

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN THE UNDUMBI ROOM, PARLIAMENT HOUSE, BRISBANE ON MONDAY 9 OCTOBER 2006.**

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**Mr GRAEME CUTHBERT**, EXECUTIVE DIRECTOR, **Mr JOHN CRITTALL**, DIRECTOR (CONSTRUCTION) AND **Mr PETER OSTERHAGE**, DIRECTOR (HOUSING), MASTER BUILDERS ASSOCIATION, WERE CALLED AND EXAMINED.

**CHAIR** (Mr Harriss) - Gentlemen, thank you very much for giving your time to be with us. Can I, by way of very quick introduction, indicate to you a quick overview of why we are here. You would be aware that we have had an accreditation of the building practitioner system operating in Tasmania for a couple of years. It has come under some criticism of late. We established a select committee of the Legislative Council. There are four of our members here today; one is joining us tomorrow and another cannot make it so only the four of us are here at this stage.

It has been mentioned in evidence we have taken in Tasmania thus far that the scheme operating in Queensland is pretty much the best in Australia so we thought it was prudent to come and speak with the peak bodies. We spoke with the AIBS prior to you joining us. We will have a range of questions to each of you as to the operation of the scheme that operates here, your builder licensing, both across commercial and residential construction. If there is anything by way of an overview introduction that you would like to share with us then we would be grateful, otherwise we will launch straight into some questions from each of the committee members.

**Mr CUTHBERT** - About four years ago there was a review undertaken of home warranty insurance in Australia and we put a submission into that. I know this is not about home warranty insurance -

**CHAIR** - It is connected though, Graeme, very much so.

**Mr CUTHBERT** - I was going to say that you probably realise that in Queensland the whole thing is connected so we thought for overview and your late night reading that would be a good overview of the whole of the Queensland system and the logic behind it and we have some copies of that for you but by way of explanation probably, I am the Executive Director. My background is commercial and industrial relations a long time ago. John, on my left, is Director of Commercial Construction, and Peter is Director of Housing Policy. Peter sort of lived the BSA, as we call it, through the licensing system, right from 1992 with the amendments in 1999. They have brought in some other legislation, the Building Construction Industry Payments Act, which has changed the focus of the tribunal a little bit and John is right across those sort of issues. I thought between the three of us we can handle what you are going to throw at us but I do agree, Paul, with your opening comment, it is the best system in Australia. There is no doubt about that.

**CHAIR** - Good. Can I indicate that we, even operating in a more formal sense in Tasmania, like to be pretty informal about the way we go about our business so if you are happy, we would prefer to call you by your first name and we are happy to receive the same back the other way. You will notice that we are recording the proceedings. You are not on

oath because we do not have any particular jurisdiction but the matters you share with us we will make a record of formally and that will form part of our processes and give us a good opportunity to refer to all that which we discuss with you in the future for when we produce our report.

I guess the inevitable first question, if I might, is: what are the key components of your licensing system operating here which are of most satisfaction to you in terms of, I guess, consumer protection as well as keeping an eye on the building industry because there are so many complaints of course, or claims, that there are shonky builders operating out there? We will come later to things like owner-builders, the volume of them operating, people dodging the system by convincing their client to be an owner-builder and so on. I guess the first question is the key components of your builders licensing system, how long it has been in operation here and probably the number of builders that are licensed, et cetera.

**Mr OSTERHAGE** - 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.

We had a registration system going back to 1972 and in 1991 the Building Services Authority Act came into being and for the first time that then also not only licensed builders but it also licensed subcontractors. There was a review of the licensing system in the late 1990s so there was an amendment to the BSA act which really strengthened the licensing system and linked the qualifications for licensing to the national training framework and with that we can ensure then that we have consistency throughout the State and it underpins the apprenticeship and the trade training system by linking that licensing qualification to the national training package.

When we look at the licensing system there are several components to it. If you are a subcontractor, firstly you need to meet a technical qualification which is linked to the national training packages; secondly, you need to demonstrate at least two years' experience in that particular trade; you need to do a business management course which is a three-day business management course. That was introduced because history shows that most business failures, especially within the subcontractor arena, is not through lack of technical skills, it is through these guys running a business and they lack the business skills so it is compulsory that they do a business management course. The other link to that licensing is that they must meet certain financial criteria. If they pass all those hoops, they can get their licence. For the builder licences we have three categories: builder low-rise, builder medium-rise and open builder. They are also linked to the technical qualification of a certificate 4 in building, a diploma in building and an advanced diploma in building. The business management components, which I talked about for subcontractors, is imbedded in those certificate 4 courses. Once they meet that qualification they have the business management stuff as well. So builders have to have the qualification, they have to demonstrate at least two years supervisory experience in the licence path and they must meet financial criteria as well. The financial criteria are

based upon what their annual turnover is likely to be. They have to have a certain amount of assets within their business to allow them to reach certain turnover levels.

In the other States with the licensing where I said it is an integrated system, if we talk about home-warranty insurance, for a builder to take out home-warranty insurance in Queensland it is virtually a three-minute phone call to the regulator. He will ring up, say what his licence number is and they know that he is licensed. He is already underpinned through financial criteria and he will get the home-warranty insurance in less than five minutes over the phone. Compare that to the other States, a builder has to go direct to a private insurer and is going to have to fess up on his financial criteria, and those may differ. It is not all open and transparent in the other States. It is the insurance companies that decide who is going to build in that State and who can't. In Queensland it was the industry and the regulators who came up with the licensing system and what the financial criteria would be. Then it is up to the regulator to enforce that. That is why it is fully supported by industry, because industry was involved in the development of it.

**Ms FORREST** - The regulator is a government -

**Mr OSTERHAGE** - The Building Services Authority.

When you look at how this whole system is funded, the BSA's insurance, which is the home-warranty insurance, is self-funded; they have overseas insurances and it is separate. Even though it is in the same building as the Building Services Authority, no funding from the insurance goes to the Building Services Authority. In the whole regulatory system which has been set up no taxpayer funds go into that because it is all funded through licensing fees. It is really the industry that is funding the whole system through the licensing fees, so there is no burden on the taxpayer.

**Mr WILKINSON** - Peter, let us say I am a person who has done a course in building, I might have done it in TAFE, I have been out with a builder for however long, I have to have at least two experience, as I understand it -

**Mr OSTERHAGE** - Supervisory experience?

**Mr WILKINSON** - Yes - and then I want to be accredited or licensed, so I just make application to the BSA for that licence?

**Mr OSTERHAGE** - Yes.

**Mr WILKINSON** - What do you do?

**Mr CUTHBERT** - We can put a free plug in here. We run a licensing service for the industry.

**Mr WILKINSON** - That is what I was going to get to; I probably asked the question poorly. In Hobart we have two: the HIA and the MBA. I cannot see any problem with surveyors, architects or engineers; with builders it is a bit different. Who should be the overarching body to look at builders? Should it be some type of BSA or MBA or an HIA?

**Mr OSTERHAGE** - I would say it should be a government regulator, not the HIA or Master Builders because it needs to be fully transparent, no favours or anything like that. We come into the process because on the applications for the licence which they put to the BSA they have to clearly indicate on there how they have got their two years' experience; they have to meet the financial criteria as well.

**Mr WILKINSON** - And what are those?

**Mr OSTERHAGE** - You will be able to download the financial criteria from the BSA web site. There are eight categories of licences, all based upon turnover. For a contractor who has a turnover of up to \$100 000 he only has to provide a statutory declaration that he has at least \$5 000 in net tangible assets. It will go up to, say, a builder with a turnover of \$10 million to \$20 million. He has to meet financial criteria to have x-hundred thousand dollars in net tangible assets, which have to be verified by an independent accountant. As you go higher, they have to produce audit reports every year when they renew their licence. So it is a very comprehensive system and it is based upon what their annual turnover or allowable annual turnover is likely to be.

**Mr SMITH** - Why would their financial assets dictate that they are the best builders?

**Mr OSTERHAGE** - It doesn't dictate that they are the best builders, it was linked primarily to security of payment for sub-contractors. It is an issue not only in Queensland, that is an issue throughout the whole of Australia. History has shown that if you have a \$2 company with no assets, then in times of difficulty that company is likely to fold. When it folds, it will owe millions and millions of dollars to sub-contractors and suppliers. History shows that if a business has sufficient net tangible assets behind it, it's not going to stop it from failing, but the likelihood of it failing if it has assets underpinning it is far less than if it was just a \$2 company where the directors of the company are getting all the profits out and putting them in their bank account, and stuff everybody else.

**Mr CRITTALL** - In a purely risk-management sense, you don't want a company tendering on a \$10 million, \$50 million or \$100 million job when it is not set up to do that, for the sake of winning their trophy job and becoming the new big star. So it allows you to gradually build, take on the risk that you've got the capital to manage that risk. It is risk management model in another way, and whilst it is by no means foolproof at all, it simply says that when you're starting out in this industry you have to get some assets behind you. You become a business, you start building those assets up and then that allows you to turn over and take on other jobs, and so on. It is to slow people down, really, and allows for the sectors to work out - it's a risk-management model to try to protect failure. It is a rough model, by any stretch, but it provides some brakes on the cowboys who want to take on huge jobs when they're not set up to do so.

**Mr CUTHBERT** - The other thing is that it's really consumer protection legislation. You don't want Graeme and Sharon Cuthbert building a house with a \$2 company; he walks away in the middle of the building and all I can do is get \$2.

**Mr WILKINSON** - It's a home warranty to take over -

**Mr CUTHBERT** - If they are all doing that, then there are no policies. That's the difficulty. I make no bones about it, this arose out of the housing sector and our wish to protect the consumer.

**Mr SMITH** - Does the Queensland model allow owner-builders to register themselves? Has that been used to circumvent the proper process in this State?

**Mr OSTERHAGE** - No. If you look at Queensland, you will see that owner-builder activity is about 4 per cent of total activity, whereas in Victoria it is probably about 40 per cent.

**Mr CUTHBERT** - Can I just make a comment about that. The reason owner-builders have exploded in other States is because of the failure of the home warranty insurance system, so make no mistake about that. At one stage - I'll go back to the mid-1990s - the home owner-builder issue was causing some difficulties in Queensland and BSA, with the support of industry, an eight-day TAFE training course. As a prerequisite to getting an owner-builder certificate or an authority to build, you had to go and do an eight-day TAFE course. It might be five or it might be seven, I cannot recall, but I am pretty sure it was eight. That slowed significantly applications for owner-builder permits. There are some other requirements, it can't be sold -

**Mr OSTERHAGE** - In the legislation, if a person gets an owner-builder permit through the licensing body - it's not a licence, it's a permit to build - then the licensing body, the BSA, would notify the titles office, and that would remain on the title of that property that it was an owner-builder project. It would remain on the title for seven years and if the person sold the house they would have to declare to the purchaser that it was an owner-builder project.

**Mr CRITTALL** - Because there's no insurance.

**Mr OSTERHAGE** - There is no home warranty insurance on an owner-builder.

**Mr CUTHBERT** - You can only do one every six years. That stops the de-facto developer.

**Mr CRITTALL** - The inability to get insurance for an owner-builder means that if there is a subsidence failure or major defective work no regulator is going to save you. So there is an in-built disincentive to become an owner-builder unless you really know what you are doing - unless you know how to manage the trades, insist on a standard of workmanship and know the building codes or the Australian standards. That is why we have kept it at 4 or 5 per cent.

**Mrs SMITH** - And that certainly is significantly different to what is happening in the southern States. I have heard of owners who have been encouraged to become owner-builders because you can save on the warranty and the six-year process is not explained to them. You have a legal process that ties that in and then three years down the track suddenly they have to move for particular reasons and they have an issue. It is six years in Tasmania. That is why I was interested to see how you got around this influx of owner-builders that you evidently don't have. The course I think is a very interesting way of -

**Mr OSTERHAGE** - They only have to do the course if the project is going to be above \$11 000. You need a permit but a lot of people do renovations on their own properties. If the value of the work is over \$6 600 they need an owner-builder permit. If it is over \$11 000 they need an owner-builder permit but they must do the owner-builder course.

**Ms FORREST** - Anything that required a structural change to a property would cost more than that. The rule we are looking at would cover a little deck out the side or something really minor.

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

**Mr CUTHBERT** - The other explosion in owner-builders came in the States where builders went to the owners and said, 'There is a mass stuff-up in the home owners insurance market and it is going to take me four months to get that. You get your owner-builder certificate and I will build your house for you with no insurance'. That is why the owner-builder numbers have exploded in the other States because it is with the cooperation of the builders.

**Mrs SMITH** - You talk about the simplistic way of getting insurance because you have a self-funded scheme in Queensland. Tasmania is a significantly smaller State. Do you believe the same system can work there and give the same amount of protection, understanding that we have a lot less -

**Mr CRITTALL** - 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 fuller roads, small barriers for entry, shonks with a dog and a ute everywhere, the free market just fails - it has failed this industry forever.

**CHAIR** - You'll have the dog.

*Laughter.*

**Mr CRITTALL** - We do receive a tax deduction for security of our tools.

**Mr WILKINSON** - You can normally split your income with a dog.

**Mr CRITTALL** - We can split the income with the dog as well. We've been running that scheme for a long time!

*Laughter.*

**Mr CRITTALL** - so your argument is about monopoly status first because the minute you lose a monopoly and allow for a private player you're gone. Your scheme will never have the resources to set a benchmark. They set the rates: how much income do we need divided by how many houses or how much work we get, and they become self-funding on that level. It provides for a level playing field for the fees and then your next item is about how much cover you want. What sort of cover do you want for the fees that you want to charge? That is all actuarially worked out.

I would have said that one of Queensland's greatest strengths is that we cover the insurance, the compulsory monopoly insurance scheme covers for the death of the builder, the builder going broke, defective work that the regulator cannot get the builder to go back and fix and subsidence and settlement.

Subsidence and settlement is huge for us. You have a crack in your slab and they bring in the bulldozers. To have a fund that gives every one protection to go to sleep at night is just huge. If you are going to be a monopoly insurer, first, you have to set the rates high enough to be able to cover the work that is for everyone; secondly, you have to keep third parties out because that protects your fee structure so that someone doesn't undercut on conditions of cover; and thirdly, the defective work protects the whole scheme because it allows the consumers to know what they are paying this fee for. They are paying it for significant and genuine cover in case something goes wrong.

**Mr OSTERHAGE** - It's a fully integrated system and it's linked to the licensing. The regulator can have the big stick. Home warranty insurance is paid on every house that is built. Let us say there is defective building work, the owner goes to the builder and says, 'I've got a leaking shower' or 'I've got a leaking roof'. The builders are responsible for defective work for six years and three months. If the owner goes to the builder five years down the track and says, 'I want you to fix my leaking shower'. If the builder gives them the two fingers and says, 'Go away. I am not going to do it', then the owner goes to the Building Services Authority, the regulator. The regulator will send out an inspector and they will issue a direction to rectify to the builder. If the builder fails to carry out that rectification the Building Services Authority will prosecute him in the tribunal. The builder can appeal the direction, so there is an appeal process. If the builder still refused to carry out the direction to rectify, the consumer can get another builder to rectify. The cost of the rectification is paid by the insurance company and then they will chase the original builder and recover every single dollar that was paid out. Theoretically that is cost neutral, but it is good home protection for the owner. It is underpinned by the licensing system.

**Mr CRITTALL** - The regulator then steps in and uses the demerit point system against the licensee who refused to follow the notification. He is now in big trouble.

**Mr OSTERHAGE** - If he gets 30 demerit points over a three-year period he is out of the industry for three years.

**Ms FORREST** - What I am hearing is that you do not need a critical mass to sustain this system.

**Mr OSTERHAGE** - You just work it out. That covers defective building work where in the other States where you have a privatised insurance scheme it will only cover the consumer if the builder dies or goes broke; it does not cover defective building work.

**Mr CRITTALL** - It certainly doesn't cover subsidence.

**Mr OSTERHAGE** - The only exposure which the insurance company really has by providing all this cover for defective work - that should be cost-neutral anyway because theoretically at the end of the day it will cost them nothing - is if a builder dies or goes out of business.

**Mr CUTHBERT** - Ruth, I think the other thing is that, notwithstanding the size of the State, I gather you run building and contents insurance, boat and car insurance, and they have to be still in the captive space of Tasmania and all those insurers aren't there because they like you. Even though it is on a small scale, if they are making a buck they will be there.

**Ms FORREST** - The majority of insurance in that area is with national firms. Although I suppose RACT is not.

**Mrs SMITH** - Mind you, they have taken the State offices out and they are just running agencies now, so they are giving us the message.

**Mr CUTHBERT** - Can I just give you a couple of examples of home warranty insurance, just a comparison between the statutory system and the interstate sector. Up until recently, when home warranty in other States had a bit of a shake up and was a bit more competitive, in Queensland if you insured a \$150 000 house the premium was \$900. In New South Wales on a \$150 000 house the premium was \$3 000, with only half the cover. The other thing is that because of the failure of the interstate systems, where the insurers are running it, a lot of our builders cross the border to New South Wales - the Gold Coast is half in New South Wales - so the Queensland builders were having to get home warranty insurance in New South Wales using their system. It became so complex that they put the pressure on us and we have now introduced a new product; we are now selling home warranty insurance in northern New South Wales based on the Queensland model and we can't keep up, we have been inundated, so our system works.

**Mr OSTERHAGE** - Everything we are talking about is really crystallised in this submission that we gave to the Productivity Commission. I will give you a copy. If you really look at the advantages of the licensing system and why it should not be Master Builders or HIA and why it should be a central body is that it is a level playing field for everybody in the industry. All businesses can participate; they all have to meet the same criteria. The industry dispute resolution model and the rectification of defective building work has a direct link to licensing. Consumers then have a single point of contact to check the history of contractors. All licensed contractors are shown on the Building Services Authority's web site. You can go in and do a history of them, how many jobs they have done in the last 10 years, whether there any directions to rectify against them.

**Ms FORREST** - Demerit points recorded?

**Mr OSTERHAGE** - Yes, demerit points recorded, so that is an open public document. Consumers can check that on the BSA web site. The technical qualifications, the financial capacity and the business management entry criteria ensure that minimum standards are maintained throughout the industry. The BSA have the database of all licensed contractors. That provides a medium for dissemination of information to all of those contractors. If there are changes to technical standards or anything like that going on, you know every licensed contractor in the State so you can send every licensed contractor upgraded information. It provides a mechanism to provide for those



directions to rectify defective building work in a simple and cost effective way, so it is a fully integrated service.

**Mr CUTHBERT** - The other thing that we should have mentioned is that when you use the word 'dodgy' builder and he does not pay the first home owners warranty insurance, the consumer is still covered. It is a no-fault policy on that basis, so if you build a house in Queensland you are covered whether the builder pays or not.

**Mr CRITTALL** - Which is again one of the strengths of a monopoly scheme. If you had a private insurer and they said, 'You forgot to insure so we are not covering you,' you would need the benefit of a monopoly scheme so that everyone is covered.

**Mrs SMITH** - So as builders, you would hope that the BSA system works well enough to get rid of those, otherwise you as builders are subsidising the shonky builder?

**Mr CRITTALL** - Yes, we want them out.

**Mr CUTHBERT** - When you are looking at a licensing system, if you are going to introduce licensing you have to look beyond just consumer protection. You have to look at it as a way of professionalising the industry, raising the standards of the industry, so industry have got a benefit from it as well.

**Mr WILKINSON** - Do you have professional training? Do builders have to undergo this professional training?

**Mr OSTERHAGE** - That is the next frontier for us; CPD as they call it.

**Mr WILKINSON** - Yes. And so that is not in place at the moment.

**Mr CUTHBERT** - One of the issues that we are aware of and you might be able to help us, is that it is very easy for me to get CPD points - Graeme Cuthbert, an individual builder - but if I am running a company with 50 people on my management team, who gets the points? Is it Acme Constructions Pty Limited or is it the individual? We have not got our head around yet how that is going to work in the larger commercial sector. With the individual, the CPD points of John Crittall, construction manager, allow Acme Constructions Pty Limited to still keep its licence. It is an issue we are still working on.

**Mr OSTERHAGE** - Individuals can be licensed if they are operating as a partnership or a sole trader. If it is a company, the company gets a licence, the entity gets a licence, but one of the criteria for that company to get a licence is that it must have a licensed nominee.

**Mr CUTHBERT** - A person.

**Mr OSTERHAGE** - So Graeme takes the responsibility for ensuring that buildings are built in accordance with the BSA and are adequately supervised. He is not responsible for the financial management of the business. That is the responsibility of the directors of the company, but the nominee, the nominated supervisor for the company, is responsible for building.

**Mrs SMITH** - So you can have 15 builders and you only have to register one of them as your nominee?

**Mr OSTERHAGE** - Correct.

**Mrs SMITH** - That is different to the building surveyors, is it not?

**Mr OSTERHAGE** - They have individual licences.

**Mrs SMITH** - Yes, individual licences.

**Mr WILKINSON** - Why should you be different from building surveyors, architects, or engineers that might have a company of 50 people?

**Mr CUTHBERT** - You want someone ultimately responsible for something. If you have 15 guys half responsible it is an issue, so I reckon you are better off having an individual human being responsible for technical building within the organisation.

**Mr WILKINSON** - Just as a devil's advocate, then, in relation to your CPD, your continuing professional development, should only that one person, the responsible person, go to those CPD classes or should it be the 15 who are doing all the work?

**Mr OSTERHAGE** - That is the dilemma because the guy who got the point is going to be very valuable in the marketplace, isn't he?

**Mr WILKINSON** - Yes.

**Mr OSTERHAGE** - His job prospects are through the roof. If you've got a company, and for example the builder is the nominee to the company, the key person in the company might be a construction manager; he could also be a licensed builder. You will have an estimator, a contract administrator; you have specialist areas within that company. Do they do CPD as well? They are not licensed.

**Mr WILKINSON** - If it's consumer protection probably they should, shouldn't they?

**Mr CRITTALL** - I think that's the point. There is a huge distinction between the residential sector and the commercial sector, and you would be well advised not to get them overly confused. Whilst the licensing system in Queensland is a consistent system for all builders, depending on the class of construction, I would think that roughly 90 per cent or maybe 95 per cent of their time, their resources, their energies, their efforts and their policy-making are all based around the residential sector.

The commercial sector really regulates itself through the commercial and contractual arrangements because you have architects, engineers, supervisors, surveyors and professionals looking at the project and exercising their commercial will over the project, much more than mum and dad with their house. So whilst the regulator gets excited and writes these acts for consumer protection, they do fundamentally work in the residential sector.

To be sure, if I am a high-rise residential unit construction builder and I have a leak on my third floor bathroom that's leaking down to the second floor or the first floor, the tenant or the owner can ring up the regulator on the high rise and say, 'I've got a leak in my bathroom', and the regulator will go the builder who built the 20-storey job and say, 'You have an order to rectify', just like they would for a house bathroom. The commercial builder will comply because they have penalties under their licence, they have demerit points in the same way as anybody else.

**Mr CUTHBERT** - And they've got retentions, too, that the housing sector doesn't have.

**Mr CRITTALL** - The commercial sector would financially give the subcontractor some compelling reason as to why they might want to come back and fix the bathroom.

**Ms FORREST** - This is a view on the CPD, and I would like to see what your thoughts are on it. Where all builders, or people working on a site, particularly in housing construction, don't need to be accredited, I don't see there is any problem with them actually undertaking CPD and recording it on a voluntary basis. I would think that would be in their best interests to do so because there may be times when that person wants to climb up the ladder and become the site manager or whatever. This would be good evidence to show why they should be employed in that position.

I also think that the company owner or the site manager or whatever should also keep their own record of all their workers below them concerning their CPD, as evidence that they are keeping their workers up to date. Anything they do personally should obviously be recorded and would have to be to maintain their accreditation. I don't think the issue is so much who records it, but it should be recorded by both parties.

**Mr CUTHBERT** - The point you made about the people on the site not legally requiring it, in the housing sector they do require it because the reality is that there are no employees in the housing sector. The builder employs no-one, he is virtually a marketing sign with a construction manager and purchasing officer. There are about 25 to 28 different trades used on a house to build the house. Every one of those requires a licence under the BSA system, so they'll have to do their CPD. We are talking about a commercial site where there might be a major commercial contractor, Acme Constructions, with 120 employees on their payroll that built Suncorp Stadium or Lang Park or whatever.

**Mr OSTERHAGE** - Concerning continuing professional development, we came up with a model, which I think New South Wales picked up, based upon a point system where you had to get 100 points over three years. You could get those points, not necessarily by attending a training course but by attending industry meetings or being a member of the association because you would get information through them. There were even some points for attending a trade show. Employ an apprentice and you will get some points et cetera. So it wasn't just go off to a TAFE college and do a course because in the State of Queensland, how do you cater for the guys way out west as a rule?

The Building Service Authority have been grappling with the CPD. The minister has been very uneasy with that particular model. The BSA are looking at introducing continuing professional development but specific continuing professional development. Let us say, for example, there has been a major problem with fire-separating walls et cetera. All builders who do multiresidential units with fire et cetera go off and do a

course on fire separation. If there is a major problem and one of the top 10 defects is waterproofing of showers et cetera, all the waterproofers go off and do a course and upskill in their specific trade area.

**Ms FORREST** - Some of these courses will be available on-line for your remote people - 98 per cent of Australia - so they will all have access out there?

**Mr OSTERHAGE** - Yes.

**Mr CUTHBERT** - The other thing with CPD is that in a State like Queensland with roughly 60 000 licensed holders you have a fair amount of administration and one of the examples that keeps coming up is that we have a builder member, Mr Bloggs, who has been doing 100 houses a year for 30 years. He hasn't had one complaint. If he decides he is not going to rock up and do the CPD points, is the Government going to take his licence off him? That's a big call politically.

**Mrs SMITH** - I think in fairness that has become an issue in Tasmania because you have had builders who have had 20 or 30 years' experience and in the transfer of licensing they feel a bit insulted that they have to prove up all this stuff but then I think in the new world there is an argument for some continuing professional development for all of us, it does not matter how good we are because times change so rapidly now. One would think that even after 30 years if he is that good Mr Bloggs has kept up with what is happening.

**Ms FORREST** - He must have done that somehow, though.

**Mrs SMITH** - Yes, that's right.

**Ms FORREST** - He should be able to show evidence of how he has done that. Regulations change.

**Mr OSTERHAGE** - That's what associations are there for. We keep our members informed if there is a change in any technical standards. If there are any sort of changes which affect our members we notify our members through either a technical bulletin or -

**Mr CRITTALL** - We just did a huge fact sheet on steep driveways because there had been so many failures, and try to tell all the builders how to construct a steep driveway because they are cutting into blocks that they would never have historically built on before and the driveways have become ridiculous. That was in response to the regulator issuing defective notices on builders who had not done it properly and then the industry responds and says here's a technical way on how to do it.

**Mrs SMITH** - If I as a consumer complain, the builder and I cannot come to an arrangement and it is investigated, an order is put on et cetera, is there a time line that ensures that it does not drag on?

**Mr OSTERHAGE** - Twenty-one days.

**Mrs SMITH** - So a builder is given 21 days from when he is given notice to rectify?

**Mr CUTHBERT** - If a consumer goes to the Building Services Authority with a complaint, they should have notified the builder in the first place. The authority will ask, 'Have you notified the builder?' They will give the builder and the consumer 21 days to sort out the problem. That can be shorter. If they cannot sort out the problem then the BSA will get involved. They will send out an inspector, he'll look at it and he'll either say it is within industry standards or yes, it is defective. They will issue a direction to rectify. The builder then has 28 days to rectify. Within those 28 days he can appeal the direction in the commercial and consumer tribunal saying the BSA have got it wrong. If he doesn't appeal it he has 28 days. If he has not fixed it within 28 days he will get prosecuted for failing to carry out a rectification.

**CHAIR** - In that time frame, Peter, if it is a major defect and it is going to take more than 28 days what is the process to allow an overrun? People are busy. The building industry is pretty buoyant around the place.

**Mr OSTERHAGE** - If it is a really major problem the builders are going to have to commenced within that time frame.

**Mr CRITTALL** - That is right and he will get a consultant's report and say he is working through the issues but they will look at that on a case-by-case basis.

**Mr CUTHBERT** - But also the BSA have a panel of peers - like panel beaters. You go to one panel beater and they organise four other quotes for you.

**Mr WILKINSON** - And theirs being the winning quote.

*Laughter.*

**Mr CRITTALL** - Can I say that the interviews are less subtle. They are either fix it or they say, 'Get stuffed. We're not going to fix it.' It is pretty clear what they are doing. They are going to make a decision pretty early.

**Ms FORREST** - Can I pursue a point that Jim raised earlier about the MBA's involvement. Is there an involvement in the accreditation of builders? The licensing is done by the BSA but do you accredit builders?

**Mr CRITTALL** - No.

**Ms FORREST** - So how are they accredited?

**Mr OSTERHAGE** - They go through the BSA.

**Ms FORREST** - So all of it is done. They do the accreditation and the licensing?

**Mr OSTERHAGE** - There is no accreditation, it is just licensing.

**Ms FORREST** - Right, okay.

**Mr OSTERHAGE** - As I said before, we actually run the licensing service and if anyone wants to come, we have an arrangement with BSA that we will do all of the hack work in ensuring the guy is up to speed before we submit the licence application to the BSA.

**Ms FORREST** - You applied to the BSA to provide that service?

**Mr OSTERHAGE** - No, we just decided to do it.

**Mr CRITTALL** - The regulator has set the criteria upon which they will license people and we decided there was a niche market to say to people, 'If you want to get licensed, come to Master Builders and we will help you. We will look at what you have done, we will assess you against the criteria and help you get ready to put the application in'.

**Ms FORREST** - So when you go to the BSA it is almost just a tick?

**Mr CRITTALL** - It has no legal standing.

**Ms FORREST** - Do you charge for that service?

**Mr CRITTALL** - No.

**Mr CUTHBERT** - No, but our marketing tactic is if they think it is a good service they will join Master Builders.

**Ms FORREST** - So they do not have to be a member to avail themselves?

**Mr OSTERHAGE** - No. The application can be fairly complex to demonstrate your two years' supervisory experience so they might jot something down, they will send their application off to the BSA, the BSA look at it and say that is not what they want and they will send it back and it might take them eight weeks to get a licence so we go through it, we help them and say, 'You've got this wrong'. When we are happy with their application we will send it to the Building Services Authority on their behalf, say on a Tuesday, and they will have their licence by Friday.

**Mr WILKINSON** - And the licence costs?

**Mr OSTERHAGE** - It varies. For a subcontractor, probably \$300 to \$400.

**Mr WILKINSON** - Each year?

**Mr OSTERHAGE** - Each year.

**Mr WILKINSON** - And they are registered for three years?

**Mr OSTERHAGE** - One year. For a major large company it is probably \$1 500 each year and they must renew each year and when they renew each year they have to prove up their financials.

**Mr CRITTALL** - So it is signed off by a monitoring auditor.

**Mrs SMITH** - Are you limited to the amount of value you can build too?

**Mr OSTERHAGE** - Absolutely.

**Mrs SMITH** - If I can give you a scenario we were given in evidence in Tasmania, the first difficulty the builder had was he decided to go overseas and see what was happening overseas so he took 12 months to roam around with a backpack and work in the building industry, look at the trades and what was happening et cetera, so he had some difficulty registering when he came back on a continuity sort of basis.

**Mr CUTHBERT** - Renewing his licence?

**Mrs SMITH** - Yes.

**Mr CRITTALL** - Because he has not done any turnover for the year.

**Mrs SMITH** - Yes, he has had a year off.

**Mr CRITTALL** - That wouldn't change his licence structure at all.

**Mrs SMITH** - His next difficulty came. He was on design and construct in commercial residence so he had a limitation of how far he could financially build, he was building in that financial bracket and built quite a reputation because he was environmentally friendly, solar, all of this, and people were moving into that arena so someone came to him who wanted him to design and construct a house financially much more valuable and he could hop into that arena and do it for them, even though they wanted his skills and his knowledge, because it was over the value of what he could build to. How would you get around that?

**Mr CRITTALL** - In design and construct we would charge, for turnover purposes, the fee to design and manage, not the cost of construction, so you could have a \$1 million house under a design and construct and his fee might be \$100 000. For the purposes of annual allowed turnover he would only declare \$100 000 and that keeps him well within the limits, even though the house is a \$1 million house.

**CHAIR** - If it's a normal construction what would happen, Peter?

**Mr CUTHBERT** - If it's a normal construction, say we have a member in Cairns and he had \$360 000 of net tangible assets in his business which gave him an allowable annual turnover of, let's say, \$10 million. Cairns has really taken off and he has contracts coming out of his ears and his allowable annual turnover is \$10 million. He can go up to 10 per cent over that without notifying the Building Services Authority. If he goes over 10 per cent the only way he can do it is to put more assets into his business, increase the net tangible assets within his business, which will raise his allowable annual turnover. The assets don't have to be in his business. If he has his own personal assets, say he is running a company but he has his own personal assets, he can give what they call a deed of assurance where he can assure his personal assets to his own company and that deed is held by the Building Services Authority.

**Mr OSTERHAGE** - If he goes broke he loses his assets.

**Mr CUTHBERT** - If he goes broke the Building Services Authority could go and find his personal assets.

**Mrs SMITH** - So there is some capacity to jump the scheme?

**Mr CUTHBERT** - Oh, yes.

**CHAIR** - I want to come back to the matter that you've gone across, Graeme, with regard you doing the work for the BSA, if you like, in terms of assessing people, how do you satisfy the consumer out there that it is not Caesar appealing to Caesar; they are your members?

**Mr CUTHBERT** - I'll give you an example, all we do is put my 17-year-old son in a car and teach him to drive. Once we think he is ready to drive we send him to the Tasmanian police and say, 'Test him'. That's all we do.

**CHAIR** - Okay.

**Mr CUTHBERT** - Our licensing service has no legal weight so it's purely administering fast-tracking to help the guy out there who struggles with his paperwork to get his package together and we dump it on the BSA and say, 'Check that against your criteria'. We have no role whatsoever -

**CHAIR** - I understand you don't have any role.

**Mr CUTHBERT** - in legally assessing the criteria.

**Mr OSTERHAGE** - He has to, for example, meet his technical qualifications. He can either demonstrate that by, 'I've been off to a TAFE college and here are my trade papers. There's the technical qualification', or if he didn't do that, he was assessed by a registered training organisation against the national training package and that registered training organisation will issue the qualification. They've assessed it under the Australian Qualifications Training framework guidelines et cetera so that's 100 per cent -

**CHAIR** - At AQF4?

**Mr OSTERHAGE** - At AQF4 or 3; trade is AQF3. Certificate 4 is AQF4 and a diploma is AQF5.

The registered trainer could be a TAFE college or a private training provider will do the assessments against the competency standards and issue the qualification. We say, 'Where is your qualification? Yes, that's okay. You have to meet the financial criteria. Where is the thing from your accountant or your statutory declaration that you have x?' if you have less than \$100 000 turnover. So we just make sure that he's got the right paperwork. We look when he has listed his supervisory experience and say, 'No, that is not going to be acceptable; yes, that is. You need references here, you need references there'. All we are doing is making sure that he has all of his eggs together before we send it to the BSA.



**Mr CRITTALL** - We're making sure he's done his homework before he sits the exam.

**Mr OSTERHAGE** - It saves him months of mucking around.

**Mrs SMITH** - They are too busy for all of that, aren't they?

**Mr OSTERHAGE** - They are.

**Mr CRITTALL** - Absolutely - hate the paperwork.

**CHAIR** - So the average builder who just wants to operate in the residential sector - AQF3 or 4?

**Mr OSTERHAGE** - Four. He would have to have a certificate 4 in the building and that's to build a low rise so with that he can build any house or he can build single-storey commercial buildings up to a maximum of 2 000 square meters.

**CHAIR** - Why not just his trade certificate and then satisfy the financial criteria?

**Mr OSTERHAGE** - Let us say I am a carpenter; when I do my carpentry apprenticeship I just do carpentry. When I am a builder I am supervising a carpenter, a bricklayer and a plumber. I am ensuring that engineers have signed off on this. I have a termite certificate and I have a waterproofing certificate. I am supervising multiple trades therefore I need to be qualified and not just be a carpenter. A carpenter knows carpentry but does not know anything about termite protection. He does not know the requirements of the Building Code of Australia when it comes to brickwork or site drainage, et cetera, et cetera. The builder needs to know that.

**Mr CUTHBERT** - Or putting the slab on the right block of land.

**Mr OSTERHAGE** - Yes, it could happen.

**Mr WILKINSON** - With the people administering your BSA, what is the set-up? You have an officer-in-charge, a managing director, I take it?

**Mr CUTHBERT** - The BSA reports to the Department of Public Works and Housing to the Minister Rob Schwarten; it has a general manager who is currently Ian Jennings; it has an insurance manager, a disputes manager, a customer service manager and a licensing manager so it sprinkles down from there. On the way down here in the car we were trying to guess how many people and we think it is about 100 to 150, statewide.

**Mr WILKINSON** - In the BSA?

**Mr CUTHBERT** - Yes.

**Mr OSTERHAGE** - There would be 60 to 80 inspectors throughout the State and the BSA board is made up of builder members, a subcontractor, a consumer, an accountant, on the financial side and the insurance representative.

**Mr CUTHBERT** - You have left out one, the union.

**Mrs SMITH** - Appointed by the minister after recommendation from each of the professional bodies?

**Mr CUTHBERT** - Correct, appointed by the minister.

**Ms FORREST** - Can you tell me about the audit processes? What auditing occurs and on what basis?

**Mr OSTERHAGE** - Are you talking about financial audit?

**Ms FORREST** - Either - financial audit but also the technical audit and their work audits.

**Mr OSTERHAGE** - On financial, the BSA can call for a financial audit at any time on a contractor. If they get some complaints from subbies that they have not been paid - if they get more than one complaint - the BSA can say, 'Maybe this builder is a little bit sus' and they will order a financial audit. That contractor will have to go to an accountant who will have to do an audit on the books, et cetera, and the accountant reports to the BSA. The accountant can be prosecuted if he is telling porkies. That is in the financial area.

For the technical area, there are virtually no technical audits except when you are first applying for a licence and then you have to demonstrate you can meet all the technical requirements.

**Ms FORREST** - How are they assessed?

**Mr OSTERHAGE** - They are assessed through a registered training organisation.

**Ms FORREST** - So all you are really looking at in that is their ability to meet the criteria to have an AFQ4 or whatever.

**Mr OSTERHAGE** - Correct.

**Ms FORREST** - So there is no process in place that actually goes out and looks at this person on a building site to see that they are at a managed building site -

**Mr OSTERHAGE** - That is all part of the recognition prior. If a person is getting assessed, that is part of it.

**Ms FORREST** - That is a given, you are saying. They achieve that qualification and then that is -

**Mr CRITTALL** - That is part of submitting documentation to get a licence. You have assessors look at what you have done and there are statements and checks.

**Mr OSTERHAGE** - You have to provide two years' experience and show references.

**Mr CRITTALL** - You have to show where you have worked and what you have done.

**Ms FORREST** - If there is a complaint about workmanship - you are not happy as the walls do not look straight and the doors do not shut properly or whatever - what is the process then for checking up on the workmanship of that builder?

**Mr OSTERHAGE** - Let us say the consumer complains to the Building Services Authority, 'I have the doors sticking, the shower is leaking, the roof is leaking and I have cracks through all the brickwork et cetera', the Building Services Authority will send out an inspector. He is a qualified person. He will assess it and say, 'Yes, that's defective building work' -

**Ms FORREST** - What qualifications does this building inspector have?

**Mr OSTERHAGE** - He would be a building surveyor or a licensed builder, and fully qualified to do it. They hold a fair bit of power.

**Ms FORREST** - Then they will set -

**Mr OSTERHAGE** - They will decide whether they issue a direction to rectify. If they issue a direction to rectify then the builder will be responsible to fix it. Say it was the bricklayer who stuffed up the job. The bricklayer is not given the direction to rectify, the builder is given that direction. The builder has overall responsibility because the consumer has complained to the Building Services Authority. The original contract was between the builder and the consumer, not between the bricklayer and the consumer, so the builder is always held responsible.

**Mr CUTHBERT** - One of the keys to that is that at one stage some of our members wanted to have the BSA go directly to the sub-contractor. It would have been chaos, because once the consumer knows they can go to the bricklayer the same would apply to the painter and so on. All this work is done against the builder's licence number, so you always have to leave the builder as the centrepiece of the jigsaw puzzle and allow him to do what he has been doing, and that is organise the trades and supervise the trades.

**Ms FORREST** - So it is obviously in his best interest to ensure that the bricklayer, the plumber and everyone else do the right thing.

**Mr CUTHBERT** - Absolutely, because he gets the rectification order against his licence, and one of the things they don't like is rectification on the web site. That has caused a lot of stress.

**Ms FORREST** - So the rectification orders appear on the web site as well.

**Mr CRITTALL** - Can I just say that 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'.

**Ms FORREST** - Even when there's a crack in the slab?

**Mr CRITTALL** - The slab probably doesn't crack that early.

**Mr OSTERHAGE** - There are cracks and there are cracks.

**Mr CRITTALL** - They can't get to it all, they are saying, 'We'll wait till the place is finished and then we'll have a look at it'.

**Mr OSTERHAGE** - The BSA only get involved in defective building work, they don't get involved in contractual disputes. If there are contractual disputes between the owner and the builder, the BSA don't want to know anything about it.

**Ms FORREST** - Say the builder asking more money than they've actually done.

**Mr CRITTALL** - Or the owner not paying until it gets fixed.

**Mr OSTERHAGE** - Or the owner not paying or there is an argument over the value of a variation, or arguments over liquidated damages, all those sorts of things. The Building Services Authority say, 'This is not our baby'.

**Ms FORREST** - So where can the consumer go in that case?

**Mr OSTERHAGE** - They can go to us and we have a conciliation service which is free if the builder is a member of ours. If we can't resolve the problem then they go to the Commercial and Consumer Tribunal, which will cost them \$207.

**CHAIR** - What is the ceiling of their jurisdiction, Peter?

**Mr OSTERHAGE** - For residential building work?

**CHAIR** - Yes.

**Mr OSTERHAGE** - For residential work, unlimited, or commercial, \$50 000.

**CHAIR** - Unlimited for residential.

**Mr OSTERHAGE** - For domestic.

**Mr CRITTALL** - I am talking about commercial. It's above \$50 000, and it's only by consent of both parties.

**Mr OSTERHAGE** - But both parties consent then it can be heard in the tribunal.

**Mr CRITTALL** - If there was one tip that I would give you in your inquiries is that you need to look at the holistic structure, you can't pull one bit out. It needs the builder to be accredited or licensed, it needs a dispute-settling procedure, it needs a defective work procedure, it needs an insurance procedure and it needs a painter's procedure exactly the same. You just have to look at the whole - that's why the different strings.

When you get a notice to rectify, if there were no demerit points attached to that most people would say, 'I'm very busy at the moment, thanks for that, I'll take it under advisement'. But because it all sort of works. When the BSA introduced permanent exclusion or life bans for two or three financial failures - I think it is two lots of financial

failure which got life bans, never to work again in the industry - all of a sudden the defective notices that got complied with went up extraordinarily. All of a sudden everyone realised there were real teeth in these notices to rectify rather than just being a paper tiger. So you have to give the regulator a fair bit of grunt, and then they don't have to work that hard.

**Ms FORREST** - Give them a big stick, then.

**Mr CRITTALL** - You have to give them a big stick.

**Ms FORREST** - When you say there are problems still with the system, what are the problems that you see?

**Mr CRITTALL** - That was the big one for me because they will not get involved in any defective work during the construction phase. They will say, 'Sorry, wait till you finish, we'll only look at it after you've finished'.

**Mr CUTHBERT** - Maybe in terms of the scale of the operations you are looking at in Tasmania, you might be able to handle it. If in Queensland we build 30 000 houses a year and there are 20 trades a house, that is a potential of 1.2 million disputes if you allow it during the course of construction. BSA took a policy position that they would limit it to the 30 000 houses at the conclusion of construction.

**Ms FORREST** - There is always a chance that the builder and the owner can work it out.

**Mr OSTERHAGE** - Especially in the housing sector, where it is all subcontract work, payments are pretty good. For example, a subbie might get paid every Friday. Let us say it is a bricklayer who does some work, he gets paid for the job under a contract, there are no outstanding moneys under the contract and the builder says, 'This is defective. The brickwork is really bad. I want you to pull it down and redo it'. The subbie says, 'I've been paid'. What a lot of builders would like to happen under the licensing system is that during construction, if the subcontractor does defective building work and the builder is saying, 'Come back and fix this defective building work' and the subbie gives him the two fingers, then the builder would have the regulator come in, confirm it is defective and issue a direction to rectify against that subcontractor.

**Mr CRITTALL** - And against the subcontractor's licence.

**Mr OSTERHAGE** - A lot of the builders are saying, 'Well, you have licensed subbies. Hold them accountable for their work'.

**Ms FORREST** - It has to flow through, and that is not happening.

**Mr CRITTALL** - At the moment that does not happen. One of the reasons Graeme used is you want to have one person to target but we would argue what is the point of licensing a subbie if you don't have some sanctions against them for doing defective work. To us it is just a consistent argument.

**Mr OSTERHAGE** - We want that to occur during construction work. Once practical completion has been reached, it is too late. 'Mr Builder, you were responsible so after practical completion all the directions are going to be against you.'

**Mr CUTHBERT** - The other little things in our package are that all contracts must be in writing between the client and the builder and the builder and the trade contractors particularly; and, particularly for the trade contractors, if you are not licensed you do not get paid for the work you do.

**Mr CRITTALL** - They are huge legislative interventions.

**Mr CUTHBERT** - If you think you can get away without being licensed and the builder finds out he just will not pay.

**Mr CRITTALL** - We would have 10 phone calls a day, 'I want to get some money'. 'Where is your contractor?' 'Oh well, we sort of had a bit of an arrangement.' The act says if there is no contract you do not get paid. As much as it causes pain in the industry, it is the best thing you can have.

**Ms FORREST** - So the public is aware of this now?

**Mr CRITTALL** - Very much so.

**Mr WILKINSON** - So they are trying to tell the builders not to get licensed.

*Laughter.*

**Mr CUTHBERT** - Without being restrictive on this, we have found that the more knowledgeable, educated and wealthy the client is, the more difficulty our builders have in getting paid.

**Mr OSTERHAGE** - The legislation says that if there is going to be any variation, or the owner wants something extra, then the builder has to put that variation in writing, price it out and get the owner to approve it before they commence the work. What happens in most cases is that the owner will come along and say, 'Can you whack an extra window in here?' and the builder will say, 'Yes, not a problem', and he will do it. At the end of the job he will give them an invoice. The variation was not in writing, it wasn't approved by the owner before the work commenced. We get a lot of owners now who are saying, 'I am not going to pay you', and they don't have because the legislation says that if you don't have it in writing you are not entitled to be paid.

**Mr CUTHBERT** - The builder has a bit of a dilemma here. He has his carpenter on site that day ready to go and he can put the window in then. If he waits for it to be in writing and goes through the whole process, he might have to wait six weeks for the carpenter to come back and put the window in. So he takes a pragmatic decision to whack it in and trust the owner.

**Mr OSTERHAGE** - But the builder still has a remedy for that because the act says that even though you are not entitled to be paid because you didn't have your variation in writing then the tribunal may make an order for the owner to pay if it is not unfair upon the

owner. The tribunal would likely order pay to the owner; you benefited and you should pay for it. They might pay for costs of it but the builder would not be entitled to the profit on that variation.

**CHAIR** - Can I come back to the matter of financials as one of the assessment criteria. How does a young person, just finishing their apprenticeship, satisfy a financial criterion?

**Mr OSTERHAGE** - Up to \$100 000 turnover is allowed. If he has his ute, he is done.

**Mrs SMITH** - He can build a house?

**Mr OSTERHAGE** - No, he can only be a trade contractor.

**Mrs SMITH** - Okay, but what about Paul's question on financials. My concern is that we are losing some entrepreneurialship in this. You have got a young man who has come down into the city at 18 or 19. He does an apprenticeship with a good company. He then decides he wants to go home because there is opportunity there. He will go as a registered builder because it is on the cusp of movement out west and he will start building houses but he does not own anything because he had had a rip-roaring time in the city. He has only his ute. What does he do?

**Mr CRITTALL** - He is in a bit of trouble. He cannot get a builder's licence.

**Mr OSTERHAGE** - But he can work as the carpenter.

**Mr CRITTALL** - Yes, but he will not be able to run his own business. He will not be able to sign a contract with Mrs Jones and build her house. No chance.

**Mrs SMITH** - Thank you.

**Mr CUTHBERT** - I am pretty relaxed about that. Yes, I am not as sympathetic to that 21-year old who has drunk all his money. I am not worried about him.

**Mrs SMITH** - If he does not do it at 21, he might do it at 42.

**Mr CRITTALL** - I would send him off to college to do his certificate IV in building. By the time he is 24 he could put \$15 000 aside and now he is getting into the area where his assets -

**Mr CUTHBERT** - I can speak with reasonable personal experience, but I am not sure that a 19-year old that has got his apprenticeship and is a qualified builder -

**Mrs SMITH** - No, he is 24 or 25. He has come to the city, the big smoke; he has learnt a trade off a good company and then he gets homesick and wants to get out of the rat-race.

**Mr CUTHBERT** - He can go back up to the sticks and contract in that trade. He can't be a builder. If he wants to be a builder he is going to have to be qualified as a builder.

**Mrs SMITH** - I am trying to equate why builders have to put their assets on the line. We are farmers. We grow vegetables. We have to follow a process in every paddock so when

you buy your frozen packet of beans, if there is something wrong they can track it back. Was it in the paddock; was it in the factory? We have a public liability policy of \$20 million and, if there is an issue, that protects our business. Why are builders different?

**Mr CUTHBERT** - I am not sure what the question was?

**Mrs SMITH** - I don't have to put my assets on the line. I pay an insurance policy for \$20 million each year.

**Mr CUTHBERT** - It is called consumer protection.

**Mr CRITTALL** - And the State Government in Queensland took a decision that they needed to protect the consumer.

**Mr OSTERHAGE** - And also security of payment to the subcontractor. It is instead of having a company, a \$2 company, to crank up all these debts, close the business down, and then the day after start another \$2 company and leave all these debts behind and go off and do it again.

**Mr CRITTALL** - I think it is an admission that the Corporations Law has failed the Australian people and it needs a stricter regulation system. I think that the idea of being able to close down your business and start up another one is unacceptable as a social outcome.

**Mr CUTHBERT** - If I owned a company and went broke today, under the old system - before 1999 - I could start up again the next day. Now with the legislation, once I go broke I lose my licence for three years. Also, I cannot even go and be a general manager in another company the next day because the law says you cannot be a director or person in control of the operations, so it shuts me out as an individual.

**Mr OSTERHAGE** - So you are out for three years. Come back after three years. Start up your business and if you go broke again you are out for life.

**Mr CUTHBERT** - And that is the way it should be.

**CHAIR** - Do you have security of payments legislation?

**Mr OSTERHAGE** - No such thing.

**Mr CUTHBERT** - We use the building construction industry payments. It came in on 1 October 2004.

**Mr CRITTALL** - It is called the Building and Construction Industry Payments Act.

**CHAIR** - I go back to your comments earlier about the deficiency in your system with regard accountability of subcontractors, yet we have just had a discussion revolving around the security of payment being a valuable component of all this in regard to protecting subcontractors and yet on the flip side they are hardly accountable for what they do.



**Mr CRITTALL** - But the BCIPA protects builders as well against the client; it protects everyone in the chain.

**Mr OSTERHAGE** - Excluding builders in the residential sector.

**Mr CUTHBERT** - Which is a bit of a thorn in our foot. In the housing sector, that BCIPA protects and allows the subcontractor to make a claim against the builder, but does not allow the builder to make a claim against the client. That is purely a political decision. There is no other word for it; you can put whatever spin you want to put on it, that is it. We have been lobbying against that, running up against that wall, but there is no chance. It is purely political; they do not want poor old Graeme Cuthbert, householder, to have to defend a litigation. The requirements of the act are pretty strict in terms of time bars for when the builder can make a claim. The client needs to respond; if they do not respond within that time the money is then owing and the builder takes it to the court and gets a court order to say it is a debt. Time bars, I think, are 15 to 21 days.

**Mr OSTERHAGE** - Ten days.

**Mr CUTHBERT** - Ten days. The Government took a decision that it did not want to expose ordinary consumers to that, which exposes government big time.

**Mr CRITTALL** - The behaviour they have tried to address is to stop the builder, on a \$100 000 claim, where \$10 000 was in dispute, saying, 'Agree to \$90 000 and we'll do a deed of settlement'. What this act is saying is that you pay now and argue later, so you end up paying the \$90 000, keeping the cash flow of the subcontractor going, while you dispute the \$10 000. It has been very effective because of the state of the market. There is so much work on that people don't want to spend money fighting in the courts. They would rather pay, keep the cash flow and move on. The double standard that Graeme talked about is a master builders' issue. Politically we cannot cope with our house builders being excluded from a process of dispute resolution, rapid adjudication, quickly and cheaply. Why should they be excluded from that process when their subcontractors can get that process? We think it is a double standard, blatant inequity, totally political to protect mum and dad. We understand the reason for it but it is an outrageous set up.

**Mr OSTERHAGE** - It has risen in the last years where builders find it extremely difficult getting the final payment off their homeowner. The homeowner who owes a builder \$50 000 and just refuses to pay. The subcontractors can use the act to get their payments and the suppliers can use the act but it really stuffs up the builders' cash flow.

**Mr WILKINSON** - What you really need is something within an act to enable that conciliation or arbitration-type resolution process to take place for the builder as well as the consumer.

**Mr CRITTALL** - Rapid adjudication for everyone in the contractual chain.

**Mr OSTERHAGE** - The builder still has a remedy; he can go to the Commercial Consumer Tribunal, but that is a much longer process than the adjudication process under the act.

**Mr WILKINSON** - Because it is not only the shonky builder; it is the shonky client as well - and there are plenty of them around.

**CHAIR** - Just on that matter, thinking about the chain that operates here, is it a reasonable assessment to think that the BSA is getting money for jam with subcontractor licensing. You indicated earlier that they are hardly accountable because the builder really can't go and make demands of the subcontractor because he has got his money for the job, unless the complaint is investigated as the job progresses. It seems to me that the BSA is getting money for jam because they do nothing more than assess their -

**Mr CRITTALL** - Collect their fees and give them a licence.

**CHAIR** - Yes.

**Mr CRITTALL** - I think that is a fair criticism but it is more than that. They are setting standards for subcontractors to be licensed, so that improves the overall standing of their skills, their technical base and their capital requirements. The area that we chose is just one of our particular bugbears. How can you accredit them and licence them, check that they are fulfilling criteria for skills, experience or technical and then not do anything for defective work. We just see it as an oversight that they should correct. The reason they do not is for the other reason we alluded to; they have 60 or 80 inspectors that have to be across nine regional centres in Queensland. There are 30 000 homes being built and you are better off going after one builder than trying to go after the 20-odd subcontractors on any one job at a time, so that is the difficulty.

**Mr CUTHBERT** - The one weakness in your argument is that you are assuming that all subcontractors work for builders. A vast number of subcontractors also work direct to consumers. Therefore if they are not licensed then the consumer has no protection. You have all heard stories of the guy knocking on the door saying he will spray your roof, so at least with the licensing system the subcontractor then stands in the shoes of the builder and the BSA will act against the subcontractor.

**Mr CRITTALL** - Yes, when he is contracting directly with the consumer.

**Mr OSTERHAGE** - If the painter has painted your house and you reckon it is defective, and if they go out and it is defective, they will issue the painter with a correction directive.

**Ms FORREST** - Does a contract with a subcontractor, like a painter, need to be in writing?

**Mr CUTHBERT** - Absolutely.

**Ms FORREST** - To have your roof sprayed or termite protection?

**Mr CUTHBERT** - Absolutely.

**CHAIR** - On the matter that we developed a while ago, and Sue took it up, I will paint another scenario - not your 24-year-old fellow who has been in the city having a good time. We have many people who have worked as subcontractors for most of their building career. They could pick up a building project and, with their eyes closed, run the project. We do not need to put an age determinant on that. They can have been operating and running jobs for a builder. They have been working as subcontractors for all intents and purposes, and they have lots of assets -

**Mr OSTERHAGE** - The knowledge and the skills.

**CHAIR** - Yes, how do they get licensed?

**Mr OSTERHAGE** - He still needs to have the technical qualification.

**CHAIR** - Let us assume he has that after 30 or 40 years of operating.

**Mr OSTERHAGE** - But he has not the piece of paper which says, 'Here is your qualification'.

**CHAIR** - But he might have done his apprenticeship.

**Mr OSTERHAGE** - He has not gone off to a TAFE college -

**CHAIR** - Let us say he did his apprenticeship but he chose not to be a full-blown builder because he was happy making \$35 an hour as a subcontractor, until the time came and he has a few mates lined up and they all want him to build their house because nobody else is available in a buoyant industry. He says, 'Yes, all right, I will go and get licensed. I'll make a quid out of this'. How does he get licensed in this State under that scenario?

**Mr OSTERHAGE** - He would need to get the technical qualification of a builder. Obviously the 40-year-old bloke is not going to go off to TAFE college for two years to get his certificate IV in building. He has picked up the knowledge and skills already. He can be assessed by RPL - recognition of prior learning. He can be assessed with all the knowledge and skills he has. He can be assessed against the qualification and if he is successful in the assessment, then 'Here is your qualification; here is your technical requirements. Go to the BSA and get your builders licence'. It is not just builders; 80 per cent of tradespeople out there have never done an apprenticeship. A bricklayer might have been the mud mixer. After a year or so he might have been laying a couple of courses of bricks in a straight line and five, six or eight years later he is a damn good bricklayer. He has not a piece of paper which says, 'I'm a damn good bricklayer because I did an apprenticeship'; he has picked up the knowledge and the skills. He can be assessed against the qualification if he needs to go for it. If you have 90 per cent of it but you have not got this skill here, then just go and upskill in that little tiny bit and then we will give you the qualification.

**Mr CRITTALL** - And registered training organisations will issue that certificate based on their experience and assessment rather than through having to send them to college. I think the HIA and we, as registered training organisations, do that work.

**CHAIR** - I was going to ask whether you were an RTO.

**Mr CRITTALL** - Yes, we are.

**CHAIR** - Graeme, I was interested in your comment at the outset about the owner/builder who doesn't get indemnity insurance. I understand that process but if they sell within seven years then that house comes without any insurance attached. Can they get some form of inspection and assessment which identifies deficiencies? Those deficiencies

aren't covered by indemnity insurance but the balance of the house is so that they can sell a pro rata -

**Mr CUTHBERT** - Are talking about the completion of the house?

**CHAIR** - No, the owner/builder might have lived in it for three years and there are four years left; can they give a pro rata insurance? Can they get some sort of inspection?

**Mr OSTERHAGE** - No, they can't get any insurance whatsoever.

**CHAIR** - The BSA won't take that on?

**Mr OSTERHAGE** - No. No private insurer will cover them either.

**CHAIR** - Whereas out there in the private sector that does operate in that manner. The system that operates in Tasmania that I am familiar with is that if you want to sell within a six-year period then whatever is left, since you have inhabited the building, you are obliged to attach as an indemnity insurance to that house for sale. You pay an arm and a leg for it because someone has to go out and carry out a very substantial inspection and identify deficiencies, or otherwise say it's okay.

**Mr OSTERHAGE** - I don't think that you will find an insurer to do that in Queensland?

**Mr CUTHBERT** - But in that, let's face it, you've got to somehow load the cost of that insurance inspection onto the sale price?

**CHAIR** - Absolutely.

**Mr CUTHBERT** - So the purchaser is supplying his own insurance.

**CHAIR** - Absolutely.

**Mr OSTERHAGE** - I wouldn't buy a house under those circumstances.

**CHAIR** - Gentlemen, thank you very much and we do appreciate the fact that you have been prepared to come along and give so much of your time. It has been very helpful to our deliberations, even though we are in a situation in Tasmania at the moment where the Government has said that Tasmanian Compliance Corporation ceases operation on 1 November and they are taking it over. The Government is keen for us to continue our deliberations in that we might be able to chart a path for the Government so that they don't have reinvent the wheel.

**Mr CUTHBERT** - Can I ask you who else are you talking to in Queensland?

**CHAIR** - Yes; we have HIA tomorrow, the board of architects, Engineers Australia and the BSA; that's it. We have seen the building surveyors.

**Mr OSTERHAGE** - I'll throw this on the table now anyway. In Queensland, Master Builders is the largest organisation representing members in this State. We are probably about three times larger than HIA, which is different from all of the other States.

Probably the reason why is that in the other States where you have a privatised insurance system, following the HIH collapse there was only one private insurer and to get insurance through that company you had to be a member of the HIA. Memberships are much larger than the Master Builders in the other States. We fully support the whole integrated system in Queensland. HIA would like to privatise the insurance scheme in Queensland -

**CHAIR** - So that the insurance component isn't integrated?

**Mr CUTHBERT** - Yes, because they own the biggest private insurers.

**Mr OSTERHAGE** - Because they will gain financially.

**Ms FORREST** - How many members do you have?

**Mr OSTERHAGE** - Eleven thousand.

**Ms FORREST** - How many would they have?

**Mr CUTHBERT** - Three to three and a half thousand - maybe. That is why your figures are quoting \$900 for our premium versus \$3 000 in New South Wales for the same value of construction - that is the beauty of the cross-subsidisation of the monopoly model. That's is why it works, because every one is in.

**Mr CRITTALL** - We do not have the same angst in our relationship with the HIA that other States have. Our view is that we are selling Commodores and they're selling Fords. We talk up the Commodore and they talk up the Ford. You're never going to get us to bucket the HIA. In other States of Australia that does not happen does it? They have little wars and -

**Mr OSTERHAGE** - There's no mileage in that.

**Mr CRITTALL** - We're the biggest master builder movement in Australia because we've got more members than New South Wales and Victoria combined.

**Mr CUTHBERT** - We have a different model; we encourage trade contractors to join. The others are still a builders club - cognac, silk jackets, smoked-filled rooms that sort of stuff.

**Mr CRITTALL** - We're not a builders club; we are an industry association.

**Ms FORREST** - How many people in Queensland could be members? You have 11 000. What percentage do you represent?

**Mr CUTHBERT** - The BSA will tell you tomorrow. I think we have about 16 000 builders licences and about 40 000-something subcontractors but what you will find is Graeme Cuthbert might have three or four subcontractor licences, I might have one waterproofing, one in prestressing, one in concreting and one in scaffolding, so it is not quite as accurate as they think it is because we thought we would use their list as a bit of

a marketing drive for membership and we started to get complaints from people who sent them four letters in one day for four different licences.

**Mr OSTERHAGE** - And where there may be 16 000 licensed builders, there are probably only about 7 000 active builders because you will have the TAFE teacher with a licence, you will have staff members of the Master Builders who are licensed but they are not contracting, they are not active, so there would probably be about 7 000 active.

**Mr CRITTALL** - And what have we got - about 4 000?

**Mr OSTERHAGE** - We have about 4 000.

**Mr CRITTALL** - So we would have just over 50 per cent of the active builders.

**Mr OSTERHAGE** - A lot of our members would also be members of HIA.

**Mr CRITTALL** - Absolutely.

**Mr OSTERHAGE** - There are the volume builders. Someone walks into their office and wants to build with an HIA contract and someone wants to work under a Master Builders' contract so from a marketing point of view, most of the big builders would be members of both, and that is fine.

**Mr CRITTALL** - This paper which we gave you was done four years ago when the Productivity Commission was doing a review into consumer protection and hard-wiring insurance so this explains really the model which we have in Queensland, the integrated model. Nothing really has changed. There may be a couple of word changes because in here we said the Building Tribunal and it is now the Commercial and Consumer Tribunal but the BSA web site is a pretty good source of information as well.

**CHAIR** - Thank you very much, gentlemen.

**THE WITNESSES WITHDREW.**