was regarded as an expert opinion. You could have a review where, if it was a paint specification, you could bring in an expert who may test the paints and a higher expert could make a determination.

Mr BOOTH - But that was still adjudication?

Mr MAGNUS - It would be heard by the tribunal and the only way you could appeal the Queensland Building Tribunal was normally on a point of law.

Mr BOOTH - That's the sort of thing we need to have: a very short, sharp, quick dispute-resolution process where somebody who is independent adjudicates the matter. People may sign up to that at the start of a building project and, in the event of a dispute it goes off to here, and Fred comes in when there's a dispute and makes a determination. Is that the sort of thing?

PUBLIC

Mr MAGNUS - I believe it would be very good to have something standard like that in contracts. Once you get into a prolonged dispute and the communications break down further the trust is gone and it gets worse.

Ms ARCHER - In other words, mediation wouldn't work because either party can't agree?

Mr MAGNUS - Once you get down the track and the communication is destroyed, you can put two parties together and mediate, but if they are violently opposed, you can get a result but neither party will be happy with it.

Mr BOOTH - In the case of a building project, if you worked on a system where you had that adjudication and the capacity for either party, for a cost-reflective fee, to appoint an adjudicating person, similar to the securities of payments legislation where there's an appointing authority who then selects the adjudicator - it is not selected by the individuals in the dispute, it's an authority that appoints somebody to look at that issue - that person should be able to come any number of times through a building project and alleviate the fears of either the client or the builder with a very quick determination.

Mr MAGNUS - I believe that would be a very positive step and would be in the interests of all parties. As you say, reflect it with a small fee, bring them in and give a quick adjudication. Everyone has to have their appeal rights, but it is an important step to have if you want to avoid it. The big thing that is blowing out a lot of these costs is getting into these procrastinated disputes.

CHAIR - If an injured party didn't agree with a mediator and went the legal route, at the very next point that tribunal or the judge would take that into consideration and say, 'You didn't agree with the mediator back then'.

Mr BOOTH - Do you mean the adjudicator?

CHAIR - Yes, that's right.

Mr BRAMICH - I would suggest the adjudicator's report would be tabled.

CHAIR - Yes, and that becomes germane to the whole thing.

Mr BOOTH - It may be appealed on a point of law, too, if the adjudicator made an error.

Mr MAGNUS - Certainly.

Mr BOOTH - Often these things are a bit nebulous; they are esoteric things.

Mr MAGNUS - I can give you a great example of one of the disputes I enjoyed, and that was with a solicitor in Queensland who said the brickwork was wrong. We were standing at the site of his property and I said, 'What's wrong with the brickwork? I am looking at that wall and it looks reasonable'. We stood 2 or 3 inches from the brickwork and he said, 'Look at that sill. Look at the uneven line'. I said, 'Now let's walk back to the property boundary. Can you pick the sill from here?', he said, 'No', so I said, 'Well, it's a reasonable job'.

PUBLIC

Mr BOOTH - That is a very good example and it's the sort of thing that can mire consumers sometimes - not that all consumer-builder disputes are trivial. I've seen plenty of them where it appears to me to be completely ridiculous. Both parties have their view and it is difficult to determine in law, through evidence. You need somebody who comes in as an adjudicator.

Mr BRAMICH - I think you need that independent person. People don't understand the role of the building surveyor. We need to remain totally independent of the design and the building process. Our role is to carry out required inspections to ensure compliance with the minimum requirements of the Building Code.

At the moment there is no satisfactory procedure for the consumer to seek dispute resolution. There is a professional organisation you can call if you have a complaint against one of their members - I think it costs \$1.85 a minute and the care factor at the end of that telephone line is zero, in my opinion. There is another professional organisation that is very good in trying to resolve disputes, but the poor old consumer does not know where to go. Their immediate reaction is, 'I will go to consumer affairs'. Let's be honest, consumer affairs is a toothless tiger. Very few people understand they should go to the Director of Building Control and lodge a formal complaint.

Mr BOOTH - Are you saying one of the trade associations has a telephone line that you call and it costs you \$1.85 a minute?

Mr BRAMICH - Yes, I'd have to confirm it.

Mr BOOTH - What association is that? You can say it.

Mr BRAMICH - HIA.

CHAIR - Poor documentation: we have covered plans, specifications, contract variations, poor communication between parties - we have spoken about that.

Mr MAGNUS - Further on that very briefly. I do not think builders or building surveyors or anyone really, receives a lot of training about that phone call that says, 'Hey, I have this wrong on my site'. The first thing a lot of people seem to do is say, 'Thank you very much' and put the phone down. In my office, because of my background, first we ask questions about what is wrong, and ask whether can we have someone go out and look at it. Before I started where I am working now, the idea was to put the phone down even there. I said that we should go and look because if it is something that we have done we need to address it.

We have recently gone through one only last week where the lady came back after a week or two and said, 'Thank you so much for coming out, testing this, checking this, there is no dispute we have actually identified what the problem is'. The lady is moving ahead to getting her whole job, the pressure has been taken off the builder because it was not his fault there were some other circumstances. We just dye-tested some drains.

PUBLIC

Mr BRAMICH - I must admit most building surveyors who are successful, and the same goes for builders, will take the phone call and go out on site, inspect it and say, 'What's the problem?' and resolve it at that time.

CHAIR - Can I explore something with you? There is a proposed new environment for owner/builders in Tasmania where they have to undertake some education and what have you, I do not want to discuss that, it is a separate issue we have been there and done that. There is no such education for an amateur party to a building contract.

Mr MAGNUS - Correct.

CHAIR - I am picturing a situation where, if you entered into a contract with a registered Tasmanian building practitioner, as a matter of course he or she would give you a DVD to watch before you sign this contract. On there, one after the other, the different players come on and said, 'Hi, I am Barry Magnus, I am a building surveyor. What I and my colleagues do is this: we remain independent, we do this'. Then we go off to the next person, so people are educated about whom all these practitioners are that they need to deal with.

When people buy a motor car you can see the wheels, the shape of the car, the duco, you have read up on it, you drive it -

Mr MAGNUS - It has a very nice technical manual.

Laughter.

CHAIR - When you enter into a contract with a house, if it is right that people do not know what a building surveyor is - and I think you are dead right - then this lack of clarity could be dealt with in that fashion, could it not?

Mr BRAMICH - There is \$1 per \$1 000 [inaudible] of works building [inaudible] administration fee. Whether that is enough or whether it needs to be increased -

CHAIR - They spend every cent of it.

Mr BRAMICH - Yes. Whether that has to go to \$1.50 or something, that is the sort of thing that fund should be funding.

CHAIR - It overcomes the lack of definitional clarity of the roles of the parties. That is an issue isn't it?

Mr MAGNUS - I believe it is a very big issue. As I said, the lady who we went to the other day said, 'I have spoken to the builder and he has been awful'. I said, 'What's the problem?'. We started talking and I said, 'I think that we should get the engineer out first'. So we have had the engineer out, I said, 'He will ring us as soon as he has been there'. She asked him to ring us. He rang us back and I said, 'I will get my plumbing surveyors out and we will go and dye test these drains'. We have dye tested them and we picked exactly where the pipe was broken. It had nothing to do with the building work.

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The lady has confidence. She spent \$200 000 on doing up this house. She is an older lady. She had no idea where to go. She said, 'I just need to speak to someone'.

Ms ARCHER - Did that cost her any extra for you to have to do that?

Mr MAGNUS - No. Not through us. We are not overly cheap as a building surveying practice, by the way, but I guarantee, if they are involved in something like this, most of the time, people walk away and say, 'I did get pretty good value out of them'.

Ms ARCHER - I'm asking to cover off on that issue.

CHAIR - This dot point where you talk about a truly independent assessment, I notice that the exposure drafts of the legislation, or the material with that, did propose a panel of independent experts. Is that workable in Tasmania? Could they be independent? As members of parliament, we are aware that, for instance, a builder who was a member of the Master Builders, might find that the person who comes to adjudicate on this bit is also a member of the Master Builders. Tasmania is so small, how do we manage this? Are we small enough to have an independent panel of adjudicators or of assessors?

Mr BRAMICH - Personally, I have done investigations here on jobs [inaudible] and what I do as a matter of courtesy, if I do any job that involves another building surveyor, I will ring that building surveyor up and say, 'Listen, I have been asked to investigate this, I can tell you that I will call it as I see it. I am just advising you that I am going. If you have any great concerns, please contact ...'.

Mr MAGNUS - We have been approached with regard to some disputes that were going on by the Director of Building Control. I pulled out the file, went back to the Director of Building Control, and on one, I was the building surveyor who issued the permit when I was working for another company. I made my position on it very clear, I said, 'Is the dispute to do with your documentation or the construction on-site?'. We then went back to the owner, who had spoken to myself and the Director of Building Control, and quite satisfied, said, 'Yes, Barry can come on and I don't think he has anything to do with the construction whatsoever'. We were appointed as the replacement building surveyor when the work proceeded. That has happened and you have to be very wary that if you are involved in it, you need to declare that upfront and offer to remove yourself immediately. I think that is part of what they need to do too.

Mr BOOTH - How often do you end up being involved in a building dispute post an approval of either the stage of the building works or right past the completion certificate, where you then subsequently find that it was work that didn't comply with the Australian Construction Code?

Mr BRAMICH - I would have to say regularly, I would probably say weekly.

Mr BOOTH - How often is the work found to be deficient?

Mr BRAMICH - It's a hard to put a percentage on it, but to give you an idea; a lot of people think that once you get an occupancy permit everything is finished - no. An occupancy permit just means it is fit-for-purpose. It does not mean compliance with the Building

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Code or anything else. Most disputes will happen before final. I would say, in the last five years, after [inaudible] has been issued, when a fault has been identified that they have missed for one reason or another, there were two or three times that we have gone back. Generally the builders have been quite good about it.

Mr BOOTH - Perhaps you haven't quite understood what I am getting at: I am wondering how often you get involved in a dispute or checking compliance or a complaint on a matter that is relevant to something that has been approved by the building inspector? In other words, as an example, you might get a dispute purely because someone says a frame is inadequate and it doesn't comply with the code.

Mr BRAMICH - For one of my own jobs or something else?

Mr BOOTH - It shouldn't really be one of your own jobs - I mean an independent thing, so -

Mr BRAMICH - At that stage I would refuse to re-inspect it for another building surveyor. The reason being is that you can't shop around between different building surveyors. I would say, if you have an issue, talk to your appointed building surveyor. If you are still not satisfied, then you need to go back to the Director of Building Control.

Mr MAGNUS - You do have to worry about the legislation there because if, for instance, Steve was a building surveyor on a job and they said, 'Barry, I would like you to go out and have a look at it as a building surveyor, we are not a 100 per cent certain of what Steve has passed'. I have to be very careful because of the role that is defined there. That would probably have to be sent to the Director of Building Control to say am I right to go on to this building site to give building surveyor advice as an independent? What they are looking at there is the integrity of shopping around; 'You will not pass my job so I will get someone else'.

Mr BOOTH - The point I am getting to is a building dispute that you get involved in where the job has already been certified as being compliant with the code and you subsequently find that it is not compliant.

Mr MAGNUS - I have had a couple of those here in Launceston.

Mr BOOTH - Are there enough inspections? Are some of these things occurring later on? We certainly have evidence from people before this committee where there is no doubt that the work is not compliant and yet it has been ticked off all the way down the line as being inspected.

Mr BRAMICH - I am involved in a couple of those myself and a couple of them are quite significant. I would have to say to you that it is a rarity rather than the norm.

Mr BOOTH - In your opinion, and I would like an answer from both of you if it is different, are there sufficient inspections? Is the level of inspection of works adequate in this State?

Mr BRAMICH - If the building surveyor or the building inspector is competent then, yes.

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Mr MAGNUS - I believe that it is the expectation of the people. We are only looking to the BCA, so we are looking at a standard, we are not looking at a workmanship issue. If a workmanship issue is to be identified then there wouldn't be enough independent - but surely that is the role of the supposedly accredited tradesperson and accredited builder to look after the workmanship. If your contractual documents are pretty strong and the variations are strong it is very easy to pick up where the mistake has occurred.

Mr BRAMICH - I think some of the problems that are happening at the moment are some building surveyors rely on an engineer to do footings and slab inspections and sometimes frame inspections. You could certainly understand it with a big job such as MONA where, if I were to inspect every bit of reinforced concrete, I would be living there in a tent full-time for about four years.

Mr MAGNUS - You would become the exhibition!

Laughter.

Mr BRAMICH - Whereas some building surveyors will rely on work for a house and others, such as myself, prefer to do their own inspections of footings, slabs and whatever.

A building surveyor always has the option of other inspections that he or she may require. A good example of that is, I always want to see fire-separating walls between attached units before we cover up, because once you cover up it is too late.

Mr MAGNUS - Another one would be the alternative solutions which I heard mentioned previously. With alternative solutions you have to look at what is being proposed and maybe there will be a totally different inspection regime required to confirm that certain aspects or milestones have been hit.

Mr BOOTH - Given that it is only a building engineer that can provide a 'deemed to comply' document for an alternative solution, I would assume that, because there is a defined process, they would do those things properly. Is that not correct?

Mr MAGNUS - Yes. In my practice we make sure that we actually specify the alternative solution. We normally go back to the person who has designed that particular aspect to inspect it. With an alternative solution we would rely more on the expert who has done some of the areas and we would probably minimise our inspections.

Mr BOOTH - It is done by somebody -. I cannot do it -. I have to take it to an engineer -

Mr MAGNUS - We have just done a perspex floor over a swimming pool for a function centre. It does not comply with the Building Code so the engineer has done a lot of research which he sent to me. We have gone through exactly how that is going to be done. Through the design engineer we have specified when it has to be inspected, but it will be certified by the design engineer to make sure. So that is a good example.

We will probably go down only to do the final inspection for that job because realistically, for the type of job, it is unique for the engineer to be involved. We would not turn around and let someone else inspect that.

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Mr BOOTH - What I am trying to discover for the committee's benefit is what is causing there building disputes? Why do we need this empire to - and new legislation and so forth to deal with it? Are we effectively creating a drone's castle or is there a real need for it?

Mr BRAMICH - I think there's a mentality out there where people want a Rolls Royce for the price of a Mini Minor. Good builders come at a cost. You get cowboy builders and you get good builders. The same applies to building surveyors.

Mr MAGNUS - The same applies to owner/builders. You get people who want to be an owner/builder for the right reason, they want to enjoy the experience and design it, and then you get the people who purely have it in their mind, 'I am going to be an owner/builder because I will save x dollars'. You will, if you spend enough time knowing the system and becoming involved as though you are the builder. I think that is where a lot of the owner/builders, unfortunately, make the mistake. You need to become involved in the process and understand what your role is.

CHAIR - Could I explore with you, given your positions in the association and the national body - I'm not looking for a legal opinion as such, just your experience in these matters. If there were a building surveyor who went on-site and did one of the stipulated inspections and for whatever reason - my mind boggles - it could be taking money or all sorts of reasons, things go wrong - the inspection either wasn't done or was done with eyes closed, deliberately or not, that is what professional indemnity insurance is about, is it not? Or is it poor judgment that is -?

Mr MAGNUS - I believe that if you are negligent and fraudulent your PI may wipe you.

CHAIR - Let's separate out fraud because I am not aware of any circumstances of that, let us just say he was having a bad day and frankly, he didn't have a look; his mind was on something else.

Mr MAGNUS - Drove by and he didn't get out and look.

CHAIR - Exactly. He signed off something he shouldn't have. The house is then passed on to the next owner and all hell breaks loose because the water comes in under the frames. We have a case before this committee where that is precisely the case. There is *Hansard* of this committee where a supervisor of that employee expressed a view that his employee did not do the job properly. It has been admitted that it was a poor outcome.

Mr MAGNUS - I might leave this to Steve because I am aware of that case.

CHAIR - That is often the case. The Director of Building Control sent this employee off for more education. Barry, is your PI or negligence insurance or whatever in councils any different than for private industry?

Mr MAGNUS - I believe it's not. It's supposed to be the same. The old argument was before private came along there was a bit of -

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CHAIR - There were political reasons to fix this as well, I suppose.

Mr MAGNUS - They did, but at one stage they were also indemnified for a lot of these claims.

CHAIR - You mean a hole-in-the-footpath type of nonfeasance?

Mr MAGNUS - Ms Archer may be more aware of this than me, but I believe it used to be a lot harder to make claims years ago. Now with the private section, I believe it is very easy to.

Ms ARCHER - It's more in relation to public liability matters.

CHAIR - It seems to me that where you have a case on the record where somebody says, 'Yeah well I mucked that up and it has resulted in costs of, say, \$100 000' -

Mr MAGNUS - I can speak because it is settled and it has been won and it is nowhere near that. The institution that I work for -

CHAIR - Institute, You said 'institution'.

Mr MAGNUS - Apologies. When I reviewed the case, because it was several years back, the frame was defective. There was no doubt that it should have been picked up at the frame stage. At that time I advised the Director of Building Control's office of the problem because the owners were very agitated. Again, good communication, I felt. The builder, myself, the supplier of the product and the owners met on site and for about \$3 500, which was shared by all parties involved, other than the owners who didn't have to pay, we fixed it.

CHAIR - You are safe because this is not your council.

Mr MAGNUS - No, I am fully aware, but I was thinking that this was an example where I have gone out and it was certainly missed by one of our people. There is no doubt. When I went to look at it, I thought that there is no way in the world that should have been missed.

Mr BOOTH - That's the point I was trying to get to before; how often is it that there is a building dispute that has arisen after an inspection stage and the problem is something that should have been picked up at inspection?

Mr BRAMICH - It's a bit hard to tell you every third day or whatever. It would probably be an irregularity more than a regular event. Every couple of months you might come across something like that.

Mr MAGNUS - It is rarely major. May be a step was put in incorrectly onto a deck and you picked it up at the final and it should have been picked up earlier. We have a site where I have gone back and looked at it where the site was never cut correctly. I said to my staff, 'Why was that not picked up at this point? Why are we now coming towards the final

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and we are finding this site is wrong? That's not good enough, let's review our process'. That has all been sorted out again.

Mr BRAMICH - I think where the problem comes into it is that your practise, when you go an inspect, is that some building surveyors, for example, will rely on the plans that the builder has on-site. Personally, I take my own file because I know it's correct. In this day and age with colour copies you wouldn't know what was done.

Mr BOOTH - You might be dealing with the tail here with some of these things. We have had evidence before the committee of major building problems, but it is almost incomprehensible that it could have ever occurred at all, other than the fact that either somebody was blind when they went out to inspect it or they didn't go out and inspect it at all.

CHAIR - Complete negligence.

Mr BOOTH - Clearly there is something seriously wrong because to sign off on insulation, for example, that doesn't exist and various other things, there is a process problem there. Today, do you think there are enough building inspections prescribed within the process to make sure we don't end up with a building defect problem later on and then an intractable dispute? Dispute resolution is part of this, but we will -

Mr BRAMICH - This inquiry is about the cost of building, cost of housing. At the moment building surveying costs are not realistic for the risk that the building surveyor takes. We are at the high-end risk areas. To give an example, if we were to charge 0.5 or 1 per cent on a \$300 000 home, that equates to about \$1 500 which is pretty close to what you were charging at the moment. You can't use a percentage for every job because others are not realistic. You may have a complicated house worth \$300 000 or you may have a simple house that will do fine. It is how much money people want to pay. Your argument, do we go and do an insulation inspection, I would say to you, okay, that's fine, I can go and do that. But unless I'm there to look at the packets, I couldn't tell you whether it was R3 batts or R4 batts. I can measure the thickness.

CHAIR - No, that's right because they have exploded out.

Mr BRAMICH - Yes. I can measure the thickness and I think they are R4, but are they Chinese or are they Australian or are they Australian-compliant or are they not, I don't know.

Mr MAGNUS - We have just picked up hand rails that are being sold and that are not being fixed in accordance with the Australian standard and we have gone to the manufacturers and we have gone to the suppliers. We are fully aware that they are on several buildings somewhere in Northern Tasmania. The two that we are fully aware of; the manufacturer, fortunately, and us and everyone has worked together and fixed those. They are glass balustrades - they are sold and they have not been fixed correctly and they don't comply. That's not to say all glass balustrading is bad, that's just the couple we have picked up on this particular product.

Mr BRAMICH - Wet areas are probably the cause of most building defects.

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Mr BOOTH - That's the point I'm trying to get to. You have raised the issue of, 'How many times do you want us to go back? I don't get paid enough'. I'm really more interested to know whether there should be a compulsory stage of inspection. Generally most inspectors want to measure the foundations for example. Some surveyors will accept photographic evidence, for example. With iPhones now you can take a movie of what's going on as the concrete is poured over it, and that should suffice, so it's not that you would have to stand there and watch it and wait until the concrete was too dry to pull the mesh out. It may be that there be a requirement of some evidence that the mesh is in the trenches, that the insulation is in the walls. I am asking the question, I'm not saying there should be.

Mr BRAMICH - In the [inaudible] final inspection, if we don't inspect we are required to give a reason that we didn't inspect. The act requires the builders to notify when they are ready for that inspection. That's all that is required. It doesn't mean the building surveyor has to inspect, but if I don't inspect then I need to say why. Sometimes it is not practical to go and inspect.

Mr BOOTH - Failure to inspect then doesn't seem to be indicative of claims problems? That's not an issue?

Mr BRAMICH - Probably not. Most of the areas I find are causing defects are more at the occupancy final stage. I would say, without a doubt, in the vast majority of cases it's the workmanship issues.

Mr BOOTH - We talked about that before; that you could have an independent adjudicator who said whether it was good enough and make rectification orders.

Mr BRAMICH - I will give you an example. One job where a bench top had been cut 5 mm too short because the builder mucked up his measurements, the claim was for \$4 000 for a two-foot square benchtop. Is that the building surveyor's problem? No.

Mr BOOTH - But it's a dispute that could be resolved under the system we talked about?

Mr BRAMICH - Yes.

Mr MAGNUS - I would suggest that even the institute, from a national level, we're discussing about, traditionally for 30 years we've done footings, slabs, frames and occupancy finals. We are starting into the debate whether that regime should be recommended to the regulators nationally that changes. It is very hard to answer because it is a debate that is going on within our institute at the moment, as and whether we move to live safety; smoke detectors, fire stuff and recommend that maybe the structural engineers, maybe there is another regime for other areas. It's a debate that's going on.

Mr BRAMICH - An example of that is an engineer who designs a footing and slab system on a house. We, as building surveyors, have no authority to authorise alterations to that design. All we can do is go and sign, yes it is putting it in accordance with the engineer's plans. There may be a rock or a tree that's buried in the ground that we weren't aware of, that requires some modification. I think what Barry is alluding to; do we say it to the

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engineer who has designed the footings and slab? Do we have the engineer carry out the inspection to make sure they are satisfied and then we see the sign?

One thing that worries me, and I am looking at consumer protection when I say this, if a building surveying company goes belly up, there is no process in place that takes over that building surveyor's files. As an example, I've probably got \$2 000 or \$3 000 of active jobs on the go at the moment - hundreds of thousands of dollars worth that are underway. If all of a sudden I decided to close the door or fall off the perch, God forbid, there is no process in place.

Mr BOOTH - What about the old file repository - nothing for that either?

Mr MAGNUS - No, at this stage it looks like the legislation would be require it to go to the permit authority and the Director of Building Control would have to direct who is going to be the replacement. I suppose what we are alluding to is that there is very little consumer protection.

Mr BRAMICH - Who pays for the new building surveyor? Where is it likely to stop and where does it start?

Mr MAGNUS - Unfortunately we're all getting older.

Can I also table a document? I thought this might be helpful to the committee, it is from the Queensland Building Services Authority, it is a dispute -

CHAIR - Rectification of building work policies.

Mr MAGNUS - That tells you what they regard as defective and that. I thought it may be of some help to you while you are looking at this matter.

CHAIR - Thank you very much.

Mr BOOTH - You heard Frank Gekus's evidence a moment ago - he is going to be submitting to the committee some thoughts, if you like, on minor works and how they could be dealt with. If you had any thoughts on that it would be interesting.

Mr BRAMICH - I deal with him quite often. The guideline I use doesn't involve structural alterations, and if it does then a building permit is required. In my view, if you were taking out a timber window and you're not making the opening any bigger, only putting aluminium windows back in - which you quite often see in old houses - that to me is maintenance. I don't think that sort of work requires a building permit.

Mr BOOTH - So that the arbitrary \$5 000 limit is ridiculous?

Mr BRAMICH - You would use that where it might be a simple little garden shed, as an example, which cost you, say, \$400 to buy, it is 3.4 metres long by 2.7 metres wide. Why should someone pay \$600 or \$700 [inaudible].

CHAIR - Most councils have a protocol for that, don't they?

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Mr MAGNUS - We do exemptions under the Building Act, and there are some proposals to change those, as you are possibly aware. I heard the comment with regard to fees, when we have PI, can I say to you, the amount of paperwork on my PI insurance is the same whether I do a carport, a house or a commercial. So we are all doing the same paperwork for a commercial or a carport.

CHAIR - If you have any views on that, please contribute them for clarity.

Mr BRAMICH - We will work on that together.

Mr BOOTH - Your view is that if structural work is required then you should require a permit but -

Mr BRAMICH - Yes, for something very minor. If you are going to take a window out from one width to another width it is really something-nothing.

CHAIR - Thank you very much gentlemen for your expert advice today.

THE WITNESSES WITHDREW.

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MS JANINE BRANDSEN AND MR CHRIS CARLSON WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Thank you very much for making your time available to us in this committee. Before I begin I want to ensure that you received the guide from the committee about appearing before committees.

Ms BRANDSEN - Yes.

CHAIR - There are a couple of important aspects I want to reiterate. The committee hearings are a proceeding of parliament and this means it receives the protection of parliamentary privilege.

Mr BOOTH - I think you have both given evidence before.

Ms BRANDSEN - Not to this committee.

Mr BOOTH - Other committees?

Ms BRANDSEN - A number.

CHAIR - So you are aware of the parliamentary privilege aspects - you can say things in here but not out there. It is important you understand that we are being recorded for *Hansard* - these microphones are live.

We are looking at dispute resolution and, as we advertised, we were inviting people to bring before us their dispute to consider those elements of the history of that dispute that we ought to be aware of in constructing a new system. I know, Janine, since your issues you have been very involved with other people in dispute. You are aware it's not just about you, it is about the other people in the community who have the same issues and I know you are interested in that. That is precisely what this committee is about; trying to improve the situation for future disputes. The current proposals for dispute resolution have been drawn up by the very government departments you people have had issues with. We are going to ask you some pointed questions about this process to assist us in developing a new system. As to what the dispute was about, the workmanship and the rest of it, that is of lesser importance to us, other than understanding the context.

Mr BOOTH - You also have a written submission?

Mr CARLSON - Yes.

Ms BRANDSEN - I have a spare copy, if you would like it. I have detailed an overview of our case.

Mr BOOTH - Janine, you could not only speak to that, but table it as well, if you don't get through all the points.

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CHAIR - Would you mind tabling a copy now so we have it in our records and when we adopt it as a document we can refer to it, regardless of it being spoken to.

Ms BRANDSEN - Would you like to me table some photos as well?

CHAIR - Let's leave that until the end. We need to find what is relevant to this committee. What's not in dispute, from our point of view, is you had a dispute with your builder. The nature of it, the context, we need to be aware of.

Mr CARLSON - I think you and Kim have a fairly good understanding of our dispute anyway.

Mr BOOTH - This committee evidence will be read by other people so in terms of the generality of your dispute it is worth putting down what happened to you, what process you went through and where you're at now.

Mr CARLSON - We have done a little overview. Thank you for the invitation and opportunity to speak on behalf of consumers. We were encouraged about 10 years ago, when Premier Jim Bacon wrote to us:

Your case has shown up serious deficiencies in the current dispute resolution process and I am therefore looking to have a more equitable dispute resolution process developed to avoid incidents like this reoccurring. You will be invited to provide input into this important reform.

As you know, we have very strong views and appreciate this opportunity to input into any new legislation up for consideration. It saddens us it has taken 13 years to get to this stage.

You are probably aware of our experience, but perhaps an overview may be appropriate. From the time of signing our building contract in 1999 our lives have been ruined by a flawed process of consumer protection that has exposed us to enormous legal costs and incredible stress. The following is a summary of our experiences and the difficulties we have faced, and that face all consumers.

Ms BRANDSEN - During this time Chris has also suffered a stroke from which he lost his speech, so he has done very well.

CHAIR - Indeed.

Ms BRANDSEN - Our residence was constructed in 1999 by a builder who was the president of the MBA in Tasmania. We advised the MBA, both verbally and in writing, of a number of building defects that became apparent during the construction and their advice was to let the builder complete the project before commenting, which in hindsight was very bad advice.

We notified the department of consumer affairs of problems with the builder and house during the construction period. The builder insisted on full payment as per standard

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MBA contract which had no retention clause. Dispute arises - builder and MBA notified. We lodged a claim with HIH insurance for warranty under housing indemnity. HIH assessor inspected and documented over 40 defects in May 2000 and he did a Scott schedule. Do you know what a Scott schedule is?

Ms ARCHER - I don't.

Ms BRANDSEN - It documents each defect and the parties responsible for fixing them. It is a very detailed work schedule.

Mr BOOTH - Done by the building surveyor?

Ms BRANDSEN - Yes. The builder denied responsibility for the faults - I must have built the house in my dreams. HIH would not process the claim until the contract conditions were fulfilled which had an arbitration clause. We employed a building expert to document defects; Martin Mol did a report in November 2000. We met with Peter Patmore who was the Attorney-General and he informed us in writing in February 2001 that we had to enter into arbitration before our housing indemnity claim could be processed. Arbitration commenced in March 2001.

Then we had the criminal collapse of HIH - insurance no longer available to process claim. It was placed into provisional liquidation on 15 March 2001. February 2002 we met with Premier Jim Bacon to discuss the HIH collapse where other states had setup a rescue package, but not in Tasmania. The Premier asked the director of consumer affairs and representatives from the Attorney-General's office to inspect our house. All agreed it was defective.

We advised consumer affairs that we could no longer afford legal representation; our legal arbitrator and expert report costs were in excess of \$25 000 at the time. We employed the services of a building consultant to represent us in arbitration as the cost of a barrister was beyond us. Consumer affairs offered to provide legal assistance at arms-length via our building consultant who agreed to follow their advice.

Arbitrator declared a possible conflict of interest in June 2002. By August 2002 the builder had not rectified any of the defects. At each fortnightly arbitration meeting, costing us between \$1 500 and \$1 800 in legal costs at each event, the builder would provide the arbitrator with excuses for why he had not rectified the defects. The arbitrator accepted the excuses and postponed until the following meeting; this happened every meeting.

Once the possible conflict of interest had been declared the builder would not continue and our consultant was given a draft letter prepared by consumer affairs' legal adviser to mutually agree to stand down the arbitrator and treat all previous awards as having no binding effect. The arbitrator had awarded 85 per cent of claims in our favour at this stage.

The second arbitrator commenced in September 2002, nominated by the MBA. His brief was to complete the arbitration after written documentation in only two days. The arbitrator heard all matters again and the second arbitration was not completed until

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February 2004. The arbitrator awarded us all - other than a few minor items to the builder. The defects awarded to us by the first arbitrator were miraculously found by the second arbitrator in favour of the builder, clearing the builder of any faults, defects and wrongdoing.

A prime example was a claim for the replacement of the roof. It was defective, as all evidence clearly indicates, and which the HIH insurance assessor and expert agreed. However, the second arbitrator found in favour of the builder. How could this be? The final award was that we pay 65 per cent of the builder's costs on a party/party basis to be agreed or failing that, to be taxed. That was, that we pay 65 per cent of the arbitrator's fees. His costs were \$26 100. The builder was to pay 35 per cent of our costs on a party/party basis to be agreed, or failing that, to be taxed and the builder pay 35 per cent of the arbitrator's fees. Consumer affairs and their legal advisers had full knowledge of proceedings and continued advising us, at arm's-length, all the way through the second arbitration.

The builder began pursuing us for his portion of his costs, \$32 697.10. We notified consumer affairs of our inability to pay costs. The builder began action in the Supreme Court for costs to be taxed. We contacted the court with the intention of claiming our portion of costs from the builder for our consultant's bill, which was \$55 316.69. The court advised us we could not claim for a non-legal representative, *i.e.* our building consultant representative. Our representative notified consumer affairs that we were unable to claim costs for the representation plus questioned if the arbitration award was in fact fraud, as its costs could not be taxed. The department of consumer affairs, legal adviser, responded stating, 'The matter of costs was arguable'.

A cover letter from the Department of Justice, Division of Consumer Affairs and Fair Trading with the above letter and advice closed by stating: 'As the costs of the arbitration are the exclusive concerns of the parties to it, it is not appropriate in these circumstances for consumer affairs and fair trading to comment further in relation to this matter.' We throw our hands in the air.

We had followed the advice of consumer affairs and they abandoned us. We stood to lose the very house we had fought to have fixed for 10 years. This has cost us in excess of \$160 000 in legal costs, aside from the emotional pain and suffering and having to endure 13 years in a defective house. We followed due process to end up with nothing fixed and huge debts. The original estimate of the costs to fix the defects was \$63 599. There is no such thing as consumer protection or indemnity insurance, in our eyes. Insurance is inaccessible.

The Housing Indemnity Act was designed to give us protection. It doesn't work, as you are well aware of today. The fair trading act has let us down. The building industry regulators, Tasmanian Compliance Corporation failed and has been disbanded by the Tasmanian government due to corruption. It failed to protect consumers, did little to assist builders and was only a money-making scheme for the directors. The director of consumer affairs stated, 'Blind Freddy can see that there are building faults'.

We have been living in a defective house for 13 years without adequate or appropriate legislation in place to protect consumers. I have been the subject of personal slander by

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bureaucrats who remain in paid positions today. I found myself defending my integrity against accusations that were both incorrect and misleading. This is part and parcel of what consumers endure when it all goes wrong and people try to absolve themselves of any wrong doing or advice, in this case.

On 29 February 2008 - invitation to Attorney-General, David Llewellyn to visit and inspect our home. After a meeting at our house on 2 May, and an email to Mr Llewellyn and from consumer affairs, we noted quite a few omissions and amendments, including the extent of the involvement of consumer affairs in our dispute and we were concerned at the general opinion that consumer affairs was not involved in our dispute other than payment of legal costs. At this meeting, Mr Llewellyn was provided with copious documentation showing that Consumers Affairs and its legal advisors had full knowledge of proceedings and continued advising us at arm's-length all the way through the second arbitration.

In June 2008, Mr Llewellyn's letter stated that we had to go to taxation to quantify our costs should the government assist us at some future point, and also confirming they were seeking the scope and condition from the Builders Collective of Australia for offer of assistance to rectify defects in the house. We reluctantly entered taxation. We received information in a private session with the taxation mediator of the Supreme Court that the government's legal advice, given to us by consumer affairs - from Toomey Manning - was flawed and to the point of exposing both ourselves and Mr Connors to serious criminal charges had we proceeded to taxation and not settled this matter then and there. This was a complete surprise and alarming, to say the least. That is, the submission of our owner's bill of costs claimed for our representative, for Mr Connors, was a serious criminal offence under the Legal Profession Act 1993, sections 53 and 54. This was also the opinion of the Supreme Court taxation officer and was yet another example of the inaccurate, dangerous and irresponsible advice provided by Toomey Manning and Co who stated in correspondence to Roy Ormerod of consumer affairs:

I informed Mr Connors that it was arguable that costs associated with the use of a non-lawyer in arbitration proceedings was claimable. From the advice of consumer affairs and the legal advisors, Mr Connors presented legal submissions in arbitration that ultimately exposed us, and him, to potential criminal charges. While the settlement reached at mediation had removed that threat, we were advised that if a settlement was not agreed we would likely be charged with an offence. A default of the settlement would likely reignite those charges immediately.

This horrendous legal situation was the last straw in a continuous trail of terrible advice from consumer affairs that has been directly attributed to all our losses, from the first arbitration to the second one and then to taxation. We were appalled and distressed that we were in this position by simply following the advice from the department every step of the way. We tried to do the right thing, we acted in good faith and, as a result, we could have faced criminal charges. We trust you will understand when we are of the opinion that the department and the government are ultimately responsible for our situation and should be held accountable. If it wasn't for a good friend lending us the money to pay the builder's cost we would have lost the very house we had fought for so hard to be fixed.

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On 10 August 2008 we met with Premier Bartlett at a forum. In our opinion Mr Bartlett was uninformed of the true facts of our case. We raised our concern that there had been no HIH rescue package made available in Tasmania. We expressed our disappointment at the decision by cabinet. He gave us a personal undertaking to re-read the submission that went to cabinet and gave us his word he would contact us by telephone on the following Tuesday of that week. From this meeting I do not believe he had that intention at the time, nor do I believe he re-read the documentation. The information provided is an insight into how things can go terribly wrong and how powerless consumers are.

Our lives have been ruined and we will never live long enough to recoup the losses we have suffered. The worst part is we can never get back our health or the 13 years wasted going through due process.

Mr CARLSON - Thank you very much, Janine, for giving us a summary and overview into what we have been through.

We are looking to be proactive and to ensure that any future legislation protects homeowners from lengthy and costly proceedings and to ensure that recalcitrant builders are made accountable for their poor workmanship and unethical and unprofessional behaviour.

It was and still is in the best interests of a builder to delay and run up costs because consumers will give up and put up with the defects or pay someone else to fix them. A member of parliament once suggested to us, 'Why didn't you cut your losses and run?'. Unfortunately once locked into this process it is almost impossible to withdraw without being liable for all the costs associated with the proceedings. It is another inadequacy of the current system.

Mr BOOTH - You also acted on advice from consumer affairs.

Ms BRANDSEN - Yes, absolutely.

Mr CARLSON - I came up with a couple of analogies for us to consider. I know that we are all very financial people so perhaps for a moment we might want to consider having saved for many years and we are going out to buy a new Mercedes. We pay for it and arrive at the dealership to pick it up and to your dismay it has dents in every panel. How would you feel if the salesperson claimed not to be at fault and he sent it to the panel beaters to have the dents removed or even worse if they claimed it still ran, in other words it was fit for the purpose it was made, and would give you compensation because it had an imperfection that is what happened to us.

Ms BRANDSEN - In our case the tiles on the roof concertinaed due to poor workmanship and the roof leaked and we have rotten plaster today to prove it. The builder had an expert witness who stated it did not leak. Yet this same person was an expert a few years before acting for our insurance company denying our legal claim under the house insurance as it was a building fault that the roof leaked.

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The arbitrator from the evidence determined that the roof did not leak, however was imperfect and determined that the builder pay a portion of 15 per cent insulating. When someone at fault crashes into your brand new Mercedes your insurance company asks you to get three quotes and arrange for it to be repaired then they recover costs from the party at fault, fix the problem, then look to the costs.

Some years ago we contacted the Queensland Building Services Authority to appreciate how other states handled disputes such as the one we faced in Tasmania at the time. It was and still is an open and transparent model that delivers appropriate consumer protection - see the submission extract which is on the back of this submission: Victorian Upper House Inquiry. The Australian building industry is deserving of such an approach undertaken with the appropriate oversight from the government. We have no choice but to remain living in a defective home. You have the opportunity here to ensure that other consumers like us do not face the same obstacles and introduce a system that works for builders and consumers alike.

In closing, wouldn't it be great to get what we paid for and we have to keep believing that one day someone will listen and we the people will finally get it right.

I had researched every building department in every state in Australia. On 29 June 2011 I received a letter from Senator Kerry O'Brien's office, because we had meetings there:

Dear Janine, Please find enclosed all the paperwork and documents I have on file for your constituent case. I have returned it in two bags as there has been quite a bit of correspondence. Senator O'Brien's office closes on 30 June and thought best that all the information was returned to you for your personal file.

One of the saddest times during the nine years, working for Senator O'Brien, was when I couldn't help you and Chris. For that, I am truly sorry.

I wish you both the best for what the future brings.

Kindest regards, Leanne Paterson.

Mr BOOTH - You summed it up pretty well. Just for the record, Janine and Chris, at this point in time, unless there is some other act of parliament with some act of grace, you have run out of legal avenues now to have any rectification done on your house other than by yourselves?

Mr CARLSON - That's correct.

Mr BOOTH - Has there, to your knowledge, been any recrimination with regard to the builder?

Ms BRANDSEN - No.

Mr BOOTH - The Master Builders Association?

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Ms BRANDSEN - No.

Mr BOOTH - Was this the northern president of the Master Builders Association?

Mr CARLSON - The builder?

Mr BOOTH - Yes.

Mr CARLSON - He was the president of the Tasmanian Master Builders Association at the time, not the northern division though.

Ms BRANDSEN - He was the state president and we had the northern manager running around the site.

Mr BOOTH - Have you had any assistance from MBA?

Ms BRANDSEN - No. If someone says they have a certificate or an award from the MBA or the HIA, I go, 'hoo-ha', because I have seen, personally, defects. As late as last week, I had another complaint from a consumer; a couple with a four month old baby. Their house is falling down. They rang Building Standards and received a very rude response from, I believe they said Kerry Crowder, who said, 'The person that's in charge of this is off sick at the moment and we're in the midst of rewriting the legislation'. That didn't help that person. I have tried to prevent them ending up in a very costly legal dispute with a builder who has denied even building their house.

CHAIR - Sorry to cut you off, but they are hearsay matters for this committee and it leads us into an area of a current dispute. It's certainly interesting and know that -

Ms BRANDSEN - It's still going on today.

CHAIR - I know and because of your experiences, people ring you and they get you involved in this.

Mr CARLSON - Janine belongs to a consumer advocate group which obviously gets lots of these things from Australia-wide.

CHAIR - Yes. We are certainly interested in your views in a general sense, but not about particular cases unless we are able to look at them clearly. We did advertise for people who are currently in disputes to come forward.

Ms BRANDSEN - This happened last week.

Mr BOOTH - If you know of anyone, they can contact us. The question I was going to ask, following on from that was, why did you choose that builder?

Ms BRANDSEN - I rang the Master Builders Association and they recommended the builder and the designer of our house. They came highly recommended. You expect the president of the MBA to be able to give you a very good quality building.

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Mr BOOTH - For the record of this committee and for other members, I have inspected your home and I fully concur with everything that Chris and Janine have said, it is an appalling job. It is mind-boggling to think that you have been put through from hell to high water over this place, when clearly, as Roy Ormerod said, 'Blind Freddy can see the house has defects'.

Mr BEST - I don't want to ask a really stupid question but I know it is. Why didn't the builder then -. He just wanted to argue, he just said like, 'It's fine', even though it's obvious, as Mr Booth just said, he has inspected it?

CHAIR - He withdrew though, didn't he, at a certain point, when things went legal. He stepped back and said I am not going to do anything unless I am told to do something.

Ms BRANDSEN - He did that. During the building process he would not take responsibility for anything. He would not turn up on the site. If you asked him why something had happened -

Mr BEST - Are we allowed to know who the builder is?

Mr CARLSON - Michael Hardacre, he is no longer building to my knowledge.

Ms BRANDSEN - He has gone into another company.

Mr CARLSON - Gone into another business.

Ms BRANDSEN - Which is a frequent happening with builders as soon as they get someone who is going to stand up to them they become insolvent and form another company.

Mr CARLSON - He threatened to go belly-up many times during our arbitration. 'If you take me down this path I am going to go belly-up and you get nothing', was his threat all the way through arbitration.

Mr BEST - What was it going to cost him to fix it all? If he was going to take it on himself?

Mr CARLSON - I think the total cost was less than \$60 000.

Mr BEST - But what would it have cost him in real money? It might cost you to get someone in, but he is a builder -

Mr BOOTH - You are correct. It would cost far less if he did it himself.

Mr BEST - For someone else, but for him it might be - I do not know - half of that, maybe?

Ms BRANDSEN - Oh, yes. The original tiler that I had requested to put the tiles on our roof because we shipped them over, we brought them from Western Australia - roman tiles. He didn't employ the tiler, he couldn't get a tiler so he had joiners lay the tiles on our roof. We didn't know at the time. The first time I drove in I -

Mr BEST - He had a joiner do it?

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Ms BRANDSEN - Joiners.

Mr BEST - Yes, they are not qualified for the work?

Ms BRANDSEN - No.

Mr CARLSON - Even a registered tiler would find it difficult to lay these tiles because they are quite different from normal tiles. They are made differently and it has to be done by an expert. Bristle had their nominated people in Tasmania and we gave those names to him for him to employ them - to contract them - to do it. We ended up with some guy from Port Sorell in the first instance, I cannot remember who it was, who came in and did a bit of a hash job. Then they had joiners -

Ms BRANDSEN - He threw his arms in the air and said, 'I have never laid these tiles so please do not hold me responsible'. The person we nominated was Phil Hays and he was experienced with these tiles and I had done five years research prior to building. I had scrapbooks, I had names, I had everything so it was all streamlined and the builder just had to follow the contract, the instructions and everything.

Mr CARLSON - Brenton, I can see you looking at those tiles -

Mr BEST - I am just looking at how rough they have been cut.

Mr CARLSON - That is right. Just to give you an example. We had specific guttering that was specified in the plans, it was actually a bigger half round and a higher frontage on the guttering. The builder decided, in his infinite wisdom, that he would not put that guttering on and he actually put on something - and let me give you a difference in price: the guttering that we specified was \$16 per metre, but the guttering that was put on was \$4 per metre - that was just normal guttering.

So when the tiles came down to the gutters -

Mr BEST - They were over the top?

Mr CARLSON - They were showing up and so therefore you could see the sarking underneath the tiles. So the builder, in his infinite wisdom, decided that he would knock out the tilt battens so that the first tile dropped down into the gutter. Then, of course, it concertinaed -

Mr BEST - All the way up?

Mr CARLSON - All the way up and so therefore it leaked and it still leaks today because the builder decided to save some money by not putting the specified item -

Mr BEST - Without even discussing it with you either?

Mr CARLSON - Without even discussing it.

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Mr BEST - Not that you might have known it, but you could have researched it.

Mr CARLSON - He had me sign the variation to say this is the same guttering it just comes from a different company its called OG and it didn't do what it was supposed to do. The only reason he did it was because it was financially in his best interests. There was no cost variation, so we did not get reimbursed for the \$12 a metre that the gutters allowed us to get, but I was a novice in this industry.

Ms BRANDSEN - The variation that Chris signed - I was supposed to be signing all variations - the builder didn't even put that actual gutter on -

Mr CARLSON - It was D-Mould that he put on, not OG.

Mr BEST - He never said to you that he was going to lower the gutter?

Ms BRANDSEN - No.

Mr BEST - He was getting you to sign something that you didn't even know what he was using -

Mr CARLSON - Exactly. His excuse was, 'I can't get these right now. I can't get them from South Australia, where they are supposed to come from. I can get them made locally, they are exactly the same thing, just sign here'.

Mr BOOTH - Can you tell us about your experience when you first became aware that there were defects or that you felt that there were some issues on the building project in terms of your ability to be able to enter the site or negotiate with the builders?

Mr CARLSON - We weren't allowed to enter the site.

Mr BOOTH - Can you give us a bit of a rundown on that?

Mr CARLSON - Janine went to Max Seymour who was the northern director of MBA and he said, 'Let the builder take control, don't do anything. I'll talk to him. I'll make sure he does all the right things'. We were encouraged by the person who in the first place had recommended this builder and the designer, to do nothing.

Ms BRANDSEN - When I went on the site I was met with hostility. I said, 'If you are having problems, I will get a building consultant to come in a oversee you'. The builder said, 'If you bring a building consultant on this site I will meet him with a four-by-two in my hand'.

Mr BEST - Who said this, sorry?

Ms BRANDSEN - The builder.

Mr BEST - Really? If you bring in someone to check things?

Ms BRANDSEN - Yes. I have done research on the builder.

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Mr CARLSON - I have to go now; I know that Janine will have plenty to say that I don't, but can I say that the builder had a lot of power as he was the president of the Master Builders Association at the time. All of his contractors provided evidence during our arbitration. Some of it was different from one arbitration to the next, even though they were signed, sealed and delivered evidence.

Ms BRANDSEN - It was verbal at first.

Mr CARLSON - Their evidence changed according to the needs of what the builder wanted at the time. A lot of their evidence was dictated by what the builder told them.

Ms ARCHER - Was it sworn evidence?

Ms BRANDSEN - Yes.

Mr CARLSON - The first one was verbal, but still under oath and the second one was written affidavit under oath. The evidence varied from one arbitration to the next, depending on what the builder needed because, after the first arbitration, he knew what our defence was. Then the evidence would change to refute whatever we had won in the first arbitration. We found ourselves being stymied for the most parts.

Ms ARCHER - Did the second arbitrator have access to the first evidence?

Mr CARLSON - No. Specifically, by the builder's solicitor, no access to the first evidence. The contractors were warned by the builder - and we received this from a couple of their contractors - that if they didn't do what they were told, they wouldn't work in the industry. Too much power here.

Ms BRANDSEN - We had them crying on our shoulder and coming to us and telling us what was happening behind the scenes, but when it came to putting things in writing, they were terrified. They all relied on the building industry for their income. Everybody related to the industry closes ranks and you end up -

We came home from arbitration, I have photos in my bag, not that you need to see them, to find blood poured all over our paths. I was later given a phone call, 'Next time we will be towing your gates'. It was appalling, the things that we have been through. The builder would knock on the door sometimes, he was sent back to do some maintenance work, unannounced. There were two ladders up against the house. They were running around on the roof and I was about to leave to take my daughter to the hospital, she's had an operation on here wrist. The builder finally rang the front door bell and he said, 'I want to come in and do some maintenance'. I said, 'Where's your work schedule? I need a work schedule. I have no notification, I have to go out'. He said, 'We can just do it'. I said, 'No, I'm living here now. I would like you to give me a schedule of works'. He threw his arms up in the air and I said, 'I've been advised, I actually rang a solicitor'. I felt like ringing the police because they'd had a scrum out the front with all his contractors. I thought, 'Oh, what's going on here?'.

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He then left the site and my solicitor and us received a letter saying that I had denied him access to carry out any repairs. That is a common practice - from consumers - the complaints that they come to. It is like we have a play and we will all play a role, and it seems to be - I know there are very good builders out there and I have met them, but I wonder whether the association sits there and say right when this happens you do this. I feel like they are all having like a kindergarten meeting where they try to railroad consumers.

Mr BOOTH - You go through the motions, but you don't get an outcome?

Mr CARLSON - You don't get anything done, what they do is go through a process.

Ms BRANDSEN - If you do this you will stall, stall, stall. Stalling sends consumers broke - as we were. Our house should have been paid off, we should have been enjoying life. When you get to 60 you expect to be able to have a little bit of downtime. There is none of that. It is continual emptying of buckets.

Mr CARLSON - It rained the weekend before last and we spent that time up in the roof emptying buckets of water, but our house is not defective and, according to the second arbitrator, our roof doesn't leak and according to the builder's evidence assessor their evidence is our roof doesn't leak. You can get up there any day that it rains. I am happy for you to come and have a look at our house and see what is in our roof.

Mr BOOTH - Could you provide us with a copy of the arbitrator's findings?

Mr CARLSON - The second arbitrator?

Mr BOOTH - Both would be interesting because then the committee will get some understanding of the breadth of the faults that were found by the arbitrator.

Mr CARLSON - I do have to leave, thank you very much for your time.

CHAIR - Thanks, Chris.

Mr CARLSON - You will note the last page in there is about the QBSA. I noticed the last people who were here to provide you with evidence also talked about the QBSA -

CHAIR - Yes, because they both worked under it.

Mr CARLSON - I understand that it is probably the best of the systems we have seen and researched. At least it provides outcomes which would fix the problem. I think about the occupational health and safety thing - I was thinking about it on the way to work this morning - with the acronym of SAFER: spot the risk, assess it, fix it, and then evaluate or eliminate and review it later on. So maybe the same acronym needs to come up because consumers really just want their houses fixed and then work out who is responsible and how you can make that payment afterwards.

Mr BOOTH - Can I ask you quickly before you leave, and Janine will no doubt add to this, but the question before the committee is to do with dispute resolutions: would you as

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consumers, having gone through what you have gone through and being experienced with other people, now accept a process where you effectively had a justice-by-sundown type adjudication? Where if you have a dispute, you lodge it with an independent adjudicator who looks at it. Similar to the way that you have the arbitration done where they made those findings regarding the tiles but done instantly. The next week the adjudicator comes in and looks at the tiles and says no, that is not fit for purpose, that is not in compliance with the contract, fix it builder.

Mr CARLSON - I think that way at least everybody knows where they are at. If it is not a problem, if it is not a defect, and you have no claim then, as a consumer, at least you know where you stand. As a builder, if it is an independent tribunal or an arbitrator or a mediator or whoever that person might be, then it fixes the problem immediately doesn't it? It makes it clear who is at fault. It makes it clear who is then going to be responsible to make rectifications. That is what a consumer wants; they want what they paid for.

Mr BOOTH - An adjudicator effectively assesses it themselves - they could look at reports and so forth - but effectively they make a determination on the spot rather than this long-winded drawn-out process.

Mr CARLSON - The builders can make arbitration go for four years as they did with ours. We want something that, once the house is built and there is a defect identified, there needs to be a process, the QBSA have it where they actually have it fixed within a very - I think they give the builder 21 days to go out and rectify it, if it is not done they get another builder to do it and then they charge the builder for it. That is a really simple process.

CHAIR - Thank you, Chris.

Mr CARLSON WITHDREW.

Ms BRANDSEN - I have some photos.

The witness provided photographs of defects with commentary.

Mr BOOTH - The list of defects in this place really is truly extraordinary. I can recall there were skylights in the wrong place, the kitchen was too high; it was built for someone who wore double high-heeled shoes or something. You had get on a step ladder to cut up the carrots. It was just bizarre.

Ms BRANDSEN - That was our costs and I have letters. I have eight documents boxes and two filing cabinets full of documentation.

Mr BEST - When did you get a sense maybe that things weren't going to plan? How far into the job?

Ms BRANDSEN - Six week in I started to feel that I couldn't trust the builder.

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Mr BEST - Was that things that you were seeing yourself or his behaviour or something?

Ms BRANDSDEN - His attitude had changed. We were locked into a contract and we had gone through selling my home. I was \$8 000 off owning my previous home. There was this inkling that he had no respect for a woman and he said, 'We're going to have to dig into the contingency amount, I didn't realise there was such a slope on the block'. He had two years to survey the land. It was all written there. It was on the plan, the footings were done and he was straight into the contingency amount to recover his costs. That was something that I wasn't aware of.

Mr BEST - You paid upfront did you?

Ms BRANDSDEN - We had to make progress payments. There was no retention clause in the MBA contract.

Mr BEST - There was no way you could really stop the job for a number of reasons?

Ms BRANDSDEN - I threatened to call a halt to the work and he said, 'I will charge you \$1 100 per day for every day that you suspend this work'. I am not the only consumer that he has done that to.

Mr BEST - Did you find out whether he could have legally done that?

Ms BRANDSDEN - I have no idea. I was on the phone to consumer affairs. I have the names of who was there then. I even have phone records of ringing them. Grant Anderson came on the scene at that stage. Graeme Hunt, I believe he is still there rewriting the Building Act or something or other. He sent me a copy of the building arbitration. Everyone was advising us to go into arbitration. I would like arbitration, in domestic homes, completely abolished because it can go on and on and it is a money-making scheme for solicitors.

Mr BEST - Arbitration in domestic homes, did you say?

Ms BRANDSDEN - Yes.

Mr BEST - You favour what Mr Booth suggested -

CHAIR - An adjudicator. It's still an arbitration matter, but it's not the current system.

Ms BRANDSDEN - A tribunal, an independent person. Everybody who has been involved in our case; they all have a vested interest. There is a conflict of interest right from the beginning and you cannot have that. The whole thing is incestuous. There are things in the Queensland system that need fine tuning and I wish that we could move over and -

If Jim Bacon were alive today, I believe our house would be fixed. In the letter that he wrote he said that we would be invited to give important - so on and so forth. It is all in there, but he wanted to see our house fixed and he said, 'We will fix this one way or another'. Helen Polley was there and I spoke to her about 18 months ago and she went, 'What? Still not fixed?'. She rang me back from Canberra. There are a lot of people

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behind the scenes who knew this. From the Scott schedule that was prepared by HIH that, in hindsight, could have been lodged in the Supreme Court as our claim - end of story. We went to the Attorney-General, Peter Patmore, and his advice was, 'You have to go into arbitration'. He sought the report from consumer affairs and that was the Scott schedule and I believe the solicitor for Phillips Fox who released that to consumer affairs was hauled over the coals for it. They were not supposed to have it. We have never sighted the original report.

Mr BOOTH - The original report by whom?

Ms BRANSDEN - By HIH.

Mr BOOTH - Who would have that?

Ms BRANSDEN - The MBA had a copy they would not release to us. Phillips Fox had the full copy and they would not release it to us because they said it could be embarrassing for you. I said, 'I am not embarrassed, I did not build the house, I was the one whom was bullied and forced into paying'.

One of my daughters experienced the builder's tantrum. He threw his caulking gun down, swearing, 'f-ing this and f-ing that' because she asked him to get the rails in her walk-in robe correct. It was simply reversing the plan for another one. He had no compassion, no care for his clients and that has been expressed to me by his previous clients. I have seen their houses, I have listened to them and they have sold up and left the state. One being a doctor and his wife - she does not want to talk about it anymore. It has affected her.

Other consumers who have patched their houses up, sold up, and have still not got over it. One in South Australia wishes to put in her submission where there was fraud coming out from the HIA. She would like to resubmit her submission she put into the Senate -

Mr BOOTH - The HIA, that is The Housing Industry Association?

Ms BRANSDEN - Yes. It was an annexure added to something she signed -

CHAIR - Without the full information on that - you know -

Ms BRANSDEN - I do not know what else I can say other than that we are left with a defective house. We are still going through the same humdrum that we did from 1999 when we first realised the roof was leaking.

Mr BOOTH - And \$167 000 worth of legal bills without a nail being put in to fix anything?

CHAIR - Yes, it is astonishing really.

Mr BOOTH - Are there any other comments, Janine, given your experience there with regard to how we would best resolve this in the future then. Do you have a clearer picture of what it would look like or just elements of what has been said?

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Ms BRANDSEN - The Queensland system: if you had an independent tribunal and a building assessor go and inspect the house. I don't believe the funding should be controlled by the MBA or the HIA, I think it should be an independent government-controlled funding and the inspection done. It sounds really easy. I don't know whether you have had any building background, but you can see clearly that the roof is not right. An expert details what has to be done, as they did in our Scott schedule. Then it should go ahead - give the builder 21 days and if he doesn't act, suspend his licence, perhaps put a caveat on his property and whatever, so that the security is there. Then use the funds from licences and so on to fix that person's house so they can get on with their life and they don't end up having a stroke, losing speech. Chris was in a managerial position. He had to leave that job and he had a significant reduction in his income.

Mr BOOTH - I understand, Janine, that you were paying a fairly high percentage of your income.

Ms BRANDSEN - 60 per cent of our income is on housing payments. Sitting across the table from the builder in the Supreme Court at taxation was not a nice feeling when he was sitting there, smugly suing us for his costs, knowing full-well that he had even admitted that the roof was a mess. That was a very difficult thing to do and I pitied him and I felt so sad that a man could stoop so low. There have been suicides and all sorts. I just felt so sad for him.

I don't know what else to say. I still feel we were advised to go into taxation to get rid of us. We went in there with the knowledge that it was going to cabinet and we would be compensated. When Mr Llewellyn met with us, all he had was that consumer affairs had paid our legal costs. That was his information, not all the background, the goings on, preparing documents. I am not a solicitor, yet you get a fax of a case study, reams and reams, sent to us and we would spend until 4 o'clock in the morning with our building consultant, preparing our case. You go through all the legal aspects. You had to prepare it. You had pleadings. I thought, I have never done pleadings - got it wrong - another 4 o'clock in the morning and you would spend all night. Unless you have done a law degree, you can't do it. It was just ridiculous.

Mr BOOTH - But you didn't have the capacity, financially to be able to pay.

Ms ARCHER - I might add that most people, even with a law degree, still can't do pleadings.

Ms BRANDSEN - I have them all written out. I have all the background. Faxing textbook copies through, you are reading it and thinking, how do I do this? How do I put this together? You put it together, send it back. It was absolutely outrageous.

CHAIR - There is certainly lots to learn from your situation and it is now on the record of the parliament and you can rest assured that we will be looking very closely at the structure of the new one to make sure that the things that we have learned and what has been most graphically pointed out, with your evidence is that the ramifications of not getting it right are appalling in terms of personal health.

PUBLIC

Mr BOOTH - You have other members of your consumer group or other people who have submitted a similar situation? Your experience is not unusual?

Ms BRANDSEN - No. It's probably the worst. At the time, when HIH collapsed, I believe the liquidators contacted consumer affairs and said, 'Have you anyone on the books that needs security?', and Phil Marriott told me that Roy Ormerod said that the biggest case he had was our case, '... but I wouldn't worry about that because they'll win it in arbitration, hands down'.

CHAIR - Thanks for that. It is harrowing for you to have to do it again, but this time it is on the records of the parliament and we have things to refer back to and test against and all that, so it's great.

Ms BRANDSEN - Thank you.

THE WITNESS WITHDREW.