

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN THE COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON TUESDAY 24 OCTOBER 2006.

Mr KIM BOOTH, MHA, WAS CALLED AND EXAMINED.

CHAIR (Mr Harriss) - The meeting is reconvened. Kim, we had allocated 45 minutes so I think we will stick to that and go through until 11.30 a.m. Members would be aware of course that Kim does not need to make the declaration. As a member of parliament, he has already done that. We have received your e-mail submission to Sue McLeod and we will launch straight into it. If you would like to make any opening comments or state some issues and then we will fire a few questions.

Mr BOOTH - First of all I would like to express how grateful I am to the upper House that they decided to conduct this inquiry. It was overdue, in my view, and certainly history reveals that, from my perspective and that of the Tasmanian Greens, along with many other people around the State - builders and other members of your upper House - have always had concerns about the way the Building Act 2000 has been put together, the fact that it handed over accreditation to a private company and the failure of both the minister and the bureaucrats to recognise that there were major problems. That is highlighted, I suppose, by the history of my submissions to the minister, the ex-Deputy Premier, in regard to this. Back in 2003 when Ms Jackson brought through the Housing Indemnity Act amendments that made housing indemnity or home owners warranty compulsory and made it last resort, which complied with the national standard, I put her on notice very clearly then that a big problem with building, the affordability of this with consumers, was the worthless compulsory last-resort home owners' warranty requirement. It is on the record of *Hansard*, if you want to go back to that debate, that I put to the minister at that time that this was ineffective. In fact after that debate I approached Roy Ormerod and said, 'Look, this is just worthless this last-resort home owners' warranty and we have to do something about it'. He said, 'Yes, Kim, I know. We're that close to dropping the whole thing as we know it's worthless'. So that was in 2003 and yet they have done nothing about it since then. They have let the industry fall into collapse knowing that a big part of it was this compulsory last-resort home insurance requirement which was worthless from both the builder's and consumer's point of view. It stripped a lot of money out of the home owner without providing any value.

The linkage then between builders accreditation and the need to get insurance drove a lot of the builders out of the industry and there are a lot of builders now who are not on that list of accredited builders who ought to be because they have the competence, the skills and, in many cases, unblemished histories. They have been driven out of the industry like criminals in their own trade as a result of this lazy legislation and the failure, as I said, of the minister and the bureaucrats to do something about changing it.

More importantly, it has now meant that probably a large percentage of the work that is done outside of compliance is done as a result of builders who are competent and yet unable to work as an accredited builder. That has pushed them into either illegal work, which does not do good for the consumer or the economy because it misses out on GST and so forth. The works are not recorded because they are done without council permission

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or they are done under the contrivance of the home owner being the owner-builder and therefore slipping under the radar because of that last-resort compulsory home owners' warranty requirement.

Having said that, I totally disagree with some of the sentiments that owners should not be allowed to be builders. I think that there is a basic fundamental human right issue here that if you are a family, a human being, you ought to be able to build a shelter for yourself. You should not have to go through a process that requires you to employ a builder if you do not wish to do so. I think the important thing is that buildings should be built to a uniform standard and code, and whether you are an owner-builder or a builder, your building should abide by that.

To me, one of the cornerstones of any regulatory system has to be proper inspections, and I think that's really the nub of a lot of the problems of a regulatory framework at the moment is that there seems to be a shift more towards self-regulation and relying on the fact that a practitioner is insured against incompetence or malfeasance rather than requiring the project to be inspected at completion or at various stages throughout the project by a responsible and duly-qualified, competent building professional, whether they be an engineer or an surveyor, or somebody who understands the Building Code of Australia.

All the work now has to be done under the Building Code of Australia, and if there is any non-compliant work anywhere in existence post the Building Code of Australia coming in that has been approved by council and it doesn't comply with BCA, then that is the fault of the building inspection system, not so much the home owner or the builder, although there is obviously fault there if the builder hasn't built to the standard. The point I am making is that if there is proper inspection, you would not have any defects in houses, because they simply would not get a completion certificate.

In my view, a very important area to remember in regard to any regulation is that if a builder's accreditation is worth anything, then it ought to be linked back to the builder's performance and not judged by their assets, as the current system does with access to home-owners' warranty. It ought to be linked, as it is in the electrical trades, to the performance of the contractor and their obedience to the standard.

If an inspection is done, it must be done by somebody who knows what they are doing and who has the capacity to understand the Building Code of Australia. This is a very simple document; it is a prescriptive manual which details at great lengths the standards that are required right down to the gauge and the type of the nails, the way the heads are fixed to them for bracing components, the number of nails and the location on the bracing sheets, the tie-down systems, the rafters, the windows that you have to conform to, the foundation conditions and the relative size of the foundation depending on those conditions are all prescribed in the act.

So it is actually very simple, and I put it to the committee that it is a very important part of any regulatory system that the inspections must be done properly, professionally and competently, and they should not approve works that do not comply with the Building Code of Australia or do not seek the alternative solution that is provided for in the Building Code, which is that the works, if they are not complying in a prescriptive form,

need to be accompanied by a certificate attesting that they are deemed to comply with the code.

So the code is good. It envisages alternative or creative solutions, but where they don't comply with the standard then they have to be certified by a competent engineer. I believe if there were proper inspections then a lot of the problems we have would not be occurring today.

CHAIR - Okay.

Ms THORP - Do you believe a consumer has the right to expect their builder not only to be competent but also solvent?

Mr BOOTH - Yes, but I don't necessarily think either of those things are related. I think that the solvency issue can be overcome by contract law which requires payments to be linked to certain stages of the project. In other words, the fact that a builder may or may not be solvent does not materially alter their capacity to do a job, provided the contract is laid down and the builder cannot be paid by the consumer until certain stages of building projects are completed. There is already a fairly comprehensive contract that is signed between a person getting a contract done, and the contractor that provides for that, but that may need to be tightened up.

Ms THORP - Housing indemnity insurance goes back to 1993, is my understanding.

Mr BOOTH - That's correct, yes. In 1993 though, it wasn't last-resort home-owners' warranty insurance on housing indemnity. Post 1993, if you are talking about an insurance housing indemnity and there was a problem, then the insurance company was supposed to move in and repair the problem. In actual fact, it did not work very well because they acted as a thug against the builder. They just came between the consumer and the builder to resolve the dispute, or attempt to. It usually ended up with some very unfair treatment of contractors or sometimes home owners and not a proper resolution. But that is now another matter because in 2003 in Tasmania, and in 2002 on the mainland, they changed that from first-resort insurance to last-resort insurance. I presume you have had a fairly good description of what last-resort insurance means. You all understand that in fact, inevitably, it is virtually never paid out. In fact, my understanding is that there has virtually not been a claim paid out in Tasmania. I believe there is about two claims that have been paid out under last-resort insurance after 2003. So while the insurance industry shed crocodile tears about the amount of money they are paying out, the truth is that since 2003 there has virtually not been a claim. There are still some tail insurance claims from prior to that when it was first resort. But from 2002 on the mainland and 2003 in Tasmania there have virtually been no claims paid out.

You have, no doubt, all spoken to people who have been caught up in the system. I know of some cases where consumers, under the old last-resort system, have spent \$150 000 on litigation to fix a \$25 000 problem and still do not have it fixed. They have been almost bankrupted as a result of the mediation costs and court costs, trying to resolve their problem, which is where we get to later in terms of my view of where the industry would be better regulated and how you resolve those things.

In regard to the solvency issue, solvency assessment or otherwise, that has been done by insurance companies who simply decide whether they will grant you insurance or not. It does not measure in any way the builder's skills or their history in terms of being able to build. An enormous number of builders throughout Australia, but also in Tasmania, have been thrown out of work, not as a result of ever having had a claim against them, but simply because of those new requirements since 2003, the compulsory home owner's warranty last-resort insurance. It has meant that they have not been able to meet the insurance company's conditions.

Ms THORP - But why haven't they been able to meet them?

Mr BOOTH - Because the way it works, Lin, is that insurance company requires the builder to provide their tax returns for the last number of years. In some cases that then identifies, as far as the insurance company is concerned, that they are not holding sufficient private assets to be able to pay out a claim - which begs the question of what insurance is all about. If it is about making sure the builder can pay the claim, why would the insurance then go a private insurer? Their role has been to assess whether there is money for the builder to pay for the problem, rather than the insurer, who has taken the policy to pay it out.

Secondly, there are a lot of builders who have not accumulated assets to the level the insurance wants, for all kind of reasons. Their wife might have developed cancer and they have had to sell their house to treat them, and suddenly they lose their career as a result. That has happened around Australia. Their child might have been born with a disability or they might have decided to send their children to university or something. There is a myriad of reasons why you may not comply with the requirements of the insurance companies, which are quite odious, I might say, as well. They limit builders to the amount of work they can do per year. In fact, insurance company requirements have created a crisis in many building firm's cash flow. They have simply been unable to work any more because the insurance company has said, 'We are not going to let you build any more houses because you have already built \$1 million worth of houses this year, or \$500 000 worth houses this year, and we are only prepared to allow you to build up to a certain value per annum', so that they are never notionally exposed to a risk.

Getting back to that inspection point. if the houses were inspected properly, there would never be an insurance claim, would there?

Ms THORP - But if there was an inspection and someone signed-off on it and defects showed up later, then who would they be suing?

Mrs SMITH - The building surveyor who inspected it.

Mr BOOTH - That is correct. Building surveyors are at a high level of professionalism. They are required to carry professional indemnity insurance, which has a tail component on it as well, just like an engineer or surveyor. They are already paying for those insurances anyway. Requiring a builder to also be capable of withstanding a claim - because it is the consumer who pays the premium but the builder ultimately wears the fallout - is really double-dipping, in my view.

Ms THORP - I take your point, but I could also see where it is the responsibility of the builder to act responsibly and do the job to the best of his ability. My understanding is that the Building Code of Australia is a technical document saying how wide joists have to be, how thick they have to be, what nails you use et cetera. The builder could say, 'I did do the right thing. I did use the proper equipment'. It would be very difficult for someone else to come along and guarantee in every instance that every piece of wood or every nail was in fact correct.

Mr BOOTH - The point there is that I think people are probably getting a bit over-anxious about a minor transgression from the code. The code has a redundancy factor in it to allow for the odd nail that is missing or something like that. Nonetheless, this is not brain surgery. A building that is constructed sits there forever and can be inspected as to its standard, whether it is uncovering the foundations or the walls to look at the studs. It is not like an operation that is carried out on a human, who then dies if something goes wrong. The process of inspection is not that difficult, provided you have three or four inspections on a project. You can prescribe the number of inspections. In fact, it is even possible to link that back to a builder's level of accreditation if they require further scrutiny, for example. It might be that, if you are a builder who had had an unblemished record for 10 years, they might require less inspections, for example, which might be an advantage that a builder develops.

It does not matter whether it is an owner-builder building the house, or someone who has never built before; you can walk onto the job as a building surveyor and see immediately whether the depth-to-span ratios are right in the floor joists, ceiling rafters or whatever or whether the tie-down methods have been done properly. The foundations ought to be, and usually are, inspected before the concrete is poured. It is just a simple physical measurement. A competent building surveyor would be able to see almost instantly whether the building complies.

I reject that it is not possible to do proper inspection work during the period of the building. I think it is a reasonable proposition that, rather than this notion of arbitrarily limiting owners, for example, to two building works in a 10-year period, such as is the case now, that it may be better to require owner-builders to have and pay for more inspections, so that there is proper monitoring. Under the current system, where an owner is only allowed to build two projects in 10 years, that means two building applications. That means two jobs requiring a building application, which is two jobs over I think \$5 000 or \$6 000, which is the level you have to have a permit for. Painting your garage or verandah could cost you over that and technically require a permit, or building a small balcony or a porch repair. If you do another one of them within 10 years, then you can't do anything else. Your father or mother might have been a building practitioner for their entire life, but this retired person can't then, under the owner-builder provision, do an extension for their family. It is arbitrary and capricious and doesn't solve what we are trying to achieve, which is a better standard of building construction. It is now how many you build, it is the standard that you build them to. It is also about making a system that is not so odious and repressive that it drives people out of the industry. You actually want to bring people into compliance. You want all the building works to be done under compliance so that the regulators know what has happened, and that when you buy a place they can check the plans with the council and it will comply. With the system currently you have to accept that 40 per cent to 50 per cent of work, even in some cases 60 per cent on the mainland, other than Queensland, is now

down outside of compliance by owner-builders or is completely black work. We have a major problem with the regulatory system. We ought to be looking at a way that relaxes it rather than tightens it, but assures compliance to a standard - not insures it, which is a way of guaranteeing that there will be problems. You then simply fall back and rely on stripping the builders' assets away or, in the rare event that the builder for some reason doesn't have the assets, the insurance pays it out. It is not much good if your house is falling down and you are hiding inside the thing. It is about regulating building work, not ensuring a lifeline to the insurance industry, which is all it has been doing at the moment.

Ms FORREST - You made the comment that if enough and sufficient expertise was undertaken with the building inspections that you would not have a lot of these problems. What about a situation where your slab was inspected and there was a problem identified there. Then I assume there could still be contention between the builder and the owner or even the building surveyor, whoever is doing the assessment, that they do not agree, which could hold up your process. Does there need to be some sort of provision under your suggested scheme that would deal with that?

Mr BOOTH - Yes. Let me say first of all that you are right; of course there will always be some disputation so there has got to be some way of resolving those things. The Building Code of Australia is a prescriptive scheme - it is very prescriptive - so if the code says that on this soil type you have got to have a foundation that is 500 mm by 400 mm with a certain size mesh in it or whatever, then you can physically groundproof it. You can groundproof it 10 years later if you want. It is still there. You can check to see if the work was ever done properly at any time. That is why I suggest that you have sufficient inspections by a competent person who can simply go along and say, 'I am sorry, builder X, the BCA says it has got to be a 500 mm wide foundation or you have got to use a 200 mm by 50 mm lintel here. You have not complied with that so we have to give you a non-compliance notice'. That is a defect notice, in other words, on the work. I will explain later that this should be linked back to the builders' accreditation. Or you have the choice of providing a deemed-to-comply certificate, provided that person can get one off a qualified building surveyor/engineer, who is somebody who has the relevant qualifications. They are people who have been generally grandfathered into it. They are engineers who understand the code. They can come along and say, 'Under the deemed-to-comply provisions of the Building Code of Australia I will grant a certificate for that particular undersize lintel', because of whatever. It might be that it is a timber of a higher F rating than what is in the code or some other reason, but they do have the capacity to do that. Then the project either moves on, if it has a deemed-to-comply certificate, and nobody can complain about that, or the building has to be rectified. Importantly, where something like that is uncovered, then there should not be an obligation on the consumer. In fact the contract should specify that the payment is after inspection. If you cannot get the project up to that point then you do not get paid for it because it has got to comply at that stage with the code.

Mr DEAN - I want to know whether you want to expand in any way in relation to the alleged conspiracy regarding the Building Act 2000?

Mr BOOTH - The conspiracy?

Mr DEAN - Yes. You say here, 'The ex minister, Bryan Green, broke the laws regarding the Building Act 2000.'

Mr BOOTH - I thought we were only addressing item 2 of your inquiry at this point in time, but I am happy to talk about that.

CHAIR - I should have mentioned to you, Kim, the reason we are going down this track today. The DPP has in fact indicated to us that he has concluded his interviews, so we are ready to go down that next path.

Mr BOOTH - And nothing that I might say is going to affect the -

CHAIR - I should have made that clear at the start.

Mr BOOTH - Okay. I would be happy to talk about that whenever you want me to.

CHAIR - There are probably matters you want to keep focus on.

Mrs SMITH - You made comment earlier that there are a lot of builders who are outside the loop now. Have you got any estimation of the number of tradespeople we have lost to the industry because they could not jump the hurdles to get accreditation?

Mr BOOTH - I would estimate that probably 400 to 1 000 builders are outside compliance in Tasmania as a result. That is based on the fact that the Government initially thought that there would be something like 3 500 building practitioners. They quoted that in a release - this is going back a few years ago so that is from memory. Also, Sue, there are still a lot of builders coming into my office and I know there are a number of them who have had great difficulty getting compliance or have only been able to be grandfathered into work up to \$12 000, for example.

Mrs SMITH - Can you balance that up with a presumption that at the beginning of the process that TCC would have around 670 to accredit and as such they did a budget on that and then they had 2 000 who got accreditation and you are saying there are another between 400 to 1 000 even outside that loop?

Mr BOOTH - I have no idea where that 600 figure ever came from other than a figment of someone's imagination. It's notionally insane to suggest that there were only ever 600 building practitioners in Tasmania. The Government's own rhetoric at one stage was that there were something like 3 500 building practitioners. The committee might be able to find that.

Mrs SMITH - At the beginning when the scheme was put forward and some financials attached to it shouldn't that have been tossed up to the department that the scheme was talking about and budgeting for 670 or thereabouts? The department's figures should have shown, even though we did not have accreditation, that surely the figure should have been much higher than this 600 or 700?

Mr BOOTH - As I said, I have no idea where that figure ever came from. I cannot imagine how either the minister or his bureaucrats could have believed it in the first place. If it was anything other than just a wild underestimate by the proponents of the scheme to fly

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under the radar when they wanted to set a higher accreditation fee then it just reveals an astonishing level of incompetence of the bureaucracy level within the minister's department. I think that is a matter that needs to be looked at, too - their failure to give proper advice and their failure to understand the industry themselves. That highlights the fact that to my knowledge there is not a single person within the regulatory framework as far as the bureaucracy goes who knows how to swing a hammer or understands the industry at all. I think that is also one of the problems. It has become a make work scheme for bureaucrats and a cash cow for the John White Compliance Corporation's activities, but has done very little in terms delivering a decent standard of building works or anything else.

In fact the result of this regulation has driven building prices through the roof. Accredited builders have been able to ask whatever they want because you simply cannot get an accredited builder. If your building project requires finance and you have to have an insurance policy then you have to have an accredited builder which, as I said, does not mean anything about their competence.

Mrs SMITH - Wouldn't you accept also that the economic times we have had have meant that there has been more work in the building industry and that has also been an additional to pressure on this process?

Mr BOOTH - It has but it has caused an almost exponential increase in building prices beyond what would have occurred as a result of the market forces. But you are right, there has been increased activity.

A couple of other points I would like to make and I think I made them in the e-mail. For members who would not be aware about the campaigning I have done in regard to this, I called public meetings around Tasmania in July 2004. On 1 July 2004 I hosted the first of a series of statewide meetings at Henty House. Some 50 builders came up and these are the motions that were passed there. It is interesting because effectively they are consistent with the situation we find ourselves in now.

Mr DEAN - Is that by the TIBA?

Mr BOOTH - No, these are meetings that I called. I had written to 500 builders around the State highlighting the serious issues that I saw with the Building Act 2000 and compulsory last-resort home-owners' warranty. I ran meetings in Henty House, Hobart and in Ulverstone so that builders could come and put their concerns. In total we had about 150 or 160-odd builders turned up. It might have been a bit more than that I think there were 80 or something in Hobart, 50 in Launceston and 40-odd up in Ulverstone and they all passed these same motions, which came out of the first meeting. The first reads:

'This meeting of 50 people involved in the building industry

- condemns the Government over its failure to consult and failure to provide a point of contact in the north of the State;
- expresses no confidence in the Tasmanian Compliance Corporation in its current form;

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- condemns the process will increase building costs to the consumer;
- believes any insurance must be on a pro rata basis, it calls for no extra construction levy;
- condemns the system as being anti-competitive, will cause restriction to trade and lacks transparency and procedural fairness and condemns the system as preventing new players and young builders coming into the industry.'

That particularly goes back to the point you made about a builder's solvency. It is not just a consideration of whether or not you have had assets and lost them - we are talking about young builders who simply are excluded from becoming building practitioners because they do not have any assets. You could do all the training you like, come out of TAFE, go to hang up a shingle and get locked up for false pretences - in fact, not being allowed to practise.

The meeting passed the second motion calling for - and these are really important - builders' accreditation to be a skills-based assessment on prior experience or TAFE course trade certificate or similar qualifications, the accreditation not to be linked to insurance, home-owners' warranty to be a matter of choice between client and builder, home-owners' warranty should not be underwritten by the builder, local councils be required to employ qualified building surveyors and consumers to be given the option of council - qualified, private building surveyors to ensure compliance with the Building Code of Australia, State government hold the database of accredited builders with an annual fee regulated and registration a nominal amount of \$150.

Those points came from the floor of those meetings. Every meeting around the State agreed with that and, effectively, had the Minister and his bureaucrats taken notice of that back in 2004 I do not believe we would not be in the problem we are in now.

Mrs SMITH - Kim, if we might expand on it, this was in July 2004 and one of those motions was no confidence in the TCC.

Mr BOOTH - Yes.

Mrs SMITH - There had to have been some discussion, some background or backing for the genesis of that particular motion.

Mr BOOTH - Why they have no confidence in the TCC? They have no confidence in the TCC generally. In terms of trying to paraphrase what builders were saying at that point in time, it was the lazy method of assessment of the builders' standards that was a problem with the TCC. It was the fact that it was a private corporation that was there for profit rather than for the sake of the regulation, and that there was an essential contradiction in a private company, who was going to be removing builders' accreditation, would have a conflict against the same income stream as well. There were a lot of reasons why they were uncomfortable prior to accreditation.

Mrs SMITH - They were talking about the lazy method of assessment - I gauge from that they are saying, 'We are professionals, we want to be accredited, we want to be

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recognised but we want it done properly'. There was not a problem with having an accreditation, it was how well it was done.

Mr BOOTH - Overwhelmingly. In fact, there is absolutely no dispute among the builders that I have spoken to that there ought to be a proper accreditation system, that builders need some recognised standard that consumers can recognise and that can be linked back to their performance. They wanted that accreditation but they were very clear that the accreditation had to be based on the assessment of their skills and not their wallet sizes. If there was insurance to make sure that works were completed or whatever, that should be a first-resort insurance and builders should not be excluded from that, simply because they did not have the money to underwrite the policy.

People have suggested that a builder ought not to be able to get insurance unless they underwrite it. So, by implication, then no person who is poor should be allowed to insure a motor vehicle because, in the event that it has a collision, they cannot pay for the repairs. What is insurance for? It is an absurd notion and it is a lazy way of ensuring that building works will comply to a standard simply by saying, 'That's all right, if it falls down then somebody will pay for it'. That is not the point, it shouldn't fall down in the first place.

The other point I would like to make in regard to my considered view of how the regulatory system should work is that we have spoken about builders' accreditation being skills-based, but if you have an insurance system, it should be a first-resort insurance system. It must have a component with a rapid disputes resolution. In other words, rather than home owners watching their home just fall apart in the weather, it has to be fixed in, say, a 30-day period. So there has to be a process where if a consumer lodges a complaint or a builder lodges a complaint in the event of non-payment for a stage it goes before a competent board - not one made up of bureaucrats and people who may have the best intentions in the world but no understanding of how it works; it has to be people who know what they are doing - made up of consumer groups and builder groups who make an adjudication on the problem and get it fixed quickly.

For non-compliance with the code, there needs to be a system of defect notices that ultimately puts a mark against a builder requiring either further skills development or some other measure. Ultimately there could be a punitive measure of losing accreditation. Any insurance has to be first-resort; the inspection systems must be done competently and professionally. I think that is a critical part of it, that a consumer should never have a building work signed off unless it complies with the code or it has a deemed-to-comply certificate. It should not be signed off simply because a builder has insurance in case it falls down.

I do not think private enterprise has any part in the regulation for the same reasons that we do not have private police: there are essential contradictions in that the income stream of a private corporation is based on getting as many people accredited as possible. I do not believe that any trade associations should have any part whatsoever to play in either regulation - in other words accreditation - or insurance or skills development for builders or practitioners.

Mrs SMITH - So you are suggesting is that it is inspected by a competent person and then paid in stages?

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Mr BOOTH - Yes, that is correct.

Mrs SMITH - And there is no completion certificate until everything is correct?

Mr BOOTH - That is right.

Mrs SMITH - On a lot of occasions that still falls back, does it not, to the consumer in that they cannot get the completion certificate out of the council because the work has not been completed to a satisfactory level, so the consumer is still the one with the house that is non-compliant. We have been given evidence of cases where the council has said, 'Do not commence that work' or 'Do not continue with that work'; the builder has been the only one on site, ignored the council, continued with the work unbeknown to the people who were having the work done; at the end of the day, they have no compliance certificate, the builder has walked - has not gone broke, just walked on to other jobs - and they cannot get someone to take up their issue. Where would you put that in your scenario of non-compliance no certificate for the consumer?

Mr BOOTH - The first point, Sue, is that that highlights the failure of the current system quite clearly and glaringly. A system that was competent would repair that because first of all, there would be no completion certificate on that building because it does not comply with the code. That would then trigger off this rapid disputes resolution process between the builder and the client. The client would go to the building board or commission and say, 'I have a dispute with this builder and I can't get a completion certificate because the council won't sign off' which then triggers off this 30-day disputes resolution and adjudication. The board would look at it. I mean, in that case it seems quite simple - if it does not comply then the builder either has to make it comply within that 30-day period or specified period or get a deemed-to-comply certificate from another competent building surveyor engineer which does provide then for procedural fairness and the ability to have some sort of different views on this. Provided it still complied with BCA, the project would be either ticked off or if it could not be then there would be an order made for restitution by the builder. If the builder did not do it then the commission or board would contract to have it fixed, the completion certificate would then obviously be granted by the council, the consumer would be okay and that would be the end of the matter for the consumer - 30 days later they would have a resolution to the dispute.

The board or the commission would then go after the builder and either remove their accreditation or sue them and require them to pay for the costs.

Mrs SMITH - So you could only do that with some sort of first-resort insurance or the board carrying that until they had progressed the issue with the builder?

Mr BOOTH - Yes. It is my view that with the size of the building works and the pool that is available is so big that the pool should be held by the Government or a board. You would have heard from the Builders Collective of Australia of their national resolution and we adopted that as being a very good proposal. It has a lot of merit. I believe the reason that they developed that model as a private industry-run board is that the various governments have said, 'We won't involve various bureaucrats. We will not accept regulation of the building industry to fall back on the Government. We're not prepared to

do it', and so they developed a private industry model rather than a government model. The Queensland model, I think, is worth having a look at. My understanding is that that is a system that works very well. I believe that the Builders Collective of Australia is now happy with that. I have spoken to a lot of builders who have worked under that system and they find it works in a very efficient way. For building starts it is a very quick turnaround to get a permit to start through that system.

CHAIR - Could I just indicate to members that we are down to the last three minutes. We haven't gone to the matters that Kim wanted to raise regarding term of reference 1.

Mrs SMITH - We have looked at the Queensland model. Do you think we have the critical mass? Queensland accredits right down to the painters, the decorators, the wet-area specialists and the waterproofing specialists et cetera, so they have a much bigger pool.

Mr BOOTH - You need to analyse whether the pool is big enough. I think it is here if you make sure that you have proper inspections. That is the key to it. If you have proper inspections you should not get payments out of the pool and if you link the builders accreditation back to the failure or otherwise of the work then you are going to get the bad builders out of the system - and there are obviously some. It may be that the pool needs to be joined as a national thing, or with Queensland or something like that, to make a more efficient pool. I think the capacity is there. At the moment nationally the estimate is between \$300 million and \$350 million a year in home owners warranty or building warranty insurances paid by consumers but virtually no payouts and that just leaves the country. So I think it is in the national interest to keep that money in Australia.

Mr WILKINSON - As long as it is underpinned with inspections, that is really what you are saying?

Mr BOOTH - That is the key to it. I have been in the trade myself and I know that the standard of competence of some of the building surveyors and inspectors that councils have employed over the years leaves a lot to be desired. That is not a comment on all of them but some are absolutely hopeless and incompetent.

Why is it a conspiracy? That is the question, Ivan, isn't it?

CHAIR - That is fine, because it goes to your submission.

Mr DEAN - The question is simply taken from the brief you have provided to us, Kim. You have indicated here that there was a conspiracy, or you believe there was a conspiracy, to break the law with regard to the Building Act 2000.

Mr BOOTH - I think it is section 20, part 2, of the Building Act 2000 that contemplates competition in the building industry, where it provides for other accreditation providers. Clearly, the Attorney-General has given evidence to our Parliament that the agreement signed between Bryan Green and John White two days before the election that removed the ability of a future minister to provide the competition without triggering a penalty to the Crown of \$2.5-odd million was unenforceable because it was illegal. In other words, there was an agreement signed between the minister and the director of the TCC, I believe, which was unenforceable because it was illegal. Also, we know that that

document was not supposed to see the light of day. It was a private arrangement. In Parliament the Premier claimed that he had no knowledge of the deal until it broke in the *Australian*. If that is the case, then obviously the minister had kept this extremely quiet from other members of parliament. I don't know about his own side, but he certainly kept it quiet from the rest of the House of Assembly. It was an illegal deal. In that sense there was then a conspiracy, I believe, or at least an attempt by the Premier to cover it up when he found out that the deal had been signed. He was not forthcoming and honest with Parliament with regard to the nature of the deal, or even that a service level agreement had been signed. That all points to the need for you people to inquire as to who was involved in that conspiracy, whether it was the minister acting with John White alone or whether indeed there were members of his staff who conspired to break the law and for what purpose, and we do not, at this stage, know whether the minister received political donations from John White, which is a matter that should be inquired into. I believe there were some donations made to the party by either that organisation or that individual prior to or around the election and there is the matter of whether in fact the Deputy was bargaining for office in some way or other by Mr White exerting his capacity to pull numbers, which is the Labor Party way of transition strategies in terms of becoming the Deputy or Premier or a minister or something.

CHAIR - Any further questions? Do you have any concluding comments you would like to make?

Mr BOOTH - Only very briefly. I think we are going over the same ground again basically but this inquiry is way overdue. I congratulate the upper House again for doing it. I hope that you are able to come up with some recommendations for Parliament for resolution of what is a major problem. Once again I say that the builders must be assessed on their skills, not their wallets, that the trade associations have no place to play in regulation nor the private insurance market. It should be an industry or government fund rather than private insurers. Insurance must be a first resort and it must be underpinned by a proper, competent inspection regime that is linked to stages of completion so that we do not get a situation where a consumer has paid out a lot of money to a builder which they then can no longer recover. I think if you did that, it would be a really key part of the whole way that the regulations need to move and I say that from both my own experience in the industry for many years and also from representations brought by builders to me, and consumers.

Mr DEAN - Can I take one point here? You talked about the inspections and you have emphasised that a lot and you are aware that there has got to be occupancy certification made before homes can be occupied and all of those issues. I should imagine you would also be aware of the dearth of people in the surveying areas and the inspection areas that carry out these functions and activities. I was really thinking there might have been a comment you want to make on that to try to make this a better system.

Mr BOOTH - Yes. Obviously there is an issue there in the failure of the system, I suppose, to acknowledge that we would need to train adequately sufficient numbers of building surveyors and inspectors. I believe a bit of a *Chicken Little* thing has come into this whole debate, that somehow the sky is going to fall in because someone builds an uncompliant building or whatever. The system did function okay with competent builders prior to 2002. Since that time we have to ask ourselves why it is that 40 to 60 per cent of the mainland work is done outside of the compliance and the level in

Tasmania is probably similar. I am not sure but it would be possibly 40 to 50 per cent of works that are now built outside of compliance and the answer is not by tightening the regulations to prevent people working unaccredited, it is by bringing in regulations that assure that the building project is going to be built to a competent standard and that is not achieved by simply measuring the builders' skills by the size of their assets because then they are driven outside of compliance.

Apprentices cannot join the industry; people who suffer a marriage breakdown or some other thing are driven out of the industry. Fancy if anybody here separated from their partner and they were thrown out of Parliament because their wallet was not big enough anymore. That is the way it works if you are a builder.

Ms THORP - In your earlier remarks it seemed to be that you disapproved of the situation whereby TCC were either going to have their contract expire or they were going to be bought out of their contract by the agreement with Minister Green.

Mr BOOTH - Yes.

Ms THORP - Are you aware whether any other such suggestions were put to Mr White by any other political party?

Mr BOOTH - That it was inappropriate that they -

Ms THORP - Say that the result had been different and a different party had been in power, are you aware of any suggestions -

Mr BOOTH - I think I have understood what you are saying. We went to the last election saying that we adopted the Builders Collective Australia national resolution warranty insurance which was obviously an industry administered system and therefore it was contemplated that private accreditation would not exist after the election. I believe that the Liberal Party came out with a similar position; I think they said they would abolish the TCC, which technically is not possible to do. The TCC was properly accredited under the Building Act 2000 as the body accrediting them. So, in that sense, you had to find mechanism for disposing of them and I think that would become a self-fulfilling prophecy in terms of the TCC's failure to regulate the Building Act themselves. The fact that the minister signed an agreement which was illegal because it broke the Building Act 2000, that 20(2), it also follows therefore -

Ms THORP - I'm sorry, how did it break 20(2)?

Mr BOOTH - Because 20(2) - and I think I am quoting the right section - is one that contemplates the provision of other service providers in terms of accreditation.

Ms THORP - It allows them?

Mr BOOTH - It contemplates, yes. Because that discretion in the future, or even by that minister, was removed by signing that deal, therefore the Solicitor-General's advice to the Attorney was that that deal was unlawful. Therefore it is unenforceable, so it would have no bearing on compensation, say, for the Crown.

Ms THORP - Okay, but to go back to your original one, say there had been a Liberal government or a Liberal Green accord or whatever after the last State election do you have any knowledge of any offers made by the Liberal Party to Mr Green in terms of buying out his contract?

Mr BOOTH - No, I have no knowledge of that at all. I just know that the Liberal Party's policy, before the election was to abolish the TCC which, as I said, is not possible. But certainly our position was quite clear, that had we been in a cooperative government or had some role to play, we would have changed the system and it was not contemplated the TCC would be part of that.

I think the mechanism for offloading the TCC has now become clear through this committee's hearings and statements made by KPMG when they came here that in fact the TCC were not fulfilling the scheme themselves so therefore automatically they ought not be an accrediting authority because they broke the terms of their own appointment. In my view, they have lost their accrediting rights by not complying with their own act so therefore there ought not be any need for any compensation and there certainly should never have been some exclusivity arrangement. Because they failed to meet it, I think it is a reasonable thing that they should not be doing the job.

Ms THORP - Thank you.

Mrs SMITH - Is it not a fact also under the Building Act, regardless of deals done or not done or anything else, that the discretion is there to stand down an accredited corporation if they do not meet the act, as it stands? So there is no need for deals offered in any direction? The act, quite clearly, says the minister has the discretion to stand down any accreditation body? Is that your interpretation of the act?

Mr BOOTH - You have said it then. I was attempting to say there simply that the minister ought to have done his job as a minister and stood the TCC down a long time ago because he knew they were not complying. He had had representations. I had taken delegations of builders privately to see the minister and bureaucrats and they had been completely ignored. I think it is reprehensible because they were the people who are the industry, who have lost their livelihood or parts of their livelihood as a result of the act itself and the minister's consistent failure to recognise there was a problem; in fact, to the contrary, to lock in a deal with a corporation that was not performing and in fact was causing an enormous amount of problems in the industry. To lock that in is just completely unexplainable and unforgivable and goes both to his competence and whether or not in fact there was something in it for him. I do not know. That is a matter for the DPP.

Ms FORREST - Kim, around the time of those meetings you convened, is that when you first notified the minister that there were concerns, not only by yourself but also by the builders that had been to the meetings? That was when you first raised it?

Mr BOOTH - Absolutely. I made sure that I tried to take the minister with me in regard to this. I was extremely gentle with the minister in regard to the problems that this act was causing and I tried to negotiate with the Government and the minister and in fact prior to that with Mrs Jackson when she brought in the Housing Indemnity Act amendments in 2003 that this was a major problem. If you go back to the *Hansard*, it is all recorded

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there. I have made these statements on many occasions. Furthermore, there was a protest action outside Parliament after those meetings. An assembly of builders o came to the Parliament and we debated the motion in regard to this Building Act. Delegations from Victoria came to see the minister. An owner-builders collective of Australia sought meetings with the minister on a number of occasions.

The minister was clearly on notice that there were major problems, and then I personally drove a deputation of builders who had been excluded by the system from Launceston to Burnie to see the minister in his office, for him to be able to have a personal, first-hand, off-the-camera, off-the-record discussion with these builders to understand what this had done to them as building practitioners. Some of these builders had been in the industry for 40 years, with qualifications coming out of their necks. They had worked on Olympic Games villages, as supervisors on five-storey building constructions in Victoria, and never had a complaint against their works. They had built cottages with trained apprentices - and one's son had been a building inspector, I think, on three councils - and they were refused accreditation because of their assets.

CHAIR - Kim, I think that message has been communicated very clearly throughout this part of the hearing. If members feel there is a need to have you back, we can certainly do that, but at this stage I want to thank you for your interest across a wide span of time, plus your participation today.

THE WITNESS WITHDREW.