

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

Mr DENNIS BERGIN, REGISTRAR, BOARD OF ARCHITECTS, QUEENSLAND WAS CALLED AND EXAMINED.

CHAIR (Mr Harriss) - Dennis, you know of the circumstances that bring us here to have a look at the scheme operating in Queensland. Because of the acknowledged failure of our scheme in Tasmania, the Government has decided that on 1 November it will be taking over the accreditation of building practitioners. That goes across the broad spectrum of builders, architects, engineers and building surveyors. We have been talking to other stakeholders here while we are in Queensland. We are very interested to get a good handle on just what operates in Queensland, what the best parts are and what the glitches are, if there are any. To that extent, we are very grateful that you are prepared to give some of your time to come and appear before us. Would you like to give an introduction as to your role on the board of architects?

Mr BERGIN - Architects have been regulated under an act in Queensland since 1928. The act was substantially revised in, I think, 1985. A new act came into being in 2002. I was not involved with architects then as registrar. The historical facts are that it was born out of the Productivity Commission's findings that the market needed to be freed up. Some of the models were that architects would not be regulated in Queensland; there would be a co-regulation model between the Government and the profession. In the end, I guess, the co-regulation model was the preferred model.

When the act commenced on 1 January 2003 it commenced without a lot of the regulations, as a lot of legislation does. What was to follow were regulations for assessment entities, for things like code of practice, CPD - continuing professional development - and those sorts of things. What has happened is that we do have a code of practice for architects which a disciplinary panel must have regard to. We don't have any assessment entities in terms of architects. I suppose that is where the model of the profession and the legislation were to meet.

Architects, as you probably know, are regulated right around Australia. They are registered on the basis of competencies and an exam process, which is the same process in all States. In other words, to be registered all architects have to have a qualification, which is an Australian degree or one that is recognised by the AACA - the Architects Accreditation Council of Australia - and they must have passed their practise exam, which is the same exam right around Australia. There already is that relationship where the board registers candidates but they are almost at arm's length from the assessment process because the assessment is done through a national body. The exam process is one that is set throughout Australia. It is not the board of Architects of Queensland's process. The role of the board is to register architects and to attend to their disciplinary matters. Essentially it is an education role, but they are the two main components. The board is empowered to hear complaints about unprofessional conduct against registered

architects and also to investigate complaints of other bodies that hold themselves out to be architects. So it is essentially offences under the act and unprofessional conduct.

Ms FORREST - Does the board have the capacity to undertake audits of registered architects?

Mr BERGIN - In terms of?

Ms FORREST - In terms of their technical skills.

Mr BERGIN - No. That would be caught up in continuing professional development, but that hasn't been regulated in Queensland as yet. It still has to be made. It is regulated in New South Wales, which I believe is the only State to date that does regulate CPD.

Ms FORREST - Do you think the regulation of CPD is important and something that should be progressed?

Mr BERGIN - The board's view is that it is important. It will be regulated and it is anticipated that that will happen sometime next year.

Ms FORREST - What do you see as the best model for that regulation of CPD?

Mr BERGIN - That question was discussed at the recent annual general meeting of the AACA in Adelaide. There are a number of schools of thought. One thing is that it is not intended at this stage that providers of CPD should be nominated or short-listed. In trying to be as broad as possible, with architects I think New South Wales have a system of 10 hours mandatory, or it is an achievement of points. It is 10 mandatory, 20 non-mandatory, so it is formalised as against possibly doing work on the Internet or from publications, that sort of thing, as opposed to 10 hours of attending directly related courses.

A lot of the thinking out of AACA was that architects probably know the sort of areas that they need to improve themselves or their skills, depending on where they are practising, and to put them in a position where they have to, I guess, tick off -

Ms FORREST - On a self-needs basis?

Mr BERGIN - Yes.

Ms FORREST - Do you think the model should include a self-needs analysis of their own CPD requirements as long as they get that amount of CPD in that particular area?

Mr BERGIN - That is certainly one school of thought, yes.

Mr DEAN - So to practise here you simply have to be registered and accepted within the architects board. That allows you then to practise or do you have to have further licensing?

Mr BERGIN - Basically you must complete your degree. You must then have one year post-graduate experience within Australia.

Mr DEAN - So that can be anywhere?

Mr BERGIN - Yes, anywhere providing architectural services, so that is working for an architect. You would then proceed to the examination. The first part is a logbook, where you need 3 000 hours of experience. Now, you wouldn't get that probably in one year, but often architectural students are working while they are studying so they are using their logbooks to achieve that. They then progress to a written exam and then to an oral exam. If successful in all those parts, they are then able to apply to the board for registration. The basis of that registration is that they possess that APE in the three parts that I have just explained, and that they are fit to practice. There is a fitness-to-practice question or series of questions which relate to things like criminal convictions, financial considerations - you know, bankruptcy - quite the normal thing that you would see -

Mrs SMITH - Character-test type of things.

Mr BERGIN - Yes, and they are asked whether there are any physical or mental problems that might stop them carrying out the duties of an architect.

Mr DEAN - Is there licensing on top of that?

Mr BERGIN - No, that's it.

Mr DEAN - Because of the fact that it is a national standard that you need, does that allow you to go to Tasmania to practise, or to Victoria or New South Wales?

Mr BERGIN - Not without being registered in that State.

Mr DEAN - So for you to go to, say, Victoria and practice, what would you need to do? Put your name down, is that it?

Mr BERGIN - You would need to apply for mutual recognition. It would be simply a matter of obtaining a letter from your board where you are registered to say that you are registered and there are no disciplinary matters presently before the board. Pay your money and you would be registered.

Mr DEAN - Thank you.

Ms FORREST - Because there is a national standard with AACA, there is never any doubt about that mutual recognition -

Mr BERGIN - Under the Mutual Recognition Act, yes, you cannot refuse.

Mr WILKINSON - After the five years study and the two years out in practice, for 3 000 hours for a 40-hour week and for 52 weeks, that is about 2 000 hours, so you have to be working long hours to do it in one year.

Mr BERGIN - That's right.

Mr WILKINSON - In relation to the two-year period before you sit your exams to finally be able to go out and practise, are you able to practise in your own right and start up a business by yourself or do you have to be in the industry. In law, you can't go straight in.

Mr BERGIN - Well, you can but you can't call yourself an architect. You can work as a designer and you can get experience as a designer but you can't call yourself an architect.

Mr WILKINSON - So you can after that second-year period, if you pass the practising exams?

Mr BERGIN - You can only call yourself an architect once you're registered.

Mr WILKINSON - That's right.

Mr BERGIN - Until you're registered, you can't call yourself an architect.

Mr WILKINSON - And so there's not that intervening period where you have to be working with somebody else before you can go out into business by yourself?

Mr BERGIN - No. In general, 99 per cent probably would be working for someone else but there are occasions where this has been a somewhat of a problem in the past. For example, your logbook needs to be certified by your employer or by a registered architect. It is the case now that in some circumstances AACA have decided that you can certify by a statutory declaration. That's really aimed at people who are working for themselves for part of that period. It is not unusual for students to come out and work as a designer. They're logging hours but they can't call themselves an architect.

Mr WILKINSON - As a result of the system with the architects who are working in Queensland, we haven't really had any intimate knowledge of how the BSA is going and what the deficiencies are of the BSA, if there are any deficiencies. Are you able to help us with that?

Mr BERGIN - The interaction that I have with the BSA is generally where the complaint is a two-pronged complaint against the builder, and say, the architect, or the builder and the engineer. That's generally our only involvement. Architects, as you know, aren't licensed by the BSA so I don't really have any comment as far as the BSA is concerned.

Mr WILKINSON - So if there are any disciplinary matters which could be sheeted back to the architect, it's the architectural body which would deal with those and not the BSA?

Mr BERGIN - Correct, if it's a matter of unprofessional conduct of the architect. A number of architects hold licences as builders and therefore they would become before the BSA in that role as a builder.

Ms FORREST - So it would depend where the complaint lay in regards to their work wouldn't it?

Mr BERGIN - Yes.

Ms FORREST - Whether it's their architectural or their building work.

Mr BERGIN - Yes.

Mr WILKINSON - Is it worthwhile for architects to become proficient at building along with their architectural degree, because I know a few are talking about doing something along the lines of a building course along with architecture?

Mr BERGIN - You would need to speak to the universities. I don't know. I think a lot of architects might be horrified. Some would think it might be a practical thing, and some obviously think it is worthwhile.

Mr WILKINSON - That's what I mean; what do they do because it comes into the BSA as well?

Mr BERGIN - In practical terms, I guess, some of them run building companies so they see a requirement to be licensed by the BSA.

Mr WILKINSON - And the benefits of it?

Mr BERGIN - Architects, by their registration from the board, aren't allowed to supervise trades. They need to be licensed by the BSA so simply that's their benefit.

Mr WILKINSON - So therefore you don't have any dealings with the BSA as a result of that?

Mr BERGIN - No.

Ms FORREST - That approach could be of benefit to the more regional areas of Queensland.

Mr BERGIN - Could be.

Ms FORREST - Out west and in far north Queensland you would actually have a limited number of architects and builders.

Mr SMITH - Certainly.

Ms FORREST - The two in one would be of benefit.

Mr SMITH - It could be, yes.

Mr DEAN - Can I just revisit the licensing and registration. I think I have this right and I mentioned it before and correct me if I am not. As I understood the situation applying to Tasmanian architects, they need to go through this whole process of registrations, examinations and all of that, but on top of that, to be able to practise in Tasmania, there is also the need to be licensed. Do you have any comment on that because that does not apply here? Is there any statement you would like to make on that or your position on that?

Mr BERGIN - I don't think so, no.

CHAIR - Dennis, on the matter of complaints - and Jim has had that exchange with you - is it reasonable to presume that because consumers out there know of the existence of the BSA, in the event of a complaint which they want to lodge generally they would go to the BSA, but what if the complaint ends up going to the nature of the architect's design? Who then refers that complaint on to the Board of Architects? Does the builder, because he was the one about whom the consumer is complaining, and then the builder said, 'It's not my problem. This was an architectural design problem'. It is a bit more easy to quantify with an engineer if there is a footing or foundation failing.

Mr BERGIN - I was about to say that. I have worked as the registrar of the Board of Engineers and that is a very common issue.

CHAIR - Yes, easier to define, isn't it?

Mr BERGIN - Yes. If there is something wrong with the footings, the builder says it was the engineer's design and the engineer says that he did not build it right.

CHAIR - I cannot really think of too many areas of complaint against an architect.

Mr BERGIN - No, not an issue of safety and failure of design.

CHAIR - It is more professional misconduct than design issues.

Mr BERGIN - Well, there are issues of practice. For example, you might come to an architect and say, 'I have a budget of \$300 000. I have a block of land and I would like a design with this, this and this'. He does a design and tells you that he will charge you x dollars. He does not really give you any sort of a reasonable contract and when you go out to a builder the builder comes back and says, 'Look, it's going to cost you \$800 000'. In those situations the client would have grounds to come to the board and say, 'This architect told us this. They didn't advise us that the cost could be two-and-a-half times greater'. There was no written agreement, so those sorts of issues often arise.

CHAIR - What sort of redress then, is there, for the consumer in terms of paying the architect's fee for having designed such an outlandishly expensive building?

Mr BERGIN - The act is about unprofessional conduct. The Commercial and Consumer Tribunal hears matters relating to architects in Queensland.

Ms FORREST - What was the name of that tribunal?

Mr BERGIN - The Commercial and Consumer Tribunal, called the CCT. The CCT hears matters for the BSA as well. The board cannot mediate between parties. The board has no ability to assess compensation or grant compensation. The tribunal to date has not been in that position either, so essentially it is about unprofessional conduct. Remedies for losses, I guess, are found within other jurisdictions within the district court or the Supreme Court, where you can actually -

Mr WILKINSON - It would come down to a contractual issue here, wouldn't it?

Mr BERGIN - Those contractual issues can be blurred. They can be blurred for unprofessional conduct, but it is difficult to know whether it is a straight contractual issue. I guess that is the role of the board. With both boards, engineers and architects, when the act was changed, membership of the boards became multidisciplinary. They were once all architects or all engineers on the board. Now, out of the seven board members, four are architects; the chair is the head of school and we have a lawyer with 10 years contractual experience, a builder with a minimum of 10 years contractual experience, and we have a consumer advocate.

Mr WILKINSON - That is the CCT?

Mr BERGIN - No, this is on the board itself, the Board of Architects. The CCT is a quasi court. I guess it is set up with an attempt to be lawyer-free, but it does not really work that way. However, the rules of evidence et cetera are not as strict as it would be in another court and many people are self-represented.

Mr WILKINSON - You would have the AAT, the Administrative Appeals Tribunal?

Mr BERGIN - Yes.

Mr WILKINSON - Is it a bit like that? That is a Commonwealth body, of course. In Tasmania there is no body like this. It is an interesting concept to have a body that can look at, say, a real estate agents' problems or a number of areas where there are problems, to have this type of court, a bit like your Administrative Appeals Tribunal, within a state to look at a number of different areas.

Mr BERGIN - The boards would, prior to this act, I suppose even back to about 1998, hear the charges and they would set the penalty, so now they are divorced. They decide whether the charges will go to the tribunal but the actual decision is up to the tribunal, so the board is out of the equation once it goes to the tribunal. The penalties are set by the tribunal.

Ms FORREST - The registering body or board assesses complaints that come in to see whether they should progress to the tribunal?

Mr BERGIN - Yes.

Ms FORREST - Is there, or has there been, any perception or reality of a conflict of interest there, a perception that architects might seek to protect architects and be judge and jury. Perhaps consumer protection might not be fully effected because you have a body that is the registering body who want to look after their architects and make sure that they are up to standard. They need education qualifications to get that registration to start with, but then when a complaint comes in they do not want to see them lose their registration because that is not good, and obviously it is not, so is there any risk of that impinging on the due process?

Mr BERGIN - I suppose that is a question you could ask of all professions, I guess, and they all have members who are a part of that profession. I don't really know the answer to that. My observation might be that professionals sometimes think that their own profession is much harder on them.

Ms FORREST - Yes, that is the other side.

Mr DEAN - Lawyers would say that, I think, and doctors would say that.

Mr BERGIN - Yes.

Ms FORREST - You do see examples of both sides of this coin. I hear it in other areas, not just in this area, that they are judged more harshly or you go the other way and you try to protect them. Either way represents a challenge. Anything that requires further investigation and is not a vexatious claim will go to the tribunal. Is that what you are saying?

Mr BERGIN - In the process generally what has happened is that you must get through that threshold of whether it is vexatious, trivial, whatever. If it is a genuine complaint then the board will decide whether to investigate or not. If they decide to investigate, they'll appoint an investigator. That investigator will most likely be an architect.

Ms FORREST - The investigator is independent of the board, but employed by the board?

Mr BERGIN - Employed by the board to produce a report. It is the investigator's report, and the investigator will report on what he or she finds. It's a matter then for the board to take whatever evidence has been uncovered and then decide whether to take it to the tribunal or whether to reprimand the architect. There are a number of actions under the act that can be taken.

Ms FORREST - So the board can undertake reprimanding of an architect at that point and not refer to the tribunal?

Mr BERGIN - Yes.

Ms FORSTER - So you do have a discipline arm within the board.

Mr BERGIN - The board can only reprimand. It has, I think, about five options: to do nothing, to reprimand, to enter into an undertaking - those are the sorts of options that the board has.

Ms FORREST - Do you think that works quite well or is there a better system?

Mr BERGIN - I don't know if there is a better system. I think it does. I think it is one of the advantages of a multidiscipline board. I think you get a good diversity of opinion. The boards are creatures of the act and they have to work within the framework of the act, but I think in that diversity it is quite successful.

Ms FORREST - So you would say that consumer representation is pretty important within that?

Mr BERGIN - Yes, I think so.

Mr DEAN - As an architect here, when you get your full qualifications or exams, are registered and so on, what does that give an architect here the right to do? Does it give an architect the right to do drawings for all types of buildings, from a house to a 100-storey skyscraper?

Mr BERGIN - Yes.

Mr DEAN - So there are no more requirements in that process?

Mr BERGIN - No. It is not like a builder who is licensed to go up only so many floors, and then whatever. It is incumbent upon any professional to operate only within his or her area of expertise.

CHAIR - There is really a reasonably loose connection between architects and engineers and the licensing process, whereas we've been walking down a different path in the last two years. We certainly have heard from architects and engineers in our State that it is an unreasonable proposition for them to be licensed or accredited as they have been up until now because of the professional control of the boards operating in the jurisdiction. Are there any particular matters related to the BSA that you are aware of as a profession that you would like to bring to our attention?

Mr BERGIN - I am too far removed from the BSA to give any meaningful comment; it is an infrequent relationship.

CHAIR - Terrific. Thank you very much for giving your time, we do appreciate it.

Mr BERGIN - My pleasure.

THE WITNESS WITHDREW.