

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN THE COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON TUESDAY 24 OCTOBER 2006.**

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**Mr RICHARD BEVAN**, BPACT AND ENGINEERS AUSTRALIA WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED, AND **Mr GEOFF HARPER** AND **Mr TIM PENNY** WERE RECALLED AND FURTHER EXAMINED.

**CHAIR** (Mr Harriss) - Geoff and Tim know that we like to keep these hearings completely informal, so likewise the invitation to you, Richard. Of course, we are picking up from evidence provided to the committee a few months ago now, so Geoff, if you would like to lead off for us. If you recall from last time, there was a range of questions which we had framed in our minds that we wanted at least give some thought to at some stage. We ran out of time back then. We have a more relaxed environment today to pursue some of those issues. Is there anything you want to pick up to start proceedings or do you want us to just go with those questions?

**Mr HARPER** - I think we would be quite happy just to go to your questions. We have outlined previously where we stand and where we would like to go to in the future. I am quite happy to accept any questions.

**CHAIR** - Can I just start with the matter of where to go to in the future. We were addressing our minds to that matter at the conclusion last time. Jim Wilkinson was asking some questions as to if you were able to put in place a model to go forward, what would it be. Dan O'Toole indicated that there were models available elsewhere, and if we are going to have a reasonable licensing system going forward then your national policy statement addresses some of those issues. I know we had discussed the matter with you dealing with the architects, that architects registration ought to be accepted as simply a complying component to be an accredited or a licensed architect, if you wish. There may be something more you need to expand on on that. We will go to those matters of the national policy statement Dan O'Toole referred to, with which we concluded our last round of hearings.

**Mr HARPER** - I think we left you with a copy of the document.

**CHAIR** - You did, yes.

**Mr HARPER** - I suppose one of the major things we believe is that if we are going to accredit people, to keep the systems fairly simple, it is silly to accredit people under multiple acts. So there could be a single point of reference to accredit engineers or architects, whether that be under the Architects Act. As there is now, there seems to be a bit of duplication with an architects act and the Building Act, and then potentially the professional standards act that is going to come in. Similarly with engineers there is a national system available for registration of engineers and to once again put them in a building act, we are duplicating things which can only lead to complications for the consumer and we think that from a consumer's point of view there should be a clear process they need to follow if they have a dispute or a problem with persons accredited.

At the moment I think there is a lot of courses of action they could take but a lot of consumers are not sure where to go.

**Mr WILKINSON** - There would be a couple of scenarios here: one, you leave the engineers and architects out completely because they are already to some degree licensed as a result of going through university and coming out with the normal qualifications, as everybody does; or, two, you still link them into the system but have the, whatever you call it - let us say BSA, like it is in Queensland - immediately accept the expertise if given the tick off on the engineers or the architects. In other words, do you keep them in the link or are they completely separate?

**Mr HARPER** - In the current systems for engineers and architects, there is not a requirement for professional development or insurance so they would need to be covered somewhere - whether that is by strengthening the architects act, for example, or some other means. The architects act definitely sets out a method of making sure people are competent and also has disciplinary procedures in it so that is part of the duplication where you seem to have it twice in two different acts, or potentially three, with the professional standards act. With one single model of saying yes, under the Building Act, they will still need to be accredited but they will be deemed to comply if they have met the criteria under the architects act or the Engineers Register. I think that is similar to what is in Queensland and also Victoria.

**Mr WILKINSON** - So you are saying that to be accredited, you are still under the umbrella of the BSA but if there is a problem in relation to work carried out, let the architects disciplinary body look at that as opposed to the body encompassed by the BSA?

**Mr HARPER** - Those are the two models you come down to. Sometimes a consumer may have a difficulty knowing which building practitioners could create the problem. There may be one central place to look at all those complaints. That could be a better model.

**Mr WILKINSON** - What would be the best? A central place?

**Mr HARPER** - A central place for this procedure would be better.

**Ms FORREST** - Are you suggesting that there be a separate body then for the accreditation or the licensing side of it, and another for the dispute resolution conflict management, all that sort of stuff? The insurance obviously falls in there too. Should they all be under the same umbrella or should they be separated in some way?

**Mr HARPER** - I think separation. Under the architects act we have at the moment, that is part of the national system of architects acts throughout the country and there is a body called the Architects Accreditation Council of Australia the prime purpose of which is to ensure that the requirements to be registered anywhere in Australia are as similar as possible and therefore that facilitates people being able to move around and gain mutual recognition. The professions should set the standards of competence, because they also affect the schools and accredit the people once they have come out and done the architectural practice exam after that. The professionals can set the standards for that very well, but possibly it is preferable for the disciplinary procedures to be at arms length - that would work better.

**Ms FORREST** - This organisation - I cannot remember what you called it, sorry?

**Mr HARPER** - The Architects Accreditation Council of Australia?

**Ms FORREST** - That is it. Do they accredit all the training courses as well, the university courses to ensure that there is a consistency there as well?

**Mr HARPER** - Yes. And similarly Engineers Australia does the same for engineering courses. I have just been to the University of Southern Queensland doing an accreditation visit.

**Ms FORREST** - All levels of engineering? I think there are more divisions in engineering than in architecture.

**Mr BEVAN** - Certainly all professional engineering and indeed we are currently looking at perhaps extending that into TAFE and engineering technologists, but at the moment it is a requirement of professional engineers.

**Ms THORP** - My understanding was that you were spokesperson for a group that formed back in 2002.

**Mr HARPER** - BPACT.

**Ms THORP** - Yes. And at that time it was advocating only one body to represent everybody.

**Mr HARPER** - That was the Joint Industry Council.

**Ms THORP** - That is what I am talking about. You refer in the notes that you have given us to a memorandum of understanding that was signed by 13 industry groups. Do we have a copy of that?

**Ms FORREST** - We do.

**Ms THORP** - That included the airconditioning industry, Institute of Building, Institute of Building Surveyors et cetera. That application did not go ahead.

**Mr HARPER** - It got taken over in time because all the parties to that joint industry group agreed with moving forward with the Consumer Affairs application. When that became a possibility Consumer Affairs was already set up to handle the complaints and things of that nature and we saw that that was a very good model within government to handle all the accreditations. All the industry groups were willing to provide their expertise with accrediting people to facilitate the model within Consumer Affairs.

**Ms THORP** - But after the TCC was formed, BPACT came along and said, 'Now we want to split off the engineers, architects, building surveyors and others'.

**Mr PENNY** - There was also a little bit of other water under the bridge in that there was also a diversion from the memorandum of understanding about the Australian qualification framework. That really was the framework that underpinned how you assess building

practitioners competency. That, combined with losing the Consumer Affairs complaints mechanism, the joint industry group submission fell apart with various parties choosing to go their own way. When that had then progressed, both architects and engineers had got together in a broad sense. We said, 'Okay. As professionals under the Building Act, it is relatively easy for us to demonstrate competencies in relation to the things that we have talked about'. We realised as a business model it made sense to get together as an accrediting group, if you like, in relation to the Building Act just for the professional group, mindful of the fact that we could deliver value for money within the expertise we had.

**Ms THORP** - At that point a scheme was developed, which was then submitted and found to be compliant?

**Mr HARPER** - Correct.

**Ms THORP** - But the minister had concerns about other issues and went back to you about those concerns. On the advice of, I think, the National Competition Council and others, he decided to reject your application?

**Mr HARPER** - It wasn't quite advice from them; it referred to an internal discussion paper from the ACCC. We didn't actually go and seek direct advice. It was just pulling up an internal paper that they had available at the time.

**Ms THORP** - Do you refute the reasons the minister used to knock back your scheme?

**Mr HARPER** - Yes.

**Mr PENNY** - Can I just paraphrase those a little bit, if I may? I think it is worth going back to his correspondence received on 23 March. One of the dot points that he related to was 'an ability to shop between authorised bodies to achieve the lowest requirements'. That does not make sense, if you think about, does it? It is not our responsibility. We have an act to comply with so of course we are going to have the minimum requirements. 'Inconsistent requirements between authorised bodies'. Again, we had demonstrated our compliance. The issue of an alternative authorising body is not our responsibility. 'Conflicts of interest between membership and discipline'. We had again chosen a model that drew on our professional expertise and is a model that is accepted by government through, for instance, the architects act. Again, we had a model that we thought was acceptable to government and it was based on their current legislation. The architects act has been in effect since 1929.

**Mr WILKINSON** - You would probably argue there is a conflict of interest with the TCC doing the discipline as well.

**Mr PENNY** - Correct.

**Mr HARPER** - That is why in DPAC's model they had all the complaints being handled by Consumer Affairs.

**Mr PENNY** - Another point was 'multiple points of complaints and discipline'. That seemed to me that they did not fully understand the fact that they have a board of architects

which has a separate complaints mechanism, so you in fact had that duality existing. We were trying to pull that together under the one authorising body that linked back to the board of architects. Inconsistency of investigating and audit and outcome was again something that we had consciously tried to link back to Consumer Affairs because that was an independent professional organisation with that expertise and had public recognition about the capability to deliver.

Potential for conflicting decisions to be referred by the Director of Building Control; if you go back to the TCC's model, they had that as a fallback if ultimately all dispute resolution failed. It was a point of control, so again we did not understand why that was something that was acceptable to the TCC but unacceptable to BPACT.

Differing standards to determine competence; again that underpinned our belief that our submission was not taken seriously because of course competence for building professionals, architects and engineers is easy to demonstrate - through all the things that we have talked about.

Contrary to best practice, consistency, transparency and the like; we had a fully developed national code of conduct that was developed in association with Engineers Australia as well as the Royal Australian Institute of Architects. That was a nationally and also internationally recognised framework with affiliated bodies like the Union of International Architects of America. Again, we did not understand why that was not acceptable, because it is national and best practice. Regarding general experience that tied bodies are not perceived to provide competent and unbiased review of members' performance, we believe we had the expertise and could deliver.

**Ms THORP** - So you had an opportunity to respond to that letter?

**Mr PENNY** - In detail.

**Ms THORP** - And you did in detail?

**Mr PENNY** - Yes.

**Ms THORP** - At that point it was not accepted?

**Mr PENNY** - Correct.

**Ms THORP** - Were you given reasons for that?

**Mr PENNY** - Yes.

**Ms THORP** - Any document?

**Mr HARPER** - The final document, statement of reasons, I think was around about the middle of May. It gave three points that Tim has just mentioned, three reasons at the end which were basically concern about the TCC's viability, lack of transparency and -

**Mr PENNY** - The other was like professionals judging similar professionals.

**Mr BEVAN** - Certainly during that time our view was that the Government was perhaps a bit gun shy given the recent events that had happened, especially in the legal profession. There was the issue where you have the fox and the fowl house-type arrangement, about whether there is lack of independence. We were very confident that our submission, in the construct of the board, had the appropriate degree of independence. That seemed to be the recurring theme from the Government, this lack of independence.

**Mr HARPER** - The letter of 15 June was the final response when we got the reasons.

**Ms THORP** - Okay. Leading up to that period are you aware whether or not the minister consulted other groups as to whether or not they should allow a second accrediting body?

**Mr HARPER** - Yes, he had a builders' group meeting, which we were never invited to attend - neither engineers nor architects - even though we had some concerns about the implementation. We were told that that group was only dealing with builder-related matters. We became aware that one of the minister's advisers asked that group meeting in about the middle of May - which I think we have given a copy of - for their impression of what the outcome would be if BPACT are allowed to be accredited. At that meeting TCC representatives were present and they were asked their opinion also.

**Ms THORP** - Did they give it?

**Mr HARPER** - They sort of indicated that they should not comment but then went ahead and commented. It was the meeting of 5 May, which I think we have given you a copy of. It was builders' meeting number eight, and Tasmanian Compliance Corporation, Master Builders Tasmania, Master Builders Association Northern Tasmania and the HIA were all asked to comment. HIA were the only one who did not comment. All the others provided comment.

**Mrs SMITH** - If I might follow that line, on 10 May the department was already writing to their own who had to get accreditation, like Transend, saying, 'TCC are it, you will have to accredit, this is the process you must go through'. Is that correct?

**Mr HARPER** - That is correct. In the paper around about 7 April, I believe, there were public advertisements saying that.

**Mr BEVAN** - From our point of view, we ended up in this hiatus from early in that year. The act was coming into force on 1 July and we needed to know whether we were in business or not, and therefore we were applying pressure to get an answer. I had a meeting with the minister and his advisers and we were given a commitment that a decision would be made. The CEO of Transend and I received that letter almost within days, hence my e-mail to the Director of Building Control saying you are not taking this seriously or you have made a decision and you haven't been prepared to tell us about or you are acting unconscionably or incompetently. I certainly stand by those comments.

I think that then goes further, after the event of us not being accredited. We then in fact challenged the decision through the courts. Indeed, if the minister had in mind that he was never going to accredit someone else, then to let us go to that extent and spend nearly \$50 000 quite frankly would be unconscionable behaviour. So I think that is an issue as well, that they were going to string us along. Future events indicated that the act

provided for alternative authorised bodies to be set up. In fact, I understand the architects act was specifically changed to facilitate and to become -

**Ms THORP** - But until a decision was made about BPACT, it is quite legitimate to say the TCC were the only body, weren't they, because they were the only accrediting body at the time.

**Mr BEVAN** - At that time, yes.

**Mr HARPER** - But we were also told when we put in our submission in late January to anticipate a decision within 14 days. We had an expectation that by mid-February we would be aware whether we had been accredited or not. Therefore we would have three or four months to get in to organise ourselves so we could be in practice by 1 July when the act was going to be implemented. By that time, at the end of January, we had been advised by the department that our submission met all the requirements of the act and it was only a matter of putting the process through the minister's office.

**CHAIR** - Just on that point, if I can get the chronology right, isn't it true that in those early days you were dealing with Jim Cox as the minister? Can you then advise the committee what the process was, in your dealings with Jim Cox, and then the transition to Bryan Green - some dates which are relevant there.

**Mr HARPER** - We put in our draft submission towards the end of the November in 2003, and that was the process that was recommended by Government. They said, 'Don't put a full blown submission in. Get it fairly well developed, then come and talk to us so we can make sure it will meet the requirements of the act'. They indicated that that was the same process they went through with the Tasmanian Compliance Corporation. So we were encouraged to do that. We did that and by the end of December we had our complete submission ready and submitted to the Government. In December of that year, Jim Cox also had given us a verbal indication that once it was a fully compliant solution he was prepared to sign off our application. In about the middle of January, the department came back with a few things that they wanted to clarify. They asked us for our due diligence report, which we completed and submitted to them. By the end of January they said it now met all the requirements of the act and they were prepared to submit it to the minister's office, Jim Cox, for signature and approval. They indicated that that would take about two weeks. At that time there was a Cabinet reshuffle and they were changing ministerial responsibilities.

**Ms THORP** - February, and then in March you received a letter from the minister saying -

**Mr HARPER** - The new minister, yes.

**Ms THORP** - that he had received your application, your scheme, it has been checked out, it is compliant but we have concerns, to which you responded?

**Mr HARPER** - Correct.

**Ms THORP** - To which he came back and said, 'We're still not happy', and then in early May he gave you a rejection.

**Mr HARPER** - Correct.

**Ms THORP** - You could not really describe that as inactivity over that short period of time, could you?

**Mr HARPER** - Well, it was taking a long time between getting one piece of advice and responding, answering all the questions that had arisen. We also had some meetings with the department in the meantime. They went through all the situations and we believed we had covered everything that they raised. We were just waiting for a time. It was the middle of May before we got a response and we were meant to be operating - to accredit people - by 1 July, which would not have given us very much time to do anything.

**Ms THORP** - No, which meant that the TCC was required to do it because it was the only accredited body?

**Mr BEVAN** - The reality was that we could not get ourselves effectively operating in the business in time for 1 July. It meant that we would have lost a year because all the builders and professionals would have had to be compliant to be able to continue their trade. They would have had to be registered with an accredited body, of which there was only one by 1 July.

**Ms THORP** - And should you not have lost the year those people would have had the option -

**Mr HARPER** - Absolutely.

**Ms THORP** - to come back to you after that 12-month period. Theoretically we could have lost this whole group of people out of the TCC model over to a separate group. It sounds to me from the different things you have said that there was concern amongst the Master Builders and the Master Builders northern branch that if that were the case it would effect the viability of either or both of the accreditation schemes.

**Mr HARPER** - That was their opinion; we did not believe that was going to be the case. I believe the TCC model put forward was based on 750 accreditations. The original RIS talked about 1 270, but that included plumbers who were later excluded. There were only 100 plumbers, so that should have still left about 1 170 people for accreditation. We anticipated there would have been somewhere between 200 and 300 engineers or architects. If you took them off the 1 170 that still left it above the number the TCC had based all their things on, which was 750. We now know that there are more like 2 500 to 3 000 accreditations.

**Ms THORP** - So you don't agree with that argument that it would make them financially unviable?

**Mr HARPER** - Definitely not. In fact when we were seeking information, we did an FOI and asked for the information that the minister had relied on to make his decision, but no financial information was ever provided.

**Ms THORP** - Okay, thanks.



**CHAIR** - Just on that matter then, Geoff, you pursued an FOI?

**Mr HARPER** - Correct.

**CHAIR** - Do I then understand that you have said that, based on the information flowing from that FOI, there was no financial analysis?

**Mr HARPER** - We weren't provided with any.

**CHAIR** - Based on that is it true that you are dissatisfied with the minister's letter to you indicating that the financial viability of the TCC might have been challenged if in fact your organisation was to be accredited?

**Mr HARPER** - We were dissatisfied with all three reasons, for the reasons that we have outlined in our letters to them. In fact we asked to meet with him. That was declined and after a while we were informed that he would only meet with us if we took away the threat of taking any further legal action.

**CHAIR** - Sorry? He would only meet with you -

**Mr HARPER** - If we withdrew. At that stage we had lodged a request under the Judicial Review Act because of the time scale - it was only a very short time scale. At the same time we asked him to review his decision to refuse our application. He then came back to us some time later and said he was going to standby his decision. We then asked for his reasons under the Judicial Review Act. At that stage we had tried to meet with him to discuss it face to face but could not get to meet with him. Then we were advised that he would not meet unless we withdrew any potential action under the Judicial Review Act.

**Mrs SMITH** - Have you something in writing or can you give us a name who gave you that advice? Evidently it was not the minister. You said, 'We were advised that he would not meet with us'.

**Mr HARPER** - I think I could probably go back and find an e-mail that indicates that I guess would have been through John Dowling.

**Mrs SMITH** - Thank you. I think that it is important that you attempt to do that if there is an indication that the minister won't meet with someone unless a particular action is withdrawn. That can be tested. There may be legal reasons why it is not appropriate once something has started and I think we need to test that both ways.

**CHAIR** - If you could do that for us please, Geoff, and forward that to Sue McLeod because that seems, as Sue Smith has just said, an important link in the whole process here, an important document.

Taking up some points that Lin has raised with you and Richard's comment about the commercial reality that, if you were not in the field before 1 July, you would lose that year because anybody who needed to be accredited would have to be accredited by the

only other organisation, TCC. Did you accept that as a commercial reality - if you did not get your house in order before that date, then you had lost a window of opportunity?

**Mr BEVAN** - Very much so. In fact we had architects and engineers who were well aware of what we were doing through BPACT and asking, 'What are my options here? I need to continue in business after 1 July, I need to be accredited. Are you in business or not, or do we have to go to the TCC?' So we were being inundated with requests for confirmation from our members, right through from that period, early in 2004 and, as I said before, we ended up in this hiatus where we did not know what was going on and we were trying to get action. We finally met with the minister in very early May and the commitment was given to provide an answer by 10 or 12 May. That was very much the reality for us. I think it has been the base issue for us. We are fully supportive of appropriate accreditation of ourselves in the industry and we are not trying to shy away from that. But we need to remember the original objective - to protect customers at the least possible cost. We thought, when we saw the fee structures that were being proposed, that we could provide that service to the community in relation to who were professionals at a significantly lower cost, linking into already nationally and internationally-accredited competency assessment procedures without watering down -

**Ms THORP** - But you did move from your original position of one body to do all the accrediting?

**Mr BEVAN** - Provided it was a government body. That is a very important point -

**Mr HARPER** - Based on competency.

**Mr BEVAN** - In fact, where we are currently at now, with this arrangement being resumed under government control, that is effectively where we were quite a few years ago and we were very supportive of the joint industry body, provided it was done and managed under Consumer Affairs. But then, the two issues that made a significant difference were: first, a decision was made to put it to private enterprise and in our view, private enterprise was already open to competition; and second - and Tim touched on this - we were concerned because we were starting to see what we believed to be a watering down of the assessment of competency. So we said, 'We are not happy with that'. To reinforce my first point, we are very strongly of view that appropriate accreditation of competency needs to be there. So that was when we decided that if it were to be private sector, we had an obligation to the industry and to the consumers as well as to our own professionals, to pursue a second -

**Ms FORREST** - Your concerns then were that the accreditation processes undertaken by TCC did not have the expertise to fully assess the qualifications, competence and the requirements that you would see as important to register an architect or an engineer. Is that what you are saying?

**Mr BEVAN** - No, I am back in history before that. This was at the time when there was discussions around the table - and Geoff might like to make further comment - about the original proposal with joint industry arrangements set up under Consumer Affairs, effectively. Then, we were a bit concerned that we were starting to see some dilution of what were going to be the appropriate levels of accreditation.

**Ms FORREST** - So you saw the way forward in that was to have the professional bodies of these groups undertaking that role to ensure that high standard was met?

**Mr BEVAN** - Even under the original, single government-owned arrangements, that was our view, which still remains our view, notwithstanding. There were a couple of different models which we talked about earlier in this hearing, about levels of coregulation and whether you have the accreditation and the dispute management under one body or whether you have the accreditation under one body, but the dispute management under a separate body. So our position has been very consistent all the way through.

**Ms THORP** - So, am I misreading your letter of 8 August 2002 in which you say, 'Discussions between the organisations who received your letter.' - that is, to a formerly authorised body and this is to Mr Robert Pearce - 'have led to the concept of recommending to your single, authorised body and the formation of a joint industry group comprising representation from the Tasmanian branch or chapter of the following organisations - the engineers, architects et cetera. There is no mention in this letter of Consumer Affairs. That sounds like you guys wanted to run it yourselves, as one group.

**Mr HARPER** - We were going to be an organisation that was going to have representation from all those groups, plus consumers and the department - anybody we could get involved to try to broaden it as much as possible because at that stage government had indicated that it was not interested in running the accreditation system but they wanted co-regulatory model with the industry groups putting up the competencies for people to be assessed against. The whole criteria for the memorandum of understanding talks about an accreditation scheme based on the AQF framework of national competencies and benchmarks. The only criterion that we were ever going to use - that means engineers and architects - was to go through the university courses and then undertake practice for two or three years and have it assessed, then have another exam before we said they were competence to practise. They are the sorts of criteria that we expect everybody to go through and have a competency-based assessment before they are allowed to operate independently and deal with the public. That way we believed the consumer could be confident about the type of person they were dealing with. That was the reason the MOU was there when the Joint Industry Council was formed.

As time went on and the TCC came into being, they put forward a proposal that they were going to accredit people based on providing two or three completion certificates for the type of work they were undertaking in the building area. That is where we objected to that sort of criterion because it was not based on an individual's competence. For example, almost anybody who has built two or three pergolas or decks could go to the council and say, 'I've got completion certificates. I'm going to become a builder'. That is not a test of competence. There is a letter that was written to the minister, signed by me on behalf of a group of people, stating that that sort of criterion for assessment was inappropriate and was no test of competence. At that time we started meeting with a number of groups. There was another document put together, including by the Building Industry Training Board, setting out some basic competencies for builders that we believe should be adhered to to accredit people. We were told by the minister that that was fine but he wasn't going to put any existing practitioner out of work by introducing the Building Act. We said, 'Well, the proposal doesn't go that way'. It allowed them to identify the skills they didn't have and, through the CPD they were going to have to do under the act over the next years that they had been accredited for, would have to focus

their CPD on the areas where they didn't have the skills against these competencies. At the end of that three years that would be assessed and if they had the extra skills they would be fully accredited. So it was always based on competence. It was when no competence assessment of practitioners was going to be done that we walked away from that and formed BPACT because we did not believe professions that had been through considerable competencies assessments really wanted to be in the groups of people accredited by the same organisation where people were getting through on completion certificates.

**Ms THORP** - I am a former teacher and one of the most constant arguments is what form of assessment is appropriate - prescriptive, competency-based or straight out examination. I can understand why out there in the world of building, if you like, there is going to be a variety of opinions about how best to assess the competency or otherwise of professionals.

In your letter that we have been referring to, this original position you came from, it says:

'Attached are copies of letters from other organisations supporting the single authorised body proposal.'

Do we have those?

**Mr HARPER** - No, because we haven't given you every piece of paper out of our filing cabinet.

**Ms THORP** - I would be very interested to hear the opinions of all these people who in the first instance wanted a single body, which is what we ended up with, but who later changed their position to want a separate organisation for engineers, architects, surveyors et cetera. I think they would be useful to read.

**Mr HARPER** - The reason they were prepared to go to a single body was provided they were based on the purpose of that MOU. It was all dealing with that MOU, that letter. Everybody agreed to the competencies and everything based on the AQF framework which the act was structured around and the different levels that the building practitioners could work at depended on what AQF standards they met. So all industry groups were prepared to go down that track under the MOU; it was just when the alternatives came out that there was a divide between different people.

**Ms THORP** - Okay. Through you, Chair, I would still like to see the letters, if that's all right.

**Mrs SMITH** - We have a copy of a letter here where Mr Harper was written to by Mr Pearce, Director of Building Control, in July 2002. Is that the first occasion when you were invited to seek expressions of interest in establishing an authorised body? I am attempting to get a handle on whether the Government, through DIER, in 2002, approached organisations about setting up authorised bodies, or whether this was a response to organisations, saying, 'We might be interested in doing this'.

**Mr HARPER** - Is that 2002?

**Mrs SMITH** - This is July 2002. Is a letter in which the minister has issued guidelines, and there is a copy of the guidelines. The letter says:

'I am writing to industry organisations to seek expressions of interest in establishing an authorised body, or alternatively to be advised regarding your intentions for the accreditation of members affected by this new accreditation requirement'.

Is that the first formal documentation?

**Mr HARPER** - I believe that is the first.

**Mrs SMITH** - So the Government of the day wrote to your organisation and others, quite evidently, inviting you in the first instance to take a look at establishing an authorised body, if you saw fit?

**Mr HARPER** - Yes.

**Mrs SMITH** - So in the early days of 2002 there was an expectation within government that maybe the industry itself could be involved in this process instead of an external organisation. They took that path later, because of some expressions that you would have difficulty in managing both the discipline and the accreditation.

**Mr HARPER** - It was the first request. Prior to that, of course industry groups had been on the reference groups that were introduced before 2000 and working at developing the minister's guidelines and insurance requirements. It was by reference groups that were in existence prior to that.

**Mrs SMITH** - I am trying to get my head around the policy of the Government as it went through, where it changed and why it changed.

**Mr HARPER** - Yes. At that stage, they invited all interested groups.

**Mrs SMITH** - Thank you.

**Mr PENNY** - Mr Chair, I go back to one of your earlier questions that I answered in part. It was also to do with the implication if building practitioners, particularly engineers and architects, had become accredited with the TCC and missing out on that first-year cycle. I would just like to put on the record that our model was still current, that we'd still seen it as moving forward. We still saw it as of value to offer that model to the membership because we knew, based on our business model which you have a copy of, that we could offer good value for the community. So even though we recognised we missed that year, we still wanted to carry it forward. That is important to recognise.

The other thing that is also worth putting on the record in relation to value to the community, is that architects are required to be registered through the Board of Architects, and that involves fees. So for the members of the community who engage building practitioners who may be engineers or architects, these are fees that keep adding

up and of course they go back to the community. We have seen it as important to be able to come up with this model and offer it up.

**CHAIR** - Isn't it true that essentially we are looking at that which section 20(2) of the act facilitates, and that is to accredit a specified category of building practitioner. That's correct, isn't it?

**Mr BEVAN** - Hence the name of the organisation was that it was really aimed at building professions, for a couple of reasons. I think we believed we could officially provide that service, that the new Building Act required. Secondly, I think it probably fair to say that in terms of what the whole intention of the Building Act is if you look at the history of complaints in the industry, very few of them are in fact against architects, engineers and building professionals. Its objective is getting the cowboys out of the industry; it was very much aimed at things we were not interested in. So we did not see it as being a particular issue. We are saying, yes, we need appropriate accreditation and competency assessment. We can do that through established mechanisms. Then the focus of the other bodies could be perhaps on where the real issue was in terms of the people who were not doing the right thing. It also comes back to our concern that if someone can prove their alleged competency by giving two or three certificates of completion, in our view we did not see that was going to have any value in weeding out those operators that might be in the industry that were not doing the right thing.

**Ms THORP** - So you saw no issue in having an organisation that was supposed to licence and potentially discipline professionals when the whole idea of the Building Act was consumer protection? You saw no problem there?

**Mr HARPER** - We were going to do the accreditation to make sure they met the competency standards but if a complaint came in we were going to refer back to Consumer Affairs to hear the complaints.

**Ms THORP** - Right. So completely separate.

**Mr HARPER** - It was going to be done at arm's length so that consumers could deal not with the profession but with an organisation.

**Ms THORP** - You should have a chat to the lawyers. That is a really good idea.

**Mr WILKINSON** - In fact the lawyers have been asking for the same thing for a number of years.

**Ms FORREST** - The nurses have got it.

**Mr WILKINSON** - Touching Sue's point, I am trying to ascertain why there was this change of heart. In other words you have been invited to come along and make application to be a part of it. You have looked at the act and are a professional body, so do you believe that you had all the criteria to make an application? You were asked by the Government to make it. You made application in accordance with the criteria and then something happened and you were told you were not the proper body to deal with it.

**Mr HARPER** - Correct. We believed we could apply because the Architects Act was specifically amended to allow it to become an authorised body or part of an authorised body. It was an intent there that most of those bodies would apply to become an authorised body.

**Mr WILKINSON** - And therefore the question is, and you may not know, were you given any reason, other than what you have told us, as to why there has been what appears on the face of it to be a change of heart?

**Mr HARPER** - The only reason we have been given is what you have got in the documentation.

**Mrs SMITH** - You made a comment earlier that you were going to do the accreditation and Consumer Affairs was to do the discipline?

**Mr HARPER** - Yes.

**Mrs SMITH** - You had some discussions and then Consumer Affairs pulled out?

**Mr HARPER** - No. Consumer Affairs was still willing to provide that. The Consumer Affairs model we talked about was actually a full scheme by Consumer Affairs to handle everything from accreditation right through.

**Mrs SMITH** - Okay, but Consumer Affairs were happy to be aligned with your model so you accredit, and they discipline?

**Mr HARPER** - Yes.

**Mrs SMITH** - So therefore there could be an expectation, then, that there was no capacity for self-interest because it is the discipline, is it not, that is going to make sure that you do your accreditation correctly. If you accredit someone wrongly the message to you is you are putting the wrong people in these positions?

**Mr HARPER** - Yes.

**Mrs SMITH** - So that was your balance.

**Mr BEVAN** - That did become a subsequent issue in that there was the challenge as to whether Consumer Affairs had the technical and governance capabilities to participate as the dispute-handling body. In fact a 2006 amendment to the Building Act sought to clarify that. It is just a one-liner. That was in fact brought back to us as another reason why there was a problem with our scheme. Consumer Affairs could not, under their terms of reference, take on that role, notwithstanding that we had had discussions with them on a technical point of view because they fulfil that role for quite a number of other organisations anyway. It was a matter of that not being within their current ambit. From our point of view, the one-line legislative change that is now on the table could have been done a couple of years ago and solved that problem if that was the concern.

**CHAIR** - Richard, you have just indicated that Consumer Affairs already play that role for a number of other processes, so were you unconvinced that the legislative authority was not there for Consumer Affairs?

**Mr BEVAN** - I am not a lawyer but it came down to a legal interpretation of the -

**Mr HARPER** - - Richard, I think, is talking a little bit about Consumer Affairs actually doing the whole model and being the authorised body itself, compared to their just doing our complaints handling. There was some question whether Consumer Affairs could be an authorised body in its own right, but all we were talking about is their doing our complaints handling. When I sent Roy a copy of the minister's response saying that he did not believe Consumer Affairs could do it on our behalf, his response was very interesting because 'They already do it for a number of other parties'.

**CHAIR** - Yes.

**Ms FORREST** - On page 4 of that letter and it says:

'In section 9 of the BPACT scheme reference is made to the Office of Consumer Affairs and Fair Trading providing assistance in investigations. It is not properly a function of the Office of Consumer Affairs and Fair Trading to undertake investigate functions for BPACT. The functions of that office are statutory ones. There is no part in these functions to assist private bodies with their inquiries.'

Was there a time when the TCC actually approached Consumer Affairs for assistance?

**Mr HARPER** - Yes, they have, and that was I think why Roy Ormerod actually responded to the Legislative Council committee relating to the Budget. Roy indicated at that meeting that there had been an approach and there were discussions going on between the TCC and Consumer Affairs.

**Ms FORREST** - So Consumer Affairs have not actually undertaken any work on behalf of the TCC?

**Mr HARPER** - I am not aware that they have, no. In our letters, under tab 12, there is some communication with Roy. In fact there is one e-mail dated 13 July 2004 where I sent Roy a quote from Minister Green's response to us, which is interesting: 'I do not believe that my offer conflicts with the act under which this offer is established'. So he believed he had the powers to do it.

**Mrs SMITH** - We have looked at the past and we have seen some historical decisions made over the last month or so, do you have a position where to from here? What do you believe would be appropriate from here? Do you believe, after everything and the lack of confidence that appears to be there now by both the industry and the consumer, that it should remain within the Government as the regulation body?

**Mr PENNY** - As Chairman of BPACT, no we have not formally got together and convened a directors meeting. A few issues have been thrown up for which there is general support. One is the co-regulation model, where in fact you have ended up with a private industry



model; there is concern in relation to that. Obviously as an architects group we have looked at other models. In New South Wales, the Architects Act requires continuing education as well as insurance; it has a complaints mechanism, so that generally is the body and then that dovetails into the Building Act. Within Tasmania there is the Architects Act, and with a little bit of work that can easily apply, but engineers might well have a different view.

**Mr BEVAN** - There is not a specific engineers act in Tasmania, as you would be aware. In some States, like Queensland and most recently in Western Australia, there are some different approaches. I am aware that you have looked at those.

I think the fundamental premise from our perspective has not changed. If there is going to be a monopoly body it ought to be under the umbrella of government. That is our view. If it is going to be private sector then it ought to be open to competition, as a principal.

**Mr PENNY** - That is right because the issue of profit out of an organisation becomes absolutely essential. The thing that really has been important in this process is what is going to deliver best value. Obviously if you have an organisation that has the before-profit component taken out of it, it should therefore be an organisation with sufficient adaptability, complexity and flexibility to be able to tailor what it costs to deliver all the requirements of the Building Act and make sure that is delivered back to the community. So that would be our premise.

**CHAIR** - Given that backdrop then, Tim, what has been the reaction to the letter that Mark Dunbabin received where the minister indicated to him that the TCC was a not-for-profit public administration company?

**Mr PENNY** - Well I think history has shown that to be otherwise.

**Mr BEVAN** - There seems to be great confusion about whether it is for profit or is it not for profit.

**Mr HARPER** - It appears that it is obviously a for-profit organisation, from reading that letter and also from the comments by the TCC directors at a meeting I was at. They indicated that they were a not-for-profit public administration company, and obviously industry was being misled. In trying to justify the level of the TCC fees at the level they were, when everybody was saying they should be much less, we were being told not to worry because it is a not-for-profit organisation, so have confidence.

**Mrs SMITH** - Considering the number who have been accredited, have you looked at the concept of fees and settled on what you believe would be a fair and reasonable fee to be charged by a government monopoly?

**Mr HARPER** - We would probably still endorse what the Consumers Affairs application for an authorised body put forward. I think those fees appeared quite reasonable. There would have been no reason for BPACT to ever come into existence under those circumstances.

**Mrs SMITH** - So if the Government transposed the work done by Consumer Affairs into the concept they are now setting up, you would think that was a fair and reasonable proposition?

**Mr HARPER** - We would work with them to assist wherever we can to make sure people are appropriately accredited because we still have a concern that a large number of the engineers, for example, on the TCC list haven't been through a competency-based assessment and therefore do not meet the minister's guidelines or the act.

**Mrs SMITH** - So you would support us moving back to competency based and away from financial insurance, which appears to be the process because we have taken the path that if you have the money you can become accredited and if you haven't the money you will work your way through a process to get accreditation.

**Mr HARPER** - We definitely support a competency-based assessment.

**CHAIR** - On the matter of fees, is it a fact that TCC had promoted a scale of fees in a monopoly environment as opposed to a scale of fees in a competitive market?

**Mr HARPER** - We were not privilege to the TCC application. We heard a rumour that might have been the case but we have nothing to support it.

**CHAIR** - Is there no documentation to that effect?

**Mr BEVAN** - Certainly if you talk to some of the practitioners there appeared to be a bit of confusion out there in terms of what exactly was the fee structure. You get a bill but what is the basis of this bill, and then, 'Oh well, we can change that', so what are the rules of engagement? It was all a bit funny. It was all a bit unclear from the practitioners' perspective as to what was the basis and indeed was it negotiable or fixed?

**Ms FORREST** - You made comment after Sue's question about supporting in principle the Consumer Affairs and Fair Trading proposal, that you would provide whatever support was necessary. I would expect that Consumer Affairs and Fair Trading would not have a high degree of expertise on their staff concerning engineers, architects and building surveyors and anyone else who may be required to assess the competency of a particular applicant. So is that the role you would envisage playing in providing advice on that accreditation process or how would you envisage providing that support?

**Mr HARPER** - For engineers and architects it is fairly simple because there are very good systems already available. It is only a matter of whether they are accredited under the Board of Architects registration, and then architect's competence is not in doubt. For engineers there is the National Professional Engineers Register that could be used for the same purpose. So for those two professionals, BPACT was an easy system but for builders and others those systems aren't as easily available.

**Ms FORREST** - Do building surveyors come under the professional arm?

**Mr HARPER** - Engineers Australia's professional engineers register was amended to satisfy New South Wales' requirements for building certifiers and therefore we believe the building surveyors could be picked up easily under that building certifiers classification

on the National Professional Engineers Register. In fact, there are a number of engineers who are also building surveyors and that is why we were including those in the model.

**Ms FORREST** - But currently that is not all of them? There is still some work to do in that area obviously, if that was a process to be followed?

**Mr HARPER** - Yes. Building surveyors may have their own set of competencies but for engineers we certainly had a set that were appropriate for building surveyors.

**Mr DEAN** - I am just interested in relation to the meeting you sought with the minister. You said that the minister had refused to meet with you unless you were to discontinue your action. What was your reaction to that to the minister? What was the response to that? Did you pursue that at all?

**Mr HARPER** - No, we didn't pursue that; we just accepted that as his view. Then we had to determine whether we were prepared to put aside that action or not.

**Mr DEAN** - So you didn't pursue that with the minister or his advisers?

**Mr HARPER** - No.

**Mrs SMITH** - Following from that, I think it would be quite usual that if two people were having a legal case perhaps legal advice would be given, 'Don't talk to one another. You may prejudice your case'. We will not know until we test that, of course, but would you accept that that may have been a position of the minister, that he had advice that there was a legal case and perhaps he ought not talk to another party?

**Mr PENNY** - I guess our view was that there are matters here that are in the public interest, that are beyond individuals. Through all our correspondence we had endeavoured to maintain a dialogue; we did not want to end up in a confrontationalist environment. We thought we had something to offer and put out into the community and so that was the tenor of all our discussions. When we delivered that this was the outcome we felt, as directors, that we were faced with a decision, given the impending 1 July effect of the Building Act, that we had to make decisions and make them fairly promptly. We were surprised at the decision but we were not taken aback because they seemed to be very strong in their opinion. But we would have expected, for an individual representing a government, that they should be accessible.

**Mrs SMITH** - But you don't see a legal conflict there, that once there is something before the courts, for both parties to be discussing -

**Mr HARPER** - At that stage it wasn't before the courts. That was before we had lodged the application. We were asked to sign away our rights almost at that stage, if we wished to have a meeting.

**Mrs SMITH** - So it wasn't in the judicial area at that time you requested the meeting?

**Mr HARPER** - No.

**Mrs SMITH** - How did the minister know?

**Mr HARPER** - Because we had asked him for the reasons under the Judicial Review Act. That was the trigger; they thought, 'He's going to take legal action'.

**Mrs SMITH** - In fairness to all sides, I want to ensure where we were on the path. We could all say everybody should talk to us but if you have legal advice, in some instances good legal advisers might say it was not at that stage into the formal process of going into court. So it could have been stopped perhaps?

**Mr HARPER** - Yes.

**Mrs SMITH** - Am I fair to presume that if the minister had met with you and discussed issues it may have stopped that process from ending up in court?

**Mr PENNY** - Yes. We personally didn't want to go to court. If we could have avoided that, we would have done, but we were left with no alternative.

**Mr WILKINSON** - So at that stage there had been no documentation filed at all which had been put into any tribunal, court or anything like that?

**Mr HARPER** - At that stage we had only asked for his reasons.

**Mr WILKINSON** - In court processes there is mediation, conciliation prior to the matter go to court at any rate, I suppose.

**Mr PENNY** - Not in this instance though, was it?

**Mr WILKINSON** - No, but I am saying in a process there is still dialogue that is had, although some person could have said, 'Don't say anything.' I do not know. We will have to ask them.

**Mr DEAN** - I think I have got it right from that conversation that there was no attempt by the minister or the minister's side to appease or talk to you about your concerns and you wanting to go to the judicial review process, is that right?

**Mr BEVAN** - I think it is probably fair to say that the Government thought that they had made their position clear to us on the issues and that they had made their case. I think it is also fair to say that from the discussions that we had about the Judicial Review Act it was certainly on the table that we reserved the right to challenge this in the courts, which we ended up doing, so I do not think there was any surprise factor when we finally decided to take it to court.

**Ms FORREST** - Going through that process, the appropriateness of the scheme was not even under consideration, was it? It was only whether the minister had the right to say yes or no.

**Mr BEVAN** - Yes, it was only a judicial review, it was not a merits review, so there was not a judgment as to whether the right decision had been made. It was whether the minister had the jurisdiction under the act to make a discretionary decision, whether it was a good decision or not.

**Mr HARPER** - To refuse the application once it had been indicated that it did not meet the requirements of the act.

**Ms FORREST** - Yes, that is right. That was always being argued.

**CHAIR** - Gentlemen, thanks for coming back and being frank.

**Mr HARPER** - Thank you for having us. I think the outcome we would like to see is a good system for the consumers' benefit where competent practitioners are accredited at a reasonable cost.

**THE WITNESSES WITHDREW.**