

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON WEDNESDAY 30 AUGUST 2006.

Mr TIM PENNY, DIRECTOR, BUILDING PROFESSIONS ACCREDITATION CORPORATION TASMANIA LTD, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Harriss) - Tim, were you here when I made the introductory comments about the DPP and his deliberations?

Mr PENNY - Yes.

CHAIR - All right, let us go straight into your detailed submission and your verbal evidence.

Mr HARPER - Can I just clarify that statement relating to BPACT? Does that mean any of the matters relating to BPACT being rejected as an authorised body -

CHAIR - No. My judgment would be no and I think the committee is nodding in agreement.

Mr HARPER - It is only 15 February 2006?

CHAIR - That is it, yes.

Mr PENNY - I think it is probably worthwhile just to quickly recap as to how BPACT came into being; I did note that you had commenced talking about that earlier. As a quick overview, as you have noted previously, when the building legislation was intended to come forward there was what was called a joint industry group submission which was the intent of all the players within the building industry to come together to form the authorised body. That then subsequently did not come to fruition following various issues.

BPACT is made up out of the Institute of Architects, the Board of Architects, Engineers Australia and that is it. A quick overview about why is that really - and you have touched on it in your previous submission - it is about duplication and value for money for consumers because obviously, as you have talked about, engineers and architects have prescribed methodologies for demonstrating their competencies. We have talked about being able to, as an architect, go through the Board of Architects which gives you the tick so we thought as a model that we have the experience and the expertise to be able to undertake the requirements and so with the agreement of those various bodies we formed BPACT and made the submission to government.

A quick overview of where that got to is obviously we had an early indication that it was a complying submission so we moved forward and submitted it on the basis of the indications that we had received from government. That was subsequently rejected. We still thought that we had a submission that was worth going. I think it is worthwhile noting that the Board of Architects as constituted is predominantly made up of architects. We thought that that was a model that had been accepted by government in undertaking

the Architects Act so that was part of why we put the structure together as we did. We built into it various mechanisms to be able to have arm's length distances about complaints and those sorts of processes, so really how we fit into the broader picture is that obviously the Architects Act currently provides all the requirements that the TCC does, except demonstrating your professional indemnity insurance. So we thought being able to give value for money to the community because we thought as a business model it could be a lot less. It takes out the duplication, it is professionally managed, it has the support of our professional bodies which are national bodies and so they link into nationally developed codes of conduct which are very comprehensive and thorough, as does the continuing education support. So within that context is why BPACT came about. We didn't want to come in and compete in a commercial environment. It was a not-for-profit organisation that was really providing value for money to the community and support for professionals. That is sort of it in a very broad picture. Obviously it was rejected and we are here today.

Ms FORREST - Can I just clarify one point here, the architects, engineers and building surveyors - was BPACT aiming to accredit all building practitioners?

Mr PENNY - No.

Ms FORREST - Only those three?

Mr PENNY - With an emphasis on architects and engineers.

Mr HARPER - Some architects and engineers are also building surveyors and have professional qualifications so it was really only the professional level that already had been to university with a degree then had practised that had been signed off against another level of competency so we knew that they were all at a higher level of competency.

CHAIR - Would you have seen that that would be the exclusive province of BPACT? The reason I ask is, would there have been the opportunity for an architect, building surveyor or engineer, if he so chose, to go to TCC?

Mr PENNY - Not at all, Mr Chairman. People would just make a commercial decision.

Mr HARPER - Some multidiscipline practice potentially might have got a better deal by going to the TCC to have everybody accredited there. We were just giving an alternative.

Mr PENNY - Our business model was obviously made up from the database through both the Institute of Architects as well as the Board of Architects out of the list of current registered architects, as well as Engineers Australia, so in terms of our business model, the backgrounding of that from a financial point of view was thorough and well researched, we believed.

Ms FORREST - One issue that has been raised by a previous submission was the issue of consumer input into particularly complaints but even into the development of accreditation procedures and as far back into the development of the new act. You just

mentioned the membership. Is there consumer representation at any level within your proposal?

Mr HARPER - At the director's level there wasn't and at the accreditation level there wasn't because BPACT was going to rely on national and internationally recognised standards which were standards set external to us in Tasmania. So we were relying on that for accreditation purposes to understand the competence of the individuals we were going to accredit.

We were inviting consumer representation on a management level committee and any complaint that was received by BPACT, provided it wasn't frivolous or minor, was going to be actually handled by Consumer Affairs and Consumer Affairs had agreed to perform that role on behalf of BPACT on a cost-recovery basis.

Mr PENNY - So our model had our complaints mechanism not overseen by other architects. We saw it as a preferable model to have that offsite and handled independently. I would note, just for your information, that the current Architects Act has a complaints mechanism that is dealt solely with by the Board of Architects, which is not necessarily an ideal model. So we had seen that that could be perceived as being not advantageous, not where current consumer thinking is these days, and so that was the basis of why we spoke to Consumer Affairs.

Ms THORP - Excuse me, though, it says in a letter from the minister outlining reasons for knocking back BPACT's application, which is number 10 on page 4 of that letter:

'At Section 9 of the BPACT scheme reference is made to the Office of Consumer Affairs and Fair Trading providing assistance in its investigations. It is not properly a function of the Office of Consumer Affairs ... The functions of that office are statutory ones and there is no part of those functions to assist private bodies with their inquiries.'

Mr HARPER - If you look at item 12 of one of our lists, which is e-mails from Roy Ormerod where he supports the BPACT, on 13 July 2004, we wrote to Roy indicating the minister's reference -

Ms THORP - Where are you now?

Mr HARPER - The second number 12. Sorry about the confusion with the two sets of numbers. There are three e-mails under item 12 which lead up to Roy saying he can do it for us. The second one says that he does it for land valuers and land surveyors and some others. Regarding the third one dated 13 July where we quote the minister's reference that it was not appropriate for Consumer Affairs, Roy's response was interesting: 'I do not believe that my offer conflicts with the act under which this office is established'.

Ms THORP - Okay, fair enough. I love it when you get a good, clear answer.

Ms FORREST - On that third e-mail that you just referred to, Geoff, you put a little note: 'TCC now in discussion with Consumer Affairs and Fair Trading to handle complaints'. How are you aware of that?

Mr HARPER - I was sitting in the Legislative Council committee about the budget submissions when Minister Kons was there. Roy Ormerod was sitting next to him and Roy made that reference.

Ms FORREST - Having heard that from the minister's mouth or from Roy Ormerod's mouth, whichever mouth it came from, would that suggest that that is probably an unfair dismissal of the BPACT proposal?

Mr HARPER - By the minister?

Ms FORREST - Yes.

Mr HARPER - Yes.

Ms FORREST - So there has been a change of view on that? You would suggest that there has been a change of view, that Consumer Affairs and Fair Trading are now a reasonable body to look at this?

Mr HARPER - Well, Roy always believed it was appropriate.

Ms THORP - Disagreement rather than a change of opinion. The Director of Consumer Affairs is saying that he thinks it fits under the statutory functions of his office and the minister is disagreeing.

Mrs SMITH - Is that one of the reasons you were given for the scheme being disallowed?

Mr HARPER - The three final reasons were that -

Mr PENNY - If I could go to the heart of that because that is the architects overseeing architects issue - Caesar judging Caesar - that we have always said that the constitution is separate from the complaints mechanism and so I think it muddies the water to imply that the fact that we are made up at a director level of the Institute of Architects, the Board of Architects and Engineers Australia is somehow going to control the complaints mechanism because that is not the case in the business world.

Ms THORP - It sounds a bit like AMA.

Mr HARPER - But we deliberately put it at arm's length.

Mr PENNY - That is right.

Mr WILKINSON - It is the same argument that is going on with the legal profession. The legal profession is saying, 'Look, you take discipline, that is yours. We do not want it'. Architects are saying exactly the same, engineers are saying exactly the same.

Mr HARPER - Which is what we believe is a true co-regulatory model.

Mr WILKINSON - Let us look after what we are supposedly expert at but we do the discipline if you want it.

Mr HARPER - That is right.

There was an earlier reference to the reasons given by the minister to myself in that earlier letter from Michael Roussos; letter number 1 from the minister dated 23 March 2004 lists on the bottom about 10 points.

Ms THORP - This is stretching us, you know, these double lots of numbers.

Mr HARPER - There was a list of 10 points raised by the minister where he had concerns and we addressed all in our letter, I think, of 8 April and then we met with the Director of Building Control and one of the minister's advisers to make sure they were clear and there were no other issues in our letter of 27 April which is, I think, letter 3. After our meeting we clarified two additional points they raised at that meeting.

Ms THORP - So you were looking forward to a meeting on Monday the 3rd; you had the meeting. At the end of your letter it says, 'looking forward to meeting Minister Green on Monday 3 May to personally discuss any issues you may have.'

Mr HARPER - Yes, correct.

Ms THORP - So you had that meeting.

Mr HARPER - We had that meeting and after that meeting we wrote the letter of 4 May.

Ms THORP - And gave you more information and said, 'we are looking forward to the outcome of your deliberations by 13 May'.

Mr HARPER - Yes.

Ms THORP - And then on 10 May there was a letter sent out by Robert Pierce to Transend saying you are now required to accredit, with the TCC, I understand.

Mr HARPER - One thing that was missing which we realised later was also a fairly substantial advertisement placed in the *Mercury* and I think in every other newspaper in Tasmania on 7 April, which I will table, which in the middle sort of says, 'Existing building practitioners are strongly encouraged to lodge applications with the Tasmanian Compliance Corporation by Saturday 15 May 2004. So here we are trying to get an application through that we were told would take a fortnight after it was approved by the department, which was way back in January, and here we are on 7 April seeing the Government advertising to say go to the opposition and we could not get an answer whether that was going to be accepted or rejected.

Ms THORP - We are going to get that, aren't we?

Mr HARPER - Yes, I am going to table that.

Ms THORP - Further on from that, in this order of events -

Mr HARPER - Can I say one more thing?

Ms THORP - Yes, sure.

Mr HARPER - We also became aware that on 5 May 2004 one of these other implementation groups called the *Builders Group Regular Meetings Meeting No. 8*, which is a department file copy of the minutes where, in fact, our submission was discussed with the three building groups and the Tasmanian Compliance Corporation, and we thought it was quite inappropriate to be asking those groups their impression of our submission on 5 May 2004.

Mr PENNY - And we were not invited to that.

Ms FORREST - Let me clarify that, your submission in its entirety was discussed at that meeting?

Mr HARPER - We do not know whether the whole submission was put in front. We hope not because it was commercially in confidence. But certainly they were asked about their impressions and views of this matter.

Ms FORREST - May I ask who was at that meeting again, sorry?

Mr HARPER - The meeting had DIER representatives Graeme Hunt, John Dowling, Brendon Bowes; building industry representatives - I will just name the organisations - Master Builders, Northern Tasmania, HIA and MBA. We had TCC representatives David Diprose and John White. Robert Pearce and the Local Government Association were apologies.

Ms THORP - And we are getting copies of those?

Mr HARPER - I will happily table those documents for you. And hence the reaction that you got to Richard Bevan when receiving his letter. I was just trying to put that into perspective also, what was happening at the same time.

Ms THORP - Somewhat nonplussed, I got the impression. Then just after your FOI requests, just a little further in there, you have a section from DIER's Annual Report 2004.

Mr HARPER - That is right. We were mystified when we noticed on the web site that the DIER Annual Report actually said that two authorised bodies had been appointed and we thought, 'The department's files indicate that there are two. Who is the other one?' So we checked and asked the library from the department whether they could send us the appropriate page out of their annual report and hence we got the second one and I assume that was the one that was tabled in Parliament.

Ms THORP - Right.

Mr HARPER - So we were mystified, being told that there was only going to be one and suddenly it is in their annual report that there are two.

Ms FORREST - But you were unable to ascertain who the second body was?

Mr HARPER - That is correct.

Mr WILKINSON - And you did try to find out who the second body was?

Mr HARPER - We asked the question and never got a response, and we noticed within about five minutes the annual report was off the web site. Of course you are aware that after this process for some funny reason we took the minister to the Supreme Court to see in fact whether he had the powers under the act, once we were advised that we were totally compliant with the act, to reject the application. The court ruled that yes, because the act says that the minister may approve an authorised body if certain conditions were made. We argued that if you met all the conditions, the 'may' became a 'must' and that precedents had already been held up in the High Court on a number of issues, particularly in immigration matters in that it sets out that if you meet these requirements you will be allowed to come into Australia. We argued that in court and we were told no, unfortunately the minister still had the discretion to make a decision even though he had already told us we had complied with all the requirements of the act in his guidelines.

Ms FORREST - The Supreme Court decision didn't go to the strength of whether the submission met the guidelines -

Mr HARPER - No.

Ms FORREST - or if it was compliant with the act, it was only the ability of the minister to make that choice? That's the only thing they were looking at, correct?

Mr HARPER - Correct. It was not on the merits of our submission or the merits of anything, it was just whether he had a power to make the decision. Because under the Judicial Review Act that's all we could challenge.

Regarding the list of FOI information where we asked the minister what he'd relied on in making the decision, it's very interesting just to look at the list that there didn't seem to be anything relating to the viability of organisations or any financial information that was considered to come up with the decision, which was one of the three final points. It's mainly just correspondence between us and them.

Ms THORP - Correspondence with TCC which you're not allowed to see?

Mr HARPER - Yes.

Mr WILKINSON - What do you believe the best process is, if there should be a process like TCC? Should you have TCC, should you not, should it all be with Consumer Affairs and let professional bodies look after themselves?

Mr HARPER - The only reason BPACT came into existence was that we felt that TCC wasn't an appropriate body and didn't have an understanding of professionals, so we thought there needs to be somebody to do the accreditation and so we believe that the whole process is probably more appropriate within government, with the professional bodies providing the input into the accreditation requirements and that everything else could be handled within government or if it's going to be put out to private bodies then

BPACT would like to continue but it doesn't particularly want to have that role, but it believes to provide something to the professional side of the market it would go back into the market if appropriate.

Mr WILKINSON - So a government body would deal with it; they would seek advice from your engineers, from your association, from your architects association in relation to accreditation and the expertise or otherwise of the person who makes an application, number one. Number two, in relation to discipline they would set up a board and they'd be able to pick from different people who are expert in the area in relation to that board and that board would then sit on disciplinary matters. Is that it?

Mr HARPER - Well, the two bases for accreditation already exist nationally so there is no need to duplicate them.

Mr PENNY - Yes, just to reiterate if I could. Really, for instance looking specifically at architects, if you change the Architects Act to demonstrate the continuing education as well as professional indemnity insurance, given that the Government as part of their legislation have that as a board and an act that exists, changing that would offer the most effective solution in terms of both value for money as well as consumer protection once they'd worked through the issues of complaints handling.

Just to reiterate what Geoff said, professional bodies got together and saw there was some value both to the community as well as the professional groups because we concur with and support the idea of building legislation, the Building Act 2000 because the idea of offering consumer protection pre this, obviously nanna could design a building, and it was very crude, anyone could be a builder, and so offering that level of support we have always thought is really good legislation, but all we've seen now, once you have privatised certification, is they didn't have the expertise. It was really just synergies coming out of engineers and architects.

Mr HARPER - I assume you have seen or will see the actual BPACT application?

Mrs SMITH - We will request it, no doubt.

Mr HARPER - I was just going to add that in there is a detailed code of conduct which we believe is very measurable and sets out the requirements very clearly and that was going to be open to the public so the public can see what we expected of a builder and their obligations. So it was going to be totally transparent and I think everything we had was going to be available both for the public and the practitioners to see. You've got a copy of all that so it's available to you.

CHAIR - Yes. Thanks very much to both of you. You've done very well to conclude that.

THE WITNESSES WITHDREW.