

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON TUESDAY 29 AUGUST 2006.

Mr JOHN KENNEDY, MANAGING DIRECTOR, MODBUILD (TAS) PTY LTD WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Harriss) - John, welcome to this hearing and thanks for your written submission. We acknowledge that there is some detail there which you have submitted to the KPMG inquiry and likewise shared with us. Can I just indicate to you at the outset that we are essentially confining our considerations today to our term of reference (2), whether we have a reasonable scheme in place to accredit building practitioners; whether we ought to consider other schemes. We won't be addressing our minds to the matter of the agreement signed between John White and Bryan Green because the Director of Public Prosecutions is still deliberating on whether there is a case to answer in terms of any criminal activity there. So we are staying out of that arena in terms of that agreement, so if there are matters that you want to discuss with us related to that agreement we will need to do that at another time.

Mr KENNEDY - No, there's not.

CHAIR - John, please speak to your written submission and we will spend half an hour with you and then we will ask questions, as we have of the other witnesses.

Mr KENNEDY - Okay, thanks very much. I have just put a few brief notes together in preparation for this, but bear with me.

I am the Managing Director of Modbuild (Tas) Pty Ltd. It is a business I started in 1994. We also run a shipping container business called Tasbulk, which was a locally run company until we purchased it in 2003. We employ about 15 persons, including an apprentice welder and four building apprentices. We recently invested close to about \$2 million on the new manufacturing facility on the Midland Highway between Roberts and Elders Webster as you go north, which we completely constructed using the resources from within our own company. As a brief description of the businesses, Modbuild specialises in the manufacture of transportable buildings, so we would build structures from a builders site office, which wouldn't necessarily need council approval, through to classrooms for the Government, which certainly do; Beaconsfield goldmine offices, that style of thing, and certainly we are starting to do a number of more residential style cabins. We've always targeted the commercial sector more so than the residential sector for a lot of reasons that you're finding out as you are going through this process.

We've never asked for any government assistance and nor have we received any. The views that I put through here are very non-political and I generally read the paper from the back to the front. In actual fact I've never spoken to or had a conversation with any current politician about any matter at all. Nothing against politicians, it's just that we've never needed to contact them and they don't contact us.

The Building Act 2000: am I allowed to ask you good members whether you've all read it from cover to cover?

Members laughing.

Mr WILKINSON - My answer would be no, not from cover to cover.

Mr KENNEDY - Has anyone read it from cover to cover?

Mrs SMITH - We went through it clause by clause when it was in the House.

Mr WILKINSON - But to say we understand it clause by clause - to me anyway - would be a long bow.

Mr KENNEDY - That would be my next question. Does anyone understand it or can anyone make sense of it? I can't and I've read it from cover to cover a couple of times. I just wondered whether I might be a bit slow.

Ms THORP - Legislation is notoriously difficult to read.

Mr KENNEDY - I agree, but it's certainly legislation that has such an effect on our industry that we need to understand it and I don't have that ability really, without going, perhaps as we do from time to time, to our solicitors and independent legal advice.

I will move on to a few matters directly related to the TCC if I could.

I have never met with any of the directors of the TCC and I have never spoken to them apart from one exception. I had an unsolicited phone call from Diprose spruiking his CPD system and other than that I have never spoken to the directors. So I am totally unbiased, I guess, with what I am putting forward here.

The first thing I will start off with is the statutory declaration that we had to sign that I made comment on in the previous submission that I put forward. I took great issue with that. My Dad was a JP and he instilled in me that a stat dec or the giving of evidence under oath are the backbone of our legal system and that is how I understand it and I always have done. I believe that that stat dec was being used in a very loose fashion to trap people into signing the thing - 'If you don't sign this stat dec and agree to abide by our code of conduct' which, as we have detailed previously, to my knowledge never existed. The summary did but the full version didn't. But we had to sign the thing or we'd risk losing our accreditation, which would mean that we couldn't put plans to council which means we couldn't run our business.

Our business took legal advice on that matter, which is all documented in detail there, and I thought the response was very poor, very inadequate. The response also tried to determine, I believe, who the agitator was, I think I used those terms, because my solicitor only told the TCC that he was acting for an accredited builder. So I took great offence at that and on top of that obviously I incurred legal expenses to try to sort this mess out. That's the stat dec issue.

I term this paragraph the privacy act. I had an issue with the fact that Diprose had got hold of my private e-mail address and bombarded me with e-mail spam, which to my knowledge is an offence in Australia, about his CPD point scheme. I know many other builders, engineers and architects have all received the same to their personal e-mail addresses.

I believe he must have used a data file or private personal information held by the TCC. After all, he was a director of the TCC. So does the TCC have a privacy policy in place? Does it have any policy at all on how they're going to protect people's personal information that they have on file? Perhaps we should apply the recent Centrelink private policy to the TCC. That one worked.

The next thing in relation to TCC-non disclosure I have termed this one, and they are just headings. I'm not saying that that's a non disclosure in this description.

After many months of receiving e-mail spam from Diprose and trying to work out whether the letterhead he was using was a TCC letterhead or if the CPD program he was offering was affiliated with the TCC, we received a letter from the TCC dated - I can't quite give you the date of the letter because the letter which was written by the registrar didn't have a date on it, which I found very unprofessional, so I can't tell you what the date was but anyway, that was some time ago. The letter spoke of the fact that Diprose was not involved with the TCC but just happened to neglect to inform us that he was still a director and was a director of the TCC, which I didn't know, and I thought it was poor that they couldn't point that out in this letter. They simply stated - I don't know whether you have read this letter -

CHAIR - Which one is that? The undated one?

Mr KENNEDY - The undated one, yes. The only reference number it has on it is my accreditation number, which will mean nothing.

CHAIR - I don't know that we've got that, John.

Mr KENNEDY - Could I read it to you?

CHAIR - Please, or in fact table it.

Mr KENNEDY - It says:

'Dear John,

Following approaches from a number of concerned members of the building industry, I am writing to all accredited builders regarding the relationship between the Tas Compliance Corporation and David Diprose. Mr Diprose is a former employee of the TCC. His employment with this company ceased in July 2004 and as a result he has no involvement in the TCC's accreditation process. The TCC has no involvement in his present scheme. The TCC has not approved the provision of CPD by him or any other provider. If you would like to talk to me about this matter please contact me by phone'

on such and such -

'or if you would like to speak to an independent source of advice,
Workplace Standards Tasmania.

Yours faithfully, Peter Rayner.'

CHAIR - John, do you have a date that you received that letter?

Mr KENNEDY - No, I don't.

Mrs SMITH - A date that you received it, not a date that they have written.

Mr KENNEDY - No.

Mrs SMITH - Was it a month ago, two months ago?

Mr KENNEDY - Sorry, this was well over 12 months ago.

CHAIR - I am just trying to get in perspective the time when Mr Diprose's services were dispensed with by the TCC.

Mr KENNEDY - I would suggest that this letter came out a couple of months after July 2004 because they are stating in here that his employment with this company ceased in July 2004. Nowhere in here, I will just repeat it again, do they make mention of the fact that he is still a director.

CHAIR - Yes.

Mr KENNEDY - The rumour was going around that the three directors had had a blue and were unable to get over it and get on with it. We have to do that in private companies but that was all a result of receiving this letter. There was a lot of hearsay about what was going on in the place, not that any of us really particularly cared that much. I considered it all a bit of a joke. Here we had three directors that obviously were not capable of running a bath together, appointed by the Government to bring the building industry into line, and here they are falling out after 12 months of operation. And you wonder why we are so cynical.

Effectiveness: this is of the TCC's accreditation process. I will use myself as an example here - at risk, I suppose. I am an accredited commercial builder for a project of two storeys and 2000 square metres of floor area. I am also an accredited building designer for the same. I have never sought accreditation, I have never wanted to be a builder, nor do I profess to be a builder. I am a business owner and a managing director of two single director companies. I have never completed a TAFE trade certificate, which is what I would deem necessary for an individual to call himself a builder. Upon the introduction of the Building Act 2000 it was deemed necessary that I would require accreditation to enable our company to submit plans to council. There were other options but none suitable to our business.

We could use an external designer but over 12 or 15 years we have developed this transportable building system and the intellectual property that is in that we keep in house. Digressing here but by way of explanation, we are a little different to normal builders. We design our own product, we manufacture it in house, in a workshop which is 95 per cent of the project then 5 per cent would be the installation of the project. We do all our documentation in house. So I guess we would be one of the few that do design and construction and have to put up with the complete gamut of all this approval process. I have some information here that we can get on to later, further to me and my accreditation. So I needed to be accredited to run my business, otherwise we could not submit the plans to council.

One other option we had was to use one of our qualified tradesman to become an accredited builder, which we looked at but I felt that it was not fair to put that amount of responsibility onto him. I was the managing director of the company, it is a single director company, and I felt that he also had to show a certain financial status before he could get the appropriate insurance. So it was just a mess. So I took it on myself. I put a proposal together to the TCC, which took me about a week. It documented the projects that we had done to date and we submitted certificates of final completion. We have never had any hiccups, we have never had any issues; we follow the rules as they are meant to be. We have had good guidance from our engineers, Johnstone, McGee and Gandy, who are a very well founded firm. They give us the guidance to do things correctly and we use their professional abilities as engineers. So we were able to put a few references together which enabled me to get accreditation, and I believe that the TCC made the correct decision in approving my accreditation because our business has a track record but it still confuses me, as I believe that it should be my company that is accredited and not me personally. But I guess that would provide a lot less revenue for this entire process, would it not?

CPD points: this is the issue I detest the most. As a business owner, every day is a new day of continuing professional development. Our business was created from scratch; it has developed its own transportable building system. We undertake all the design, manufacture, installation, certification, responsibility within our own business and we do this so that it works and we have control and we are keeping the quality within our own factory.

I do not believe that I need to go to a K & D trade night to listen to some spruiker supplier go off about his garbage product, have a sausage and a couple of beers, all in the name of two CPD points; it just does not cut it for me. I run two businesses, I have a wife and two boys aged seven and eight and I try desperately to have a life when I am away from work, which is getting more difficult each year as more and more regulation is placed on my business by Commonwealth and State governments. This CPD garbage is an unfair impost on the people in that industry.

Many builders start at 7 a.m., physically work all day, not in front of a computer - not at a desk - finish at 5 p.m., go home to their office, finish off a quote, pay a couple of bills, try to make sense of a BAS statement while talking to a real estate agent trying to sell them a block of land for a spec house. That is ten o'clock. He goes into the lounge room, speaks one word to his wife, 'Hello', sits down on the couch, goes to sleep, gets up at 5 a.m. and does it all again. CPD adds another 30 to 40 hours a year that we simply do not have. We just do not have that time. I certainly do not. On top of that it is going to

cost me \$4 000-odd in unproductive time. I do not know; if I put \$100 an hour on my costs as a managing director and do 40 hours, that is \$4 000. That is a cost I suffer.

To rub salt into the wounds, I do not understand the TCC's CPD scheme so I would have to go and pay Diprose \$300 to administer it for me. The irony of it all! It is a scam. I refuse to do this builder CPD point blank and if that results in me losing accreditation, which in turn would not allow me to run my business and submit plans to local councils, then I will seek legal advice from my solicitors and take whatever action we feel appropriate against anyone in the firing line to attempt to overturn the decision. Ultimately, though, if I lost accreditation I would simply concentrate on our shipping container business. I would shut down our building manufacturer, retrench up to eight or nine of our more building-oriented employees, including the apprentices, and that is a thought that saddens me greatly because all of them are great young Australians. I will repeat it again: I will not undertake builder CPD; I have to draw the line in the sand somewhere and will just not continue to accept overregulation like this as commonplace.

The interesting one here for me - and it is in the paper here, isn't it? - politicians recently refused a \$3 000 incentive payment to do CPD and it was abolished. Here it is: a popular \$3 000 professional development allowance which MPs said was not enough has been abolished. It cost me \$4 000, you were going to get \$3 000 for it.

Mr WILKINSON - Not us.

Mr KENNEDY - Sorry. Those guys were going to get \$3 000 for it and they did not think that was enough. Anyway, abolish it and abolish it today. I have finished with that one. I have a little bit more here, though.

Mr WILKINSON - I can see you do not approve of it, John.

Mr KENNEDY - Thanks, Jim. Owner builders: not that I have a problem with that but could I just say something about owner-builders in relation to the act? The Building Act 2000 has driven owner-builder levels to record highs. However many of these approvals would be persons - landowners - using accredited builders but not prepared to pay the insurance and the approval processes charges. You are always going to have some form of owner-builder, it is a basic constitutional right that a landowner can construct a dwelling on his own land. But owner-builders are on the rise for other reasons as well. Consumerism. Plenty of do-it-yourself home handymen spend enough time at K&D they turn themselves into owner-builders. We've got *Backyard Blitz*, we've got the *Block*. All these things add to people getting their ambitions mixed up with their talents and having a go at owner building. I've nothing against people having a go at it; it's their block of land, it's their right, but don't blame the professionally run individuals and businesses in the building industry for the problems and legal actions caused by owner builders.

I can see plenty of legal action on the owner-builder front because owner-builders do not understand the correct process. We struggle ourselves to understand it. The process is too complex for most persons outside the industry to understand correctly. Most councils have lost most of their knowledge to advise people. To my way of thinking, the real professionals in the councils were the building surveyors, they've pushed them out the door and they are running their own businesses. So it's difficult to find good

educators within councils, and here I am mainly of course talking about the building regulations; I am not bagging councils, all 29 of them.

So councils are limited in their abilities to provide good, clear, concise information to an owner-builder. There is to my knowledge no document or guide that gives those type of people any idea of the full approval process. They might gain information from the council on the specific question they ask but they don't know the full process that they've got to go through.

Based on that, we spent a little bit of time putting together what we'd call a typical council scenario. It is up to you. I was hoping to present that to the six of you to have a read through; it is in one of our brochures there - we may as well get a plug in for ourselves. I don't know whether you want to just quickly flick through that now. Other than that I've said my piece.

CHAIR - John, in the remaining 10 minutes I suspect members will have questions of you based on both your verbal presentation now and also the written submission which you have given us. I certainly have some questions but I'll open the process up to questions right at the moment for other members.

Ms FORREST - In relation to CPD, I appreciate that is not a popular area, in looking at another submission where we received information about the TCC professional development scheme it does talk about ways of accumulating points, one being preparation of lectures, technical papers, industry award entries. I would assume from what you do that you do some of that stuff of design and implementation of your product, developing your product or advancing - you could do it the business from scratch. Can I say that you're doing professional development any way and there may be opportunities there. I appreciate what you're saying about it and the impost of time and non-productive time in a business sense but -

Mr KENNEDY - Specifically in that I made the point before that I don't consider myself a builder in the true sense of the word. I'm a managing director of a business. I run a business. So the CPD points that I'm receiving as a accredited builder they are not really relevant to what I do.

Ms FORREST - But isn't the understanding that you'll do CPD in the area that is relevant to your practice?

Mr KENNEDY - I guess that's my point in that I had to gain the accreditation or I couldn't run my business. Somebody in our business had to gain it so I gained it. But I'm not a builder in the true sense of the word; I've had a lot of exposure to the industry over 26 years but I didn't go to TAFE.

CHAIR - Did you obtain your accreditation under the transitional arrangements?

Mr KENNEDY - Correct.

CHAIR - Thank you.

Ms FORREST - I don't expect there's any need for you to upgrade your level of qualification or accreditation.

Mr KENNEDY - No, there's not.

Ms FORREST - If there was, you would not be able to do that now, without a formal qualification, as Mr Harriss was suggesting.

Mr KENNEDY - Yes, I agree, but obviously in going through it we looked at what we thought would be the maximum accreditation we'd need and I certainly can't see our company, in the near future, building a double storey, 2000 square metre building, although our factory is 1500 square metres and we did that under our own accreditation.

Ms FORREST - Single storey?

Mr KENNEDY - Single storey.

Mr WILKINSON - We have had a builder doing a building for us just recently and what he was saying, and I think you are saying the same thing, is that with this professional development, it's probably more professional development to continue, if you wanted to do it on a weekend, to continue working at the weekend under an expert builder, with the other builders working under him doing the building that they've got to do to get the building done. They're getting more out of that than presently what they're getting with the professional development, as you say, up in Launceston or wherever it might be, where they listen to people pretty well talk about moneys that they've made as a result of their building experience. Is that right? That's what I understand is occurring on these professional development weekends.

Mr KENNEDY - That's right. Building is a do business, it's not a theory business, it's a hands on trade. That's true building. I don't think the people in that industry who are at the coalface, and a lot of those are accredited builders of course, want to know about CPD theory. A lot of them often have an understanding, more so than you would actually believe, of these two documents here being the BCA. I am quite surprised sometimes at how much our guys know about the BCA.

CHAIR - By practical application.

Mr KENNEDY - Yes.

Mr WILKINSON - Especially on the weekend if you are working under a builder who is well recognised in his field, the others under him are accredited but employed by him. What they're saying is that they probably get more out of that than they do going and listening to something which is not really applicable to their trade.

Ms FORREST - So it comes down to the definition of what CPD really is?

CHAIR - Has that been defined by the TCC for your practice, for builders?

Mr KENNEDY - Not to my knowledge. We had very little information on CPD and the CPD guide that I am showing you here arrived on 13 July this year. So two years in production that document there - not a bad effort.

CHAIR - John, can I go to the matter of the code of conduct. Your solicitor has addressed his mind to the code of conduct and the fact that, as you said at the outset, you're required to tick a box that you will comply with the code of conduct and you are expected to sign that as a statutory declaration, and yet two matters are drawn to the attention of the TCC by your solicitor. One is that it is not a complete code of conduct. 'Can we please have a copy of a complete code of conduct.' You've never been provided with that, I presume.

Mr KENNEDY - No.

CHAIR - Secondly, my reading of the response by the Tasmanian Compliance Corporation in their letter of 6 September is that they say 'but the declaration pertains to insurance'. Surely they have missed the point. This is a declaration that you were required to sign encompassing three different components, only one of which was an insurance declaration.

Mr KENNEDY - Correct. And once again, it is just how I have been brought up, that a stat dec is one of the most important documents you'll ever sign in your life.

CHAIR - And likewise, on that matter, your solicitor indicated to the TCC in his letter of 6 July that there is nothing in the act giving power to an authorised body to require you to sign a statutory declaration that you will comply with a code of conduct which is of itself deficient.

Mr KENNEDY - Yes. Well, he asked for clarification on that from the TCC but you see yourself that the response was very short.

CHAIR - And missed the point, and didn't provide a complete code of conduct document.

Mr KENNEDY - Or dodged the point.

CHAIR - We can presume that there is no such document - full document - in existence.

Mr KENNEDY - They're probably writing it now though.

CHAIR - Ms Forrest suggests that there is.

Ms FORREST - There is. I've read it.

Mr KENNEDY - Why didn't they send it then?

Ms FORREST - It is here.

Mr WILKINSON - Whatever the case, I think what John is saying is that he has been asked to sign something to say that he is agreeable to the code of conduct and has not been provided with the code of conduct.

Ms FORREST - You have not seen that?

Mr KENNEDY - No, I have never seen that.

Ms FORREST - That is the code of conduct.

Mr KENNEDY - I would have thought that would have been an easy answer to provide my solicitor with at the time if that had been in existence. They could have just sent that and said, 'Here's the full code of conduct. Pass it on to your client'. I am not saying that I would not. The code of conduct, to my knowledge, could have told me to take my clothes off and run up Liverpool Street and I'm signing a statutory declaration.

Mrs SMITH - You certainly make the distinction between the fact that you are not a builder, you are a company director. Do you think that there should be another category within the process to cover people? When you were talking I was thinking of the build-a-shed people that can give you all the similar principle up the coast. Are we missing a particular category in the definitions?

Mr KENNEDY - No, I do not think that you are. If it was not so difficult because of the insurance issues for some of my qualified tradesman to become accredited builders then they could be accredited builders and our business would go on and I would not have to have been. But we do not seem to have got over HIH and all that sort of stuff, do we, so we will never go forward.

Mrs SMITH - Would you not have a risk then as the owner of a business that your qualified tradesmen might move on, for whatever reason, and then you could be caught with no capacity to continue on?

Mr KENNEDY - If it was the case, yes, that is correct. It would probably be preferable for me to have that accreditation but not necessary. We do not have a very high turnover of people in our business. Our last construction manager had been with us for seven years. He also had accreditation, by the way. He has since left to go out and work on his own.

Mrs SMITH - You talked about company accreditation. I have written down company versus singular accreditation. You said, 'My company should be accredited not me'. The customer out there links, rightly or wrongly, the accreditation to the fact that this is a good company. There is somebody out there, supposedly, who has said that these people are good at what they do, we have accredited them, they are safe. So if you went to company accreditation rather singular and you decided that you had had enough of this - wife and boys - and were selling, along comes a good price and somebody comes in that has a very poor track record or no record but shows a track record, running off the good name of your company with a transfer of accreditation or some sort of tick-off in that whole sale, how is the consumer protected then if you are company accrediting rather than individual accrediting.

Mr KENNEDY - I guess that the company would always be at risk of having its accreditation removed. The Builders Registration Board used to be an operating entity. Without going back in history too far, it performed a tremendous function but it was overrun with sorting out cases and legal actions and things that were not really

appropriate for it to do. 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 and 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. Maybe that was going to be on the boards of review that have never been set up.

CHAIR - We've exhausted our questions, John. Thank you very much for both your written and verbal presentations. We just continue on with our deliberations. We send out a copy of our report to everybody who makes a representation to the committee so when we've concluded, we will send you a copy.

Mr KENNEDY - I appreciate your time. Thank you very much.

THE WITNESS WITHDREW.