PUBLIC

THE HOUSE OF ASSEMBLY SELECT COMMITTEE ON THE COSTS OF HOUSING, BUILDING AND CONSTRUCTION IN TASMANIA MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON TUESDAY 2 OCTOBER 2012

Mr STUART CLUES, EXECUTIVE DIRECTOR, WAS CALLED, AND **Mr PAUL FERGUSON**, ASSISTANT DIRECTOR, BUSINESS PRACTICES, HOUSING INDUSTRY ASSOCIATION TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Hidding) - Thank you for you time today, gentlemen. We read in the media that you had concerns the Residential Building Work Quality (Warranties and Disputes) Bill 2012 was likely to increase costs of building. As this is a committee primarily looking at that matter, we have invited to you come and speak to that.

Mr Ferguson, a committee hearing is a proceeding of parliament and this means you receive the protection of parliamentary privilege. It's an important legal protection that allows you giving evidence to a parliamentary committee to speak with complete freedom without fear of being sued or questioned in any court or place outside of parliament. It works this way so we receive the very best information when conducting our inquiries. It's important you are aware this protection is not accorded to your statements that may be defamatory or impeded or referred to by you outside the parliamentary proceedings. This is a public hearing and *Hansard* is recording every word you and I say and that means your evidence may be reported. If anything you say you want heard in private, please say so and we can consider going into camera for that.

Mr CLUES - Firstly, I want to introduce my colleague. Paul Ferguson is our internal legal counsel and I thought it would be useful to have him here today to answer any technical questions in relation to the act and also to provide a bit more detail in relation to some of the concerns that industry has, but do it from a more learned state than I can offer.

CHAIR - Paul is an employee of HIA?

Mr CLUES - Yes, he is.

CHAIR - In Tasmania?

Mr FERGUSON - No, I am a national employee. I work from the Melbourne office and hold a corporate practising certificate as an Australian lawyer.

Mr BOOTH - Could you give us details of the corporate structure of the HIA?

Mr FERGUSON - The HIA is a national organisation. We have a national office that services the states for policy and national interests. Each state has its own structure of staff that serves our members with committees. We have a state and federal system. We have state committees and that feeds up into a national committee system as well as an executive management.

Mr BOOTH - So it's a company?

Mr FERGUSON - It is a limited company; it is not a proprietary limited company.

Mr BOOTH - Who owns it?

Mr FERGUSON - The members do. It is a non-profit organisation.

Mr BOOTH - I want you to be very clear about this: it is registered as a non-profit organisation or is it a company that's owned by shareholders?

Mr FERGUSON - That's right.

Mr BOOTH - It's a company owned by shareholders?

Mr CLUES - It has no shareholders.

Mr FERGUSON - It has no shareholders. It is a limited company and it is not for profit.

Mr BOOTH - So you're saying that the members have some control or say in it, or are they just paid to be a member notionally?

Mr FERGUSON - Members pay for their membership but many of the members are actively involved through the committee process.

Mr BOOTH - What rights do they have as members?

Mr CLUES - The membership of the HIA operates both at a state and national level. We have various committees that are operated at state level to provide policy guidance on matters such as training, industrial relations, legal matters, technical issues and planning matters. Those committees then feed into a national structure. The chair of each of those state committees then sits on a national committee and provides guidance at a national policy level. From those national policy levels the heads of those committees also have the opportunity to sit on our board and the board provides direction to the senior management of HIA.

Mr BOOTH - What I'd like Mr Ferguson to answer is what is the structure? Can you give us the details of exactly how the company is structured? I want to understand whether you are an actual company with people who have ownership or rights or whether it's a true association in the sense that most people understand an association.

Mr FERGUSON - It's an association and the members don't have any specific shares.

Mr BOOTH - So they have no rights? What rights does a member have?

CHAIR - We can probably cut to the chase. Are you asking, Mr Booth, whether let's say a member, a plumber who is a member of the HIA, can aspire to hold office?

Mr BOOTH - No, I am interested to know whether the HIA is a true association - say, the basketball association or something like that - or whether you have a board that has control over the organisation and the members don't have the normal rights -

Mr CLUES - No, our board is constituted by its members, so there is no-one who sits on the board other than the managing director; every other board is just a regular member of the HIA who has worked their way through various positions of office, whether it be state president of head of one of those committees that I described. All the way through the organisation, from a very local level - a state level - they help guide us in relation to all manner of policy issues. At a national level, they set our policy agenda. At a board level, they also oversee, not only a policy, but also our financial management and structural issues around the association.

Ms ARCHER - Are they elected to the board?

Mr CLUES - Yes, they're elected to the board by the membership.

CHAIR - Is it a member-owned group -

Mr CLUES - Correct.

CHAIR - It's like the Mitre 10 Hardware group that I was on the national board of; that's precisely how that occurred. Is that any different?

Mr CLUES - There are no shareholders; there are no distributions. All monies are reinvested back into the association.

Mr BOOTH - It might be helpful if you could provide the management structure, the structure of HIA, because what I'm interested in exploring - and I have had concerns expressed with regard to the Housing Industry Association that they have been actually a company for profit, rather than the members having normal rights.

Mr CLUES - I find those sort of comments bizarre in this forum and objectionable.

Mr BOOTH - No -

Mr CLUES - HIA has existed for 160 years for the benefit of -

Mr BOOTH - That's what I'm asking you - if you could actually provide the corporate structure. Are you saying you won't?

Mr CLUES - No, I'm wondering why, in this particular forum, you find it necessary to raise your concerns about the HIA?

Mr BOOTH - Because it's a parliamentary inquiry.

Mr CLUES - The HIA is a national organisation that has a huge amount of credibility. We do nothing but represent the interests of the industry. If you've got some constituents that have some concerns, then I'm happy to talk to you off the record about it but I

wouldn't have thought, given the terms of this committee, that today is the appropriate forum.

Mr BEST - Point of order, Mr Chairman. I think the members have give up today and the time also, to talk about issues in the construction industry like savings, efficiencies and things like that. The terms of reference -

CHAIR - In fact, we've invited them. So I'm going to uphold your point of order. I point out to Mr Clues that, at the start of a discussion with somebody, it otherwise would be reasonable to ask the structure of an organisation. But the answers are given that it's a company. A limited company is not an unusual structure in Australia, so if you were to research that, presumably you would find that there are many others like the HIA.

Mr BOOTH - Thank you for that, Chair. Given that Mr Best raised a point of order, it is actually very important to this inquiry to make sure that we understand the reason for the representation.

Mr BEST - You just made allegations about the organisation.

Mr BOOTH - The Housing Industry Association has been long on the record as representing the interests of itself and builders. You were involved, of course, with the last resort homeowners' building insurance and so forth so I am interested to explore whether part of the regulatory regime is due to corporate capture, which we know is occurring with other organisations or groups that actually have an interest in a regulation for their own profit rather than for the good of the building standards, for example. That's what I am trying to explore. There's no need to get hostile about that; it's a reasonable question and you've made your point.

CHAIR - Thank you, Mr Booth, we'll take that as an explanation as to why you asked the question. I think the offer being made by Mr Clues here for you to contact him and have a private discussion is a good one. I think that, if you're not happy with the responses, then in future you have the opportunity, of course, to call anyone back to further that. Perhaps, as we are talking detail here, you should pursue that with Mr Clues.

The matter we have invited you in for is the potential new environment around dispute resolution in the building industry. We are particularly interested in understanding what that's going to do to the building industry on the ground. Recently, a bill went through the parliament and we were aware that you and your members are grappling with the introduction of various elements of it. People are already saying to us that it is going to cost us this or do that or that it's changing the way we go about things. We are not talking about resisting change here; we're actually interested in what the cost is going to be to a building operator, which he is going to have to pass on to the customers. Perhaps you could tell us what your views are about that.

Mr CLUES - First of all, thank you very much for the opportunity to appear today. It's obviously been a pleasure from the outset. It's our understanding that the principle focus of the committee was intended to have a look at affordable housing and anything that might impact on that from a regulatory point of view and I've appeared before this committee to that end in the past. I guess, in its simplest form our reservations sitting in and around this proposed bill is that one of the biggest costs in the construction industry

is the delay that might occur as a consequence of a dispute. If there is a dispute between a builder and their client, that costs both parties money and inconvenience, so for our part it is really important that this bill gets up and that it works. To that end, HIA is supportive of a bill that introduces a fast, equitable dispute resolution process. This is not a situation where we are seeking to oppose the introduction of its core elements but we would argue that the drafting of this bill is fundamentally flawed. It has no confidence of industry and if it was introduced in its current state it would significantly add to the cost of building because you would end up with protracted building disputes, not disputes that will be resolved in a fast, equitable way.

Mr BOOTH - When you say 'industry', is that beyond the HIA? Is that a consolidated group?

Mr CLUES - It is HIA. Our views are supported by the MBA and the Property Council and I think the MBA will be appearing before you later today to make their own submission.

CHAIR - Can I ask a question on the protracted process? What are you currently operating under now? Is there a void?

Mr CLUES - Yes, there is.

CHAIR - So it's not protracted because there's basically nothing out there. There are some protections.

Mr CLUES - At the moment you are really in a situation where the parties have the opportunity to try to sort out the dispute themselves and if they can't do that they go off to the court system with all its inherent difficulties.

Mr BOOTH - That's through the mediation processes and so forth.

Mr CLUES - Yes.

Mr BOOTH - I'm sorry to cut you off there but, for the record, there is a prescribed process for building.

CHAIR - That currently exists, you mean.

Ms ARCHER - Which is very costly.

Mr BOOTH - Yes, I know, but I just want to make sure that there is a process at the moment and this is a change to that process.

Mr CLUES - Correct. This is an opportunity to introduce a dispute resolution process that would operate outside of the traditional court system that is currently available.

CHAIR - On the matter of it being protracted, are you aware that in the minor assessment statement under the LRP done on this bill the department says that the residential and rapid adjudication process, RRA, which has been recommended for Queensland but not adopted as of earlier this year, and recommended for the ACT, they have identified as a potential method to solve many of the matters. It goes on to say that the potential

benefits of RRA are worthy of consideration when assessing the draft bill, which is a bit odd. I reckon if they thought it was any good why didn't they put it in? It might have been a timing issue but I am very interested to know whether the speed of that process is something that is attractive to you.

Mr CLUES - We would argue that we're not interested in much that is prescribed in this bill in terms of actual detail. If you were to take just the interpretation and the intent of this bill you would say it is a really good idea. Like a lot of legislation that is brought before this parliament, when you read what its intent is it's very difficult to argue against and we would support it and say this is a good idea, it is something that would aid consumers and builders because it will resolve disputes more quickly.

Our concern is that, like most things, once you get into the detail that's when the alarm bells start to ring. What I was hoping to do this morning was take you through some of those alarm bells and say that in its current format this is not acceptable and that what should happen is that Workplace Standards or the minister should step back, come back to the table and have discussions with industry and find something that is mutually acceptable, both from a consumer protection and industry point of view, so that both parties can go into the process with confidence and let the cards fall where they may.

Ms ARCHER - What consultation has there been?

Mr CLUES - There has been extensive consultation; I couldn't fault the government for the amount of consultation that we've had. I'd say 90 per cent of our concerns in and around this bill have now been resolved through the productive and meaningful discussions that the government has had with HIA, MBA and PCA. Our concern is that the centrepiece of this legislation is the ADR, the alternative dispute resolution process, and we would argue that that process is fundamentally flawed and it is a shame because this bill has the potential to do a lot of good for both industry and consumers, but in its current format it is never going to be acceptable to industry. We would have no confidence in it and would actively try to disengage from it because we think there is an institutional bias that runs through the whole theme of the bill and I would like to take the committee through that so you can understand why we are concerned.

CHAIR - Yes, that is good. Thank you.

Mr BOOTH - One question before you go onto that in regard to the securities of payments legislation. I understand in terms of the principle of it that it's a similar attempt to disentangle a dispute and get sort of almost justice by sundown, if you like, with the majority of the claims settled. I have been told that this is a similar attempt to do something like that.

Mr CLUES - Its intent is to do that in terms of finding a quick and fast resolution that enables both parties to get on with their lives but the process they've adopted is so fundamentally different to that which was adopted under the security of payments that it 's not going to be acceptable to industry. One of the things that industry has repeatedly said to government is that you introduced security of payments in December of 2009 and it has been wholly successful. You have had disputes resolved, by and large, before they have even gone to the independent arbitrator because the moment that the parties realised they had to have a bit of skin on the table, both have to pay to get an arbitration,

commonsense starts to prevail and the issues that they thought were so huge suddenly get worked through and people start to get paid, work gets rectified and people get on their lives.

Mr BOOTH - It gets lawyers out of the equation too.

CHAIR - Not that there's anything wrong with lawyers.

Ms ARCHER - No, of course not.

Laughter.

Mr CLUES - We say the security of payments model would be a good model to adopt or extend to try to resolve these types of disputes on the basis that it takes the dispute out of government hands and puts into the hands of an independent expert who makes a quick and dirty determination based on paper submissions from both parties. We argue that is good because it has the independence and the expertise. Both of those are lacking in this. With this model, in the simplest terms Workplace Standards wants to act as judge, jury, executioner and funeral director. It is a one-stop shop and we would argue that it compromises the basic principles of separation of powers. There is no separation of powers here and that's what I want to get into in some detail.

CHAIR - Do you mean degrees of separation from people involved in the dispute? It's too bureaucratic a model, is that what you're saying?

Mr CLUES - What I'm saying is that Workplace Standards wants to do the conciliation, then the arbitration, then they want to issue the rectification orders and if you don't follow that they want to issue the penalties. They are acting in a capacity equivalent to the Supreme Court of Tasmania in that there are no caps or limitations in terms of the manner of disputes or the volume of money involved.

Mr BOOTH - To clarify that, Stuart, because I think it's an important point, the security of payments legislation seems to work very well from everything I've heard. I've never heard anybody say it's bad, put it that way. I'm sure some people who have lost think it is, but it has not been brought to my attention. The difference with that is that the appointing authority appoints an assessor, I think they call him, who then makes a judgment and determines 90 per cent payment or zero or whatever it is. That is appellable; if you want to you can go to the Supreme Court although it is a judgment that is enforceable through a bailiff as if it was a lower court judgement. That is correct, isn't it?

Mr CLUES - You have summarised it very well.

Mr BOOTH - With this particular legislation the deficiency you're seeing is that the concept is good but the processes they have put in place won't work because there is no appeal to it. It is all held within one unit which, as you say -

Mr CLUES - There is a right of appeal but it's right at the end of the process and we would argue that you can't have any confidence in that administrative body doing it all. I know of no other jurisdiction where you can do the conciliation with one hat on, take that off

and do the arbitration, take that hat off and issue the penalties and the fines, and then if you want to, put another hat on and decide whether or not someone should have a livelihood. To me, we're not running a police state.

CHAIR - Thanks. If you would lead us, then, through your concerns.

Mr CLUES - I have given you a broad overview. Basically what we would say is that we've seen a lot of bills come through this parliament and generally we've had one or two issues of concern. With OH&S it was just the timing, essentially, in that most of the big arguments were run on a national level and by the time it hit this state they wanted to introduce 400 pages of OH&S legislation with four weeks notice leading into the Christmas break. That was our concern. With security of payments our concern was that the government didn't look at introducing the client into the equation. When it was builders' accreditation it was the TCC, the appointment of a private entity.

With this particular bill we have numerous concerns. Fortunately we have worked our way through most of it, but the concerns we have point to the very nature and ethos sitting behind this bill. I want to step you through those because by understanding those you can understand why the process of dispute resolution is also unacceptable because the whole tenor of the bill is unacceptable.

If you ever wanted to be concerned about this bill, you would go to section 28 about referring to a dispute. The way the bill is currently constructed the only party that can nominate a dispute is the owner. If you ever wanted to have concerns from an industry perspective about an institutional bias in terms of a process, there it is. Section 28 says that the only people they're interested in hearing from in a building dispute is the owner, as though in every instance the builder is going to be to blame and, at the very least, if there are two sides to blame the only party they're interested in hearing from is the owner. If the builder has a dispute or a concern, they're not interested.

CHAIR - How would a builder have a concern under this? The builder's concern would be he's not being paid.

Mr CLUES - There are all manner of ways in which a building dispute can arise. You can have a situation where it is about payment, in which case security of payments may step in, but often you don't have owners putting up their hands saying, 'I'm broke, I've run out of money', or 'I've overbudgeted'. They say, 'We're not happy with the workmanship'. At no point in time do they say, 'I'm strapped for cash'. They say, 'The cabinet work is not up to speed' or 'I'm not happy with the tiling' or 'The driveway's out of skew', so it becomes masked under a workmanship issue. Then they start coming on the site without authorisation and start directing the subcontractors as to how they want the job done maybe to save costs, or they come on site and haven't organised basic services like the connection of power or water to frustrate the process. I can understand that from a consumer protection point of view it's important to give the owner access to a dispute resolution process, but it's also important to recognise that in any dispute, whether it be of a business nature, a building dispute or a marital dispute, there are two sides to the dispute and both have a part to blame.

CHAIR - That's a very interesting point.

Mr BOOTH - I do take your point that there ought to be access to justice from both sides, but I want clarification about the current situation you mentioned where a person comes onto the site. That is a breach of the contract and voids it and the builder can walk off and claim for a completed contract, not just because a person walked on to give them a meat pie or something, but under the circumstances you allude to there is already a capacity, isn't there, for a builder to get redress from that?

Mr CLUES - As you would know, we are going through difficult economic times and if you lost a job every time you had a dispute with the owner about walking on the job you would soon be out of business. Builders go to a lot of time and effort to win contracts with a view that at the end of the day they'll hopefully make a dollar and be able to feed their family and other people's families. They don't want to be walking off a job having a hissy fit because the owner is causing difficulties. They want a dispute resolution process - 'We're engaged to build your house. Yes, we're having some difficulties, so let's work through them and have a process that might be able to assist that.' We don't want to be relying upon contractual provisions that enable us to just terminate the contract.

CHAIR - What happens in other states? Consumer law is generally for consumers but in this case you're proposing it be both ways. What occurs in other states in terms of builders having access to this?

Mr FERGUSON - Comparing us to other states is a bit like comparing apples and oranges. Each state has its own market and consumer issues and potentially a different regime of consumer protection. A common thread is that we have prescribed conditions for the major domestic building contracts. We agree with most of the things in the contract for those major domestic building contracts, but some we still don't agree with. We are not about today to pick through the bill piece by piece, but having a regulated major domestic building contract is one pillar of regulation.

CHAIR - That you agree with?

Mr FERGUSON - Of course. We produce contracts which are compliant with various legislation around the country. Requiring a contract to have prescribed conditions is an appropriate course of action for consumer protection. When we talk about consumer protection, though, we are not just - I want to put it in a slightly different context. What we're really talking about is protecting the market from a failure. We want to protect the consumer from market failure where there's an identified problem.

Every state has their own regime and weaknesses and strengths, et cetera. I'm not prepared today to go through each state's different arrangement but one of the key issues of the differences between Tasmania and the other states is the absence of insurance in Tasmania and an insurance scheme. Even interstate, those insurance schemes differ. Victoria has a last resort insurance scheme. New South Wales and Queensland have different schemes again for insurance for their first resort. The regulation of domestic building around the country in different states is certainly not homogenous. In South Australia and Western Australia, it's very different as well.

I'm not prepared to go into the interstate stuff today but what I will say is that Tasmania is not the rest of the country and we're very critical of other states, particularly

Queensland's system. We think this is a great opportunity to have a system in Tasmania that will work for Tasmanians. We don't want to import something that's going to be a disadvantage to the industry or we don't want to import something that's not going to meet the consumers' needs and protect them when they need protection. What we want is something for Tasmania.

Can I let Stuart go ahead? I've got some things that I'll say towards the end.

CHAIR - Sure. I thought you might tell us that South Australia, WA and Queensland have all got builder protection built into the consumer protection. I don't know, Stuart, whether you're proposing that this legislation, by simply changing an owner or a builder under a residential building work is entitled, et cetera - or whether you have a separate section which provides better indemnity for -

Mr CLUES - What I say is that at the end of the day it's in the interests of consumers and in the interests of builders to have a dispute resolution process where you take the heat and emotion out of it and get down to tin tacks. Has there been poor workmanship performed on this job? If so, rectify it. Or is it a situation where the client has run out of cash? In that case, let's talk about how we move forward.

In relation to this, what we would say is that section 28 really frames the fact that this bill has been poorly drafted from the outset on the basis that it is saying it wants to set up a dispute resolution process but it's only interested in hearing from one party. We find this just bizarre. That's section 28.

The next section which really rings alarm bells for us is part 6 which goes to investigations. The powers under this act - I haven't read anything like it. Basically, what it's saying is that the building commissioner can require a person to answer questions, provide any information or document; a workplace standards officer can enter and remain on site at any time; they can inspect anything on site; they can break and open any shed, cupboard, box or container which the officer deems relevant for the purposes of their investigation; they can move or remove a building or a structure; they can conduct tests; they can take photos; they can operate on mechanical, electrical or other equipment that might be on site; they can seize and retain anything that appears to indicate an offence.

Mr BOOTH - Is that consistent with the building act at the moment or not?

Mr CLUES - I haven't seen anything in the building act that gives police state-type powers to administrative officers. I haven't seen any act of parliament other than something that might belong to the SWAT team at the police department.

CHAIR - What about bikie gangs?

Ms ARCHER - Fair Work Act gives them the right to -

Mr CLUES - I'm not sure where mum and dad builders -

CHAIR - What did Workplace Standards say to you when you raised it with them?

Mr CLUES - They said that they thought these powers would be unlikely to be used but it's nice to have them. I'm sure it is.

Mr BOOTH - From their point of view.

Mr CLUES - If you're a vice squad that's managing a drug cartel then I think that's appropriate but we're talking about mum and dad builders who knock up homes and you're talking about disputes over things like waterproofing or poor cabinetwork. I'm not quite sure where you need powers that are equivalent to a vice squad.

Mr BOOTH - So this would be only for contracts where there was a lawful building going on, Stuart, would it? I have seen those words in some other legislation which I cannot actually recall, and that is why I have asked you that question. They do seem incredibly draconian.

Mr CLUES - We have not seen -

CHAIR - Well, OH&S stuff. Workplace Standards can -

Ms ARCHER - I have seen it in the Fair Work Act too but that is for pretty serious investigations.

CHAIR - Yes. Workplace Standards can crack onto work if they think there are some very dangerous practices taking place.

Mr CLUES - We have seen right of entry provisions before, which is fair and reasonable but where you have got the right to break open people's tool boxes, sheds, seize documents, remove buildings, jump on plant and equipment, operate electrical stuff -

Mr BOOTH - I am wondering whether this is specifically then just in this legislation for domestic building contract work, and that is what you are talking about.

Mr CLUES - Yes, it is. Clearly, whoever has drafted this bill holds a very low view of mum and dad builders because what we are saying is mum and dad builders do not go out to defraud people. They go there to build a home and sometimes things go pear-shaped and a building dispute occurs but it is over the quality of the tiling. I am not quite sure you need a SWAT team from Workplace Standards kicking in your door at midnight and seizing documents and cracking open tool sheds. It just seems rather a heavy-handed approach.

CHAIR - It does, a tad.

Mr CLUES - I have living in this state for some time and I have not met a builder who warrants that type of treatment and I have not seen any Workplace Standards officer that would be capable of actually exercising that power.

CHAIR - Clearly, that is something we will look at.

Mr BOOTH - Just for the record, I do not disagree with what you are saying, Stuart, but we have actually seen more than disputes about tiles.

Mr CLUES - Absolutely, yes.

Mr BOOTH - Just to get it in context that is all.

Mr CLUES - I have got this image of them smashing down doors with flak jackets on and night vision glasses. It is fairly -

CHAIR - Those builders are a worry.

Laughter.

Mr CLUES - ham-fisted. You know you do not see the tourism sector subjected to this. You have a bad night's accommodation and everyone gets dragged out of their bed at midnight and mattresses thrown out on the lawn. I mean it is just bizarre.

CHAIR - Check the sheets, yes.

Mr CLUES - Yes. If you have a bad night at a hotel, you ask for a refund.

CHAIR - Alright, point made. Thank you.

Mr CLUES - Someone has had a lot of fun drafting it.

CHAIR - Yes, obviously.

Mr BOOTH - I was wondering whether it was imported from other legislation.

Mr CLUES - I think it was.

CHAIR - It would be somewhere.

Mr CLUES - East Germany, maybe; I am not sure.

CHAIR - North Korea.

Mr CLUES - Yes, North Korea; something like that. Anyway, we were not quite sure how it fitted into the Tasmanian landscape and were not quite sure how it fitted into mum and dad building but nonetheless -

Mr BEST - Do they have it in other states, that sort of provision?

Mr CLUES - I am not aware of any other state that has it. Even if it does, I find it objectionable. What we are here to say is that that is indicative of how this bill has been drafted. The first part is that we are not interested in builders having access to the dispute resolution process but we are very interested in kicking down your door and breaking into your tool shed. It just seems too bizarre.

Mr BEST - I hear what you are saying but I am thinking about the accident that happened near Devonport at Stony Rise.

Mr CLUES - Sure.

Mr BEST - Then, I also hear a couple of days later when the site was visited that people went out to the construction site at the school at Port Sorell. I cannot say it was exactly the same but there were situations where an apprentice was above the ground and not secured. I guess they are different work sites because we are talking more commercial developments, aren't we? As opposed to -

CHAIR - Still on OH&S.

Mr CLUES - But you are also talking about provisions that assume you are going to get a lack of co-operation. You are talking about provisions that are basically painting a worst-case scenario that says that if there has been an incident that occurs, whether it be an OH&S or a wages or a building dispute, that you are dealing with a party that is going to give the government absolutely no co-operation in their investigations and hence they need all of these powers. I am not sure there is any evidence of anyone in the residential sector being so unco-operative that the government needs those sort of powers to regulate them.

Mr BEST - No, I was just thinking about safety, more or less.

CHAIR - You could understand stronger workplace entry powers for OH&S. There are lives at risk.

Mr BEST - Yes, like if there are apprentices there.

CHAIR - We are talking about a dispute over the quality of a tiling job in there, so it is entirely different.

Mr CLUES - Even if it is, as Mr Booth has put it, something more severe than a tiling job, there is still a presumption here that the builder is of a nature inherent across the whole industry that they are such an unco-operative, secretive, destructive, force to be reckoned with that we need to empower Workplace Standards with all of these powers to investigate a building dispute, and I am not sure where there is evidence of that.

Most of my people at the moment if they get a visit from Workplace Standards they go to water and just want to do whatever is required to get on with the job and not upset anyone.

Mr BEST - That's interesting. Notwithstanding anything else you've just said, the point you're making is that this is a dispute about payment for quality of work and yet the powers that are being talked about in some way are about safety. I think you said 'seizing or retaining anything can be an offence'. That could be anything - not even related to the work. It could be, say, a stepladder left in the wrong place. I am not saying it shouldn't be there; obviously if it was in the wrong place, or whatever, it may be the case. What does that have to do with the tiles, for example?

Mr CLUES - These powers are saying they can enter the premises at any time. They can stay on the premises for as long as they wish; they can view any documents they wish;

they can break and enter into anything they wish; they can seize anything they wish; they can hop on any piece of equipment and operate it if they wish. These are unfettered powers.

CHAIR - Why would you want to legislate to allow them to do it is the question?

Ms ARCHER - Previously, you would have had to obtain a warrant for something like that and yet the legislation is allowing that per se.

Mr BOOTH - Can I perhaps use an example? I would be very interested in your comments on it. I will preface it by saying that I don't disagree with what you are saying; it does seem completely un-Australian, draconian and so forth and I would hope to see that it does not ever happen. We have recently had the earthquakes in New Zealand and there has been an engineer who has been arrested for designing a building that may have collapsed. There are circumstances where, say, a multistorey building has not been constructed properly. Would that then become part of a building dispute where it may be reasonable for some regulators to say, 'This guy's a fraud. We need the power to raid his office and seize the documentation. This building could collapse and kill 100 people'. Is that a reasonable potential?

Mr CLUES - I'm not saying our people are above the law, but maybe if you're talking about severe matters, almost of a criminal nature, we should allow that to be dealt with by the police. I am not quite sure -

Mr BOOTH - How do you do it to gather the evidence? I am only exploring this; I don't have a position on it other than one that's probably more towards your position, so it is a friendly question rather than an interrogation. I am just trying to work through in my own mind how you would be able to give sufficient powers to deal with those sorts of extremes, rather than the bad tiling job you have talked about. You could have a circumstance where a multistorey building that could threaten life had been built in such a way it had not been picked up in the inspection process. Let us say the owner registered a dispute over it and there were valid grounds that potentially, as the New Zealand example I have raised, gave rise to at least some need to have the capacity to investigate something like that fairly quickly.

Mr CLUES - The first thing I would say is that we need to bear in mind we are not talking about the commercial sector with multistorey buildings; we are talking about the residential sector. If we are talking a worst-case scenario, we are worried about a house falling on somebody and causing injury, that is fair and reasonable. But let us have something that says that these people need to show due cause as to why they need all these powers. Let's not just give an administrative body these unfettered powers. As you said, that is un-Australian and I haven't seen anything like it. We're not saying that people shouldn't have the right to investigate and we want to inhibit that. However, there has to be a midpoint between where we are at at the moment and some commonsense, and probably align it more with what you would see being conducted by a proper judicial body or a police-type body that has the qualifications and experience to administer these types of powers. You are talking about giving Workplace Standards officers across the river at Bellerive these types of powers.

Mr FERGUSON - Your example of a multistorey building collapse that would probably result in a coronial inquest, is outside the scope of a residential building work quality. I agree that - heaven forbid - it could happen one day. There was an example in South Australia where I think a golf club building fell down; that was a commercial building and was dealt with through the police in a coronial inquest. It wasn't a residential building work quality issue and I can't think of any circumstances recently here or in Victoria where that has been an issue.

Ms ARCHER - Even if that type of example happened in the residential sphere, surely other legislation would cover it rather than dispute resolution.

Ms WHITE - Under part 6 in Investigations, it does say that they need to, by writing, require a party to submit to attend a building site. They need to have permission; they do have to issue a warrant. So there are other provisions; it is not just that they can go on site without seeking the approval of the parties.

Mr CLUES - Some of their powers are limited by warrants but a lot of them are unfettered powers under part 6.

Ms WHITE - As one part of our investigation, we can look at whether the powers are appropriate but there certainly are provisions that they need to seek approvals before they can enter the property and do an investigation.

CHAIR - Under division 3 as well, Mr Clues, and elsewhere in the bill there is an arrangement for approved mediators. They would not be Workplace Standards people, would they? They are off-site. What you are saying is that the bill gives a nod to sensible, normal processes but there are separate unfettered arrangements that they control the whole thing all the way through.

Mr CLUES - Correct. What we would say is that part 6 is a sledgehammer approach in terms of investigations. It does not sit well with industry but it is consistent with other elements of the bill, and that gives us concerns as to the ethos or the mentality behind it. It is not looking as though this an equitable dispute resolution process. This is looking very much like a bash-a-builder exercise.

Mr BOOTH - Judging builders as criminals, effectively - the class.

Mr CLUES - It is. As I said, if you read each one of these sections, that is how the whole bill is constructed. That is why I am sorting of wading through those.

The next part goes to the penalties. Basically what they have said is that they want to introduce a range of fines from 200 points to 500 points which is $26 000 for individuals up to $65 000. These penalties apply to such things as non-compliance in terms of not answering questions that might be asked of you during an investigation through to either over-estimating or under-estimating provisional sums in a contract which might be an administrative error. So you are talking about applying penalties. I would argue where the penalties fit into a dispute resolution process, they have already got the power to issue rectification which is going to render a good to the consumer. Builder - fix the problem; rectify it; incur the cost; wear the shame; get on with it. That is a power that should be available in terms of rectification. But we go a step further, back to this drug cartel

mentality, that no what we have got to do is not only get the builder to rectify it, we then need to penalise him, haul him over the coals and set an example to others and actually apply punitive damages.

CHAIR - $5 000 or something.

Mr CLUES - No, we are talking about $26 000 through to $65 000.

Mr BOOTH - Those are for failure to cooperate with the investigation rather than the actual deficiency in the work, aren't they?

Mr CLUES - The fines run all the way through the bill.

Mr BOOTH - Even for deficient work?

Mr CLUES - Yes, there are fines in here that are applied for administrative errors in the contract. There are fines for not cooperating with Workplace Standards investigations. If there is any way that you can apply a fine, they have found it under this bill. What I would argue is that one of the most significant powers is rectification in terms of getting the work rectified. Why we then need to go and punish the builders, publicly and financially, is beyond me - and not in a small way. We are talking about $26 000 and $65 000.

Mr BOOTH - Would you prefer a situation where, under this act, if somebody refused to cooperate, rather than imposing a fine for not cooperating, you simply get an adverse finding because you have not given any evidence. So the adjudicator or -

Mr CLUES - We do not have an issue with findings. We have been able to negotiate - it is not represented in this bill, but we have been able to put our position to the department and they have accepted that those fines are over the top and they have reduced them significantly, down to the sort of numbers that you are talking about.

CHAIR - You have done that.

Mr CLUES - We have done that. As I said at the outset of these proceedings, 90 per cent of the concerns that we have raised, Workplace Standards have dealt with. The reason I raised them with you is because they still exist in the bill and what they do is they go to the ethos or the mentality sitting behind the bill. When we question why we do not have confidence in the dispute resolution process, I point to the fact that the bill says we are not interested in hearing from builders. We are interested in breaking and entering your property. We are interested in applying penalties to you, but you can trust us with the ADR process. We are really equitable, unbiased and do not have any institutional concerns about the building industry. It is like - the hell you don't! Everything else in the bill points to the fact that we're running a drug cartel.

Ms ARCHER - It's my understanding Workplace Standards already has the power to require not necessarily retraining but further education if there's a deficiency in knowledge which has caused the problem. Would you argue that that is already sufficient power, if they're found to need further education to -

Mr CLUES - What we would argue is that there need to be two very different regimes. There needs to be a regime that deals with the building industry - 'Let's get this building dispute resolved. Something's happened on the job that needs to be fixed - either poor workmanship or people have run out of cash; let's get this fixed.' That's what we should do about it.

Then you have the building act where it's a question of whether or not the person should even be building, whether they should even hold accreditation because they're so unprofessional and so unethical that they shouldn't even be in the industry. That exists at the moment. What we are saying is that you can't wear both hats. You can't have the director of building control put on a different hat to become the building disputes commissioner and say that that is an appropriate separation of powers.

CHAIR - Is that being proposed?

Mr CLUES - Yes.

CHAIR - The building disputes commissioner will be the -

Mr CLUES - That's what's being proposed under this bill - the director of building control will be the building disputes commissioner. What we are saying is that they both sit within Workplace Standards; they're the same person and when it comes to resolving a building dispute, let's resolve the building dispute. If you've got to repeat offender whom we've seen having numerous building disputes, let's deal with that separately but let's deal with that as a professional misconduct issue.

Ms ARCHER - That's where the punitive effect should be, in other words?

Mr CLUES - Possibly. I would have thought the fact that they're going to lose their livelihood and access to be able to build is pretty punitive.

CHAIR - Alright, so -

Mr CLUES - What we would argue is that you've got penalties in this act where you've got substantial sums of money being awarded against somebody. And where do those monies go? They don't go to the consumer who is aggrieved. They don't go to helping that person for any loss of suffering, time wasted or delays; they go into the coffers of Workplace Standards. So, you've got a situation where the penalties are being applied and the revenue is going straight back into the department. They don't benefit the consumer. They are just there for punitive damages and they apply to a range of things from administrative errors through to non-cooperation.

CHAIR - What are the elements of the remnant issues that you have after your six tough months with the department on this?

Mr CLUES - It really comes down to one issue which is the dispute resolution process. What we would argue is that we would like to see a dispute resolution process in there but the fundamental issue is that it needs to have independence, separation of powers and it needs to have technical and judicial expertise to be able to deliver a verdict and have the confidence of the industry. All of those things are missing at the moment.

CHAIR - Can you run through those one by one.

Mr CLUES - At the moment, under this bill, it is proposed that the conciliation process will be done by officers at Workplace Standards. If the conciliation fails, it then gets directed through to the building disputes commissioner who will make a determination. What we would argue is that you are dealing with disputes that could involve hundreds of thousands of dollars, or potentially millions of dollars for residential homes now - two and three million dollar homes are not that unusual. In fact, there was one at Battery Point recently where there was a concrete failure. The whole house was virtually made out of concrete. You've got a dispute there that involves the concrete company saying, 'It's not our fault'; the builder saying, 'It's not my fault'; the engineer saying, 'It's not my fault'; the council saying, 'It's not my fault'. You're talking about a two or three million dollar home and very technical arguments. What Workplace Standards are saying is, 'Give us the power to make a determination on that matter because we have the judicial and technical expertise to do so'. You're talking about a matter that, in the current format, would go to the Supreme Court where you have learned persons who are used to dealing with technical arguments and making very complex judicial decisions. What this bill is saying is, 'Forget that process; we know as much about judicial and technical matters in the building industry as the Supreme Court does'.

There is no cap or no limit under this bill as to what the nature of the dispute is that they can deal with. They're asking you to give them a jurisdictional equivalent to the Supreme Court. We would argue that, with no offence, Workplace Standards does not have the technical or the judicial experience to deal with building disputes of that nature.

Mr BOOTH - Is it appellable beyond that, though?

Mr CLUES - There are rights for appeal but what we would argue is that you shouldn't have to go through all of that process to get to an appeal. What they're asking is -

Mr BOOTH - It's a prerequisite that you go through their process before you go to court.

Mr CLUES - Correct. What we are saying is that that is not acceptable.

CHAIR - It is the reverse of what this committee has expressed concerns about in the past - that for minor matters people are being forced to the Supreme Court. We do want a smaller, cheaper justice by sundown process for them but for the big end of town, clearly, that belongs in the big end - the Supreme Court.

Mr CLUES - What we would say is that if people are going to have confidence in engaging in this process, there needs to be a clear separation of powers. You can't have Workplace Standards putting on a cap, saying, 'We're going to conciliate the matter'. 'Conciliation didn't work; we're going to arbitrate the matter'. 'Arbitration didn't work; we're going to issue penalties'. 'Penalties aren't enough; what we're going to do is put on another hat and take your builder's licence off you'. There is no separation of powers.

There is a reason why the people in this room make the laws; the police go out and investigate and make a prosecution, then a court makes a determination. You don't have a situation where the police get up in the morning, make the law, drag someone out of

their house and shoot them in them afternoon, which is effectively what Workplace Standards are asking you do to. They are asking for an unfettered right to manage the whole process.

Ms WHITE - Chair, can I seek clarification? The proposal you've just made in terms of having some separate independent person issue rectification laws - for example, a court. How is that any different from the process we currently have?

Mr CLUES - I'm not arguing that it needs to be a court. What I'm arguing is that, like the security of payments model, when it gets to the point of making an adjudication, we need an independent person who is technically and judicially qualified. What we were argue is that it is not Workplace Standards.

I'm not asking that we retain the existing system; I'm not asking that we set up a tribunal; I'm not asking that we set up a division of the court. What I'm arguing is that this process, at some point in time, has some independent separation.

Ms WHITE - Do you have a proposal of what that would look like?

Mr CLUES - No, what I'm asking is for government and industry to come back to the table and recognise that the principles of separation, independence and having people with the technical and judicial experience be inserted into this process somewhere.

Ms WHITE - One of the reasons we've looked into this matter is that we've had constituents approach us who've had a lot of difficulty in navigating the system and who can't afford to take it to that independent umpire of the court at the moment. So I guess the proposal in this bill is that you have a one-stop shop - and I know you have a problem with this - but it does provide clarity and a really simple process for people who have a building dispute to go to someone who can say, 'There's an issue and we can rectify it right here', rather than sending them off somewhere else where they can fix that problem.

Mr CLUES - What I would argue is that the government managed to find it's way through the issue with security payments. So in December 2009, it managed to come up with a process that is cheap, fast, independent, has the confidence of both industries and consumers, and is working really well.

Ms WHITE - Am I right in thinking that you didn't originally support that bill, though?

Mr CLUES - No, I did support the bill. What I argued for at two or three o'clock in the morning, was that they needed to drag the client into the process. What the government was proposing under that bill was to exclude the client from the food chain and if builders aren't paying subcontractors, then builders need to be pulled over the coals and made to pay.

The fact that the builder wasn't getting paid from the client was of no concern or relevance to the government and that same ethos applies to this bill where they're interested in resolving disputes for the owners but have no interest if the builder has a concern.

What I would argue is it's not a quantum leap to say that a couple of years ago we introduced a very good model that had all the elements of separation. It's very low-cost; it's very fast; it's independent, yet we somehow think that the only way we can resolve a very similar type of building dispute is through this sledgehammer approach under this bill.

What I would argue is that the security payments - and I have argued this repeatedly - at the end of the day security payments are all about quality of workmanship. People don't have a security of payments dispute and say, 'I've run out of cash; I over-estimated what I wanted'. What they do is they say, 'I'm not paying you because I'm not happy with the quality of the cabinet work'.

CHAIR - That's a market condition that you guys have always had to work with.

Mr CLUES - Absolutely, and every time a security of payments matter goes up, the adjudicator has to wade his way through the nonsense and say, 'Is it really a workmanship issue or is it someone who's just run out of cash and doesn't want to pay the builder'.

Mr BOOTH - They will make it a proportionate award, too. They might say, 'Well, it's not a perfect cabinet but 90 per cent; so you pay $9 000 instead of $10 000'.

Ms ARCHER - On the independence issue, I'm not sure you're proposing, as was intimated by Ms White, to have a court adjudicate but -

Ms WHITE - But they didn't have a solution.

Ms ARCHER - No, but would you be happy with an independent adjudicator such as an expert panel; a person could be selected from that panel with the expertise. For example, you could have retired Supreme Court judges on it, which we've had in other systems.

Mr CLUES - We're not coming here today to advocate an alternative model. We would be open to anything that hits those principles and that has merit. If you were putting that on behalf of the government we would be open to having discussions around that. We are saying that you can't be both the director of building control and the building disputes commissioner; you can't be both the conciliator and the arbitrator.

CHAIR - Did I not read in the newspaper at the time you expressed concerns that there was an element of a standard contract that was a problem?

Mr CLUES - What is also advocated under this bill are severe restrictions being placed on the use of cost-plus contracts. There are two types of contracts that are used in the industry: one is a cost-plus contract and the other is a fixed-price contract. A fixed-price contract is, 'I will build your home for $300 000'; a cost-plus contract is, 'I will build your home for whatever it costs plus my builder's margin'. The builder will say to you, 'I'll have a 10 per cent profit margin on this and apply that 10 per cent to the labour and materials'. Those sorts of contracts are used extensively in the renovation area and in such things as architectural homes where it's a moving landscape in terms of designs and specifications.

CHAIR - And it's often of great benefit to the customer because it takes all the risk out in terms of a builder having to cover his backside.

Mr CLUES - Exactly. If you go with a fixed-price contract only, you make that the only commercial option and builders will be compelled, because they are absorbing all the risk, to load that into the contract.

CHAIR - What's the department saying about that?

Mr CLUES - They're prepared to move on that. They have said that if the person gets a second quote or gets the job quantity surveyed that gives them some confidence about what they're heading into, and we're satisfied with that.

CHAIR - You've done good work with that. Where do you see the main cost to the customer coming in, other than a whole layer of bureaucracy that needs to be paid for?

Mr CLUES - We think the main cost will be that this is a very adversarial approach that has no confidence of industry and, as a consequence, disputes will not be resolved with goodwill or confidence and therefore any dispute is a delay and any delay adds a cost. If this committee or the lower House wanted to do the industry a great service it would come up with a dispute resolution process that works, is independent, has the skills and talents needed to expedite it well, and that industry has confidence in and wants to engage with. I know that when Michael Kerschbaum appears before you today he will say the same thing. We would love nothing better than when a building dispute hits our desk to be able to refer them off to a process we have confidence in and say, 'Go and get it sorted out and the cards will fall where they may', because we have confidence that the people administering that process are independent and have the judicial and technical expertise to make the right call. At the moment that is absent from this process and the only alternative is the court system, which is also timely and costly.

Mr BOOTH - Stuart, I want to get some clarity with regard to this. Are you saying you want this bill thrown in the bin?

Mr CLUES - No, I think 90 per cent of this bill has been resolved in discussions between Workplace Standards and the industry associations, but with the dispute resolution process we say there needs to be a fundamental shift somewhere. It may only be in some words, but we say that you can't have the director of building control being the building disputes commissioner.

Mr BOOTH - Yes, you've made that point, but if the dispute resolution process part of it mirrored the securities of payments process, given that you haven't given us a preferred option, is that something that would -

Mr CLUES - You'd be getting a damn sight closer.

Mr BOOTH - Okay. I think it's important you think about this and perhaps suggest an alternative model because at the moment it's like a mirage. You've said, 'This is no good but we can't tell you what would work'. It would be very helpful to the committee.

Mr CLUES - We are being more productive than that in our discussions with Workplace Standards. What I don't want to do is put on *Hansard* the perfect model.

CHAIR - No, I understand that.

Mr CLUES - I think we can work this out with Workplace Standards and the government and we can educate our people. We have said from the outset that we would like something that looks like the security of payments-type model where when it gets to the point of adjudication it gets removed from Workplace Standards and is given to somebody with the judicial and technical competence to make a decision.

CHAIR - We accept that in your negotiations with Workplace Standards you have to keep an integrity process going there and it is obviously working well for you. It is commendable that Workplace Standards has worked through so many matters -

Mr CLUES - They have.

CHAIR - but they will also read on *Hansard* that we will be going over your evidence and checking with Workplace Standards how they resolve these matters.

Mr CLUES - Thank you.

CHAIR - It is a three-cornered arrangement that we work under.

Mr BOOTH - With this bill as well.

CHAIR - Exactly.

Mr FERGUSON - Could I advance a couple of the comments of my colleague? We touched on bias earlier and we accept that there is a legislative bias towards the consumer and market protection because that's what it's there for. We say at the moment - and as we have said, most of it has been resolved - that the bill in its current state is excessive for the purposes of consumer protection. That's something we're working through and that's a legislative bias. What we're really concerned about is this institutional bias. I obviously don't have time to go through all the notes I have so I'm just going to focus on what the really important things are. One is this concept of the separation of powers. I'm not going to argue legally about the separation of powers because we would be here all day and it has a different meaning in state and federal law, but the regulator is really wearing too many hats and I'm going to advance that a bit more. They are administrator, conciliator, investigator of everything, prosecutor of crimes, disciplinarian of builders and the decision maker for contractual disputes.

CHAIR - And they can take the builder's licence off him at the end. That is the last one. Livelihood gone.

Mr FERGUSON - That's right. Putting all that in a one-stop shop seems a very attractive thing for the government. For a government that's great - 'We control everything, we can do that, that's fine.' - but if you look at it carefully it's got a huge moral danger and a huge legal danger.

I'm not going to go into that today but the words 'procedural fairness' and 'natural justice' just leap out. At the end of the day I think it's going to be unpopular with both builders and the public by having this consolidated, all in the one bucket silo-type process. It lacks sufficient checks and balances that only appear when you get to the Supreme Court. I'm not going to go through the dispute processes because I've already discussed it but it's cumbersome and long and by the time you get to the Supreme Court people will have run out of money.

The system as it's designed at the moment is broken. It's not going to work. As I said, they look like the technical expert, police, judge, jury and executioner. That is a quote from our members. They're petrified of this and they're not going to have any confidence in it. The administrators and the decision makers - and I make that big distinction - need to be perceived to be independent in their function and the way they carry out their role.

There are two ways that I'm going to tell you about the separation of powers generally. One is in the dispute resolution procedure. We have, first of all, complaint handling and administration. Clearly Workplace Standards can deal with that. Then we have conciliation of disputes. They might handle that or outsource it to an external conciliator. Then we have the production of expert reports, and this is where it starts getting a bit more complex. Well, they're going to need to go outside for that. Then we have determination of an independent nature, and that's going to require a judicial or a quasi-judicial function. Not something with a person with a different title, something outside the government. It needs to be a role that reports to the Governor-General and not the minister. It needs to be independent.

CHAIR - A VCAT kind of thing?

Mr FERGUSON - A VCAT kind of thing would be something we could consider but, as I said, we are not here to give you a solutions-based approach today. We want to be able to sit down with Workplace Standards and put all those things on the table and say, 'We think this will work, we don't think that will work', because they're not budging on this process.

The other way I want to look at separating out the power is through the administrative process. As we've said, they want to look after dispute resolution and everything and that is one whole silo that we really need to break up a bit. They also want to deal with the conduct and discipline of builders. That is another thing in the same bucket. Then they want to do investigations and compliance for prosecuting them for offences under the act which are criminal proceedings which, despite what Workplace Standards say, is in reality going to the Magistrates Court and pleading guilty or not guilty. It is a crime.

We need to look at perhaps having civil penalty provisions for some things rather than having them characterised as or assumed to be criminal. Some of the things may indeed be offences under the act. If you're meant to do something and you don't do it, that's fine, but other things should simply have a civil penalty provision if there is no intent or it is simply arising from something that is not so critical.

It seems tempting and easy for the government to lump all the functions and powers into one government body and one silo and have a one-stop shop, but you cannot treat regulation of the housing industry like some vertically-integrated business. It's not that

easy and it won't work. What we need is specific separation of those roles and I think it's a lot more complex than Workplace Standards appreciates. We don't want to see the legislation fail or be ineffective for a legal or practical reason. The primary check and balance is here with the parliament. This is where we need to get it right. We will do our utmost to make sure that if something is not right it won't get through. We can't support something that's going to fail the market.

CHAIR - What would happen if this became law? As currently proposed, eventually matters would go to the Supreme Court and a Supreme Court judge would likely be critical. He would look at all this stuff that happened before it got there -

Mr CLUES - I think it would be a situation where 90 per cent of the time Workplace Standards would be dealing with small builders and they will have a field day with them because it will be a small dispute and Workplace Standards will manage it and the builder will have to wear it sweet because he doesn't have the resources to fight it.

Where Workplace Standards and the government ought to be really concerned is where it becomes a very complex matter and you're dealing with a big builder who's not to just be sledgehammered into this. Workplace Standards will make a decision and because they don't have the judicial or technical expertise to get the decision right it will be the government who will wear the cost of having erred in their decision, because somebody at Workplace Standards came in, intervened, made a decision, didn't have the judicial or the technical competence to deal with the matter and instead of dealing with a small builder that is going to roll over and take the kicking they're going to deal with somebody of some substance who is going to hire a good QC and sue the government for setting up a pretty dodgy-looking dispute resolution process in the first place.

CHAIR - And to wear all the costs of the whole process and the rest of it.

Mr CLUES - Yes, so when you start dealing with $2 million and $3 million dollar projects and a big builder it gets complex.

CHAIR - A very good submission; you make a very strong point. We are well over time so thank you very much. You provided very clear input.

Mr CLUES - Thanks for your indulgence.

THE WITNESSES WITHDREW

Mr NORMAN REABURN, DIRECTOR, LEGAL AID COMMISSION OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Mr Reaburn is well known to us as the director of Legal Aid in Tasmania. He shared with me a matter when he was here in parliament recently that I was thought was of quite some interest and I thought as we were here in Hobart I wondered if he would spare us 15 minutes of his time to come and tell us more about it.

Just for the purposes of the committee, I raised with Mr Reaburn the matter of people who have been financially injured in a building issue not having the funds because of that injury in the first place to actually go anywhere with it. Mr Reaburn shared with me some changes in the process and I wonder if he could share that same information.

Mr REABURN - It's an interesting kind of process. We offer some services which are of relevance to the kinds of issues that this committee is concerned about. The first one is our telephone advice service. From time to time we get people who call us about building disputes. We don't have a particular and specific expertise in the field of building law and a lot of the time what we'll do, apart from taking people through the general outlines of the process, is refer them to Workplace Standards as being the organisation with responsibility of dealing with a matter of that kind.

When you reach a stage of somebody wanting to take on a builder because of bad work and they've not been able to resolve the matter in the more informal processes, the Legal Aid Commission runs a service called the civil disbursement fund. This was introduced towards the end of 2004 and was to make up for the fact that in the 1990s, because of the budgetary turmoil when the commonwealth changed the way in which it approached funding legal aid, the Legal Aid Commission stopped giving grants for civil matters. For most of the 1990s it had given quite a number of grants for civil matters and building disputes would have been one of the kinds of matters it gave grants for.

Anyway, we created a scheme called the civil disbursement fund. Over a period of two budgets, the government gave us half a million dollars and, in effect, said, 'There you are, there's your seed money, off you go.'. What happens is that somebody goes to a lawyer and gets the lawyer's agreement that they will take the matter on. The fund scheme requires the lawyer to be making a bit of a contribution, either deferred payments or special rate or -

CHAIR - A bit of pro bono.

Mr REABURN - Pro bono or a pay-if-you-win kind of exercise. The applicant comes to us through the lawyer and says, 'I need to sue somebody because of this', and they set out the circumstances and reasons. That is then looked at by specialist civil matter lawyers who are on our volunteer panel to assist us. The commission will then get a report from those people and will agree to fund what the applicant needs in terms of expert reports. So for a building dispute it could be a quantity surveyor, an engineer or another builder. I've heard you all make the point about people not having the funds to take on something like this. We had one matter where the costs of the reports in relation to a building matter were $25 000-$30 000. If the person wins their case either by settlement or court decision, they give the money back with a bit of a premium. If they don't win their case, they don't give the money back and we write it off.

CHAIR - Okay, so it's an underwriting.

Mr REABURN - That's right, it's an underwriting of the non-lawyer costs of a civil dispute. It's been a pretty successful program. Certainly, all the legal firms that do things like personal accident, workers compensation and negligence - all those sorts of areas. The firms that do that make constant and frequent use of the scheme. Our expert panel advisors are very good at picking. We don't refuse many, and we do not lose that many once we've agreed to support them. The lawyers who are coming to us are bringing us things they're confident they can win. It has been extraordinarily useful and helpful and we are close to 600 matters where we will have helped Tasmanians achieve an access to the process that they may not have otherwise been able to do.

Mr BOOTH - Is that 600 building matters?

Mr REABURN - No, they're not building matters. We've had less than a handful of building matters. Mostly they are workers compensation, motor accidents and medical negligence. They would be the three greatest categories of matters that we assist. We have had several building matters. They are not minor matters. We could build a house better than some of the houses involved, when you look at the details, the photographs and the materials.

While the situation requires at the point of the pyramid an expensive court-based process, this is at least one mechanism that makes the cost of that a bit easier for people who come into our scheme.

CHAIR - Could I share with you a case that is on our *Hansard*, where an elderly couple built a home built by an owner-builder that subsequently was proven to have very dodgy building practice use which means that when it rains, the water just comes inside. It is almost laughable, but that is what happened. It is a damp-proofing matter, which is standard building technique. On the record of this committee, we had a senior council officer who admitted that his junior had made an inspection and signed it off as appropriate when it clearly wasn't. Why that took place, whether there was any inducement or whatever is not the issue; the fact is that his council employee did the wrong thing. These people have now bought this home and I think the council is waiting for someone to knock on the door and say, 'You've done the wrong thing and you have to pay up'. We are going to hear from this elderly couple next week. I believe they're going to tell us that nothing has happened; they are just sitting there and have to go to the Supreme Court - and they have no money because now their house is worth nothing. Bearing in mind that the draft legislation we're currently looking at from the government doesn't contemplate this at all - it's only about registered builders and their customers, and has nothing to do with owner-builders - where do people like that -

Mr REABURN - Over the last two or three years, the commission has changed its rules about civil matters. It is possible to get a grant of aid that will pay your lawyer in a civil matter. We don't do very many because in circumstances where the plaintiff is looking for damages we say, 'We should be using the civil disbursement fund'. The interesting thing about the case you've described is that it's possible that in those circumstances the potential plaintiffs don't need expert reports.

CHAIR - Because there are admissions.

Mr REABURN - That is right. That is what I am saying; they don't need it but they need the ability to bring the matter to -

CHAIR - To the table.

Mr REABURN - If you are having these people appear before this committee at a later time, please tell them to give me a call and talk to me. It may just be possible, and I would not want to lift their hopes -

CHAIR - No, we would not say that.

Mr REABURN - It might be worth their while to have a talk to us. It is not impossible. The phrasing in our guideline requires something more than simple personal benefit. There is a requirement that there be some wider community benefit to taking up the matter and looking to get a solution to it. We would need to look at that fairly carefully but it would always be worth having a conversation with people caught in that kind of predicament.

CHAIR - Terrific. Thank you for that. I think it has been a worthy addition to the evidence we have got because those sorts of instances escape all the work that is taking place with legislation. They stand out there on their own, and access to the Supreme Court is limited to wealthy people.

Mr REABURN - For some people, it is a hard and complex process to go to the Supreme Court,.

CHAIR - Thank you very much. Could we thank you very much for your submission and your time in coming in to doing that? We will see you again.

Mr REABURN - My pleasure, Mr Chairman.

THE WITNESS WITHDREW.

Mr MICHAEL KERSCHBAUM, EXECUTIVE DIRECTOR, MASTER BUILDERS TASMANIA, WAS CALLED AND EXAMINED.

CHAIR - Michael, we do not need to swear you in and you will recall the standard warnings about the fact that we are being recorded; you are on *Hansard*, and the rest of it.

Mr KERSCHBAUM - Certainly.

CHAIR - Thank you very much for coming in to the invitation we made to you. We are looking at the entire disputes resolution proposals from the government. In fact, we are looking at dispute resolution as an overall matter and it just so happened that the government at the same time put a draft bill out there for consideration, so we have slowed down a bit to let the industry catch up with it. I understand, and we have heard from the HIA this morning, that there has been considerable work done with the relevant agency and there are accommodations and considerations that have taken place. We would be very keen to hear what the Master Builders feel about where we are at with the proposals.

Mr KERSCHBAUM - Certainly. Thank you for giving me the opportunity to speak. Obviously, a little-known fact about the Master Builders is that about 80 per cent membership is, in fact, residential. Only about 20 per cent of our members as such categorise as commercial. We are seen as predominantly the commercial builder in town. That is because most of the commercial builders are members of ours. However, we have about four times as many residential builders as we have commercial builders.

The first thing I want to say is that we have been working collaboratively with the HIA on this issue and most of the feedback you would have already received from the HIA. So I am not going to look at going over old ground. You have certainly heard from Stuart and he has given me a copy of his presentation for today so that I am able to skip over those issues. There are probably only a couple of points that I will make which are subtleties and reinforcing some of the things he has already said.

Like the HIA, we do support the bill in principle. We believe that since housing indemnity insurance or warranty insurance has gone from the landscape that consumers have been left to some extent vulnerable. We made those comments when warranty insurance was removed. We did say to the government that it is in their best interests, we believe, that there is a system of protection there for the consumer. Also, we would like to see a dispute mechanism that builders can also access, that both parties can hopefully come to resolution using, and one that's effectively put in statute so it's mandated.

We currently spend a reasonable amount of our time and resources dealing with complaints against builders and some of those are legitimate and some are not. Only last Friday morning I assisted a member drafting a letter to a client who was not satisfied with their slab. The slab was within all tolerances, there were no problems with it, the builder had bent over backwards, but the client would have none of it and they wanted the slab ripped up and replaced.

CHAIR - Could we just explore that a bit?

Mr KERSCHBAUM - Certainly.

CHAIR - Most of us have had some exposure to legal matters and building matters. What would a justification be for a slab being completely wrong to the point where it has to be taken up? Surface is the one that most owners are worried about, aren't they?

Mr KERSCHBAUM - Quite obviously a slab, unless it's designed to be a visible slab, only needs to be finished in line with the level of finish you're looking to put on, so if you're putting carpet on top of the slab, the finished surface of the slab is really quite irrelevant. We had an unusual situation in this case where the aggregate and the concrete - it's the aggregate that the slab sits on - was all supplied by the same manufacturer which is a multinational. The finish came up a bit odd and the slab didn't look like a normal slab but they believed it was just the aggregate that was used and the aesthetics of it, I guess, were somewhat off-putting.

Having said that, the slab was poured late last year and here we are, almost a year on, and the cracks are no larger than 1 millimetre, which is well within the defined tolerances in Australian Standard 2870. So the builder had been bending over backwards trying to get to the bottom of it and I said, 'There is no bottom of it. At the end of the day you have a slab, it's a structural slab that wasn't designed to have an exposed finish, it's designed to be tiled over, carpeted over or vinyl laid over the top of it. There's no need for you to get worried about a 1 millimetre crack when there's a category damage of one' - zero being nil, one being the least and four being the most. I said, 'You're worried over nothing'. He said, 'But the client's not happy', and I said, 'It doesn't matter whether the client's happy or not, you've done your job'.

The builder was worried in this instance because the job was reasonably remote and he used a subcontractor to undertake a lot of the work for him so he was worried that the liability would come back to him. I had to say to him, 'Look, at the end of the day, you have to cut all ties with the client'. They'd received a lawyer's letter threatening to take legal action, and I said to the builder, 'But it doesn't specify any real damage. He can't cite an Australian standard, there's no engineering report to back it up, so there's no reason for you to take this any further'.. Yet this builder had beat himself up over the whole issue to a point where he owes the concrete and aggregate provider - the same company - a substantial amount of money. It is now with a collection service and he said, 'I will not pay you until I'm satisfied that everything is done'.

So you've had a hold-up in the contractual chain through no fault of the builder. I'm not saying that the builder is always right, of course, but in that instance the builder was trying to do everything he possibly could to keep a client happy that, in all honesty, would probably never be happy with the final result.

Mr BEST - So that slab is not going to fall apart, it's not going to warp or anything like that, it's the simple fact that there are slight cracks in the surface which would be covered anyway?

Mr KERSCHBAUM - That's right, and my understand is that the client has gone to a number of engineering firms trying to get, effectively, the slab condemned and hasn't been successful, so we had this generically-worded thing saying it's not fit for standard, it's not fit for purpose. It fits in with the guide to standards and tolerances, which is the

document the state government adopts, because that relies on the appendix of Australian Standard 2870 so it all lines up. Quite clearly there's no issue with the slab.

Mr BOOTH - So, Michael, presumably that matter may end up in court.

Mr KERSCHBAUM - If the client chooses to take it that far they could well end up in court.

Mr BOOTH - So we probably shouldn't discuss this particular slab. I was going to use it as a case in point to see if we could step through a process of dispute resolution regarding quality of work and standards.

Mr BEST - We'll talk about another slab.

CHAIR - Sorry, has the builder been paid in this case?

Mr KERSCHBAUM - He hasn't invoiced the client and I said, 'Well, that's what you have to do', but he's been trying to appease the client to a point where he can provide -

CHAIR - Yes, he's trying to work it through.

Mr KERSCHBAUM - I said, 'Look, you have no case to answer; you have to invoice the client and get your money out of them.'.

Ms ARCHER - And he still owes the supplier, correct?

Mr KERSCHBAUM - He has the money to pay the supplier but he was concerned that if the slab wasn't correct it was because of the aggregate, the mix in the concrete.

Mr BOOTH - Let's not talk about that slab but a completely different issue where you had a situation which met all of the standards and had been checked by relevant people such as an engineer to make sure it complied; you had the concrete slump tests and all that sort of stuff, but the client simply refuses to pay. In a case like that it would normally go to security of payment legislation, wouldn't it?

Mr KERSCHBAUM - It would, yes.

Mr BOOTH - So, why would this be any different in terms of building standards? Do you see a hypothetical slab that had a visual defect ending up not being able to be dealt with by security of payment or would it go through a building dispute because it is a quality issue or something?

Mr KERSCHBAUM - It's a moot point. Security of payment is really all about securing payment and I don't think there's enough cases or precedents, I should say, in Tasmania, although there probably is on the mainland, as to how far they'll go with security of payment. Where there's clearly a lack of payment in the contractual chain, then security of payment would deal with it whereas, if it's an issue of defect, I don't quite know how you'd go about that because the security of payment legislation was not really designed to be dealing with defects yet they are often cited as the main reason for non-payment. So the two pieces of legislation don't necessarily align, although I would say there is a lot

of crossover because a lot of security of payment claims are not met because the client may or may not have a problem with the defective work but that's often the reason cited.

Mr BOOTH - Certainly, there are a number of cases where non-payment is based on the client. If it's a client refusing to pay then the builder goes to security of payment and takes the client. The dispute is that the client says, 'You didn't do a good enough job on the cupboard so I'm not going to pay you for the whole house', and the adjudicator comes in and says, 'Look, actually the house is fine and the cupboard is 95 per cent fine so I'm going to order that you pay for the house and most of the cupboard but we'll keep 5 per cent out because you need to sand the scratch on the door', or something similar. Why, in your view, would you need a different system? Why couldn't you deal with an issue similar to that slab issue simply through security of payment where there is actually a defect claim by the client.

Mr KERSCHBAUM - I guess you're relying on the integrity of the arbitrator/mediator or the person undertaking the security of payment claim.

Mr BOOTH - The adjudicator.

Mr KERSCHBAUM - Yes, you're relying on the adjudicator knowing what they're talking about and being able to come up with an answer. I think that's probably the downfall; most adjudicators aren't technically trained and so for them to start talking about whether the issue is a defect or not and trying to apportion liability on that basis becomes a fairly technical issue. For instance, the guide to standards in tolerances doesn't cover particularly well rooms that are out of square. You may well have a slab that's fine but the room's out of square, so the fact that the room is out of square then becomes a contractual issue and the non-payment arises from that contractual issue, so the adjudicator can often make an assessment based on payments where it's pretty cut and dried, but where the issue is not so cut and dried or where there are a number of defects involved, then it becomes a question of whether the person under the security of payment legislation has the technical expertise and ability to deal with it. I'm not saying that security of payment couldn't be changed to allow for technical issues to be dealt with under that particular system.

Mr BOOTH - That's what I'm getting at. It seems to me there are some parallels there, from my understanding of the way I have seen security of payment work, in that it deals to some degree with building defects or standards because there is an adjudication about that at the end of the day sometimes as a result of that process. It seems that this disputes resolution process is similar; there are parallels there. For example, one of the proposals under the building defects issue is that the standard of the building is assessed, rather than by the Workplace Standards model - which you probably want to talk about in a moment, I guess - by a different authority similar to the security of payment system. That's what I was trying to get to - whether you could see a role for a very rapid justice-by-sundown process where building defects et cetera can be dealt with in the same way as the security of payment.

Mr KERSCHBAUM - With the majority of fairly simple works I think you could incorporate a degree of technical assessment as part of that security of payment legislation. The issue is that security of payment is all about ensuring rapid payment to someone who is out of pocket. The risk you run dealing with technical issues is that they

can go on and on and on and then that brevity you're attempting to achieve using the security of payment legislation is circumvented because you've got a situation where the issue gets bogged down where you have two engineers and one is claiming the slab is defective and one is claiming it is not. The adjudicator is not a technical expert and they have to rely on two conflicting reports. The issue then becomes protracted and the original aim and intent of the security of payment legislation is to get that payment out very quickly to the disadvantaged or disenfranchised subcontractor or whoever it might be in the contractual chain.

To some extent I could see it working for very simple items like the one you've described with the kitchen cupboard or something, or where the matter is fairly cut and dried in the instance I have described earlier, that might be one, but when we get to issues that are a lot more complex as to where water ingress might be coming in through and those sorts of things, then it is harder to make an assessment.

The Master Builders is subject to a housing indemnity claim at the moment which we are willing to put our hand up on. On the facts of the matter it is a fairly straightforward claim, the issue is just quantum. The client is saying, 'It's going to cost this', and we've got builder's quotes that say it's going to cost this, and the difference is threefold. We're not going to pay the client what they want, we're going to get our own builder in to fix the defects - so you have those sorts of issues as well. The client comes up with a report that says you've got $100 000 worth of rectification work there and the builder says they can do it for $20 000, so then there is that separate issue as well. What seems to be a fairly good piece of legislation to utilise that payment system - and I agree with you - can start to lose the reason for its very being, and that is getting a payment within a certain period of time, because it gets caught up with technical issues and issues of quantum and merit and those sorts of things.

CHAIR - On the adjudication matters, in the past we have had situations where members of your organisation have been involved in a building dispute. Some builders are said to inspect or investigate and they also happen to be members of the MBA as well. It is a Tasmanian issue. At the end of the day we are a small state and there is only so much expertise in the state. I think this committee is interested in ensuring that there are degrees of separation so that clients or customers can rest assured that the information they are receiving is in fact completely at arm's length. Does the adjudication process in the act that is proposed meet with your approval? Is that the kind of thing you would see as being appropriate?

Mr KERSCHBAUM - I guess we share the HIA's concerns about Workplace Standards being in charge of the whole kit and caboodle. It is more of an issue for us because you have builders' accreditation sitting within the same area and if the Director of Building Control was to wear a number of hats, which was proposed initially and may be the case, it would be a worry because our real concern is that if the issue gets past the mediation/conciliation stage and there has to be a determination made, if the same department is undertaking the initial conciliation and deciding what the final outcome is after an investigation, the builder is almost forced to play along. There will be very little appetite for the builder to push back on the system. This is effectively the same department and potentially the same person who is looking at their professional conduct issues.

So we have some concerns about it. We are more than happy, as is the HIA, to have a conciliation initially or a mediation undertaken or supervised by Workplace Standards or one of their inspectors. We are more than happy for one of their inspectors to go out and look at the works and try to influence to some extent the outcome or the discussions between the parties to try to resolve it early.

Mr BOOTH - Why would you want that to go through Workplace Standards rather than as in the security of payment situation where it's completely independent? You have an appointing authority that appoints an assessor or adjudicator, so why wouldn't you do that for building standards?

Mr KERSCHBAUM - We're not fussed at all who undertakes the initial conciliation/mediation or who undertakes the first investigation. If the state government believes it has a role to play in that process we're happy to allow that to occur. What you're talking about is trying to get the parties together to talk and resolve the outcome between them.

Mr BOOTH - So you don't have a preference?

Mr KERSCHBAUM - I'm not fixed, to be perfectly honest. I'm not particularly fixed on the model.

Mr BOOTH - I'm very interested as to why you or anyone would think the government would have a role in a consumer dispute when they don't normally have conciliation tribunals or so forth set up for any other dispute.

Mr KERSCHBAUM - I guess there is Consumer Affairs and if they see it as an extension of Consumer Affairs, good luck to them. We don't have a fixed position because, at the end of the day, if you look at what they're trying to achieve out of the process, it's just a way of mandating the parties to get together to try to resolve it amongst themselves.

CHAIR - So you're relaxed about the conciliation process, which is basically a statement of agreed facts, isn't it, about what's going on and what the dispute's about?

Mr KERSCHBAUM - Yes, and trying to get the parties to have a chat about it and see what areas of common interest there are realistically.

CHAIR - On the matter of slabs, does a contract these days specify what surface is required on a slab - in other words, carpet, tiles or whatever? A polished concrete slab outcome is fairly expensive because they have to get it to a certain standard.

Mr KERSCHBAUM - No-one can produce a slab that is crack-free. In fact, it was a constant source of frustration for me when I was a builder when you'd turn up three days later and there'd be early shrinkage cracking occurring. You'd be on a rock base and you'd think, 'How can this happen?' It just can't happen, you didn't add water and did all the right things, but slabs will crack. It's the extent to which a slab cracks, I guess. The builder, engineer and designer will often take special measures if it is an exposed aggregate finish to try to minimise cracking.

CHAIR - So you're reasonably relaxed about the conciliation process but with the mediation process, however, your main concern is that they're qualified?

Mr KERSCHBAUM - Yes. I talk about conciliation/mediation because I don't think the final model is fixed here. I'm quite relaxed about the preliminary stages and who undertakes that work. It's a policy issue, an issue for government, and I don't want to start saying you should have third parties doing it. All I'd suggest is that there's going to be more of a cost if somebody does it independently. That doesn't worry me either because having some skin in the game is often the quickest way to sharpen everyone's resolve. We as an industry association don't have a fixed position as to how that preliminary mediation/conciliation process might take place and who might undertake it. Our concern is that then it is removed and whoever ends up making a final decision on it is qualified to do so and has taken into account all facts, and it is not Workplace Standards, effectively. We see that they have too much influence on the whole situation and we believe they have way too much control and influence over the build post that particular dispute. There are a lot of builders out there who would change everything they possibly could to meet the government's wishes because they are concerned that their builder's licence would be revoked, or they will come under scrutiny under a different part of the building act which deals with professional misconduct or unprofessional conduct. I think that that is a real threat and we do not believe that that should be there. We believe that if the parties cannot agree, going through some sort of preliminary ADR, at the end of the day whoever is making the decision should be qualified to do so and separate or at arm's length.

CHAIR - The department, when they issued this legislation for the community's consideration, spoke about RRA, which is Residential Rapid Adjudication. It was not, back then anyway, in place anywhere in Australia but was being considered by Queensland and the ACT. Interestingly, from Mr Booth's point of view, they both say it spins out of security of payment methodology. From what I have heard today, that is precisely what happens. The department said then that the RRA 'may allow for quick resolution of any disputes that would otherwise remain unresolved or it may escalate. While there would be some benefits in establishing one domestic residential building contract' - sorry, that is a contract matter.

Clearly the department is not - I don't know why they have not progressed it yet; they may have progressed it by now and they will be coming before us eventually. Do you have a view on that at all, on the rapid process? Have you had a look at that?

Mr KERSCHBAUM - Not particularly, no. I have to admit I haven't. I am sort of familiar with the Building Service Authority's process in Queensland and I know anecdotally through discussions with members who have come from Queensland that they believe it is quite a big stick approach because the BSA, of course, control the issue of housing indemnity insurance. They control the licensing of builders and they control the disputes, and so you have this similar situation to what we are proposing and we are worried that there is no ability -

CHAIR - It is pretty powerful. If I could draw you attention to the minor assessment statement that came with this legislation. You will get it on line; there is a whole box of it where KPMG address this issue in the Queensland BSA organisational review project report. So they are considering it and clearly it is there for us to think about it as well.

My guess is that this committee will be exploring it with the department; so if you do not have a view on it we will do that.

Mr KERSCHBAUM - Certainly, we would be in favour of any dispute process which is rapid and gets the issue resolved as quickly as possible. It is in every party's benefit. We see from the sidelines that the longer a dispute goes, the more entrenched the positions become of both parties and the harder it gets to finalise with any sort of outcome for either party. It just gets more and more bogged down and just more and more difficult. We, in our own contracts, introduced a system which involves an expert and that expert makes a quick and dirty assessment on certain projects up to a certain value and then both parties live by it. That is only up to $30 000; over $30 000 you are in a separate process.

CHAIR - I suspect the success of a scheme such as this is in this comment here from KPMG: 'a panel of adjudicators would be established.' So, it is about having confidence in those adjudicators. They have got to have the technical expertise. Your builder cannot bluff them and neither can the client. He knows about Australian standard 2870. He knows about that stuff before he ever walks on site, or he might bone up on it before he gets there. Adjudicators may come from backgrounds including legal, building, inspection, or investigative backgrounds. Licensed adjudicators would need to meet strict licensing and technical qualifications. That is not so different from what we have got under the current housing indemnity thing where there are certain people in the industry who are consistently used as independents, is it?

Mr KERSCHBAUM - No. Can I say my only real concern with any system is finding the appropriate people. There are a lot of people who call themselves 'building consultants'. I have seen a number of them - and I come from a technical background. But I see very few well-written reports and very few reports that have any real basis or claim within the BCA, or they misinterpret the BCA. That is the trick. You get the right people and these issues would be resolved, I believe, extremely quickly and extremely well.

CHAIR - I would have thought they'd need a formal engineering qualification which allows them to present reports in a legal and technical way that meets academic standards; something which says, 'No, what you're both on about is just not an issue', and just resolve it.

Mr KERSCHBAUM - You're right. You do need that sort of mentality; you need a logical process-driven solution. The concern I have with engineers is that they have no real idea about anything other than the structural components. Often it is the finish and those sorts of things that become the issues for a client - the quality of the plasterboard or the paint finish. I think you need a number of experts in a number of different fields to deal with the range of issues.

Ms ARCHER - Or you have expert reports presented to the adjudicator who has the ability to assess those.

CHAIR - It all gets fairly expensive, though.

Mr KERSCHBAUM - The other problem with that is that for every expert you find, I will find one who says the opposite. That is the problem I have with it.

Ms ARCHER - Occasionally they agree.

CHAIR - Particularly at the moment with some many renovations going on, the issue of rooms out of square and things like that is common. It's almost axiomatic with renovations because you're working off somebody else's previous work.

Mr KERSCHBAUM - There are occasions where rooms have to be built to tie in with existing rooms and they won't necessarily be square; so there are those sorts of problems.

CHAIR - On a different matter, I was at somebody's house and they said, 'Come and have a look at how this place has been built. This doorway is completely out of square'. We measured it and it was out of square. I looked on the other side and it was perfectly square and he said, 'How can it be square there? I said, 'You would have ended up with both sides slightly out of square. One way or another, you had to make a decision'. He said, 'Why hasn't somebody told me that?' He was already a month or two into some sort of process. People who go into these things expect perfection, which is nonsense. You're dealing with organic issues.

Mr KERSCHBAUM - You are. It's one of the hardest things we have to deal with. It is being built on a site which is often, six months of the year, typically wet and muddy and you tramp in in your boots. You do your best but things still happen. It's not built in a factory environment or a laboratory-type environment.

Mr BOOTH - For the record, what is the structure of the MBA? Could you detail what you are as an organisation - a company or an association?

Mr KERSCHBAUM - We are an association; we are incorporated. We were formed in 1891 in Hobart and grew to the north and north-west in the 1960s and 1970s, so we developed membership in those areas. We are a true not-for-profit association insofar as if we were wound up all our proceeds would go to a similar association. We have a number of objects and most of those follow along the lines of most not-for-profits. We are a union of employers, and industrially registered as well. So we play a fair part in industrial negotiations, although that is becoming less and less of an issue with the industrial relations regime we all operate under now. We have a number of objects and one of the ones I take principally fairly seriously is the duty to the industry. We have a number of our objects very high up; we range from A to Z, and A - C and D involve the industry. Whilst we are there to look after our members, there are a number of other aims; we have an objective to better the industry. With a better industry, our members prosper. We are an industry association, we have effectively five basic membership categories, if you like. We have builder members, which we split into commercial and residential - commercial builders typically receiver a higher level of service, especially in an industrial area. Then we have membership categories for trade contractors, that is bricklayers, carpenters, plumbers. We also have a membership category for trade suppliers like your K&Ds and Bunnings, those sorts of people. We have one for service providers, engineers, architects and others and we also have affiliate membership which covers the balance, like student members and those sorts of people. That's it in a nutshell. We also have life and honorary members.

Mr BOOTH - Is it under a company structure, then? It's a non-profit association but is it run with a board like a company?

Mr KERSCHBAUM - We certainly have a board of directors which is our state council. Our new constitution which we have been working hard on for a while now involves our state council going from 15 to 9, more in line with strategic and modern board structures and sizes. Those nine comprise of three from each region so we've split it equitably so we have three members on that committee from the north-west, three from the north and three from the south.

Ms ARCHER - Are they appointed or elected?

Mr KERSCHBAUM - Elected.

Ms ARCHER - By the members?

Mr KERSCHBAUM - By the regions. Each region chooses its three members that go forward and they go to a management committee which chooses it.

Mr BOOTH - So you're saying the members in each region elect the three members and then they go to the council.

Mr KERSCHBAUM - The members in each region elect the management committee which can comprise between three and six people, and then from amongst themselves they choose it, so the members choose the management committee and the management committee from amongst themselves choose, so it's a pseudo-democratic process. It's not quite 100 per cent democratic but, you know.

CHAIR - Well, yes, we know about pseudo-democratic processes.

Laughter.

CHAIR - We're all from political parties. We call that managed democracy. While we have you here I would point out to you, Michael, that we did advertise that as a committee we were interested in the whole issue of dispute resolution. We didn't know the department had a draft bill out there which they slammed down immediately basically when we did that, but we did advertise for anybody who wanted to share with us their experiences - bad or good I suppose - under dispute resolution, not from the point of view at all of looking at what the dispute was about but the processes that took place during that arrangement, to ensure that any of the issues that raised their head through that couldn't possibly be incorporated in a new structure.

We've had a couple of submissions that may or may not involve Master Builders. They haven't come before us yet so that is not public but it might be of interest to you after they have come in and we may want to ask you some questions about that although if there are about things before your time that is probably not very relevant, but I think there will still be issues that will be relevant to check and see whether certain practices are still the case, those sorts of matters. We may well be contacting you again to see if you agree to come in. Historically, what took place when HIH went belly-up was that the MBA set up its own insurance scheme.

Mr KERSCHBAUM - I am very familiar with that; I was responsible for the day-to-day running of it from 2005 to 2008.

CHAIR - Were you? There you go.

Mr KERSCHBAUM - I was the one who liaised with the members. Chris Atkins was executive director at the time and I worked under him.

CHAIR - But you set the thing up.

Mr KERSCHBAUM - No, he effectively set it up. It was undertaken by lawyers, but Chris and I basically hatched the plan and came up with the idea. In fact, I was the one who suggested it be incorporated into the regulations because we were being told it couldn't be done and I thought it could be done through the Housing Indemnity Regulations and it was followed through and incorporated.

CHAIR - It certainly was done because you did it.

Mr KERSCHBAUM - Yes.

CHAIR - What has happened with it? Has the scheme wound up, or has it got a tail?

Mr KERSCHBAUM - All but; as I said, the tail has pretty much wound up. We operated that scheme from 2002 to 2005 when we were forced to roll over our database to CGU. We took housing indemnity payments right up to 30 June 2005. You then had a construction period and then the sixth year started from there. We are pretty much out of that period now and we believe even if houses were commenced and completed under that old scheme, they would have been completed by about the middle of 2006 and we are now past the middle of 2012. So the six years expired; we have one very small outstanding issue on one claim and we have this other claim which will go to the Supreme Court if it's not mediated or dealt with probably by the end of this month. We're keen to get rid of that small issue and the large one and clear our books because we just want to put a line underneath the housing indemnity system.

CHAIR - To give me a clue, is the claim that might be going to the Supreme Court a residential one?

Mr KERSCHBAUM - It is, they're all residential.

CHAIR - Has it been a longstanding one?

Mr KERSCHBAUM - Yes.

CHAIR - That could be the case coming before us.

Mr KERSCHBAUM - It's fair to say that I inherited it from Chris before I took over and I've been in the job for three and a half years, so it's been some time in the making. I guess, upfront, certainly with the BO4 contract and now the DB1 contract, which are our two primary residential contracts, we have run both past Consumer Affairs and on both occasions the dispute resolution clauses have been rewritten in those. Whilst Consumer

Affairs had a few small issues with the builder-owner agreement and the existing one, it's very similar and we've done everything we can to be transparent in this issue.

To be perfectly blunt with you, we're on a hiding to nothing when a dispute arises because if we come down on the side of the builder, the client doesn't like us very much and they say that was always going to be the predetermined outcome because you're a member of the association, and if we come down on the side of the client then we put off side our own membership who we're supposed to be supporting. We can't wait for someone to take over this issue because, regardless of how transparent we are in all of this, we really struggle to stay clean on the issue and there are always allegations both ways. We have been looking forward to having this legislation.

CHAIR - In terms of history, though, what will happen to the funds in the account?

Mr KERSCHBAUM - The funds that haven't been expended on claims and management stay with the MBA. We put up a half-million-dollar bank guarantee to payroll this particular scheme, we have taken on all the risk, so we get the reward. Effectively, we act as insurer and intermediary in this issue.

The other thing I'd like to say on that issue is we have predominantly used an MBA member to assess the housing indemnity claims. That may or may not come up. I have no problems with that because when we set up the panel, which was approved by the government, we had it comprise one person nominated by the insurance council, Roy Ormerod, who was then director of Consumer Affairs, and the same person undertook the inspections.

Mr BOOTH - Did he receive a fee for sitting on that board?

Mr KERSCHBAUM - There was technically a fee available for sitting on that board but he didn't take it. He would undertake consultancies on behalf of the board and be paid for that work as a consultant. The reason they settled on the gentleman -

CHAIR - Did Workplace Standards take on consultancies?

Mr KERSCHBAUM - No.

CHAIR - Oh no, because he wasn't Workplace Standards, he was Consumer Affairs.

Mr KERSCHBAUM - Consumers affairs, yes.

CHAIR - Did Consumer Affairs contract with you?

Mr KERSCHBAUM - Contract with us? They took a seat at the board.

CHAIR - You were saying that he consulted -

Mr KERSCHBAUM - Sorry, no, not him, the builder representing the MBA. The reason he was put on the panel was because he is pretty much the only building consultant that all the insurers used towards the latter part. The insurers started off with a large number of

consultants and they gradually whittled the number of consultants that they used down to virtually one or two people.

Mr BOOTH - Did you say that Roy Ormerod worked as a consultant for the MBA?

Mr KERSCHBAUM - No, not Roy, the MBA representative.

Mr BOOTH - Yes, we both thought the same thing - I just wanted to clear the record.

Mr KERSCHBAUM - Certainly Roy Ormerod didn't.

Mr BOOTH - When you said you were compelled to hand your database over to CGU, was there money left in that fund that went to CGU as well?

Mr KERSCHBAUM - No. They looked at our track record of warranty claims at that stage and were pretty comfortable with the book of claims we had and the way we were running our scheme. The government gave us some time to remove ourselves from the system and we were able to negotiate with CGU to take over our existing membership log based on the fact we did some due diligence on our members before they joined and asked for their financials as part of that process before they could reapply for housing indemnity insurance through us.

CHAIR - The MBA put up a $500 000 guarantee to kick off the scheme so you had to have liquidity to do that. What was the high point of premiums you were holding at any time? What sort of quantum did it get up to?

Mr KERSCHBAUM - I couldn't tell you because the money was put into consolidated revenue but it was probably around $1 million. We took more than $1 million worth of housing indemnity premiums; in fact, we would have taken closer to $2 million. Having said that, we paid out about a dozen or so claims that I am aware of under that scheme. The latest one is a claim for $200 000 so, if that was to be successful, with lawyers' fees and things that would wipe out the best part of $250 000 in the one claim. The majority of the claims were sub-$100 000. I can't think of a claim over $100 000 at this stage, but the smallest one would have been $10 000 or $15 000 and the majority would have been between $30 000 and $70 000, plus the other costs to administer the scheme, have the board convene, undertake consultancy reports and other things on behalf of the panel.

Mr BOOTH - Does the MBA have a process of vetting members?

Mr KERSCHBAUM - We do.

Mr BOOTH - You mentioned a moment ago that you looked at their financials and qualifications, so you have fairly strict criteria for a builder to become an MBA member.

Mr KERSCHBAUM - It's not hard to be a member of the Master Builders but we do try to work out if you have any skeletons in your closet; that's the first thing we do. Part of that is just by advertising the fact that someone is seeking to become a member of the association to the broader membership. If someone has skeletons in their closet or some past history we will often find out because the members in that region will say, 'We've had some dealing with *x, y* and *z*' - and usually the feedback is positive because we go

out of our way as staff members to advise them of the complete process. I have had builders approach us and then walk away because they've realised that process isn't for them.

We would prefer to deal with it that way. I'd rather not receive an application than have to deal with an application that receives adverse comment. We have received adverse comment from people and the state council has discretion in determining who becomes accredited or not, and the accreditation committee has a system. The fact that you may have been bankrupt wouldn't preclude you necessarily from joining the MBA but we would certainly ask a number of questions. We ask if you've been involved in any disputes in the last five years, you have to outline them and demonstrate to us how you dealt with them and if they were dealt with appropriately, if it was your fault how you rectified it, and if it wasn't your fault how you went about it. For that reason alone, we probably don't get as many members as other industry associations because there is a bit of a process to go through, a bit of a hurdle, but we make no bones about that.

Mr BOOTH - So you promote your own guild, if you like; the MBA stands for something.

Mr KERSCHBAUM - To some extent. We don't advertise it well enough, and one of my objectives as executive director is to start promoting that and providing some consumer confidence that when they choose a member of the Master Builders it means that that person is a paid-up member of our association and person has taken some time and effort to join it. We keep a pretty close eye on them. It doesn't mean they're all angels but I'm pretty happy with the quality of our membership in general and I'd have to say I think we can make some claims that other industry associations perhaps can't. That is across the board, I'm not just talking about our industry. We like to think we take it seriously.

Mr BOOTH - It has always been my view that if you are an association such as the MBA you should do something about quality of your members so that people who come to you have some confidence that you've vetted the builders and they'll do a good job, and where they don't you'll step in and ensure that they do.

Mr KERSCHBAUM - As much as we can. We only have limited powers to deal with members. You can threaten to kick them out of an association or there are fine provisions but it doesn't go a lot further than that.

There was one other issue which I did want to mention that is in the bill. It's an issue that seems to have been lost in our discussions at Workplace Standards, although I've raised it with them on two occasions. The issue might sound like a fairly minor one but if you follow me through the process, I think you'll realise it has wider implications. The proposed bill, as it stands, talks about provisional sum and prime cost items. So your prime cost items are things like taps, baths and the like, and a provisional sum is where there's a provision for an amount for labour and materials. So a kitchen cabinet is a classic - you're going to install a kitchen cabinet. I believe that the proposed bill has a flaw insofar as it requires the builder to nominate a reasonable amount for those items.

CHAIR - For the provisional cost?

Mr KERSCHBAUM - Yes, the prime cost and the provisions sums - I believe that's a failing of the bill. If I asked any one of you what you thought a reasonable allowance for a kitchen was, you would all come up with extremely different items.

CHAIR - Especially these days.

Mr KERSCHBAUM - Yes, so it comes down to the quality of their appliances, the fixtures, the fittings, self-closing doors, soft-closing doors - you have the whole lot. So if you have a couple that aren't at-home entertainers, they might be happy with a $15 000 kitchen. For someone who entertains at home and wants the best of everything would be talking $50 000 for exactly the same home.

Mr BOOTH - I don't know which clients you've been talking to - it's certainly not me.

Laughter.

CHAIR - No, but that's precisely what happens - there are huge difference in price. Back in our day, everybody understood what a standard kitchen was and you went upwards from there. But now I don't know where you would set the bar. I reckon you'd have to put the whole cost of the kitchen in. You'd say, 'I'll build your house for so much, plus kitchen - whatever you choose'.

Mr BOOTH - Why not just a kitchen plus the house?

Laughter.

Mr KERSCHBAUM - Honestly, $50 000 is not unfathomable.

CHAIR - I've just had some cupboards done myself and it's horrendous.

Mr KERSCHBAUM - It's not unknown. We have a situation as well where we've been building relatively modest homes that still have a high-end kitchen in them or a bathroom with marble tiles and German fittings.

What I believe is happening is that there is too much defaulting back to the builder under this bill and, potentially, what will happen is that the builder will be asked to make a bunch of allowances which they'll have to justify later on down the track. My suggestion is that the client sits down with the designer, which they should have done in the first instance, and worked out what sort of fittings and things they want.

This isn't a problem for the project home builders, because if you go to a Ronald Young & Co. builder, they will give you a list of specifications that accompany that set of drawings.

But often what happens in Tasmania is that the majority of homes are designed by a draftsman or an architect and the kitchen is just a bunch of lines on a piece of paper; the bathroom is just a bunch of lines on a piece of paper. It might say 'tiles' - are those $10 a square metre tiles? Or are they $110 a square metre tiles? Do you have a walk-in shower which is fully formed or are you getting a cheap polymarble base which costs $150.

So there are a lot of issues associated with this item and I believe it's unfair for a client who has gone to see a builder-designer and spent only $2 000 on a set of drawings to flick them out to a builder and say, 'Now you come up with the allowances'. What size of hot water cylinder is reasonable? If you're on gas, it often doesn't stipulate that you're going to go to a gas system. Does the builder allow for gas in the area, or do they go with just an electric hot water cylinder?

What is reasonable for one client isn't always reasonable for another, but just the level of specification.

CHAIR - We have the chairman of the building designers coming before us next week so I was going to raise that matter with him.

Mr KERSCHBAUM - I know that they're doing some work in this area as well. So I guess my suggestion is that you don't ask for three builders that are tendering on the project to come up with an allowance, you ask a client to come up with the allowance and give it to the builder. If the builder knows they have a $15 000 allowance for the kitchen cabinets, they'll work to that budget and the price that comes back will reflect that.

The builder that quotes $30 000 for the kitchen because he thinks that's a reasonable allowance, will always lose the job over the builder who quotes $15 000 because there's a $15 000 differential.

It also brings everything back to an apples versus apples comparison and I'll never forget one of the first calls I took in my technical capacity at Master Builders was this dear old lady who said, 'The builder has made an allowance for $400 for a hot water cylinder in my new home'. You will not get a billy tap that sits above the kitchen sink for that sort of money. You could not get a basic 160-litre hot water cylinder for under $700 at the time. He had allowed $300-400. You just knew that the guy would have allowed the cheapest carpet allowance; so unless you want anything other than the cheapest nylon that money could buy and the cheapest vinyl, you were going to have to pay extra. So what looked like the cheapest quote quickly became the most expensive quote. Likewise reflected lighting plans. Often you do not have a lighting plan for a house. Does that mean you get a single batten fixed in the middle of the living room? Or do you actually get three light fittings of any value.

CHAIR - What you say makes a lot of sense because all that stuff is just prime dispute area. That is where it all ends up.

Mr KERSCHBAUM - It is. If this is about avoiding disputes in the first instance, I think you could do a lot worse than asking the client to come up with those. The best outcome is that your client knows what they want down to the door handles, the size of the architrave skirtings and door types. If they don't, they should be specifying them. I am not suggesting that this should be hard task. Any building designer should be able to come up with a low quality, medium quality, and high quality fit-out allowance for a home and then just effectively change the figures to suit and go through those with the client, and provide them to the builder. The builder then only has to worry about bricks, plaster, and all those things that they can all quote on and should all be fairly similar. What you will find then is that the degree of difference between the quotes will become, I

would suggest, less than 10 per cent and the client then knows that they have allowances if they do not know what they want in fixtures and fittings.

CHAIR - I think that is going to be crucial - that one.

Mr KERSCHBAUM - I would love to see that incorporated into legislation. The kick-back from the bureaucrats has been that it seems like too much hard work. My advice is that if you are going to build a home and spend a quarter of a million dollars, do the homework up front and get it right.

CHAIR - Quality of documentation is going to be the answer to knocking three quarters of the disputes out. Have it up front. Have the arguments when you are doing the documentation and the contracts.

Mr KERSCHBAUM - The documents only have to be likely to comply with the BCA and that is a long way away from a fully 'specked' and detailed set of drawings that the clients really want to have quoting on.

CHAIR - Excellent input.

Mr BOOTH - Cost plus.

Mr KERSCHBAUM - Cost plus is the other issue I was going to touch on. Probably our position aligns fairly much with the HIA. We thought $50 000, and the reason we thought up to a $50 000 threshold - and then perhaps the high end work - is that there is a lot of small work that you might want to do on a cost plus basis. I think once the value gets over $50 000, and probably up to half a million or three quarters of a million dollars, you could do the majority of that work. Heritage work is always a bit different. It is always hard to quote heritage or historical work and small projects can sometimes be more of a nuisance to quote than they are worth.

Mr BOOTH - You wouldn't be opposed to cost plus generally, would you? As a general principle, if you have got an honest builder and a trusting client coming together to do a job on a cost plus basis, it could be cheaper than a quoted thing.

Mr KERSCHBAUM - It could be. For a new home it would be hard to argue that case. Having come from new home construction, it is pretty easy to quote a new home as long as you have got a list of allowances. I think cost plus is a lazy way of building for new homes. For smaller renovations and alterations -

CHAIR - Good for that.

Mr KERSCHBAUM - Perfect, and for large high-end architectural homes where the client might change fittings and finishes regularly, and the architect might make changes or details at a later date - I think there is some argument or merit there. At that middle end, I do not think there is a lot of argument for relatively straightforward homes and the like. Certainly, I think there is merit in cost plus contracts in certain instances. We tend to have problems with cost plus contracts. We tend to find that our problems arise more in the cost plus area, so I am guarded about saying 'carte blanche'. But certainly I think the

small fiddly work such as internal renovations, alterations to bathrooms and things like that - I do not have any problems with it.

Mr BOOTH - If consenting adults agreed to a contract that was cost plus, should they not have the right to do that?

Mr KERSCHBAUM - I agree, and I think that providing the relevant checks and balances are in place, I have no problem with cost plus across the board.

Mr BOOTH - There should be some form of check and balance there associated with it - it might be gross estimates or something like that. Okay.

Mr KERSCHBAUM - Yes. I have no problem with that. I think the builder has to keep the client up to date with the costings, so that they don't blow out. That is one of the problems we face. On a small project, a lot of the costs come to the end and the builder does not know what the costs are - getting the invoice at the end of the 30 days, the project is finished and it blows out by a margin of greater than 5 or 10 per cent.

Mr BOOTH - As an association, do you have some sort of standard or pro forma or advice that you would give to people who are entering a cost plus at the moment? You are talking about the checks and balances; do you have anything you could give the committee in a written form that would indicate a suitable cost plus arrangement?

Mr KERSCHBAUM - We do have a cost plus contract and before we give it to our members, we generally make sure they are going to use it in a appropriate manner. But that does come with some precautions in it.

Mr BOOTH - Do you have that list of precautions? That could be quite useful to the committee. Do you have some indication of how you feel they would work and give adequate consumer protection without requiring - because quoting is very expensive.

CHAIR - My experience with that cost plus contract is that the only drama is when the builder sits on his bills.

Mr BOOTH - And hits you at the end.

CHAIR - That's right. What you ought to do is shut the job down until you get the bill, otherwise you don't have any control.

Mr KERSCHBAUM - That is a problem, especially with a small job and an internal job where you need to have a 4-6 week time frame to get the job over and done with. The problem we have is, is the scope growing? You have a painter painting out two rooms and you think that the other room could do with a bit of touch-up plasterwise and paintwise and the scope grows. The electricians ends up doing a total rewire and the client says, 'You were only going to cost $50 000', and you say, 'You've got a house that is now replastered, with new floor coverings, new plumbing, the whole lot and you still want it for $50 000. I can't do that for you'.

Mr BOOTH - That's why in some instances you need to have cost plus because you don't know until you discover what's needed. If it grows, what do you do? If someone says,

'It's a quoted job', but then they want an extra bit done because they like what you're doing. Do you then have to quote for the next room? It doesn't seem to make sense in some cases.

CHAIR - It goes then to the expertise of the client. If the client is reasonably competent and has a business view about things, that is okay. But a little old lady shouldn't enter into a cost plus contract at all, really. It is too exposed for somebody with no skills in that matter.

Thank you very much for your expert input.

THE WITNESS WITHDREW.