

**THE PARLIAMENTARY SELECT COMMITTEE ON THE COSTS OF HOUSING,  
BUILDING AND CONSTRUCTION IN TASMANIA MET IN COMMITTEE ROOM 2,  
PARLIAMENT HOUSE, HOBART, ON TUESDAY 25 JANUARY 2011.**

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**Mr ALLAN GARCIA**, CHIEF EXECUTIVE OFFICER; AND **Dr KATRENA STEPHENSON**, POLICY DIRECTOR, LOCAL GOVERNMENT ASSOCIATION OF TASMANIA, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** (Mr Hidding) - Thank you both for coming along and for your excellent submission to this inquiry. The Parliament has agreed to set this committee up, which would suggest that there is sufficient concern in that place about the cost of building in Tasmania. That doesn't necessarily mean that it is about any particular cost but obviously from our perspective it is our duty to look at various market conditions as to whether there are any skewed situations on costs, various government costs and clearly local government costs as well, which you acknowledge in your submission. Clearly you are the peak body of the local government sector in Tasmania and you are going to be key to our deliberations in this matter so we look forward to a frank exchange. Would you care to make an opening statement?

**Mr GARCIA** - Certainly. I'd like to start by saying that this is not just a Tasmanian phenomenon, this is national. I suppose there is a perception that local government is adding a significant cost to the construction effort in the country, I would have to say largely driven by the Property Council of Australia and the HIA nationally through their policy bodies. That has a tendency to permeate down through their State bodies and create, I think, some degree of hysteria in some jurisdictions where it is inappropriate. Making comparisons in Tasmania with what is happening in Sydney, Melbourne and Brisbane is utterly ridiculous. Certainly capacity to access land and some of the fee structures that exist in those jurisdictions simply don't exist here. So from our perspective we have always found that a national perspective on this issue is inconsistent with prevailing conditions in this State. We don't have the same level of issues.

We get concerned in particular when there are comments about delays in regard to planning and the cost of 'footloose' investment. In reality, we see very little of that in terms of what's not being built and what's not being approved. I think in discussions with councils, if we sheet home where - and I don't want to call it blame - the responsibility is for a lot of this work, good investors come with good applications and good proposals and they don't get knocked back.

Let us talk about David Walsh for a moment. I'm not sure how much time David Walsh spent with Glenorchy City Council but I haven't seen anything in the press that said, 'We've been delayed on the biggest project in Tasmania' for any length of time. We often get the Dick Smith one cited by the likes of the TCCI. The Dick Smith proposal was approved; people tend to forget that. It was a very sensitive one but it's heralded as the hallmark of terrible destruction in Tasmania. It was a sensitive project, with a council that possibly

didn't quite have a skillset that matched the requirement of the complexity of the project, but nonetheless it was ultimately approved and within a time frame that I expect most investors would be quite pleased about.

In terms of projects that aren't getting up, in reality, if we have a look at the reasons for them, we are probably finding that most of them are due to incomplete data and information from the applicants themselves. In addition to that, there are many things that exist within the legislation that the Parliament is responsible for that are not the responsibility of local government, like threatened species and heritage, although we have obligations regarding heritage. We also have things like infrastructure intersection. Whilst local government has responsibility for certain infrastructure there are other intersections with the State where, while there is not a requirement for absolute referral, there are conversations that happen with the State to ensure that a project of any significance does have the appropriate infrastructure associated with it.

So I think there are a lot of issues outside and complementary to local government that create some angst amongst developers. As I said before, the good developers find this out upfront. They know how sensitive their site is, what they need to do, who they need to get in touch with, and what sort of expertise they need to get involved to get those projects up.

In terms of what our councils do in approval, we have a 42-day approval period. Our statistics show that in the majority of cases we are well inside the 42 days. There is conjecture as to what 42 days represents. If I am a developer, I say, 'Yes, there are 42 days but it can take me 142 days because of the stop-start nature'. What the developer has to realise is the reason it stops is the inadequacy of information or further requirements. There is no question that from time to time the interpretation of a planning scheme by either party, whether it is the council or the developer, can create some lineball difficulties in terms of what their expectations are. It could be said at times that some council planners might be pedantic. It could also be said that some of the cultural heritage officers might be pedantic.

What we do not have is a pure system that is black and white within a planning scheme, so interpretation comes into play and some of that stop-start is around interpretation, and that goes for things like, in particular, cultural heritage. I can cite an example presently where I am aware of somebody who is doing a development on the Glebe. It's a fantastic development, I have a vested interest, that is okay, but the council's view is that it needs to be more in keeping with the actual precinct, notwithstanding the fact that next door there is a factory. But interpretation comes into play and so there is this issue of the developer thinking, 'I've got a fantastic thing, I'm prepared to spend a lot of money', and what someone might deem as being appropriate within a precinct is often I suppose a problem in terms of time frames and therefore for cost.

In terms of what we have had that local government pointed to us in the past as contributing to the high cost of development - and there is a lot made of things such as developer charges - in the main in Tasmania developer charges have not been used. There have been very few councils that have used developer charges. I go back to this point about New South Wales and Victoria. In New South Wales, developer charges are significant. Some councils have

used developer charges up there for childcare facilities, for libraries, for all that social infrastructure. In this State those that have used developer charges in the past have largely done it around water and sewerage, so it has been as an offset to the sunk expenditure in that infrastructure.

As you know, with water and sewerage moving to the water and sewerage corporations, councils now effectively do not have an ability to levy developer charges. There is some conjecture around whether or not they should or can, but in the main they do not now because it has gone over so from that perspective councils can't be accused of developer charges. Developers will say it is not appropriate now that they are in the water and sewerage regime that there are developer charges but, again, I think those of you who understand developer charges know it is more than appropriate and as long as it is transparent and can be justified in terms of the modelling, it is quite appropriate. So I think any suggestion that councils are charging developer charges is very inappropriate.

In terms of things like development costs, planning fees and the like, the reality is that different councils use different models and I am not going to defend councils or suggest anyone is doing anything wrong. They have a model of charging that they consider appropriate at their place - some are capped, some are uncapped, some are on a percentage basis, some are on a use basis. In the main I would anticipate that these are not charges that are inconsistent with any other jurisdiction or place where this work gets done. I do not believe that in Tasmania those charges are exorbitant or in excess of anything else operating within the country and largely those charges relate to the actual cost of undertaking the analysis and the work that is required.

In terms of planning broadly, while we have criticism about the planning system from time to time - that is, daily in every newspaper - at the end of the day councils are policy takers. This is a State government planning system which the local government entities are required to interpret and put into effect. If there are problems with the planning system you in the Parliament should fix it, okay? From my perspective that is being fixed through the regional planning process templated arrangements for planning schemes which will bring about consistency. Some of the work and the legislation on foot presently will bring about consistency and standardisation will take away high degrees of interpretation. It will create a whole bunch of other issues, by the way, in terms of whether or not we have the skillsets within local government to be able to manage some of that, but I think we are moving to a place that if cost is an issue and if interpretation is an issue that adds to costs of development, then I think we will find that standardisation should - I will not say eliminate but - alleviate some of that cost structure.

We make a comment about land supply and, again, I hark back to this interstate comparison. There is no land in Sydney, there is no land in Melbourne, but there are truckloads of land in Hobart, on the coast, in Launceston and anywhere in between. The big issue for developers I think is that we still need to have sensible development. The cost of developing something out at Woop-Woop still requires infrastructure connection, major costs to the ratepayer and the taxpayer for things like medical services, childcare services, all that other infrastructure you need beyond hard infrastructure, and again I come back to this policy requirement that

we need to have settlement strategies to confine development until we can afford development to expand as we need it.

Unfortunately we still have this idiot mentality that everyone deserves to have their own house and they deserve to be able to buy it cheap and on-tap and they can have a new home if they desire, but the reality is that we cannot afford as a community to continue to provide that service. We need to ensure that we get greater density, we need planning schemes that allow greater density and, as citizens, we need to get over the fact that someone is going to build three units on the block next door and they are going to oversee our privacy. It is a maturity issue and we are a bit spoiled in Tasmania, let's not kid ourselves, but the day will come when the Melbourne, Sydney and Brisbane issues catch up with us as well.

So I do not think land supply is an issue at the moment in terms of housing affordability but the hidden cost in all that is what we around this table pay for that extended development through not having settlement strategies and decent planning for infrastructure in the future. While there is a State infrastructure plan, it certainly does not go to the point of dealing with these issues in terms of settlement and the like. Am I missing anything here, Katrena, that is important?

**Dr STEPHENSON** - No, I think that is all the key things.

**Mr GARCIA** - Just briefly, while we have some very experienced developers who are quite capable and have many projects that they wish to roll out, the reality is that we have a shortage of highly-skilled planners in this State and in the country, and I think people need to understand that with the best will and intention in the world and with the best findings of this committee and the Parliament, the bottom line is that you still cannot insert expertise where it does not exist currently. Despite the fact that we are trying to cultivate more planners with more skills that are relevant to what is required, the fact of the matter is it is not a short-term fix. It is like not having enough mathematicians or not having enough scientists, teachers or the like. You cannot make it happen overnight and even if you can make it happen overnight, the reality is they will not get the experience and the expertise they require to do things quickly. So one of the issues that people need to consider against this backdrop of wanting to make these things more affordable, more smooth and more flowing is that you will be doing this against a backdrop of planning reform that is going to require the expertise that we have changing its mindset and implementing a whole process and then we say 'and we want to save some money on housing as well'.

So there is an issue around capacity and what we can do in that regard. If people think the answer is amalgamating councils, or whatever they might believe, that is still not going to get over the fact that you still have a finite resource in the planning field and it is a blockage. It is an issue and probably one we would acknowledge as not necessarily being a major contributor to the cost of housing but one which obviously does create consternation and certainly creates angst for us as well in terms of that capability.

**Ms ARCHER** - You mentioned the 'A' word. I know some councils are looking at shared services. Do you see that that could help alleviate some of the costs associated? If there were some shared planners, what sort of impact could that possibly have?

**Mr GARCIA** - Elise, I think it is going to be a lot easier when you have standardised planning schemes. If we look at Huon Valley, Huon Valley Council's planning scheme is something like 35 years old so it's an antique by any measure. The Kingborough one is quite modern - not the most modern but quite modern. From a planning perspective I am not suggesting a planner therefore can't interpret, but it's not an easy process to flit from one to the other. If you've got an experienced planner who has been around for a little while, a lot of this is nuance and experience, but I think when you get planning schemes looking very similar, with the regional plan over the top of that, your capacity to move outside is going to be quite difficult. I think there is a significant opportunity to upgrade that shared servicing arrangement to overcome some of those deficiencies.

At the present time it is quite difficult. There is also a mindset in councils about, 'We want our planner. We want our this. We want our that'. That is a maturity thing. I think councils are being more accepting of the fact that if they work together they can get real savings. They still want their own set of Matchbox cars and Barbie dolls. They all want their own. But I think out of necessity they are finding that some of those sharing arrangements are netting some results. Planning is such a difficult one in terms of the flak you can get from your community. Most still want to stick with their own people. They are very reluctant. Some use consultant planners at high cost. So they are acknowledging that there is an offset against high cost versus a fly-in from another council. Certainly I think the likes of Tasman now are using that type of service and so are some of the smaller councils. Where they cannot really justify having a person on the ground all the time they are looking at those sharing arrangements. But they don't like it. They still prefer to have their own person. From your experience on council you would know the affinity with the elected members, knowing how the elected members are going to react and respond. It's an important issue to have rather than someone just coming in on a Friday and saying, 'Well, here's the answer'. Yes, that's the answer but you know what is going to happen upstairs in another place.

**Ms WHITE** - Do you think councils should be amalgamated?

**Mr GARCIA** - You are asking the wrong person.

**Ms WHITE** - You talk about a lack of skilled planners in Tasmania and obviously skill shortages.

**Mr GARCIA** - Katrena handed me an article and it is something I quote quite often, if amalgamation is the answer, what is the question?

**Ms WHITE** - How do we respond to demands of the community if we don't have the capacity with these small councils to do that? We're talking about shared services perhaps.

**Mr GARCIA** - Do you think the councils should be amalgamated?

**Ms WHITE** - I'm asking you.

**Mr GARCIA** - I don't believe they need to be. These councils are meeting the needs of their communities, with gusto. In fact some of the smaller councils are probably doing it better than some of the larger councils. The councils can respond to their community every which way. The whole thing about any change to any structure is what is the value proposition - what is the value proposition to the community and overall in terms of this capacity issue? If you have a small community - Dorset, for example, that has had heartache after heartache in the last 18 months - if that local council is, say, Launceston-based, how do you anticipate that community might have responded if Launceston council saw them as an outriding sort of thing? It takes a while for the community to adjust to change in any structural arrangement but at the present time 29 councils is a really good number.

**Ms WHITE** - Looking at your submission on page 14, data on council performance, you have an average for the number of days that planning applications take and building applications take. Some of these councils take an extraordinary longer time than the average. Can you explain why that might be the case?

**Dr STEPHENSON** - With the planning ones it may depend on the complexity of a particular application, which can throw out the statistics quite significantly if you only have small numbers of applications as a whole. For a small council that doesn't have the volume, one complex application will skew the figures quite a lot. If you look at things such as the building approval times, you will notice that it is often the bigger councils - and that is because they have so many and the building permit process is quite complex. The builder has to provide a fair bit of information up-front, there is only seven days, but if they haven't provided their certificate of likely compliance and their plumbing permit application as well, often a council won't reject it; they will hold it on the books because it is quicker to seek the information rather than throw it out and start all over again in terms of workload and the like. That will skew the numbers because council is being helpful as opposed to saying, 'Forget it. You'll have to come back again'. With the building permits, that's quite a common reason. The certificate of compliance is provided by an external party, so that can slow things down. Sometimes it is out of the council's control.

Allan mentioned that in terms of resource sharing we have some of our smaller councils that share planning resources. Brighton provides support to Tasman, for example. While in the past it has happened because of necessity, they haven't been able to attract staff or they haven't had the volume to justify having a full-time staff member, I think it is becoming more proactive in the way they look at sharing resources. It is the same with Heritage officers and community development-type roles where, as a small council, you maybe can't justify a full-time position but you can share a position across two councils and also start to get a more regional perspective on things, and it applies for planning as well.

**Mr BACON** - You said a complex application can throw out the average. Would it be good if those complex ones could be referred on to the planning commission or someone else?

**Dr STEPHENSON** - We're waiting to see what impact the new legislation will have. There hasn't been a project of regional significance declared yet and we don't really understand what the criteria are fully yet. It may but I don't know that it will speed things up.

**Mr GARCIA** - Let us be clear here, isn't the Tasmanian Planning Commission a shining light? In reality I would much rather have my stuff dealt with at council in a timely way than sending it to the planning commission. The planning commission is under-resourced, has too much work to do, is going to have a situation in the next six months where it's going to have 29 planning schemes under interim arrangements. It cannot scratch itself. If I was a developer who had an option of dealing with my issue at council or sending it to the planning commission, I tell you where I'm going.

**Mr BACON** - Would that depend on which council it was?

**Mr GARCIA** - No, it shouldn't.

**Mr BACON** - So you think all councils would perform significantly better than the planning commission?

**Mr GARCIA** - Regarding a particular project, whether it is a project of regional significance or otherwise, if I am a mayor of a council and I do not want to abrogate my responsibility here, but let us use Tommy Smith's development that is going to happen in ABC place - and I can see that this is going to be a significant issue for me in terms of my capability at my planning level and is going to create community angst which maybe is going to be difficult for me to manage, perhaps there should be an option for me, as the mayor, to talk to my council about whether or not I wish to refer that. Not a call-in power -

**Mr BACON** - No, as a referral.

**Mr GARCIA** - but more one of me wanting to refer on the basis of capability, expertise or whatever. I do not think councils should be able abrogate that responsibility on the basis that it is going to be hard, I do not think that should happen, but if it is one where there might be some criteria that you could say, 'Under these circumstances we would refer it', I do not know that that is necessarily a bad thing. You really would not want to do that for everything and you really would not want to have a capability. You would almost want to say, 'I would like to refer this', someone make an assessment saying, 'Under the circumstances that is reasonable and we shall do it'. But you would not want a multitude of councils saying, 'Refer, refer, refer' because fairly soon you might just say, 'We will get someone like the planning commission to do that'.

In its current form the planning commission could not deal with more than it has now. It cannot deal with what it has now. The planning commission in terms of aggregating resources is another failure at the present time. It cannot cope with the traffic it has presently so there is no point in giving it a whole lot more to do.

**Ms WHITE** - Katrena, following up from what you said in respect to the data, you mentioned that the larger councils sometimes take longer because of the volume of work. Are they under-resourced or do they not have the skills or capabilities? Why is that?

**Dr STEPHENSON** - If you look at the planning side of things, for example, Hobart, which probably has the highest volume of planning applications, meet their statutory time frame despite the fact they have 850 applications a year. So it is only on the buildings approval side that things come down, and seven days is not very long when you have 800-plus building approvals coming in a year. So I think it does not take much when you have that sort of volume to skew the figures if you have not received the information that you require from the builder.

**Ms WHITE** - Looking at a growing council area like Sorell, for instance, their average days for approval of building applications is 39 and the median is nine, so that is 30 days over the median. Why would that figure be that high?

**Dr STEPHENSON** - I do not know exactly for Sorell. I could certainly undertake to get some information from them.

**Ms WHITE** - I thought they would probably have the same volume of staff as Hobart, so they are still dealing with quite a large number of applications?

**Dr STEPHENSON** - I would have to look at the previous year but that seems quite a high volume for Sorell. I am wondering whether they have had some major developments going on but I could undertake to check that.

**Mr GARCIA** - Yes, they do; they have massive development.

**Dr STEPHENSON** - I am pretty sure that is higher than previous years in terms of the volume. It may just be that they have had this spike of work but I could undertake to look at the previous years.

**Ms ARCHER** - Do you have any evidence as to why developers or any type of applicant are not providing councils with the required information? Is it a problem with the planning scheme? Is it a problem with councils not saying up-front, 'We are going to require this, this and this'?

**Mr GARCIA** - No, I think again it comes down to interpretation. There were the partners at Penguin. They bought up all the town and they were going to build a new Disneyland at Penguin. The planning scheme was quite clear about what you could do and you could not do. You could build four storeys, you could do this and you could do that and you could do the other and they said, 'Bugger. We will try on six in an effort to get five'. You know what, the planning scheme said four and so despite going and going and blaming and blaming, the planning scheme was quite clear about what you could do. There was notional discretion but on the waterfront you are not going to go berserk.



So I think some of this is about pushing the envelope. In some planning schemes there is marginal discretion and councils can exercise that discretion but generally speaking, you want it to be in the public good, not in the developer good. But the developer will seek to use that on the basis that they can present an argument saying, 'This is for the welfare and benefit of Tasmania, certainly not for my benefit'. So there are opportunities within those discretionary arrangements for developers to push the envelope. It comes down to the complexity of the planning scheme. The planning scheme is a complex document.

**Ms ARCHER** - Would you agree that in some circumstances, though, councils may shift the goalposts halfway through? Do we have any examples of that? I am sure it happens.

**Dr STEPHENSON** - At the moment within planning schemes there are a lot of discretionary elements and by its nature discretion is complex. With the reform activities that the Planning Commission have underway they have hearings at the moment around both the common template, which has a greater list of exemptions and more permitted uses, so that may reduce the number of discretionary applications. There is also a standard for residential dwellings under consideration at the moment, so if you fit the standard it is a permitted application, that also may reduce the number of discretionary applications and make it clearer to developers. What we found with the EDA project that we have been piloting in Hobart and the northern midlands -

**CHAIR** - EDA?

**Dr STEPHENSON** - The electronic development assessment project, which is Commonwealth-funded as part of the Housing Affordability Fund. When we were doing the preliminary business case we found out that in Tasmania, while we do have professional developers, a lot of applications come from mums and dads who are not skilled in development applications and the biggest delaying factor was that the applications were incomplete in the information required, particularly as they pertain to discretionary applications which need quite a lot of information which is clear, but if you are not a professional it is sometimes harder to work your way through the scheme.

The idea of this project is that the planning scheme is codified electronically so that you have to answer each question and provide the information required before you can step through and it provides guidance on that. It has been an interesting project in that it is quite an expensive tool and it would appear in Tasmania that the benefits are really only there for the big councils who have high volumes in terms of the initial outlay that councils would require unless the Commonwealth decides to fund more councils to do it. But certainly for councils with high volumes of development applications this might be a way to reduce the numbers of incomplete applications and speed up the process and it also allows some internal process modifications which allows them to assess and respond faster. So we are optimistic that for bigger councils this might be a good avenue.

**Ms ARCHER** - Which councils are currently participating?

**Dr STEPHENSON** - Hobart and Northern Midlands councils are trialling it and we had some funds left so we are working on business cases for Clarence, Launceston and Kingborough.

**Mr GARCIA** - What needs to be considered in that context is that it is a national agenda and in other jurisdictions you have significant referrals so in Tasmania the council is the decision maker. In Victoria you have mass referrals to government agencies, utilities and the like. We have two in Tasmania effectively; we have two formal ones, one being where the gas lines are and the other one being now water and sewerage, so they are the formal ones. More informal ones relate to things like heritage, threatened species and the like where there is not a pure referral, but in other jurisdictions when you put your application into council it literally gets on the conveyor belt and then goes off here, there and there. The intent is that if my application is electronic and I can flick it to all those referral agencies at once then it should be able to be dealt with appropriately. In Tasmania it is not as complex, therefore the business case around the EDA, as Katrena says, in high volume it is almost there but in low volume it does not come anywhere near.

I make one other point on what Katrena was saying about the mums and dads factor. The reality is that everyone knows a draftsman. They used to be architects but there are now people called 'building designers' who are up-tempo draftsmen with a few skills in architecture. In reality, though, it comes back to this issue of while you say, 'I want a house that looks like this that has this functionality' and they can draw it, it does not necessarily have any relationship to the planning scheme capability. I am not blaming draftsmen in particular, but the reliance on getting yours done quickly in the way you want it done, and cheaply, efficiently and effectively, is often a problem in terms of what is actually required under the planning scheme. It's not the high end, it is the low end, people who want to have their nice little modern place that does this, that and the other with that and that and that. Often the draftsman can do it quite quickly, but unless they are fairly good in terms of understanding the planning scheme they may get it totally wrong.

**CHAIR** - Still on page 14, this matrix, if you wouldn't mind. There is more information we require than is obvious here and you should give us some advice as to how we should go about getting it and whether you as the peak body can provide it for us. For instance, the actual question about Sorell as to why it took an average of 39 days for its building applications is something that we are not in a position to ask about because we will not be talking to that council. However, we will be speaking to Launceston about their 34 days and will explore that with them. But on the Sorell matter, I wonder is it something that you could provide us a response for?

**Mr GARCIA** - We would be happy to look into that for you. Yes, absolutely.

**CHAIR** - So they are the two that stick out on that. Now let us go to the left of that page which is about planning applications. You were saying in your introduction that while there are some diversity of charges between councils that is an appropriate thing for councils to be able to do. However, there are some stark policy differences between councils and I don't yet understand why they exist. It could be just in their planning schemes. For instance, it is legend amongst the building industry in Launceston that in Riverside, just across the bridge

in the West Tamar municipality, you will pay a planning permit for a permitted house of \$499 or thereabouts, but on the other side of the border in Launceston you don't. Then out the other end at Longford you do, apparently, so that is a stark difference.

We are not just talking about the delays - and I suspect the Property Council and the HIA are always on about delays because every minute is a dollar and time equals money - but where there are clear policy differences as to how you go about things, it could be argued that local governments are gouging in order to have an income stream to support their activities.

**Mr GARCIA** - Those are very strong words from the Chair. The issue is that -

**CHAIR** - It could be argued, and that is why I am exploring it with you.

**Mr GARCIA** - It could be argued, it might even be said, but I don't know that it is right. In terms of why West Tamar would be different to Launceston, recent amendments to legislation suggested that in particular cases a P1, which is a permitted-use house, must be assessed. I think there are three or four councils that have what is called a new planning scheme and within that you have this new category of a P1. A P1 used to just be a permitted use and you ticked the box and on you went, but it now requires you to make an assessment whether you have ticked the box or not. On the basis that you have a policy that says you must make an assessment, it is subject to a planning fee. You can waive it if you choose but I don't expect you'd want to. They have to go through a process and they still have to make the assessment. It might be a simple assessment as against a complex assessment, but they still have to do it.

The Planning Commission wants councils to consider every application on its merits, whether it should be permitted or otherwise, and therefore there should be a charge for everything. I said before in my introduction that councils are policy takers not policy makers in many cases and this may be one of those circumstances where their interpretation is such that on the basis that they have to do something, they try to align their policy across the board that says if they have to make an assessment there is a charge. Maybe there is an argument that suggests there could be a differential charge, a simple charge or a complex charge. I anticipate that might be the reason in the Riverside case because I do know the West Tamar planning scheme is one of those newer ones.

**CHAIR** - It's one of the new ones.

**Mr GARCIA** - Yes, so that could be the reason.

**CHAIR** - So therefore, as you say, the argument could well be that if you are going to charge \$400-odd, which is the same price for a really complex planning question as compared to a house which should be a 'cookie cutter' approach really, then I guess that's where the argument comes. It is the level of charging.

**Mr GARCIA** - I suppose there is a fundamental question, Chair: on what policy basis or pricing basis should councils charge? Should there be uniformity? Others who will present to you

say there should be and, as I say to some of those others, when I go to a builder and want my house built I don't seem to get the same price. I get the same house delivered but someone charged me \$800 000 and someone charged me \$600 000 - why is it so?

**CHAIR** - Market forces, I guess.

**Mr GARCIA** - Well, there might be market forces in councils as well.

**CHAIR** - That is what I am saying - you are saying there are market forces with that.

**Dr STEPHENSON** - And also how they have their planning department structured, what level of resourcing they need, whether they are able to attract in-house staff or are paying consultants -

**Mr GARCIA** - Yes, if I am outsourcing and paying consultant fees the chances are I am going to have a higher fee structure associated with my consideration.

**Dr STEPHENSON** - The Productivity Commission has said that councils must be working on a user-pays basis so councils will review these charges in line with their annual budgeting so that is why there is flexibility. Every council has a different level of community services.

**CHAIR** - We are going to have the Planning Commission here to unravel all this for us but is it your understanding that the new arrangements that are proposed are going to subsume some of this by having the standard residential -

**Dr STEPHENSON** - It will still require councils to make assessments, it doesn't take away from councils' requirement and in fact one of the issues we have raised about the Residential Code is that it is quite administratively burdensome for councils as it stands at the moment so it has not actually reduced the burden for councils in terms of what they have to do to assess it.

**Mr GARCIA** - The HIA may need to be very careful that it gets what it wished for. While the intent is to have something that sort of says, 'Okay, if everything fits there beautifully it should get a tick', now that you have this complexity of arrangements that are going to be beautiful you need to make the assessment against that. So while it should be streamlined it may be more administratively burdensome.

**CHAIR** - That is what we want to explore with the Planning Commission because that is a real concern if that might be the case, and some people are expressing that.

**Mr GARCIA** - Absolutely.

**CHAIR** - Some of the evidence we heard yesterday suggested - and it was second-hand but direct from building operatives - that you could in fact apply for and construct a house in the West Tamar municipality while Launceston was still thinking about it. When you look at the average of 38 days as opposed to 15 days you can see, especially if there were stop-starts in between, the validity of that sort of frustration bubbling from the building community. So

we need to clearly investigate that with Launceston and see why that is and what the resourcing is. As a group, we are determined to understand and we need to drill down a little further from this matrix here. Let us look at the planning applications for, say, Break O'Day, of which there were 269. How many of those were for domestic dwellings -

**Dr STEPHENSON** - That data simply is not available at the moment. It has been introduced from 1 July this year under the national requirements so we will be able to report in July next year a breakdown by different classes but they have only commenced collecting it by class from 1 July.

**CHAIR** - That is less important than the one we are really after, which is how many of these planning applications had their 42-day process stopped and restarted and then what were the actual number of days?

**Dr STEPHENSON** - Again, that data is not available at the moment but it will be under these new requirements.

**CHAIR** - Why would councils not have that data available?

**Dr STEPHENSON** - Councils would have to go through all their individual applications at the moment -

**Mr GARCIA** - Councils may have it available but there is no collection point at the moment.

**Dr STEPHENSON** - Yes, the division has never collected it and it has never been required at a collated level.

**Mr GARCIA** - The issue for us in terms of presenting this data is that this is data that is collected. Your question as to how many of those 269 would have stopped would possibly require a question of the council to say, 'Of the 269, are you in a position to provide that? Could you give us a percentage?'

**CHAIR** - What we are after is how many days it has really taken.

**Mr GARCIA** - Yes, and that is probably the hard one and then that becomes a value judgment as well because if it was supposed to be 42 and it ended up being 92, what do you assign to the 92 if it was all the fault of the proponent?

**Dr STEPHENSON** - Or Heritage Tasmania.

**Mr GARCIA** - Or Heritage, or Aboriginal heritage.

**CHAIR** - Is it not possible that a planning authority such as Break O'Day, but only because they are on the top, could grant an approval with a condition that approval from Heritage be obtained rather than stop the whole process; it goes off to Heritage and then back to the council?

**Mr GARCIA** - I don't think the legislation allows us to do that.

**Dr STEPHENSON** - They can't under the LUPAA.

**Mr GARCIA** - LUPAA doesn't allow that. The requirement is that those things have to be taken into consideration as part of the overall permit.

**Dr STEPHENSON** - A planning permit can't be issued without the Heritage approval.

**Mr BOOTH** - You could issue a conditional approval, couldn't you? You issue all sorts of conditional approvals.

**Mr GARCIA** - You certainly could do that, Kim. In terms of saying, 'Yes, there's a permit that's approved and here's some conditions' but not to, I suppose, second-guess or leave blank issues around legislation.

**Mr BOOTH** - No, but I think what Rene is getting at is that you could have that conditional approval with a condition precedent 'Subject to approval by the Heritage Commission' or 'Subject to approval from an Aboriginal assessment'.

**Mr GARCIA** - I don't think we can issue a permit on that basis, though.

**Dr STEPHENSON** - We couldn't speed up anything.

**Mr GARCIA** - You still can't act on it.

**Mr BOOTH** - No, that's right.

**Dr STEPHENSON** - So it doesn't change the time frames at all, even if you could, because you are still dependent on waiting for the Heritage tick-off.

**Mr GARCIA** - I hear what you are saying. I think at the end of the day you still have a situation where there is still something that has to be done by somebody.

**Ms ARCHER** - And sometimes Heritage might impact on another issue which means that it couldn't be granted.

**Mr BOOTH** - Yes, I know, but you get a permit condition on certain things. If you don't construct it or do the development in accordance with the conditions, then you have an illegal development.

**Mr GARCIA** - There is no reason that we in council wouldn't like to say, 'Yes, we approve it all but with those other mongrels over there, you need to go and sort them out' and we would issue a permit on that. The question would ultimately be who issues the final permit. So if I give you a permit now saying, 'There's your house, you need to sort out your Aboriginal

heritage issue and that climate change issue', you have that and so you know from my perspective that you've done all you need to do here and then the Heritage report comes back and it says, 'And by the way'. So then I, as a council, might need to re-look at that or indeed if there is an inundation issue, I might need to look at that as well. Sometimes they are not purely discrete, sometimes they may have overlays that will bring council back into play - maybe.

**Mr BOOTH** - Yes, there could be.

**Mr GARCIA** - I'm flying by the seat of my pants here.

**Dr STEPHENSON** - I don't know LUPAA off by heart but I am pretty sure that you can't do it under LUPAA, but certainly if you have the planning commission coming to speak to you, they will know the answer.

**CHAIR** - We will explore that. It seems to me that if it can be stopped and restarted then this information could be taken at face value that the average days for approval and discretionary use is 31 in Break O'Day. If there were any stop/starts, it would have nothing to do with the council but it would happen for other reasons.

**Mr GARCIA** - Yes.

**CHAIR** - If the development community is saying to us that the 42-day thing is a nonsense because they are all stopped and restarted and they take on average 150 days, it is not necessarily a reflection on council but it is a body of knowledge that we need to know. What is the truth, what is the actual total time that these things sit in council?

**Mr GARCIA** - One assumes in your questioning you are asking things from the perspective of the developer as to why is it being stopped. I think it is something you need to ask because, as I say to you from a council perspective, we will talk about incompleteness or other process; from the developer's perspective it will be interesting to understand - they say everything gets stopped. In many cases when that is being stopped, the answer is, 'It's stopped because we seem to be lacking the engineering report', for goodness' sake.

**CHAIR** - That's one way of putting it but when you read the *Hansard* from yesterday, and there's more to come, you will see that the development community is saying that they suspect that councils are stopping them capriciously because they will never make it in 42 days because they've got way too high a stack of things to get through, so they are applying the stop and restart in order to stay under the 42 days. Opponents to anything always make lurid claims and we are not interested in how lurid they are, we are interested in some facts, and if that feeling is there then that needs to be considered by us.

**Mr GARCIA** - Far be it from me to comment, but I would find that ridiculous in its truth. In reality, I expect if councils have an issue with time they are certainly not stopping everyone. It is not a practice that would be condoned by the association. I anticipate it would not be a

practice condoned by the elected members of those councils either and I would suggest that if developers do have those issues, they need to take it up with their elected members.

**CHAIR** - So, in short, the answer to my question as to how we would achieve the actual days, you do not have any information available?

**Dr STEPHENSON** - Not in a similar form to this; it just does not exist.

**CHAIR** - We would need to go straight to the councils?

**Mr GARCIA** - I think that would be the best way. I think you want to think about what you ask because you could probably ask one question or five questions and get a whole bunch of rich data and if you ask only one question, it will probably lead to other things that you want to know. If they are having a look, if they are opening it up, and I expect most would be happy to open up because they want to present the best case they can, you might ask a series of questions.

**CHAIR** - We would subpoena them if they did not.

**Mr GARCIA** - Yes. You might ask Break O'Day, of the 269 that went through and with the 23 days' average for permitted use, how many were stopped and are you able to cite reasons and *a, b* and *c*. You might even give them some guidance as to what those might be.

**CHAIR** - There would have to be a reason to stop. Incomplete data would be the obvious one.

**Mr GARCIA** - Incomplete data, referrals, whatever it might be, but you might get some richer data by asking some other questions rather than, what was the length of time?

**Dr STEPHENSON** - I think you do need to be aware, if you go to councils, to ask that question. Some councils have very manual systems. So this is quite a resource-intensive ask for them which is why we gave them quite a lead-up for this national data collection to set up their systems. The bigger councils have sophisticated software so that they will be able to churn out the report.

**Mr GARCIA** - Maybe.

**Dr STEPHENSON** - But some smaller councils work on things like Excel and so it may be more complex for them to produce that information.

**Ms ARCHER** - Some surely report annually to at least reach KPIs perhaps?

**Dr STEPHENSON** - They report these figures annually to the Local Government Division.

**Ms ARCHER** - I mean in-house.



**Mr GARCIA** - But Elise is saying internally some will have other measures, and Hobart has, as you know, a ridiculously complex arrangement of KPIs. So, yes, it may very well be that in Hobart's case they have that, and indeed some of the others.

**CHAIR** - When will 2009-10 be done?

**Dr STEPHENSON** - The division should be putting that together; they are just getting the data in for 2009-10 now. There was a delay because there has been project under way to review the sustainability indicators in the data collection. So the data collection sheets only went out fairly recently for last year.

**Mr GARCIA** - If you ask the Minister for Local Government I am sure he will be able to give you an answer immediately.

**Dr STEPHENSON** - The data collection for that period is under way.

**Mr BOOTH** - Have you had it brought to your attention that there is a lack of resourcing in planning areas in departments that might indicate that there could be delays simply through lack of staff rather than the need for a referral? Is that something that is a problem in local government at all to your knowledge?

**Mr GARCIA** - I think it is a fairly commonly held view that there is a lack of fundamental resource within local government. The other issue is that while there is a resource there, recruitment is bringing with it people who are learning. So whatever is coming through is also immature in terms of experience and knowledge of not only the council arrangements but the broad planning structure. That is sought to be overcome by recruitment from elsewhere, interstate. Tough, because interstate as well is exactly the same. There are simply not enough planners in council land to deal with it.

In the old days, land use planning was the domain of local government and some State government. These days it is the domain of mining companies, forest companies - resource companies generally - and people doing land-use planning are now picked by utilities for natural resource management and a whole range of things. The pool that used to be available, that has probably always been the same, has diminished in terms of capability for local government to access. In addition to that, the other competitors for the resource are paying big bucks. Local government does not pay big bucks. I expect the statutory planning task is probably one of the most boring jobs you can possibly do as a land-use planner. It is not very sexy or exciting and if I have an opportunity to do that or that, I am probably going to choose that most times.

I think, Kim, it's fair to say that we hear from time to time how councils are struggling with that planning capability. They don't throw up the flagpole and say, 'Hey, we're drowning', but we do get anecdotal material. When we get general managers together in a room like this and a discussion goes on they certainly respond then. It comes about by things such as, 'We're in the throes of planning reform at the moment. We've been doing the regional planning process' and that has required the current resource within councils to turn their

attention to the reform agenda and what that means. That means they are doing that as well as their base load. What we hear is that that is quite straining. Then we have the overlay of new planning schemes that will come along where the public will go berserk and councils will then again be in that process of having to respond to that as well as dealing with the conveyor belt of applications coming through.

There are national reports. I don't think there has necessarily been a lot of State work done on the toxic environment of planning where these people are under the pump all the time, being questioned by the outside world, trying to get things done - the pressures of elected members saying, 'We want to be pro-development' and being caught in the middle. I don't think I can point you to a place saying, 'There's a particular problem', but honest mayors and honest general managers say from time to time, 'We are really struggling at the moment'. It is a uniform issue that probably most councils are sub par in terms of the resource they would prefer to have.

**Ms WHITE** - Are there any provisions within LGAT to second a planner from another council if you have a high volume in a particular council and they don't have the capacity? Can you second a planner across to assist through that peak period?

**Mr GARCIA** - It is a question of whether councils want us to intervene. We don't have any powers, we play on the basis that people want to play with us. What we are finding is that there are councils that are saying, 'We have a bit of over-volume, can you help?' Again, it becomes that issue of putting up your hand and saying, 'We need help', so I think there is an issue around that as to who needs the resource. Clarence is the classic example I have seen a few times. They will run an ad four or five times for a planner and you know that they are running the same ad, they're just not getting any response. The difficulty we might have - and it has come to my attention in the past - is that, say, Clarence advertises for a planner. A planner at Glenorchy says, 'There's a job for me. I'll go over there'; he tells his Glenorchy boss that he is now going over to Clarence. The Glenorchy boss says, 'We can't afford to lose you. We'll give you \$10 000 more'. The Clarence guy says, 'Bugger. I'll top that by \$10 000'. So this guy is now deciding what he is going to do and ultimately what he does is stay where he is because he is quite comfortable where he is. He didn't want to go anyway, he wanted more money and got more money. The Clarence guy now says, 'Bugger. Now I have to go to the market for probably what I was going to have to pay him'. Even if he does come over, the fact is that now the Glenorchy vacancy is there and he advertises and the guy from Hobart has now gone to Glenorchy. Until such time as we get someone to step into the breach, because it is a finite pool, we have this tail chasing. It is highly problematic because it is a small pool. The likes of Brighton try to do the spill-over because they are dealing with the smaller councils and they are probably more understanding. I know that the likes of Hobart and Launceston in particular have tried to do that but, again, it is familiarity with the planning scheme and the like. There is an opportunity but it is a question of whether councils are prepared to commit to that.

**Ms WHITE** - Can you see yourselves playing a bigger role there with leadership capacity encouraging them to take that on?

**Mr GARCIA** - We certainly have in the past. Waterhole, horses, ring?

**Ms ARCHER** - You haven't been on local government, have you?

*Laughter.*

**Mr GARCIA** - It comes down to willingness to want to, okay? We can certainly play a facilitative or leadership role but at the end of the day we are a membership organisation and we can't make our members do anything. We can provide the opportunity and ideally our members take that opportunity and if they don't, we move on to the next bit.

**CHAIR** - On the question of the quality of applications to councils, since the onset of privatisation of building surveyors one would have thought that argument would have lessened considerably. Yes, you have a few owner-builders out there but generally an owner-builder would stroll into a council in Tasmania and find that he has to go and find a building surveyor. Up north - and we are about to talk about that - that is a separate issue. A whole bunch of councils have stayed in the business and that is a separate issue again, but if you were to walk into a southern council they will say, 'You need a building surveyor', so you go and find yourself one. That building surveyor says, 'Yes, I know you are an owner-builder and you want to do everything on the cheap but that is not how I work. If I am going to sign it it is going to be done right.'

It is those building surveyors who are telling us that the councils are stopping their 42 days and all the rest of it. These aren't dodgy applications; these are applications by qualified companies, so I would have thought the likelihood of the 42 days needing to be stopped and the rest of it, other than for reference to heritage or whatever, because he should have that already, is fairly slim and it ought to be reducing. That is why I am interested in 2009-10. I mean, the Building Act went through in 2000 but parts were not proclaimed until 2003-04-05, that sort of period.

**Mr GARCIA** - You are mixing your metaphors; you know that, don't you? You are talking about a building surveyor and a building application -

**CHAIR** - That's right.

**Mr GARCIA** - The 42 days relates to planning, okay? So under the planning arrangements the building surveyor may or may not have a role.

**CHAIR** - That's right.

**Mr GARCIA** - In terms of the building requirements, probably here I will admit that the legislative requirements for plumbing, building and the like are extraordinarily short and I think that at the time the legislation was introduced we said, 'There's not a bloody hope in hell that councils will consistently hit those targets. It's not going to happen.' It doesn't matter how many resources we have within councils, it is not going to happen and is almost impossible to do. Yet the august department that runs this said, 'Well, too bad, that is what it

is going to be.' So if our average days of approval around building are not being met, the reality is that they simply can't be met.

**CHAIR** - Many of them are, of course.

**Mr GARCIA** - Many of them are, but I think if you actually look at the split between plumbing, building and the like, I would suggest to you that there was significant non-compliance and it is not because of bastardisation, it is simply that they can't cope with the work. But on the planning side, when I talk about incomplete, the building surveyor may not even be there.

**CHAIR** - No.

**Mr GARCIA** - The building surveyor is going to oversight the works -

**CHAIR** - You are right, and it is only one or two incidences that I am aware of that they do get involved in that. They normally share something with a planner elsewhere.

**Mr GARCIA** - Your logic is absolutely right, though, in terms of the quality of the workmanship as per the building, the structure - it should be quite right.

**Dr STEPHENSON** - The surveyors have to provide the certificate of likely compliance which the council needs before they can consider the building permit application.

**CHAIR** - That's right. So now let us talk about this strange situation where a bunch of councils up north have stayed in the business. Do you have a view on that at all? There are some building surveyors who felt that the legislation in 2000 was actually designed for it to be privatised and for councils not to be in the business. As it happens, I had carriage of the legislation from our side back then and that wasn't in fact the conversation; it was to actually be competitive with councils, but what I am concerned about is a council staying in the business and not paying its way but staying in it anyway and therefore undercutting the market and having it backfilled by ratepayers.

**Mr GARCIA** - Isn't the private sector a terrible thing? When an opportunity is presented it and it builds its little exercise, it builds its little niche, and then it doesn't get its way, it's everyone else's fault. Here was an opportunity provided - because of the shortage of staff and the inability to attract to local government and a trend elsewhere in the country - that could speed up the process. Many councils said, 'Well, we've had trouble with this for a long time, we're getting out. Thank God for this, we're getting out.'

**CHAIR** - Why wouldn't you walk away from it?

**Mr GARCIA** - Why wouldn't you indeed? However, some councils have never had that problem; they have always been able to maintain that. Those in the private sector who saw that opportunity could gear themselves up. It was an opportunity that never existed previously. So those who were smart - sorry, that's not fair - those who saw the opportunity got in and fulfilled their capability to do that. If the council was always in the business and I

am a private surveyor outside the council, I haven't lost anything because I never had it. If I'm a northern building surveyor and I'm working to northern councils, I can't whinge about the fact the councils are still in the bloody business because the fact of the matter is that I never had the business.

**CHAIR** - Unless they undercut on price.

**Mr GARCIA** - Again, I make the point that there are provisions within the Local Government Act that say that you shall price and cost to the extent that it meets your cost of doing business, so there is cost attribution; there are allocations and attributions. The Auditor-General can review that at any time and I think the Auditor-General may have reviewed that at any time. That is perceptive speculation by those who aren't getting business.

**Dr STEPHENSON** - It is certainly not contributing to the cost of building in that area.

**CHAIR** - It is a reverse matter for us, but these things are complex and we have various submissions to us as a committee that we are going to investigate, so that is why we are exploring them while you are here.

**Mr GARCIA** - I think the point is, however, that the private sector never had the business. You cannot assume that you were going to get the business if the council decides to stay in the business. If I'm an operator in the north and I want to expand my business, clearly there is an opportunity potentially in the south or the north-west and if I want to take that business risk that's what I might do. If I'm working around an area where the council has maintained the business, I never had that opportunity. If the council is working inappropriately on costing, okay, that is another issue entirely. I'll acknowledge the fact that -

**CHAIR** - I am not sure whether that is the case.

**Mr GARCIA** - Nor am I.

**Dr STEPHENSON** - I do not believe it is any more. It may have been an issue at one point, but the competition policy has been put in place.

**Mr GARCIA** - Councils have to do their costing on the basis of National Competition Policy principles. Ideally there's cost attribution so that the actual cost of doing the business are that. In the private sector they will say to you they have costs of borrowings, they have depreciation, they have this, they have that, they have the other, and at the end of the day they should look pretty much the same ideally. But we do understand -

**CHAIR** - The Northern Midlands Council is currently in a bit of a pickle, where one of its building surveyors signed off on a building of an owner-builder which a third party has now purchased; the builder chuffed off and the council's in-house building surveyor approved it. I think the Director of Building Control is onto it and it is off and it will end up where it ends up, but you wonder why councils would stay in the business unless it takes complete

responsibility, just like a private building surveyor has to have indemnity for their inspections.

**Mr GARCIA** - I know some councils - and Hobart comes to mind - stayed in the game in transition certainly because they had some concerns about the void - 'It's all gone, we're not sure that we trust the system, so let's stay in.' I am not sure where Hobart sits presently and I am not looking at Elise to give me advice.

**Ms ARCHER** - I think they outsource it.

**Mr GARCIA** - I know for a period of time they were concerned about whether or not the transition would actually net the result. I think it is a valid question, though, in terms of the fact that there are other arguments to suggest that planning and a whole bunch of other things should be outsourced. I think these things need to be looked at on their merits and the real question of councils needs to be: is this a valid thing for you to continue in, is the market now mature enough to be able to do that and have you got a mechanism by which you seek to get yourself out of the marketplace? I think you're right, there was no suggestion to say it was to be privatised; it was more opening it up to the private sector and more as a value-add and a convenience to the consumer than anything else.

**Mr BOOTH** - I think the other reason was that it gave a person putting in an application the opportunity to choose a surveyor. They may have had a bad relationship with the council surveyor, for whatever reason, and so it gave choice and competition, I guess.

**Ms WHITE** - Chair, I don't know whether the committee wants to consider whether it would be useful for us to get the actual dollar amount for each of these applications from different councils to compare the costs.

**CHAIR** - I think we have received the information on what is currently available and there is another matrix coming for 2009-10 shortly and we should be able to compare those. In deliberations this committee can think about how it goes about getting deeper information on that and we will do that later today.

**Dr STEPHENSON** - In terms of fees and charges, all councils post them on their websites.

**CHAIR** - Yes. Research can do a matrix on that for us.

**Mr BOOTH** - Allan, when I came in - and you may have discussed this already, so I am sorry if you've been over it - you were talking about the different pricing for building applications between different council jurisdictions, and you said that they were obliged under NCP arrangements that they charge a full-cost attribution. Why would there be what I think is a fairly substantial variation between the different councils for those fees?

**Mr GARCIA** - While I say they have to do it under National Competition Policy arrangements, I think they have some flexibility. I know that some take it as a percentage; there are various steps and then they do a percentage or they do a percentage overall. I am at a loss

here to understand what the actual guidelines are in this area. I am not saying it is fertile ground for councils to gouge, I don't believe it is, but I think they make their pricing judgments probably on the basis of the experience they have had. I don't think they see this as being an earner; it is certainly not one where you would say, 'We'll put the rates down next year because we're making so much money out of development applications'.

**Dr STEPHENSON** - No, in fact what we hear from councils is that the prices do not cover the resources required to do the work, so they are not fully recovering costs with these fees.

**CHAIR** - But are they not also saying that that they require counter staff to answer the interminable questions when people come in fishing for information?

**Dr STEPHENSON** - Yes, there is a lot of free work that councils do.

**CHAIR** - But why isn't that a general ratepayer benefit? Why should that be user-pays?

**Dr STEPHENSON** - It is specific advice on planning issues.

**CHAIR** - If somebody says, 'I've got a large block of and I'm thinking about building a unit on it; I will just stroll into the council and ask', that is a pretty fair statement so why should they have to pay \$10 to ask that question?

**Mr GARCIA** - You don't pay \$10.

**CHAIR** - No, what I am saying is that this notion that there ought to be full user-pays and therefore there is a cost, it could be argued that ratepayers' money -

**Dr STEPHENSON** - Councils have been instructed to try to recover their costs. The Productivity Commissioner has made it fairly clear that there is a requirement to do that.

**Mr GARCIA** - I think, in fairness, there is an acknowledgement that there is a certain degree of interface that is free; there is no question about that. You have to have some basic stuff. If you are a serial developer you are probably still doing the front-counter stuff, so somewhere within that back-end cost there is an acknowledgement that it is not just behind the counter, it is probably at the front counter. Before I would do anything as a developer I would make an appointment with the most senior planner I could get, sit down and go through everything I have to do and then I would take a hike. I wouldn't bother talking to someone at the front counter, but many do. I think there is an acknowledgement that there is a free service for you to ask what you can do with your block et cetera, but once you get into the process there is also an acknowledgment that some of that front counter stuff that has probably been there can be attributable to you.

**Mr BOOTH** - But that may not be occurring in that provision of building surveyor services then, which might be part of the complaint?

**Mr GARCIA** - Possibly; I'm not sure about that.

**CHAIR** - On the matter of compliance, people have a set of rules and the owner of that land just completely ignores them - the conditions attached to his permit or whatever. Councils seem to struggle with enforcement.

**Mr GARCIA** - They have for a long time and they have certainly made this point to the State Government in the past. There was some legislation I think that lapsed last year around enforcement that we were hoping to have.

**CHAIR** - Is that LUPAA stuff?

**Mr GARCIA** - Yes. It is regulations, isn't it?

**Dr STEPHENSON** - Yes. It was to improve councils' ability and to ensure that not so many costs were awarded against them but it was when Parliament was prorogued. We are waiting for it and it is likely to be reintroduced in relation to the amnesty so that will also cover the enforcement powers of councils.

**Mr GARCIA** - The pure provision is that the councils have a planning scheme, they approve developments, they allow buildings to occur and anyone that does not do the right thing we go around to see with a sledgehammer, we knock them over the head and we fix everything up and make it absolutely beautiful. The reality is that we do not have the staff to do that. If we are going to go full-on compliance, look out. We are going to have to double the size of council staff. Everyone in Tasmania has some illegal development somewhere - a shed, a deck, a fence or whatever it is.

**Mr BOOTH** - Is that a confession?

**Mr GARCIA** - I would not like to say, Kim.

*Laughter.*

**Mr GARCIA** - But in reality minor things - I think people innocently put up a shed in the backyard thinking that that is okay, 'I have done it, I have put it on a slab and it is beautiful', and then they find out later that they should have only done a 3x3 instead of a 3x4 - innocent stuff. But in order to enforce some of that we need a lot more staff and it is a risk management exercise at the present time. Some of that we can do quite easily and some of these other enforcement provisions that we are hoping to do will simplify - at the present time if you had done something wrong, Rene, I might have to come and give you some sort of notice. We would go down to the tribunal, we would argue it around, ultimately it would cost me money and you money and at the end of the day they might say, 'It's so minor leave it alone' whereas if I come around and give you an infringement notice, \$165, you have 30 days to get it fixed and away we go. That is the sort of thing we are talking about.

**CHAIR** - I am just smiling because when I was first elected to the Launceston City Council in 1985 there was an argument with the engineers that half of Launceston had illegal toilet



connections. The elected members of parliament said, 'Rubbish' so the engineers said that they would do a smoke test. 'Every dunny is supposed to have a flue and so we will run smoke in the system'. They came to Young Town where I lived and I was fine. They forced green smoke down and then they started counting the outlets per house and said that this one should have three, four, five, six and there was green dust everywhere. It was very funny how many they found. It was crook, I can tell you.

**Mr GARCIA** - And that is the reality. There are so many of those internal things. We all know that people do stuff that they think is okay or maybe they think is not quite okay but they just do it and councils' capacity to enforce that is almost negligible.

**CHAIR** - Real estate legislation that now requires you to get a certificate for approved works as opposed to what you are selling also exposes in the marketplace that you might have put in an illegal ensuite but you are not getting any money for it.

**Mr GARCIA** - That fails on the basis that it is an honour system. I want to sell my house with a view to buying a beautiful new house and I have to sign a form here that says it is all good, I think it is all good.

**CHAIR** - Council has to know. I think council has to provide that.

**Mr GARCIA** - No, the obligation is on the owner.

**Dr STEPHENSON** - I wish to raise two matters that are on my little list and one is for the committee's consideration. There is often conflict in policy objectives which have impact on affordability. I sit on a number of committees which have very sound objectives - things like the work with the Heart Foundation and the Premier's Physical Activity Council on a planner's guide for improved healthy infrastructure. Healthy infrastructure comes at quite a considerable cost because you need wider paths and you need bikeways, and often there is not consideration of how that infrastructure will be funded. It would have a knock-on effect, I think, on things like overall affordability, and that is just one example. Climate change is probably another example and things that we do to mitigate or adapt to climate change must have an impact in the long term on overall affordability of development. So I just wanted to raise that sometimes, with all the best intents, different policies have conflict.

The other thing which was in our submission is to remember that in Tasmania we are a bit unusual in the level of third party rights in relation to planning applications and appeals mechanisms and that obviously has a significant impact on overall costs and time frames. I feel there is quite a lot of passion in the community about maintaining those but you can appeal with no real planning grounds. It may be dismissed on the lack of planning grounds but it does not stop the process commencing and there may be some avenues to look at constraining the start point to be able to dismiss things.

**CHAIR** - A pre-test or something?

**Dr STEPHENSON** - Yes, some sort of testing.

**Mr GARCIA** - Have a look at Western Australia. I think if the committee was looking at things, we are not advocating -

**CHAIR** - Do you mean the new West Australian system of development application framework that apparently the new Government has brought in?

**Mr GARCIA** - I do not know if that has changed what was but third party appeal is very limited and we are not advocating getting rid of third party appeals but as a cost to construction and development, there is a cost in some other jurisdictions. Western Australian is probably about the most strict. It would be worthwhile having a look at it just in terms of how they manage the expectation of the community vis-a-vis costs of development.

**Mr BOOTH** - Is there a feeling that you could articulate amongst local government authorities that they are required by a State government to become over-anxious about every minute detail of, for example, a residential development and the owner's lives with regard to things like garden sheds? It just seems to me that the level of control is at a point -

**CHAIR** - Micro-managing.

**Mr BOOTH** - Yes, micro-managing someone's own private development.

**Mr GARCIA** - If you take something like Tolmans, a lot of those are pre-required to set out in advance, so it is easy to manage at the time of development or building. What is concerning councils is the expectation on illegal development as to how much councils have to put in effort. Certainly I understand that councils respond to complaint largely. So if you are living in your house and the bloke next door suddenly whacks a massive great big deck out or does something a bit weird and you have not seen a little thing out the front that says this is going to happen, in all likelihood you might make an inquiry of the council. So the council responds to that. If the neighbour is a good mate and he is going to invite you over for a barbecue as soon as the deck is built and all that sort of stuff and he is going to give you a hand with the painting of the house, you would probably say, 'Nice deck, don't worry about it, it's all right'. We now have technology, we have Global Earth but I am not sure that councils are sitting down there peering in everyone's neighbourhood once a week.

**Ms ARCHER** - I hope not.

*Laughter.*

**Mr GARCIA** - Not yet, but they might. So the whole area of enforcement and illegality is a degree of risk management based on the absolutely obvious. So I do not think councils really want to get into the game of having to knock on everyone's door and go around with the tape measure. But there are some areas where the proliferation of illegality is such that maybe there is a need to do more. Shack sites are the classic examples, the old fibro that used to be there is now a four-storey thing with 17 en suites and a tennis court out the front, and it has all gradually happened over 25 years.

**Mr BOOTH** - Or by government intervention by creating their own underwater subdivision such as at Ansons Bay, for example.

*Laughter.*

**Ms ARCHER** - That is another issue entirely.

**Mr GARCIA** - Far be it for me to suggest. I think from councils' perspective they think that there is line where enforcement is really important, illegality should not be condoned but to the extent that you go around and beat up little old ladies to get their garden shed knocked over, I think -

**Mr BOOTH** - That is the point I am making, whether in fact we have become too over-anxious with the normal human activity that occurs on a suburban block.

**Mr GARCIA** - Kim, I think as part of this enforcement regime that is being proposed to come back to Parliament there is a proposition of this amnesty, a notional amnesty that will say, 'In future, councils will have the ability to come around with a big stick and make you pull things down but, in the meantime, if you put your hand up, tell us you have an illegal development, or whatever, and it will go through a process to see if we can help you out and get it resolved - only for residential and still very much in the melting pot but again it does not say that because it is illegal it will be made legal. So if I've got something illegal, I might decide I don't want to tell anyone.

**Ms ARCHER** - It's a resourcing issue, too; councils don't have to police a lot of things.

**Dr STEPHENSON** - Some councils will do audits on particular issues, like pool fencing, where a council might implement an audit process, pick a particular area and target that as an issue where there is a safety factor. They are more likely to be proactive in an area like that where there is a safety issue than they are going around spot-checking sheds and the like. Their capacity to do that in a proactive matter depends on their resources.

**CHAIR** - We will look forward to a full briefing from the planning commission as to how it is that the West Tamar Council, with the new planning schemes, have gone from permitted use to P1, to suddenly become a full planning application for what recently was, and still is in Launceston, if the house fits and it's got it's setback, approve the bloody thing, subject to a few local conditions. It has now become a \$499 process to check something that is as plain as the nose on your face. We are now talking about a template housing code that you are expressing concerns about. How do we unravel this whole thing, this bowl of spaghetti?

**Mr GARCIA** - We wish you very well in unravelling it. I think the problem we have, Rene, is that we seek to fix one problem and we obviously create some others. There is no single thinking here; planning reform doesn't start or it doesn't finish, it is just a conveyor belt of ongoing stuff. The reality is, and Kim's on the money here, we need to be very careful we don't get into such over-subscription and ridiculousness that human nature gets cast aside.

We don't want people doing stupid things or illegal things. At the margins, how much do we want to pay, how much does the rate base want to pay to run around, knocking on the door, pulling down little old ladies' sheds and glasshouses, the picket fence that should have been 3'6" and it's 3'9"?

**CHAIR** - I know somebody in the industry of design for domestic dwellings - and multiple dwellings as well - who for years have had to put a landscape plan in for units. Okay, that's fine, it's a commercial thing, but it is for houses now. He swears that where we are going, within one or two years it will be landscape plans for individual houses and then hot on the heels of that it will be colour schemes. That's what it will get to; there will be some boffin sitting somewhere deciding on whether your colour scheme is appropriate.

**Dr STEPHENSON** - This already happens in other jurisdictions, by the way. In Townsville where I grew up they apply that.

**CHAIR** - Which only shows that this is where all this nonsense ends up.

**Mr GARCIA** - This will come from the Tasmanian Planning Commission.

**Dr STEPHENSON** - Or through the national - through DAF -

**Mr GARCIA** - Or through some of those others giving you evidence that need these things; it won't come from councils, I can guarantee you.

**Dr STEPHENSON** - I don't think they want to be policing colours.

**Mr BOOTH** - I have one more question in regard to the post-amnesty that we were talking about, which has basically come about because of the Bridges' situation, and no doubt others, but publicly the Bridges -

**Mr GARCIA** - Far be it from me to say about the Bridges. I hear otherwise, of course.

**Mr BOOTH** - Okay. Given that that house was built before the change in the 1993 act, shouldn't that have been simply deemed to be a lawful dwelling? I think the wording of the old act was that if it should have come to the attention of a reasonably diligent building inspector and it had been in existence for more than 12 months, it is deemed to be a dwelling in its own right and therefore approved. That was something that was in the old act. Why wasn't the Bridges' one simply brought in on that? Why do they need an act of parliament now to approve something that should have been approved under the old act because it was built in 1989, or thereabouts?

**Mr GARCIA** - I don't know the answer on the technicality. The fundamental question about it is if it is illegal, are you going to actually have an act of parliament that says 'a house is legal' and if you do that, where do you stop? Are there other illegal houses around?

**Mr BOOTH** - I'm not sure that it was illegal, because the old act used to -

**Mr GARCIA** - That is what I say, I am not sure of the technicality of what it was. I don't know the answer.

**Mr BOOTH** - Do you recall the provision I'm talking about in the old act that said that a house that had been in existence and should have been noticed by a building inspector, if it has been there for more than 12 months, was a dwelling in its own right, notwithstanding compliance with any regulation? It was the same if more than two houses existed on a property when a subdivision existed in its own right.

**Mr GARCIA** - I think the issue on this one isn't so much about the building of it, I think it's about the planning base for it. There would be an issue around whether a dwelling is an appropriate dwelling in terms of its bona fides as a structure versus whether or not it should have been able to be built where it was. So maybe in that context, if I build a house where I was allowed to build and I built it in such a way that it was deemed to last 50 years, maybe those provisions existed. But if I build a house over here and I should never have been able to build it over here, it doesn't matter how good it is or how beautiful it is or it would last 200 years, maybe the provision doesn't apply because I've built it here instead of building it over there.

**Mr BOOTH** - Except I think it was built before even the interim orders came in.

**Mr GARCIA** - I'm not familiar with it particularly.

**CHAIR** - I think the point is made that if the amnesty comes in that is probably a good way of dealing with any tail - there is going to be a tail out there - but the notion is that usually after an amnesty there will be double enforcement.

**Mr GARCIA** - That is the question: how much do we want the tail to flick?

**CHAIR** - Okay. Thank you very much for your frankness, you have been very helpful. It may be necessary to call you back in.

**Mr GARCIA** - If you need anything feel free to just drop us a note or through Research and we will see what we can do and if we feel like doing it.

*Laughter.*

**CHAIR** - Thanks for your help.

**THE WITNESS WITHDREW.**

**Mr SIMON COCKER**, EXECUTIVE DIRECTOR, AND **Mr RON WIZENBERG**, OPERATIONS MANAGER, TASMANIAN BUILDING AND CONSTRUCTION INDUSTRY TRAINING BOARD, WERE SWORN, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** - Thank you, gentlemen. Before giving your evidence could I ask whether you have received and read the guide that was sent to you by the committee secretary?

**Mr COCKER** - Yes.

**Mr WIZENBERG** - Yes.

**CHAIR** - Thank you very much for your submission. You will understand that Parliament made the decision to implement this inquiry because the issue of the cost of construction in Tasmania impacts upon so many Tasmanian families one way or the other, commercial or domestic, but usually directly through the family home in the first instance, so therefore one of the terms of references is government levies and compulsory levies, which swings you guys into it. In any event, we are also interested in the health of the building sector and its training and the rest of it so it is a good opportunity to talk to you about your role in that and where you see it going forward. So I hand over to you now. Do you want to make any opening comments on your submission before we start kicking it around?

**Mr COCKER** - I do not have anything in particular to add to the submission. Perhaps if there are issues you want to raise I can address them.

**Mr BOOTH** - Simon, just a couple of preliminary questions with regard to the way the TBCITB works in terms of administrative costs. I notice that you spent \$1.8 million in 2009-10 on training courses but you collected \$4.2 million from fees that year, so what has happened to the rest of the money? I mean, each year since 2005-06 you have collected well over \$1.8 million - \$2.105 million in 2005-06; \$2.4 million in 2007-07; \$2.8 million in 2007-09; \$2.952 million in 2008-09; and then \$4.211 million this last year. There seems to be a pretty large discrepancy in terms of the expenditure against collections, so what's happened to the money? What do you have in the bank and what are you going to do with it?

**Mr COCKER** - A very substantial proportion of those funds are forward-committed. One of the major programs that the board has run and has been particularly focused back into 2008 was a program to increase the number of apprentices in training in Tasmania. The board is aware that there is a number of forward risks in terms of the workforce in Tasmania, not the least of which is the ageing workforce and of course the increase in competition for skilled labour from the resources boom in the west. Now, of course, Queensland with its massive reconstruction program after the floods will be looking for skilled workers in civil construction and housing. In fact, I think they are already advertising to get workers. Tasmania's workforce is ageing and needs to be renewed and replaced, so the board undertook a program of trying to boost the number of apprentices. It has been very successful but part of that process has been the payment of completion bonuses and

incentives. The board has something around \$2.8 million forward-committed in terms of that program, so the surpluses from previous years will be expended as those apprentices complete next year, the year after and the year after that.

**Mr BOOTH** - So what is the bank balance at the moment for the TBCITB?

**Mr COCKER** - It is sitting at around \$4 million, I think.

**Mr BOOTH** - How much is committed into the future?

**Mr WIZENBERG** - It is about \$3 million. There is about \$750 000 put down for cyclical downturns. The board decided several years ago - and this is probably going to hit us in the next couple of years - that we will need that money to offset the loss in revenue from the levy.

**Mr BOOTH** - To do what, to keep on training apprentices?

**Mr WIZENBERG** - Everybody in the industry. You have an obligation to keep on training people. If there is an industry downturn, we still have to keep training people otherwise the ramifications in the next few years, if you get the downturn then, mean that the work goes up and you don't have the apprentices. You're just trying to spread it equally over the years, if you can, so you get the good years and you have to put some of that away for the bad years.

**Mr COCKER** - It should be noted that the \$4 million in 2009-10 was extraordinary and was largely the result of the work done under the Building the Education Revolution program.

**Mr BOOTH** - Yes, I did note that. What you saying then is that a bit over \$1 million of it is a windfall from this last 12 months?

**Mr COCKER** - Compared to previous years, yes.

**Mr BOOTH** - What is the cost of administration of the board?

**Mr COCKER** - It runs at about \$500 000 to \$600 000 a year and includes a whole range of things. The board has a standard policy that at least 60 per cent of funds must be spent in direct training. The act provides a number of other functions to the board which it has to carry out, including research and promotion, the convening of meetings and forums and other similar activities. Those are indirect training costs and part of the administration.

**Mr BOOTH** - The board members receive fees, I presume?

**Mr COCKER** - The board members receive a small fee.

**Mr BOOTH** - Can you give us a full breakdown of the cost of running the whole organisation - fees, salaries, where the money comes from and where it goes? Rather than fleshing it out through questions you might want to provide that in writing if you don't have that.

**Mr WIZENBERG** - I can give you the budget figures for each of the program areas, if you like.

**CHAIR** - You have staff allocated to programs?

**Mr WIZENBERG** - Yes. We have the administration program, which is running the board and those sorts of things, and then we have training support, which is promotion of training throughout the community down through the industry, including in schools, and we have the research and development arm - we have a research and development officer who does all the research to build up data for the programs - and we then have the training provision side of it. So there are four programs.

**CHAIR** - Is that all within the \$500 000-\$600 000?

**Mr WIZENBERG** - No, the administration costs are around \$500 000.

**CHAIR** - Let us look at that one, because the rest of them are all funded through programs for your trainers and people on the ground. We can see from the report how many board members you have. What is the chairman's allowance?

**Mr COCKER** - It is \$10 000 a year.

**CHAIR** - And a board member?

**Mr COCKER** - It is \$5 000.

**CHAIR** - And the organisation managed to secure your services from a high-profile job before, so obviously it's not paying peanuts. Is your salary band available? Is that in the annual report? What does this board pay its general manager?

**Mr COCKER** - I am paid a salary of \$105 000 a year, I have a car allocated - and I don't know the value of that -

**CHAIR** - That is fine, it gives us a notion.

**Mr COCKER** - My other expenses apply to the telephone.

**Mr BOOTH** - Is that a full-time job?

**Mr COCKER** - It is.

**Mr BOOTH** - So it is the only job you do and it is like 40 hours a week, or notionally a full-time job.



**Mr COCKER** - It is executive hours, a full-time job, yes. Notionally, I suppose it is 38 hours a week.

**Mr BOOTH** - But it is an executive position, so you are available any time, basically.

**CHAIR** - I think I read in the chairman's report that they were pleased to secure your services through your experience in government - I have forgotten the words, but it did say industry - so what industry experience does someone like you have? We're kicking around the kind of people we get for these jobs.

**Mr COCKER** - Do you mean in a general sense or specific to the building construction industry?

**CHAIR** - Well, that is as I think your chairman wrote it. Did you have experience in the building and construction industry before or is it through the union?

**Mr COCKER** - Through union activity, yes. I haven't worked in the industry, but the broad range of skills and experience I brought to the job related more to a broader knowledge, particularly in health and safety, also of government and government administration, of working at high level on a number of boards, contributing at that level around government, and significant experience in all those areas.

**Mr BOOTH** - Was that just an appointment or did the board advertise for a chairman?

**Mr COCKER** - They did.

**Mr BOOTH** - So it was a competitive process for applicants?

**Mr COCKER** - It was, yes. There was a private recruitment firm involved and the board made the final selection.

**CHAIR** - Any more on administration costs?

**Mr BOOTH** - You said that includes the board fees, does it, the administration costs?

**Mr COCKER** - Yes.

**Mr BOOTH** - Perhaps you could provide to the committee a breakdown of all of those costs - how that \$500 000 is broken up would be quite interesting.

**Mr COCKER** - Can you be more precise as to what you want? Do you want salaries and rent and overheads?

**Mr BOOTH** - Yes, just a breakdown of where that \$500 000 administration costs go. What I'm interested in, Simon, is trying to figure out where this levy, which is levied on anybody who does building work, goes and how much ends up actually training people on the ground -

**Mr COCKER** - Okay, we can do that.

**Mr BOOTH** - how much trains the trainers and how much pays administration of that particular scheme. In other words, a breakdown of where the expenses are expended.

**Mr COCKER** - I'm happy to do that.

**Mr WIZENBERG** - Yes, that is no problem at all.

**CHAIR** - We can take it, then, that all the training programs that take place, all that actual program work, they've got their own workers; the expenditure for that staff is buried in those program expenses. There is an overall administration -

**Mr WIZENBERG** - The board buys the training, it doesn't provide the training. It is really demand-driven training, so what we try to do is bring it from the bottom up. The whole idea is that the individual builder can determine what training he believes he needs, within reason. Then he can apply to the board and then we fund it and he sources his own training provider that suits him and his time. Just for example, if it was first aid, there are probably 50 people that deliver first aid, so they can pick the best first aid provider that suits them at the particular time.

**Mr BOOTH** - And they are accredited RTOs?

**Mr WIZENBERG** - Yes, they have to be capable of issuing the proper licence or certificate or whatever it is. It works quite well because at least that way they can do it when they require it, otherwise it just wouldn't work because the industry is so fragmented and they are just all microbusinesses. You only have one, two or three people in them all over the State, so if you tried to say they can only use one provider it just wouldn't work.

**Mr COCKER** - The board has 5.5 FTE employees.

**CHAIR** - As Mr Booth has asked, perhaps you could provide the committee with a briefing note as to your administration costs and where they go.

**Mr COCKER** - Yes, no problem.

**Mr BOOTH** - Does the board meet very often? What is the regularity of your board meetings?

**Mr COCKER** - The board is required by its act to meet four times a year. I think at the moment it generally meets five times a year, plus a public meeting.

**Mr BOOTH** - How long would the board meetings go?

**Mr COCKER** - I have only attended one and that particular meeting, I think, lasted for about five hours.

**Mr BOOTH** - So it is about \$1 000 a board meeting per board member?

**Mr COCKER** - If that was the only activity they involved themselves in, you could say that, yes.

**Mr BOOTH** - Is there a broader range of activity that they involve themselves in?

**Mr COCKER** - At the moment, for example, we have agreed to jointly participate in a series of industry forums with the Building Control people and I am talking with the board at the moment. We have something like 21 spots to fill and we have asked the board members if they are willing to appear and do a presentation on behalf of the board. That sort of thing, I think, is an important part of being a board member. As I say, I have been there for two months so I cannot speak with any experience about their regular participation, but there is a board committee, for example, looking at professional fees and there are board members involved with that on a regular basis. Part of the role of the board is to promote training for industry and certainly I think they should be involved in that.

**Ms ARCHER** - What about travel costs? Where are the meetings held and do they get travel on top of remuneration?

**Mr COCKER** - Reasonable expenses are met. There are three board members who come from the north and the north-west. Meetings, with the exception of one a year, are held in Hobart. The other one rotates around the north and north-west and, yes, there would be reasonable travel expenses paid to attend that meeting.

**Mr BOOTH** - How do you select the board members? Are they chosen for their expertise or do you advertise?

**Mr COCKER** - The act is pretty clear on the selection of board members. There are eight of them, all appointed by the minister. The minister is required to advertise in the three daily papers and call for expressions of interest in the positions.

**CHAIR** - That is for some of the appointments. Aren't some of them industry-based?

**Mr COCKER** - Yes, there are three employee-based and five industry-based. The industry-based appointments are required to be capable of representing the commercial sector, the housing sector, the professional services sector, the civil sector and the building services sector. So there are five people appointed who have to be across that spread of expertise. Three come from employees. The act also requires that there be a gender and regional spread across the board so that process is in fact underway at the moment. The chairman is a separate issue. The chairman does not necessarily have to come from the industry and is a separate appointment. That position and I think those of five other board members currently

expire at the end of February. The positions have been advertised and the process is underway at the moment.

**Ms WHITE** - How do you collect the levy?

**Mr COCKER** - It is not easy but we have an arrangement with the councils which is our primary method of collecting it. The councils in the main are the permit authorities and our act requires that before permits are issued people have to pay their levy, so the councils generally collect it on our behalf. It is a goodwill arrangement that we have with the councils but it seems to work.

**Ms WHITE** - Okay, because I note that if you are looking at the amount you have collected since 2005-06, it has been gradually increasing. Is that because there is increased building activity or is it just that prices have gone up?

**Mr COCKER** - I guess it is probably both. We have had a reasonable increase in activity in Tasmania but as the levy is a percentage of the value of the project, increasing prices would also influence that.

**Mr BACON** - In terms of training there are a lot of requirements for things and a specific example that has been brought to my attention is that skilled tradesmen are required to get a white card and do training that they get no value from. Would you think that there is much of that going on, where maybe too much money is being raised from industry and these people are required to training that they do not get any value from? Do you think that is happening at all?

**Mr COCKER** - I am a very strong supporter of the white card program. It is an Australia-wide program which requires a basic induction course in health and safety to be run for any person who wants to enter a building site. In fact I went and did it myself so I could go and do some inspections the other day. Speaking from a health and safety background I think the statistics are very clear that a sizeable percentage of accidents on site happen to somebody in their first couple of weeks on the job and another sizeable proportion in the first 12 months on the job.

**Mr BACON** - So is someone who has 10 years' experience is required to go and do this course then, statistically would that -

**Mr COCKER** - I guess that is a legacy issue, isn't it? If you introduce a scheme that says people have to have a white card to be on site you are going to pick up those who perhaps need it less than others, but in the long run what you are saying is that everybody on a site should have one and I think that is a worthwhile objective.

**Mr BACON** - In terms of having requirements for people to do things, would there be that effect where people are required to do things which maybe do not have any value for them?

**Mr COCKER** - I do not think so in our case because our training is demand driven. What the board does is establish a set of priorities in the general training plan each year and then we say to the employers and the practitioners in the industry that these are the things that we will fund and, with our assistance, they locate suitable trainers, et cetera. They source the training and then come back to us and say, 'We want to do this training and will you subsidise it or support it?' We say yes or no and then they go and do it. It is entirely a demand-driven thing about choosing what they want to do. If nobody does any training we do not spend any money.

**Ms WHITE** - I assume that with the apprentices you put on you look at this table you provided to us on page 10 and see where the demand is and that is where you fund apprenticeships? Is that correct?

**Mr COCKER** - Yes. Quite a complex part of our research program is having an understanding of where the industry is at and what its future needs are going to be. As I mentioned before, we have this demographic change issue and we have significant competition for skilled labour. Tasmania generally tends to produce an all-round skilled person and they are very popular in other places where perhaps the training tends to be more specific. We have to ensure that we have a supply of labour available to the construction industry in Tasmania, so where we can identify potential shortfalls and future need our programs will aim to meet that.

**CHAIR** - We will come back to the white card business in a minute but seeing that question has been asked it could be that your operations manager might be able to answer this better than you seeing you have only been there a couple of months. I think I recall around about when your organisation was set up and the levy was first struck and exactly what it was for. At what point did this training body become a work force provider by using training money to attract apprentices and do ITABs anywhere else in Australia actually use training money to attract apprentices? Those programs that attract apprentices I think are great. There is no question that the industry has a problem. Why don't kids want to work on a building site any more? We need them. Bricklayers cannot get kids any more and you cannot even get chippy apprentices. They are hard to get so it is a terrific thing to do, but the question remains in my mind: how did the training provider become the doler out of money to attract staff into the industry? At what point did that happen and is there provision under the act for this to occur? I suspect there is, otherwise you would not be doing it, I would hope.

**Mr COCKER** - This is going back probably up to 10 years ago when this planning and work started so I cannot take you through the decision-making process. I do not know if you can, Ron?

**CHAIR** - Has it been going for 10 years? Has it been going that long?

**Mr WIZENBERG** - I think the programs for apprentices go back until about 2002, 2004 or something, around that period. Originally it was always based on areas where there were the most significant skills shortages and generally you would look at bricklayers or plasterers, probably not so much carpenters and joiners because everyone wants a carpenter and joiner,

so originally it was started to try to encourage employers to put on apprentice bricklayers and those sorts of people where we thought there were going to be skills shortages in the future.

**CHAIR** - Ron, back then I was the chair of a large work skills program up north and all that money came from the Federal Government.

**Mr WIZENBERG** - Yes, it still does.

**CHAIR** - Except here you are using training money levied off home builders.

**Mr WIZENBERG** - Yes, what we are saying, I think, is that the board believes that there needs to be quite significant incentives to encourage employers to put on apprentices in a lot of those areas because they are just micro businesses, very small businesses, and it becomes a very difficult thing to put on an apprentice. Basically if you are a one-to-one with an apprentice it is not the cost of the apprentice, it is the cost of your time when you are training an apprentice because you are not earning whatever the rate is that you charge out for. What we are saying is we will give an employer a certain amount of money provided he gets that apprentice through the apprenticeship. Based on advice we got from the industry we said, 'Okay, we will give \$2 000 after maybe the first year and the rest of it at the end of it' because we did not want to have that wastage of money, and it has worked. But we also have other things associated with that. For example, we insist that they have to train them in what we call a level 3 competency, which is a third year competency, in the first year because traditionally they put on apprentices and they never get any useful skills in those initial parts of their apprenticeship.

**CHAIR** - Go down and get the morning teas from the shop.

**Mr WIZENBERG** - Yes. So what we are saying is, 'We will give you the \$2 000 after one year, but you have to train them in one level 3 competency in that first year'. Then if the kid loses his job, he can then take it somewhere else and say, 'Look, I've learnt how to paint a room' and therefore the bloke will put him on. He will say, 'Okay, I can leave you to paint the room and I don't have to spend all the time training you'. Then we say, 'You have to do four competencies on the job over the full period of the apprenticeship'.

**CHAIR** - I can see why the building industry would be delighted with you people attracting new players into their industry and they would see this as a terrific expenditure of their money. I am just wondering whether back in 2002, 2003, 2004, you did not go off course a bit from your original intention and we don't need to change the act to allow you to continue this kind of thing.

**Mr COCKER** - I am very confident that within the functions of the board set out in section 7 this sort of activity is covered. Specifically in function 7E, part of our role is to increase productivity and career opportunities and work safety in the industry through training. I would say that is exactly what we are doing. We are getting people into training. We are providing support to small employers.

**CHAIR** - No, no, no, you are getting people into the industry to train. You are actually buying your product first before you are training them which, as I say, the industry is delighted about and from our point of view I suspect that our only area of questionability about that is who is paying for this because this is actually an industry's job to do, to look after themselves. You cannot have one industry looking after another.

**Ms ARCHER** - Recruitment is separate from training, is that what you mean?

**CHAIR** - Yes. But in Tasmania, of course, a large section of building, particularly house building, is carried out by owner-builders and they are paying the levy. That supports then the acquisition of apprentices to builders, which are of no interest at all to owner-builders. It is of high interest to the building industry and that is why it is a terrific thing to do, it is just a question of who pays and I guess we need to look at that, don't we. So you are confident that your act provides for you to participate in apprentice acquisition?

**Mr WIZENBERG** - I think the point is that we do not get involved in the training until they have signed the training agreement and they are an actual employee. Once they are an employee within the industry they are entitled to the training like anyone else is that is in the industry. An apprentice is an employee within the industry just like anyone else.

**CHAIR** - Where does he get his training? His formal training as an apprentice he gets from Skills?

**Mr WIZENBERG** - He gets his qualifications from the Skills Qualifications people after he finishes their apprenticeship.

**CHAIR** - He gets it from TAFE, though?

**Mr WIZENBERG** - Well, TAFE do the training, but the actual qualification is issued from the Skills Tasmania.

**CHAIR** - So TAFE does the training?

**Mr WIZENBERG** - Not in all cases; an RTO does the training.

**Ms ARCHER** - Who finds the apprentice in the first place? Are some of your training funds going towards finding the apprentices? That is the distinction.

**Mr WIZENBERG** - No, no.

**CHAIR** - You are providing the incentive to the builders.

**Mr COCKER** - We are not the only organisation that is involved in this. The Commonwealth Government through the Australian apprenticeship centres and the Job Network provides the recruitment infrastructure and other funding support. At various times, I think, other

moneys have been available. I have looked at the figures on this and there has been a very significant increase in the number of apprentices in training since this scheme has been introduced.

**Mr WIZENBERG** - I will just make the point - you mentioned other States - all the other States with training funds do the same thing.

**CHAIR** - Do they?

**Mr WIZENBERG** - Yes.

**CHAIR** - Okay. So it is an industry-wide acceptance.

**Mr WIZENBERG** - In some States it is very, very generous where they have quite substantial levy income. In Western Australia and South Australia where they are booming with the mining industry they are pumping heaps of money into it.

**Mr COCKER** - The reality of the employment recruitment market is that kids have a lot of choices -

**CHAIR** - Yes.

**Mr COCKER** - and if we want them to come through our industry we have to promote it to them, we have to promote the training to them.

**CHAIR** - It is a frightening thing that they are not getting the apprentices in so it is great to see the money available; it is just a question of who provides it. Traditionally it was always the Commonwealth but if the industry training boards are now into it and its working, that is fine. The question is is it tight enough and are the right people getting it?

**Mr WIZENBERG** - I have to say the board was always very conscious of that because in the early days they had the view that they didn't want to substitute their money for Commonwealth or State Government money. So we did not want to be saying all of a sudden -

**CHAIR** - Doing what they should be doing?

**Mr WIZENBERG** - Yes, exactly. So the board never wanted to do that and it still hasn't done that. All that money that is there now was there back before we started doing these things. The same level of money is going from the State and the Commonwealth into apprenticeships and we have just added more to it in areas where we believe there is a real need to try to get people through.

**Ms WHITE** - If there is a small business that wants to put an apprentice on and they access the Federal Government money, they can access your money as well, is that right? Do they



need to be a member of any other organisation? Do they just come to you and say, 'This is what I want to do' and you hand the money over?

**Mr COCKER** - Ron and I were just discussing that very point yesterday. We see it as part of our role to promote ourselves across the whole industry, not just through the associations, so that the little businesses can get access to our funding. I can point, I think, to 74 apprentices who are working for firms that employ less than five people as a result of this scheme where there were none before. They will come to us and put in an application for approval for funding and if it fits in with the scheme, they will get it, and we see it as part of our role to make them aware that is available.

**Ms WHITE** - So there is no real membership base for you as such, is there?

**Mr WIZENBERG** - No.

**Ms WHITE** - You are in the industry and you can access that funding.

**Mr COCKER** - The associations are key partners in this whole thing. The HIA and the MBA deliver training programs with our assistance. That is one of our ways of delivering training, they are partners, but, no, the whole industry is our field.

**Ms WHITE** - I am wondering because I see extra funding there that some people may not be aware of that they might be eligible to receive.

**Mr COCKER** - I think it is probably right that there will be people who are not aware but it is a question of how you get to them, and that is what we want to do. We have an industry newsletter and we have about 4 000 practitioners on a mailing list and we add to that whenever we get the opportunity. That is our primary method.

**Ms WHITE** - You said that to receive funding from your organisation they need to take the apprentice right through, that they get instalments basically. If you are a small business operator sometimes it is difficult to do that and you might share an apprentice. Would you still be eligible?

**Mr COCKER** - I think so.

**Mr WIZENBERG** - We are a little bit circumspect about that but we are pretty reasonable. If someone moves from one employer to the other, we will allow the subsidies to follow to the new employer. A kid will be get stood down and then we say, 'Okay, if you take him on for the rest of the period of the apprenticeship, you will get the \$4 000' or whatever it is 'if you can complete him', because that is what we are on about. We do not want to lose them after we have put all the effort in.

**Mr BOOTH** - That is different to what Rebecca was asking about whether you can actually share an apprentice between two small businesses so that they both share in the training obligations.

**Mr WIZENBERG** - We haven't any of those. We haven't had any applications that have said that.

**Ms WHITE** - For example, my brother is a plumber. He has a small business and he has an apprentice who comes from the Apprenticeship Board but he can only take him for a couple of months here and there and he is shared as a resource between another plumber and himself. I don't think he has ever spoken to me about the funding that is available through you to help fund that apprentice but he probably wouldn't be eligible.

**Mr WIZENBERG** - One of them would have to take responsibility, I think, to put the application to us. We wouldn't worry about how they worked it themselves; that is not our interest. Our interest is to get the outcome. I know that happens; a lot of times people ring up and say that someone is moving somewhere else and we just say, 'Oh, that's fine. Just keep the training going and we'll pay the money out'.

**Ms ARCHER** - The money follows the apprentice.

**Mr WIZENBERG** - Yes.

**Mr BACON** - But they have to apply before the apprentice starts?

**Mr WIZENBERG** - Yes, that's right.

**Mr BACON** - So you can't apply after its all done and dusted?

**Mr WIZENBERG** - No, you can't do it retrospectively; they have to do it before the apprentice starts. I am sure there are a lot of those things going on all the time, where they would be sharing. I know that there are groups of builders in Launceston who share. They have arrangements where they do exactly that.

**Ms ARCHER** - Do you provide any information upon payment of the levy as to what it entitles someone to? For example, you said that the councils collect the levy, so is there any mail-out in response to the payment of the levy? Is that something the board might look at?

**Mr WINZENBERG** - What do you mean there? If someone pays a levy -

**Ms ARCHER** - For instance, if you pay your car insurance you will get a booklet back from the insurance company. How do people know what they are entitled to?

**Mr WINZENBERG** - If we are involved in it and a new person comes to pay the levy we send them a booklet about the levy, but I guess in a lot of cases we wouldn't know. If they went to the council we wouldn't know that.

**Ms ARCHER** - That's the thing. If the levy is collected by the council, that is something that is probably not working because you don't have control over that. Shouldn't you keep a register of who has paid the levy?

**Mr COCKER** - We attempt to. We have a database with more than 4 000 industry practitioners in it and we add to that whenever we have the information to do so. Those people are on our mailing list. We have a quarterly newsletter which talks about the training -

**Ms ARCHER** - Does that come from council? How do you find out that information?

**Mr COCKER** - A variety of ways, I guess.

**Ms ARCHER** - But isn't that unsatisfactory? There is a missing link there. If the councils are going to collect the levy then surely that information needs to be provided as to who has paid the levy?

**Mr WIZENBERG** - The person who pays the levy gets a receipt to indicate that they have paid the levy, so they have met all their responsibilities under the act. We try to get all the information we can so we are trying to update our database all the time. If we can get information, whether it be from a building list or any source whatsoever, the newspapers or anything about any building work, we try to get those people onto our database. If someone comes in and gets an approval for Joe Blow the builder, we will put them on our database so that they get that information through our training news.

**Mr COCKER** - I guess you're suggesting perhaps that we should have a leaflet on the counter in the councils so that when someone pays they can be given the information.

**Ms ARCHER** - Yes, there was that issue, but that led me to ask why you don't get a precise list of the levy payments from various companies, people, small business or whatever, so that your database is accurate?

**Mr WIZENBERG** - We get all that from the councils. They give us lists of who paid the levy. We have a legal agreement with them to collect the levy and pay it to us and then they send us a list of all the people who have paid the levy. For most councils it is a voucher they have to send to us under the regulations under the act, so the voucher says that Ron Wizenberg paid the levy on a house at wherever and that then just goes into the system.

**Mr BOOTH** - Going back to the white card issue, in regard to certification sometimes creating an artificial barrier to entry for people to participate in a trade or in a workplace, I think one of the reasons we're seeing a skills shortage is because a lot of people have been driven out of the industry, particularly builders and so forth, simply by an artificial contrivance. It seems to me that the white card could well be a costly impost on employers and employees. It is potentially keeping people out of the workplace, particularly because you have to pay \$100 or thereabouts for a white card, and it is not clear whether it achieves the result or acts as an artificial barrier to participation. You were saying you had to have one to go onto an inspection site. What inspection was that that required you to have a white card?

**Mr COCKER** - With the guidance of the project managers I went and had a look at the Kingston bypass and the Kingborough bypass a couple of weeks ago. They took me around the sites and it was an educational process for me as to who does what and what the various occupations are and what they are called and what they do on site and all those things. But to enter that site I was required to have a white card.

**Mr BOOTH** - So you put your hard hat on and your earmuffs and the hi-vis jacket and they walked around and held your hand and took you along? So you were under supervision at all times and you still had to have a white card?

**Mr COCKER** - Yes.

**Mr BOOTH** - That is a really interesting scenario because I was at an auction recently where someone bought some stuff and then there was a discussion as to whether the truck driver could pick the stuff up from the public auction, notwithstanding the fact that not a single person on the same site on the day - and there were probably 100 people there - presumably had white cards. There was no barrier to entry to go and buy the stuff but to cart it away you're supposed to have a bloody white card!

**Mr WIZENBERG** - A building site?

**Mr BOOTH** - It was a government auction selling off stuff from the Skills Institute, I think it was.

**Mr COCKER** - I am not quite sure why you would need a white card to enter an auction room.

**Mr BOOTH** - Well, I am going to ask you the same question. Why would you need a white card to enter a construction site of a highway when the foreman was holding your hand and taking you around? It was not like you were let loose as an employee. The point I am making is that this is now becoming a bureaucratic burden for a lot of construction sites and employers in general that anybody who comes on the site, as you have just given evidence, has to do this course and get a white card and pay \$100 to some RTO or some other organisation. They are great for income streams but I am not sure it delivers a proper outcome in terms of workplace efficiency or even safety. How did you become safer having received a white card to walk onto that site?

**Mr COCKER** - I guess in my personal case it didn't because I have a long history of involvement with health and safety. I was a member of the WorkCover board for six years and have been involved in health and safety training and other things, so for me, personally, it did not help at all. The whole purpose of the white card is as an induction to give you an understanding of the safety requirements and what you need to do when on construction sites. Construction sites are very dangerous places; they kill more people in Australia than any other industry. The imperative is to make -

**Mr BOOTH** - So for a visitor to a workplace accompanied by the foreman, or someone delivering something to that site, surely you're not going to impose such a bureaucratic wall?

**CHAIR** - What about a member of parliament?

**Ms WHITE** - That is what I was wondering. If a minister goes to view works -

**Ms ARCHER** - What is wrong with a sign saying, 'Do not enter unless accompanied by -

**Mr WIZENBERG** - I think you really have to go to the owner of the site to get that question answered. It is the owner of the site who makes the decision as to what is required to go onto that site. Everyone has to have a white card and you will find that some of the big contractors will say no-one is coming onto their site without a white card.

**Mr BOOTH** - But what does the legislation say?

**Mr WIZENBERG** - That you have to have a white card.

**Mr BOOTH** - Therefore it is not up to the owner of the site.

**Mr WIZENBERG** - No, with this sort of thing I was talking about. Sorry, I am thinking more about where you could have someone delivering pies and the people who run that site say, 'If you want to come onto the site anymore to deliver pies, you are going to have to have a white card.'

**Ms ARCHER** - But does the act say that?

**Mr COCKER** - The national regulations, I must be honest, I cannot tell you what they say. But from a personal perspective, I am more than happy to do it because I think, as a matter of principle, that improving health and safety on constructions sites is a critical issue.

**Mr BACON** - No-one argues that. It is whether or not you should choose that outcome.

**Mr COCKER** - Yes.

**Mr BOOTH** - The point there, Simon, is that I think there is a lot of make-work schemes invented and dreamed up by bureaucrats that make sites less safe. I used to own and run a sawmill and I can tell you that some of the regulations that were prescribed, invented and dreamed up by bureaucrats actually made the site less safe than it was without that regulation because it meant that you had to divert resources to ticking boxes rather than spending money on genuine safety issues.

**CHAIR** - It takes away initiative.

**Mr BOOTH** - It takes away initiative from the site. It means that you have ticked the box, so when someone gets run over by a forklift or something and you have ticked the boxes you

are probably all right. Whereas if you have not ticked the box, the same person is injured but it was not the fact that you had done some dodgy course to put in a paper trail and bureaucratic process in place to make it look like you had a safe working environment. If you followed your assertion through to its logical conclusion, no-one who had a white card would ever be injured on a site, and that would be notionally insane because to do a white card course, the biggest requirement is to pay \$100 and ask a few questions. I have seen it on plenty of building sites where people who have been operating in the industry - and I think Mr Bacon touched on it before - for 10 or 20 years and the regulators who dream these things up are turning us into a nanny State, where people who know what they are doing and have a good safety record are suddenly excluded from doing things and the person who has the certificate is able to do the job.

I can give you an example of that with forklifts. I am not saying you shouldn't have training on a forklift, but the possession of a certificate doesn't make you a safe driver of a forklift, you've got to actually have some skills and coordination and understanding of machinery to be able to drive those things safely, which you don't get through a forklift course. I have seen sites where people who have 20 years of industry experience thrown off their forklifts and somebody who had a forklift ticket they got out of a Cornflakes packet put on as a forklift driver but was the most dangerous person in the yard. That is the point I am making. Are these regulations and the interference in the normal human activity that occurs actually achieving something other than creating a drone's castle of bureaucrats sometimes that doesn't actually deliver a safe site and becomes an artificial impediment to people getting entry into a trade, participating in business, even being able to employ somebody for something that doesn't require the level of OH&S stuff that you are talking about?

**Mr COCKER** - I would say to you that no responsible employer in the construction industry would put a new employee onto a site without some safety training.

**Mr BOOTH** - It depends on the site.

**Mr COCKER** - The fact that it has been formalised into a white card is neither here nor there, really.

**Mr BOOTH** - Yes, it is.

**Mr COCKER** - What they give is an induction training into health and safety.

**Mr BOOTH** - It is here and there because it means that if you want to employ someone on a building site to use a spade, for example, you are not allowed to take somebody who has worked as a farmer for 25 years to do something in the back corner of a site that might be just a very small construction, like putting up a My-T-Built shed or something. I think some of these regulations really need to be thought through to see if they actually achieve anything.

**Mr COCKER** - I guess the proof of the pudding will be in the eating. The white card program is not compulsory until August this year, and after that we will start to see what happens to

the injury and accident levels on construction sites. I mean, five hours of training is not a big ask.

**Mr BOOTH** - It's not going to deliver the ability to understand safety in a workplace either, mate, I'll tell you now. Five hours of training is not going to make someone safe in a workplace -

**Mr COCKER** - It is.

**Mr BOOTH** - Not that it doesn't help -

**CHAIR** - Wouldn't it make them five hours safer?

**Mr BOOTH** - That's about it, it would make them five hours safer.

**Mr COCKER** - What you are getting is basically health and safety induction. On that site there should be somebody else who has a much higher level of safety training who is going through the risk assessment on that site and setting standards on the place. What is happening is that the workers who are coming onto the site have been given that induction training, they understand what risk assessment is, they understand the process of identifying a hazard and reacting to it and acting safely, they understand the importance of reporting unsafe things that they have come across in their workplace, and they understand that their safety is more important than making a buck.

**Mr BOOTH** - So they can drive there on a motorbike with 0.05 alcohol in their system wearing a T-shirt and shorts at 110 kilometres an hour, but as soon as they get on site they can't pick up a shovel unless they have a white card and have paid \$100 to some bureaucrat or some RTO that is making money out of these things - that is the point. Unless they actually achieve the required result they are just an artificial barrier to operating on a site and I think there are a lot of those things now being created by bureaucracies and people who feed off these things who become RTOs and make a lot of money out of this stuff that don't actually deliver compliance with regulations, safer work sites and whole lot of other things, with the best intentions in the world.

**Ms ARCHER** - Would it not be better then to have a classification system, so if you are going to employ somebody on a fairly dangerous construction site where you need the white card before entering because it is just far too dangerous to put someone in that situation - for obvious reasons. Then for a situation where it is not going to be a dangerous site, that it be done within a certain time frame or it is a lesser requirement, a shorter course or whatever. Do you recall that being looked at in the process?

**Mr WIZENBERG** - From the board's perspective the board is not involved in deciding whether or not people have to have a white card; it is the Building Industry Training Board. Before the white card came into being most of the big contractors already had their own safety induction. Most of those people who were just accredited with a white card had to go and do a short course - it might have been an hour, some of them do it on computers or however

they want to do it - and they get their ticket. Then the smaller contractors who work wherever in the housing industry have now all got to do the white card by virtue of government legislation. The board made a decision 12 months or so ago that because of the ramifications of the cost of this white card for the industry, which is quite significant for a lot of the bigger companies, that it would contribute toward the cost of the training for everyone in the industry. The board is saying that they will give people money towards that when they have to send all their people off to do the white cards. A lot of the comments that come back are a bit like what you are saying that they wonder whether they should have had to do it as individuals because they have been in the industry for a long time and have worked in various places. They feel a bit that way but the fact is the law is the law.

**Mr BACON** - You said before with the apprentices you have to apply beforehand with the white card before you do the training, but as the training is compulsory why is that the case? You are not providing it as an incentive to do the training; they are required to do it.

**Mr COCKER** - It is a board policy position and the board policy position is that prior approval must be obtained and it is largely for administration and budgeting purposes. We have a pretty limited budget and we need to be in control of it. If we have people retrospectively applying for training funding that we are not in control of then we need to know how we are tracking and what we are spending as we go.

**Mr BACON** - People will be at a disadvantage one day if they go and do the white card training and they find out at the white card training that they are not eligible for the payment if they have not applied before doing it.

**Mr WIZENBERG** - We have had a few cases of that but not very many. Most of them are aware of us and most of the RTOs are aware of us as well. When they go to the RTO to do the training the RTO will tell them to make sure they put their application into the board.

**Mr BACON** - But that is after you have done the training.

**Mr WIZENBERG** - No, before you have done the training. They go to the RTO to book their training and at that time they make the application to us. They go to put their 100 people through it and they will put their application into us at the same time and we say that we will give them so much money for that training.

**Mr BACON** - If there are not many cases then surely it would not affect the budget if you did just approve all white card training regardless?

**Ms WHITE** - You have written here in your submission that there are 20 000 industry members so you could assume because it is mandatory that you will have to accredit all 20 000, so couldn't you budget on that basis?

**Mr WIZENBERG** - Yes, but a lot of those will not even bother putting an application to us because a lot of those have already just been assessed and they did not have to do any training. It is very hard to get hold of the number. It is quite surprising because we thought



we were going to get that number but we have not had anywhere near that number of applications. Either they have not done it or they have done it without worrying about us or they have just been assessed and got the ticket.

**Ms WHITE** - Coming back to what you were speaking about earlier about promotion about programs you offer, do you think that could be a reason why? Because we discussed the apprenticeship initiative you offer and you did say councils provide you with the names of people who paid the levy, but that would not include who was a roof slater and tiler, the bricklayer, the plasterer, so all of those people are probably still unaware as to your ability to assist with the apprenticeship program and probably are not aware of your ability to assist with the white card funding too. How do you propose to change what you are doing so you can promote better the services you can offer to industry members?

**Mr WIZENBERG** - I think that really is a challenge; I agree with you.

**Mr COCKER** - It is a challenge and in fact the board has a review of its communication strategy as one of its key strategic objectives for the next three years so we are going to be having a long hard look at that. At the moment it is doing the best that it can as far as it is aware but if there are other and better ways of doing things then we want to find them and do them.

**Ms WHITE** - What do you currently do? How do you promote and communicate with the industry at the moment?

**Mr COCKER** - The two prime mechanisms are through the industry associations and secondly through our newsletter. We've got something like about 4 000 industry practitioners on the database who receive a quarterly newsletter. We have public meetings where practitioners come together and we promote the board's activities. As I mentioned earlier that is one of the things that we will look at in February and March, a range of meetings that Building Control are doing. We have been invited to send someone along just to talk about the board's programs.

What we would like to do, of course, is have field officers that go out and talk to people, but it is simply not affordable. We do not have the money to do it.

**Ms WHITE** - It is difficult too when you consider our roles in communicating programs that are offered through government, for instance, particularly contacting small business because they are everywhere and always so frantically busy. So I can empathise with the difficulty you have in trying to communicate and I am glad to hear you are going to look at how you do that better. It is probably a reason why you haven't had the take-up you expected because people just do not know that you are there.

**Mr WIZENBERG** - Could well be.

**Ms ARCHER** - Do you have your newsletters on your website?

**Mr WIZENBERG** - Yes.

**CHAIR** - You were saying your funds are limited, and I guess they are, but they are not insubstantial. The possibilities, intentions or considerations to increase your funds can come through two areas. On is the increase in the percentage at application for building jobs. We had some evidence yesterday that somebody was of the view that you were considering changing from 0.2 per cent to 0.25 per cent, so 0.05 of a per cent up. The other proposition I read on page 8 of your submission where you say you have completed a research project on the implementation of board resolutions arising from the feasibility study into the payment of the training levy on the design and specification phase of building and construction projects. So we are now talking about some potential increases in funding. How potential and how big an increase are we talking here?

**Mr COCKER** - The act provides that our levy is between 0.2 and 0.5 of a per cent, set by the minister. It is currently set at 0.2 per cent. This issue that you raise is actually quite a difficult one and it is probably the first major problem that I'm working through at the moment. It is the issue of collection of the levy from the professional side of the industry and then in return what money should be spent on their training.

**CHAIR** - So you are calling that the professional side - design and construction?

**Mr COCKER** - Yes.

**CHAIR** - What about the first issue? It was raised yesterday with us that you were considering changing from 0.2 per cent to 0.25 per cent.

**Mr COCKER** - It is a decision for the minister. We have no submission with the minister at the moment to do that. It is an option on a range of things that the board is looking at to deal with.

**CHAIR** - So the board is looking at that as an option?

**Mr COCKER** - It is an option in a range of things the board is looking at.

**CHAIR** - Why do you need more money?

**Mr COCKER** - The complexity of this arises in actually collecting the levy due from that part of the industry. We are talking about architects and building surveyors and this sort of business. Their work is all done before we go to a builder. There is no certainty that the value that the permit authority accepts and that the levy is collected on includes that preconstruction work. It may or it may not. For us to be certain about that would cost probably a lot more than we would raise by putting the effort into being sure.

**Ms ARCHER** - Why should it include that?

**Mr COCKER** - Because the act says it should. The act talks about the design and the pre-construction costs as well.

**Ms ARCHER** - Philosophically why should it?

**CHAIR** - The flip-side of that question is: what makes you believe that it isn't? If the value of a building job is put down as \$200 000, why wouldn't the bill from the building surveyor be in that \$200 000?

**Mr COCKER** - It may be.

**CHAIR** - But you are going to put it up anyway just in case it is not?

**Mr COCKER** - No, I didn't say we were putting it up. The other thing is that the professional side of the industry - the engineers, the architects and so on - are saying to us well that they should be the beneficiary of funds from the training fund. I have a view that these people are professionals, that they have ongoing obligation under their profession to their CPD and that ongoing obligation is reflected in the fees they charge the industry. I am a bit dubious about that and I am of the view that we shouldn't be funding their CPD.

**CHAIR** - They have an argument. If in a \$100 000 job some \$50 000 was design and professional services, and you collect 2.2 per cent of it, they have an argument that you should be providing them with some service.

**Mr COCKER** - That is exactly right.

**Mr WINZENBERG** - But they don't.

**CHAIR** - How do you know that?

**Mr WINZENBERG** - I have checked with the councils and the assessments they make on the values don't include the design stage. The assessments they make are just the construction stage. If you look at the pulp mill, for example, all those costs are being incurred as we talk. There are jobs that might have had more money spent on the design and feasibility studies than maybe the construction.

**Mr BOOTH** - But didn't that fast-track parliamentary approval exclude the payment of training levies for the pulp mill?

**Mr WINZENBERG** - I don't know.

**Mr BOOTH** - I think it did.

**Mr WINZENBERG** - That is a bad example. A good one may be the development at The Springs. That has been looked at for probably 10 years and the cost of all those feasibility studies -

**CHAIR** - If you were to get 0.2 per cent of all that work done in the last 10 years, what would you spend it on?

**Mr WINZENBERG** - You could increase your contributions to people. We have limits on what we pay people so we could pay them more towards the cost of training.

**Mr COCKER** - Or we could be providing training to the professional corner of the industry, across the whole value chain.

**Mr BOOTH** - So you're suggesting that there should be a levy, whether it is 0.2 per cent or 0.25 per cent, on works that don't even get to the approval stage with a council?

**CHAIR** - No, the act is quite clear. It only applies if construction occurs.

**Mr WINZENBERG** - Say that went to the Hobart City Council, a levy will not be paid on all that; it will only be paid on the construction part of the project.

**Mr COCKER** - We have a circular argument. We have the complexity of collection and knowing what is being paid and, at the same time, the professionals are saying they want some assistance from the board. This whole thing is being worked through at the moment and one of the options is to amend the act so that we are only talking about construction value, not the whole value chain, to make it clear-cut and simple. If we are going to do that then we need to increase the levy slightly to make up for that.

**CHAIR** - So the poor old home owner has to pay more because you have to provide services to architects that a home owner would never use?

**Ms ARCHER** - Who already have a CPD program of their own.

**Mr COCKER** - That is a discussion that is going on and the resolution of that is something that we have to come to this year. I don't know what the resolution will be but it is a problem and it needs to be solved.

**Ms WHITE** - They are asking for it but they don't make a contribution, so do you have the capacity to say, 'Sorry, we can't provide that service.'?

**Mr COCKER** - That is an option, to go to the associations and say, 'Until you can guarantee our collecting all the money then we are not going to pay anything'. That is one of the options.

**Ms ARCHER** - Under the act shouldn't they already be entitled to it, if they are already deemed to have been contributing?

**Mr COCKER** - The spending of the levy is at the discretion of the board. There is no guidance in the act about whom it has to be spent on.

**Mr BOOTH** - What percentage is going into those areas we're talking about, the design and engineering side of it, and what percentage of your expenditure goes into apprenticeships and payments and whatever in those sectors of the industry?

**Mr WINZENBERG** - Zero

**Mr COCKER** - Except for a major conference that we facilitated last year, which was aimed at upskilling the whole industry in the future of building and environmental design. That was an area that they would benefited from, and so does Tasmania from their having that knowledge.

**Mr BOOTH** - Yes, but directly zero.

**Mr WINZENBERG** - Yes. We have now put in building surveyors and included them in the definition on the basis that the cost of the work they do is put into the price of the house.

**Mr BOOTH** - Does that mean, Ron, you are funding apprenticeships and programs for building surveyor apprenticeships, for example?

**Mr WIZENBERG** - We may well do that too. We may well help them with traineeships or whatever they want to do to put people through degrees to do building surveying. We haven't got to that yet but we are funding them now for some training.

**Mr BOOTH** - So, Ron, although not necessarily acknowledging everything I said with regard to the white card and so forth, you have had that comment from other building practitioners or participants in the industry that some of these things are perhaps unfair with regard to the comments that Mr Bacon made with people who have been in the industry for a long time and so forth. Do you see it as your role as a board or have you made comments back to the Government as a board that some of these schemes are problematical and causing issues in industry or do you just simply sit behind the legislation and say that is what the law says so we will do it? Do you act as a conduit back to government as well?

**Mr WIZENBERG** - To say that the numbers would be significant enough to make submission to the Government to change the law would not be the case. We would not get that number. You just get a bit of a feel sometimes that some people feel that they shouldn't have had to do anything because they have been in the industry for 20 or 30 years. It is not a big upswelling to do that. As I said before, most of them would agree it is the mechanism to have to do it. If your people already have to do an accreditation or a safety induction course, which all the big builders already have anyway, and then they all have to go and do something else then you are going to get a bit of a comment.

**Mr BOOTH** - My understanding, Ron, is that all businesses that employ people on a work site - if you have a small business, a mill or whatever building company - you have to already have induction programs in place. You have to be able to identify them to Workplace Standards. They come and inspect your induction courses to make sure that you are complying with a whole range of regulatory requirements in regard to employing people,

including wages and conditions and all that sort of stuff. It is already being done at a small business level right across the State, so it just seems counter-intuitive that you would suddenly then exclude people who have already done that from being able to go to work simply because they have not paid \$100 for a white card and done another five-hour course.

**Mr COCKER** - It is not a question that this board is involved with. It is a decision made in other places.

**Mr BOOTH** - But it does highlight not only the complexity but the contradictions that exist where on the one hand government is saying that you have to do this under the Workplace Standards and OH&S requirements, then you have some other bureaucracy saying you also now have to do this other layer of stuff that is going to replicate, but not to the same degree, as a proper site plan for your workplace. It is quite an exhaustive cost in terms of a burden on business. If you have 20 employees there is \$2 000 just pulled straight out of it. You could have paid \$2 000 to the employees who have already done this stuff, but instead of that you are just going to pay it off to some sort of training provider or whatever for provision of the card.

**Mr WIZENBERG** - It is interesting that a lot of employers might find it quite good to do the white card because the act is not descriptive. The OH&S act has left it to the decision of the employer all the time to decide what he does and what he doesn't. It does not say you have to go and train someone on using plant. They have to make that decision in their own interests as to whether or not it is a risk to their business. At least with the white card now they have to do it.

**Mr BOOTH** - You have to have SOPs and stuff on all of your equipment. You cannot employ someone to operate something without a standard operation procedure induction and a description book, manual or that sort of stuff. You are not allowed to employ someone to drive a forklift unless they have a forklift licence or they are under training. They have SOPs, go through procedures and so forth. It just seems to be another layer of bureaucracy.

**CHAIR** - We are getting into public policy now.

**Mr BACON** - Do you administer any other training that is mandatory apart from the white card? Any other courses that people have to actually do?

**Mr COCKER** - Yes, heaps.

**Mr BACON** - So a great percentage of the ones you provide are mandatory?

**Mr COCKER** - If you sign a training agreement then what you have to do as part of that training agreement is laid out, whether it be an apprenticeship, a traineeship or whatever. The course becomes compulsory once you have signed into it.

**Mr BACON** - Is the whole thing just a big circle? You say it is demand-driven, but is it driven by the fact that they are mandatory courses? Has anyone looked to see if the value is actually there in the training in that regard?

**Mr COCKER** - I guess that is probably getting into the realms of Skills Tasmania more than the training board. That is a function of Skills Tasmania, and the Tasmanian Qualifications Authority for that matter, to make sure that training is up to scratch, up to quality and up to requirement. A lot of training packages are nationally agreed through the industry skills councils and so on. A lot of it is set way out of our realm. In fact a lot of it is set out of Tasmania.

**CHAIR** - This is an opportunity for you to sell us on the idea of why the TBCITB should continue in what it is doing. In 2005 you had a new act. It is not a bad time to look at if you are still relevant in the market place. Is the levy being properly expended; are people getting value for it; can someone else do your job? It is our job to ask you these questions and for you to explain why you should exist. I didn't know that you didn't actually have trainers, that you buy all your packages. So you are a purchaser of services. Your submission to this inquiry on page 5 says that you produce an annual training plan. The training plan is developed through detailed consultation. In 2010 that consultation included writing to 26 stakeholder industry organisations, unions, RTOs and Skills Tasmania to provide their input. How many of them answered?

**Mr COCKER** - The deadline hasn't passed as yet. I know that I have a meeting with Skills Tasmania on Thursday in which they are going to provide their input into the plan. I can't tell you off the top of my head how many organisations have written back yet.

**CHAIR** - Do all these organisations, unions or whatever say, 'Well, you guys are just doing your stuff,' or do they actually interact here. You have written to them; is that enough? Should you be visiting these people?

**Mr COCKER** - In terms of the unions, there are probably three main construction unions - arguably a fourth. Three of them are represented on the board and they will be participating in approving the training plan. Yes, we talk to them. Yes, I see it as part of my role to have a visiting program. I have been in the job for two months and so far I have visited the Housing Industry Association, the Master Builders, Civil Contractors Federation, and I've had discussions with the plumbers. My intentions are to meet with all of them over the next 12 months. We want their input. We know the board is highly valued by industry. Industry generally likes the training levy. The building and construction industry is the only industry that has its own training fund and the Tasmanian training fund has subsequently been replicated in most other states. South Australia, Western Australia, Queensland, ACT, Northern Territory have all done it. Victoria have a version and New South Wales is now looking at setting up its own training fund.

The building industry is also very strongly supportive of it remaining independent - that is, the industry controls it through the board and through appointments to the board having to

be representatives of industry. They see that as very valuable. They do not want this training fund to be administered through some other part of the government bureaucracy.

**CHAIR** - Through TAFE or someone?

**Mr COCKER** - They like it independent. They like it the way it is.

**CHAIR** - Three consultative forums for the industry were attended by over 150 participants. Was there a pretty even split-up?

**Mr COCKER** - Yes. We went up the north-west and north.

**CHAIR** - So you get about 50-50 attendees?

**Mr COCKER** - Yes.

**CHAIR** - And they come together to talk about their training requirements.

**Mr WIZENBERG** - Yes, it is restricted strictly to practitioners. No-one from the board can go, no unions can go, no employer organisations can go. It is purely for practitioners so they can say their piece, and it works very well. I think they come out with some very, very good ideas and it is good because you get it from the bottom up.

**Mr BOOTH** - The board goes but that is it?

**Mr WIZENBERG** - Just the staff of the board. We have a person to run the program, but they say what they like and I can assure you of that. It is quite embarrassing what they say. It is a terrific forum because you get an understanding. You think you know what is going on but you do not.

**CHAIR** - Is what they say different to what they are saying to Mr Cocker when they say they are delighted to pay the money?

**Mr WIZENBERG** - At those forums we never got one complaint about paying the levy - and it is an open forum. We get complaints about other things but not about the levy.

**Mr BOOTH** - Is there some sort of précis of the general complaints that people had at those workshops?

**Mr WIZENBERG** - It is a bit like what you said before; a lot of people feel that they are doing training for training's sake in a lot of cases. They are a bit concerned that there are not enough opportunities out there to do other forms of training, but a lot of that is because it is very difficult for these builders to be able to do that, as they are out there on their own and it is hard for them to source training. We probably have to do a better job of that in trying to give them more information about all the courses. We have it on our database. If you want to have a look on our website there are thousands of courses listed there. Nevertheless it is



still very difficult if you are a small business and you have to come home of a night and all those things, so we have to keep on working on that.

**Ms ARCHER** - Do they fill in a survey or a feedback form or anything like that at those forums?

**Mr WIZENBERG** - We write it all up and that goes to the board and then we send that all back to them with the decisions made. So we will send them out the training plan and the strategic plan so that they can see where their input has been put into those documents. We embrace them fully in it.

**Mr COCKER** - As an example, at the Hobart forum which I attended probably half the meeting was taken up talking about asbestos. We discovered that there is a real need in the building industry for some training on asbestos identification, asbestos awareness and what to do when you come across it. It is an issue that deeply worries a lot of builders. In our health and safety part of next year's training plan there will be some discussion about asbestos awareness training for builders. That is direct feedback that we get from the conversations in these forums.

**CHAIR** - For one public meeting open to all you would have had to have the Albert Hall and have been beating them off with broomsticks.

**Mr COCKER** - Not quite. We had the big meeting room at the Royal Yacht Club for that forum.

**CHAIR** - Does the act require it?

**Mr COCKER** - The act requires that one, but the other ones are not.

**Ms ARCHER** - That is instead of an AGM in the old system?

**Mr COCKER** - No, it is just a public meeting.

**CHAIR** - How many people turned up other than staff?

**Mr COCKER** - About 40-odd people. The act says we have to have a public meeting and we have to advertise it.

**Ms ARCHER** - I am suggesting that it would be in lieu of it if you came under a system where there was an AGM requirement. It is the equivalent under your structure and is the only way of feedback.

**Mr COCKER** - Yes.

**CHAIR** - We all get the quarterly newsletter. I read that assiduously and it is all very good on the website. There are five meetings of the board and we have spoken about that.

I want to move on to other things you do which set you apart from a non-independent organisation - your research projects. Your annual report talks about the good research that you do in the building industry. The first research project was completion of industry research on the independence of yourself. What was that about? Why did you need to do it? Were you worried about this?

**Mr COCKER** - This was a board decision. The board commissioned Corporate Communications to survey the industry to find out what their views were around those issues, whether they were happy with what the board was doing or -

**CHAIR** - Independent from what? Bureaucracy? You cannot be independent from the industry because you have industry people on board.

**Mr COCKER** - Yes, but independent from Skills Tasmania, for example, or independent from the Minister for Education or whatever. We are not independent; we are subject to direction.

**CHAIR** - Yes, from the public sector.

**Mr COCKER** - But it is an industry board which runs the organisation and in that sense they see that as being independent. There has, I think, over the years been a lot of discussion, and not necessarily agreement, between Skills Tasmania and the training board about how things should be done, but at the end of the day the industry can say this is why we want it to be done and it gets done that way. They value that independence.

**CHAIR** - So how much did you pay Corporate Communications for this project?

**Mr COCKER** - I don't know the answer to that.

**CHAIR** - We try to get a snapshot of the things that you do as a board, like how much you paid for that research.

The second research project was submission of a training plan, which is hardly research because that is what you are supposed to do under section 34 of the act. The third one is the implementation of the recommendations of the CPD for building and construction professional's report. What was that about?

**Mr COCKER** - That is the issue we were discussing earlier about the access of the professions to the fund and so on. We commissioned a report to look into those broader issues. One of their recommendations was that the legislation be amended and the levy be marginally increased to compensate - as we discussed earlier.

**CHAIR** - So it is implementation of the recommendation; it is not really a research project.

The next one is implementation of board resolutions; neither is that a research project. I don't want to be pedantic here but one of the things that your annual report speaks about is that you do research projects for the building industry. These research projects appear to be

simple management tasks that you would normally do. Cooperation with the Tasmanian Government on building and construction training policy and the affordable housing strategy group training initiative is hardly a research project as well.

**Mr COCKER** - Could I suggest that each of those issues did in fact require a significant research component. Somebody has to investigate the issues, work out potential solutions, have a look at what happens in other States, at what is available and what is possible. Those are what we would call research functions. Then somebody has to do it.

**CHAIR** - Yes, but that is management research; that is hardly a research project to benefit the industry as such.

**Mr BOOTH** - Are they outsourced, Simon?

**Mr COCKER** - We have a research position on staff, yes.

**Mr BOOTH** - One of them I think was outsourced but the others were done in-house with your own researcher?

**Mr COCKER** - Dot point 3 was a report prepared for us.

**Mr BOOTH** - So those two were outsourced and the others were in-house? With dot point 3, implementation of the recommendations of the CPD for building and construction professionals' report, can you tell us what that is about? Who are those continued professional development for building and construction professionals and what was the report?

**Mr COCKER** - That is the issue we were discussing earlier - the architects, the engineers and the professions associated with the early phase of the construction value chain.

**Mr BOOTH** - So who did that review?

**Mr COCKER** - I cannot tell you off the top of my head.

**Mr WIZENBERG** - I am not involved in research but we can get it for you if you would like to know.

**Mr BOOTH** - If you would not mind, and the cost of it as well.

**Mr COCKER** - Of course the training plan has a significant research component to it in that we need to have the knowledge in-house about what the general requirements are, what is available, what is happening in other States, what the industry needs, what is available in Tasmania and we have to put all that information together.

**CHAIR** - I agree completely but I would simply argue that this would be normal management research that you would ensure takes place before you make competent decisions, but they

seem to be sold here as special research projects which benefit the industry. These seem to be management tasks. It was probably the language used in one of your previous reports which suggested that a deal of your money goes to research to benefit the industry. That is management research.

**Mr COCKER** - Or in-house research.

**CHAIR** – Yes, which of course needs to be done.

**Mr BOOTH** - Earlier you touched on the skill shortage and the mopping up of available labour in Tasmania, particularly to do with the mainland floods. There is a huge reconstruction task there. They are also going to Western Australia with the minerals boom that looks to continue unabated for a long time. Do you do your own research in terms of assessment of potential training needs or do you just rely on ABS data?

**Mr COCKER** - Within the capacity of one person we do all those things. We rely on ABS information but we also rely on local information. By being in contact with the associations and industry generally we get feedback on what is going on. A really good example would be with crane operators. A couple of years ago the board was advised that a research officer came across a situation where Tasmania had six crane operators, all of whom were about to retire. I think there is one crane at the moment working over the Mercure Hotel and there is another one or two working on the bypasses. If there were no crane operators in Tasmania, those projects would have ground to a halt while they sourced a crane operator from somewhere on the mainland. The board put in place a program and we now have six crane operators resident in Tasmania, who are newly trained and can fill that hole. If we had not done that then those projects would have had a major problem because they would have been subject to sourcing someone. Crane operators are attracting around \$120 000 a year as a salary, which gives you a bit of a clue as to the demand they are in. Those sorts of things happen. It is just part of the routine of the business.

**Mr BOOTH** - Rebecca made the point earlier on in terms of the levy being based on the amount of construction work and whether it indicated an increase in activity or whether it was just an increase in cost of those projects. If you look at 2009-10, which you said had a lot to do with the stimulus package, it might be masking a massive escalation in building and trades costs. If you try to employ plumbers, electricians - people who have serious qualifications as opposed to a white card - they are going through the roof and there is a critical shortage. I think a couple of years ago the average age of plumbers was something like 55 years, which means that you're not going to have enough plumbers shortly.

**Mr COCKER** - A situation that would be a lot worse without the work of the board.

**Mr BOOTH** - In terms of bringing on apprentices, to that degree obviously we have to train people up. I can see a fairly alarming prospect for the trades here with younger people getting mopped up and heading off to greener pastures where they can command massive wages and whether this is going to end up delivering Tasmanian workers who remain here to

provide Tasmanian services or whether it will just train people for the mining industry and reconstruction on the mainland. Do you have a view on that as a board?

**Mr COCKER** - It is a threat; it is a real risk. Talking to my counterpart in Western Australia, they are having a real problem in Western Australia. The building construction industry is training people and the resources sector is swallowing them up. They go to the resources sector and say, 'You guys really should be contributing to this training effort' and they don't want to know. I think the Western Australian Government is considering expanding their levy to cover the resource sector for exactly that reason. The trend is increasingly to create a fly-in fly-out work force, so they are not resident and they can do six weeks work and then come home for six weeks. Almost whole suburbs of Melbourne that do that and Tasmania won't be immune from that. So it is a real risk.

**Mr BOOTH** - It is happening right across the board. A lot of the forest industry workers, for example, will get jobs on the mainland, fly out and earn a lot more bucks than they have in the industry here.

**Mr WIZENBERG** - If you look at the figures, you are talking about \$4 million last year but I think we will be lucky to get \$3 million this year. So that gives you a bit of an idea. That is a million dollars, so a quarter of it is gone. There are about 20 000 in the industry and that has gone down quite considerably. It now may be down to 14 000 or 15 000; it just happens.

**Mr COCKER** - The last confirmed number we have is 18 700. That is six months old now.

**Mr WIZENBERG** - When you look back a few years ago we only had 13 000 people, so where did the 7 000 people come from?

**CHAIR** - You went on site at the Kingston bypass. What percentage of your annual take of, say, \$3 million comes from the road construction industry?

**Mr WIZENBERG** - It is around about 30 per cent. About a third is housing, about 40 per cent is civil and the rest is commercial.

**CHAIR** - So of the intake you get, civil pays for more than domestic housing.

**Mr WIZENBERG** - Yes.

**CHAIR** - Civil pay 0.2 per cent, but not on the entire total, do they? For instance, on the Brighton bypass, how much would they be paying on that?

**Mr WIZENBERG** - On the contract price of the work according the legislation. That doesn't go near a council.

**CHAIR** - No.

**Mr WIZENBERG** - It is the contract amount that those three contracts have.

**CHAIR** - How do you achieve that money?

**Mr WIZENBERG** - We have to chase that.

**CHAIR** - Do you?

**Mr WIZENBERG** - Yes, because it doesn't go through the council. We buy reports and things of what activity is going on and then we send letters out to people and we check with councils and all that about when the work commences. Then we seek the money from the principal contractors in those cases.

**Ms ARCHER** - It's not an easy system of recovery, given that it's by legislation. It is making your job quite difficult in that regard.

**Mr WIZENBERG** - It is like the Commonwealth taxation legislation - the same thing.

**CHAIR** - They are required to pay it.

**Mr WIZENBERG** - They are required to pay it but you have to chase the people to pay it.

**Ms ARCHER** - Yes, exactly.

**Mr COCKER** - As I said earlier, we do rely on the goodwill of the councils because there is actually no compulsion on the councils to collect that money for us.

**Mr WIZENBERG** - Whether it is taxation levy or any other levy or any revenue, people do not come forward and offer the money.

**CHAIR** - Are they getting value for their 40 per cent? Are they chasing apprentices as well?

**Mr WIZENBERG** - Yes. We fund them for plant operators and road construction.

**CHAIR** - You do?

**Mr WIZENBERG** - There were none of those up until recent years and now there are quite a few who do asphalt paving, so there are people doing those sorts of courses. It is very hard to get those people to do that now, to get someone to go behind one of those trucks putting asphalt down. It is a challenge for those contractors to get them.

**CHAIR** - It is a terrible job, the worst job in the building industry.

**Mr WIZENBERG** - It has been very difficult. I think traditionally they were of the view, and they probably still are a fair bit, that you just come as a labourer and you just dress up. I think there is still probably a fair bit of that in that sector of industry.

**Mr BOOTH** - The report on the state of the building and construction industry commissioned by the Building and Construction Industry Council in conjunction with the TBCITB in September 2007, have you done one of them for 2010?

**Mr COCKER** - Yes. One of our key functions is to provide advice to the minister on the state of the industry. It is our aim to produce a state of industry report every year. We currently have one in production.

**Mr BOOTH** - Why have we got a 2007 report here?

**Mr COCKER** - That was a specific report. The partner in that report no longer exists. It has been reformed as the Building Industry Advisory Committee. It may well be that we will jointly produce another report under the new organisation, but that was the most recent major work available.

**Mr BOOTH** - This is not criticism of you for providing the information but we are looking here at something that is over three years old now in terms of forecast demand of labour in all of the different trades.

**Mr COCKER** - At the time this was done it was two years old, but it is now a year older again.

**Mr BOOTH** - For the purposes of this committee we are looking at a report which is virtually over three years old. How contemporary do you think this would be? Have you got anything to say with regard to the veracity of this information? Is it far worse than this? We are looking at net shortfalls of electricians, for example, of 370 out of 3 050, a 10 per cent shortfall in electricians alone. So what is your ballpark figure for how many short we would be now?

**Mr COCKER** - I cannot answer that question at the moment.

**Mr BOOTH** - Have you got research available to the committee with regard to the current figures?

**Mr COCKER** - I'm happy to provide what we have got. One of the problems we have is that we rely on the ABS. As anyone who has relied on ABS stats in Tasmania knows, once you start trying to break them down the sample size gets too small to be totally reliable. If you've got an industry figure you can probably rely on it, but once you start breaking it down into subcomponents of the industry those figures get less and less reliable. There is a lot of work being done at the moment that still relies on the 2006 census because that is a big enough sample to be totally reliable. There is another census due next year and I guess we will be in a better position when we have those figures to work with. In the meantime the figures do cause some problem.

**Mr BOOTH** - The ageing bell curve is effectively what is causing a drop off in trades. It is not just that people decide they don't want to be a carpenter; it is because they are too old or they

retire and people haven't taken up that entry. These figures could grossly underestimate the skills shortage.

**Mr COCKER** - They could. I know when the Demographic Change Advisory Council did its work a couple of years ago it was predicted that the tip-over point for Tasmania would be 2012 - the point where new entrants were less than the people retiring. I think we have actually hit that point early; we are already there.

**Mr BOOTH** - I think we have too.

**Mr COCKER** - That work was identifying a problem, but it is with us now.

**Mr BOOTH** - So with the mop-up of professionals or at least qualified tradespeople to go to the mainland, for example, it could be an enormous task and take years.

**Mr COCKER** - If you look at civil construction, the industry at the moment is quite concerned about what is next. It has two major works on at the moment, Kingston and Brighton, but there are no major civil construction projects beyond those two that people know about at the moment. Those companies will be looking for opportunities elsewhere anyway. The workers who are there know they have six months work and if they see opportunities they may well be attracted.

**CHAIR** - One of them bought a Queensland company to be able to transfer some staff up there because there is nothing in the pipeline - Hazells.

**Mr COCKER** - So it is a real risk. The outcome of all that is that when we have got work, if we haven't got the workforce then cost goes up and quality goes down. I would argue that is the real benefit to homeowners in Tasmania. They pay their \$200 on building a house but that money is going towards trying to guarantee that there will be suitably qualified and reasonably competitive prices in the market when it is their turn. It has been paid before and it has created the situation which they are now benefiting from and they will look after the future. I would argue that that little \$200 contribution has probably saved them money.

**CHAIR** - It is a long shot, but it is the first one I have heard, so we will take it.

**Mr COCKER** - I have renovated and I know how hard it was when I did mine a few years ago to get tradespeople at the time they said they were going to be there and all together. If we have less of them it will get harder.

**Mr BOOTH** - Back to the artificial impediments to entry, I can cite electricians and plumbers who have just moved out of the industry because they were sick of this overly bureaucratic control of their daily activities as a human being by bureaucrats and controllers who have created make-work schemes around the industry rather than things that are genuinely necessary. It has been put to me that in terms of some of the electrical stuff a lot of the proper controls have been removed. It is outside of your ambit here so I am not blaming the board for this but it is actually driving people out of the industry rather than encouraging



them to remain. If you look at this statistic it is alarming that people might be leaving the industry because of artificial impediments to entry. Things like a white card, for example, to an electrician who has been operating for 40 years, are undignified. It is an insult to a lot of these people to have to suddenly go off and do a course on something they obviously know how to do because they have been doing it for 30 or 40 years.

**Mr COCKER** - They would not have to do a course. They could do the assessment without doing the course if they have that level of experience.

**CHAIR** - Submitting themselves for assessment.

**Mr COCKER** - Yes. If they don't like it -

**Mr BOOTH** - It seems to be imposed on the trades but not on the people who are imposing it on the trade. We do not have to do a white card to be a parliamentarian or any other -

**Mr COCKER** - You have other requirements and qualifications.

**Mr BOOTH** - They do let anybody in.

**Mr COCKER** - Job security is not that crash hot either.

**CHAIR** - Thank you very much for your frank submission for your time.

**THE WITNESSES WITHDREW.**

**Mr CHRISTOPHER ATKINS**, CHIEF EXECUTIVE OFFICER, TASBUILD LIMITED,  
WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Mr Atkins, thank you for your attendance today. We did receive one submission from a company that has recently been acquired - KWMC in Launceston. In this letter, this company objects to being required to pay, 'but after communication with our solicitors TasBuild took KWMC to the Magistrates Court'. At the first appearance the magistrate took leave to consider if he had jurisdiction to hear the case when he discovered TasBuild was not a government instrumentality but a trust. Is that accurate?

**Mr ATKINS** - That is accurate, yes.

**CHAIR** - You are a trust?

**Mr ATKINS** - Yes.

**CHAIR** - Set-up by an act of parliament?

**Mr ATKINS** - Yes.

**CHAIR** - We will look at that in a moment. So the matter has been back to court and currently as it stands KWMC accounts for long-service leave totalling \$15 000. These accounts have only been received today, which was the day you wrote this submission back in November. I have no knowledge whether it has gone back to court, whether he is continuing to defend it or whether he has to pay. That is a matter between you and him obviously, but there are some matters raised there that I think would be valid for us to consider with you. Perhaps you could just give us an overview as to how the trust was set-up. I am aware of its long-term background. The first time I became aware of it was when there were too competing proposals for Bicentennial funding from the Federal Government. One was for the Abt Railway and the other one was from a group of Hobart businessmen who wanted to build an AFL stadium at Elphin showgrounds utilising all the money from the long-service leave account, but it needed some Commonwealth funding and it did not get it. So that is when I first became aware it was in existence.

**Mr ATKINS** - I will give you some background to the best of my knowledge. I have been the CEO since April 2009 so I do not have a long history but I have been a past board member of the long-service leave fund. Legislation was enacted in 1971 recognising the itinerant nature of employees in the building industry and their lack of ability to otherwise get a long-service leave entitlement. The Long Service Leave Act was established to recognise the itinerant nature of employment in the industry and provide an opportunity for those employees to have their service to the industry recognised for long-service leave accrual purposes, as opposed to service to the individual employers. I think that became operational in March 1972. Workplace Standards I think were the most recent government department or agency that had responsibility for that long-service leave fund. I acknowledge the issue about people seeking contributions out of that fund to fund different projects, and I am not

sure whether this is the motivation for it, but there was a claim from industry that they could actually administer the fund more prudently and cost effectively than the government agencies actually doing it and they provided some evidence of how they would do that. In 1998 the Liberal Government of the day decided to look at the model that was in Victoria and actually introduce legislation to establish a trustee company to administer the long-service leave fund in accordance with the Construction Industry (Long Service) Act 1997. That became operational from 1 July 1998 and has operated under that guise ever since.

**CHAIR** - So in order for us to understand whether there has been any policy creep or bracket creep in terms of its capture and the rest of it, and given that the building industry has changed quite substantially, particularly in IT areas - and this company is involved in the provision of IT services. In fact they that did this camera system and they deliberately stay out of wiring because they leave that up to wiring companies. They do the provision of this stuff. More of those companies are going to be involved in and around industry. So there is then a challenge as to whether they are in or out. These people received a visit to say you are in and obviously you are in court now. So are there many others that you are currently in dispute with as to whether they are in or out of the industry?

**Mr ATKINS** - April 2009 was my appointment date as CEO and trying to quantify or interpret the ANZSIC code as it relates to the construction industry is a very difficult issue particularly when the ANZSIC code is a business classification structure, not an employment classification structure. So we are meant to apply a business classification structure and try to identify how that fits with employees. So it is not a simple issue.

Certainly businesses of the type that KWMC would basically fit into are described in the ANZSIC code, not directly in division E, which is the construction industry classification, but in an ancillary area that refers the businesses back to division E, which is straight construction. KWMC presented quite a number of issues in relation to interpretation of the act and also interpretation as to whether employees sat within the classification structure. Just on that one, KWMC provided copies of the employment contracts of each individual employee. The scope of work to be undertaken or performed relevant to those contracts was reviewed both internally at TasBuild and also with a legal firm and the joint position was that their employees would be covered within the ANZSIC code definitions and the other issues within the rules and the act.

**CHAIR** - Are there any other companies that you have engaged with at this level?

**Mr ATKINS** - There is another matter that is going forward and may end up in court. We have asked a company to provide information relevant to the employment of some employees that we would be able then assess and determine, as far as we can, whether they are in the construction industry or in fact mining. The ANZSIC code under division E provides that organisations removing overburden from a mine site are in construction - as an example.

**CHAIR** - How far do take this and why is it that you are aggressively pursuing people who are on the fringes of the ANZSIC code?

**Mr ATKINS** - The particular company that I am referring to about the mining issue, certainly they have been in civil construction for quite a number of years. Some time ago they got a contract with a mining company and they are now claiming their employees are in mining. It is a moot point. If the contract says that they are employed to remove overburden from a mine then that is construction work, as defined in division E.

**CHAIR** - If you have to go to court on these matters, it would point to the fact that things have become cloudy enough for parliament to have to legislate so that these things are as plain as the nose on your face and not require Tasmanian companies to be taken to court by a trust.

**Mr ATKINS** - In relation to proceeding to court, it is not proceeding to court to prosecute them about their employees. The proceeding to court is to get them to provide information so that an assessment can be made. If the employees are in mining then they are in mining, end of story, but getting sufficient information to establish the employment categories of these employees is the difficult issue. Section 8 of the Construction Industry (Long Service) Act allows us to serve notices on employers requiring them to provide specific information. That is about fact-finding, evidence-gathering issues so an assessment can be made as to what their employees are doing, whether they are covered or not. If an employee chooses or refuses to comply with that notice then the only way we can enforce it is by proceeding to court.

**Ms ARCHER** - Like a breach of statutory duty claim.

**Mr ATKINS** - Yes. KWMC were in exactly the same issue. They said, 'We're not in the construction industry, so we don't need to comply', but the subtlety of the wording of the act is that we can serve a notice on an employer to provide us with information which then allows us to make some assessment. It is not a requirement for that employer to be in the construction industry.

**CHAIR** - So you no doubt have people out in the field strolling into companies that are on the margin and just requiring to look at their books?

**Mr ATKINS** - Could be. If the company refuses we can then serve the official notice.

**CHAIR** - But they're walking in off the street asking for a look at employment contracts.

**Mr ATKINS** - Generally they don't just walk in. They might make an inquiry of the owner of the business as to what they are doing, but generally that is prompted by someone contacting our field officer or the staff at TasBuild saying, 'I'm in the construction industry and no-one is paying any money in for me'. That might generate a visit, but generally it is not a cold-canvas call; something has prompted it in general terms.

**Mr BOOTH** - But you do a bit of push yourself. I know of industry groups that have complained that TasBuild has served them with a letter demanding payment for TasBuild for long service without any complaint. You are proactive in seeking out any business that is involved with construction?

**Mr ATKINS** - Yes, if there is somebody in the construction industry. The reason, from a business point of view, is that the legislation doesn't only impose obligations on an employer, it also imposes an obligation on TasBuild. TasBuild has an obligation to pay an employee, whether a contribution is paid or not, if they have been in the construction industry for the period of time. If we have potential employees coming to us establishing their bona fides as being employed in the construction industry, whether or not we have funds or contributions paid on their behalf, we are obliged to make a payment. It goes without saying that if you have the pressure on this end then you need to relieve on this side. If an employee has a potential claim against TasBuild then we would be pursuing the employer to ensure they are complying with their legislative obligations.

**Mr BOOTH** - So in the case of KWMC, for example, if they had an employer who in that industry worked for them for whatever the qualification period for long service in that particular industry was, who would pay the long service if they had been paying contributions to you and the employer remained with them? They didn't come from another employer but had been there for the full time. Do they assume the obligation or do you pay?

**Mr ATKINS** - We pay. That is the obligation under the legislation and the rules; whether we get contributions or not we still have the obligation to pay.

**CHAIR** - If some person said, 'I was with Smith Enterprises for five years and it should count towards my long service', you would say, 'They are not in the construction industry'.

**Mr ATKINS** - We would have to review it. It is not necessarily the employer; it is what the employee is doing. If the employee fits within the construction industry, we are most probably obliged to do it.

**Mr BOOTH** - How do you justify that? If somebody comes in and says that they have been in the industry for 10 years so give me my long service, what audit trail do you go through?

**Mr ATKINS** - There are two scenarios. One is where someone comes in cold canvass and nothing has been recorded on the system for them and no employer. We would be asking them to stump up the information to establish their bona fides so there is something to actually chase after. So we get that information and then we refer that information to the employers that have been listed and ask them to confirm or deny that they were employed, and employed in the construction industry.

**CHAIR** - So in reality the chances of your having to pay out without having actually received a contribution is not high.

**Mr ATKINS** - The building industry is quite large and quite nebulous and I think it would be fair to say that unless it is a large company the chances of chasing down an individual or a partnership or a very small company are negligible in being able to contact them or identify where they are, and then getting funds even if you can contact them.

**Ms ARCHER** - What if you reach a dead end situation where, say, the business that they worked for has since gone under and there is no response to any correspondence from anyone that previously purported to be in charge of that business? Do you just simply reject the employee?

**Mr ATKINS** - No. All the information is then referred to the board and the board actually make a decision as to whether, on the balance of the evidence provided, the person was or was not employed in the construction industry for that period of time. If they say he is then we pay the liability.

**Ms WHITE** - If you do track down an employer and you find that they are to make a payment, how do you enforce that if they are unwilling to comply?

**Mr ATKINS** - That has to go through the court process.

**Mr BOOTH** - Is it a cumulative thing? What is the period for long service?

**Mr ATKINS** - For accrual, 10 years.

**Mr BOOTH** - Is it 10 years continuous or 10 years accumulative over a lifetime?

**Mr ATKINS** - You can actually accrue 10 years provided you are not out of the industry for over four years. You can have breaks of up to four years and then the balance will keep on accruing. If you have had two years service then we record two years and if you are out for less than four years and then you come back in you can actually add to it again.

**Mr BOOTH** - So you have a nice holiday in between but somehow this qualifies them for long service as if they had been a continuous employee of any other ordinary company providing long service?

**Mr ATKINS** - Yes.

**Ms ARCHER** - Yes, under the long service leave act.

**Mr BOOTH** - It is an extraordinary situation.

**CHAIR** - We will have a look at that. Your board and your operations, you and your staff, have to be paid from something, so it gets paid from income from cash management on deposit. If I were paying Scott Bacon as a carpenter for, say, six years and then he exits the industry and stays out for five years and does not come back, what happens to the money that I paid in on his behalf for six years?

**Mr ATKINS** - It stays in the pooled funds.

**CHAIR** - It becomes yours.

**Mr ATKINS** - Yes.

**Mr BOOTH** - Mr Bacon never gets access to it?

**Mr ATKINS** - No.

**CHAIR** - That is house money - like striking zero on roulette. It goes to the house.

**Mr BACON** - And the opposite is true in that employees can come along and claim money that has never been paid in?

**Mr ATKINS** - Yes, that is the other side. You are exactly right that this is what happens but by the same token those funds are returned to the industry employers, if you like, via the contribution rate that is actually applied. So in the circumstances where somebody never gets an entitlement, the funds stay in the pool and that is right, but those funds are then actuarially assessed and the contribution rate is determined based on our ability to pay the liability within the fund. There is a balance issue in that we try to keep the contribution rates as low as possible and it is those sorts of things that allow that to happen.

**CHAIR** - Let us talk about a contribution rate. This is not an actual salary percentage payment; this is a rate that is struck under your legislation?

**Mr ATKINS** - To an employer making a contribution to the fund?

**CHAIR** - Yes.

**Mr ATKINS** - They are paying a percentage of an employee's ordinary pay into the fund.

**CHAIR** - Which is what?

**Mr ATKINS** - Today it is 2 per cent

**Mr BOOTH** - If you get a whole lot of people who came along and said, 'We've been employees in this industry', and you identified them and paid them out, and then you needed more money to keep the fund going, do you just put that percentage up?

**Mr ATKINS** - That is the leg we have to pull. The most recent example I can give you of that is the global financial crisis. We had back-to-back years of negative returns. Prior to the global financial crisis the contribution rate was 0.3 per cent of ordinary time earnings. You need to balance that against the fact that to fully fund the liability is 2.5 per cent of ordinary time earnings, so it was only 0.3 per cent, so the fund was going very well. The global financial crisis came along and hit us pretty hard. The board made a decision to increase the contribution rate to 0.6 per cent in April 2009 and then up to 1 per cent in October 2009. However, the global financial crisis took a toll worse than we anticipated and so the October increase, instead of being 1 per cent, was 2 per cent.

**Ms ARCHER** - So was this based on actuarial evidence?

**Mr ATKINS** - Yes. We are required under the trust deed to take actuarial assessment every year.

**Mr BOOTH** - So it is virtually a 700 per cent increase because of the global financial crisis. Current employers are now being charged a 700 per cent increase to pay for the global financial crisis and in many cases to pay for long-service leave entitlements that might have been from six or eight years before from other employers?

**Mr ATKINS** - That's correct.

**CHAIR** - I always love it when funds managers say, 'We had a couple of years of negative growth'. How much money did you lose?

**Mr ATKINS** - We went back 11.3 per cent between 2007 and 2008. In 2008 we experienced a minus growth of 11.3 per cent and a further 17.4 in 2009. So in 2007 we had total funds invested of \$62.2 million. At 30 June 2009 it was \$45 645 000.

**CHAIR** - So you have lost \$17 million?

**Mr ATKINS** - Yes, and that was effectively the global financial crisis. We are coming back.

**CHAIR** - You guys are charged with funds management. You and your board make decisions about lots of money. You come from the building industry so you are very well placed to understand all the nuances around the industry and employment and the rest of it, but how about the rest of the board? Are these experienced fund managers?

**Mr ATKINS** - The board consult or contract with MLC Implemented Consulting in relation to the management of the funds. So the board overview their decisions, issue instructions and objectives to be achieved from the investment of the funds, and MLC actually invest the funds based on those directions.

**CHAIR** - Of the \$17 million you lost was any of it in a strange derivatives or products?

**Mr ATKINS** - No. I think it would be fair to say it is fairly conservative investment. We are a defined benefit fund, if you like. If we are talking about somebody who has been in the industry for 10 years and started as an apprentice, even in today's market if an apprentice is \$250 a week then we get 2 per cent of \$250, but we are paying him out at his tradesman's rate. A carpenter is now about \$1 080. But along that 10-year continuum we have 2 per cent of \$250 in year one, the 2 per cent of \$300, so the investment has to be more risky maybe than what you would otherwise like because of that growing issue. Then on top of that we've got wage increases that occur every year as well. Being a defined benefit fund, we've got certain challenges and our investment portfolio is structured to accommodate that particular issue.



**CHAIR** - It is all very well to be smart in hindsight but when you say you have to operate in the more aggressive margins for investment in order to meet your objectives, that is certainly not the way government works. They always operate on the prudent side, boring and prudent, but know exactly what is going on.

**Mr ATKINS** - To get that level of comfort and security, I would think that the contribution rate would have to go up further.

**CHAIR** - Even further now?

**Mr BACON** - It is long-term thing and if you go in at high risk then at some point it is going fall over.

**Mr ATKINS** - Exactly right.

**CHAIR** - Yes, you have to fall some time but \$17 million is a serious kick in the pants. That is a monstrous failure.

**Mr BOOTH** - Yes. It is not bad if you can make up a shortfall by charging someone else for it. It is a pretty good model.

**Mr ATKINS** - That is the only lever that TasBuild has but they are mindful of the industry. Even in relation to the 2 per cent there was a lot of discussion about whether it should be that or 2.5 per cent or something lower. The advice from the actuary was that we needed to address our issue and we needed to get the value of our assets to 110 per cent of our liability. That is the recommendation so that the ups and downs of the market are mitigated without having to adjust the contribution rate. The intention of the 2 per cent was also, at the first opportunity after we did get through the GFC, to decrease the rate to something that we could set and forget; there would be no other adjustments. So the board are working towards that now, moving it from 2 per cent down to a figure that hopefully, with the surpluses et cetera, we will able to leave and not worry about it any further going forward.

**Mr BOOTH** - What is the administrative cost of the whole deal?

**Mr ATKINS** - I do not have that with me.

**Mr BOOTH** - Could you provide that to the committee, please?

**Mr ATKINS** - Yes.

**CHAIR** - How many staff do you have, Chris?

**Mr ATKINS** - 6.4 staff.

**Ms ARCHER** - A paid board?

**Mr ATKINS** - The board do received payments.

**CHAIR** - How much does the chairman receive?

**Mr ATKINS** - I think it is \$25 000 a year.

**Mr BOOTH** - How do you appoint the chairman? Is it a merit-based appointment?

**Mr ATKINS** - For this last appointment each board member was asked. Des Hodgman was the past chairman and gave plenty of notice that he was moving on. The board were asked to identify suitable or prospective candidates that they were aware who had some industry affinity, knowledge of the industry et cetera, which was seen to be reasonably high profile for them.

**CHAIR** - Investment experience?

**Mr ATKINS** - Yes, all those things. The last appointment was Graeme Sturges.

**Mr BOOTH** - So he had investment experience?

**Mr ATKINS** - Not to a great degree. He understood the running of businesses et cetera. Based on all the candidates that we considered, the board considered he was most appropriate.

**Mr BOOTH** - So how does one become a candidate? It just seems extraordinary that a failed minister would end up on a nice little earner like this. What is the process that gets someone into that position?

**Mr ATKINS** - The board were asked to nominate potential candidates and to receive expressions of interest. Based on the expressions of interest there were a number of discussion held with different parties and the board were comfortable to support Mr Sturges.

**Ms ARCHER** - So it is only by board nomination; it is not advertised or any other recruitment process?

**Mr ATKINS** - In my time as CEO, Des Hodgman was always the chairman. When he was appointed I think they might have advertised at that time. It was quite some time ago in early 2000. A number of ways to select the chairman this time were discussed and it was agreed that the board would attempt to identify appropriate parties that might fit the role chairman.

**Ms ARCHER** - What is the instrument that TasBuild has been created under? It is not a constitution, is it, if it is a trust?

**Mr ATKINS** - No, it is a trustee company.

**Ms ARCHER** - That does not stipulate how the appointment of a chairman is to be done?

**Mr ATKINS** - No. There is a deed between the government and TasBuild in relation to what we are allowed to do et cetera, and then from that the rules are established.

**Ms ARCHER** - That does not cover the process for appointing a chairman?

**Mr ATKINS** - No. You are referencing articles of association, and that is by a vote. The appointment of the chairman is by a vote of the board members.

**CHAIR** - There are articles?

**Mr ATKINS** - Yes.

**CHAIR** - Can we get a copy of those?

**Mr ATKINS** - Yes.

**Ms ARCHER** - That stipulates the appointment of the other board members, doesn't it? They are drawn from industry and the unions?

**Mr ATKINS** - Yes. There are six organisations acknowledged in the articles and each of them are allowed to appoint a member to the board.

**Mr BOOTH** - So is there a short list for the chair?

**Mr ATKINS** - There were two parties who were being considered seriously for it.

**Mr BOOTH** - So there were only two nominations?

**CHAIR** - Your board is made up of nominees from organisations?

**Mr ATKINS** - Yes.

**CHAIR** - Could you tell us which organisations and who they are?

**Mr ATKINS** - Master Builders' Association - Michael Kerschbaum. Tasmanian Trades and Labour Council - Unions Tasmania - is a funny situation at the moment because they appointed Kevin Harkins, who was the secretary of the ETU who has continued as board member representing Unions Tasmania and he is now the secretary of Unions Tasmania.

**CHAIR** - Is he on your board?

**Mr ATKINS** - Yes.

**Mr BOOTH** - He and Sturgo together! That would be an interesting dynamic.

*Laughter.*

**Ms ARCHER** - You don't have to comment on that.

**Mr ATKINS** - Then we have Michael Shepherd from the Building Industry Specialist Contractors Organisation. TCCI have appointed the Civil Contractors Federation representative Adrian Granger as their representative. CFMEU have appointed Tony Benson. The AMWU has appointed John Short. He replaced Anne Urquhart.

**CHAIR** - How much a year do they receive?

**Mr ATKINS** - I think there is \$3 600 in July of each year and I think it is \$600 per meeting.

**Ms ARCHER** - In addition to that annual remuneration?

**Mr ATKINS** - Yes.

**CHAIR** - How many meetings?

**Mr ATKINS** - Generally there is one every two months.

**Ms ARCHER** - Is that to cover expenses or do they get expenses on top of that for travel?

**Mr ATKINS** - No, they do not get expenses. The board sitting fee is actually paid back to the nominating organisation in that circumstance, not the individual. So we don't pay superannuation or anything on that.

**Mr BOOTH** - So do they then remunerate them if they want to themselves?

**Mr ATKINS** - I can tell you as a past board member of Master Builders I never got it.

**Mr BACON** - Because it is part of your job that you go to board meetings?

**Mr ATKINS** - Yes.

**Mr BOOTH** - It is intriguing that it goes back to the nominating organisation as part of an income stream for them.

**CHAIR** - I suppose it is reimbursement for when the director of MBA is away from his job and that is their contribution.

You have had a very interesting time in your new career; you arrived when the sky fell in.

**Mr ATKINS** - Yes, lovely. There was some discussion about the 2 per cent increase; that was brought in because of the CEO's new car. A nice Subaru Liberty. I don't know whether you know how much they are worth but they are not -

**CHAIR** - No, so that is what that was about. A new car.

**Mr ATKINS** - Yes.

**CHAIR** - It was nothing to do with the fact that you had lost \$17 million?

**Mr ATKINS** - No.

**Mr BOOTH** - Chris, back to the KWMC situation. If you wanted a CCTV put up on a currently constructed building, in other words just an add-on to a premises where you decided you wanted security, then 2 per cent of the wages of the person putting that CCTV up on an already constructed building would be levied for long-service leave?

**Mr ATKINS** - Based on the KWMC example, yes.

**Mr BOOTH** - Anything they do in that regard? Even repairing a broken cable?

**Mr ATKINS** - Yes. Repair, alterations, additions, renovations are all part and parcel of it. You don't repair a brand-new building obviously. That it is the intention, that it is ongoing works as well.

**CHAIR** - In a bank if Westpac Bank rings and says, 'Our ATM is down, the security is down, so we have to shut the bank'. They send someone and they fix the security system on the ATM. What on earth does that have to do with the building industry?

**Mr ATKINS** - I would have to look at the other information, but I am not sure what a security system on an ATM does. I know what a security system on a building does and, quite clearly, if you said it was a security system on a building the repair on that would be covered.

**CHAIR** - They all have internal security. That is the problem with sweeping in these marginal things. When I look at the financial performance of your organisation and the fact that you have had to go to a 700 per cent increase there, I am not surprised that you are out beating the drums looking for new players because you need the money. My concern is you might be sweeping in people and a reasonable man on the street would say that you are pushing the margins.

**Mr ATKINS** - I would agree with your comment if on an ongoing basis they were being charged full tote odds to fund their liability to long-service leave, but they're not. They are still getting a 20 per cent discount on the full cost to fund their liability. To fund liability totally is 2.5 per cent of ordinary time earnings.

**Mr BOOTH** - To run TasBuild?

**Mr ATKINS** - No. We pay an employee the equivalent of 2.5 per cent of ordinary time earnings for their long service leave, so the value to fund that is 2.5 per cent of ordinary time earnings. That will fund the 13 weeks after 10 years that an employee gets as a benefit.

**Mr BOOTH** - But they only get it if they qualify for it, so the real cost is probably a fair bit less than that because a lot of people are now transporting from industry to industry. There are not many people who are receiving long-service leave anymore.

**CHAIR** - They get people in the IT industry who might do four years in this work and then slide off and work at an allied company within IT. Because of the four years out, that is a straight tax on this company - a \$15 000 tax because he won't get any benefit at all from the money. He had a bill back in November for \$15 000, a straight tax on this. He has to therefore immediately put up all his pricing and costing. That is what this committee is looking at. This is called 'policy creep' or 'bracket creep'. There always was a bracket of people in the industry who are covered under your ANZSIC code. You are taking people to court to look at their documents. Then you are getting a legal opinion and levying the bill. The only way they can defend themselves against what they consider a tax is to take you to court themselves - and you can imagine the huge bills there. You can imagine the distress of these people who are on the margins. It may well require Parliament to look at this disturbance in the industry. This is a company that is out there doing terrific things, that otherwise you would have to go to mainland companies to do, but they are being whacked with this tax that this separate trust has determined they should pay. That is why I am really keen to understand from you how many more of these marginal situations you are involved in.

**Mr ATKINS** - Relevant to that particular matter, there are possibly another two or three similar organisations based in the same area that are all in the same boat.

**CHAIR** - Are there any other new industries, people who have set up a new business, that you are seeking to sweep into your clutches?

**Mr ATKINS** - It is certainly not my intention, or the Government's. We are looking to change the legislation at the moment to try to remove some grey areas. If this committee were to make some recommendations it would be opportune because that legislation is in draft form. They were starting to amend it before I got to TasBuild and it has been ongoing. I think we are up to version 12.

**CHAIR** - Which department is this you are working with?

**Mr ATKINS** - Workplace Standards.

**Mr BOOTH** - KWMC have a \$15 000 potential liability at the moment. Is that from the starting date when you first notify them that they are due or do you go back to 2002 or whatever?

**Mr ATKINS** - We can go back historically. So all those employees would have service recorded from the date they started with KWMC and they are charged accordingly.

**Mr BOOTH** - In other words you look at their whole payroll back to 2002, notwithstanding that some of them might not be there any more, they might be dead, they might have retired; you just tax them the 2 per cent?

**Mr ATKINS** - Yes.

**Mr BOOTH** - Even if it would have been 0.3 per cent when the liability occurred in the first place?

**Mr ATKINS** - In KWMC's circumstance they are actually charged at the full recovery rate, 2.5 per cent, because the liability is known and the offsetting things, like the investment returns and those sorts of things, we haven't been able to apply that to that liability, but that is defined liability today. So where someone signs up today and they have historical records going back, anything back for two months is at the current rate, but anything after that it is 2.5 per cent at today's wage rate.

**Mr BACON** - You go back how far?

**Mr ATKINS** - To when the employee started.

**Mr BACON** - For each employee?

**Mr ATKINS** - Yes.

**Mr BACON** - Who has ever worked there?

**Mr ATKINS** - For the employees that they are actually reporting, that we are aware of.

**Mr BACON** - So you can force someone out of business because they have such a big bill, effectively, if they have been in business for 20 years.

**Mr ATKINS** - That is the potential. KWMC is a little bit out of the square but you would like to think that most of the businesses are actually aware of their obligations and actually doing what they need to do.

**Mr BOOTH** - So you may go back to a business like KWMC which is in an area that is grey. You are talking about legislation perhaps to capture these things and clearly define who is liable. If in fact it is found that they fall under the scheme and are captured, you could go back 10 years. You could take all of their employment records in terms of the PAYE tax that they have paid in that period of time and you could levy 2.5 per cent over the entire time that those people worked there.

**Mr ATKINS** - You are basically correct apart from the fact that the legislation only provides seven years. They have to keep records for seven years. If you are an employer and you are approached by us in that circumstance, you would say, 'I've only got records for seven years.'

**Mr BOOTH** - So if they threw their records away as soon as they got the letter from you, you can only go back seven years because that is what they are required to keep.

**Mr ATKINS** - Yes.

**Mr BOOTH** - But the obligation would be there if they had their records to potentially go back 10 years, and it would be 2.5 per cent?

**Mr ATKINS** - Yes.

**Mr BOOTH** - Even though for the majority of that time prior to GFC it was 0.3 per cent of a liability, but they now have to retrospectively pay 2.5 per cent?

**Mr ATKINS** - Yes.

**Ms ARCHER** - Because you have lost on the investment opportunities; is that the reason?

**Mr ATKINS** - They are my words. There was some motivation for drafting the rules and legislation to reflect that position. In fact we have not had the benefit of actually getting those funds and being able to use them and get whatever out of it.

**Mr BOOTH** - Chris, getting back to the issue of the security camera I was talking about before, I would argue that in fact it is not construction to be retrospectively fitting a CCTV system. Even if you accept that it is construction, if the monitor breaks and someone then goes out and fixes the monitor, you are saying that they have to pay transportable long-service leave through TasBuild for repairing an electronic device.

**Mr ATKINS** - I suppose it goes into degrees. If an employee is employed to install and do all the other things with it, generally you will find that once the employees are registered then the contributions continue.

**CHAIR** - Once an employee has made his tick he is part of the construction industry. It doesn't matter what he does. He could spend his entire 12 months only working on ATMs and having nothing to do with construction at all, but he is paying anyway because he has been determined as being part of the construction industry, even though he is not.

**Mr BOOTH** - And every other person who is in that company is deemed also to have been in the industry as well.

**Mr ATKINS** - No, not everybody because it does not cover clerical, admin or managers. As a sidelight, recognise that employees start with a building company in general terms. They start as a tradesman and no doubt they are employees for the purposes of the legislation. You will find that the good ones get promoted and they will get promoted to a position where they are no longer in relevant employment, which is the determining factor as to whether there are contributions required or not. Some companies continue to pay. Some



employees, it has been reported, have refused promotion because they are so close to an entitlement and if they take the promotion they will not get it. Part of our legislative amendments at this stage is to allow that circumstance. Where a person is employed, provided they meet certain criteria contributions can continue until they receive an entitlement. Equity and all those sorts of things coming into play would be an appropriate course of action to go forward with. That is a particular issue that the industry have lobbied TasBuild about and the response is to see whether or not the Government will approve the legislative amendments in relation to that area.

**CHAIR** - We would be interested in that as well. It is a separate issue and that is an interesting twist on it.

**Mr BOOTH** - Can you comment on cashing out the long-service leave entitlement because of the transportability of people in the industry and the fact that a lot of them never end up getting any benefit out of this because they do not stay in the industry for the period that is required? It might be appropriate to look at the possibility of just simply adding that - currently it is 2 per cent - onto that employee's wage and they deal with it themselves. They bank it or it goes into their superannuation as an additional contribution or something rather than long-service leave.

**Mr ATKINS** - I have no doubt that there are a number of ways that can be achieved. My personal view - and this is irrespective of long-service leave - is that there is some advantage in having guarantee or security of those funds for the benefit of employees locked away somewhere, as opposed to being held in a company business. The progressive payment of that certainly does that to some degree, but also whether or not the Government's policy position on the benefits of long-service leave from a physical and psychological point of view need to be weighed into that. Long-service leave was not done because it was a nice thing to do. I am imagining that there was some justifiable rationale behind it because every State employee has legislation relevant to long-service leave. Portable long-service leave is in every State for the construction industry, so the policy benefit of psychological and physical issues of a long-term employee, whether it is with a single employer or a number of employees in the construction industry, need to be considered in relation to that. If that policy position is important to Government then it is important that the funds are also available for payment of those entitlements when they accrue. That is just me speaking personally without a TasBuild hat on; there are some issues.

On whether long-service leave is a real benefit, I have been working since I was 15 personally and I have never had long-service leave and maybe that is my problem today. It is those sorts of issues and it is really for a government to say whether long-service leave is worthy to continue in the community and if it is worthy to continue how is it best funded.

**Mr BOOTH** - If you take into account the cost of administering this scheme and the likelihood that a lot of people never receive a benefit - even if they worked there eight years, for example, they might not get a benefit - then it may be just simply cheaper and easier to cash that out. I think in fact in some cases you can cash your long-service leave out anyway.

**Mr ATKINS** - We are not a leave fund. The board's policy position is that every employee should take the leave and it would require a legislative change to do that. There are a number of arguments that employees will proffer as to why they do not want that changed - the ability to make the choice of leave or cash. Most people who take the cash use it as a deposit on a house. The younger ones in particular take the leave and then build a house so.

**Mr BOOTH** - Or they get another job somewhere else in the meantime.

**CHAIR** - This brings us to a point of contention. It is not our job here to argue with you whether this should be here or not, and you are being very frank and I thank you for that. I think the distrust of the whole thing comes in when people look at the arrangement and find that, as will happen with many of the employees of an organisation like KWMC, very few of them will qualify for the 10-year long service because they are in the IT industry, which means they will drift over to an IT job. They will be working here in Parliament in IT services or something for a couple of years here, then a couple of years there. Your organisation then pockets the loot. If that money for those four years that KWMC paid in here was repatriated back to KWMC, 'Here's your money back. He didn't qualify', you would say, 'Who cares? I'm going to give the money to that organisation to put forward to this guy if he makes it. If he doesn't, I get it back.' But you guys are knocking it off because you need it to run your operation. I think there would be far more people prepared to pay or feel happier about the whole thing if it was more genuine in that case. How many people annually, for instance, do you pay out? How many weeks is it for 10 years' service?

**Mr ATKINS** - It is 13 weeks. In 2010, it was 465 people. That was a record year.

**CHAIR** - Just a cohort coming through?

**Mr ATKINS** - Yes, it could be. It was 373 in 2009, 308 in 2008. In more recent times I think it is escalating, whether or not people are now accruing and the records are such that they know they have accrued. That represented just over \$3.1 million in entitlement payments.

**Mr BOOTH** - When an employer makes a contribution, that is recorded against each individual employee if that employer is registered with your organisation. So if Fred Bloggs is registered with you in 2010 and by 2018 he has worked all over the place, those contributions will all come back and the continuity of service will already be recorded in each case?

**Mr ATKINS** - Yes. There is an obligation on each employer, depending on the size of the organisation, either monthly or quarterly to lodge an employer return which will report the number of days the employee has worked, recognising that it is Monday to Friday dates that we count. So the number of days they work and the wages paid for the month.

**CHAIR** - Would it be as fair on a building industry worker that he gets one extra week a year so that after 10 years he gets 10 weeks.

**Mr ATKINS** - No, it would still be 1.3 weeks extra a year, if you're talking about that issue. It has been mentioned in other jurisdictions outside Tasmania in relation to rolling annual leave and long-service leave into the same boat. Effectively it just changes the deck chairs to some degree. The cost doesn't change.

**Mr BOOTH** - It sort of does, Chris, because it means that the leave is paid for at the time it's earned, which means that you are back at that 0.3 per cent rather than retrospectively 2 per cent, or a higher wage when they get their long service. It also means that the intended recipient gets the benefit rather than it being consumed in additional bureaucracy, boards and so forth and that person may never get the benefit.

**CHAIR** - I wonder what percentage of people who have paid into this over five years have never claimed? Do you have any notion of how many people drop off every year because of the four-year rule?

**Mr ATKINS** - It's in the order of about 50-80 a year, but don't quote me on that figure. We are changing internally because someone who doesn't have four-year service in Tasmania could have gone from Tasmania to New South Wales, Victoria or wherever. One of the processes we are introducing is that if an employee hasn't had contributions paid for three months we will attempt to contact the employee to define where they're at and tell them the issues about the four-year rule and all those other things. If they advise us they are working interstate then we will not actually close their file off because it is likely they will have service which will breach the four-year rule if they are interstate. We may not know about it at the time, and at this stage we do not know about it, but it is something that we will be looking to close off.

**Mr BOOTH** - Have you any idea what the cost, percentage-wise, would be for long-service leave payments for an employer at the moment, the percentage of the payroll?

**Mr ATKINS** - In general terms it is 2 per cent of the employees that are in relevant employment.

**Mr BOOTH** - So this scheme in its current form, if you are paying that 2 per cent, is similar to what it would cost if you were not in an industry that required that and paid out long service out of the normal award in another industry?

**Mr ATKINS** - The private sector is 15 years, so that is one issue. Commercial practice would dictate that after seven years a business would start accruing or making provision in their books for an employee's long-service leave.

**Ms ARCHER** - They are entitled to pro rata at seven years.

**Mr BOOTH** - But is this more expensive?

**Mr BACON** - Than doing it yourself?

**Mr BOOTH** - Yes. By going through TasBuild does it cost the employer more for the superannuation obligation than a similar employer employing someone who wasn't required to go through TasBuild?

**Mr ATKINS** - If they are on 10 years and you provided from year 1, you would be providing 2.5 per cent of ordinary time earnings annually.

**Ms ARCHER** - Average industry is 15 years, so it is different.

**Mr ATKINS** - So if it was a 15-year employee then about 1.67 per cent of ordinary time earnings would have to be put aside annually to fund your liability, recognising that even then you would have to invest those funds yourself into an account because you are paying out what their wage is in 10 or 15 years time, not what it is today when you are putting away the money.

The other issue that is worthwhile noting in relation to costs is that an employer funding it themselves would not get a tax deduction until they actually make the payment to the employee, whereas they are getting their tax deduction progressively as they make contributions to us because our contribution, because it is a paid amount to another party, is actually tax deductible, whereas if they keep it within their own business it is most probably going to be taxed.

**Mr BOOTH** - Although there would be many businesses that never have to pay it out because people simply would not stay there for 10 years or 15 years.

**Mr ATKINS** - Yes. They are arguments that you hear from the industry: 'Joe Bloggs has never paid long-service leave', whether it is because the employer terminates them before they get an entitlement or the employee leaves. They are the sorts of things that can happen. They are all arguments for and against.

**Mr BOOTH** - Do you collect long service off someone who makes kitchens, for example?

**Mr ATKINS** - There is a subtlety in relation to kitchen manufacturers which we are wrestling with. A manufacturer of a flat-pack kitchen selling to the public, they generally wouldn't, but if the kitchen manufacturer also then installs then they would be covered. It is a moot point; one is deemed to be a manufacturer and the other one is deemed to be in the construction industry.

**CHAIR** - Have you currently got all kitchen manufacturers in Tasmania under your wing?

**Mr ATKINS** - Most of them are actually making contributions, yes. I don't go and check all the files to see who we have contributing, but I'm aware that most of them are actually making contributions.

**Mr BOOTH** - Window manufacturers?

**Mr ATKINS** - On the same scenario, if they are just manufacturing and selling to builders and the public without any installation, then they are out, but if they are actually manufacturing and installing then they would be in.

**Mr BACON** - In the draft amendment bill was there a change to the definition of who is in and who is out?

**Mr ATKINS** - It is more a clarification of what is there and putting it in more simple terms so that it can be understood. Regarding the interpretation of the ANZSIC code, I argued whether the definition of the construction industry could be changed to something that was more readily understandable and because I had some experience with the Industry Training Board the definition of the construction industry that they entertain seems to be reasonably definitive in the circumstances. It hasn't been tested to any great degree. The definition of 'construction industry' in their legislation seems to be pretty embracing and, in my opinion, easily understood when you compare it to what we have to go through to try to interpret who is in and who is out. I can categorically state that in relation to the amendments that we are currently considering I argued whether a different definition of the construction industry could be used as opposed to the ANZSIC code as being the basis for that defining issue.

**CHAIR** - Yes, and I have to support that if you have current court cases. It is pretty sad that people have to defend themselves against this. They ought to be willing and knowing contributors because of legislation, so everybody is in, but for people on the margins the definitions are bad.

**Mr BOOTH** - Chris, you have touched on this with regard to talking about some employees not wanting to go up to a certain category of staff, for example, that would create a nightmare, would it not, for a business that is in the construction industry where they have office staff, foremen, managers, directors, cleaners, people who might make lunch or who come in and cook for people. How the hell is a business supposed to be able to separate and define each employee as a different category?

**Mr ATKINS** - The simple issue is, if you like, apart from those little nuances of joinery workshops and glaziers et cetera, 'on-site on tools'. It is not legally defensible but is a very simple description if you are making your first cut of who do I pay for and who don't I pay for.

**Mr BOOTH** - The compliance costs would be quite extensive for the business. What about contractors who come on-site?

**Mr ATKINS** - The rules provide that the definition of employee includes a labour-only subcontractor. That is aligned to some degree with the ATO ruling about a labour-only subcontractor. If the employer has responsibility for paying that person's super, the person in that ilk would require to have long-service leave contributions paid on their behalf.

**Ms ARCHER** - Providing they are treating them legitimately?

**Mr ATKINS** - If they are treating them legitimately they would not have to pay to TasBuild, but if you have a contract principally for labour then there would be an expectation that a contribution would be paid. The building industry is notorious for lack of use of paperwork, particularly in the housing sector. You are hard pressed to establish a bona fide self-employed person or subcontractor in that sector because they generally do not exchange contracts. It is a whole lot easier if it is a proprietary limited company that is a subcontractor.

**Mr BOOTH** - So for a labour hire company like Skilled, you employ someone through them to work on a building site?

**Mr ATKINS** - If they are in relevant employment, and most of the labour hire companies are making contributions.

**Mr BOOTH** - But who has the obligation?

**Mr ATKINS** - The employer, which is the labour hire company. So if we come back to the subcontractor issue, a proprietary limited company as a subcontractor has the obligation if the employees are in relevant employment. It becomes a little bit more complex where there is no proprietary limited company and it is a sole trader or a partnership. If the sole trader has executed the appropriate contract documentation with the intention that others can do the work, providing plant equipment et cetera and responsible for the defects, then they would not be included.

**Ms ARCHER** - Have you ever had a case where the 'employer' says, no, they are not an employee, they are a contractor, and you have had to go to the commission for a determination on that issue?

**Mr ATKINS** - No, we have relied on the information provided by both parties. So if one party said, no, they are a contractor and here is why they are contractor, we would put that to the other party and ask.

**Ms ARCHER** - Because I know in the industry there have been cases in the past where there have been so-called sham arrangements. I am just wondering if you have encountered that.

**Mr ATKINS** - No, not to any great degree.

**CHAIR** - It is good to see that your board and others obviously recognise the degree of contention out there. There is draft legislation, which is good.

**Mr ATKINS** - Some other pressure on the sticky issue would not go astray, I don't think.

**CHAIR** - We are a unit of parliament and all parties are represented and we will consider this matter in which could assist. We will have a look at the draft legislation and see what is in mind as well.

**Mr BOOTH** - Rene has raised this with me as an aside in regard to this IT work as opposed to construction work. We are sitting in here; we have *Hansard* recording every word that is said. We have microphones hanging from the ceiling and there is a guy sitting in the control box recording all this. What component of that would be regarded as construction if they fitted a new system in here and new IT equipment?

**Mr ATKINS** - I do not have the ANZSIC code with me but CCTV is definitely mentioned, telephonic equipment installation repair and maintenance et cetera. I would not mind betting that the power points and the running of the cables et cetera would all be covered as construction in the ANZSIC code.

**Mr BOOTH** - As well as the repair of it?

**Mr ATKINS** - Yes.

**Mr BOOTH** - What about getting someone to paint your house?

**Mr ATKINS** - Painting would be, yes.

**Ms ARCHER** - Once you are in it is hard to get out, by the sound of it.

**Mr BOOTH** - Yes. So basically a self-employed painter would not obviously have any obligation because they are just their own business, aren't they, as a small business?

**Mr ATKINS** - Yes, unless -

**Ms ARCHER** - They are a company and they are an employee of the company?

**Mr ATKINS** - Yes, that would certainly cover them, but a sole trader in that circumstance, if he had service recorded with TasBuild, can have the opportunity of making contributions into the fund so they can access their employer contributions. I do not know how that was drafted. It was some time ago for bona fide self-employed people. So if you had prior service with TasBuild, you are bona fide self-employed and you have worked at least a day in the industry after being bona fide self-employed, you can make contributions. The advantage obviously of that is that if you had seven years service and did not qualify for pro-rata, you could register as a self-employed for three years and get the seven-year money out of the fund. The nature of the industry is that that happens reasonably regularly. We would have 500 or 600 self-employed people who have gone through that process.

**Mr BOOTH** - Has there been any cost benefit analysis done on this or regulatory impact studies done on different, alternative methods?

**Mr ATKINS** - I am not too sure whether TasBuild or the Industry Training Board commissioned the opportunity of collecting a levy at the building approval stage to fund the liability. I do not know the details of it. Nothing changed and that might not necessarily have been because the information or the data did not support it; it might have been more

political or whatever. Certainly from an industry angst point of view, if it was redirected to the local government who were collecting the levy, then that would save us a lot of heartache and angst and discussion and explanation.

**CHAIR** - Yes. It would also assist people like KWMC because if they are doing access control for a bank somewhere, they would not put in a council application. This is an IT job.

**Mr ATKINS** - It depends on whether it was with the original construction of the building or not, I suppose, because it would be in the value of the building.

**CHAIR** - These are contemporary issues that this committee is looking at. The IT industry has become so big that even in this parliament we think this is real gee whiz stuff, but compared to what is going to come in the next 10 years, all the money is going to be spent in that end stuff. So this is a bigger net for you people. There is more and more dough coming and, sadly, we have gone up so high and we have to make massive increases in the payments. So these are just the sort of costs that we are looking at.

**Mr BOOTH** - So the NBN rollout might end up being caught?

**Mr ATKINS** - I would have to check that. Maintenance of power lines is included. We would also buy 2.5 per cent of that liability but they are my challenges, I suppose.

**Mr BOOTH** - If you could go back and get 2.5 per cent for 10 years that would be all right.

**Mr ATKINS** - I would not mind betting that the organisations doing that work are already contributing, if they were required to. There would be a lot of civil contractors, civil construction work, and that would be covered. So the digging of the ditches and the laying of the cable would definitely be covered. It does not matter what sort of cable it is; the laying of the cable would be covered.

**Mr BOOTH** - What about when a farmer employs somebody on their farm to do various things but then gets them to help build a hay shed?

**Mr ATKINS** - Currently the employer in that circumstance isn't seen as being in the construction industry and if their employee isn't working for more than 90 per cent of their time - and this is not a rule, only a guidance. If the employer is not in the construction industry, however the direct employee is doing more than 90 per cent of their total work in construction work, there maybe a requirement for the employer to register and make contributions. The general farmhand is never going to get his 90 per cent up in construction work so wouldn't have to be registered.

**Mr BOOTH** - So if you were a home builder and you employed various people to help you build a home as employees, not contractors, then you surely should be registering?

**Mr ATKINS** - Are we talking about an owner-builder?



**Mr BOOTH** - Yes.

**Mr ATKINS** - For an owner-builder I would not see that would be the case, because they are not seen as being in the construction industry.

**Mr BOOTH** - No, but the people doing the work are.

**Mr ATKINS** - So it would come back to the individuals there. We haven't ever pursued in that area. Identifying all the owner-builders would be difficult. Generally we rely on the individuals who are doing the work. They don't just work for one owner-builder; they go from here, there and everywhere. They are self-employed in that circumstance.

As a general comment, portable long service leave is not new.

**CHAIR** - Is it only in the building industry?

**Mr ATKINS** - No. In Tasmania it is only in the building industry; in other jurisdictions it is in cleaning and also community services. New South Wales are going into community services from 1 July this year. Cleaning is in Queensland, ACT, New South Wales and I think South Australia. From an employee side there is a huge benefit in having portable long-service leave because in the itinerate industries there is a huge opportunity for them to get a benefit that other employees enjoy. Under the basis that we are employed today and the change of lifestyles and careers that we all enjoy, should long-service leave be the period you work, as in the portable-type situation, or should it be with the employer. Is that still relevant today as it was back in the 1800s when they first started talking about long-service leave.

**Mr BOOTH** - It is the sort of argument that has changed because 12-year olds used to work in coal mines. That practice ceased and everybody was happy so it could be a call for a change to the system to make it fairer.

**Mr ATKINS** - Across Australia, every jurisdiction has construction industry long-service leave and they have different rates of contribution. In South Australia as at June 2010 their contribution was 2.5 per cent of ordinary time earnings. New South Wales, they had a levy on construction projects of 0.35 per cent. ACT is 1 per cent of ordinary time earnings; WA 2.25 per cent of ordinary time earnings, Queensland 0.3 per cent of the construction cost, so they are a levy. Northern Territory has 0.4 per cent on building projects - building approvals - Victoria is 2.7 per cent and we are 2 per cent. So that is a snapshot across the industry.

Between the quarters ending December 2009 to September 2010 the construction industry was about \$1.4 billion of work completed in that particular period of time. The old rule of thumb is that most construction projects are 60 per cent materials, 40 per cent labour. On that basis, we should have collected \$11.2 million of long-service leave funding on that 60:40 per cent split. We actually collected \$7.5 million in that same period. So I think it would be fair to say that if we are looking to identify where the highest level of compliance

is, it would be my best guess that it is in the commercial sector, with limited compliance in the housing sector.

**CHAIR** - If you do exactly what ITAB does - what Simon Cocker and his people do - that limits it to just construction jobs - design, plan, carried out, finished. There is a percentage of workers that would pay and therefore you wouldn't sweep up all the rats and mice on the edges. You wouldn't do somebody who is off servicing ATM security, for instance.

**Mr ATKINS** - I have no problem with the levy and obviously at a national level we have spoken about the differences between the two. The regular feature that we enjoy at this stage is that we are able to identify the employees that are covered and quantify the actuarial liability under the current basis. If you went to a levy, the motivation of getting that same level of information that we need to quantify our actuarial liabilities is going to be mitigated because the employees are going to say, 'We're not paying anything', so who cares. I have mentioned this to my colleagues interstate who are on the levy that you could be in for a very rude surprise as to what your liability is.

**CHAIR** - When people front up and say, 'Well, here I am'.

**Mr ATKINS** - Yes, and you never had a record of them. That is the only down side I can see from the levy.

**CHAIR** - What is your annual income from contributions, seeing that ITAB brought in \$4 million.

**Mr ATKINS** - At this stage, we are above that.

**CHAIR** - They are only 0.2 per cent.

**Mr ATKINS** - It is \$6.6 million for 2010.

**CHAIR** - I am thinking back to 1971, because this complainant here doesn't agree with the whole concept of pooling. I can imagine back in 1971 people sitting around and saying, 'Listen, we want to keep these good people in our building industry'.

**Mr ATKINS** - Yes.

**CHAIR** - Let's say we're all builders and we say, 'I have 11 carpenters, you have four carpenters and you have three carpenters. Why don't we work out a way to keep them in our industry? So if I run out of work, they can go and work for you and then go and work for you etcetera'. In that way they are not going to take off and go driving trucks because they will stay in their industry because their long-service leave is secure. I can imagine them doing that. That makes sense. But they wouldn't have considered then that, with the advent of all the IT and all that, you're going to sweep all these extra workers in. So the notion of a levy is, on the face of it, sounder than being out there looking for new contributors.

**Mr ATKINS** - Under the 1971 act there were two options of making contributions. You could either make regular contributions at full tote, which was in those days 1.67 per cent because it was 13 weeks after 15 years. So you made that on a regular basis to Workplace Standards or Treasury or whoever it was, or conversely you could opt to make the contribution when an employee terminated. So if they worked with you for four months, six months or 12 months there was a calculation that Workplace Standards did, and here is your bill so pay your money. The system we have today is a little bit different in that at least there is some discount or recognition of the investments.

**CHAIR** - Not much now; you are at 2 per cent out of 2.5.

**Mr ATKINS** - But I feel fairly comfortable that that will drop to either 1.5 per cent or 1.7 per cent in the not-too-distant future.

**CHAIR** - What would make you drop it?

**Mr ATKINS** - Because we are looking to get 110 per cent of our liability in investment funds and we will actually be there. We were close in 2010.

**CHAIR** - It is not the nature of these organisations to go backwards.

**Mr ATKINS** - We have a motivation to ensure we preserve employee benefits and make it as cost effective as possible for employers. They are the two motivations of TasBuild. I hear what you are saying, but I believe it will go down in the not-too-distant future because we will have achieved our target of 110 per cent, which we are told by our actuary is likely to be able to ride out the issues that we are going to face in investment returns into the future. We can only take the best advice we have.

You mentioned the tradition that organisations don't cut their funding. When TasBuild was first introduced in 1998, the contribution rate was set at 0 per cent for the first 12 months. I am not sure whether or not, if you had historical figures, you could identify that those savings from the 1.67 per cent were actually passed on to the industry or not, but then in 1999 it was established at 0.7 per cent. Now, whether or not those savings versus 1.67 versus 0.7 per cent were actually passed on and reflected in prices -

**CHAIR** - It was a Labor government about then; anything could have happened.

**Mr ATKINS** - Whatever we do with our contribution rate we might not see that filter through into costs of construction or otherwise.

The other issue about portable long-service leave is that for each four employees there is another employee required. So for each four employees that achieve an entitlement there is another employee required to be employed.

**Mr BOOTH** - Because it is a year's pay.

**Mr ATKINS** - Exactly right. So for portable long-service leave where the employees can regularly take their leave there is some level of income generation as well to meet the demand for those who aren't in the industry working for that period of time. It is a point that is not regularly considered, I suppose, but it is a very valid point.

**Mr BOOTH** - Have you got any figures on how many people traditionally get long-service leave who aren't in this scheme? Even in this scheme not everybody ends up getting long service.

**Mr ATKINS** - There was a national survey done and I think somewhere in the order of 68 per cent of employees do get long-service leave. So 32 per cent, still a big percentage, don't ever take or get long-service leave, but 68 per cent of Australians have taken or enjoyed long-service leave.

**Ms ARCHER** - That is quite high given that there is a lot more movement amongst younger employees than there would have been in the past. It would be interesting to see if that figure used to be higher.

**Mr BOOTH** - If you employed someone eight years before they reach retirement age, do you still take their long-service leave contributions even though they would never get it?

**Mr ATKINS** - They would.

**Mr BOOTH** - How would they get it?

**Mr ATKINS** - The pro rata entitlement for retirement is two years service provided you achieve the retirement age of 55. So it is two years service, which I think is very generous. If I am 55 today and I've just come into the building industry, and if I'm 57 and I retire, I come back three months later and I'm in the industry again and at 59 I retire.

**CHAIR** - You get your pro rata every time.

**Mr ATKINS** - Yes.

**Mr BOOTH** - Only what you have contributed for that period of time.

**Mr ATKINS** - Yes, two years is 2.6 weeks.

**CHAIR** - We thank you again for a very interesting discussion.

**THE WITNESS WITHDREW.**