



Parliament of Tasmania

LEGISLATIVE COUNCIL SELECT COMMITTEE

FINAL REPORT

ACCREDITATION OF BUILDING PRACTITIONERS AND ADMINISTRATION OF THE *BUILDING ACT 2000*

Members of the Committee

Mr Ivan Dean
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Mr Jim Wilkinson

Ms Ruth Forrest
Ms Lin Thorp

Table of Contents

Abbreviations	3
Executive Summary	4
Conclusions.....	8
Recommendations	9
Introduction	10
Chapter 1 — Agreement between the Tasmanian Compliance Corporation and the Hon Bryan Green	12
Chapter 2 — The Optimum Framework for the Accreditation of Building Practitioners and Administration of the <i>Building Act 2000</i>	15
LIST OF REFERENCES	56
ATTACHMENT 1 — LIST OF WITNESSES	63
ATTACHMENT 2 — WRITTEN SUBMISSIONS TAKEN INTO EVIDENCE.....	65
ATTACHMENT 3 — DOCUMENTS TAKEN INTO EVIDENCE .	67
ATTACHMENT 4 – MINUTES OF PROCEEDINGS	72

ABBREVIATIONS

AACA	Architects Accreditation Council of Australia
ADR	Alternative Dispute Resolution
AIBS	Australian Institute of Building Surveyors
AQF	Australian Qualifications Framework
BPACT	Building Professions Accreditation Corporation Tasmania
BSA	Building Services Authority (Queensland)
CPD	Continuous/Continuing Professional Development
CPI	Consumer Price Index
DBC	Director of Building Control
HIA	Housing Industry Association
MBA	Master Builders Association
RAIA (AIA)	Royal Australian Institute of Architects (Australian Institute of Architects from 1 July 2008)
TAFE	Technical and Further Education
TBCITB	Tasmanian Building and Construction Industry Training Board
TCC	Tasmanian Compliance Corporation
TIBA	Tasmanian Independent Builders' Association Incorporated
WST	Workplace Standards Tasmania

Executive Summary

The Legislative Council Select Committee on the Accreditation of Building Practitioners and Administration of the *Building Act 2000*, was established following the public exposure of matters contained in a Service Level Agreement (SLA) between the Tasmanian Compliance Corporation (TCC) and the then Minister responsible, the Hon Bryan Green (Term of Reference 1).

The SLA was an agreement which, inter alia, required the TCC to:

1. Commence a program of auditing building practitioners.
2. Develop a code of conduct applicable to building practitioners.
3. Develop a plain English version of the accreditation scheme.

Further, the SLA gave some financial surety to the government in the event that the TCC sought to discontinue its service.

The two most contentious provisions of the SLA were:

- (a) that the government would be required to pay a substantial buy-out fee if it terminated the services of the TCC with anything less than 3 years notice; and
- (b) that the government guaranteed the TCC a monopoly and that it would not appoint any accreditation competitor without giving the TCC 3 years' notice.

The Committee's second term of reference required the consideration of "the optimum framework for the accreditation of building practitioners and administration of the *Building Act 2000* including the appropriateness of all consequential costs imposed on builders".

The Committee commenced its inquiry in 2006 and received written submissions and verbal evidence relating to its terms of reference. The evidence raised concern about the motivations and difficulties encountered by having a private company in charge of the accreditation process and criticised the TCC scheme.

Members also visited Brisbane in October 2006 and met with officers from relevant government departments and organisations. On 29 November 2006 the Legislative Council suspended the operation of the Committee until the Council could be satisfied that the Committee's inquiry would not prejudice related proceedings in the Supreme Court involving charges against Mr Bryan Green MP.

The prorogation of parliament on 22 February 2008 had the effect of dissolving the Committee and it was subsequently re-established on 4 March 2008. In further considering term of reference 1, it was decided that given the Court case and its findings, further investigation would be limited to the insertion of Clause 9 in the Service Level Agreement. That clause could best be described as a risk averse provision which purported to guarantee that the TCC operated as a monopoly as outlined above. Verbal evidence was received from Mr Green MP in this regard.

The Committee has not made any conclusions in relation to this issue. It should be noted, however, that the evidence provided by Mr Green differed significantly to that presented to the Supreme Court by his former advisor, Mr Guy Nicholson.

The Committee continued its inquiry into the second term of reference and received additional evidence from the major stakeholders. The information received at this time pointed to concerns in relation to fees; accreditation processes; dispute resolution procedures; and continuing professional development.

The TCC's commission was withdrawn in September 2006 and Workplace Standards Tasmania (WST) took over the accreditation process.

The scheme implemented by WST in July 2008 remains problematic. There appear to be inconsistencies in the accreditation process. Examples were provided by Engineers Australia suggesting that some applicants in the engineer category were accredited without any reference to that organisation as long as the applicant had three years experience in an engineering discipline considered appropriate by WST.

Concerns were also raised about the expertise within WST to accredit practitioners. Expert review panels were to be established for the various categories of building practitioners involved in the building industry, including professions and specialised fields. No such panels had been established under the current scheme.

The professional institutes representing Architects, Engineers and Building Surveyors expressed particular concern regarding the requirements of accreditation. Architects are registered under stand-alone legislation and in addition the Royal Australian Institute of Architects (RAIA) maintains professional standards and disciplinary procedures. Engineers and Building Surveyors, likewise, have professional institutes but do not have profession specific legislation. The accreditation standards adopted by the TCC for architects were less than those required to satisfy registration under the *Architects Act* or for membership of the RAIA. This concern has continued with the change of regulator.

The RAIA suggested that duplication should be avoided and that registration under the *Architects Act* should be an acceptable qualification for

accreditation under the *Building Act*. The RAIA contend that Tasmania's *Building Act 2000* has been partly modelled on Victorian legislation, but that the Tasmanian legislation lacks the provisions to ensure that the regulation of architects in that jurisdiction stay within their Architects Act.

Although there is no Engineers Act in Tasmania, it is nonetheless considered that the Engineers Australia professional register could be altered to include a building certifiers' classification similar to New South Wales and thereby facilitated reciprocal recognition for accreditation as a building practitioner under the *Building Act 2000*.

Similarly, the AIBS was considered the most appropriate body to assess the professional competence of building surveyors. It is considered that applicants, who are nationally accredited with AIBS at the relevant level, should be automatically accredited under the *Building Act* at minimal cost.

It is evident that some weight is now given to professional registration when accrediting under the *Building Act 2000*, however, architects remain subject to regulation under two Acts.

The level of experience and qualifications required for accreditation as a building practitioner concerned industry representatives. Some considered it was too easy to gain accreditation without necessarily having fulfilled appropriate educational prerequisites. The requirements of AQF for accreditation was also questioned.

The Committee received evidence suggesting there was inadequate continuing professional development (CPD) provided by either the TCC or WST. One key concern was that CPD had been used as an advertising forum for building suppliers, or alternatively, as a money-making attempt for individuals. Others suggested that improvements were needed to make the required CPD more relevant.

Industry questioned the lack of rigorous auditing of practitioners to ensure compliance. Evidence presented to the Committee in November 2008 suggested that the audit system was being developed and new staff sought for this purpose.

Dispute resolution was a further area of concern. The Department of Justice's Consumer Affairs and Fair Trading division is developing a scheme whereby remedy of defective work could be enforced by legislation. The most recent update of the Consumer Affairs website indicates that the Tasmanian Government has now agreed to the drafting of a Bill to establish a legislative process that will implement a framework which includes:

- a dispute resolution process for domestic building disputes;
- an ability to order the rectification of defective building work;
- implied contract terms; and

- incorporation of the mandatory information, statutory warranties, minimum deposit and progress payment provisions currently contained in the *Housing Indemnity Act 1992*.¹

In conclusion, those involved in the building industry expressed concern about the number of owner-builders in the marketplace in 2006. Changes have since been made and owner-builders are now required to be registered and a limit imposed on the number of building projects an owner-builder can undertake within a specified period.

17 December 2009
Parliament House, Hobart

Paul Harriss MLC
Chairman

¹ Department of Justice, Consumer Affairs and Fair Trading: *Consumer Building, Tasmanian Government approval* accessed at http://www.consumer.tas.gov.au/fair_trading/consumerbuilding#framework

Conclusions

As discussed in Chapter 1, the Committee does not make any conclusion in relation to the Service Level Agreement (SLA) between the Tasmanian Compliance Corporation (TCC) and the Government.

The Committee concludes that:

1. The accreditation scheme conducted by the TCC failed to deliver most services. It did not act in accordance with Ministerial guidelines and became operational without appropriate processes in place.
2. Last Resort Home Warranty Insurance did not provide reasonable consumer protection.
3. The accreditation system should be competency based, allowing those who have become competent in a field to be accredited.
4. Continuing Professional Development is of ongoing importance for all in the building industry.
5. An alternative dispute resolution (ADR) process is needed with enforcement powers to ensure the rectification of faulty work.
6. Registration with a professional institute, such as RAIA, Engineers Australia and the AIBS, be given reciprocal recognition for the purposes of accreditation as a building practitioner.
7. Accreditation of building practitioners under Workplace Standards (WST) still occurs without assessment by expert review panels. This system continues to apply to all of those involved in the building industry, including professions and specialised fields.
8. Further investigation is required, as many accreditations have not been reviewed, and it is not possible to know whether all building practitioners are properly classified. Individuals may still be working under conditional accreditation.

Recommendations

The lengthy period of the Committee's inquiry, as set out previously, has meant that many changes have occurred to the building accreditation landscape throughout its lifespan. The Committee believes that many changes have been implemented as a result of its Inquiry.

The Committee recommends that:

1. A review be undertaken of the process for accrediting building practitioners since the takeover by Workplace Standards, against the expected outcomes of the TCC, including CPD, audits, dispute resolution, fee structures and value for money.
2. A clear and coherent arrangement for dispute resolution be implemented, through which structured redress can be organised. Alternative Dispute Resolution options should be explored in order to provide this process quickly, efficiently and cost effectively.
3. The *Architects Act* be retained to ensure mutual recognition between the states.
4. In order to avoid unnecessary and unreasonable duplication –
 - (1) registration under the *Architects Act* be acceptable qualification for accreditation and that the *Building Act 2000* be amended to include an appropriate deeming provision; and
 - (2) registration of Engineers and Building Surveyors by their professional institutes be acceptable qualification for accreditation as a building practitioner.
5. Expert review panels be established to assess those applying for accreditation.

1.1 APPOINTMENT AND TERMS OF REFERENCE

On Thursday, 13 July 2006 the Legislative Council resolved that a Select Committee of Inquiry be appointed “to inquire into and report upon the application of the *Building Act 2000* with particular reference to —

- (1) The accreditation of building practitioners including in particular all details of the agreement entered into between the Tasmanian Compliance Corporation and the then Minister responsible, the Hon Bryan Green;
- (2) The optimum framework for the accreditation of building practitioners and administration of the *Building Act 2000* including the appropriateness of all consequential costs imposed on builders.”

And any other matters incidental thereto.

On 29 November 2006 the Leader of the Government moved a motion:

... that further proceedings before the Legislative Council Select Committee on the Accreditation of Building Practitioners be suspended until such time as the Legislative Council can be satisfied that such proceedings would not prejudice related proceedings in the Supreme Court of Tasmania².

The motion was agreed to. The proceedings in the Supreme Court involved charges against Mr Bryan Green MP. While the proceedings of the Committee were thus suspended, Parliament was prorogued on 22 February 2008 which had the effect of dissolving the Committee.

On 4 March 2008 the Committee was re-established with the same Terms of Reference.

The Committee initially comprised six Members of the Legislative Council – Mr Dean, Ms Forrest, Mr Harriss, Mrs Smith, Ms Thorp and Mr Wilkinson. On 11 June 2008 Mrs Smith resigned from the Committee due to her election as President of the Legislative Council.

1.2 THE REASON FOR ESTABLISHING THE COMMITTEE

The Committee was established following the public exposure of matters contained in a Service Level Agreement between the Tasmanian Compliance Corporation (TCC) and the Government and also “...the significant controversy since the [*Building Act*] became effective some years ago and ...both public and parliamentary comment”.³

In moving for the establishment of the Committee in 2006, Mr Harriss stated –

² Parkinson, Hon. Doug, *Hansard*, Legislative Council, 29 November 2006, p. 28.

³ Harriss, Hon Paul, MLC, *Hansard*, 13 July 2006, p. 27.

It is not just ...about the Tasmanian Compliance Corporation and the Service Level Agreement that has been signed by Minister Green and Mr White, Secretary of the Tasmanian Compliance Corporation. That will, however, be a significant matter for scrutiny. It ...will be an assessment of the full gamut of accreditation of building practitioners in this State, and indeed an assessment of schemes operating elsewhere in the nation.⁴

Mr Harriss also argued that the establishment of this Select Committee would provide "...a robust opportunity for the building industry itself to ventilate concerns or indeed compliments about the legislation to an independent arm of the Parliament".⁵

1.3 PROCEEDINGS

The Committee called for evidence in advertisements placed in the three regional daily newspapers. In addition invitations were sent to key stakeholder groups.

The Committee held hearings in Tasmania on 29-31 August and visited Brisbane in October 2006 to discuss issues relating to the terms of reference with officers of relevant departments and organisations.

Forty four written submissions were received in 2006 and verbal evidence was given by a total of thirty three witnesses in Tasmania and Queensland.

On 29 November 2006, as previously noted, the Committee was suspended.

Following the Committee's re-establishment on 4 March 2008, invitations were sent to the major stakeholders to provide additional evidence in relation to Term of Reference 2. An additional five written submissions were received and further hearings were conducted.

Verbal evidence was also taken from the Mr Bryan Green MP in relation to Term of Reference 1.

The Committee met on twenty five occasions. The Minutes of such meetings are set out in Attachment 4.

The witnesses are listed in Attachment 1. Documents received into evidence are listed in Attachment 3.

⁴ Harriss, Hon Paul, MLC, *op. cit.*, p. 28.

⁵ *Ibid.*, p. 28.

Agreement between the Tasmanian Compliance Corporation and the Hon Bryan Green

Chapter 1

The Committee received written submissions in relation to the accreditation of building practitioners, including details of the agreement (Service Level Agreement (SLA) entered into between the Tasmanian Compliance Corporation and the then Minister responsible, the Hon Bryan Green.

Following the re-establishment of the Committee, it met on 9 April 2008 to determine its future program.

At this meeting the Committee resolved that, “given the finalisation of the recent court cases, the Committee would not pursue Term of Reference (1)”. The Committee believed at that time that, as the Court had made a determination in relation to this matter, it would not be necessary for the Committee to further consider matters related to the SLA.

Upon further consideration however, the Committee believed it was important to clarify its concerns relating to the insertion of Clause 9 in the Service Level Agreement. Accordingly, the Committee wrote to the Hon Bryan Green MP requesting an answer to that question. Mr Green responded by requesting an opportunity to provide verbal evidence.

This chapter will only report on the evidence relating to the insertion of Clause 9 in the SLA.

Service Level Agreement

In August 2003 the Tasmanian Compliance Corporation (TCC) was authorised to accredit building practitioners under the *Building Act 2000* and was the only “authorised body” appointed under the Act.

The reasons for the development of an agreement between the Tasmanian Government and the TCC were set out in a Meeting Issues Brief for the then Minister for Infrastructure, Energy and Resources, Hon Bryan Green, which included:

- Section 21 of the Act states that the Minister by public notice may withdraw authorisation if an Authorised Body fails to comply with any conditions of authorisation or the Minister is no longer satisfied that a number of specific matters in the Act have been met.
- On 24 November 2005 Mr Glen Milliner, the Chairman of the TCC wrote to the Director of Building Control requesting that their appointment as an Authorised Body under the Act be subject to a notice period – that is, the Director and the TCC agree that the appointment will not be withdrawn,

terminated or resigned from except on written notice.

- The TCC advised that it is concerned their appointment is at the Minister's discretion and can be terminated at any time and this places them in a state of uncertainty and their ability to plan their business for the future and invest accordingly to build and develop that business is adversely impacted.
- The TCC also notes the uncertainty for the Government, as there is no requirement for the Corporation to give notice to the Government should they terminate their appointment for any reason.⁶

The Evidence relating to the Service Level Agreement (SLA)

No verbal evidence was heard by the Committee prior to November 2008 which directly related to the proceedings being conducted at the time in the Supreme Court.

Mr Green gave evidence to the Committee on 20 November 2009, that he had told Mr Guy Nicholson, then his Adviser, to leave Clause 9 in the SLA. This clause gave exclusivity to the TCC to accredit building practitioners. It stated:

The Minister agrees that he will not exercise powers under Section 20(2) of the Act to authorise any additional body to accredit building practitioners, while the TCC remains so authorised, without first giving the TCC written notice 3 years prior to that authorisation.⁷

Mr Green said "He asked me the question and I said, 'No leave it in'".⁸

Mr Green stated that he had not been advised that it would be illegal to include such a clause. "Guy [Nicholson] had asked me what I wanted to do with respect to it [Clause 9]. I said what difference does it make? He said well no difference really because it has got to go on to Crown law. That is the, you know, it is an interim agreement".⁹

In the Court evidence, Mr Nicholson had a different recollection of events. He testified that he had advised Mr Green regarding the Director of Building Control's concerns in relation to Clause 9. Mr Nicholson stated, "I had made him aware of Robert's [the Director of Building Control] objections to clause 9 and to the document being signed with clause 9".¹⁰

The Supreme Court proceedings considered an email dated 7 February 2006 from Mr Robert Pearce, the Director of Building Control, to Mr Nicholson. The

⁶ Department of Infrastructure, Energy and Resources – "Meeting Issues Brief for Minister for Infrastructure, Energy and Resources" – *Meeting* – Thursday 15 December 2005, 1.30 pm – 2.30 pm, Mr John White, TCC – *Future Arrangements for the Tasmanian Compliance Corporation (TCC)*

⁷ Draft Service Level Agreement Between the Minister for Infrastructure, Energy and Resources and the Tasmanian Compliance Corporation Pty Ltd, 21 June 2006.

⁸ Green, Hon Bryan, MP, *Transcript of Evidence*, 20 November 2008, p. 24.

⁹ *Ibid.*, p. 18.

¹⁰ *Nicholson, Mr Guy, State v Green* - Transcript of Court Proceedings, 22 November 2007, Supreme Court of Tasmania, p. 194.

email stated, “I’ve been keeping David [Peters, Deputy Secretary of the Department) in the loop on this and he [is] strongly of the view that paragraph 9 providing monopoly to the TCC should remain deleted”.¹¹ Mr Nicholson was asked if he had conveyed that view to Mr Green and he responded “Yes I did, and I gave a summary of the contents of this document to Bryan”.¹²

The Committee does not make any conclusion in relation to the evidence provided by Mr Green. It notes, however, that it differs in a number of areas to the evidence presented to the Supreme Court by Mr Guy Nicholson.

¹¹ Nicholson, *op. cit.*, p. 104.

¹² *Ibid.*

The optimum framework for the accreditation of building practitioners and administration of the *Building Act 2000* including the appropriateness of all consequential costs imposed on builders

Chapter 2

Background

The Committee was established in July 2006 because of industry concerns surrounding the operations of the Tasmanian Compliance Corporation (TCC), a private company, and the assessment processes it applied in accrediting building practitioners.

Evidence provided to the Committee at this time raised concerns in relation to:

- Fees;
- Who was to be accredited;
- Dispute resolution procedures; and
- Professional development.

In reflecting on the initial implementation processes, Mr Steve Bramich the then President of the Australian Institute of Building Surveyors (AIBS) remarked that:

The blueprint for the whole TCC scheme, if it had been implemented properly and tweaked where there were any shortcomings identified, would have been quite good, I think, but once again it should have been under government control right from day one. If you couple that with expert panels and a lot more industry involvement with the Industry Council assisting, I think you would lift the profession. You would need to also enforce compulsory CPD training in areas of concern or various category or so on.¹³

The concern about the motivations and difficulties encountered by having a private company in charge of the accreditation process was raised by many who gave evidence to the Committee in 2006.

Evidence criticising the TCC scheme suggests that the system of builder accreditation and the checks employed by the TCC lacked timelines for responding to complaints.¹⁴ Further, it was claimed that the TCC failed to produce a complete Code of Conduct whereas applicants for accreditation were required to affirm, in writing, their preparedness to comply with such a code. Understandably, applicants were reluctant to provide written confirmation that they would comply with a document they had not seen.¹⁵

¹³ Bramich, Mr Steve, *Transcript of Evidence*, 19 August 2008, p. 64.

¹⁴ Pearce, Mr Robert, *Transcript of Evidence*, 15 November 2006, p. 6.

¹⁵ Discussed by Hon Ruth Forrest, Mr Graeme Hunt and Mr Robert Pearce, *Transcript of Evidence*, 15 November 2006, pp. 6- 7; Kennedy, Mr John, *Written Submission*, LCSC/BPR/7, p. 2.

The cost of accreditation was also considered exorbitant and that there was little value for money.¹⁶ Professional associations were also concerned that membership of their groups was not taken into account in the accreditation process.¹⁷

Many submissions to the Committee favoured a government body controlling the system.¹⁸ Whether all of the flaws identified during the early operation of the accreditation process could have been alleviated purely by moving to such a public system was doubted by Mr Peter Godfrey, a builder, who said that:

...the Building Act needs to be thrown away and that there needs to be genuine input into the drafting of any new legislation from those that work in the industry.¹⁹

Most believed that the basis of the Act was solid, requiring only some changes to specific areas. There was some criticism, however, of the lack of consultation during the development of the Act.²⁰

The TCC became an “Authorised Body” in August 2003 pursuant to section 20(2) of the *Building Act*. Another group, the Building Professions Accreditation Corporation Tasmania (BPACT), also sought appointment.

Those who presented information regarding the accreditation scheme proposed by BPACT stated that their objective was to ensure that this protection was paramount and provided to consumers at the lowest price.²¹

In initially addressing the application by BPACT in 2004, the then Minister, Hon Bryan Green, indicated that he required clarification on the following issues:

- Ability to shop between Authorised Bodies to achieve lowest requirement;
- Inconsistent requirements between Authorised Bodies;
- Conflicts of interest (perceived or real) between membership and discipline;
- Inconsistent conditional accreditation;
- Multiple points of complaint/discipline;
- Inconsistency of investigation/audit/outcome;
- Potential for conflicting decisions to be referred to the Director of Building Control;
- Different standards/ approaches to determine competence;
- Contrary to best practice considering consistency, transparency and the like;

¹⁶ Harper, Mr Geoff, *Transcript of Evidence*, 30 August 2006, p. 10.

¹⁷ Department of Justice, Workplace Standards Tasmania, *Summary of the Tasmanian Compliance Corporation Pty Ltd Authorised Scheme for the Accreditation of Building Practitioners*, p. 1.

¹⁸ Reeves, Mr Ricky, *Transcript of Evidence*, 31 August 2006, p. 3.

¹⁹ Godfrey, Mr Peter, *Written Submission, LCSC/BPR/6*, p. 3.

²⁰ Bramich, 19 August 2008, *op. cit.*, p. 52; Barton, Mr Richard, *Transcript of Evidence*, 19 August 2008, p. 5; Yali, Mr Danilo, *Transcript of Evidence*, 19 August 2008, p. 53.

²¹ Bevan, Mr Richard, *Transcript of Evidence*, 24 October 2006, p. 10.

- Increased consumer cost due to reduced viability of current Authorised Body;
- General experience is that tied bodies (membership organisations) do no or are not perceived as providing competent and unbiased review of their members' performance.²²

However, Mr Green did acknowledge that the BPACT application complied with the Act.²³ In response BPACT replied:

To become registered, engineers and architects are required to complete a four or five year university degree, or equivalent, followed by at least two/three years of documented practical experience which is assessed against nationally accepted competence standards and a peer review including a face to face interview.

Given that professionals are required to go through stringent requirements we do not believe that they should be subsidising, through higher fees, the costs to manage issues within other sectors of the industry.²⁴

They also contended that:

We believe that it is in the public interest for you to approve our application to become an Authorised Body as our system is based on nationally accepted competency standards and processes. This will facilitate mutual recognition of practitioners to and from Tasmania and ensure national standards are maintained. BPACT has been set up so that it is at arms length from both professional bodies and individual practitioners to ensure that it can act in the best interests of the public.²⁵

In a further response to the issues raised, BPACT noted:

Our support for a single body changed when the basis for accreditation for some building practitioners moved away from the AQF educational framework and nationally accepted competencies. To allow practitioners to be accredited based on evidence such as two or three completion certificates is not an adequate test of competence and will not give the public any confidence in practitioners accredited in this way.²⁶

This letter addressed all the matters of concern raised by the Minister.²⁷ Ultimately the Minister decided that:

²² Letter from Hon Bryan Green, MHA to Mr Geoff Harper, Director, Tasmania Division, The Institution of Engineers Australia, 23 March 2004, pp. 1-2.

²³ *Ibid.*, p. 1.

²⁴ Letter from Geoff Harper of BPACT Ltd, to Hon Bryan Green MHA regarding the "BPACT application to become an authorised body under the Building Act 2000" dated 27 April 2004, p. 4.

²⁵ Letter from Geoff Harper of BPACT Ltd, to Hon Bryan Green MHA regarding the "BPACT application to become an authorised body under the Building Act 2000" dated 8 April 2004, p. 1.

²⁶ Letter from Geoff Harper of BPACT Ltd, to Hon Bryan Green MHA, 27 April 2004, *op. cit.*, attachment 1.

²⁷ *Ibid.*

[A]fter due consideration of your application, I regret to inform you that I am not convinced that it is in the overall public interest for me to authorize the Building Professions Accreditation Corporation Tasmania Ltd. as an authorised body under the *Building Act 2000*.²⁸

The Minister, in a letter dated 15 June 2004, further indicated he was not prepared to approve BPACT as an Authorised Body because of a lack of independence, lack of transparency in the BPACT scheme process and concerns relating to the viability of two authorised bodies competing for accreditation clients.²⁹

This meant that it was only the TCC that was authorised to accredit building practitioners and subsequently a number of problems arose.

In November 2006, the Government responded to most of these concerns by implementing a change in the regulation of building in Tasmania. From November 2006 the Director of Building Control assumed the role of accrediting building practitioners.³⁰ In addition, Consumer Affairs and Fair Trading conducted a review to determine the best means of resolving building disputes.³¹ The findings of this inquiry are currently informing the drafting of the new framework.³²

Those who gave evidence to the Committee outlined problems with the legislation and the accreditation process. A concern in relation to the *Building Act* was highlighted by Mr Geoff Harper, Director, Engineers Australia Tasmania Division, who noted that:

One of the issues that we have had is that when a lot of people refer to the Building Act, unfortunately it has not been clear from an industry point of view that the building industry consists of more than builders.³³

Submissions also highlighted the lack of legislative power to issue infringement notices for defective work. According to Ms Chantal Williams, an individual personally affected by poor workmanship:

...the Act talks about, in part 14, division 2, infringement notices that can be issued by council. I would like to strongly recommend that it should not be a 'can be' but a 'must be'.³⁴

²⁸ Letter from Hon Bryan Green, Minister, to Mr Geoffrey Harper, Director, Building Professions Accreditation Corporation Tasmania Ltd, 13 May 2004, p. 1.

²⁹ Letter from Hon Bryan Green to Mr Geoffrey Harper, Director, Building Professions Accreditation Corporation Tasmania Ltd, dated 15 June 2009.

³⁰ Workplace Standards, *Building Practitioner Accreditation*
<http://www.wst.tas.gov.au/industries/building/bpa> (accessed 5 June 2008)

³¹ Department of Justice, Consumer Affairs and Fair Trading, *Consultation paper, A New Consumer Building Framework*
http://www.consumer.tas.gov.au/data/assets/pdf_file/0008/94931/Consultation_Paper_Building_Framework_-_Final_!.pdf

³² Department of Justice, Consumer Affairs and Fair Trading, *New Consumer Building Framework*,
http://www.consumer.tas.gov.au/fair_trading/consumerbuilding#framework

³³ Harper, Mr Geoff, *Transcript of Evidence*, 19 August 2008, p. 31.

The Committee concluded, however, that there was general support within the building industry for the accreditation of building practitioners. According to Mr Russell Joseph, representing the Builders' Collective of Australia Inc:

The accreditation of building practitioners in every State... including Tasmania is the fundamental cornerstone of effective consumer protection.³⁵

Consumer protection was a significant motive for the introduction of an accreditation scheme and Mr Ricky Reeves felt that consumer confidence in the industry was enhanced through the accreditation process.³⁶ Mr Peter Coad, the Executive Director of the Tasmanian Building and Construction Industry Training Board (TBCITB), suggested that:

Accreditation should not be seen or used as a restrictive form of occupational regulation but rather evidence of competency in business, building and construction and ethical standards.³⁷

Professional associations outlined areas of importance for accreditation. For example, the AIBS submission stated that:

The AIBS is supportive of an accreditation scheme that creates a level playing field for all practitioners within any given category and also promotes upskilling through structured continued professional development (CPD)³⁸.

In order to achieve a better level of consumer protection and standardisation in registration, Mr Glynn Williams suggested that the industry should aim:

To be a model akin to, let us say, the Nurses' Registration Board...There is a rigorous attention to the standards of the practitioner and there is enough statutory independence and weight to give the body credibility.³⁹

Such a system would dictate a competency based standard and submissions received supported this view.⁴⁰ Further, the Productivity Commission had a view that "...in most jurisdictions, licensing needs to be more closely linked to the actual performance of builders".⁴¹ Mr Godfrey, an independent witness,

³⁴ Williams, Ms Chantal, *Transcript of Evidence*, 31 August 2006, p. 4.

³⁵ Joseph, Mr Russell, *Transcript of Evidence*, 30 August 2006, p. 4.

³⁶ Reeves, 31 August 2006, *op. cit.*, p. 1.

³⁷ Tasmanian Building and Construction Industry Training Board, *Written Submission LCSC/BPR/38*, p. 6.

³⁸ AIBS Tasmanian Chapter, *Written Submission*, 2008, LCSC/BPR/13, p. 8.

³⁹ Williams, Mr Glynn, *Transcript of Evidence*, 31 August 2006, p. 12.

⁴⁰ Harper, Mr Geoffrey; Penny, Mr Tim and Bevan, Mr Richard, *Transcript of Evidence*, 24 October 2006, p. 18; Coad, Mr Peter and Lijauco, Mr Fred, *Transcript of Evidence*, 24 October 2006, p. 1; Board of Architects, *Written Submission LCSC/BPR/32*, 15 May 2008, p. 1.

⁴¹ Australian Government, Productivity Commission, *Review of Australia's Consumer Policy Framework - Productivity Commission, Inquiry Report*, Volume 2 – Chapters and Appendixes, accessed at http://www.pc.gov.au/data/assets/pdf_file/0008/79172/consumer2.pdf, p. 126.

suggested that consumer protection would be better served by the application of such a system.⁴²

In January 2008, the former Minister for Justice and Workplace Relations, Hon Steve Kons flagged a further change to the building industry, announcing the Government's intention to abolish compulsory Builders Warranty Insurance.⁴³ Mr Kons said at the time that:

This insurance does not provide the resolution or security that people expect...It is not the sort of insurance cover that the consumer thinks they are buying, and often leaves home owners with no option but to turn to the courts, which can be both time consuming and costly.⁴⁴

Hon David Llewellyn subsequently became the Minister for Justice and in effecting the abolition of Warranty Insurance said that: "The Tasmanian Government is of the view that the current scheme does not offer value for money for consumers".⁴⁵ The *Housing Indemnity Amendment Bill* passed both Houses of Parliament in June 2008 with all parties supporting its removal.

As outlined in the previous Chapter, the Committee was suspended between November 2006 and March 2008, whilst legal proceedings were underway in the Supreme Court of Tasmania.

As a result, where evidence has become outdated, it has not been included in the report. The evidence taken before this suspension, however, has assisted the Committee in understanding the development of the current system and the deficiencies that were rectified following the dismissal of the TCC. All of the transcripts from these hearings can be accessed on the Committee's website.

Issues that remain outstanding following the most recent changes to the accreditation of building practitioners are discussed below.

Accreditation under the *Building Act 2000*

Many people believe that builders and building companies are large-scale organisations with large turnovers. According to Mr David Diprose, however, 55% of Tasmanian builders fall into a category that earns an average of

⁴² Godfrey, Mr Peter, *Transcript of Evidence*, 31 August 2006, p. 7.

⁴³ Kons, Mr Steve, Minister for Justice, "Scrapping of Mandatory Housing Indemnity Insurance", *Government media statement*, 16 January 2008.

⁴⁴ Choice "Tasmania scraps builder's warranty" accessed at <http://www.choice.com.au/viewArticle.aspx?id=106164&catId=100570&tid=100011&p=1&title=Tasmania+scraps+builder%e2%80%99s+warranty> posted January 2008

⁴⁵ *Housing Indemnity Amendment Bill 2008* (No. 20), House of Assembly, Hansard, Tuesday 27 May 2008 - Part 2 - Pages 37 – 97 accessible via <http://www.parliament.tas.gov.au>

\$9000 a quarter and those companies that gross \$2–3 million dollars are only in the top 1% of the top1% of the market.⁴⁶

To provide a further understanding of the number of building practitioners requiring accreditation, Mr Roy Ormerod, the General Manager of Workplace Standards Tasmania, explained that:

As at 7 August 2008, we have 2445 building practitioners who have a total of 3632 categories; some have more than one category. As at the same date, 1741 of those 2445 were in the builder categories, domestic and commercial builders.⁴⁷

According to Mr Phillip Watts:

The original purpose behind registration was to ensure that builders became more professional and consequently were better remunerated for their work by operating in a closed but level playing field.⁴⁸

The *Building Act 2000* prescribes the accreditation process. In relation to that Act, Mr Harper submitted that:

...we believe that the whole legislation is a good piece of legislation if it works properly because it will provide protection to the public, provided the people who are being accredited have been accredited against some set of competency standards.⁴⁹

Whilst the public may perceive that being a good tradesperson is a necessary prerequisite to becoming a builder, those involved in the accreditation process explained that this is not one of the highest priorities. Mr Ormerod commented:

...that a trade skill itself is probably one of the least levels of competency we are looking for in a builder because building is all about the running of the business of building, not about the actual practice of knocking bits of wood together. So their capacity to be able to manage the business and understand the concepts around building is very highly ranked, rather than the practical aspects of building.⁵⁰

Mr Steve Jeffes, Team Leader, Built Environment Construction, TAFE Tasmania, agreed with this, clarifying that:

A builder in relation to the training is a project manager...It is not about constructing a building in a physical sense, it is about managing the process. Clearly, what has happened in the building area is a lot of people may have been good carpenters or bricklayers and because they could get a letter saying that they had had two buildings approved in the

⁴⁶ Diprose, Mr David, *Transcript of Evidence*, 15 November 2006, p. 4.

⁴⁷ Ormerod, Mr Roy, *Transcript of Evidence*, 19 August 2008, p. 69.

⁴⁸ Watts, Mr Phillip, *Written Submission, LCSC/BPR/4*, p. 2.

⁴⁹ Harper, 29 August 2006, *op. cit.*, p. 2.

⁵⁰ Ormerod, Mr Roy, *Transcript of Evidence*, 17 November 2008, p. 37.

last so many years, they were automatically given accreditation. I think we have done a disservice to our community because of that.⁵¹

With regard to other problems in relation to the accreditation scheme implemented by WST in July 2008, Mr Harper observed:

There are inconsistencies on how things are being accredited and also there is at least one basic flaw in it that we are extremely concerned about. For example, some people under the accreditation scheme to be accredited as an engineer get accredited without any assessment by Engineers Australia or the national professional engineers board or even the Director of Building Control because all they require is to have something put forward that says the person has had three years' experience in the area of practice which they have been signed off by. The terminology used in the scheme is 'senior engineer' but we are aware of people less than that just signing off documents being accepted because the definition of senior engineer is open to interpretation.

We believe the Director of Building Control should have some responsibility to have some rigour in assessments of affiliated credits and not just rely on saying that they will have to work within their area of expertise and that will cover them. I think from the public point of view, if you are saying this person is accredited in a category, the public should feel comfortable that they have been through some rigour to get accredited.⁵²

The above point alludes to another issue which is viewed by many as a troublesome area of the legislation. This relates to which groups should come under the "builder" banner and, therefore, under the auspices of the Act. There is a further contention regarding who should be involved in assessing the trade competence of those seeking accreditation. The AIBS submission stated that:

The AIBS believes that the TCC did not then, and certainly, the Department of Justice since, does *not* have the appropriate expertise to accredit practitioners without input from Expert Panels.⁵³

Early discussions on how the accreditation process should operate in the state suggested the use of expert panels in determining who should become accredited. It would appear that such panels are yet to be implemented under the current scheme.⁵⁴ Indeed, since accreditation was taken over by Workplace Standards Tasmania there has been a move away from the idea. Mr Roy Ormerod justified this by explaining that:

Given that it was a private sector group, you needed more checks and balances. I would have thought that a public sector group that is used to processes and systems should be able to do it without having independent committees overlooking them. That doesn't alter the fact

⁵¹ Jeffes, Mr Steve, *Transcript of Evidence*, 17 November 2008, p. 21.

⁵² Harper, 19 August 2008, *op. cit.*, p. 35.

⁵³ AIBS Tasmanian Chapter, *op. cit.*, p. 5.

⁵⁴ Bramich, Mr Steve, *Transcript of Evidence*, 29 August 2006, p. 1.

though that we actively engage our stakeholders in areas that directly affect them. We need to do more of that.⁵⁵

It appears that a single individual has been the sole assessor of competence as a building surveyor under the most recent WST system.⁵⁶ This was occurring contrary to the advice of representative bodies. Mr Bramich noted:

We have maintained all along that it should be a function of an expert panel of perhaps three people so if there is a conflict by one particular person then that person can declare that conflict. We felt it was not a smart move to have one person to do the assessments. As a consequence, there were some people who were given accreditation and we believe they should not have been given accreditation.⁵⁷

The witnesses representing building surveyors felt if a system such as their proposed expert panel was adopted:

... it becomes a transparent process, but also you would have a number of academic people like the TAFE providers, university providers, the consumer, relevant peak organisation, but also the other groups, to make sure that there is transparency and also there are checks and balances, because as far as we are aware none of the providers, especially here in Tassie, have been consulted at great length. People are simply accredited.⁵⁸

Accreditation of building practitioners under WST still occurs without assessment by expert review panels. This system continues to apply to all of those involved in the building industry generally, including professions and specialised fields.

Accreditation of Professions

The requirements of accreditation were of particular concern to some professions, especially engineers and architects. Currently, architects need to be registered as “designers” under the *Building Act 2000*.⁵⁹ The main criticisms of professionals coming under the Act came from people like Mr John Jacob who said:

There appears to me no cause to embrace the building professionals (qualified architects and engineers) in the provisions in the 2000 Act other than political arguments to show a sense of equality and/or to increase revenue. Suitable mechanisms exist with all three bodies, Board of Architects, RAIA and the Institute of Engineers, to exert discipline over

⁵⁵ Ormerod, Mr Roy, *Transcript of Evidence*, 20 November 2008, p. 46.

⁵⁶ Bramich, 19 August 2008, *op. cit.*, p. 47.

⁵⁷ *Ibid.*

⁵⁸ Yali, 19 August 2008, *op. cit.*, p. 50.

⁵⁹ The Royal Australian Institute of Architects, *Written Submission*, 15 May 2008, LCSC/BPR/26(2), p. 2.

members found to have committed unprofessional conduct and they are far more adequate to deal with these matters.⁶⁰

Mr Harper further endorsed such comments saying:

... it is silly to accredit people under multiple acts. So there could be a single point of reference to accredit engineers or architects, whether that be under the Architects Act. As there is now, there seems to be a bit of duplication with an Architects' Act and the Building Act... Similarly with engineers there is a national system available for registration of engineers and to once again put them in a building act, we are duplicating things which can only lead to complications for the consumer and we think that from a consumer's point of view there should be a clear process they need to follow if they have a dispute or a problem with persons accredited.⁶¹

Further, evidence presented to the Committee suggested that the rate of accreditation under the Act, for some professions at least, is low. This is a problem exacerbated by situations such as those described by Mr Harper:

...fewer than 45 per cent of the registered architects are required to have, by an act of parliament anyway, professional indemnity insurance or undertake professional development.⁶²

Architects are compelled to be members of their professional institute, which maintains professional standard and disciplinary procedures. A worrying aspect of the TCC accreditation process was that those accredited as architects were not always required to satisfy to the same standards as the professional institute.⁶³ This concern has continued with the change of regulator.

According to RAIA, duplication is difficult as it:

... has the capacity to cause:

- Confusion to consumers as to the appropriate avenue of complaint, leading to a disciplinary action in both, and
- Potential unfairness to architects who may be faced with defending a disciplinary charge in two distinct forums, with an outcome in one out of touch with an outcome in another in a myriad of alternative ways
- Potential unnecessary costs to both consumers and architects.⁶⁴

⁶⁰ Jacob, Mr John F., *Written Submission, LCSC/BPR/14*, p. 1.

⁶¹ Harper, 24 October 2006, *op. cit.*, p. 1.

⁶² Harper, 19 August 2008, *op. cit.*, p. 20.

⁶³ Harper, 30 August 2006, *op. cit.*, pp. 6-8.

⁶⁴ RAIA, *Written Submission, 2008, op. cit.*, p. 1.

One suggestion from Mr Tim Penny, a former director of the Building Professions Accreditation Corporation Tasmania Ltd and architect with Philp Lighton Architects, was:

...if you change the Architects' Act to demonstrate the continuing education as well as professional indemnity insurance, given that the Government as part of their legislation have that as a board and an act that exists, changing that would offer the most effective solution in terms of both value for money as well as consumer protection once they'd worked through the issues of complaints handling.⁶⁵

The Royal Australian Institute of Architects' written submission agreed:

...there is absolutely no reason why the Architects Act 1939 [sic] could not be amended to provide for the additional requirements of compulsory PI and CPD, a more targeted and easily accessible Code of Conduct and if desired, audit of individual practitioners for compliance. Each of these things have been added to Architects Acts in other states and territories, in whole or part.⁶⁶

This view was supported by Mr Neil Mackintosh, Royal Australian Institute of Architects, who made the following statement:

We believe that architects will be better served by not being required to be accredited under the Building Act. We believe that the Architects Act only requires some minor amendments and some subsequent minor amendments to the Building Act so that architects can be properly accredited under the Architects Act as is the case in most other States around Australia.⁶⁷

According to Mr Mark Dunbabin, Chairman, Board of Architects Tasmania, the requirements for accreditation are:

Registration as an architect; professional indemnity; and continuing professional development. The act requires that the authorised body carry out audits of professional development requirements.⁶⁸

Mr Dunbabin continued:

...in a nutshell our position is given that we've got the registration procedure in place nationally and we've got the model AACA, which is the umbrella organisation of all the State boards of architects, we feel that that suffices on the accreditation side of it, but in terms of the consumer side, we'd be more than happy to look at the consumer complaints and all that sort of thing handled outside of our jurisdiction.⁶⁹

⁶⁵ Penny, Mr Tim, *Transcript of Evidence*, 30 August 2006, p. 8.

⁶⁶ The Royal Australian Institute of Architects, *Written Submission*, August 2006, LCSC/BPR/26, p. 9.

⁶⁷ Mackintosh, Mr Neil, *Transcript of Evidence*, 29 August 2006, p. 1.

⁶⁸ Dunbabin, Mr Mark, *Transcript of Evidence*, 30 August 2006, p. 11.

⁶⁹ *Ibid.*, p. 14.

The RAI contend that Tasmania's *Building Act 2000* has been partly modelled on Victorian legislation, but that the Tasmanian legislation lacks the provisions to ensure that the regulation of architects in that jurisdiction stay within their Architects Act.⁷⁰

However, the former Minister, the Hon Steve Kons MP, explained that such provisions were:

...determined as not being applicable to Tasmania because of the deficiencies in the provisions of the Architects Act. To transfer the provisions of the Building Act to the Architects Act would be duplication.⁷¹

In response to the duplication issues that were a concern to architects, Mr Ormerod noted:

Architects often argue that the Architects Act and our act is a duplication and that one should be scrapped and that is ours of course, because they are architects that like to look after themselves. But the Architects Act determines who can be called an architect. That is the whole purpose behind the act; it sets a list of qualifications you must meet and then you can be called an architect.⁷²

He explained further that:

Under our act, if you want to conduct a business of an architect firm you need to be accredited as a building practitioner architect. We accredit the firm or the individual, the person in charge or a person that has a qualification that is managing the business, and then that person can employ as many architects as they like. What our act does that the Architects Act does not do is provide a mechanism for discipline, for investigation into any conduct problems and those sorts of issues that are seen to be arm's length from the profession itself. That is the distinction between the two.⁷³

Evidence presented to the Committee suggested that, at times, threats were made regarding the retention of the Architects Act⁷⁴. Mr Peter Scott from the RAI explained that it was important to retain the Act to ensure mutual recognition between the states.⁷⁵

Mr Barton suggested that changing the Act could be as simple as strengthening the provisions already within it and applying a code of conduct that the Institute has access to and has already approved. He also noted that

⁷⁰ The Royal Australian Institute of Architects, *Written Submission*, 2008, *op. cit.*, pp.2-3.

⁷¹ Letter from Hon Steve Kons, Minister for Justice & Workplace Relations to Mr James Jones, President Tasmanian Chapter, Royal Australian Institute of Architects, Received 10 July 2007, p. 1.

⁷² Ormerod, 19 August 2008, *op. cit.*, p. 75.

⁷³ *Ibid.*

⁷⁴ Jones, 19 August 2008, *op.cit.*, p. 14.

⁷⁵ Scott, Mr Peter, *Transcript of Evidence*, 19 August 2008, p. 4.

it would be important to make changes to the Architects Act concurrent with those to the *Building Act*.⁷⁶

Initial reluctance from the Minister's office regarding the restructure of the Act seems to have changed with the change of Minister.⁷⁷ The Architects Act is now undergoing review via round-table meetings between interested parties.⁷⁸

Whilst the submissions from the architects' representatives provide some suggestions to resolve the duplication, the situation regarding engineers involves different concerns. There is no specific Engineers Act in force in Tasmania, however, it was thought that the Engineers Australia professional register could be altered to include a building certifiers' classification such as has been implemented in New South Wales.⁷⁹

Engineers' representatives also discussed the legislation in other states. Queensland has an Engineers Act and has appointed Engineers Australia as an assessment entity.⁸⁰ It is evident that engineers in Tasmania would be keen to follow this model. In response to such a question, Mr Harper stated:

That is one of the options that we believe could solve a lot of the issues. If you had one act that accredited all engineers in specific categories, which is very similar to the model in Queensland. For example, a mining engineer could be accredited under the engineers act and then the mining act could say somebody accredited under the engineers act, but at least you would have consistent approach to accrediting all engineers. Engineers Australia would be happy to assist with it and make sure that people come up to the appropriate standards.⁸¹

With regard to building surveyors, the representative body, the AIBS submitted:

...that it (the AIBS) is the appropriate body to assess the professional competence of Building Surveyors and that we should have a position on any Expert Panel to assess building surveying practitioners, any Accreditation Board, Joint Industry Council, any appropriate panels and tribunals under any approved accreditation level.

Currently the Department of Justice is undertaking its own assessments of Building Surveyors competence without any involvement from the AIBS. It is our view that persons who are nationally accredited with AIBS at the relevant level be automatically accredited under the scheme at minimal cost to the applicant.⁸²

⁷⁶ Barton, 19 August 2008, *op. cit.*, p. 10.

⁷⁷ Jones, 19 August 2008, *op. cit.*, p. 10.

⁷⁸ *Ibid.*, p. 10.

⁷⁹ Harper, 24 October 2006, *op. cit.*, pp. 18-9.

⁸⁰ Harper, 19 August 2008, *op. cit.*, p. 34.

⁸¹ *Ibid.*, p. 39.

⁸² AIBS Tasmanian Chapter, *op. cit.*, p. 5.

And further, Mr Bramich contended that building surveyors should be accredited on the basis of the national body's requirements. He said other jurisdictions already accept the AIBS accreditation scheme 86 and he submitted that:

We have fairly rigorous criteria in our own code of conduct and our CPD scheme that goes with it offers the whole box and dice. The CPD scheme itself has been accepted by the Director but our scheme does not appear to be an accreditation scheme. What we are saying is surely, if you have engineers and architects and ourselves as building surveyors, in reality you should not need further assessment other than insurance, which is very minor. Why can they not be accredited for a very minor fee of say \$50, or whatever covers it costs and what it would require.⁸³

Mr Ormerod was of the view that the assessment by individual professions' boards was recognised by the department in accrediting individuals in most circumstances:

.... for builders we have a building licensing authority, a national group that has developed accreditation standards for builders. We have adopted those and we were one of the first States to have done that.

We have engineers. We rely heavily on their skill sets, as we do with architects, and building surveyors are the same. I think they are pretty well all national.⁸⁴

Mr Ormerod was unsure of why the building surveyors' accreditation was not likewise recognised.⁸⁵ A further concern expressed by building surveyors was in relation to the lack of an appeals process for those refused accreditation under the Act.⁸⁶

A final point from Mr Harper with regard to the accreditation of professions was:

I think the significant thing was that architects and engineers already had a fairly good, rigorous process with property standards being well developed even before the Building Act was thought about. We still ask the question now, why were we ever included? Particularly if there was an Engineers Act.⁸⁷

Some weight is now given to professional registration when accrediting under the *Building Act 2000*, however, architects remain subject to regulation under two Acts.

⁸³ Bramich, 19 August 2008, *op. cit.*, p. 55.

⁸⁴ Ormerod, 19 August 2008, *op. cit.*, p. 89.

⁸⁵ *Ibid.*, p. 90.

⁸⁶ Bramich, 19 August 2008, *op. cit.*, p. 55.

⁸⁷ Harper, 19 August 2008, *op. cit.*, p. 42.

Building Qualifications

The level of experience and qualifications required for accreditation as a builder was an issue of debate amongst industry representatives. It seems that the general working group, which considered the transition of the industry to the accreditation system, was not consulted in relation to some matters. Mr Jeffes suggested that there was general surprise that:

... a discussion had taken place with other members of that party (the accreditation working party), the HIA and the MBA, and the Government had come to an agreement to transition every builder who could prove that they had built a certain number of buildings over the previous two years.⁸⁸

In considering pre-requisites for registration under the system, Mr Harper stated:

One of the main things that we have always put forward is that all building practitioners should have an academic qualification – this is after the transition provisions of course when a lot of people without qualifications were allowed to come in and be accredited. The Act was introduced in the six-month transitional period that went on a bit longer, and we feel that all practitioners should have an academic qualification and have a period of experience after that and that experience should be tested against competencies not just going out and spending 12 months or two years on the job and nobody is sure what they have done.⁸⁹

Mr Jeffes suggested that:

You do not want anyone to lose their potential for employment or their income and that was never the wish of the group. My real view is ...that with every building practitioner who has ever been accredited, the paperwork should be audited. Anyone who does not have a formal qualification should be supported in gaining a formal qualification at the appropriate level.⁹⁰

When considering those without formalised qualifications, Mr Jeffes noted that: “The aim of the group was not to remove them from their workplace but to try to come up with the model that would be manageable so they could upskill”.⁹¹

Generally, individuals require a recognised AQF level to be accredited under the *Act*. However, with regard to the recognition of prior informal learning Mr Jeffes commented that when individuals seek to convert their skills into a formalised level through the former TAFE:

⁸⁸ Jeffes, 17 November 2008, *op. cit.*, p. 20.

⁸⁹ Harper, 19 August 2008, *op. cit.*, p. 17.

⁹⁰ Jeffes, 17 November 2008, *op. cit.*, p. 21.

⁹¹ *Ibid.*, p. 20.

...it's a mandatory obligation on us to provide recognition for prior learning up front and to advise all potential students of the availability of that process... If they wish to activate that process formally, once they've gone through the informal process, they have to enrol and then pay fees. Then there's a formal assessment process put in place against the competencies.⁹²

In explaining the need for an academic qualification, the Executive Director of the Master Builders' Association of Tasmania, Mr Chris Atkins commented that:

The AQF level 4 that is currently available...does not equip you with the skills to be a builder. But if there was an appropriate course that we could agree on that would provide that, that would be fine. We need to make sure that we protect those who have done the hard yards in the industry as well; we do not want to make it too easy for people to come in. We want to make sure that the bona fide people enter the industry. So an academic course of study is necessary because the people who are aspiring to be builders have the opportunity of making decisions. Those who were already in the industry with the introduction of the Act, had no decision. The decision was, step up to the plate or step out, quite clearly.⁹³

Some considered it was still too easy to gain accreditation under the system without necessarily having fulfilled the normal prerequisites.⁹⁴ Mr Chris Atkins, suggested that the problem with the AQF4, 5, 6 and 7 was "that those courses did not equip the participant"⁹⁵ to adequately operate as a builder. He did however note they were being reviewed at the time.⁹⁶

Mr Jeffes questioned the reliability of the AQF requirements for accreditation. His experience indicates that in other states these levels were also linked to specific course prerequisites for accreditation types.⁹⁷ Although AQF levels were mentioned, he said:

We found once the scheme was up and running that there were some individuals who were accredited because they happened to have an AQF level, but it may have actually had nothing to do with the building practitioner status they held, which caused us some concern. That is why we tried to nip that in the bud early but unfortunately it did not work.⁹⁸

This system has been amended for builders.⁹⁹ Now the Tasmanian requirements dictate the specific qualifications and units which must be

⁹² *Ibid.*, p. 12.

⁹³ Atkins, Mr Chris, *Transcript of Evidence*, 24 October 2006, p. 6.

⁹⁴ Vaughan, Mr Steve; Bramich, Mr Steve, Jeffes, Mr Steve and Yali, Mr Danilo, *Transcript of Evidence*, 29 August 2006, pp. 5-6.

⁹⁵ Atkins, 24 October 2006, *op. cit.*, p. 3.

⁹⁶ *Ibid.*

⁹⁷ Jeffes, 17 November 2008, *op. cit.*, p. 14.

⁹⁸ *Ibid.*, p. 14.

⁹⁹ *Ibid.*, p. 15

studied in order for the applicant to be accredited.¹⁰⁰ However, Mr Jeffes related stories to the Committee which suggested that people were being incorrectly accredited in other categories.¹⁰¹ He noted:

...what we were concerned about was that the people who were making decisions specifically about who was going to be accredited have no skills in relation to educational capabilities, competence, and they were essentially...bureaucrats. That continues to this day. Those same people are just being directly employed by the Government and they are still making the same decisions. We have identified at least six people in the building design category who have been accredited in the last 12 months who do not hold the qualifications required by the scheme. We know that because they have been students of ours and they are no longer students of ours.¹⁰²

A further concern with regard to qualifications was the duration and nature of the equivalent AQF 4 courses in the State. Mr Jeffes explained that whilst the TAFE course was 780 hours in duration, neither the HIA nor the MBA course delivered 200 hours education. This situation was allowed to occur as the requirement in relation to course length was only “nominal” however it appears that these courses must differ significantly.¹⁰³

Mr Harper said that the Board of Architects of Tasmania was concerned *that* some of the provisions of the Tasmanian *Building Act* were at odds with other jurisdictions:

The one that we really have difficulty with ... is: in the new scheme they have introduced a category called civil design...that person could be a person with a two-year TAFE qualification, which is what an AQF 6 is. It is not a bachelor's degree from university. Then they go out and have five years' experience. Once again it could be five years' experience working for a small engineering company designing pergolas and certifying that they are okay. Then, under their scope of work, that person can be deemed to satisfy civil and structural engineering designs for buildings of all classes and unrestricted sizes, which means potentially that person could be signing off a multi-level building of a complex nature.¹⁰⁴

In his submission on behalf of the Tasmanian Independent Builders' Association Incorporated (TIBA), Mr Peter Hutcheson wrote:

TIBA also takes the view that applications should be assessed by an independent person or persons who has the qualifications and experience within the field to which the accreditation application is applied for.¹⁰⁵

¹⁰⁰ *Ibid.*, p. 14

¹⁰¹ *Ibid.*, p. 15.

¹⁰² Jeffes, 17 November 2008, *op. cit.*, p. 15.

¹⁰³ *Ibid.*, pp. 23 – 24.

¹⁰⁴ Harper, 19 August 2008, *op. cit.*, p. 36.

¹⁰⁵ Tasmanian Independent Builders' Association Incorporated, *Written Submission*, 15 May 2008, LCSC/BPR/52, p. 1.

Mr Ormerod told the Committee that builders will:

... need to be competent to manage the process of building and that is what we are looking at trying to maintain in this process. I suppose you could say the next flagged intention by the Commonwealth Government under the COAG changes or initiatives is builder categories are going to be caught up in a national scheme that is managed by the Commonwealth for all builders or a State scheme which is harmonised across the country. We believe we are pretty well on the front foot because all of our accreditation for each scheme meets national benchmarks that we have been party to for some time.¹⁰⁶

Changes were made to the classification of builders in July 2008. Amongst other things, these changes mean that there will not be a distinction between commercial and domestic builders in terms of licensing.¹⁰⁷ The reasons for the changes were:

- National consistency to align Tasmanian builder licensing with the Builders Licensing Australasia Model (which is the same as the Queensland Model);
- Consistent with the Australian Qualification Framework qualifications for builders;
- More appropriate definitions of the 'scope of work' based on necessary skills to perform more complex building projects;
- Easier movement across jurisdictions for builders who want to work on projects in different states as licensing is clearer to all regulators. States and Territories have recognised this classification of builders as the appropriate model for national consistency;
- Aspects of the previous Authorised Scheme for the Accreditation of Building Practitioner have been reviewed in the light of four years' experience under the operation of the Building Act 2000. The builder associations have been involved in this review.¹⁰⁸

Accreditation Conditions

AIBS was concerned about the allocation of "private conditions"¹⁰⁹ to the registration of practitioners. The AIBS 2008 written submission stated that:

There are also cases of Building Surveyor practitioners being permitted to move away from accreditation conditions restricting them to working for Councils and only certifying Class 1 and 10 buildings, into private practice

¹⁰⁶ Ormerod, *19 August 2008, op. cit.*, p. 73.

¹⁰⁷ Department of Justice, Workplace Standards of Tasmania, Building Control Branch, Building Control Branch Information Sheet July 2008 - *Important information for all Accredited Builders* accessed at http://www.wst.tas.gov.au/data/assets/pdf_file/0010/107866/BPA_class_changes.pdf

¹⁰⁸ *Ibid.*

¹⁰⁹ AIBS Tasmanian Chapter, *op. cit.*, p. 5.

with the same certification powers without having to have the formal AQF qualifications.¹¹⁰

This concern regarding the necessity of appropriate qualifications was due to the fact that:

It is the role of building surveyors to implement the Act. Our regulatory and professional role is to ensure the safety and health of the occupants of all buildings; the provision of a minimum level of amenity for the benefit of building occupants; equitable access for people with disabilities; energy efficient compliance in buildings and other related matters to the extent that they represent the minimum standard required by legislation and in the public interest.¹¹¹

Associated with this need for accreditation is the possibility of recognition in other jurisdictions and the ease of facilitating the movement of building surveyors. Mr Danilo Yali, of the Australian Institute of Building Surveyors related that transferability of accreditation was seen as important to building surveyors:

...I don't know how hard it is going to be to achieve, but we basically claim that the Department of Justice in collaboration with other States work together to have a nationally recognised accreditation register to ensure that if a building practitioner practises here, they should be able to practise in another State, provided they meet certain criteria.¹¹²

And that:

If you can have a Building Code of Australia that is nationally recognised and we still have appendixes that are pertinent to each State, each time they get lesser and lesser, why the hell can't we have a national system that applies? Builders are no longer just locked into one State; they do go from State to State. That is just a reality of life. When industry dries up in one State they move to another State.¹¹³

Mr Yali further submitted that:

Private conditions, as we explained before, should not be used or if they are should be made available to the public so they can be checked by building surveyors and the people will make an application to us for a D11 certificate of paperwork.¹¹⁴

There is some confusion surrounding how organisations become accredited and how many of the individual practitioners within an organisation are required to be accredited. Mr Dunbabin said:

¹¹⁰ *Ibid.*, p. 5.

¹¹¹ *Ibid.*, p. 1.

¹¹² Yali, 19 August 2008, *op. cit.*, p. 60.

¹¹³ *Ibid.*, p. 60.

¹¹⁴ *Ibid.*, p. 57.

I guess that is something the Building Act has not really come to grips with ... as to who is accredited and who has to be. You would have a situation where a firm has to fork out four or five accreditation fees...¹¹⁵.

He did concede that most firms only had one registered member.¹¹⁶ Mr John Kennedy the Managing Director of Modbuild (Tas), raised an issue relating to whether an individual or the company for which they work should be accredited:

If an accredited builder or accredited building company failed structurally on a project, I believe there should be then a board of review that reviews their accreditation. But that is distinct from an owner-builder building a dwelling then taking the builder to court who has been working on hourly hire because there could be a whole host of variables in there as to why that structural defect occurred. But if the consumer is paying for the accredited builder or accredited building company to take the process from design through to completion yes, they should be protected and then perhaps that entity or that company or accredited builder should be responsible to a builders registration board or something along those lines, which I guess in a way is what the TCC was going to try to provide but, once again, I don't know where the depth of experience was to do that.¹¹⁷

Mr Chris Bullard, President, of the Association of Consulting Architects Tasmania, suggested that due to the interpretation of Section 25 of the *Building Act 2000* it was only necessary for one person from each corporation, practice or partnership to be accredited.¹¹⁸ He said that "various things go astray as far as that is concerned".¹¹⁹ In addition, Mr Warwick Temby, Executive Director, Housing Industry Association Queensland, discouraged Tasmania from going down the path of licensing sub-contractors on the basis that "It does not add any value. It adds revenue but it does not add any value".¹²⁰

Related to this issue is the concern that if accreditation lapses it is difficult to reinstate. Mr Harper explained that:

Under the Architects Act, as part of the discussion papers that we are currently developing, we are looking at potentially having more than one class of architect; a practising architect and a non-practising architect. We would also look at putting in processes so a person in the circumstance that you are talking about [the committee had discussed women having children and taking time off] who is not currently practising can become a non-practising architect and when they want to commence

¹¹⁵ Dunbabin, Mr Mark, *Transcript of Evidence*, 19 August 2008, p. 29.

¹¹⁶ *Ibid.*, p. 29.

¹¹⁷ Kennedy, Mr John, *Transcript of Evidence*, 29 August 2006, pp. 10-11.

¹¹⁸ Bullard, Mr Christopher, *Transcript of Evidence*, 31 August 2006, p. 2.

¹¹⁹ *Ibid.*, p. 2.

¹²⁰ Temby, Mr Warwick, *Transcript of Meeting*, 10 October 2006, p. 6.

practice again, they would need to ensure that they have been doing something in that time to keep their skills up-to-date.¹²¹

Further investigation is required as many accreditations have not been reviewed and, it is therefore not possible to know whether all building practitioners are properly classified. Individuals may still be working under conditional accreditation.

Continuing Professional Development

Questions were raised regarding the form and direction under which continuing professional development should occur in the building industry.

Witnesses contended that there was very little money allocated to deliver CPD under the system provided by the TCC. Individuals still had to pay their industry institutes for professional development whilst paying a large amount to the TCC for little obvious return.¹²²

Mr Watts suggested that CPD "...should include practical training as well as theoretical training".¹²³ There was some criticism of the whole premise of CPD and the means by which it had previously been administered.¹²⁴ The HIA submission contended that:

There has never been a comprehensive, sustainable and independent study that substantiates a clear basis for mandatory CPD. The only beneficiaries from CPD appear to be trainers, industry associations that receive income from providing training and membership recruitment as a result of the accompanying CPD points, and regulators who require more resources to administer a mandatory scheme. The housing industry and its consumers are the losers when CPD is mandated.¹²⁵

One key concern was that CPD had been used as an advertising forum for large hardware stores,¹²⁶ or alternatively, as a money-making attempt for individuals.¹²⁷

Others suggested that improvements were needed to make the required CPD more relevant. One proposal was that CPD points system should only apply to those with less than 5 years experience.¹²⁸ Alternatively, in the written submission from the TBCITB, Mr Coad suggested that the following changes would benefit the industry:

¹²¹ Harper, 19 August 2008, *op. cit.*, p. 21.

¹²² Watts, Mr Philip, *Transcript of Evidence*, 31 August 2006, p. 11.

¹²³ Watts, *Written Submission*, *op. cit.*, p. 3.

¹²⁴ Godfrey, 31 August 2006, *op. cit.*, p. 2.

¹²⁵ HIA, *Continuing Professional Development – HIA’s View for Industry provided Development Policy Paper*, p. 2.

¹²⁶ Kennedy, 29 August 2006, *op. cit.*, p. 5 and Ryan, Mr Colin, *Transcript of Evidence*, 31 August 2006, p. 4.

¹²⁷ Godfrey, *Written Submission*, *op. cit.*, p. 2.

¹²⁸ Reeves, Mr Ricky, *Written Submission*, LCSC/BPR/15, p. 3.

The first point you would make sure is that your CPD was relevant to the problems that were occurring within the industry to address those particular issues. The second point regarding the CPD is that the organisations would need to look at their own particular circumstance in terms of what best suits their particular needs rather than the scatter-gun approach, and have their training designed to meet their particular needs.¹²⁹

Workplace Standards has implemented some measures to address this concern. Changes are proposed to make the system fairer. Mr Ormerod noted:

The current CPD scheme developed by the TCC has what they call nine structured and three unstructured points per year and each point equals an hour. There have been complaints from some people that it is too complex and we did not want to touch that until we had the scheme finished. Instead, we have six structured and six unstructured points... [t]hat is for the builders.

Theirs is the area in greatest need of improvement because the others are already handled well by the professional organisations; it is only builders who we need to tidy up in CPD ultimately.¹³⁰

Mr Ormerod thought that the most important factor for CPD was getting the mix of activities right.¹³¹ With regard to the form of CPD undertaken, he explained that:

Structured would mean where they have to demonstrate they have gained something out of it as opposed to unstructured, which means you attend a trade show and listen to somebody.¹³²

The proposed scheme for CPD was outlined by Mr Ormerod:

CPD is all about getting skill sets up, competence and a builder should be able to do some of that themselves, like reading the building code and other literature checks and they should get acknowledgement for that. Whether that is assessed as six points, three points or whatever that is fine. Those which we call structured should be assessed, the provider should be assessed and the provider should have some sort of accreditation for providing that service and they should be providing us with a set of information that they are offering. I think that is the bit that we want to tidy up.¹³³

Mr Harper said that although he had not studied the provisions to any great depth, he would like to:

¹²⁹ Coad, Mr Peter, *Transcript of Evidence*, 24 October 2006, pp. 2 -3.

¹³⁰ Ormerod, 19 August 2008, *op. cit.*, p. 87.

¹³¹ *Ibid.*, p. 87.

¹³² *Ibid.*, p. 88.

¹³³ Ormerod, 17 November 2008, *op. cit.*, p. 54.

... ask where the CPD requirements come from and why there is variation for different categories from a builder at 12 to an architect at 20 and engineers at 30. The only explanation we have received to that is that we were consulted. I assume that means consultation with the TCC but the TCC, I can assure you, did not consult us at any stage because we were seen as a rival.¹³⁴

Industry still had questions as to the implementation and mentoring of CPD schemes. The concerns related to auditing of practitioners to ensure compliance. There was a general view that no audits of engineers had yet occurred.¹³⁵ Evidence presented to the Committee in November 2008 suggested that the audit system was being developed and new staff sought for this purpose.¹³⁶

The revised accreditation scheme in operation under the Director of Building Control initially saw 3.8 positions carried over from the TCC with auditors and others employed since.¹³⁷ Evidence presented suggests that the desired staffing level to adequately carry out all the necessary functions associated with accreditation is 6.5 full time equivalent positions.¹³⁸ Mr Ormerod spoke of acquiring a CPD auditor when he appeared before the Committee in November 2008.¹³⁹

Building surveying representatives suggested that CPD should be linked to problems identified in the industry, and that it should address flaws identified through auditing. Mr Yali believed that:

It should be linked to the auditing process, because if you do find common themes, which you will through the auditing processes, that is where it should be linked through the educational process, so you have a real advancement. Otherwise you are going to have a recurrence of the same problems.¹⁴⁰

Mr Ormerod's evidence suggested a new emphasis on auditing by WST staff:

... they will be auditing whether they are doing what they are accredited to do; so therefore if we have a person signing off on designs and drawings, to see the person is accredited to do that work.¹⁴¹

Mr Jeffes was concerned that those auditing lacked technical competence:

...If you are going to audit people – and I have been an auditor myself in other areas – the auditor himself is looking at the paper flow but not the technical competence of an individual. If someone makes a formal

¹³⁴ Harper, 19 August 2008, *op. cit.*, p. 44.

¹³⁵ *Ibid.*

¹³⁶ Ormerod, 17 November 2008, *op. cit.*, p. 46.

¹³⁷ Ormerod, 19 August 2008, *op. cit.*, p. 71.

¹³⁸ *Ibid.*

¹³⁹ Ormerod, 17 November 2008, *op. cit.*, p. 46.

¹⁴⁰ Yali, 19 August 2008, *op. cit.*, p. 63.

¹⁴¹ Ormerod, 19 August 2008, *op. cit.*, p. 72.

complaint against any type of practitioner and you do not match that auditing with a person who has technical competency in that area independently then you are not really going to get to the bottom of the problem.¹⁴²

Mr Yali had similar views and commented that to do the job properly auditors should have formal qualifications and expertise in the work they are assessing.¹⁴³ It was thought that rather than having auditors on permanent staff WST could sporadically source them from both inside and outside the state.¹⁴⁴ Another suggestion raised was to use one auditor and also utilise the expertise of the expert panel in the role.¹⁴⁵

The AIBS submission continued:

... it is clear that the government (and prior to them the TCC) regard the audit obligation as an incidental function and that few resources are applied to the task (one-person state wide for all categories of building practitioner.) Our experience is that the audit function is not being performed effectively and as a consequence there is a concern that a diminution in the standard of building construction may be occurring unchecked.

Notwithstanding, the AIBS would like to see that there is a clear understanding of the service obligation expected to fulfil this function and a public reporting mechanism against performance indicators which demonstrates that a proportional and sufficient response is being achieved.¹⁴⁶

When appearing before the Committee in 2006, Mr Kim Booth MP, highlighted the benefit of inspections of work done to ensure a high level of practice:

To me, one of the cornerstones of any regulatory system has to be proper inspections, and I think that's really the nub of a lot of the problems of a regulatory framework at the moment is that there seems to be a shift more towards self-regulation and relying on the fact that a practitioner is insured against incompetence or malfeasance rather than requiring the project to be inspected at completion or at various stages throughout the project by a responsible and duly-qualified, competent building professional, whether they be an engineer or a surveyor, or somebody who understands the Building Code of Australia.¹⁴⁷

Mr Reeves was supportive of regular reviews of the system:

I feel that the initial accreditation should be reviewed every year and the review should be taking in the projects that are completed, not the time

¹⁴² Jeffes, 17 November 2008, *op. cit.*, p. 17.

¹⁴³ Yali, 19 August 2008, *op. cit.*, p. 57 and Jeffes, 17 November 2008, *op. cit.*, p. 18.

¹⁴⁴ Jeffes, 17 November 2008, *op. cit.*, p. 19.

¹⁴⁵ Yali, 19 August 2008, *op. cit.*, p. 58.

¹⁴⁶ AIBS Tasmanian Chapter, *op. cit.*, p. 6.

¹⁴⁷ Booth, Mr Kim, MP, *Transcript of Evidence*, 24 October 2006, p. 2.

they spent on courses. It is the practical work that has been done, the standard of work, the work conditions that the jobs were carried out under that the accreditation should come from.¹⁴⁸

Some witnesses suggested that the standard for CPD required clarification. Mr Yali commented that:

The whole point of having a CPD scheme is to ensure that people maintain their current accreditation and also that the CPD that is done is actually current to what the industry is doing. Too often you hear rumours in the industry that people can gain accreditation in just about anything.¹⁴⁹

Other professional associations have similar views. According to Mr Geoff Mitchell of the Australian Institute of Building Surveyors:

The continuing professional development scheme the institute has is well documented and it covers different areas. You can go and get some training in an associated profession but it does not gain as many points as it does in specific training to the profession. To gain the point the training or whatever you are doing must be approved by a local CPD convenor so it is strictly controlled to make sure you are updating your skills and there is a subtle difference between CPD and working as well. It is to try to broaden horizons. I suppose from the Institute perspective, that is one of the key things behind it. It really behoves the Institute to provide that training and to put the training sessions together.¹⁵⁰

Whilst Mr Ormerod explained that the basis for CPD was:

... to try to get these people to maintain and improve their competency level and we've obviously been in consultation with the various peak industry groups to get a CPD scheme that is effective in getting people to skill levels or keeping the skill levels at a high level.¹⁵¹

Mr Barton was critical of the fact that no money was returned to the Institute, or architectural profession generally, to run the the mandated CPD.¹⁵² To try and resolve this problem, Mr James Jones, the then President of the Australian Institute of Architects Tasmanian Chapter, advised that the RAIA has been "... working through the Building and Construction Industry Training Board, arguing that some of the funds that come through building approval fees could be used for CPD for professionals".¹⁵³

The engineers' representatives were similarly unimpressed with the fund allocation but pleased to see recent attitudinal changes by key building groups. Mr Harper discussed the recommendation of the Building and Construction Industry Council and the TBCITB commenting that:

¹⁴⁸ Reeves, 31 August 2006, *op. cit.*, p. 1.

¹⁴⁹ Yali, 19 August 2008, *op. cit.*, p. 62.

¹⁵⁰ Mitchell, Mr Geoff, *Transcript of Meeting*, 9 October 2006, p. 4.

¹⁵¹ Ormerod, 17 November 2008, *op. cit.*, p. 37.

¹⁵² Barton, 19 August 2008, *op. cit.*, p. 12.

¹⁵³ Jones, 19 August 2008, *op. cit.*, p. 12.

...[The] Board ought to extend their coverage of the training levy funding to be available to more than just the building people and have some funds available for the design, documentation and associated activities, which has been one of the issues that professions have had for some time because all the funding under the building levy – which is approximately \$1.8 million a year – is being put back into the builders' area of it. When applications have been made by engineers and others for some training funds, they have been rejected.¹⁵⁴

Further, he stated:

Considering, under the *Building Act*, engineers are required to do 30 hours per year of CPD and builders are only required to do 10 to 12, it just seems very unbalanced... When you think about the whole building project...the design side of it – design and planning – can affect the cost of a building over its life far more than just the construction cost.¹⁵⁵

The TBCITB sets a minimum threshold for the amount of time that must be spent on the actual work site in order to qualify for training funding. This threshold is 90%,¹⁵⁶ which is why the other professions do not qualify.

Building surveyors too were keen to see this funding situation altered. Mr Yali said:

What seems to happen with the industry is that the only levy that people pay is for the building work, not the design face of the work. So people spend up to, say, \$15 000 or \$20 000 for design work and that amount doesn't get levied. Therefore some of these practitioners are not part of that process. We are saying that they should be part of that process and that amount should be leviable. By the same token, we see nothing wrong in being able to access some of that funding, not only through the Industry Training Board but also from Business Standards and Regulations. We are paying a hefty amount for accreditation.¹⁵⁷

Some information on the basis of this division was provided by Mr Bramich who explained that; “[t]here is a mentality within the board which has been there for years and very strongly held by the HIA and MBA, that to get access to the training funds you must wear a nail bag”.¹⁵⁸

Although Mr Ormerod welcomed applications for funding from building surveyors and others, he did not commit to how applications would be treated, saying:

They certainly can apply. There is no reason for them not to be able to apply. I am not sure how we would treat it.¹⁵⁹

¹⁵⁴ Harper, 19 August 2008, *op. cit.*, p. 32.

¹⁵⁵ Harper, 19 August 2008, *op. cit.*, p. 32.

¹⁵⁶ *Ibid.*

¹⁵⁷ Yali, 19 August 2008, *op. cit.*, p. 64.

¹⁵⁸ Bramich, 19 August 2008, *op. cit.*, p. 64.

¹⁵⁹ Ormerod, 19 August 2008, *op. cit.*, p. 92.

To date the Workplace Standards website sets out the amounts of CPD to be undertaken by each profession.¹⁶⁰ As below:

One CPD point equates to one hour of learning activity.

Category of Accredited Building Practitioner	CPD Points Required per year
Builder	12
Construction Manager	12
Fire Protection Services Builder	12
Demolisher	12
Architect	20
Building Surveyor	30
Assistant Building Surveyor	30
Building Services Designer	20
Building Designer	20
Engineer	30
Civil Designer	20

Where a practitioner is accredited in multiple categories, the CPD points for each category must be gained. CPD relevant to more than one category may be counted for each relevant category.¹⁶¹

¹⁶⁰ Workplace Standards Tasmania, Continuing Professional Development accessed at <http://www.wst.tas.gov.au/industries/building/bpa/cpd>

Dispute Resolution

At present, it is difficult for consumers to determine the correct group for reporting complaints. Mr Barton explained:

In terms of the pillars of the *Building Act*, which I will describe as disciplinary procedures, CPD and insurance, we have one-third who are disciplinable only under the *Architects Act* and another two-thirds who are disciplinable under both. Then we have all sorts of confusion about which body a consumer goes to.¹⁶²

Mr Ormerod cautioned that it was better to go to an overarching body than to go directly to the industry for two reasons:

First, there is the perception through the eyes of the public that you're going to the engineers to complain about an engineer, for argument's sake. Secondly, you don't know how far that complaint will go in its first stages. If you come to an independent body, the complaint is seen to be looked at independently by the body.¹⁶³

Whilst Mr Harper's view of the situation with complaints and discipline was that:

To be nationally consistent and assist with international reciprocity, logically it should be under the Architects Act because every State in Australia and Territory have an architects act.¹⁶⁴

Mr Ormerod explained the benefit of a separate system:

If we have a complaint against an engineer, we go to the college and seek their advice and get somebody independent to assess any issues around the competency of the engineer.¹⁶⁵

Commenting upon the current operation of the system, Mr Ormerod stated:

The bit we do not really have a proper handle on yet is complaints handling...We have not really worked out – and this is part of the new scheme that we are still finalising to some degree – what is deemed as a complaint which we have jurisdiction over, because we do not have powers under the act (for) the direct rectification. When people come to us to complain, they usually want something fixed. We tell them that we cannot help them with that, it is not our job. If you have a complaint, you give it to us and we will assess it to see whether the building practitioner has conducted a breach or breached the code of conduct and then we will take whatever action we think is appropriate, but I don't think that

¹⁶¹ Department of Justice, Workplace Standards Tasmania, Building Control Branch, *Scheme for the Accreditation of Building Practitioners*, July 2008 accessed at http://www.wst.tas.gov.au/data/assets/pdf_file/0009/107865/BPA_scheme_08.pdf, p. 34.

¹⁶² Barton, 19 August 2008, *op. cit.*, p. 8.

¹⁶³ Ormerod, 19 August 2008, *op. cit.*, pp. 50-51.

¹⁶⁴ Harper, 19 August 2008, *op. cit.*, p. 28.

¹⁶⁵ Ormerod, 19 August 2008, *op. cit.*, p. 76.

message is well understood by the community. We are hoping that by building up the Consumer Affairs model we might be able to make that work.¹⁶⁶

Mr Ormerod said that he consulted the then Solicitor-General on the disciplinary range of the WST:

His view was that you want to be at arm's length, that as an authority that accredits you don't want that body also to be caught up in making assessments on damages. He said they should be separate, they should talk to each other but they should be separate. That is why we went down this track that we are working on now with Consumer Affairs. We need to feed in, we need to know who is complaining against which particular builder, what the outcome of the investigation is and whether we should then take our own action against the building. It's got to happen.¹⁶⁷

Mr Ormerod admitted there had been a backlog of complaints that WST had not been able to process quickly enough, but said that with the newly employed staff it is hoped that the process for resolution will be improved in the near future.¹⁶⁸ Consumer Affairs and Fair Trading is developing a scheme whereby remedy of faults could be enforced via legislation.¹⁶⁹ Mr Ormerod said that in his experience the more quickly a dispute can be resolved the better.¹⁷⁰ His reasons were that:

If you do that quickly in most cases where the parties have lots of good faith, as they normally do in the early stages, you can knock it off quickly and you get the two talking to each other and the whole thing is finished quickly. That is what I am hoping the Consumer Affairs model will have.¹⁷¹

Mr Chris Atkins commented that:

... the dispute resolution process needs to be fast, fair and friendly. The arbitration process that is inherent in the building industry today is inappropriate: if I've got the most money, that will mean whether I am right or wrong, I will still win.¹⁷²

Mr Ormerod discussed the way registration and dispute resolution processes should be structured:

You have to keep it separate. That is why, as you may be aware, we funded Consumer Affairs from the levy to develop a mechanism to seek to conciliate on complaints and also develop some legislation that would give Consumer Affairs authority to arbitrate should conciliation fail. As I

¹⁶⁶ *Ibid.*, p. 78.

¹⁶⁷ Ormerod, 19 August 2008, *op. cit.*, p. 79.

¹⁶⁸ Ormerod, 17 November 2008, *op. cit.*, p. 47.

¹⁶⁹ Ormerod, 19 August 2008, *op. cit.*, p. 79.

¹⁷⁰ *Ibid.*, p. 80.

¹⁷¹ *Ibid.*, p. 80.

¹⁷² Atkins, 24 October 2006, *op. cit.*, p. 6.

see it that is a much neater fit. We would then have accessed the information because it becomes a matter of conduct. If you have a builder caught up in so many contract disputes that it becomes habitual, then clearly that starts to say this person is not an appropriate person to hold accreditation and therefore should be removed.¹⁷³

The Productivity Commission received submissions that suggested that:

... where the use of ADRs is voluntary a significant proportion of disputes end up in court, where the costs of resolving a dispute escalate.¹⁷⁴

As a result, one of its recommendations was that early consumer protection could be enhanced through “guaranteed access to effective ADR across Australia.”¹⁷⁵

HIA’s submission to the Productivity Commission outlined its desire to see “a new and properly designed ADR process that separates contractual disputes from factual disputes over defects...”¹⁷⁶ Suggestions were received that the Building Levy should be used to partially fund the dispute process. According to Mr Stuart Clues, Executive Director, Tasmania, Housing Industry Association Limited:

We are saying that having accredited builders, the building levy should then be used to go through and provide consumers with an alternate dispute resolution process so that if there is a concern relating to a particular building project, consumers can lodge an appropriate complaint and have that determined through an ADR process. We are saying that that is similar to what operates in Victoria and would provide a low-cost dispute resolution procedure that would enable people to have some confidence, whether it be in relation to a contractual matter or an ethical issue, to have the matter resolved appropriately.¹⁷⁷

With regard to WST, Mr Ormerod said:

I think we need to improve our game by telling people up-front what exactly our role is. There is some potential there. I think you are right, in engaging more effectively with perhaps an expert uniform panel.¹⁷⁸

There appears to have been some attempt to do this:

At the end of the day I think that what we are looking at is trying to develop a scheme where consumers get a fair hearing. Where it sits at the end I think is not all that important so long as people know where to go and they get the service they need. So I think it can become an academic argument in the end whether it should fit with us or fit with

¹⁷³ Ormerod, 17 November 2008, *op. cit.*, p. 33.

¹⁷⁴ Australian Government, Productivity Commission, *op. cit.*, p. 121.

¹⁷⁵ *Ibid.*, p. *xix recommendation 5.5.*

¹⁷⁶ Chamberlain, Mr Scott, *Written Submission* by the Housing Industry Association to the Productivity Commission on the Review of Australia’s Consumer Policy Framework, Draft Report, 6 Feb 2008, p. 3.

¹⁷⁷ Clues, Mr Stuart, *Transcript of Evidence*, 30 August 2006, p. 18.

¹⁷⁸ Ormerod, 19 August 2008, *op. cit.*, p. 85.

someone else. I think the most important thing is it has to be done properly.¹⁷⁹

It is evident that industry groups are supportive of the involvement of Consumer Affairs¹⁸⁰ and an issues paper was distributed regarding how it could be involved.¹⁸¹

Under the current complaint handling system it is made very clear to consumers that whilst the Director of Building Control can adjudicate regarding the alleged “Unsatisfactory Professional Conduct/Professional Misconduct” of a builder, it is not possible to:

- resolve contractual disputes;
- order the completion of any unfinished work;
- order any building work or repairs to be made;
- order a refund or compensation or the return of your progress payments¹⁸².

Further, the most recent update of the Consumer Affairs website states that:

The Tasmanian Government has now agreed to the drafting of a Bill to establish a legislative process that will implement the framework which includes:

1. a dispute resolution process for domestic building disputes;
2. an ability to order the rectification of defective building work;
3. implied contract terms;
4. incorporation of the mandatory information, statutory warranties, minimum deposit and progress payment provisions currently contained in the Housing Indemnity Act 1992.¹⁸³

Mr Harper outlined the confusion created by the many different options available for pursuing complaints against engineers.

I feel sorry for the consumer trying to get the right advice on where to go. We have no problem with an engineer having complaints against them

¹⁷⁹ *Ibid.*, p. 86.

¹⁸⁰ Harper, 24 October 2006, *op. cit.*, p. 3.

¹⁸¹ Department of Justice, Consumer Affairs and Fair Trading *A New Consumer Building Framework*, *op. cit.*

¹⁸² Department of Justice, Workplace Standards Tasmania, Building Control Branch, GF061, *Complaint against an Accredited Building Practitioner – Information Sheet*, accessed at http://www.wst.tas.gov.au/_data/assets/pdf_file/0018/109503/Complaint_form.pdf

¹⁸³ Department of Justice, Consumer Affairs and Fair Trading: *Consumer Building*, http://www.consumer.tas.gov.au/fair_trading/consumerbuilding (site last updated 9 September 2009).

and us investigating, but five or six ways of doing it seems a bit unjust and confusing to the consumer.¹⁸⁴

Under the *Architects Act* there is a disciplinary board in place.¹⁸⁵ The Architects Board currently comprises:

Two elected persons from the Royal Australian Institute of Architects, the current president of the Royal Australian Institute of Architects and two nominees of the Governor who can be architects or non-architects.¹⁸⁶

They have the power to impose a fine of only \$200.¹⁸⁷ The representatives of engineers similarly had a plan of how to mediate disputes available through their national policy statement of Engineers Australia.¹⁸⁸ For defaults arising out of engineering work, Mr Max Smith, Deputy Director-General, Department of Public Works, Queensland, suggested:

My recommendation to government is that we have got to increase the sanction on the engineers for poor performance because we have not got too many things we can do to the engineer except deregister them at the present time and seek costs.¹⁸⁹

Appropriateness of Accreditation Costs

Many witnesses questioned the appropriateness of the cost of accreditation under the system run by TCC. The cost was considered too expensive for the service provided.¹⁹⁰ It was suggested that the cost structure imposed did not take into account matters of scale and the turnover of a practitioner. Mr Reeves explained that:

As a small domestic builder the impost of a \$600 dollar plus annual fee to remain accredited every year, is an expense I have to pass on to clients and customers, it should not be as high after the initial accreditation.¹⁹¹

In determining a reasonable fee, Mr Mitchell Rowlands, a builder, spoke in support of setting a lower fee and then linking its increase to the Consumer Price Index (CPI) as is done by electrical contractors.¹⁹²

Mr Clues submitted that the Building Levy should subsidise a properly structured dispute resolution system:

¹⁸⁴ Harper, 19 August 2008, *op. cit.*, p. 38.

¹⁸⁵ Saunders, Ms Janine; Mackintosh, Mr Neil and Barton, Mr Rick, *Transcript of Evidence*, 29 August 2006, p. 3.

¹⁸⁶ Harper, 19 August 2008, *op. cit.*, p. 26.

¹⁸⁷ Dunbabin, 19 August 2008, *op. cit.*, p. 27.

¹⁸⁸ O'Toole, Mr Dan, *Transcript of Evidence*, 29 August 2006, p. 17.

¹⁸⁹ Smith, Mr Max, *Transcript of Meeting*, 10 October 2006, p. 7.

¹⁹⁰ AIBS, *Written Submission 2006*, *op. cit.*, p. 8; Rogers, Mr Andrew, *Written Submission, LCSC/BPR/19*, p. 1.

¹⁹¹ Reeves, *Written Submission*, *op. cit.*, p. 3.

¹⁹² Rowlands, Mr Mitchell, *Transcript of Evidence*, 24 October 2006, p. 20.

We think that if you were to charge an accreditation fee of around \$100 and used the building levy to supplement the dispute-settling process then you would have a really good model. We think the building levy...is generating between \$1 million and \$2 million per annum and that should be adequate to run a complaints management process... that complaints management process should be also supplemented with an application fee, maybe something in the order of about \$200, to ensure that you don't have frivolous and vexatious claims being made, that people have to be serious about the complaint but not have the cost so high that it is prohibitive.¹⁹³

A reasonable accreditation fee in such a situation was discussed by Mr Harper who said that a figure around \$135 (similar to that suggested by Consumer Affairs) was reasonable:

From an engineer who is on the national professional engineers register, which is basically the requirement under the minister's guidelines, to have the competencies to be on the National Professional Engineers Register, if they come along with it already signed off on the register then all they need to do is check their insurance and do the paper work for putting them on the register. There is no additional assessment required.¹⁹⁴

Mr Harper continued that the consequential cost to the consumer should be considered:

... really we should not be looking at the cost imposed on the builders or the building industry. There probably ought to be the additional cost to the consumer or the building owner because, let's face it, any cost put onto the builder or any building professional is going to get charged back to the owner of the building or the consumer...¹⁹⁵

If accreditation costs are to be incurred, the view of AIBS is that they are not yet at reasonable levels as they are "excessive and not value for money":¹⁹⁶

It is our strong opinion and recommendation that Building Surveying practitioners who have AIBS accreditation and carry the appropriate required level of Professional Indemnity Insurance, or better, should be automatically accredited by the DBC [Director of Building Control] and only be required to pay a minimal administration fee. This would assist in maintaining a level playing field for all Building Surveying practitioners.¹⁹⁷

Some had a pessimistic view of the impact of costs imposed at any level. Mr Andrew Rogers, a builder, cautioned:

I support the concept of accreditation, both for protection of consumers and to encourage professionalism in the building industry. However, common sense and even superficial observations, show that poor or

¹⁹³ Clues, 30 August 2006, *op. cit.*, p. 19.

¹⁹⁴ Harper, 29 August 2006, *op. cit.*, pp. 8-9.

¹⁹⁵ Harper, 19 August 2008, *op. cit.*, p. 31.

¹⁹⁶ AIBS Tasmanian Chapter, *op. cit.*, p. 6.

¹⁹⁷ *Ibid.*, p. 6.

dishonest building practices cannot be effectively legislated against. The process provides some protection but in effect is often just another cost with little in return for either consumers or industry.¹⁹⁸

Mr Jones represented the perspective of the architects:

The fees have been significantly reduced, which is very positive. Under the TCC they were \$500. Under the new process they are about half that figure...¹⁹⁹

With the reforms to the Act that occurred in July 2008, the number of classifications for professions such as engineers was condensed.²⁰⁰ This made the system less complex and also less expensive.²⁰¹ Mr Scott did note, however, that:

What is being said is that if there is a flat rate fee across all accredited building practitioners, the body that is doing the accreditation has to do a lot more work to accredit someone, without disparaging, let us say a builder who does not have tertiary qualification to verify that they are qualified to do a job, than to assess the accreditation credentials of an architect because that has largely been done through their registration under the Architects Act.²⁰²

Mr Harper commented:

We note that since the Government took over accreditation the cost to some engineering companies has increased even though the accreditation fees were reduced.²⁰³

This change may have occurred due to the difference in the cost of registration for each of the categories and how organisations are charged.²⁰⁴ Generally, the initial cost to register an engineer is seen as excessive. Mr Harper noted:

...in addition to the \$300 when you initially apply there is a \$150 application fee. We believe that if they are simply going to pick up somebody else's assessment, there is no justification for a \$150 fee.²⁰⁵

The building surveyors were concerned about the costs imposed on associated practitioners:

The cost for associated practitioners – again that is basically what Steve highlighted earlier, where a practitioner has already national accreditation

¹⁹⁸ Rogers, Mr Andrew, *Written Submission, op. cit.*, p. 1.

¹⁹⁹ Jones, 19 August 2008, *op. cit.*, p. 11.

²⁰⁰ Department of Justice, Workplace Standards of Tasmania, Building Control Branch, *New Scheme for the Accreditation of Building Practitioners 2008*, Issued 23 July 2008, Number 3/2008 accessed at http://www.wst.tas.gov.au/data/assets/pdf_file/0006/108078/No_3-2008.pdf at p. 2.

²⁰¹ *Ibid.*, p. 2.

²⁰² Scott, August 19 2008, *op. cit.*, p. 13.

²⁰³ Harper, 19 August 2008, *op. cit.*, p. 41.

²⁰⁴ *Ibid.*, pp. 40-41.

²⁰⁵ *Ibid.*, p. 41.

through a recognised body this should not incur the same fees when they are up for re-accreditation through the Tasmanian model.²⁰⁶

Mr Ormerod gave an example, using engineers and how increases in prices had been countered and changed to ensure reasonableness.

We consulted with the various bodies and have adopted the national standard for those. Off the top of my head I do not know what they are exactly. For instance, in the engineer category we had 10 categories of engineers that we inherited from the TCC. One category attracted a full fee and then for about \$50 you can get the extra ones up and when they came to us we said no, the scheme does not read that way, that if they want 10 categories they have to pay the fee 10 times.

So we had a number of engineers up in arms because suddenly they were paying us actually far more than they were paying the TCC. We changed the scheme, reduced the categories down to four which meets the same numbers as the engineers colleges, and streamlined it so that their costs were more manageable and it was easier to manage as far as we were concerned too. We are not about occupational licensing, we are about licensing the business of engineering and architecture et cetera.²⁰⁷

The Regulation of Owner-builders

Those involved in the building industry expressed concern about the number of owner-builders in the marketplace in 2006. Since this time various changes have been introduced. In March 2006 the Committee was told that, "...34 per cent of all housing starts registered with councils in this State are now under the guise of owner-builders. The national average is 9.9 per cent".²⁰⁸

Others supported these figures and drew further comparisons. Mr Peter Osterhage, Director (Housing), Master Builders Association, Queensland commented that Queensland was the stand-out performer with only 4% owner-builders whilst in 2006 Victoria languished at approximately 40%.²⁰⁹ Information from the Mercury in June 2009 suggests the current owner-builder rate in Tasmania sits at around 23 per cent.²¹⁰

Mr John Fulton explained that:

Since the introduction of the *Building Act 2000* there has been a dramatic increase in homeowner builder applications. This empirical evidence demonstrates that the Act must be defective to cause a community to react in such a manner.²¹¹

²⁰⁶ Yali, 19 August 2008, *op. cit.*, p. 60.

²⁰⁷ Ormerod, 19 August 2008, *op. cit.*, p. 75.

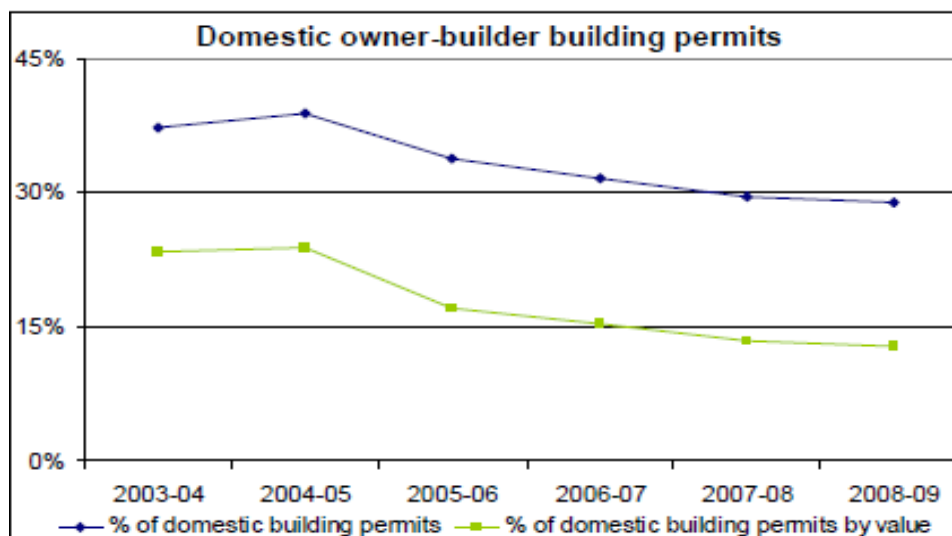
²⁰⁸ Clues, Mr Stuart, *Transcript of Evidence*, 15 November 2006, p. 10.

²⁰⁹ Osterhage, Mr Peter, *Transcript of Meeting*, 9 October 2006, p. 5.

²¹⁰ Paine, Michelle, "Unlicensed builders fury" *The Mercury*, 3 June 2009, p. 13.

²¹¹ Fulton, Mr John, *Written Submission*, p. 2.

Whilst Victoria experienced a similar increase, some reduction occurred after further limitations were imposed in 2005. The following graph depicts this:²¹²



Mr Booth MP believed it is a basic human right to build yourself and your family a shelter:

You should not have to go through a process that requires you to employ a builder if you do not wish to do so. I think the important thing is that buildings should be built to a uniform standard and code, and that whether you are an owner-builder or a builder, your building should abide by that.²¹³

This right is still protected under the current accreditation system. To ensure regulation of owner-builders, amendments to the Building Regulations in 2007 introduced a requirement that owner-builders be registered when undertaking building work over \$5000.²¹⁴ Until this amendment, individuals were only required to fill in a form to prove public liability and workers' compensation insurance requirements were met.²¹⁵

The Consumer Affairs and Fair Trading website advises that:

There are a number of criteria that you must satisfy to be a lawful owner-builder, including:

- not being in the business of building

²¹² Australian Senate, Australia's Mandatory Last Resort Home Warranty Insurance Scheme, "Senate Report" released 13 November 2008, http://www.aph.gov.au/senate/committee/economics_ctte/home_warranty_08/report/c03.htm, 3.18; graph sourced from Building Commission Victoria, *pulse^{today} Extra*, Issue 11, September 2009 "Victoria recorded \$19.3 billion worth of building permits during 2008-09. 2008-09 building permits report." Accessed at http://www.pulse.buildingcommission.com.au/resources/documents/2008-09_building_permits.pdf, p. 8.

²¹³ Booth, 24 October 2006, *op. cit.*, p. 2.

²¹⁴ Singh, Ms Lisa Minister for Workplace Relations, Letter to the Editor – "Owner Builders", *The Mercury*, 16 June 2009, p. 14.

²¹⁵ Clues, 15 November 2006, *op. cit.*, p. 11; Wright, Mr Colin, *Transcript of Meeting*, 11 November 2006, p. 15.

- being the owner of the land, and
- not having constructed more than two buildings in the last 10 years²¹⁶.

There is still some unrest among the building community about the systems of registration required. In one of the 2008 submissions, Mr Harper reflected that:

With regards to owner builders, we agree that there needs to be some new requirements introduced, but to require them to be on site the majority of the time seems unnecessary.²¹⁷

The Committee received evidence in Queensland regarding the tougher requirements imposed on owner-builders in that state. Mr Graeme Cuthbert, Executive Director, Master Builders Association Queensland advised that it was necessary to undertake a TAFE training course of more than a week's duration to allow them to gain a permit.²¹⁸

Further, Mr Temby noted that in Queensland the title of a property must note that a building has been constructed by an owner-builder. That notation shall remain for a period of 6 years and 6 months.²¹⁹

Queensland Model

The Committee was impressed by the Queensland system of registration. The following is an outline of its key features.

The Queensland system is fully integrated but Mr Cuthbert cautioned:

You cannot just look at the licensing system in isolation. We, in Queensland, have a fully integrated system which covers licensing, dispute resolution, rectification of defective building work and home warranty insurance so all of them are interlinked. To remove one of them, the whole system would collapse so the benefit of the licensing system is not only for consumer protection. We use the licensing system here also to raise the standards of industry itself, not only as a consumer protection model, and, as I said, you cannot have a single focus on only one of those things.²²⁰

Mr Philip Dwyer, National President, Builders' Collective of Australia Inc was complimentary of the Queensland system:

²¹⁶ Department of Justice, Consumer Affairs and Fair Trading, *Consumer Building*, http://www.consumer.tas.gov.au/fair_trading/consumerbuilding#ownerbuilders

²¹⁷ Engineers Australia, *Written Submission*, 21 May 2008, LCSC/BPR/33(2), p. 5.

²¹⁸ Cuthbert, Mr Graeme, *Transcript of Meeting*, 9 October 2006, p. 5.

²¹⁹ Temby, 10 October 2006, *op. cit.*, p. 9.

²²⁰ Cuthbert, 9 October 2006, *op. cit.*, p. 2.

This holistic system is self funding, profitable and no burden to the taxpayer while delivering affordable, first-resort consumer protection and genuine builder accreditation. It is a proven, workable system.²²¹

A key element of this system is that the builders are initially required to remedy any defective work at their own cost.²²² However, if the builder refuses to do so then the other strong elements of the scheme come into effect, including the possibility of deregistration.²²³

Mr Ian Jennings, the General Manager of the Queensland Building Services Authority, explained that:

The first element of the system is integrity, which is licensing. This has an issue of making sure that people are licensed. One is that they have the technical understanding and the business nous to run a business and not to cause havoc to other players in the industry and to consumers. Licensing is an integrity element, to make sure that ultimately they are professional enough to be in the industry. Our licensing system has that technical element.²²⁴

Whilst according to Mr Cuthbert:

The secret of the scheme is that it has a monopoly status and you are in a world which is trying to deregulate everything. But there is still a good argument for monopolies when you can argue about whether the free market works? The free market when you've got ... small barriers for entry, shonks with a dog and a ute everywhere, the free market just fails - it has failed this industry forever.²²⁵

The registration fees collected by the Building Services Authority are used for various purposes including educating practitioners in areas which commonly result in defect. The Committee was provided with examples where the funding had proved useful, such as with the broad scale problem of rising damp.²²⁶ Mr Jennings continued:

Any time I have any amendments in my legislation we will travel through the State ... inviting the contractors... We try to show them some of these defects. So for their licence they get that show stuff and education.²²⁷

The ability to check the credentials of builders on the internet is a feature of the Queensland system. Additionally, the Queensland system operates on a demerit point²²⁸ basis and penalties applied are also visible on the internet. The Queensland system involves a greater level of monitoring to ensure

²²¹ Dwyer, Mr Philip, *Transcript of Evidence*, 30 August 2006, p. 3.

²²² *Ibid.*, p. 9.

²²³ Temby, 10 October 2006, *op. cit.*, p. 2.

²²⁴ Jennings, Mr Ian, *Transcript of Meeting*, 11 October 2006, p. 2.

²²⁵ Cuthbert, 9 October 2006, *op. cit.*, p. 6.

²²⁶ Jennings, 11 October 2006, *op. cit.*, p. 4.

²²⁷ *Ibid.*, p. 4.

²²⁸ Lee, Ms Jill, *Transcript of Meeting*, 10 October 2006, p. 28.

registration standards are maintained and thus disputes minimised. It includes an auditing requirement whereby each practitioner is audited (generally every two years).²²⁹ Additionally, spot audits also occur.²³⁰

Mr Mitchell explained the auditing process by saying:

They have two full-time people but that is all they do. It is a whole day. You are given three months' warning or you can be given up to three months warning. Basically you give them a list of all projects you have done. They come to the office and I'll just say that project, pick the projects at random, do a technical audit through the paper trail. Currently they are also doing technical audits on site. They are going on site looking at projects, identifying issues and calling surveyors to explain actions.²³¹

The Queensland system allows the BSA to suspend a license immediately.²³² Mr Jennings explained that:

We have a provision under our legislation for grossly defective work. So if work is grossly defective I could ban a builder for three years or even life. [If the person disagrees t]hey can go to the Commercial and Consumer Tribunal and what they have to prove is that it was not grossly defective...If it was proved grossly defective, you are gone for three years. If it is not, you still have your licence. So he has to try to prove that it was not grossly defective and grossly defective means that it could damage the health or safety of an individual.²³³

Ms Janine Bransden testified that her house in Launceston had substantial building defects, but her concerted efforts to have the defects rectified had been unsuccessful. Mrs Bransden said:

If a builder doesn't go in and fix a defect then his licence is taken away from him. With the Queensland system, the tribunal will step in, fix your house and then they will pursue the builder for the cost. We would not be going through this. Neither would other clients of the same builder.²³⁴

Another positive aspect of the Queensland system is the formal contractual obligations placed on builders and contractors which Mr Coad, from the TBCITB, thought made "good sense".²³⁵ Mr Cuthbert summarised the strong points of the system, outlining that:

...contracts must be in writing between the client and the builder and the builder and the trade contractors particularly; and, particularly for the

²²⁹ Mitchell, 9 October 2006, *op. cit.*, p. 6.

²³⁰ *Ibid.*, p. 28.

²³¹ Mitchell, 9 October 2006, *op. cit.*, p. 7.

²³² Jennings, 11 October 2006, *op. cit.*, p. 7.

²³³ *Ibid.*, p. 13.

²³⁴ Bransden, Ms Janine, *Transcript of Evidence*, 30 August 2006, p. 8.

²³⁵ Coad, 24 October 2006, *op. cit.*, p. 8.

trade contractors, if you are not licensed you do not get paid for the work you do.²³⁶

Mr Temby commented on matters that may require caution if the Queensland model is to be considered for introduction in Tasmania. Mr Temby stated that:

...the licensing arrangements up here have delivered a very large and complex bureaucracy and [are] expensive. The advantage that the regulator has up here is that they have a licensing pool now with over 60,000 so there are some substantial economies of scale. I think that was where the Tasmanians, and the Northern Territorians after you, fell into the trap of wanting a Rolls Royce building regulatory system that you don't have the critical mass to sustain. I rather glibly suggested one day when we were looking at the Tasmanian accreditation arrangements that you could do worse than subcontract the Building Control Commission in Victoria to do it for you. They have the infrastructure and systems in place. With the sorts of numbers that you are talking about in Tasmania they would be able to do much more economically than you could with a stand-alone system, which is where you ended up.²³⁷

Mr Joseph further commended the Queensland registration system:

In Queensland the removal of private companies from providing both accreditation and warranty insurance has provided a consumer protection regime that is effective, affordable, self-funding and provides no impost to taxpayers. While the accreditation and warranty roles are independently funded – that is, one does not subsidise the other – they are both managed by the same authority providing seamless integration across the entire industry. There are no profit-driven brokers, trade associations or insurers that can exploit any systemic weakness in the Queensland system whatsoever. It is fully transparent, accountable and audited annually by the Auditor-General.²³⁸

Mr Temby advised of matters that have been considered when the Queensland system had been periodically reviewed:

One of the options that was considered during one of the reviews of the BSA up here in the late 1990s was to take the BSA back into one of the government departments because for most purposes it operates like a government department anyway. It has a board that is made up of industry people but that is a policy board, an advisory board. It is ministers that make decisions in Cabinet that make decisions about the legislative environment and the regulatory environment at the end of the day, so that was one option. That might be a cost-effective option in Tasmania.²³⁹

²³⁶ Cuthbert, 9 October 2006, *op. cit.*, p. 22.

²³⁷ Temby, 10 October 2006, *op. cit.*, p. 2.

²³⁸ Joseph, 30 August 2006, *op. cit.*, p. 5.

²³⁹ Temby, 10 October 2006, *op. cit.*, p. 13.

Under the Queensland system the key is the focus on licensing those who are ultimately accountable for work.²⁴⁰ Importantly, the BSA is not responsible for licensing engineers and architects.²⁴¹

Owner-builders are able to build in Queensland, however, the numbers are low, possibly due to the requirements that are placed on them. Whilst there are many positives which can be drawn from Queensland, Mr John Crittall suggested there were some deficiencies:

...the system isn't perfect in the sense that the BSA still has a policy that if you are in the middle of construction and there's a complaint about the defective work, they don't want to get too involved at that time of the construction phase. They would rather say, 'We'll wait till the job's finished and then we'll have a look at it'.²⁴²

Mr Clues suggested that the Queensland model could be improved:

I would like to see licensing completely separate from the dispute resolution process because I think where the Queensland model falls down is on the basis that [they] are trying to be all things to all people – we will insure you, we will license you and we will resolve the disputes – and you have a situation whereby you can strong-arm builders on the basis that we do not want to have to rely on our insurance, therefore we can take away your licensing if you do not fix this problem up.²⁴³

Mr Clues thinks that this model lacks independence:²⁴⁴

I do not think that the insurer should also be the person doing the accreditation. I think it should be completely separate, and I think the dispute settling process should be separate as well. There is a conflict of interest between the people who are insuring them and the people who are accrediting them.²⁴⁵

It was suggested to the Committee that criticism of the Queensland model comes from private companies, not the affected consumers.²⁴⁶ The BSA operates the insurance system in Queensland. It operates:

...a system of first resort cover which enables consumers to make a claim, not only where a builder has died, disappeared or become insolvent but also where a builder refuses to complete work or will not return to rectify problems following completion. BSA offers cover for six and a half years for all work valued over \$3 300 and provides cover up to \$200 000, making it the most comprehensive cover offered in any jurisdiction. Premiums are tied to the

²⁴⁰ Jennings, 11 October 2006, *op. cit.*, p. 3.

²⁴¹ *Ibid.*, p. 4.

²⁴² Crittall, Mr John, *Transcript of Meeting*, 9 October 2006, p. 19.

²⁴³ Clues, 15 November 2006, *op. cit.*, p. 15.

²⁴⁴ *Ibid.*, p. 18.

²⁴⁵ *Ibid.*, p. 18.

²⁴⁶ Joseph, 30 August 2006, *op. cit.*, p. 5.

value of the building contract and based on a standard formula of \$6.40 per \$1 000 of contract cost.²⁴⁷

²⁴⁷ More detailed information is available from www.bsa.qld.gov.au as cited in Department of Justice, Consumer Affairs and Fair Trading, *Issues Paper, Review of the Housing Indemnity Act 1992* (May 2005, Version 4) accessed at http://www.consumer.tas.gov.au/_data/assets/pdf_file/0004/45319/V2_Issues_Paper.pdf, pp.13-14.

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Department of Justice, Workplace Standards Tasmania, Summary of the Tasmanian Compliance Corporation PTY LTD Authorised Scheme for the Accreditation of Building Practitioners.

Draft Service Level Agreement Between the Minister for Infrastructure, Energy and Resources and the Tasmanian Compliance Corporation Pty Ltd, 21 June 2006.

HIA, *Continuing Professional Development – HIA’s View for Industry provided Development Policy Paper*

HOUSING INDEMNITY AMENDMENT BILL 2008 (No. 20), *Hansard*, House of Assembly, Tuesday 27 May 2008 - Part 2 - Pages 37 – 97.

Kons, Mr Steve, Minister for Justice, “Scrapping of Mandatory Housing Indemnity Insurance”, *Government media statement*, 16 January 2008.

Letter from Geoff Harper, BPACT, to Hon Bryan Green MHA regarding the “BPACT application to become an authorised body under the Building Act 2000” dated 8 April 2004: 27 April 2009.

Letter from Hon Bryan Green, MHA to Mr Geoff Harper, Director, Tasmania Division, The Institution of Engineers Australia, 23 March 2004.

Letter from Hon Bryan Green, Minister, to Mr Geoffrey Harper, Director, Building Professions Accreditation Corporation Tasmania Ltd, 13 May 2004.

Letter from Hon Bryan Green to Mr Geoffrey Harper, Director, Building Professions Accreditation Corporation Tasmania Ltd, dated 15 June 2009.

Letter from Hon Steve Kons, Minister for Justice & Workplace Relations to Mr James Jones, President Tasmanian Chapter, Royal Australian Institute of Architects, Received 10 July 2007.

Nicholson, Mr Guy, State v Green - Transcript of Court Proceedings, 22

November 2007, Supreme Court of Tasmania.

Paine, Michelle, "Unlicensed builders fury" *The Mercury*, 3 June 2009, p. 13.

Renouf, Mr Paul, Director of Policy and Campaigns, CHOICE, Senate *Hansard*, Friday, 13 June 2008, E20.

Singh, Ms Lisa Minister for Workplace Relations, Letter to the Editor – "Owner Builders", *The Mercury*, 16 June 2009.

Association of Consulting Architects Tasmania
Australian Institute of Building Surveyors
Board of Architects Queensland
Board of Architects Tasmania
Booth MP, Kim
Bransden, Janine and Carlson, Chris
Building Professions Accreditation Corporation Tasmania Ltd
Diprose, David
Engineers Australia Tasmania Division
Fulton, John
Godfrey, Peter
Green MP, Bryan
Housing Industry Association Queensland
Housing Industry Association Tasmania
Hunt, Graeme, Building Standards and Regulations, Department of Justice
Kennedy, John, Modbuild (Tas) Pty Ltd
KPMG
Ormerod, Rod, Workplace Standards, Department of Justice
Pearce, Robert, Policy and Planning Services, Department of Justice
Queensland Building Services Authority
Reeves, Ricky
Registered Contractors' Guild
Rowlands, Mitchell
Ryan, Colin
Saward, Graeme and Keene, Bruce
Smith, Mark, Building Control, Department of Justice
Smith, Max, Department of Public Works, Queensland
TAFE Tasmania
Tasmanian Building and Construction Industry Training Board
Tasmanian Consulting Service Pty Ltd
The Builders' Collective of Australia Inc
The Master Builders' Association of Queensland

The Master Builders' Association of Tasmania Inc

The Royal Australian Institute of Architects

Watts, Phil

Williams, Chantal and Glynn

Anonymous

Association of Consulting Architects Tasmania

Australian Institute of Building Surveying

Ayling, Jon

Board of Architects Tasmania

Booth MP, Kim

Brandsden, Janine & Carlson, Chris

Brumby, Robert

Building Designers Association of Tasmania Inc

Building Professions Accreditation Corporation Tasmania Ltd

Crack, David

Cunningham, Donna

Diprose, David

Engineers Australia Tasmania Division

Fulton, John

Godfrey, Peter

Hodgson, Bob

Housing Industry Association Tasmania

Ingles, Owen

Ireland, Guy & Lois

Jacob, John

Keene, Bruce

Kennedy, John, Modbuild (Tas) Pty Ltd

Klavins, Paul

Local Government Association Tasmania

Master Plumbers Association of Tasmania

Murphy, Ross

Neyland, Jamie

REC Hydraulic Design

Reeves, Ricky

Rogers, Andrew

Rowlands, Mitchell

Ryan, Colin

Saward, Graeme

Tasmanian Building and Construction Industry Training Board

Tasmanian Consulting Service

Tasmanian Independent Builders' Association

Tasmanian Liberals

The Builders Collective of Australia Inc

The Master Builders' Association of Tasmania

The Royal Australian Institute of Architects

Watts, Phil

Williams, Chantal

Summary of TCC Accounts to Johnstone, McGee and Gandy and attachments

Chartered Status – Engineers Australia 2006

Public Policy Guide – Engineers Australia 2003

Overseas Qualifications Assessment Kit – September 2004

Modbuild – Portable Building Solutions

Draft memorandum of Understanding – TCC

Emails and correspondence between Steve Bramich, Director of Building Control and the TCC

Correspondence regarding AIBS concerns on accreditation process

Letter dated 23 August 2006 from TCC to RAIA re first meeting of the Joint Industry Council

Presentation to LCSC re accreditation of building practitioners and administration of the *Building Act 2000*

Report – Dispute regarding workmanship and subsequent defects to the newly constructed premises

Appendix to Report

Issues Paper – Review of the Housing Indemnity Act 1992 – Consumer Affairs and Fair trading – Department of Justice – May 2005

Correspondence – Kleiner

Correspondence – Lovett

Brandsen/Carlson 0 14 Spring Grove (folder)

Comparison of Relevant Acts

AACA – Handbook of the policies, procedures and services

Mercury Advertisement, 7 April 2004 – *Building Act 2000* – Building Practitioner Accreditation

Department of Infrastructure, Energy and Resources – Builder Groups Regular Meetings – Meeting Notes – Meeting 8, 5 May 2004

Letter dated 30 August 2006 from Bruce Keene and attachment

CGU Home Warranty Insurance – Eligibility Confirmation

Letter dated 15 August from Brett Whiteley and letter dated 10 August from Mary Duniam

Undated letter from Bryan Green, Minister and a letter dated 11 October 2005 from Brett Whiteley regarding the requirement of structural defects insurance for commercial builders

Code of Conduct – TCC

Association of Consulting Architects – Details of Organisation

Curriculum Vitae – Christopher Bullard

Department of Justice – Summary of the TCC Authorised Scheme for the Accreditation of Building Practitioners

Part IV *Building Act 2000*

Board of Architects – Invoice for 2006 Registration Fee

Letter from TCC dated 13 July 2006 regarding CPD options

Information about filling out the accreditation application – TCC

RAIA Notice of Luncheon Series The Lifecycle of a Design Practice

TCC Code of Conduct and associated papers

Additional Submission by Mr John Fulton

Letter dated 23 August 2006 from Ranbuild Launceston re Quality Building

Letter dated 26 July 2004 from Bryan Green MHA to Mr Kevin Watts

Letter to Minister Bryan Green MHA from Kevin Watts dated 24 September 2005

Letter to Minister Bryan Green MHA from Kevin Watts dated 5 December 2005

Letter to Kevin Watts from Minister Bryan Green MHA dated 27 October 2005

Building Act pamphlet

Letter dated 22 December 2004 from Launceston City Council re Development Application

LCC Building Permit – Watts Builders

Letter from LCC dated 19 April 2005 to June Carmichael

Certificate of Final Inspection

Certificate of Completion (Plumbing Work)

Certificate of Completion (Building Work)

Drawing List – Proposed Garage for Mrs J Carmichael

Additional information from Mr John Fulton

“Invitation 28 June 2006 – Building Act Training Session. What is going on”
from Mr Bruce Keene

Letter dated 23 August 2006 from Mr John White, Director, Tasmanian Compliance Corporation Pty Ltd to Mr Neal Macintosh, President, Royal Australian Institute of Architects extending an invitation to attend the first meeting of the Joint Industry Council

Accreditation Scheme and Procedures dated 10 March 2003 from David John Diprose

Australian Compliance Corporation Pty Ltd – Survey

Explanation of the Australian Compliance Corporation Pty Ltd

Certificate of Registration of Trade Mark – David John Diprose

KPMG Terms of Reference (provided to Members previously)

Deed, dated 25 September 2006 between The Crown in Right of Tasmania and Tasmania Compliance Corporation Pty Ltd

QMBA – National Review of Home Builders’ Warranty Insurance and Consumer Protection – January 2002

Letter dated 22 October 2002 to QBSA Act Review regarding the NCP Review of *QBSA Act 1991*

Building Services Authority – Tasmanian Select Committee visit to BSA – 11 October 2006 (folder)

Institute of Actuaries of Australia – Builders’ Warranty

BCIPA – Booklet and Brochures

KPMG Report to the Attorney-General – Tasmanian Compliance Corporation,
September 2006

KPMG – Terms of Engagement

Continuing Professional Development Policy Paper

Questions to the Minister

Answers from the Minister

2 letters from PJ Hutcheon

Submission by Tasmanian Independent Builders' Association Incorporated, as
requested by KPMG

TCR Contractors Register – Expression of Interest

ACCC – Initial Assessment of Certification Trade Mark

Attitude to Building Accreditation

CPD Institute

Chapter 7 – Benchmark Results Q2 2005-06

Industry Risk Bulletin

'Everything Prompt' by Caroline Evans

Folder of Documents from David Diprose

Email dated 14 July 2006 from KPMG following request for TCC Scheme

Summary of TCC Scheme for the Accreditation of Building Practitioners

List of Owner Builder Activity

All Files from Consumer Affairs (Roy Ormerod)

Volume 7 – Departmental Files

Volumes 9 and 10 – Departmental Files

Disks – remaining Departmental Files

Disk – Graeme Hunt's emails

TCC – WST Folder Distribution List as at 18 August 2006

List of Correspondence Specific to the Service Level Agreement

Notes on Building Standards and Regulation Staffing Issues 2001-2006

Authorised Body – List of Documents

Part A – Impediments to TCC undertaking the functions and role of an Authorised Body

Appointment of the TCC and other authorised body applications

Email sent 11 January 2007 from Phil Dwyer, National President, Builders Collective of Australia advising the video of the ABC 7.30 Report is available to view online

Email sent 11 January 2007 from Phil Dwyer, National President, Builders Collective of Australia attaching two articles from the Australian Financial Review

Board of Architects of Tasmania – Legislative Council Select Committee – 19 August 2008 – Summary

AACA – Architects Accreditation Council of Australia

AACA – The National Competency Standards in Architecture

Architects' Model Statutory Code of Professional Standards and Conduct

AACA/RAIA Joint Policy on Continuing Professional Development (CPD) – November 2006

Engineers Australia – Legislative Council Select Committee – 19 August – Summary

State of the Building and Construction Industry

Policy Position – Regulation of the Engineering Profession

Engineers Australia - Application for assessment of qualifications and competencies for registration as a registered professional engineer in Queensland

Extracts from New Scheme

Building Act – Insurance Changes

Letter dated 2 June 2008 to the Director of Building Control from the Australian Institute of Building Surveyors

Workplace Standards – Notes for Public Hearing

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

THURSDAY, 13 JULY 2006

The Committee met at 5.30 o'clock pm in the Ante Chamber, Parliament House, Hobart.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Order of Parliament :

The Order of the Parliament appointing the Committee dated 13 July 2006, having been circulated, was taken as read.

Election of the Chair :

Mr *Harriss* was elected Chair and took the Chair.

Business :

Resolved :

- (a) That witnesses be heard under Statutory Declaration.
- (b) That evidence be recorded verbatim unless otherwise ordered by the Committee.
- (c) That advertisements be inserted in the public notice section of the three daily Tasmanian newspapers on Saturday, 22 July 2006 and that receipt of written submissions be conditioned for closure on Friday, 1 September 2006. A copy of the advertisement is attached.
- (d) That the Secretary send invitations to make submissions to :

Hon Bryan Green MHA
Attorney-General
Housing Industry Association
Master Builders' Association
Institute of Architects
Institute of Building Surveyors
Institute of Engineers
Tasmanian Compliance Corporation

Building Practitioners Advisory Committee Tasmania
Local Government Association of Tasmania
Consumer Affairs
Mr David Diprose

Other Business :

Resolved, That the Parliamentary Research Service be requested to provide details of the building accreditation processes in other Australian states and territories.

At 5.55 o'clock pm the Committee adjourned until a date to be determined.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

TUESDAY, 29 AUGUST 2006

The Committee met at 2.53 o'clock pm in Committee Room No. 2, Parliament House, Hobart.

Members Present : Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Apology : Mr *Dean*

Confirmation of Minutes :

The Minutes of the meeting held on Thursday, 13 July 2006 were confirmed as a true and accurate record.

Correspondence :

Resolved, That the following correspondence be received –

- Letter dated 19 July 2006 from WCR Bale QC, Solicitor General regarding TCC Inquiries.
- Letter dated 14 August 2006 from Hon Steven Kons LLB MHA, Minister for Justice and Workplace Relations providing documents as requested by the Committee.
- Email dated 16 August 2006 from the Hon John White LLB, Director, Tasmanian Compliance Corporation Pty Ltd advising the Corporation will appear before the Committee.
- Letter dated 25 August 2006 from Peter J Coad, Executive Director, Tasmanian Building and Construction Industry Training Board advising

the Board doesn't have any further verbal evidence to add to their submission.

Submissions and Requests to give Verbal Evidence :

Resolved, That the following Submissions and Requests be tabled –

- 1) Bob Hodgson
- 2) Anonymous
- 3) Owen Ingles
- 4) Phil Watts
- 5) David Crack, DJ Building Contractors
- 6) Peter Godfrey
- 7) John Kennedy, Modbuild (Tas) Pty Ltd
- 8) Colin Ryan
- 9) J Fulton
- 10) R C Brumby, Brumby's Building Contractors
- 11) Building Designers Association of Tasmania Inc
- 12) Master Plumbers Association of Tasmania
- 13) Australian Institute of Building Surveying
- 14) John Jacob
- 15) Ricky Reeves
- 16) Graeme Saward, Sawards' Building Services
- 17) Bruce Keene
- 18) Jon Ayling
- 19) Andrew Rogers
- 20) Paul Klavins
- 21) Janine Bransden & Chris Carlson
- 22) Chantal Williams
- 23) HIA
- 24) Mitchell Rowlands
- 25) The Builders' Collective of Australia
- 26) The Royal Australian Institute of Architects
- 27) Kim Booth MHA
- 28) David Diprose
- 29) The Master Builders' Association of Tasmania
- 30) Guy & Lois Ireland, Ireland Construction
- 31) Local Government Association Tasmania
- 32) Board of Architects Tasmania
- 33) Engineers Australia Tasmania Division
- 34) Building Professions Accreditation Corporation Tasmania Ltd
- 35) Association of Consulting Architects Tasmania
- 36) Tasmanian Consulting Service
- 37) Jamie Neyland
- 38) Tasmanian Building and Construction Industry Training Board
- 39) Ross Murphy

The Committee suspended at 3.07 o'clock pm.

The Committee resumed at 3.17 o'clock pm.

Public Hearings :

MR DAN O'TOOLE, MR IAN JOHNSTON AND MR GEOFF HARPER on behalf of Engineers Australia Tasmania Division were called, made the statutory declaration and were examined.

The witnesses withdrew.

MR STEVE BRAMICH, MR STEVE VAUGHAN, MR STEVE JEFFES AND MR DANILO YALI were called, made the statutory declaration and were examined.

The witnesses withdrew.

MR JOHN KENNEDY, on behalf of Modbuild (Tas) Pty Ltd, was called, made the statutory declaration and was examined.

The witness withdrew.

MS JANINE SAUNDERS, MR NEAL MACKINTOSH AND MR RICK BARTON, on behalf of the Royal Australian Institute of Architects, were called, made the statutory declaration and were examined.

Mr *Wilkinson* withdrew.

The witnesses withdrew.

Tabled Documents :

- Summary of TCC Accounts to Johnstone, McGee and Gandy and attachments (33)
- Chartered Status – Engineers Australia 2006 (33)
- Public Policy Guide – Engineers Australia 2003 (33)
- Overseas Qualifications Assessment Kit – September 2004 (33)
- Modbuild – Portable Building Solutions (7)
- Draft memorandum of Understanding – TCC (13)
- Emails and correspondence between Steve Bramich, Director of Building Control and the TCC (13)
- Correspondence regarding AIBS concerns on accreditation process (13)
- Letter dated 23 August 2006 from TCC to RAIA re first meeting of the Joint Industry Council (26)

At 6.00 o'clock pm the Committee adjourned until Wednesday, 30 August 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

WEDNESDAY, 30 AUGUST 2006

The Committee met at 8.58 o'clock am in Committee Room No. 2, Parliament House, Hobart.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith* and Ms *Thorp*.

Public Hearings :

MR STUART CLUES AND MR JAMES GRAHAM, on behalf of the Housing Industry Association Limited were called, made the statutory declaration and were examined.

The witnesses withdrew.

MR PHILLIP DWYER AND MR RUSSELL JOSEPH, on behalf of The Builders' Collective of Australia Inc were called, made the statutory declaration and were examined.

The witnesses withdrew.

Mr *Wilkinson* took his place.

MS JANINE BRANSDEN, MR CHRIS CARLSON, MR PHIL CONNORS AND MR RUSSELL JOSEPH were called, made the statutory declaration and were examined.

The witnesses withdrew.

MR MARK DUNBABIN AND MR GEOFF HARPER, on behalf of the Board of Architects Tasmania, were called, made the statutory declaration and were examined.

The witnesses withdrew.

MR TIM PENNY AND MR GEOFF HARPER, on behalf of the Building Professions Accreditation Corporation Tasmania Ltd, were called, made the statutory declaration and were examined.

The witnesses withdrew.

Tabled Documents :

- Presentation to LCSC re accreditation of building practitioners and administration of the *Building Act 2000* (25)
- Report – Dispute regarding workmanship and subsequent defects to the newly constructed premises (21)
- Appendix to Report (21)
- Issues Paper – Review of the Housing Indemnity Act 1992 – Consumer Affairs and Fair trading – Department of Justice – May 2005 (21)
- Correspondence – Kleiner (21)
- Correspondence – Lovett (21)
- Bransden/Carlson 0 14 Spring Grove (folder) (21)
- Comparison of Relevant Acts (32)
- AACA – Handbook of the policies, procedures and services (32)
- Mercury Advertisement, 7 April 2004 – *Building Act 2000* – Building Practitioner Accreditation (34)
- Department of Infrastructure, Energy and Resources – Builder Groups Regular Meetings – Meeting Notes – Meeting 8, 5 May 2004 (34)

At 12.52 o'clock pm the Committee adjourned until Thursday, 31 August 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE

ACCREDITATION OF BUILDING PRACTITIONERS

MINUTES

THURSDAY, 31 AUGUST 2006

The Committee met at 8.58 o'clock am in the Federation Room, Upper Level, Devonport Entertainment and Convention Centre, 145-151 Rooke Street, Devonport.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith* and Ms *Thorp*.

Public Hearings :

MR GRAHAM SAWARD AND MR BRUCE KEENE were called, made the statutory declaration and were examined.

The witnesses withdrew.

MS CHANTAL AND MR GLYNN WILLIAMS were called, made the statutory declaration and were examined.

The witnesses withdrew.

The Committee suspended at 10.30 o'clock am.

The Committee resumed at 10.40 o'clock am.

MR PETER GODFREY was called, made the statutory declaration and was examined.

The witness withdrew.

MR RICKY REEVES was called, made the statutory declaration and was examined.

The witness withdrew.

MR COLIN RYAN was called, made the statutory declaration and was examined.

The witness withdrew.

MR SIMON ANGILLEY, on behalf of Tasmanian Consulting Service Pty Ltd, was called, made the statutory declaration and was examined.

The witness withdrew.

The Committee suspended at 12.58 o'clock pm.

The Committee resumed at 3.00 o'clock pm in the Conference Room, 4th Floor, Henty House, One Civic Square, Launceston.

Public Hearings :

MR CHRISTOPHER BULLARD, on behalf of the Association of Consulting Architects Tasmania, was called, made the statutory declaration and was examined.

The witness withdrew.

MR JOHN FULTON was called, made the statutory declaration and was examined.

The witness withdrew.

MR PHIL WATTS was called, made the statutory declaration and was examined.

The witness withdrew.

Tabled Documents :

- Letter dated 30 August 2006 from Bruce Keene and attachment (17)
- CGU Home Warranty Insurance – Eligibility Confirmation (16)
- Letter dated 15 August from Brett Whiteley and letter dated 10 August

- from Mary Duniam (16)
- Undated letter from Bryan Green, Minister and a letter dated 11 October 2005 from Brett Whiteley regarding the requirement of structural defects insurance for commercial builders (16)
- Code of Conduct – TCC (6)
- Association of Consulting Architects – Details of Organisation (35)
- Curriculum Vitae – Christopher Bullard (35)
- Department of Justice – Summary of the TCC Authorised Scheme for the Accreditation of Building Practitioners (35)
- Part IV *Building Act 2000* (35)
- Board of Architects – Invoice for 2006 Registration Fee (35)
- Letter from TCC dated 13 July 2006 regarding CPD options (35)
- Information about filling out the accreditation application – TCC (35)
- RAI A Notice of Luncheon Series The Lifecycle of a Design Practice (35)
- TCC Code of Conduct and associated papers (35)
- Additional Submission by Mr John Fulton (9)
- Letter dated 23 August 2006 from Ranbuild Launceston re Quality Building (4)
- Letter dated 26 July 2004 from Bryan Green MHA to Mr Kevin Watts (4)
- Letter to Minister Bryan Green MHA from Kevin Watts dated 24 September 2005 (4)
- Letter to Minister Bryan Green MHA from Kevin Watts dated 5 December 2005 (4)
- Letter to Kevin Watts from Minister Bryan Green MHA dated 27 October 2005 (4)
- *Building Act* pamphlet (4)
- In camera document
- Letter dated 22 December 2004 from Launceston City Council re Development Application (4)
- LCC Building Permit – Watts Builders (4)
- Letter from LCC dated 19 April 2005 to June Carmichael (4)
- Certificate of Final Inspection (4)
- Certificate of Completion (Plumbing Work) (4)
- Certificate of Completion (Building Work) (4)
- Drawing List – Proposed Garage for Mrs J Carmichael (4)

Resolved, That the Committee visit Brisbane during the week commencing 9 October 2006 in relation to the Queensland building accreditation process.

At 5.16 o'clock pm the Committee adjourned until a date to be confirmed.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

WEDNESDAY, 4 OCTOBER 2006

The Committee met by phone.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Business :

Resolved, That a sub-Committee be appointed, consisting of Mr *Harris* and Mr *Wilkinson*, to hear the Solicitor-General's reasons for recommending that the KPMG Report not be released to the Committee.

This Resolution is to be ratified at the next full meeting of the Committee.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

FRIDAY, 6 OCTOBER 2006

The Committee met by phone.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Business :

Resolved, That the Chairman invite Mr Paul Green, Chairman, KPMG to give evidence to the Committee on Friday, 13 October at 1.00 pm.

This Resolution is to be ratified at the next full meeting of the Committee.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

MONDAY, 9 OCTOBER 2006

The Committee met at 2.00 o'clock pm in the Undumbi Room, Parliament House, Brisbane.

Members Present : Ms *Forrest*, Mr *Harriss*, Mrs *Smith* and Mr *Wilkinson*.

Apology : Mr *Dean* and Ms *Thorp*

Confirmation of Minutes :

The Minutes of the meetings held on Tuesday, 29 August, Wednesday, 30 August and Thursday, 31 August 2006 were confirmed as a true and accurate record.

Correspondence :

Resolved, That the following correspondence be received –

- Letter dated 27 September 2006 from the Solicitor-General of Tasmania replying to the Chairman's letter dated 26 September 2006.
- Letter dated 29 September 2006 from the Premier replying to the Chairman's letter dated 26 September 2006.
- Letter dated 4 October 2006 from the Premier replying further to the Chairman's letter dated 26 September 2006.
- Letter dated 4 October 2006 from the Hon Glen Milliner, FAIM, MAICD, replying to the Committee Secretary's letter dated 27 September 2006 declining the invitation to appear before the Committee.
- Email dated 4 October 2006 from the Hon Glen Milliner, FAIM, MAICD, advising further of his decision to decline the Committee's invitation to appear, for reasons outlined in the above letter.
- Letter faxed 6 October 2006 from the Premier to the Chairman of the Accreditation of Building Practitioners Select Committee regarding the briefing by the Solicitor-General.
- In camera correspondence

Submissions :

Resolved, That the following submissions be received –

- (40) Donna Cunningham
- (41) REC Hydraulic Design

Documents Received :

Resolved, that the following documents be received –

- Additional information from Mr John Fulton (9)
- “Invitation 28 June 2006 – Building Act Training Session. What is going on” from Mr Bruce Keene (17)
- Letter dated 23 August 2006 from Mr John White, Director, Tasmanian Compliance Corporation Pty Ltd to Mr Neal Macintosh, President, Royal Australian Institute of Architects extending an invitation to attend the first meeting of the Joint Industry Council (26)
- Accreditation Scheme and Procedures dated 10 March 2003 from David John Diprose (28)
- Australian Compliance Corporation Pty Ltd – Survey (28)
- Explanation of the Australian Compliance Corporation Pty Ltd (28)
- Certificate of Registration of Trade Mark – David John Diprose (28)
- KPMG Terms of Reference (provided to Members previously)
- Deed, dated 25 September 2006 between The Crown in Right of Tasmania and Tasmania Compliance Corporation Pty Ltd.

Meetings :

MR GEOFF MITCHELL, on behalf of the Australian Institute of Building Surveyors met with the Committee.

The Committee suspended at 3.15 o'clock pm.

The Committee resumed at 3.28 o'clock pm.

MR GRAEME CUTHBERT, EXECUTIVE DIRECTOR, MR PETER OSTEHAGE, DIRECTOR (HOUSING) AND MR JOHN CRITTAL, DIRECTOR (CONSTRUCTION) on behalf of the Master Builders' Association met with the Committee.

Tabled Documents :

- QMBA – National Review of Home Builders' Warranty Insurance and Consumer Protection – January 2002.
- Letter dated 22 October 2002 to QBSA Act Review regarding the NCP Review of *QBSA Act 1991*.

Business :

Resolved, That -

- The Minutes of the phone meetings held on Wednesday, 4 and Friday, 6 October 2006 be confirmed as a true and accurate record.
- Given advice received, the Committee authorises the Chairman to demand, in accordance with the *Parliamentary Privilege Act 1858* and the Legislative Council Standing Orders 2004, that the Premier provide

the Committee with the KPMG Report into the investigation of the Tasmanian Compliance Corporation by 12 noon on Friday, 13 October 2006.

At 5.35 o'clock pm the Committee adjourned until Tuesday, 10 October 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

TUESDAY, 10 OCTOBER 2006

The Committee met at 8.53 o'clock am in the HIA Offices, 14 Edmondstone Street, South Brisbane.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith* and Mr *Wilkinson*.

Apology : Ms *Thorp*

Business :

The Committee discussed issues surrounding the release of the KPMG Report.

Meetings :

MR WARWICK TEMBY, EXECUTIVE DIRECTOR, HIA AND MS JILL LEE, LICENSED BUILDER met with the Committee.

The Committee suspended at 11.30 o'clock am.
The Committee resumed at 1.57 o'clock pm.

MR MAX SMITH, DEPUTY DIRECTOR-GENERAL, DEPARTMENT OF PUBLIC WORKS and also on behalf of Engineers Australia, met with the Committee.

The Committee suspended at 3.05 o'clock pm.
The Committee resumed at 3.15 o'clock pm.

Business :

The Committee discussed disclosure of the letter received from the President of the Senate.

Meetings :

MR DENNIS BERGIN, REGISTRAR, BOARD OF ARCHITECTS met with the Committee.

Tabled Documents :

- In camera document
- In camera document

Business :

Resolved, That -

- In accordance with the *Parliamentary Privilege Act 1858* and the Legislative Council Standing Orders 2004, that the Chairman write to Paul Green, Partner, KPMG demanding his attendance at a formal hearing of the Committee on Friday, 13 October 2006 at 1.00 pm, and also demanding the tabling of the KPMG Report into the investigation of the Tasmanian Compliance Corporation, as well as the terms of engagement by the Attorney-General at that meeting.
- The Chairman also advises Mr Green that the Committee will discuss the request for the evidence to be heard 'in camera' at the commencement of the hearing and, after receiving the reasons, a decision will be made by the Committee at that time.

At 4.22 o'clock pm the Committee adjourned until Wednesday, 11 October 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

WEDNESDAY, 11 OCTOBER 2006

The Committee met at 9.00 o'clock am in the BSA Offices, 2nd Floor, 11 Edmondstone Street, South Brisbane.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith* and Mr *Wilkinson*.

Apology : Ms *Thorp*

Meetings :

MR IAN JENNINGS, GENERAL MANAGER AND MR COL WRIGHT, DEPUTY GENERAL MANAGER, BSA (Queensland Building Services Authority) met with the Committee.

The Committee suspended at 11.00 o'clock am.
The Committee resumed at 11.10 o'clock am.

MR COL WRIGHT, MR JASON SMITH, MR CHRIS BOYLE, MR MICHAEL CHESTERMAN AND MS MANDY McCOSKER, on behalf of BSA, met with the Committee.

Tabled Documents :

- Building Services Authority – Tasmanian Select Committee visit to BSA – 11 October 2006 (folder)
- Institute of Actuaries of Australia – Builders' Warranty
- BCIPA – Booklet and Brochures

At 1.40 o'clock pm the Committee adjourned until Friday, 13 October 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

FRIDAY, 13 OCTOBER 2006

The Committee met at 12.56 o'clock pm in Committee Room No. 2, Parliament House, Hobart

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Confirmation of Minutes :

The Minutes of the meetings held on Monday, 9 October, Tuesday, 10 October and Wednesday, 11 October 2006 were confirmed as a true and accurate record.

Correspondence :

Resolved, That the following correspondence be received –

- Anonymous letter dated 6 October 2006 regarding The Tasmanian Contractors Register.
- Copy of letter dated 10 October 2006 from the Minister for Justice and Workplace Relations to Modbuild (Tas) Pty Ltd regarding TCC Accreditation Fees.
- Letter dated 10 October 2006 to Paul Harriss MLC from Tony Hurd regard TCC Matter.

Submissions :

Resolved, That the following submission be received –

(42) Tasmanian Liberals

Public Hearing :

MR PAUL GREEN, PARTNER AND MR DAVID RICHARDSON, DIRECTOR, on behalf of KPMG, were called, made the Statutory Declaration and were examined.

Tabled Documents :

- KPMG Report to the Attorney-General – Tasmanian Compliance Corporation, September 2006.
- KPMG – Terms of Engagement

At 1.15 o'clock pm the Committee suspended to discuss KPMG's request to give evidence 'in camera'.

The Committee resumed at 1.26 o'clock pm.

Public Hearing (continued) :

MR PAUL GREEN, PARTNER AND MR DAVID RICHARDSON, DIRECTOR, on behalf of KPMG.

Resolved, That KPMG provide the following information –

- The response to the report from the Tasmanian Compliance Corporation
- The dates that the draft reports were provided to Peter Hault and Robert Pearce
- The date the draft was provided to the Tasmanian Compliance Corporation

The witnesses withdrew.

Business :

The Committee discussed its future program.

Resolved, That the Chairman write to the Solicitor-General requesting confirmation that the Committee can proceed with hearing and receiving evidence in relation to Term of Reference No 1, as per phone conversation with the Director of Public Prosecutions.

At 2.36 o'clock pm the Committee adjourned until Tuesday, 24 October 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

TUESDAY, 24 OCTOBER 2006

The Committee met at 8.53 o'clock am in Committee Room No. 2, Parliament House, Hobart

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss* and Mrs *Smith*.

Confirmation of Minutes :

The Minutes of the meeting held on Friday, 13 October 2006 were confirmed as a true and accurate record.

Correspondence :

Resolved, That the following correspondence be received –

- Letter dated 17 October 2006 from FC Neasey, Principal Crown Counsel advising that the advice is sought from the Director of Public Prosecutions.
- Letter dated 18 October 2006 from FC Neasey, Principal Crown Counsel attaching a copy of a letter to Messrs Hoults, Scott and Addis advising them that departmental officers could appear before the Committee.
- Email dated 19 October 2006 from Mike Shannon, Operations Manager, Builders Warranty, Lumley General Insurance Limited advising ICA as being the appropriate body to contact.

Ms *Thorp* took her place.

Documents Received :

Resolved, That the following documents be received –

- Continuing Professional Development Policy Paper (43)
- In Camera Document (44)

Mr *Wilkinson* took his place.

The Committee discussed its future program.

Public Hearings :

MR MITCHELL ROWLANDS was called, made the Statutory Declaration and was examined.

The witness withdrew.

The Committee suspended at 10.37 o'clock am.

The Committee resumed at 10.47 o'clock am.

MR KIM BOOTH MHA was called and was examined.

The witness withdrew.

MR GEOFF HARPER, MR TIM PENNY AND MR RICHARD BEVAN, on behalf of BPACT and Engineers Australia, were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

The Committee suspended at 12.55 o'clock pm.

The Committee resumed at 3.02 o'clock pm.

MR PETER COAD AND MR FRED LIJAUCO, on behalf of the Tasmanian Building and Construction Industry Training Board were called, made the Statutory Declaration and were examined.

Ms *Thorp* withdrew.

The witnesses withdrew.

The Committee suspended at 4.22 o'clock pm.

The Committee resumed at 4.27 o'clock pm.

MR CHRIS ATKINS, on behalf of The Master Builders' Association of Tasmania Inc. was called, made the Statutory Declaration and was examined.

The witness withdrew.

Tabled Documents :

- Questions to the Minister (24)
- Answers from the Minister (24)
- 2 letters from PJ Hutcheon (24)
- Submission by Tasmanian Independent Builders' Association Incorporated, as requested by KPMG (24)

Other Business :

The Committee discussed its future program.

Mr *Dean* withdrew.

At 5.52 o'clock pm the Committee adjourned until Wednesday, 25 October 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

WEDNESDAY, 25 OCTOBER 2006

The Committee met at 8.50 o'clock am in Committee Room No. 2, Parliament House, Hobart

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss* and Mrs *Smith*.

Confirmation of Minutes :

The Minutes of the meeting held on Tuesday, 24 October 2006 were confirmed as a true and accurate record.

Ms *Thorp* took her place.

The Committee discussed the issues surrounding the anticipated Court proceedings.

Mr *Wilkinson* took his place.

Business :

Resolved, That –

- The Committee not proceed any further until legal advice is received in relation to its position, as a result of the anticipated Court proceedings surrounding the accreditation of building practitioners.
- After the legal advice is received the Chair report to the House, in consultation with Members of the Committee, what the position will be to go forward.

At 9.15 o'clock am the Committee adjourned until 12 noon on Tuesday, 31 October 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

TUESDAY, 31 OCTOBER 2006

The Committee met at 2.17 o'clock pm in Committee Room No. 3, Parliament House, Hobart

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith* and Ms *Thorp*.

Confirmation of Minutes :

The Minutes of the meeting held on Wednesday, 25 October 2006 were confirmed as a true and accurate record.

Correspondence :

Resolved, That the following correspondence be received –

Letter to the Chairman dated 30 October 2006 from the Solicitor-General providing advice on the Committee's activities pending criminal proceedings.

Business :

Resolved, That the draft 'Statement to the House' relating to the Committee's proceedings, circulated at the meeting, be accepted and that the *Chairman* present the Statement at today's sitting of the Legislative Council.

At 2.27 o'clock pm the Committee adjourned until 9.00 o'clock am on Thursday, 2 November 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

THURSDAY, 2 NOVEMBER 2006

The Committee met at 9.04 o'clock am in Committee Room No. 3, Parliament House, Hobart

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith* and Ms *Thorp*.

Confirmation of Minutes :

The Minutes of the meeting held on Tuesday, 31 October 2006 were confirmed as a true and accurate record.

Future Program :

The Committee discussed its future program.

Mr *Wilkinson* took his place.

Resolved, That –

- The Committee conduct further hearings on Tuesday, 14 and Wednesday, 15 November 2006; and
- Departmental Officers – Roy Ormerod, Robert Pearce, Graeme Hunt and the Director of Building Control, be summonsed to provide verbal evidence and to table all documents relating to applications to be an authorised body to accredit building practitioners.

At 9.32 o'clock am the Committee adjourned until Tuesday, 14 November 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

WEDNESDAY, 15 NOVEMBER 2006

The Committee met at 7.58 o'clock am in Committee Room No. 2, Parliament House, Hobart

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Confirmation of Minutes :

The Minutes of the meeting held on Thursday, 2 November 2006 were confirmed as a true and accurate record.

Public Hearings :

MR DAVID DIPROSE was called, made the Statutory Declaration and was examined.

The witness withdrew.

The Committee suspended at 9.38 o'clock am.
The Committee resumed at 9.48 o'clock am.

MR STUART CLUES, on behalf of the Housing Industry Association was called, made the Statutory Declaration and was examined.

The witness withdrew.

MR ROY ORMEROD was called, made the Statutory Declaration and was examined.

MR ROBERT PEARCE, MR GRAEME HUNT, MR MARK SMITH, MR BRENDON BOWES (AND MR ROY ORMEROD) were called, made the Statutory Declaration and were examined.

The Committee suspended at 12.00 o'clock noon.
The Committee resumed at 12.15 o'clock pm.

The public hearing with Mr Pearce, Mr Hunt, Mr Smith, Mr Bowes and Mr Ormerod continued.

The Committee suspended at 1.04 o'clock pm.
The Committee resumed at 2.04 o'clock pm.

The public hearing with Mr Pearce, Mr Hunt, Mr Smith, Mr Bowes and Mr Ormerod continued.

The witnesses withdrew.

The Committee suspended at 3.40 o'clock pm.

The Committee resumed at 3.55 o'clock pm.

Documents Tabled :

- TCR Contractors Register – Expression of Interest (28)
- ACCC – Initial Assessment of Certification Trade Mark (28)
- Attitude to Building Accreditation (28)
- CPD Institute (28)
- Chapter 7 – Benchmark Results Q2 2005-06 (28)
- Industry Risk Bulletin (28)
- 'Everything Prompt' by Caroline Evans (28)
- Folder of Documents from David Diprose (28)
- Email dated 14 July 2006 from KPMG following request for TCC Scheme (23)
- Summary of TCC Scheme for the Accreditation of Building Practitioners (23)
- List of Owner Builder Activity (23)
- All Files from Consumer Affairs (Roy Ormerod)
- Volume 7 – Departmental Files
- Volumes 9 and 10 – Departmental Files
- Disks – remaining Departmental Files
- Disk – Graeme Hunt's emails
- TCC – WST Folder Distribution List as at 18 August 2006
- List of Correspondence Specific to the Service Level Agreement (confidential at this stage)
- Notes on Building Standards and Regulation Staffing Issues 2001-2006
- Authorised Body – List of Documents
- Part A – Impediments to TCC undertaking the functions and role of an Authorised Body
- Appointment of the TCC and other authorised body applications

Other Business :

The Committee discussed its future program.

Resolved, That –

- The Committee conduct further hearings on Thursday, 7 December 2006.
- Mr Jim Cox MHA, Mr Bryan Green MHA, Mr Peter Hault and the TCC be summoned to provide verbal evidence in relation to the accreditation of building practitioners, including the optimum framework for the

accreditation of building practitioners and administration of the *Building Act 2000* including the appropriateness of all consequential costs imposed on builders.

The Committee also discussed presenting a Special Report to enable the release of the KPMG Report.

Resolved, That a Special Report to release the KPMG Report be prepared for consideration at the next meeting.

At 4.30 o'clock pm the Committee adjourned until Thursday, 30 November 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

WEDNESDAY, 22 NOVEMBER 2006

The Committee met at 4.02 o'clock pm in the Ante Chamber, Parliament House, Hobart

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Confirmation of Minutes :

The Minutes of the meeting held on Wednesday, 15 November 2006 were confirmed as a true and accurate record.

Correspondence :

Resolved, That the following correspondence be received –

- Letter dated 22 November 2006 from Graeme Hunt, Manager Building Standards and Regulation regarding the payment of Building Practitioner Accreditation Fees after 31 October 2006.

Special Report :

The Committee considered the draft Special Report.

Resolved, That the Special Report be agreed to and that it be tabled in the Legislative Council tomorrow, 23 November 2006.

Future Program :

The Committee discussed its future program.

Resolved, That –

- Mr Peter Rayner, previously from the Tasmanian Compliance Corporation, be invited (and summoned) to appear at the Committee's hearing on Thursday, 30 November 2006 at 4.15 pm.
- Mr Peter Coad from the Tasmanian Building and Construction Industry Training Board be invited to re-appear at the Committee's hearing to discuss the reasons why the TBCITB withdrew as education adviser to the TCC and other matters relating to the broader position of the TBCITB's role with regard to qualification assessment.

Other Business :

The Committee discussed whether to take evidence from Messrs Green, White and Cox in public or 'in camera'.

Resolved, That the Committee continue the discussion and make a decision on Thursday, 30 November 2006.

At 4.30 o'clock pm the Committee adjourned until Thursday, 30 November 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE

ACCREDITATION OF BUILDING PRACTITIONERS

MINUTES

MONDAY, 27 NOVEMBER 2006

The Committee met at 12.34 o'clock pm in Committee Room No. 3, Parliament House, Hobart

Members Present : Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, Ms *Thorp* and Mr *Wilkinson*.

Correspondence :

Resolved, That the following correspondence be received –

- Copy of a letter dated 23 November 2006 to the President, Legislative Council from RA Hart, Rae & Partners as lawyers for the Hon Bryan Green MHA.

Mr *Dean* took his place.

Future Program :

Mr Harriss briefed the Committee in relation to his discussions with the President , Clerk and Mr Wilkinson and his telephone conversation with the Director of Public Prosecutions.

Discussion took place.

Ms *Thorp* moved that the Committee be wholly suspended until after the impending Court case.

The motion was defeated.

Resolved, That given the recent legal advice received –

- Mr Bryan Green's name be removed from the motion and that an amended motion be moved.
- The Summons for Mr John White be withdrawn at this time.
- A decision be taken at Thursday's meeting regarding hearing evidence from Mr Peter Hault.

Other Business :

Ms *Thorp* indicated verbally that she would be resigning from the Committee.

At 1.20 o'clock pm the Committee adjourned until Thursday, 30 November 2006.

LEGISLATIVE COUNCIL SELECT COMMITTEE ACCREDITATION OF BUILDING PRACTITIONERS MINUTES

WEDNESDAY, 9 APRIL 2008

The Committee met at 9.02 am in Committee Room No. 3, Parliament House, Hobart.

Members Present : Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Mrs *Smith*, and Ms *Thorp*.

Order of Parliament :

The Order of the Parliament appointing the Committee dated 4 March 2008, having been circulated, was taken as read.

Mr *Wilkinson* took his place at 9.03 am.

Election of the Chair :

Mr *Harriss* was elected Chair and took the Chair.

Confirmation of Minutes :

The Minutes of the meetings held on Wednesday, 22 November 2006 and Monday, 27 November 2006 were confirmed as a true and accurate record.

Correspondence :

Resolved, That the following correspondence be received –

- Letter dated 28 November 2006 from the Minister for Justice and Workplace Relations regarding future payments by builders for accreditation.
- Letter dated 29 November 2006 from KPMG regarding an error in report.
- Letter dated 5 December 2006 from the Attorney-General regarding documents relating to the accreditation of building practitioners.

Additional Information :

Resolved, That the following additional information be received –

- Email sent 11 January 2007 from Phil Dwyer, National President, Builders Collective of Australia advising the video of the ABC 7.30 Report is available to view online (25).
- Email sent 11 January 2007 from Phil Dwyer, National President, Builders Collective of Australia attaching two articles from the Australian Financial Review (25).

Other Business :

The Committee noted that Ms *Thorp* verbally indicated her resignation from the Committee at the meeting on Monday, 27 November 2006.

Ms *Thorp* wrote to the Chairman advising of her resignation, but the letter was not Tabled with the Committee. Ms *Thorp* advised the Secretary that she wished to withdraw the resignation prior to the Committee being re-established on 4 March 2008.

Future Program :

Discussion took place on the Committee's future program.

Resolved, That given the finalisation of the recent court cases, the Committee would not pursue Term of Reference (1), and that –

- A Media Release be sent to all Media advising that the Committee had

been re-established and will not be pursuing Terms of Reference One, but will continue to investigate the best way forward for the accreditation of building practitioners.

- A letter to be sent to all relevant stakeholders advising of the Committee's future direction. (A list of all relevant stakeholders be provided to all Committee Members).

At 9.20 am the Committee adjourned until a date to be determined.

LEGISLATIVE COUNCIL SELECT COMMITTEE

ACCREDITATION OF BUILDING PRACTITIONERS

MINUTES

TUESDAY, 19 AUGUST 2008

The Committee met at 9.47 am in Committee Room No. 2, Parliament House, Hobart.

Members Present: *Mr Dean, Ms Forrest, Mr Harriss, and Ms Thorp.*

Confirmation of Minutes:

The Minutes of the meeting held on Wednesday, 9 April 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received –

- Letter dated 26 May 2008 from David Bartlett MP, Minister for Planning and Workplace Relations, regarding the invitation to present additional evidence to the Committee.
- Letter dated 11 June 2008 from Hon Sue Smith MLC, President, Legislative Council indicating her resignation to the Committee.
- Letter dated 13 August 2008 from David Bartlett MP, Minister for Planning and Workplace Relations regarding Roy Ormerod, General Manager of Workplace Standards Tasmania being present at public hearings on 19 August 2008.
- Letter dated 13 August 2008 from James Jones, President, Australian Institute of Architects confirming attendance at public hearing on 19 August 2008.

Submissions:

Resolved, That the following submissions be received –

13(2)	Australian Institute of Building Surveyors
26(2)	The Royal Australian Institute of Architects
32(2)	Board of Architects Tasmania
33(2)	Engineers Australia Tasmania Division
52	Tasmanian Independent Builders' Association

Mr *Wilkinson* took his place.

Other Business:

The Chairman tabled a copy of a transcript of the former Solicitor-General's comments on Stateline and asked Members to consider whether it was necessary to revisit Term of Reference (1).

Public Hearings:

MR JAMES JONES, MR NEAL MACKINTOSH, MR PETER SCOTT AND MR RICHARD BARTON, on behalf of the Australian Institute of Architects were called, made the Statutory Declaration and were examined.

The witnesses withdrew.

The Committee suspended at 10.53 am.
The Committee resumed at 11.04 am.

MR GEOFF HARPER AND MR MARK DUNBABBIN, on behalf of the Board of Architects of Tasmania were called, made the Statutory Declaration and were examined.

Ms *Thorp* withdrew at 11.08 am.
Ms *Thorp* took her place at 11.33 am.

The witnesses withdrew.

MR GEOFF HARPER, on behalf of Engineers Australia was called and was examined.

The witness withdrew.

The Committee suspended at 12.35 pm.
The Committee resumed at 2.03 pm.

MR STEVE BRAMICH AND DANILO YALI, on behalf of the Australian Institute of Building Surveyors were called, made the Statutory Declaration and were examined.

Mr *Wilkinson* took his place at 2.30 pm.

The witnesses withdrew.

The Committee suspended at 3.04 pm.
The Committee resumed at 3.12 pm.

MR ROY ORMEROD, on behalf of Workplace Standards Tasmania, was called, made the Statutory Declaration and was examined.

The witness withdrew.

Documents Tabled:

- Board of Architects of Tasmania – Legislative Council Select Committee – 19 August 2008 – Summary (32(2))
- AACA – Architects Accreditation Council of Australia (32(2))
- AACA – The National Competency Standards in Architecture (32(2))
- Architects’ Model Statutory Code of Professional Standards and Conduct (32(2))
- AACA/RAIA Joint Policy on Continuing Professional Development (CPD) – November 2006 (32(2))
- Engineers Australia – Legislative Council Select Committee – 19 August – Summary (33(2))
- State of the Building and Construction Industry (33(2))
- Policy Position – Regulation of the Engineering Profession (33(2))
- Engineers Australia - Application for assessment of qualifications and competencies for registration as a registered professional engineer in Queensland (33(2))
- Extracts from New Scheme (33(2))
- *Building Act* – Insurance Changes (33(2))
- Letter dated 2 June 2008 to the Director of Building Control from the Australian Institute of Building Surveyors (13(2))
- Workplace Standards – Notes for Public Hearing (51)

Other Business:

The Committee further considered the transcript of Bill Bale’s comments on Stateline and agreed to discuss the issue again at the next meeting.

At 4.52 pm the Committee adjourned until a date to be advised.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

THURSDAY, 30 OCTOBER 2008

The Committee met at 9.35 am in Committee Room No. 3, Parliament House, Hobart.

Members Present: Mr *Dean*, Ms *Forrest*, Mr *Harriss*, Ms *Thorp* and Mr *Wilkinson*.

Confirmation of Minutes:

The Minutes of the meeting held on Tuesday, 19 August 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received –

- Email dated 19 August 2008 from Geoff Harper, Engineers Australia, regarding comment from TAFE teacher.
- Email dated 20 August 2008 from Steve Bramich, Braddon Building Surveying in relation to additional papers requested by the Committee.
- Letter dated 25 September 2008 from Roy Ormerod, General Manager, Workplace Standards Tasmania in response to Committee's request for further information.

Future Program:

The Committee discussed further the transcript of Bill Bale's comments on Stateline and the need to resolve issues surrounding Term of Reference 1.

Resolved, That the Chair write to Bryan Green MP requesting information regarding the insertion of Clause 9 in the Service Level Agreement, and also providing an opportunity to present verbal evidence if preferred.

The Committee also agreed to hold further hearings on Monday, 17 November at 3.00 pm.

At 10.06 am the Committee adjourned until 17 November 2008.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

MONDAY, 17 NOVEMBER 2008

The Committee met at 2.57 pm in Committee Room No. 2, Parliament House, Hobart.

Members Present: Mr *Dean*, Ms *Forrest* and Mr *Harriss*

In Attendance: Mrs Sue McLeod (Clerk-Assistant)
Ms Allison Waddington (Assistant)
Miss Emily Freeman (Research Assistant)

Confirmation of Minutes:

The Minutes of the meeting held on Thursday, 30 October 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received –

Letter dated 6 November 2008 from Bryan Green MP, Member for Braddon, accepting offer to provide information to Committee.

The Secretary advised the Committee that the hearing with Bryan Green MP had been postponed until the procedural requirements had been undertaken.

Resolved, That a Notice of Motion be given in the Legislative Council tomorrow requesting that Mr Bryan Green MP be given leave to appear before the Committee.

Mr *Wilkinson* took his place at 3.06 pm.

Public Hearings :

MR DAVID DIPROSE, on behalf of the Registered Contractors' Guild, was called, made the Statutory Declaration and was examined.

The witness withdrew.

Ms *Thorp* took her place at 3.40 pm.

MR STEVE JEFFES, Team Leader, Built Environment Construction, TAFE Tasmania, was called, made the Statutory Declaration and was examined.

Ms *Thorp* withdrew at 4.42 pm.

The witness withdrew.

MR ROY ORMEROD, General Manager, Workplace Standards, was called, made the Statutory Declaration and was examined.

Ms *Thorp* took her place at 4.55 pm.

The witness withdrew.

Documents Tabled :

- Steps to Achieve Better Building (28)
- TAFE Tasmania Submission to Legislative Council Select Committee on Accreditation of Building Practitioners (53)

Other Business :

Resolved, That –

- Mr Steve Jeffes be requested to provide the dates of the meetings of the Accreditation Working Party.
- Transcripts of the Committee's public hearings to date be placed on the Committee website.
- Bryan Green be requested to appear at 8.30 am on Thursday, 20 November 2008.

At 6.07 pm the Committee adjourned until 8.20 am on Thursday, 20 November 2008.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

THURSDAY, 20 NOVEMBER 2008

The Committee met at 8.31 am in Committee Room No. 2, Parliament House, Hobart.

Members Present: Mr *Dean*, Ms *Forrest*, Mr *Harriss* and Ms *Thorp*

In Attendance: Mrs Sue McLeod (Clerk-Assistant)
Ms Allison Waddington (Assistant)

Public Hearings:

MR BRYAN GREEN MP was called and was examined.

Mr Wilkinson took his place at 8.37 am.

The witness withdrew.

Documents Tabled:

- Meeting Issues Brief – Thursday 15 August 2005 – Future Arrangements for the Tasmanian Compliance Corporation (TCC)
- Meeting Notes of 15 December 200[5] (TCC)
- Handwritten notes - Briefing from Guy Nicholson dated 19 April
- Budget Estimates Brief 2006 – Service Level Agreement between the Tasmanian Compliance Corporation and the State Government
- Details of Ministerial commitments for period 2004-2006

Confirmation of Minutes:

The Minutes of the meeting held on Monday, 17 November 2008 were confirmed as a true and accurate record.

Other Business:

Resolved, That the Secretary request the Supreme Court transcripts of Mr Guy Nicholson's evidence in relation to the case involving the Tasmanian Compliance Corporation.

At 9.58 am the Committee adjourned until a date to be advised.

LEGISLATIVE COUNCIL SELECT COMMITTEE

ACCREDITATION OF BUILDING PRACTITIONERS

MINUTES

WEDNESDAY, 12 AUGUST 2009

The Committee met at 2.08 pm in Committee Room No. 3, Parliament House, Hobart.

Members Present: Mr *Dean*, Ms *Forrest*, Mr *Harriss* and Mr *Wilkinson*

Apology: Ms *Thorp*

In Attendance: Mrs Sue McLeod (Clerk-Assistant)

Confirmation of Minutes:

The Minutes of the meeting held on Thursday, 20 November 2008 were confirmed as a true and accurate record.

Correspondence:

Resolved, That the following correspondence be received –

- Email dated 20 November 2008 from Jane Diprose in relation to evidence provided by David Diprose.
- Email dated 17 December 2008 from James Jones in relation to *Architects Act 1929*.
- Email dated 2 December 2008 from David Diprose in relation to Building (Amendment) Act 2006.

Document:

Resolved, That the following document be received –

- Evidence to Legislative Council Select Committee – Accreditation of Building Practitioners – David Diprose

Draft Report:

The Committee considered the Draft Report (as at 24 July 2009).

The Committee suspended at 3.02 pm.
The Committee resumed at 3.25 pm.

Draft Report:

The Committee further considered the Draft Report (as at 24 July 2009).

Resolved, That the Chair provide further suggested amendments to the draft report.

At 4.35 pm the Committee adjourned until a date to be advised.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

TUESDAY, 17 NOVEMBER 2009

The Committee met at 8.36 am in Committee Room No. 2, Parliament House, Hobart.

Members Present: Mr *Dean*, Ms *Forrest*, Mr *Harriss* and Ms *Thorp*

In Attendance: Mrs Sue McLeod (Clerk-Assistant)

Confirmation of Minutes:

The Minutes of the meeting held on Wednesday, 12 August 2009 were confirmed as a true and accurate record.

Draft Report:

The Committee considered the Draft Report (as at 13 November 2009), page by page.

Mr *Wilkinson* took his place at 8.46 am.

The Committee further considered the Draft Report.

Ms *Thorp* withdrew at 9.23 am.

The Committee further considered the Draft Report.

At 10.00 am the Committee adjourned until 8.30 am on Wednesday, 18 November 2009.

LEGISLATIVE COUNCIL SELECT COMMITTEE
ACCREDITATION OF BUILDING PRACTITIONERS
MINUTES

MONDAY, 14 DECEMBER 2009

The Committee met at 9.04 am in Committee Room No. 3, Parliament House, Hobart.

Members Present: Mr *Dean* (by phone), Mr *Harriss*, Ms *Thorp* and Mr *Wilkinson*

Apology: Ms *Forrest*

In Attendance: Mrs Sue McLeod (Clerk-Assistant)

Confirmation of Minutes:

The Minutes of the meeting held on Tuesday, 17 November 2009 were confirmed as a true and accurate record.

Draft Report:

The Committee considered the Final Draft Report (as at 3 December 2009), page by page.

Resolved, That the following amendment be agreed to –

Page 25 – delete the paragraph commencing “The RAIA” and ending with the quote from Mr Kons.

Insert instead the following –

*The RAIA contend that Tasmania’s Building Act 2000 has been partly modelled on Victorian legislation, but that the Tasmanian legislation lacks the provisions to ensure that the regulation of architects in that jurisdiction stay within their Architects Act.*²⁴⁸

However, the former Minister, the Hon Steve Kons MP, explained that such provisions were:

*...determined as not being applicable to Tasmania because of the deficiencies in the provisions of the Architects Act. To transfer the provisions of the Building Act to the Architects Act would be duplication.*²⁴⁹

²⁴⁸ The Royal Australian Institute of Architects, *Written Submission*, 2008, *op. cit.*, pp.2-3.

²⁴⁹ Letter from Hon Steve Kons, Minister for Justice & Workplace Relations to Mr James Jones, President Tasmanian Chapter, Royal Australian Institute of Architects, Received 10 July 2007, p. 1.

The Secretary reminded the Committee of BPACT's request for their application to remain confidential. The Committee confirmed their understanding that the relevant section in the Report was not part of the BPACT application.

Resolved, That –

- The Final Draft Report as amended by agreed to.
- The Report be presented to the President on Thursday, 17 December 2009.
- The Secretary be delegated the authority to present the Report.
- A press release be prepared by the Chairman and Secretary for distribution to the media on 17 December.

Other Business:

The Committee thanked Ms Emily Freeman for her outstanding work in assisting the preparation of the draft report.

The Committee also thanked the Secretary, Mrs Sue McLeod for her work and commitment.

At 9.22 am the Committee adjourned *sine die*.