

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON THE ACCREDITATION OF BUILDING PRACTITIONERS MET IN THE HIA OFFICES, 14 EDMONDSTONE STREET, SOUTH BRISBANE, ON TUESDAY 10 OCTOBER 2006.**

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**Mr WARWICK TEMBY**, EXECUTIVE DIRECTOR, HOUSING INDUSTRY ASSOCIATION QUEENSLAND, AND **Ms JILL LEE** WERE CALLED AND EXAMINED.

**CHAIR** (Mr Harriss) - Firstly, Warwick, thank you very much for allowing us to use your boardroom and your building for the day. We really do appreciate that because when we travel interstate sometimes it is difficult to find a venue, and with the opening of Parliament today there are no rooms available even if we wanted to meet there.

Both the Seven network and the ABC have asked if they can come and get some overlay. They will not be recording the proceedings of what we are undertaking here, so if they do get crews here we just need to ask whether you are comfortable about that, whether there are any problems with you in terms of them getting some overlay. In fact it will only be the Seven network between nine and eleven, the ABC is likely to get here at about two, so that is that matter covered off.

**Mr TEMBY** - No, that's fine.

**CHAIR** - Ivan has a slight hearing problem so he is going to sit over there nice and close to you two so that he can hear. I think you are on his best side there.

*Laughter.*

**CHAIR** - Just as a really quick introduction, I think you are familiar with the reasons we are here - to have a look at the scheme which operates in Queensland so that we can make some comparisons as to where we have been in the last couple of years, which doesn't seem to have been on the right track because the Government has reined back in from the Tasmanian Compliance Corporation their commission to be the only accrediting body in Tasmania. The Government is going to take it over themselves as of 1 November. So there is an issue.

We have been referred in evidence provided to us in Tasmania to the Queensland scheme as being a pretty decent scheme of licensing building practitioners and hence the desire of the committee to talk with the peak bodies such as yourselves. We are meeting with the architects later on in the day and Engineers Australia. So tomorrow we will have a full day, with a half day or less with the BSA, so we get some handle on exactly how they run the show, the numbers of staff, and so on.

Really, the purpose for wanting to take up some of your time was essentially for us to fire a whole heap of questions at you as to how the scheme operates, but if you want to give some overview of your HIA's background and its involvement with builders licensing in this State and how it might compare to other States and whether there are components of other States obviously you are aware of that ought be picked up by

Queensland, if they have not been, or any deficiency with the Queensland system, please do so.

**Mr TEMBY** - That's a very big question. Perhaps I should explain first who I am. I am Executive Director of HIA here in Queensland. I first took up this job in 1991 which was when the BSA was launched. I got here just as the reviews that were being done on the then licensing regime were coming to a conclusion. With the exception of about six years off in the national role, which I have just come back from, I have followed the history of the BSA reasonably closely. When the accrediting system first came in in Tasmania we went through a process within HIA about whether we should put our hands up to become an accrediting body ourselves. In my other role at the national level I was heavily involved in that assessment as well. We concluded at the end of the day that we did not want to go down that path, and I would be happy to explore some of those reasons. Jill is a licensed builder here in Queensland; she has been licensed for 10 years or more.

**Ms LEE** - Fifteen.

**Mr TEMBY** - She runs her own building company and does a lot of work for other building companies as well in land development and building. As you can tell from the photos, she has been president of the region here in Queensland and is currently the vice-president of HIA nationally. She has had lots of exposure to the whole licensing policy debate.

HIA's general philosophy about licensing is that licensing makes sense where there is a warranty that comes in behind it. Our position is that any warranty or work should be carried out by somebody who is licensed; if it is not warrantable work, then why bother? In a nutshell that is the philosophical approach that HIA brings to the licensing question on the basis that if it is not warrantable work then somebody else is responsible for it. It is their problem without whether the quality of work is there or whatever. The other observation we would make, particularly about the system here - and it is not unrelated to that philosophical position - is that the licensing arrangements up here have delivered a very large and complex bureaucracy and expensive. The advantage that the regulator has up here is that they have a licensing pool now with over 60 000 so there are some substantial economies of scale. I think that was where the Tasmanians, and the Northern Territorians after you, fell into the trap of wanting a Rolls Royce building regulatory system that you don't have the critical mass to sustain. I rather glibly suggested one day when we were looking at the Tasmanian accreditation arrangements that you could do worse than subcontract the Building Control Commission in Victoria to do it for you. They have the infrastructure and systems in place. With the sorts of numbers that you are talking about in Tasmania they would be able to do much more economically than you could with a stand-alone system, which is where you ended up.

One of the reasons that we did not go down the path of being an accrediting body - and only one of them - at the end of the day it was partly a philosophical question about not wanting to be seen to be sitting in judgment on our own members about whether they get a licence or not. One of the key drivers also was that with the sort of money that you would have been able to charge people for a licence it just did not stack up in the Tasmanian market. It was simply too small for the sort of overheads that you were going to have to have to drive the kind of accreditation system that the Government was

looking for. Again, they were looking for a Rolls Royce system in a State which because of its size it just really could not afford. For us, as I said, that was a secondary consideration. The main consideration was a policy one and at the time we got behind a proposal for I think it was your Office of Fair Trading to run the system, which the Government ultimately rejected. Our view is that in the Queensland context the licensing arrangements haven't delivered anything in themselves. The insurance arrangements have delivered some results for both the industry and for the consumers. HIA are strong supporters of warranty insurance and we were the instigators of it in Victoria nearly 30 years ago because we saw it as a very important part of providing some confidence to consumers about making a pretty big financial decision. So we are strong supporters of warranty insurance. The BSA has certainly delivered that.

We see some issues around the insurer and the licensing body being in the same place. There is potential for conflict of interest there. I am not saying that in reality there is conflict of interest but there is certainly a lot of potential for it and that was recognised as long ago as 1990 by Commissioner Dodd who did a review into the Building Services Corporation in New South Wales who identified that as a major issue I think in practice as well as in theory in New South Wales, that potential for a conflict of interest between being a licensor and an insurer.

The other thing that the Building Services Authority has delivered which gets mixed reviews and will always get mixed reviews is its dispute resolution service. It is a bit of a by-product of the warranty insurance arrangements. Any insurer will have to have a dispute resolution service just to manage the caseload that comes through. Is there really a claim area or isn't there? It is not always clear-cut.

The Building Services Authority in its early days went down a fairly rocky road with its dispute resolution arrangements, much to ire of the industry and consumers alike. There were subsequent inquiries into all of that. My view, based on the member inquiry and stuff that we get here, is that that has settled down quite a lot. There is now a lot more clarity around what's defective work and what isn't, just through case law and custom and practice. There is still a perception among contractors that if it is a tough decision the Building Services Authority will always lean in favour of the consumer because it gets the complaint off their books and it gets the complaint potentially out of their insurance scheme as well, which is where the conflict of interest potential arises.

That dispute resolution service has delivered some results. It has essentially been funded by the licensing arrangements. On their own, licensing arrangements, we do not do a great deal of them. Very few consumers ask for them because the building public is a shifting population; it is only a very tiny proportion of the population that is building at any one time. It is a very difficult market to educate about anything. The existence of a licensing system is very something that is complicated to educate the home-buying public about.

**Mr WILKINSON** - Can you have one without the other, though, Warwick? Can you have your licensing without your insurance or can you have your insurance without your licensing?

**Mr TEMBY** - Tasmania is a perfect case in point where you ran a mandatory insurance regime for many, many years without any accreditation or licensing system and I think it worked pretty well.

**Mr WILKINSON** - So what's the benefit of licensing?

**Mr TEMBY** - In the knowledge that there is an insurance regime there, licensing itself adds very little to that because the insurers undertake a lot of the checking that a licensing body would otherwise do. I think particularly in the early days of the accreditation system in Tasmania you had a lot of conflict between the accrediting body and the insurers because the accrediting body was saying these people are able to be accredited to be a builder but the insurer had developed over time their own checking and underwriting procedures and they didn't want to accept carte blanche anybody with accreditation as an acceptable insurance risk. In my view, where you do have an effective insurance regime, the licensing system of itself adds very little.

**Ms FORREST** - Can I ask a question about insurance. You are talking about public liability as well as home warranty insurance. Under the BSA it is only home warranty insurance that is provided, so the builder would still have to get public liability insurance and professional indemnity. Can you buy that?

**Ms LEE** - No, builders are a risk.

**Mr TEMBY** - Very few builders are able to get professional indemnity. They get public liability and they get contractors' risk, which is -

**Ms FORREST** - How much are we looking at? We talked yesterday and it was \$100 for accreditation for building surveyors and then \$600 for their licensing through the BSA. How much in addition to that do they need to pay for their public liability insurance and any other insurance they would need?

**Mr TEMBY** - It varies with the turnover of the business, but the absolute minimum for public liability would be somewhere between \$700 and \$1 000.

**Ms LEE** - Based on a \$3 million turnover, which is your average small size builder, you would be paying \$8 000 to \$10 000 a year, including contract works insurance, apart from the BSA.

**Mr TEMBY** - Which insures the work while it is under construction.

**Ms LEE** - And that is just in the domestic market, not in the commercial industry.

**Mrs SMITH** - You made the comment the consumer does not ask whether a builder is licensed or not. Does the consumer have the same attitude to insurance? Do they ask a builder if they have insurance before -

**Mr TEMBY** - I would expect so. Julie, you might like to add to that.

**Ms LEE** - Some clients are aware of it but a lot of them are ignorant of the fact, and they find out only when the builder goes broke. There is a whole hinge of responsibilities on the

consumer with regard to that builder. If the builder goes broke, if they have overpaid the builder or paid them in advance, then that is not covered by the home warranty insurance here in Queensland, so you lose it. If you pay at frame stage and the frame is not up, and you have given the builder an advance payment, then that is not covered by the home warranty insurance and you will lose that, so there is an enormous amount of responsibility on consumers. I do not know if they totally understand what their responsibility is. If we go right back to our scheme here in Queensland, yes, it has been very good, but if you are an axe murderer you can get a BSA policy as long as you hold a licence. It does not matter how you have performed. It does not matter about the defective work or the way you have treated your clients -

**Mr WILKINSON** - You can swing an axe well.

**Ms LEE** - Yes, that is right - you get insurance. I know that there has been some problems with the other States. There is the Builders Collective for people who feel like they have been locked out of the insurance system. They have weeded them out if they have found them to be an enormous risk. They have said no and they have weeded out certain people from the industry. Whether that be good or bad, up here in Queensland anybody can get that insurance if you hold a licence.

**Mrs SMITH** - If an insurance company has an exceptionally good client financially that pays big dollars, how do we protect that? They could be the axe murderer but because they pay the big dollars to the insurance company, which looks for profits for shareholders of course, they will not get ticked off anyway. I am looking firstly to guaranteeing the character, I suppose. Insurance does not say they are a good builder; it just means that they have paid someone.

**Ms LEE** - And the insurance is only there if they go broke; it is not as if they do defective work. With insurance in the other States, if you have a dispute you still have to go to the tribunal but if you go broke then they will step in and fix it.

**Mr TEMBY** - It might even be that insurers are probably much more interested in the sorts of things you are asking about than a licensing body. Up here, and in any every other jurisdiction that I am aware of, once you have your licence, and as long as you keep paying your annual renewal and do not appear in the court reports, you will continue to get the licence. Insurers have an ongoing interest to make sure for their shareholders, as you say, that they are pricing their risks properly. Pricing their risks properly includes doing some pretty thorough assessments of what the builders are actually doing. In my experience in dealing with the insurers they are much more interested in the ongoing performance of those companies, not just financially but predominantly financially. They are much more interested in that than the licensing bodies are.

**Mrs SMITH** - So you are telling us that you have no confidence in the demerit points system that Queensland has whereby if a builder does not do the appropriate thing they can lose demerit points and eventually perhaps lose enough so that they have lost their licence for three years?

**Mr TEMBY** - The demerit points system is very rigid. You can get demerit points for silly little breaches on contractual issues.

**Ms LEE** - Like not issuing the frame certificate when you send your progress payment out. That is a demerit point. That could be one of your staff members, your clerical officer, failing to do that. If your consumer complains then you get a demerit point for that.

**Mr TEMBY** - At the risk of introducing something positive in the discussion, one positive thing that the licensing system has done, not because of the demerit system but because of other actions that have been introduced into this legislation, is where directors of failed companies can get excluded from holding a licence for either five years or life, depending on their track record. I think that has had a positive impact on the industry because Queensland had a pretty poor reputation in the 1980s and during the early 1990s for phoenix companies in the building industry. You have burned a building company here one day, but the directors will pop up next week with a new building company. That sort of stuff has pretty much gone from the industry now. You still get it because it is hard to track but that is one very positive thing that has come out of the licensing arrangements.

**Ms LEE** - Because I think when the BSA first started up they grandfathered everybody that had a licence, so there was no checking. Everybody got a licence. We had those people brought into the new system, so it has taken quite a fair amount of time to weed them out. I was on the BSA board for six years. Among the problems we had over there, one was that our cards used to be gold but then builders advertise, 'I am a gold card builder,' so they had to change the colour of the card to blue. That is why it is blue now, because consumers thought there is the level of construction. I know they struggled to get the message across to consumers, especially about pre-payments and what your responsibility is. That brought in the Domestic Building Contracts Act. Back in the old days we did not have a soil test when we signed a contract, but now you have to have a soil test because builders would go back and say, 'It is another \$10 000 for those foundations.'

They have tried and it has been a long process - 10 years - of trying to fix the system. I think when I was on the board that the stakeholders and the consumers looked to you if something went wrong. They expected you as the insurer and the licensed body to fix everything, but that is not possible. The builders who are responsible want the subcontractors to be responsible. They are licensed up here but they are not responsible. You cannot haul them over the coals for any work that is not done properly. A lot of the other states do not agree but here in Queensland we feel very strongly that subcontractors should be responsible for their work if they are licensed.

**Mrs SMITH** - I do not think we even licence our subcontractors.

**Ms LEE** - No.

**Mr TEMBY** - We would not encourage you down that path. It does not add any value. It adds revenue but it does not add any value.

**Ms LEE** - No. There is a lot of burden on the BSA. The other thing the subcontractors look to the BSA for is security of payment. We struggled with security of payment for years. They got a memorandum of understanding, they tried to get certain builders to sign. A lot of the commercial builders pay for 90 days and then will go down will all these subcontractors owed an enormous amount of money. I think it has been a strain on the

BSA because the stakeholders have expected them to deliver and they have only got so much in their budget.

I think in the year 2000 they had a \$7 million loss on their insurance scheme. That was when GST came in. A huge bubble of work came through, but builders were not prepared because they had priced things on old prices. Subcontractors put them up. A lot of builders went down - a \$7 million loss, if I remember correctly, in that year. They have a lot of trouble with the reinsurance, so it will be that boom and bust that is going to happen with your insurance scheme. Sometimes your reinsurers are going to be happy. I think they let out about 50 per cent of the reinsurance business.

The subcontractors are saying they do not get paid. They have struggled with that security of payment. It has been an enormous task. Because they are licensed they expect that the Government is going to protect them against rogue builders because they licensed them. It is an impossible task. It is an enormous task for you guys to take on. You will talk to them about it. The other thing is that they had 6 000 disputes a year when I was on the board. I have not been on the board for four years and it is never getting any less. They still have an enormous number of disputes.

**Mr SMITH** - So even though you are licensing everybody - builders, contractors, whatever - there has been no decline in the number of disputes, in your opinion, since the process started?

**Ms LEE** - No.

**Mrs SMITH** - One would expect it as the consumer learnt, 'You're going to have a peak up there because this is our right' and then the rogue builders learn, 'I'm going to be in that loop unless I do the right thing'?

**Ms LEE** - Yes. I have continued to go to their two-day seminars and I have noticed that the disputes sometimes have risen. Last year I think it was around the 6 000 mark again.

**Mrs SMITH** - Can you relate that, though, to increase in building that all States have seen as well?

**Mr TEMBY** - No, it has been remarkably stable at about 5 000 to 6 000 a year, irrespective of what the industry is doing. It is almost like that is the capacity they have to manage and people just use it up to its capacity.

Jill was talking about the insurance. There are some differences with the insurance arrangements up here compared to other States. Jill mentioned one of them, which is if you have a licence you can get insurance. From a consumer point of view, you can get insurance even if the builder did not pay the insurance premium, which is different to other States. The other issue up here is that, unlike every other State in Australia where insurance premiums are falling because of the softening in the insurance market globally, the insurance premiums have just gone up and in some cases doubled. In my view there are some structural problems with the insurance arrangements up here, which are making the reinsurer of the BSA scheme very nervous around the first-resort, last-resort issue. Has the committee been down that path?

**CHAIR** - That is one of the challenges that I was going to put to you. We amended our legislation a couple of years ago to make that policy of last resort; yours is still at first resort, as I understand it from speaking with the MBA yesterday. That being the case, that adds a whole different light to the notion of insurance and consumer protection. First resort seems to me to deliver the protection that Jill has spoken about; last resort doesn't in terms of a consumer. You spoke about the Tasmanian scheme, Warwick, that we had in place prior to those legislative amendments a couple of years ago. Clearly under that process the insurer says, 'We've had a complaint. We have investigated and found the builder at fault. Go back and fix it'. The builder says, 'No', and the insurer says, 'Okay, the consumer can't be left hanging', so the insurance policy is activated and they get another builder in to fix the job. The recalcitrant builder doesn't get any more insurance. That is the self-regulation process.

**Mr TEMBY** - The reality, compared to what you might hear tomorrow, is that we have the same process up here. The consumer complains, the BSA sends out an inspector, the inspector says, 'That work's defective; fix it'. However, less than half of the orders that the BSA gives to rectify are actually complied with; the other half end up in an insurance claim - and while that is happening the builder is still able to get more and more insurance.

**Ms LEE** - You could be an axe murderer and get insurance.

**Mr TEMBY** - There will be occasions where, if the claims are big enough, the BSA will then try to recover from the builder, but they are the minority.

**Ms LEE** - If it is subsidence, then sorry. We have gone down the track now so that the engineer who inspects the foundation and slab has to be the same engineer who does the soil test, which used to be different. If you have done everything right and you have had it inspected and it is all approved and it still fails, then the BSA picks up the tab. They have never prosecuted one engineer in all these years. Subsidence is the biggest part of their insurance; it drains the most money out of their claims.

**Ms FORREST** - I go back to when you talked about the insurers being perhaps more rigorous in assessing the competence, perhaps, of the builder. How do they go about that? We talked yesterday about the BSA undertaking this with qualified building surveyors assessing building surveyors and qualified builders assessing builders. What does the insurance do and how do they do it? What qualifications do they have to undertake that to properly ascertain whether a builder who is applying for insurance is competent and qualified and a good all-round person?

**Mr TEMBY** - In other States, do you mean?

**Ms FORREST** - No, here.

**Mr TEMBY** - Here it is if you have a licence. If you have a licence, you've passed all those tests.

**Ms FORREST** - So the insurance simply don't look at that.

**Ms LEE** - Only financially.



**Ms FORREST** - So where are you suggesting that happens? I must have missed -

**Mr TEMBY** - In other States where there is privatised insurance.

**Ms FORREST** - Okay, sorry, I misunderstood.

**Ms LEE** - They look into your background and you get a rating. Then if you lose your rating, if you go from, say, rating 1 to rating 3 it takes you three years to get back to rating 1 even though you could be a genuine rating 1 for a couple of years. They will make you sit through that and your premiums will be higher. But compare the premiums to up here, if I can just touch on what Warwick said: if we do major renovations, say, \$300 000 or \$400 000, we used to pay \$1 400, now we are going to pay \$2 800, and that started a week ago. Overnight it doubled. That is an enormous amount, and the renovation market up here is very strong.

**Ms FORREST** - Is this through the BSA?

**Ms LEE** - Yes.

**Ms FORREST** - So does the monopoly of the BSA create a problem in the premiums here? Are you saying it is more competitive in the other States? Mind you, looking at New South Wales, certainly there's a much bigger population base than Tasmania has, and possibly even Queensland. Being competitive within that market is much more feasible.

**Ms LEE** - For the same amount of renovation in New South Wales we would pay \$800 - against \$2 800 here.

**Ms FORREST** - Is there not more than one insurance company to go to get your insurance from?

**Mr TEMBY** - Also there's this fundamental difference between the first resort and last resort insurance. First resort insurance is considerably more expensive and I think unsustainable, which is what we are finding now with the BSA cover. The other complication you have in Tasmania is not just the size of the market, but the size of your owner-builder market. Again, the owner-builder issue is something which, when it was introduced in 1991, the BSA legislation fixed overnight in Queensland. It is only people who genuinely can build their own house who get to build up here.

While Victoria and other States have mirrored most of the requirements that we have put on owner-builders in Queensland, there is one really important one that they haven't picked up - that is putting the fact that it is owner-built on the title of the property and it is there for the warranty period, which up here is six years and six months. It is noted on the title for six years and six months, so anybody buying that house knows that it was owner-built. That is in addition to all the other requirements that owner-builders have to have.

**Ms FORREST** - That six years six months is from the completion date?

**Mr TEMBY** - Contract date, I think, or is it completion? It might be completion.

**Ms LEE** - It is completion date, I think. You estimate what your completion date is on there and they basically take it from there.

**Mrs SMITH** - You used to have a cap on your insurance premiums in Queensland, didn't you?

**Mr TEMBY** - There is still a cap, but it has doubled. The premiums used to max out at \$200 000 contract value. That has doubled to \$400 000 contract value, which means the maximum premium has gone from \$1 440 to \$2 900 overnight.

**Mrs SMITH** - Is that reflective of what values have done - \$200 000 to \$400 000?

**Mr TEMBY** - No. It is reflective of the pressure that the insurers that the Building Services Authority co-insures with are putting on them just because of the claims experience. The claims experience gets back to this first resort thing - you always get a lot more complaints and claims from the first resort scheme.

**Mrs SMITH** - One of the complaints of builders in Tasmania was that they had to put their assets on then line. From the aspect of the type of insurance that Tasmania went into was that if you had the asset, if you had the cash, you could be a builder. Their argument was it did not reflect at all on what your capabilities were. It was if you were cashed up you could build to a certain level of house or commercial building or whatever and if you were not cashed up you were out of business.

**Mr TEMBY** - The reality is that it was an insurance policy against financial failure, so from an insurers point of view their biggest assessment of the risk was how cashed or how financial you were. It is no different from buying credit insurance.

**Mrs SMITH** - What keeps coming up in our hearings is that there have been very few instances, I believe, of builder failure, as in going broke. It appears to be more a question of poor workmanship and argument between the consumer and the builder. Consumers now have an expectation under all this licensing, et cetera, that if the builder will not fix it, someone will come in and say, 'I am right,' or 'They are right,' and we will go through a process to ensure that it is fixed rather than a two-year drag-out which ends up in court anyway. We have a flaw that consumers expected our system would fix and it has not.

**Mr TEMBY** - Our view is that the answer to that is not in licensing but in better dispute resolution arrangements along the lines that we have here or in New South Wales, where a consumer can take a contractor, licensed or not, to a tribunal for \$200 and get that very cheap, reasonably quick, resolution to the dispute without the expense of going to court and having, at the end of that process, a decision that is as enforceable as if it were made by a court.

**Ms LEE** - The BSA do not get involved in contractual disputes so if you get XYZ brick and you wanted ABC, that will be something you will have to go to court about. A lot of the disputes that we saw were contractual. Certainly a lot were to do with defective work when the owner was really upset. If it does not end up being what they want then they will pick and say, 'This is not straight' or whatever, and you will find yourself with a big

list, but ultimately if you drill down that is not the real problem. The communication has broken down and that is what they have concentrated on more. You can have difficult builders but, let me tell you, you can have some shocking consumers.

**Mr TEMBY** - Pretty much always at the back of a defective work dispute there is a contractual issue as well. 'I am not going to fix that until I get paid what I am owed.'

**Mr DEAN** - Just revisiting what you said about being cashed up, about assets and so on, there was a concern back home - and obviously it does not apply here - that that was stopping young builders coming into the profession.

**Mr TEMBY** - It does apply here as well because there are minimum financial requirements that you have to meet to get a licence. For those at the smaller end of the spectrum it starts at about 6 or 7 per cent of their turnover they have to have in net assets and they have to meet a liquidity requirement as well, so there are the same sorts of issues.

**Mrs SMITH** - I gave the example yesterday of my concern that perhaps we may lose the entrepreneurial process of our young people in the industry and end up with big end of town, high cashed-up building companies who sometimes, it appears here, may hold the licence but everybody else is doing the work. I gave an example of a young person who comes to Brisbane, does the trade, becomes a very good builder under the training he gets from whoever he works for. At 25 years of age, he wants to get out of the city, go back to Barcaldine. He says, 'I want to become a builder. Things are on the move up there and there is an opportunity for me to go into my own business. When I put that scenario to some people they said, 'He can't. He has no assets.' He has been in Brisbane; he has leased a flat; he has spent all his money.

**Ms LEE** - To do a turnover a \$300 000 which is one house or a couple of renovations he needs \$15 000 worth of assets which can be his ute and his tools.

**Mrs SMITH** - For one house?

**Ms LEE** - For one house. Both my stepsons are builders and one of them is in the \$5 million bracket. For that you need about \$300 000 worth of assets which would be your house or property or work in progress is also counted towards those assets.

**Mrs SMITH** - It would be my conclusion that most young people in Australia between the ages of 20 and, say, 35 wouldn't have that sort of cash asset.

**Ms LEE** - No, but they wouldn't be turning over \$5 million. Most of them would be turning over \$2 million, which would get you probably 10 houses a year which is quite a good living at \$200 000 each, and I think roughly it's around \$50 000 to \$80 000 you would need.

If you are serious enough about that you either have savings or some sort of guarantee from the bank. Work in progress is another asset or perhaps you have a block of land or some sort of equity amount.

**Mr TEMBY** - I think your concern is a very legitimate one especially for the people just coming out of a trade. They are not paid all that well while they are apprentices so they

haven't had the opportunity to accumulate assets. There is an issue, particularly if you insist on them all getting licensed - at least in the Tasmanian arrangements - it is only if you get to be a builder or a designer that you get accredited. Up here to contract to anybody you have to be licensed and that is an obstacle.

**Mr DEAN** - Knowing that is a difficulty here, are you looking at that to see whether or not you can make any changes to bring those people into the building industry?

**Mr TEMBY** - The counter argument that you get all the time from the BSA is that this is all about protecting consumers and the best way of protecting them is to make sure the builders have some money. Some of the private insurers in the other States have introduced systems that will insure younger people for one job at a time so that if they can demonstrate that they can make a profit out of the first job that they do they will give them the next one, and the next one, and the next one and give them the opportunity to build up some assets. You don't have that luxury up here.

**Mrs SMITH** - We also had the opposite and I found it when I was looking for someone to re-roof some units. The body incorporate insisted that they be accredited - licensed - and every builder with a very good reputation that I went to and who was in his late 50s early 60s said, 'No, I am subcontracting for someone in their 40s because we don't license subcontractors. I am not, when I am close to retirement, putting all my assets on the line. I am a good builder but I am not putting my assets on the line to take the risk in case something happens'. So we lost a lot of builders from the system because they went to subcontracting. They just kept themselves going rather than employing young apprentices and training them.

**Mr TEMBY** - Or working for owners-builders - that's where a lot of them went as well.

**Mrs SMITH** - That happened here?

**Mr TEMBY** - No, in Tasmania - project managers for owner-builders.

**Ms LEE** - And Victoria.

The average age of a bricklayer in Australia is 55. We've lost a lot of kids from school and the thing is now that we make them stay there until grade 12 it's very difficult to get them to take on an apprenticeship at 18 on \$100 or \$200 a week and then sit there for four years. After they get that apprenticeship, they still have to enter the industry and work for two years for someone before they can get the licence.

**Mrs SMITH** - And then if they haven't any money they can't.

**Ms LEE** - That's right. Most of them have a car and get over the line with a car and tools -

**Mrs SMITH** - As a subcontractor?

**Ms LEE** - Well, you're self-assessed at that entry level. You don't have to get your accountant to substantiate the \$15 000, you just sign a declaration saying you have it. Whether you have it or not is up to you. You can build one house or a couple of

renovations - that's where they start off and then, hopefully, they do a couple of jobs working for someone else and grow the business that way.

Insurance, even public liability and builders' all-risk, is expensive. If they don't have the money to do that then they shouldn't be entering I believe. I agree with you. There are a lot of young boys who I have helped lately to get licences but they have all entered on that first rung. They have to do one or two jobs, build up their asset base and then move on.

**CHAIR** - Let me paint the scenario which applied in Tasmania when we introduced builders' accreditation. We had a grandfathering provision and in essence everybody who was operating as a builder was accredited. I am aware of some who have been in the industry all of their lives, operating as builders, who think, 'I'm not going to bother with this accreditation stuff. I don't need anybody to tell me I'm a good builder'. They have been caught outside the grandfathering provisions. They now continue; they have two or three contracts which they have an opportunity to pick up. How do you get those kinds of people back legitimately into the system, just because they thought at the start that they don't need this rubbish? Or indeed go back to Sue's scenario with a young person coming out of their apprenticeship and being technically very well qualified to pick up a contract almost straightaway and they want to make a start in life. Both of those issues: how do you deal with the older person?

**Ms LEE** - I can answer that. Previously for those types of people - we had a lot of Italians and Greeks who couldn't even speak English, couldn't write an invoice - the BSA assessed them. They sent an assessor out and you paid your money. They came out and followed you around and asked a few questions. If they assessed you to be competent, you could get a licence. Now, though, that has all changed. They make you do the TAFE course, which could cost you \$2 500. It is quite extensive. I have done a couple lately with a couple in my trade who have become builders. It has taken one of them two years and the other one did it in six months, but you have to be on the ball all the time and fill out all these modules. It is all paperwork. You fill it in for this fellow that you have never met and eventually he comes out and follows you around and you get assessed. You still have to show two years' experience as a supervisor and then you can be licensed. Prior to that it was just an assessment and that is how we brought those people online. They can tell you what they do and they can show you their jobs but they won't write it down and they don't want to fill out 15 pages of résumé, which we are now making them do.

**Ms FORREST** - The other issue that we were told about yesterday in relation to this is the need for a written contract. If they can't even write an invoice, how do they provide a written contract?

**Ms LEE** - Well, they don't. It is against the law but they don't.

**Mr TEMBY** - We provide standard contracts, as does the BAS, that people can buy and use but there are still gaps that need to be filled in.

**Ms FORREST** - You've still got to put in the amounts.

**Mr TEMBY** - Typically they get somebody else to help them with the paperwork.

**Ms LEE** - You go and talk to the kitchen and cabinet makers. A kitchen could be \$20 000 or \$30 000 and the BSA struggles to get the insurance on that, to even get a contract between the cabinet maker and the consumer. They consider it minor works, even though it is not; it could all go very wrong. A lot of them don't fill out contracts. They are getting a bit better at it but there is certainly a lot out there who don't do that. For decks and those sorts of things that fall outside of that council approval, a lot of people don't bother to sign a contract. At the moment in Queensland we are supposed to have a contract between our subcontractors and ourselves. I guarantee that 90 per cent of the industry does not do that.

**Mr TEMBY** - One of the other options that you might have as a consequence of this inquiry is that if you come up with a new system you could provide another window of opportunity for older people to get into the system, 'All bets are off the previous system. We now have a new system and we will give you an opportunity over the next six or 12 months or whatever to get in'. Maybe something like P-plates for the younger ones.

**Mr WILKINSON** - You've had experience on the board of BSA and have been building for a number of years, likewise with the national body and the HIA here, if you were starting up knowing what you do of Tasmania's building industry - it is not a very big one - what would you be doing to get the best system up and running?

**Mr TEMBY** - I think you need to start in a fairly low-key kind of way. You do not need to go for belts and braces on day one. If you accept the premise that you only license people doing warrantable work, in my view all you need to do is worry about their technical competence - and there are lots of ways you can do that.

**Mr WILKINSON** - To me, you have architects, engineers and surveyors and they go through their accreditation at university and get their degree. That accredits them, in my view, and they then obviously if you want this overarching body, go to the BSA, if you want to call it that and they are immediately accredited from the BSA because they have gone through their prerequisites to do that. It is a bit more difficult with the building trade with about 20 different people on, say, renovations to a house, as I understand it. What do they do? What is the overarching body? So we have first to get an overarching body. We have the MBA and the HIA in Tasmania. It seems to me there has to be this overarching body and maybe we call it the BSA so we set up that BSA. Who is involved with that? Do we have a general manager of that or managing director?

**Mr TEMBY** - That assumes that it needs to be a statutory authority of some kind and it probably does not. That brings its own expenses in any event. One of the options that was considered during one of the reviews of the BSA up here in the late 1990s was to take the BSA back into one of the government departments because for most purposes it operates like a government department anyway. It has a board that is made up of industry people but that is a policy board, an advisory board. It is ministers that make decisions in Cabinet that make decisions about the legislative environment and the regulatory environment at the end of the day, so that was one option. That might be a cost-effective option in Tasmania.

**Mr WILKINSON** - My prima facie view is, if I can work through it with you - and this is just me talking and not the rest of the committee - that would be the best start for us in

Tasmania, to revert it back to government and have this policy-type board up which is going to be comprised of different experts in areas of building, so that is number one. Where do we go from there?

**Mr TEMBY** - The government department just needs to be able to check people's technical credentials, which is relatively easy to do these days, and if you wanted to do some of the character checks that the BSA does up here, you can do all of those online these days, so it is not onerous administratively to check that people are not bankrupt, they are not directors of failed companies, those sorts of things - and that is it. You then give them a licence, they then have to go and convince an insurer that they are worthy of having their work insured by that company. To me, the biggest problem in Tasmania seems to be getting the insurance capacity and I do not think you are going to get that until you have fixed the owner-builder issue. All these things are very much interrelated unfortunately.

**Mr WILKINSON** - And so that is our starting point but the big issue, as you say, is the owner-builder and the owner-builder is about 40 per cent in Tasmania and some other places in Australia, I understand.

**Mr TEMBY** - It is about 3 per cent here.

**Mr WILKINSON** - Yes. How did you fix that?

**Mr TEMBY** - As I was saying before, I think you fix it by having some tough requirements on getting an owner-builder permit - things like one permit every couple of years. Up here there is a 25-hour TAFE course you have to do to get an owner-builder permit and most importantly, in my view, put it on the title of the property.

**Mr WILKINSON** - And you reckon those three things would assist, as they did up here a number of years ago, I understand, when they were brought into legislation?

**Ms LEE** - Yes, because the home renovation shows that we are now stuck with on television have made everybody an owner-builder and they produce it and make it look quick but at the end of the day they have to control all these trades and they do not necessarily get what they are paying for so it was a real problem here at one time and now it is not. We did not have the problem with home warranty insurance that I think Victoria have. The owner-builder figures have risen because of the warranty insurance has locked a lot of people out of the industry. I do not know if that is the case. Is that why it is 40 per cent in Tasmania? Do you need home warranty insurance to be an owner-builder?

**Mr WILKINSON** - I don't think so.

**Mrs SMITH** - What is happening, in my opinion, in Tasmania is a builder will say, 'It will cost you  $x$  amount more and if you go owner-builder I can build the house for you', and that is what they do but what they do not explain is that if for some reason you have to sell that house in a six-year time line, you have a problem. A transfer in employment might take a person somewhere else and there are many people who have suddenly come up with the shock of, 'I need to put the house on the market. The estate agent is telling me I was an owner-builder and I now have to go back and go through all this process to get some accreditation of my property', and that is the loop that is missing. I think if

people knew that, they would stay away from the owner-builder concept but it is not widely publicised.

**Mr TEMBY** - One possibility might be through the local government building approval process where the owner-builder, before they can get their building approval, has to sign some declaration for the local authority that says, 'I understand that I am an owner-builder. I understand that this is what it means. I understand that if I sell within six years then I have got to do this, this, this and this'. I think that could be made part of the building approval process. Your local authorities probably would not thank you for giving them extra work to do -

**Mr DEAN** - It does not belong to local government authorities anyway. There are others that can do that.

**Mr TEMBY** - The building approval process belongs to them.

**Mr WILKINSON** - Can I keep running down the process of setting it up. So we have the government body, we have the policy board, we have hopefully fixed owner-builders, we need a dispute mechanism set up. The dispute mechanism would be set up via the policy body I would imagine. There may be a legal/building person on that policy board. They would be the person in charge of setting up this dispute resolution area.

**Ms LEE** - It is separate to the BSA up here. It is run off the tribunal - a totally separate entity.

**Mr TEMBY** - There are two layers of dispute resolution here. One is with the Building Services Authority and they manage about 5 000 disputes a year. For the contractual ones you go to a tribunal.

**Mr WILKINSON** - It seems a bit bureaucratic maybe for Tasmania with a small area - this is me thinking out loud for the moment - therefore you have this policy person setting up the dispute resolution area.

**Mr TEMBY** - The New South Wales Government has in a sense outsourced dispute resolution to panels of adjudicators. People who get qualified as an adjudicator essentially do the role of the Building Services Authority and a tribunal at a lower level where they will go out, they will listen to both sides - a bit like Judge Judy on the TV. They go out, they listen to both sides of the story, they look at what the problem is, make a decision very quickly and in our experience most people, if they have an independent person giving them a decision, will wear it. There is a percentage that dig their heels in which is why when things get to the Building Tribunal here, two-thirds of them are solved in mediation.

**Mrs SMITH** - But if you do not give them some authority to back them up?

**Mr TEMBY** - The adjudicators have legislative authority in New South Wales.

**Mrs SMITH** - Right, because if you do not have some authority eventually people say, 'I'm not even spending half an hour going to listen to them because they have no authority.'



**Mr TEMBY** - It has the status of a court order but you do have appeal rights if you do not like the decision.

**Ms LEE** - But before you get to that stage a lot of mediation is done that you have to participate in and that is why most of them are sorted out at mediation stage.

**Mr TEMBY** - We get involved in a lot of disputes here on behalf of our members because we try to keep them away from the official process and more often than not, if people have someone from HIA come out and tell them, 'Yes, that is acceptable work,' or 'No, it is not,' they are happy. They just want somebody independent that is not part of the emotional equation.

**Mr WILKINSON** - I think we can fix that disputes area, I really do. That seems to me to be fixable. What other areas then do we do? I am no builder. When we have to do some building my wife says, 'Get a man in.'

*Laughter.*

**Mr TEMBY** - There is a company up here called Hire a Hubby. They might like to start a franchise in Tasmania.

*Laughter.*

**Ms LEE** - You have to get those guidelines set out for who can hold a licence and what criteria they are going to need and it has to be a minimum to be able to get most people over the line but not let people in who totally are taking advantage, if you are going to grandfather it or whatever. I think a lot of the problem with the BSA is that a lot of people they have there can only follow a set of guidelines. It does not matter if you've done this or done that. They say no, it doesn't fall into this box, you're not getting the licence, or 'We want another 15 pages of resume. It can be quite difficult across the line these days.

**Mr TEMBY** - I think you are lucky in that you have a substantial body of people who have already been accredited. You can say, 'They're fine, let them in', and then worry about the flow, rather than this big bunch of people who have already been accredited by some system. I don't think you'd want to go down the path of re-opening all of those.

**Mr WILKINSON** - I agree with you. We've got the intelligence of who is out there may be there. There may be a couple more who should be there but didn't take advantage of that grandfather clause. You do your professional development courses; you have somebody looking after that. Some of that can be a waste of time for some people out in the bush, it really can, so it's got to be worthwhile professional development. There has been some talk yesterday about getting a certain amount of points - 90 hours is it? You get pretty well a point for an hour or something -

**Ms LEE** - We don't have continued professional development here in Queensland, and in New South Wales it's stalled.

**Mr TEMBY** - It's a disaster.

**Mr WILKINSON** - Should you have it, do you think?

**Mr TEMBY** - No. My view is that continuing professional development needs to separate those who do from those who don't. The problem you've got in New South Wales is that everybody has been told they have to do it. People at the end of the year will just tick boxes to say, yes, I've done this and this and then they will send their forms away. Out of 180 000 licence holders in New South Wales, the chances of you being audited for your CPD diary are pretty remote.

My view is that the Victorian system is a lot better. It is optional, but you are recognised if you do it, so there is a separation between those who do the CPD and those who don't.

**Mr WILKINSON** - How do they recognise them?

**Mr TEMBY** - They are recognised on their licence. I'm not sure exactly how, whether it is a different colour or it is a tick in a box that says they are up-to-date or whatever. I am not sure in practice how they do it but it is an optional system so that those who want to do it and want to stay up-to-date actually do it, rather than just say they did it.

**Mr WILKINSON** - Do you have your building policemen to go around and say, 'Look, that is a pretty ordinary job that you've just done and I know that is about the second or third one you've done poorly. You should be going to a TAFE course or employing another builder who is excellent at that for, say, two weeks to get your skills?

**Mr TEMBY** - All you need to do to fix that is to have good record exchange between your dispute resolution system. If it's a panel of outsourced adjudicators or whatever you need good feedback from them to your licensing person to know who the repeat offenders are so that you can start down that path.

**Mrs SMITH** - The difference I see in Tasmania from Queensland is that if you've gone through the process that Jim has mentioned, and you've had some mediation and you've had the builder say, 'I'm not fixing it', in Queensland they send someone in to fix it, it's paid and then they will attempt to recoup the insurance. The link to our problem is that you have insurance companies who have the insurance process, so you would have to have something legislative that forced them in the loop to go in on your decision, on a do-and-pay, and recoup because insurance companies that are not in-house government like yours could say, 'Well, no, it is all right for you; you ought to have done that but we are not going to get involved in this. We are not going to say, yes, send someone in and we'll pay and then we'll recoup from the builder'. You have that loop of your in-house insurance to a degree, which must take away some of that angst, I would have thought.

**Mr TEMBY** - It takes away that angst but adds a whole other layer of complication and difficulty that we talked about before, about first-resort and last-resort insurance.

**Mrs SMITH** - Insurance companies want to take your money but they don't often want to pay it out the other side.

**Mr TEMBY** - In Tasmania defective work isn't a trigger for the insurance policy, but defective work is a trigger for the insurance policy up here. As I was saying before, I think in the longer term that is unsustainable.

**Ms FORREST** - Can I just go back down the CPD path for the moment. Architects, surveyors and engineers get their degree and they are competent if they have passed. There are many points of entry for builders. If that person has got to the entry point, whether it be a university degree, an apprenticeship or another pathway, because things in all industries change and regulations change, there are new requirements and new products on the market, surely there is a need to have a fully structured CPD process to ensure that it is not done as a point-collecting exercise.

I would like your thoughts on what I am saying. If you don't have a structured CPD, if you do tick off 'yes, I have done that and that', surely you should have to produce the evidence that you have done it, not just tick a box. You have to have some record of attendance at that course, or whatever, then there must be some other structured format to demonstrate that, yes, this change in this regulation impacts all people who do structural work with concrete because if they don't meet it how do you know that these people are actually competent into the future? It is okay to come up with a degree of competency at the beginning, so how would you see that working? I think it is very important. It is not just in building, it is in all areas.

**Ms LEE** - I can only say with engineers and architects that once their project is done and they have done the design, it is handed on to the builder and it is the builder's responsibility to make that stand up and work and pass inspection. So all along the way there are trigger points of putting in slab, frame, and even under the Sewerage Act, septic, that a private certifier comes in and inspects that work. If it is not up to scratch the builder will find out then.

It is not always the case with engineers and architects. Once they have drawn it and handed on the design, they are totally divorced from it unless they are actually being engaged to project manage the works. So the builder will learn all the time what is allowable and what isn't, because you will not get through those inspections. Here in Queensland under the Domestic Contracts Act, when you send out your progress payment you must send the certificate with it to say the slab has passed or the frame has passed, and here is your final certificate. That is the responsibility of the consumer to make sure they get it before they make the progress payment to the builder.

I always believe that the Building Code of Australia should be handed out when you license people. It is our rule book, it refers back to the standards. It is something that we should all have and go back to. When we look at the figures, we see that only 30 per cent of Australian builders actually own a copy of the Building Code of Australia, which is just terrible.

**Ms FORREST** - It is a fair state of a book, isn't it.

**Ms LEE** - It is, but it is quite easy. It is in plain English, you can read it. It is not complicated and it is broken up into various sections of whatever you want to know. If you are competent builder you can access that type of thing. They send out amendments every six or 12 months, so it's constantly updated. You pay your subscription fee and I think it is an essential part of your business, big or small, to make sure you have that because that's what we are all building to. Then along the way you will find out if you have done something wrong because you will not get your inspection.

**Ms FORREST** - The big issue is self regulating. What you are suggesting is that the industry is self regulating.

**Ms LEE** - It is, and with regard to new products, it is a consumer-driven thing. If Mr and Mrs Smith come to you and say they want to use Alucobond on the walls and you've never done it, but you want their business, then you need to ring up Alucobond and say, 'You're the experts, how do I do this?' That is how new products come in. The next job then you can mark it and say, 'I can do this'. That is a consumer-driven thing. If you are only in a small market of building cottage housing and it's the same house over and over - I spent 12 years building State government houses and they are the same over and over - you don't need to do a course. I could do them with my eyes shut.

There are different types of builders. There are those types of builders who go into that selective market of new products and innovation. They make a business of it and they go to the trade nights for those products and get their information from them.

**Ms FORREST** - It is in their best interests, obviously, to keep evidence of that.

**Mr TEMBY** - The best CPD you can do is remain active in the industry.

**Mrs SMITH** - But your insurance surely is the fact that building surveyors, if our evidence is correct, do have a requirement of continuing professional development. They do have to have a point system over three years of 90 points, and they have mandatory auditing. The building surveyor is usually the one who ticks off at the end, isn't he? For consumer insurance, in the Queensland model the building surveyors are very highly regulated in what they must do on continuing professional development.

**Mr TEMBY** - That's right.

**Mrs SMITH** - So that's what they have put in as their security blanket for the consumer. Do I interpret that right?

**Ms LEE** - Absolutely, and if you can't get a certificate then you don't get paid. It will make you do it right.

**Mr DEAN** - Much of this work is done with local government, where a local government has a responsibility. They can use private contractors as well, which they do from time to time, where they have to inspect a house at certain stages. In Ruth's situation, they've got to go out and they check the trenches to make sure the trenches are the right depth and have the right quantity of metal and meet all the other requirements. They pass it at that stage, then the next stage and so on. Then Jim raised the issue of building police. A check is maintained right throughout the building of a house, by local government and or by private contractors. The latter would, say, engage an employee to do that specific job. I just wanted to raise that.

**Mr WILKINSON** - You have let's call it building services, which is a government department. Under that you have your policy board. On that policy board - and tell me where I am wrong - you have hand-picked people. You have a builder, a legal person, and an educator who'd have to be mixed up with building as well because he looks at

licensing et cetera. The legal person looks at dispute resolution. Then you have the insurance broker, to always keep a check on the insurance availability, and then you've got different building trades. Do I do the building trade a disservice if I pick an architect, an engineer and a building surveyor along with a builder? Should there be any other people on it, or should I have all those people on it?

**Ms LEE** - The BSA used to have, when I joined the board, master painters and plumbers. Now they make the subcontractors choose. They are given two positions; they make the subcontractors vote to choose those two people, whether they be painters, plumbers or whatever. There are two builders - one from the commercial industry and one from the housing. There is an accountant, which I think you need because those financials are just huge, and you need an audit team. That person runs the audit team and comes and tells the board they have checked this and it is done. There is also a consumer person.

**Mr WILKINSON** - So how many people, then?

**Ms LEE** - I think there's six. I think there's two builders, one trade contractor -

**Mr TEMBY** - The engineers and architects aren't represented.

**Ms LEE** - No, because they are not licensed by that body. There is the consumer, insurance and the accountant. They also have what we used to call the government mole.

**Mrs SMITH** - The minister's rep.

*Laughter.*

**Mr WILKINSON** - We've got an accountant, builder residential, builder commercial, consumer, insurance and accountant. Do you need a legal?

**Ms LEE** - They don't have a legal person. That's really in-house. They have so many lawyers over there who come up and tell the board what we should be doing.

**Ms FORREST** - You just ask for that sort of advice if you need it?

**Ms LEE** - Yes, that's right.

**Mr DEAN** - Is building any better today than what it was 20 years ago before we had any of this? You've still got rogue builders out there. We've probably got as many out there, if not more, today than we've had. You've already given us information about the amount of disputes, which with licensing hasn't approved at all. The number of disputes are still there and increasing. It just seems to me that whatever system we have it's still not right and that we still need to do a lot of work. We have spoken to a number of people back in Tasmania in relation to this issue and the majority - a lot anyway - have sung the praises of the Queensland system. They have said that the Queensland system is the one that we should adopt here; that is the one that will fix all of our problems. What do you say about that?

**Mr TEMBY** - I think the reason that they latch onto the system is just a reaction to the HIH collapse and the difficulty that people had immediately after that accessing insurance in

other States. Up here there were none of those sorts of difficulties because if you had a licence you got insurance. I think that has affected people's mindsets about everything being good in Queensland. I dispute that there are probably just as many rogue builders as there were in the past. I think that has changed.

**Mrs SMITH** - Yes, I would agree. He lives in a different part of the State to us and there are more rogues up there.

**Mr WILKINSON** - He is an owner-builder himself, you see.

**Mr DEAN** - My wife was, not me.

**Mr TEMBY** - Particularly in the last five years the kind of financial requirements that the insurers have put on the industry has forced the industry to capitalise in a way that it has never been capitalised before which I think has had a very positive impact and I think the evidence of that is that in the current downturn in building activity there has been a handful of builder company failures compared to the typical building downturn. But normally 12 months after a building downturn companies start dropping all over the place because now they are priced at all sorts of levels and they cannot sell the things -

**Ms LEE** - And the subcontractors put their prices up.

**Mr TEMBY** - All of those sorts of things and that has not happened in this cycle. That is more related to the insurance market than it is to the licensing regime. I think there have been some positives as we talked about but I also a lot of things have not changed because a lot of people still operate outside the system.

**Mr DEAN** - Looking at all the systems that we have in place around the country, what would you see as the better system currently operating in the States? Do you believe that yours is a good system and -

**Mr TEMBY** - No, I think there are better ones.

**Mr DEAN** - Where would you say?

**Mr TEMBY** - I think we license too many people in Queensland. I think the kind of system that is in place in, say, Victoria is probably a better scope. In Victoria if you do work more than \$5 000 or \$12 000, or something, then you have to be licensed rather than being licensed if you are in a particular trade or doing a particular something or other. The Western Australian system essentially only licenses builders and painters and they have had a pretty robust kind of industry in a differently structured kind of industry than anywhere else in the country.

**Mrs SMITH** - They are about to have major changes in Western Australia, aren't they, or have just had major changes to their system?

**Mr TEMBY** - They are having a review, but I am not sure what is coming out of that review.

**Ms LEE** - Their building industry is very different from anywhere else in the country. Their market is controlled by five builders.

**Mr TEMBY** - Interestingly, though, one of the changes that has happened over there is that they have taken their Builders Registration Board, as it is called, back into a department. It is no longer a separate statutory body, it has now been absorbed back into a department. They only license builders in Western Australia.

**Ms FORREST** - And Victoria - who do they license?

**Mr TEMBY** - In Victoria if you do work over a dollar threshold - I think it might be the same as the warranty threshold of \$12 000 - you are meant to be licensed but overwhelmingly it is only builders.

**Mr WILKINSON** - Shouldn't we license subcontractors in Tasmania?

**Mr TEMBY** - We don't believe so. We believe it does not add much to the outcome because it is the principal contractor's responsibility at the end of the day.

**Mr WILKINSON** - When they had this grandfather clause there were some builders that got through the net really - they listened to Bob the Builder song and they got their licence! Some are pretty bloody ordinary, truly. What do you do about those -

**Mr LEE** - Wait for them to die.

**Mr WILKINSON** - Well, I suppose that is all you can do, isn't it. You cannot suddenly turn around and renege their licence otherwise there would be some -

**Mr TEMBY** - No, you can if -

**Mr WILKINSON** - Only if they do poor workmanship.

**Mr TEMBY** - If there are transparent, accountable and appealable rules for excluding people, then you can do that. It is where you have the arrangements that used to apply here in the 1980s where you were issued a 'show cause' notice by the board and you had to front up to the board to say why you should keep your licence. It was done on the basis of whether you owned anybody on the board money or whether they thought you were a nice person and it was very arbitrary. As there are here, there are hard and fast rules about being knocked out of the licensing system which are transparent, accountable and appealable. I think if you have those things then you can have rules to knock people out of the licensing system, otherwise why have it?

**Mr WILKINSON** - It seems to me to be the fee as well. There is some talk that the fee is not enough. They say that \$600 is not enough to look after everything. You are looking at probably \$300 000 a year if you have approximately 500 registered builders

**Mr TEMBY** - There are 60 000 licensees; about 20 000 of those are builders.

**Ms LEE** - I used to say when I was on the board that I paid more for my HIA membership than I had paid for my licence. I thought it was ridiculous that the minister would not allow us to raise the fees, especially for subcontractors. I thought that some of the bigger

builders should be paying a lot more. Imagine turning over \$10 million and paying \$500 for your licence. It is crazy.

**Mr WILKINSON** - So therefore should your licence depend on the work you are going to do. For example, the major commercials turn over a huge amount. Should they be paying more for a licence than -

**Ms LEE** - It only depends on how much money you will need to run your scheme. That could be a justifiable way here, everybody is on the same level. You don't know what you are going to do when you go out there. As I said, I have been in welfare housing for the State Government and now I am in renovations. You don't really know and that means you will have to go back and have yourself assessed again to be on a different level or turnover.

**Mr WILKINSON** - You have to pay yearly, don't you?

**Ms LEE** - Yes, that's right. It is better than it was, it used to be about \$300.

**Mr TEMBY** - You don't have such a spread of people in the industry in Tasmania as you have here.

**Mrs SMITH** - We have a couple of construction firms and the rest are really home builders.

**Mr TEMBY** - Stuart Wilson is probably the biggest home builder in Tasmania and he does about 150 a year maybe.

**Mr DEAN** - You raised the position of where a builder has an action taken against him and continues to build in the meantime while it is being resolved. You may even be well aware of the situation in Launceston where that has occurred with a builder. He has had a lot of complaints made against him and a lot of those complaints have been found to be proven. The house is virtually falling down and it is a \$400 000 to \$500 000 home. I think that lady has been onto just about everyone in Australia to try to stop the builder continuing to build whilst that matter is being resolved. How do you see the situation there? Should there be something in place? What do you see as being the ideal position there?

**Mr TEMBY** - I am not sure that anything is ideal, but I think the closest is the adjudication system that is in place in New South Wales. If the work is in progress the Building Services Authority, for example, will not even get involved at all. With the adjudication process, if you have a complaint and you are prepared to pay the \$200 or \$300 or whatever it is to get the adjudicator out there, you can get a quick decision about what should happen that is enforceable. I think that is the best you can do. You still have to run on an innocent-until-proven-guilty basis.

**Mrs SMITH** - You would accept that most builders might have four properties going at the same time so their contractors are moving from point A to point B. If you stop until one issue is settled, your consumers are being held up and the builder could be innocent at the end of the process.



**Ms LEE** - That's right. It could be a personality problem with the consumer and then all hell breaks loose.

**Mr TEMBY** - You stop cash flow and all those sorts of things.

**Ms LEE** - And then you will go under. It is not only the rogue builders that go broke, we have had good people out there in the industry who have hit a big boom or bust in the industry and have not been able to buffer themselves from it.

**Mr TEMBY** - Or worked for a poor developer.

**Ms LEE** - Yes. So it has not always been the rogue builders that have gone broke; some of them have been quite innocent. You tend to find that if you get one of those clients they take up your whole time and you want to get to the end of it. Sometimes it can take two years to get a resolution.

**Mrs SMITH** - I suppose I am comparing it to our Gaming Commission in Tasmania where at the end of the day they have the capacity to give people with licences warnings, fines or inevitably take their licence off them. I think there is probably an expectation amongst consumers that once you license people there should be some stage at which if you have a road builder, eventually someone can pull his contract. Would you see that as something that would be acceptable in a fair and reasonable system?

**Mr TEMBY** - If you do not have provisions like that then why do the licensing in the first place? You might not have to use it very often but it has to be there. You have to have the capacity to take it away. But that process has to be just.

**Ms LEE** - That is right. Nationally, we have had one large builder in a State who had lots of trouble on *A Current Affair* but operates in other States without any trouble. I think they have closed down in that State. So there is no national system. I think we did look at trying to bring it across because you can close down in New South Wales and start up in Queensland tomorrow.

**Ms FORREST** - So over the border essentially, isn't it?

**Ms LEE** - Yes.

**Ms FORREST** - In Tasmania you have to get on a plane or a boat.

**Ms LEE** - Yes, that's right.

**Mr WILKINSON** - Building Services department, government. Accountant, building residential, building commercial, insurance broker, consumer, legal in my belief are who should be in this so-called policy bill. Areas we have to look at are licensing, who is going to be licensed, are we going to have another grandfather clause to get those people who are expert but have not been able to get in for whatever reason. We have to have a look at dispute resolution and how we solve that. Insurance seems to be the biggest issue and how we solve that. CPD has a question mark beside it. Have I forgotten anything?

**Ms LEE** - No, not that I can think of.

**Mr TEMBY** - There are some training issues off on the side but I think that is a pretty complete package.

**Ms FORREST** - Does your auditing get into there? Does that come under your licensing processes?

**Mr TEMBY** - Yes.

**Ms FORREST** - This needs to be perhaps at the stage of the licensing. If you have a licensing process and no way of administering it in a way or applying it, you have to have some sort of auditing process and then some consequences.

**Ms LEE** - That's right.

**CHAIR** - Warwick, can I take you back to your comments when you opened. When you looked at what was unfolding in Tasmania and considered getting involved, did I hear you correctly when you said that the access there was too small to get a relevant income stream to undertake the work required? That suggests to me that if a scheme which includes a proper dispute resolution system and all of those things which we spoke about this morning was adequately run, then you would have to charge a heck of a lot for the 2 000 people, say, that were going to be accredited for that to pay for itself. You made an assessment that the fees would be exorbitant to properly conduct that. That further suggests to me that with the scheme that we have had in place, charging \$500, round figures, either has not or did not at that time intend to properly proceed down a path of an adequate dispute resolution system or a monitoring system or ongoing auditing. So for \$500 you really cannot deliver that full range of services. That is my interpretation of your comment.

**Mr TEMBY** - We didn't believe you could.

**Mr DEAN** - You don't?

**Mr TEMBY** - No. We didn't believe at the time that we could have delivered all of the services that were in the prospectus for accrediting bodies for anything like \$500.

**CHAIR** - That prospectus would have been the guidelines for schemes produced by the minister at the time?

**Mr TEMBY** - No, which is why we worked up a joint proposal with I think it was the Office of Fair Trading at the time.

**CHAIR** - Yes, there was a joint industry council working at the time. Because of the size of the Tasmanian market, you do have to look at bolting some of these things onto things that might already exist. Presumably in your consumer affairs process you have some dispute systems there or going down the New South Wales path where you outsource it to private adjudicators where both parties share the cost of that. One of the problems up here I think is that it is too cheap to start a dispute. You can start a dispute I dare say for \$200 and \$200 is relatively recent. It was free, which is why it went from a handful of disputes every year to 5 000.

**Ms FORREST** - When was it introduced? Only very recently, was it?

**Ms LEE** - Only in the last 12 months. It used to be \$50. It was free when I was on the board.

**Mr TEMBY** - It was the late 1990s, I think.

**Ms FORREST** - So you haven't seen a drop-off in that - the \$200 is not an incentive, obviously.

**Ms LEE** - No, we tried to get \$1 000 from the minister.

**Mrs SMITH** - But you would have to accept for somebody, a young couple, that has just had a new home built, for instance, \$1 000 to put up as security is a lot of money to find, to then have some dispute heard. I suppose the political arm of me would say someone tried to find something in the middle that is fair and reasonable.

**Ms LEE** - Yes.

**Mr TEMBY** - Exactly. To make it affordable, you have to be looking at options like that. I don't know what kind of other tribunals you might have in Tasmania. The tribunals up here have gone down the Victorian path. There was a residential tenancies tribunal, an auctioneers and somebody else's tribunal. There was a whole bunch of them that have all been put together into the one body. Victoria has done the same. I don't know whether you have a similar situation.

**Mrs SMITH** - We probably should have rather than all the different bodies.

**Ms FORREST** - Paul mentioned the cost, \$500 for the scheme in Tasmania, but that did not include home warranty insurance.

**Mr TEMBY** - No.

**Ms FORREST** - So when you look at \$600 in Queensland to do what I understand is all that the Tasmanian model is to do and have home warranty insurance then perhaps \$500 is too much.

**Mr TEMBY** - No, you pay for the warranty insurance on top of the \$500.

**CHAIR** - On top of your licence. You pay per policy which you pick up per house.

**Ms FORREST** - The home warranty insurance as well?

**Mr TEMBY** - Yes, that's on top of that.

**Ms FORREST** - I thought that was included.

**Mr TEMBY** - No.

**CHAIR** - If you build 10 houses, you buy 10 policies.

**Ms FORREST** - Right, fair enough.

**Mrs SMITH** - But you can do it on the phone, is that correct?

**Mr TEMBY** - Yes.

**Ms LEE** - Jim, I have just thought of something for you to add and that is the owner-builders.

**Mr WILKINSON** - Yes, thank you.

**CHAIR** - Warwick, for me that was an important point to revisit and we will need to make some assessment as to whether the scheme which we have had operating in Tasmania was able to in fact provide all the services suggested in the ministerial guidelines or wasn't. I think it was Jill who was discussing the demerit point system and I just wanted to write down a question that I wanted to raise with the BSA tomorrow, Jill. You mentioned that a point can be taken away for a simple oversight like not providing - there was some certificate -

**Ms LEE** - A certificate for the frame, slab or footing - you are supposed to provide that when you send your invoice for progress payment.

**CHAIR** - To the client?

**Ms LEE** - Yes, and if your secretary forgets to send it or it didn't come from the engineer or what have you you can get a demerit point for that. So there are lots of little triggers for demerit points. I think that is ridiculous.

**Mr DEAN** - I am just writing that down. What does the demerit point do to you?

**Mr TEMBY** - It is like a driver's licence, if you accumulate enough demerit points over a period of time you can lose your licence.

**Mr DEAN** - But if you lose it now, today, you can get it back again in six months, three months, four months, the same as with a driver's licence or not?

**Mrs SMITH** - It was three years if you lose all your points, I thought -

**Mr TEMBY** - Something like that, yes.

**Mrs SMITH** - if the information we were given was true.

**Ms LEE** - To date I do not think we know of anyone that has lost their licence due to demerit points.

**Mr TEMBY** - The sorts of things that you would think would trigger an inquiry into somebody's capacity to have a licence isn't whether they have the knowledge to send out bits of paper - it is all about contractual stuff, it is not about the quality of the work. So

you can have the best contract administrator in your business and not get any demerit points but be constantly producing defective work.

**Ms FORREST** - No system is perfect obviously.

**Mr TEMBY** - No, because you are dealing with people, unfortunately.

**Mr WILKINSON** - Can you get a standard form of contract with the areas that have to be varied depending upon the type building, depending upon obviously peculiar differences in the building? Is there a way that the HIA or the MBA has a standard form of contract?

**Mr TEMBY** - Yes, we do and the BSA has one as well.

**Mr WILKINSON** - I think we have them in Tassie too, Paul, don't we?

**CHAIR** - Both MBA and HIA have their standard forms.

**Mr TEMBY** - Up here it is the Domestic Building Contracts Act that determines what you can do in a building contract. It is a very complex piece of legislation.

**Ms LEE** - It is; it needs revisiting.

**CHAIR** - Warwick, another matter that you mentioned that I want to pick up on if I could is that you indicated that a consumer can get an insurance policy, I presume a warranty policy, even if the builder does not pay for it. What is the system in default there?

**Mr TEMBY** - In Queensland if you have work done by a licensed person and it subsequently proves to be defective and the person is not there to do it and it ends up in an insurance claim, the BSA will pay the claim even if a premium was not paid.

**Ms FORREST** - Because the builder was accredited? Licensed sorry?

**Mr TEMBY** - Yes.

**CHAIR** - And then the BSA would presumably go after the builder for recovery if he was around?

**Mr TEMBY** - Yes. Typically if they are small amounts of money it is not worth the trouble to chase people.

**CHAIR** - My best recollection is that a similar default system operated in the original Tasmanian scheme and may have dropped through the cracks when we amended the legislation a couple of years ago.

**Mr TEMBY** - It has a moral hazard item to it. It's a bit like when governments provide support as they have done because of the cyclone to people in north Queensland who weren't insured does that encourage people not to insure but if you don't help them then politically you have a problem, so there is that same sort of issue with the BSA scheme because there is an awful lot of under-reporting of insurable building work where you don't need a building approval, whether it's a kitchen renovation or a bathroom or

whatever. There is a lot of under-reporting of insurance. I don't think they end up paying a lot of claims on that sort of work because you tend not to get a lot of claims in those smaller-value jobs in any event.

**CHAIR** - Is there a maximum exposure payout? I again go back to the Tasmanian scheme which was \$50 000 when it first started.

**Mr TEMBY** - Just two weeks ago it was increased from \$200 000 to \$400 000.

**CHAIR** - The ceiling on payout?

**Mr TEMBY** - Yes. It's \$200 000 -

**CHAIR** - You mentioned that earlier and I thought you were talking about something different.

**Mr TEMBY** - I was. I was talking about the calculation of the premium but associated with that there has been an increase in the maximum payout to \$400 000, \$200 000 of which is for defective work and \$200 000 of which is for incomplete work. They split the payouts so potentially you could get \$400 000. It's pretty unlikely but potentially you could.

**CHAIR** - Yes, because isn't it true that if the progress payment system is properly administered and properly monitored by the consumer then even if the builder dies, disappears or goes insolvent there ought not be too much exposure for the consumer -

**Mr TEMBY** - For incomplete work.

**CHAIR** - if the insurance company was satisfied at the outset when the builder made application for the policy that this 20 square house is going to cost \$400 000?

**Mr TEMBY** - Yes.

**CHAIR** - If he comes in and he says, 'I'm going to build this for \$100 000' the insurance company says, 'Ah, you're not going to get an insurance policy from us on that basis'.

**Mr TEMBY** - The private insurers behave that way. The BSA will just take the contract value at face value.

**CHAIR** - That seems to me to be an unreasonable approach, then, because -

**Ms LEE** - As long as the builder hasn't varied the progress payment schedule that has been recommended. Here it is mandatory and set down so that you don't overpay. But there have been contracts where a lot of them get 30 per cent up front and then do a runner. They've paid 30 per cent of \$100 000 - \$30 000 - to get this person to start, and then they have not even got anything.

**CHAIR** - Does your legislation control the maximum deposit?

**Ms LEE** - Yes - 5 per cent, but you can vary it.

**Mr TEMBY** - You can't vary the 5 per cent but you can vary the other stages if your consumer agrees.

**CHAIR** - So if the consumer pays 30 per cent on demand as a deposit, then the consumer is just the source of their own loss.

**Mr TEMBY** - Yes.

**Ms LEE** - Because at the end of the day the insurance will pay only 5 per cent.

**Mr TEMBY** - For loss of deposit.

**Ms LEE** - That's right. If you overpay the builder it won't come back to you in insurance.

**CHAIR** - Correct me if I am wrong, but it has always seemed to me that if the contract price reasonably reflects the size of the building, in a general marketplace, and if progress claims are reasonably set down, then the insurance companies aren't unreasonably exposed in the event of the builder going broke.

**Mr TEMBY** - And also in most States there's a cap on that cover, the non-completion cover equivalent to 20 per cent of the contract value as a further protection against fraud, more than anything else. In the early days of warranty insurance there were some notable cases of fraud where a developer and the builder were the same companies, essentially - or the same people, if not the same companies. They set up contracts between the two entities that they knew were going to fail in the expectation that the insurer would come in and finish them off, and then they would be able to be sold at a reasonable price. So there was the potential for fraud in some of that, too.

**Ms FORREST** - In Queensland, if you sign a contract to build a home for \$300 000 and the builder says he or she wants a deposit of 10 per cent prior to commencement, you shouldn't pay that.

**Mr TEMBY** - No.

**Ms FORREST** - How soon do they get their first payment, then? What is the payment schedule, because for a builder to engage his staff and get the materials, obviously it is a business management issue and a cash flow issue, though they should be able to manage that anyway. I am thinking that some of these guys are starting out and might not have a particularly good credit rating, and might not be able to afford \$20 000 worth of timber on an account. I don't know if that's possible or not, but what is the payment schedule that will make it unnecessary for them to have a 10 per cent to 20 per cent deposit?

**Ms LEE** - If it is a small job, under \$20 000, you can get 10 per cent deposit, but anything over \$20 000 you can only get 5 per cent, which is supposed to cover your preliminaries - the working drawings or engineering. The next progress payment is for the slab or floor, and you get 10 per cent at that stage. That is recommended by the HIA. Then the frame goes up, that is 15 per cent; enclosed is 35 per cent; pre-paint, 20 per cent; and the balance, I think 5 per cent, on completion. That has worked in the industry for quite a bit.

Sure, there is a period of adjustment for people in the beginning, and you will need some sort of overdraft or cash in your account to commence that project, but if you issue your progress payments on time and the consumer pays them on time, you should be able to cope.

**Mr TEMBY** - The reason that it has worked is that there is pretty much an industry-agreed schedule, but for the odd weird jobs you have the capacity to vary it if you need to. If you go up to the tablelands, to Toowoomba and west, they have very poor soil conditions up there, so to get to the slab stage you would typically be paying a whole lot more than 10 per cent. So up there it is widely accepted that you vary that bit, so there is the capacity to vary things, particularly if you are doing things like alterations and additions. Again, you might need a bit more up front if you are demolishing things. There is the capacity to vary it, but there's a fairly well known and well-used schedule that most people are happy with because they do not want to go through having to explain to their consumer why they want to vary it. Because the standard schedule has to be printed in the contract, as soon as you change it the red light should go on and say, 'Give me a reasonable explanation about why you are doing this.'

**Ms LEE** - You have to write the reason on the contract.

**Mr TEMBY** - Yes, you have got to write it on the contract, so it works pretty well.

**Ms FORREST** - Is this the case in Tasmania at all, do you know?

**CHAIR** - Yes.

**Mrs SMITH** - Nothing unusual about that. You do not pay a deposit on your car before they deliver it.

**CHAIR** - Warwick, you mentioned the Victorian system, particularly with regard CPD and that it is not compulsory but that it is a voluntary process and you get recognition on your licence for it. Are you aware as to whether that is nonetheless a fairly flimsy process anyway? As Jim noted, some CPD delivery is pretty flimsy. Are you aware of whether that is the case in Victoria, so in essence they are paying lip service to it, they get an extra tick on their licence, but they are really not undertaking any depth of professional development.

**Mr TEMBY** - I am not that close to it but my understanding is that because it is optional the people who do it want to do real things. They are not made to do it; they are doing it because they want to learn something. That is the other thing about optional CPD. You are much more able to tailor the CPD to what your needs are rather than what some regulator tells you they think your needs are, which is where New South Wales is - you have got to do this and this to do your CPD. For a lot of building companies a lot of those requirements would be irrelevant because they are already very good at doing contract administration but maybe did not know enough about IT stuff, so they wanted to focus their CPD on IT things. However, the regulator was saying everybody has got to do some stuff about contract administration, so the optional stuff also has the advantage of being much more flexible for that particular business' needs.



**Ms FORREST** - One of the issues I guess too that flows on from that is if a builder comes to the attention of an insurance company or the licensing body because of complaints, is there the capacity, then, if it is deemed that that is important, to instruct a particular builder to undertake CPD or further education to address that issue?

**Mr TEMBY** - Yes, I think it should be just like your driver's licence. One of the penalties you can be given when you get before the magistrate, if you have been so naughty with your licence, is they will send you off to an advanced driving course or they will send you off to work in a hospital where people are damaged by car accidents. They will do all sorts of things that the magistrate thinks is appropriate punishment or cure for that particular person. I think that is entirely appropriate, again so long as it is part of that transparent licence review process and that people will know that that is one of the options that might come out of it.

**Ms FORREST** - So it comes down to this discretion of the tribunal or the licensing board or whoever to make a decision. It is not a blanket approach so that anyone who has three black marks against their name will have to do this. It is an individual approach.

**Mr TEMBY** - I think once you get to that sort of level it is a judgment call which is why so much of this stuff ends up in the courts. You cannot prescribe for exactly every circumstance that might arise and what the appropriate punishment or remedy might be.

**CHAIR** - A thought occurred to me members when we were having that discussion with Warwick and Jill just now about CPD. I have been onto the Director of Building Control's web site and I printed up the CPD which they expect would apply to the building category. I wonder if Warwick and Jill would be able to give us a critique of that. I, for one, would appreciate that if we are going to make some recommendations to our government through this report as to what we think is a reasonable process.

**Mr TEMBY** - Right this minute, you mean?

**CHAIR** - No, no. Take that if you have some officers, Warwick, who might do that. Is that a reasonable thing to ask you?

**Mr TEMBY** - We would be very happy to do that. We had a lot of debate around the Victorian criteria because they were the benchmark that was used for the Tasmanian accreditation scheme.

**CHAIR** - It may be that this committee doesn't recommend that there be undue bureaucratic input into our registration system, whatever this may be, so anything you can provide for us in advice there we would be grateful.

**Mr TEMBY** - Yes, we are happy to do that.

**Mr DEAN** - It seems to me when we look at this whole thing that the licensing of our builders has too much red tape. There is so much involved in the whole damn thing that there has to be a way of simplifying it and still getting the same sort of return out of it. Jim's model over here, when he started categorising them all, and those in renovations as opposed to builders et cetera, it just seems to me that the whole system is wrong. Do you wish to make a comment on that?

**Mr TEMBY** - I think I will just go back to where I started. If you are licensing people who are doing insurable work, the licensing system can be quite simple. It is a technical qualification, which these days is tending to include managerial skills as well. There should also be a check on people's criminal records, bankruptcy records, an ACCC kind of check that they are fit and proper people. The BSA does that part of the process pretty well.

**Mr DEAN** - I guess one of the reasons I make that comment is that you have Howard and the Federal Government articulating that we have too much red tape, we need to get rid of heaps of it, we need to go back to the basics on a lot of it and we need to make it more user friendly.

**Mrs SMITH** - Returning to federalism, where we will have one system for everything and then we won't need ourselves.

**Mr TEMBY** - There is work going on at the moment trying to rationalise the licensing arrangements for builders, carpenters and a few other trades all around the State.

**Mr DEAN** - There ought to be a national scheme, I suppose, because a builder ought to be able to move from State to State. Portability is the name of the game.

**Mr TEMBY** - Very much so.

**Mr DEAN** - We ought to be going down that track.

**Ms FORREST** - There are two ways to look at it. There is a national scheme and a national recognition of the States' qualifications. There needs to be some consistency in that but it does not mean you have to have a national body.

**Mr TEMBY** - Again, it is like drivers' licences; there is no national body that licenses people to drive.

**Ms FORREST** - But I can still drive over here.

**Mr TEMBY** - Exactly. There is mutual recognition of your Tasmanian licence wherever you drive.

**Ms FORREST** - There needs to be a certain expectation and set of qualifications.

**Mr TEMBY** - I get back to my other slightly flippant suggestion about outsourcing this to the Victorians. Politically it might not be attractive to you but they have the IT infrastructure, process, systems and everything else in place.

**Mr DEAN** - Builders come to us - and one builder in particular, whom we all know - and say that not only do they have the licensing fees and satisfying all the insurance requirements, but then they have to licence their nail gun et cetera. They can give you a long list of all the licences and registrations they have to have.

**Mrs SMITH** - Not only builders; that is business. It may be wrong but every business is caught in that loop.

**Mr DEAN** - But builders probably more so than anybody else.

**Ms FORREST** - It is very hard to get away from that. It's for protection of the consumer as well as the worker.

**Ms LEE** - I was about to say that if that was all we had to deal with, then that is the easy bit. Workplace health and safety I think is the worst problem, but that is for everybody. The other big problem we have is the tweaking of the nobs on the Building Code of Australia. We fight all the time. We fought for two years over a wet area standard. It was just horrendous and that is just one standard of the building code. Next thing we find, 'You did that last week but you can't do that any more, you have to do something else'. It adds to the cost of everything. Energy efficiency, sustainable housing, town planning - it is just a huge ball of regulation that we have. If you opened up a shop they are not telling you to have *x, y, z* biscuits and not have others on the shelf.

**Mr DEAN** - That makes my position even stronger, that we ought to be looking at a simplified way of progressing this and going down that track. That would be my suggestion to our committee if we are going to make a recommendation to our Government.

**Mr TEMBY** - The other plea I would make, too, is if you introduce a new system. I am not sure what the opposite of sunset provisions are in legislation, they could be sunrise provisions. You should have a sunrise provision in your legislation that says, 'We won't touch this for five years. We want it to settle down. We want everybody to understand it. We want everybody to be able to work with it rather than just keep fiddling with the dials'.

**Ms FORREST** - You need to give something a chance to prove itself.

**Mr TEMBY** - But it will not be perfect and everybody knows that.

**Mr DEAN** - No, it won't.

**Mrs SMITH** - But wouldn't you accept that in any new system usually the first people who say, 'This does not work and we need to change it' is the industry, because they working with it and 18 months down the track they have found we were all wrong and we need to fix it.

**Mr TEMBY** - Possibly.

**Mrs SMITH** - If you put something in that you cannot touch that could be very dangerous.

**Mr TEMBY** - It could be but I think the principle is that you should be saving up these sorts of changes for a major review every five years rather than constant changes. As Jill says, it is not just this one; it is all of the other overlays on top of these things which have made the file for an average contract house now so thick, whereas 15 years ago it was thinner.

**Ms LEE** - To me, as I said, this is the easy part for a builder. Energy efficiency in your State must be horrendous; we are better off up here. Sustainable construction is a big agenda for us and to comply with.

**Ms FORREST** - We don't have termites, though.

**Ms LEE** - No, termites is another thing.

**Mr TEMBY** - Would you like some?

**Ms FORREST** - No, we are quite happy without them.

**Mr DEAN** - If you live in some places you do have water.

**Ms LEE** - Yes, all of that.

**CHAIR** - Warwick, can I come back to the comments that you have made a couple of times along the way regarding assessment for licensing. You said that it has to be simple but a major component is technical capacity. Is AQF4 going above the bar with regard that notion of technical capacity?

**Mr TEMBY** - The model of further licensing that the COAG process put in place, that they were looking at harmonising across the States, was very much based on the system here where there are three grades of licence: there is a low-rise builder licence, a medium-rise builder licence and an open licence. The low-rise builder licence, unlike a lot of other States, which I think would be appropriate in Tasmania as well, covers low-rise commercial building up to a certain point as well as domestic, because people in regional areas and smaller places like Tasmania need to be able to do all sorts of building. Technically there is not a lot of difference between building a house and building a kindergarten or something that does not happen to be a house. The low-rise builder licence up here is something less than a certificate IV. My recollection is that there are 24 or 25 competencies in a certificate for a house-builder course. Up here if you do 18 of them that is enough to get this low-rise licence. Buildings are not falling down all over the place up here just because we do not have a certificate IV so I agree that it is probably not necessary, although as part of this national consistency they are thinking about moving it up to the complete certificate IV.

**CHAIR** - My assessment over the years across the nation - and I would appreciate your views as to whether I am right - is that to a large extent in Tasmania a residential builder essentially does the lot, from slab through to fit-out. Over the years in most other States there seems to have been some differentiation of that, and the builder, the controller of the job, will get in a framer, then maybe a roof-framing expert and then maybe a fit-out carpenter. It has been said to me that because they are multiskilled - and that's the way it is; they tend to do the whole lot simply because they want control of the job from start to finish - builders from Tasmania wanting to transfer elsewhere in Australia would have no trouble getting a job. If that is the case, what other assessment do we need to undertake to license builders in Tasmania and to look at their technical capacity when they finish their apprenticeship? Do they have that technical capacity as long as they have some moderate level of financial backing, or are we leaving too many barriers in their way?

**Mr TEMBY** - Absolutely. As I was saying earlier, I think it should be the technical skills and the fit-and-proper-person thing - the failed director, all those sorts of things. Other than that, I think you can leave the financial stuff to the private sector where it belongs and with the insurers because it is competitive. One of the rigidities in the financial requirements up here is that, irrespective of what style of building you do, the financial requirements are the same.

A case in point is that if you are a contract builder, if it doesn't rain and everything is scheduled well, you can build a house quite successfully with no money because you are using the client's money and the bank's money all the way through. If you are a spec builder, you need some financial backing to pay for the thing while it's being built and before it's sold. The financial requirements up here aren't that sophisticated. The private sector insurers tend to be a bit more sophisticated about how they analyse people's finances.

With the South Australian licensing system there are no financial requirements at all. They took them out of that system about five years ago and they've left that to the insurance industry to worry about.

Essentially it is a commercial judgment; it is difficult for governments to be prescriptive about those sorts of things that are essentially commercial judgments.

**CHAIR** - Just finally, I come back to the integrated process here involving warranty insurance. You say that it ought to be in the private sector because competition will be introduced, but I cast my mind back to the collapse of HIH and in Tasmania, at least, that left no access to warranty insurance because the MBA, I think, had HIH as its warranty provider.

**Mr TEMBY** - That's right.

**CHAIR** - When it collapsed there was nobody else other than the HIA's warranty provider and that created some political difficulty -

**Mr TEMBY** - We don't have any monopolies, whether they're private or public.

**CHAIR** - Is there sufficient interest out there in the private sector for there to be competition if it was taken out of a monopoly situation here in Queensland? My experience tells me that's been one of the difficulties around Australia over the years that, even in a legislative environment like Tasmania had, there were only two insurers ever coming out of the woodwork to offer home warranty insurance. One is the MBA and one is the HIA. Outside that, nobody is interested. Is there sufficient interest to provide competition?

**Mr TEMBY** - In Queensland there would be for sure.

**CHAIR** - We need to have a think about that.

**Mr TEMBY** - There are already three private sector insurers backing the BSA scheme.

**CHAIR** - So that I can be absolutely clear: you would promote, from what you've said, a move away from a warranty scheme of first resort to something different?

**Mr TEMBY** - We've submitted to a recent regulation impact statement on the premium increases that happened with the BSA. They should move to a last-resort scheme. We have already made that submission to government.

**CHAIR** - But surely then if the home warranty was operating in the private sector is not the scheme of first resort the best stick for the insurer to use to get a builder to come back and fix. Once they have determined that he is in the wrong, he initially thumbs his nose, the insurer gets a private inspector to make an assessment; he determines that it is the builder and says, 'Get back here.' That is a scheme of first resort as I best understand it. If he does not then the insurer still has to pay out because the insurer company is left exposed. If you are going to get the warranty insurance into the private sector is not the scheme of first resort the best stick for the insurer to use against the builder so that then if he still rejects or resists, then he gets no more insurance.

**Mr TEMBY** - The problem for the insurers is about the cost of running a first-resort system because you essentially become the dispute resolution body as well. The cost of the insurance that you need to be able to fund that infrastructure puts your warranty premiums at a politically unacceptable level which is where I think we are heading here.

**Ms LEE** - Definitely.

**Mr TEMBY** - The insurers are much more comfortable with a last-resort scheme in that it is black and white about when there is an insurance trigger. The contract is dead, which is black and white. They are insolvent, which is black and white. Normally this appears reasonably black and white as well.

**CHAIR** - And you are suggesting to us that the premiums under that scenario are at least somewhat affordable?

**Mr TEMBY** - Much more affordable. The Western Australian and the South Australian markets have had the longest exposure. They have always had last-resort schemes; they have never had a first-resort scheme. The premiums there are a third of what they are here.

**CHAIR** - And yet is it not true that most disputes arise during the progress of the building rather than that the builder has died, disappeared or gone broke?

**Mr TEMBY** - None of the disputes that the BSA deals with are during construction because they will not deal with them. They will come here.

**Mrs SMITH** - But most of those have not disappeared, gone broke or died. It is at the completion of the building. There would be more of that than there would have been broke or dead?

**Ms LEE** - That is right. They end up in dispute.

**CHAIR** - This suggests to me that the last resort is people paying out money for old rope.

**Mr TEMBY** - No, the last resort does exactly what it is designed to do. Death and disappearance are really not a major problem. The problem is builders going broke while the houses are being built. It fixes that problem and it fixes it relatively economically and quite efficiently. Our view is that a much more cost effective way of fixing the defective work problem is through better dispute resolution systems than through first-resort insurance.

**CHAIR** - That is the key issue; it is very clear, thank you.

**Ms FORREST** - So not an insurance, a dispute resolution and process that allows the tribunal to make a decision that is enforceable?

**Mr TEMBY** - Yes. At the back of that process you have still got the last-resort insurance in the event that you get to the tribunal and the tribunal says, 'Builder, you owe this person \$10 000,' and they do not have the \$10 000 then the consumer -

**Ms FORREST** - Then they are insolvent.

**Mr TEMBY** - Then they are insolvent and that would trigger an insurance claim.

**Ms LEE** - That is right, but with the first-resort insurance, it is always in the back of the mind of the consumer that they do not have to agree and the insurance will kick in anyway.

**Ms FORREST** - It can be abused, you say?

**Ms LEE** - That is right and I really think it is better if you can bring both parties to a table and make sure that they are in a position where they must try to get some agreement.

**CHAIR** - That is fantastic, thank you. You have been very generous with your time. You have given us at least 25 minutes more than we scheduled. Thank you very much.

**THE WITNESSES WITHDREW.**