THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON WEDNESDAY 15 NOVEMBER 2006.

Mr STUART CLUES, EXECUTIVE DIRECTOR, TASMANIA, HOUSING INDUSTRY ASSOCIATION LIMITED, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Harriss) - Just by way of a short introduction, Stuart, you would be aware that given the legal processes afoot, we are staying away from term of reference 1 and it is appropriate that we do. So you will be confining your comments to term of reference 2.

When we met last time we were talking with you towards the end of your presentation about the operations of Workplace Standards and its monitoring of the accreditation process, whether there were deficiencies there or whether it was operating well, the problems which were emerging with owner-builders and some issues related to that which you wanted to share with the committee. At this stage we ask you to launch into those issues and then that will raise questions with us.

Just by way of further contribution, members are aware that in Stuart's written submission to us, there are matters that he would wish to discuss with us in camera, if we have questions related to the matters in the written submission. So consider that as Stuart goes forward. We may not need to go in camera.

Mr CLUES - When we left off, one of the concerns that we expressed in relation to the KPMG inquiry is that we made a request for a copy of the scheme that had been approved by the TCC to be made available so that we could make insightful comment about whether or not we thought it met the requirements of the ministerial guidelines and whether it met the requirements of the Building Act. We had made requests for that document in the past and we had been denied a copy of that document on the basis that it was the private intellectual property of the TCC and was not going to be made readily available. We made that request again when this KPMG audit came into passing on the basis that we thought we were going to be dealing with it in an open and transparent process now. Clearly, you cannot make intelligent comment under the terms of reference if you do not have the source document and hence we believed that at last it was going to be made available. To that end there was a request made to KPMG and they said that it was not going to be made available. That request was documented in an e-mail which I will just read, and I will tender a copy for you.

It is to my colleague, Craig Doherty, who is manager of operations within HIA, and it is from David Richardson, Director of KPMG. It says:

'Dear Craig

I refer to your recent request for a copy of the scheme to be made available to you to enable you to respond to our recent invitation for submissions on the above matter. We have discussed your request with the Director of Building Control, Workplace Standards, and it is confirmed that at this time

the scheme is the property of the TCC and is not publicly available. However the Director of Building Control has undertaken a draft, a one to two-page summary of the scheme, to allow you to make a more informed judgment about the extent to which you feel the TCC has met its obligations under the scheme and therefore delivered value for money to your members.

We emphasise that your submission should mostly focus on term of reference number 3, value for money, but naturally you may need to consider the extent and quality of services provided by the TCC and the fees charged to your members to inform that opinion. We would expect that we would be able to forward that summary to you early next week and it will be forwarded to you.'

And then we received a one to two-page summary to that end, as promised. I will just tender that for your benefit.

CHAIR - Thank you. Are there any questions on that matter that Stuart has just raised? It was a matter that exercised our minds when we last convened.

Ms FORREST - Stuart, did you feel that the summary provided you with that information that you needed?

Mr CLUES - No, it was wholly inadequate.

Ms FORREST - It was still short of what you needed to arrive at an informed comment?

Mr CLUES - Basically we were being asked to make a statement or exercise our judgment as to whether or not the TCC met their obligations under the Building Act and hence met their service requirements to the industry, moneys for which they were being paid, and the very benchmark against which that judgment could be made was not being made available. To be given a summary and told that something as serious as a government inquiry could be done based on a two-page summary, why wouldn't you make the source document available? The whole purpose of the exercise is to be open and transparent and at last shine some light on whether or not obligations have been met and we just found this exercise consistent with everything that had preceded it.

Ms THORP - Is it fair to say, based on that e-mail, that in the opinion of KPMG the scheme was not theirs to distribute?

Mr CLUES - It is not a criticism of KPMG, it is a criticism of the Government and its department in terms of it not making the scheme available. They had gone to the trouble of actually commissioning an audit that everyone applauded them for and they did it with intent in terms of appointing KPMG and then all of that good work is undermined by not making the source document available and you just say, 'Why go through the exercise in the first place if you're not going to do it fully, completely and in a transparent way?' It is just very frustrating when at last you think, 'Yes, we're going to go down this process' and then the first step that you take in asking for the source document is, 'No, we can't make it available'. It is just crazy.

Ms FORREST - Can I just clarify: you did actually ask the department first before going to KPMG?

Mr CLUES - We had in the past.

Ms FORREST - And you were declined at that point?

Mr CLUES - We had asked through the builders group in the past. The builders group is formed by the Government and it had interested parties such as the HIA, the MBA and others, and we would always receive the same response that it was not theirs to give, that it was the intellectual property of the TCC. So when we asked KPMG we thought that it would be made available on the basis that that was the foundation on which the whole audit was being done, in our view.

Ms FORREST - When did you ask the department for a copy?

Mr CLUES - I could not give you dates but it was done on a number of occasions.

Ms FORREST - In what year are we talking about?

Mr CLUES - It would have been from anywhere between 2004 to 2006 whilst those groups met.

Ms FORREST - Did you at any time approach TCC and ask them for a copy of it since they are the authors of it?

Mr CLUES - Yes, we have when we have had meetings with the principal directors on that. We asked them for copies of it.

Ms FORREST - And that was declined?

Mr CLUES - It was always declined on the basis of, 'No, it's our intellectual property and we're not having you take possession of our documents'. They believed it was their intellectual property, not something that the industry should have access to. Our view was that they were going to be the regulators of our industry and that we should have an understanding of the rules by which we were going to be regulated, and the scheme set out those rules.

Ms THORP - Isn't it fair to say, though, if three or four different people or companies put in tenders for a particular project it is not common for the unsuccessful applicants to be able to read the successful applicants tender? I believe you could liken a scheme to a tender.

Mr CLUES - I can understand why that document wasn't made available until they had been approved. But, having been approved, they became the authorised body governing the industry. You could pull out those financial components that might go to what profit was anticipated and the like. But in terms of the scheme that actually set out the rules and qualifications, the tribunals, the boards and the consultative processes that were going to be established under the scheme, they should have been made readily available. This is the body that was going to be governing our industry and all that information was contained within the scheme, and it wasn't.

Mr WILKINSON - And you, as advisers to the industry, weren't able to properly advise, I take it, without the guidelines?

Mr CLUES - All that you could do was look at the ministerial guidelines and assume that the scheme complied with the ministerial guidelines. But in terms of getting into the true depth and meanings of the words that might be contained within that scheme, that has never been made available to anyone in the industry, not just HIA. I don't believe it has been made readily available to the MBA, the engineers or anybody else.

Ms FORREST - So your requests were after the TCC had been approved as the accrediting body?

Mr CLUES - Yes, the game was over.

Ms FORREST - So it wasn't before that you were trying to get information, it was after?

Mr CLUES - Yes, correct.

Mr DEAN - Did you advise the Department of Justice that their response was, as you said, wholly inadequate? Did you advise them that that document was inadequate?

Mr CLUES - We spoke to KPMG and said, 'This doesn't help us. We want a copy of the full scheme', and we weren't able to get it. When we prepared this document in our submission it was based on a document that had fallen off the back of a truck that we assumed probably had some relevance, but it wasn't at any point a legitimate copy of this.

Mrs SMITH - You would accept, though, that the Building Act does allow a minister at any time to accredit, in any form, to put out the guidelines. Under the act, he could call tomorrow for applications for accreditation. As we saw, Minister Cox was heading down the track of more than one accredited body, but Minister Green decided that one accredited body was in the short term a reasonable process. So you would accept that it still is an ongoing process that at any time a government could call for applications for organisations to become accredited bodies? At the time you requested it, there hadn't been this government intervention where there was a deed of agreement that the TCC would pass over their intellectual property to the Government?

Mr CLUES - I guess there are two issues. The first is a request that is made to the Government and the TCC before the inquiry started. To that end, at some point in time you would have to say that the governing body, being the authorised body, should make available either the copy of the scheme or a very comprehensive abridged copy that might take out the sensitive component that they are so concerned about. But when you are talking about the fundamentals that go down to the academic requirements, the joint industry council, the other consultations, how complaints managements were going to be worked, and how they were going to meet their obligations under the act, what ensured that their complying application for the purposes of the act were meeting all the obligations, because the Building Act is very well drafted? You read through the act and it doesn't leave you with a lot of doubt about what is intended. But how the parties have met those obligations is described by the scheme. You are asking building practitioners

who are paying over $500 a year to comply with the requirements of the scheme to do so without knowing what the actual scheme required other than what has been drip-fed through the odd letter or notification and the like. I would have thought that at some point in time a more comprehensive document should have been made available but it was always kept close to chest.

The second issue is: putting all that aside, once it was definitive that there was going to be this inquiry by KPMG, you would have thought that if there was going to be any darkness then all of that was lost and we were going to have an open and transparent inquiry then the source document should have been made available at that point in time.

Mrs SMITH - If we go back to your first statement, do you believe that if the TCC were the accredited body getting the money to meet all these guidelines, they should have been the ones handing their document over to interested parties so that you could understand what their requirements were? You accept it should have been the TCC in the first instance passing it over and not a government department, on the copyright process?

Mr CLUES - Yes, I do. I think that is completely reasonable.

Mrs SMITH - Okay. So on the second stage it is a different issue; it is KPMG looking at something and you felt that you could not give full evidence if you did not have a full copy of the scheme to comment on?

Mr CLUES - Correct. We were really flying blind in terms of our making a whole raft of assumptions.

Mrs SMITH - So you had to rely on KPMG testing you and using the parts - undoubtedly they had a copy of the scheme - to actually progress the process?

Mr CLUES - We had to address the issues based on our experience over the last couple of years operating with the authorised body.

Mrs SMITH - Are you comfortable that the end process - whilst it is probably not the best we would like to have been - has given some comfort to your members in that at least now it is being sorted?

Mr CLUES - The end result is good on the basis that I believe that going forward we will end up with a better accreditation system when it is being administered by the Government. That is a great outcome and I have confidence that, if there is appropriate industry consultation going forward, history will not repeat itself. If we end up in a situation where industry is not consulted and the Government goes into a closeted environment and decides they are going to decide what is best for industry and there is no consultation, we are going to end up with history repeating itself again. But I have assurances from the Government that that will not happen, there will be industry consultation and we will get it right second time around.

Mrs SMITH - That is backed up on page 12 of your submission, too. I will not go into it in depth because some of it is in camera. But you are consistent in your comments from when you made the submission to what has happened in the intervening period?

Mr CLUES - We have always maintained the position that if government wants to regulate our builders that is fine but let government regulate our builders, that it was never meant to be a profit-making exercise for a private company. We always had concerns that there is an awkward mismatch between the motives of a private company and that of good public administration and regulation that is designed to protect an industry and assist consumers to have confidence in that industry. We do not think that is a great marriage, but we are pleased that we now have a situation where we have Workplace Standards managing it and we think that will go forward well, provided that there is a good level of industry consultation - not token consultation, but genuine consultation about how we make it work.

Mrs SMITH - So the advisory committee under the act should be that trigger?

Mr CLUES - That would be good. I am not overly fazed about the forum, just as long as there is good input.

Ms THORP - Could I just clear up an ambiguity? In your submission you say on the first page at key points:

> 'The TCC's approved scheme has never complied with the requirements of the act or the ministerial guidelines.'

And then only two pages over you say:

> 'It is not possible to state whether or not the TCC has complied with its obligation under the act or the ministerial guidelines because the information is not available.'

I am curious as to how you can make such a definitive statement in the first instance and then go on to say that you cannot make a definitive statement?

Mr CLUES - What I would say is that is probably our criticism of the process in terms of not having a copy of the scheme available. When we are making our submissions in relation to compliance with the ministerial guidelines in the act, we have to draw upon documents that were not source documents and we have to draw upon our experience over the last couple of years of operation of the TCC. On that basis we went forward with confidence in saying that they did not meet the ministerial guidelines of the act, but it would have been far more helpful if we had had the source document because then we could do a definitive comparison between the two.

Ms THORP - So basically you are saying that you suspect that they have not complied with the requirements of the act, but you cannot be 100 per cent confident?

Mr CLUES - What we can say is that we are not 100 per cent sure on whether they have or not, but there are a number of elements to that. We can say that they have not complied with the requirements of the act because the act is quite definitive about what is required. Just the fact that they did not set up a complaints process when the act requires it says that they have not complied with the act. You do not need a copy of their scheme to draw that conclusion.

Ms THORP - You are assuming there was a definitive time line by which all of these things were supposed to be done?

Mr CLUES - That is true.

Ms THORP - But you do not know that?

Mr CLUES - No, that is true and that is where it becomes unhelpful on the basis that you are not 100 per cent sure whether or not the original application and scheme ever complied with the guidelines.

CHAIR - Isn't it true that the ministerial guidelines do identify time lines for all of the reporting processes by an authorised body?

Mr CLUES - Yes it does, in terms of reports back through the Director of Building Control and the like. That is correct. Even in the absence of having an original copy of scheme, you can draw upon a number of things to see whether or not compliance has occurred and that is what we did, by and large. We had a look at the original ministerial guidelines and also the Building Act, which was quite definitive. Using those two documents, we reached intelligent assumptions about whether or not there was compliance. But it would have been far more helpful had we had an actual copy of the scheme.

Mr DEAN - Can we go back to where you mentioned the profit part of this accreditation scheme. In the government documentation the words have been used that this accreditation scheme was a not-for-profit private company. Were you told that? Do you have any knowledge of what it was all about?

Mr CLUES - We were never under the impression that they were a not-for-profit organisation. Our criticism and the reason we opposed it from the outset was our understanding it was a profit-based operation and the reason that people had established and pursued the venture was to make a profit. That was our concern from the outset. We never thought it was going to be done based on a not-for-profit basis.

Ms THORP - I just want to go back to this business about saying the requirements had not been met. Isn't it true that over a considerable period of time, a regular group met - the builder group - and if my reading of the minutes of those meetings is correct, it seems to me that it is very much getting things in place, getting the opinion from all the stakeholders and making changes over time. In fact, in one of those meetings didn't HIA even suggest a celebration of the one thousandth builder to be accredited?

Mr CLUES - I doubt a celebration would be at our instigation. If you can find the words, I will cop it. But I remember that and I cannot remember it being our initiative.

Ms THORP - Okay, I will have a look through and find it because I have read it.

Mr CLUES - I remember the occasion, I just do not remember it being our initiative.

Ms THORP - The point I am trying to make is, this company got the job of accrediting and all the other things that went with it and a certain amount of time passed during which

this was all being put into place. There was a group of stakeholders that met regularly to discuss the implementation of all that, so it was a ongoing process. It was not as if at one point in time there was a bang and everything was done. Isn't that so? Weren't you a member of that group who regularly attended those meetings?

Mr CLUES - We were definitely a regular contributor to that group. In answer to your question, my view was that, when the Government decided that they were going to go down this track in creating an authorised body, they put in place a whole lot of expectations as to what that body was to do. I would have thought, either rightly or wrongly, that all of the hard work should have been done long before it went live in July 2004. It is like opening up any store or any business: there is a whole lot of seed capital and investment you put up-front and when you open your doors on the first day you are ready to trade, whether you are selling clothes or a service or whatever it might be. It should have been the same with the TCC. They should have known that when they opened up for operation in 2004, they were in business to meet all of those requirements of the Building Act and the ministerial guidelines. Complaints processes and the like might have required refinement over time, and industry consultation with councils might have required consultation over time and could have been improved. However, to simply not have any of that in place, including CPD requirements, and just say we will see how this runs over time and we will build it up over the next few years and not have any time frames, in my view is wholly inadequate given the amount of money that industry was paying to have those services rendered under the Building Act. That is my opinion. I don't know whether, under the scheme, it was just a situation where they could do what they wished, when they wished and the Government was happy with it. I would have thought that was wholly inadequate. I can't imagine the Government would say that it is completely acceptable for you to charge each individual $495 and they will get around to providing all the services when they are ready.

I would have thought, given the ministerial guidelines are quite clear and the Building Act was quite clear about what was to be delivered in exchange for those dollars, they should have been done from day one. Then, yes, there can be refinement over time. But to simply have none of those things in place we would say is wholly inequitable.

Ms FORREST - From talking to members of your organisation, when people applied for accreditation they assumed, rightly or wrongly, that those services were in place and that was what they were paying their money for. That is what their understanding was?

Mr CLUES - Yes, they were of the understanding that this was going to embrace all the aspects of the Building Act, which included the complaints processes, the CPD and the lot. As I said, we did not have any idea; it was the industry that sat down and drafted what the CPD was going to be, in consultation with the Government. It wasn't something that was brought forward as a part of the approved scheme. There was no complaints process; there was no industry consultation council. So, yes, our members were of the belief that, in paying the money, those services would be rendered from day one, not at some arbitrary time down the track.

Ms FORREST - Did you have members coming to you, as the overarching body, with concerns in that area? They paid their money with the assumption, as you say, that the CPD would be available and organised complaints process would be in place, so did you have members coming saying, 'Why isn't it done?'.

Mr CLUES - That wasn't their principal concern. Initially it was, 'What are the ground rules and how do I stay in the business?'. That was their original concern.

Ms FORREST - Did you assist with that side of it.

Mr CLUES - We spent a considerable amount of time and resources. During the first two or three months after this was implemented, during their transition period, I had a rotating door of builders coming through my office all day every day to fill out the application forms to get them registered. That is not unreasonable. I don't have any criticism about that. That is a service that we are there to provide; I would not expect the TCC to do that. My concern is really about those other fundamentals that were required under the Building Act but were not delivered.

Ms FORREST - Once the initial filling out of forms was over, did you then start getting feedback in relation to lack of complaints processes and so on?

Mr CLUES - No, to be fair I would have to say that wasn't their principal concern. Their principal concern is really about themselves, their family and their businesses. What they were really concerned about was, 'How do I become a domestic builder? What happens if I want to become a base-level commercial builder? What happens if I can't meet the CPD requirements? What happens if I can't get warranty insurance? What happens now that my warranty insurance has been put on hold?'. They are the ongoing concerns that we have had. That sort of higher level thinking is not really their principal concern.

Mr WILKINSON - If you pay for a service you expect there to be a service there -

Mr CLUES - It's like opening a McDonalds and saying we will get around to learning how to make a Big Mac down the track.

Mr WILKINSON - That's right.

Mr CLUES - It is wholly inadequate. People have the expectation, when you open up the doors, that you can go to lunch. It just was not there.

CHAIR - Any further questions on that area? Any further comment you want to make on that?

Mr CLUES - No.

CHAIR - Then we move to the challenges and problems that have arisen related to owner-builders.

Mr CLUES - Under the Building Act, one of its principal provisions or objectives was that it would enable a reasonable outcome for genuine owner-builders who intend to build on their own land. It said it was designed to reduce the number of builders who falsely claimed to be building on their own land in order to avoid the mandatory insurance and accreditation provisions of the Building Act. It also said that it was designed to protect consumers by ensuring that non-accredited, uninsured builders who are in the business of

building did not persuade unsuspecting clients to become owner-builders without appropriate insurance protection under the Housing Indemnity Act. They were the goals of the Building Act, see page 18 of my submission. They were noble and worthwhile goals. They remain as relevant today as they did when they were drafted in 2004. Unfortunately, in our view, the Building Act has failed to achieve any of those objectives. We have a situation in this State - and I will just tender this document for your benefit - where owner-builders, in our view, are out of control. They are certainly out of control by any comparison to other States. We have a situation whereby, as of March 2006, 34 per cent of all housing starts registered with councils in this State are now under the guise of owner-builders. The national average is 9.9 per cent. Unless you are telling me that Tasmanians are a completely competent lot who are all innately gifted with incredible building talents, the reality is that -

Ms THORP - I was an owner-builder.

Mr CLUES - Were you on the tools?

Ms THORP - You betcha.

Mr CLUES - There we go, we have one of the talented people amongst us. But the reality is, as head of HIA, I am not allowed to hang a door in my own home. Most people are not talented builders but we have a situation where, allegedly, one in three housing starts is done by an owner-builder. That is an absolute crock.

Mr SMITH - Can I put a scenario to you, though, that it may have been the insurance requirements of accreditation that have blown this figure out. It may settle. I was looking for someone to re-roof a set of units and when I went to someone with a very good reputation and background he said, 'I am 59 years of age and there's no way I'm putting my assets on the line for another few years, so I will go and work under someone who is accredited, or if someone likes to set up their own process I will do their work for them. I am not going down this track of insurance that is required for accreditation for the space of a few years before I retire'. Do you accept that this 34 per cent blow out may settle once that age group of builders goes out of the system?

Mr CLUES - The first part of your proposition is correct. The level of owner-builders is inextricably linked to people's concerns about warranty insurance, but it is not about people's age and moving out of the industry. What you have is a situation where the Building Act requires, in order to be accredited, that people have home-owners warranty insurance. The home owners warranty insurance as it currently stands is not being well loved and embraced across a wide range of stakeholders. You are right in saying that it is about warranty insurance, but I don't accept that it is about the age of the builders or that this is going to pass or get better. Warranty insurance exists in all States as last resort, in all but the Northern Territory and Queensland, where it is allegedly first resort. If you look at these stats, even though warranty insurance exists in those States and it is either first or last resort, Tasmania bears no resemblance to any of those in relation to owner-builders. If you take, for example, Queensland, they are sitting at 5.7 per cent for owner-builders; Victoria is 14 per cent; New South Wales is 9 per cent; South Australia is 6.9 per cent; Western Australia is 4.9 per cent. Then you look at Tassie and it is 34 per cent, so you have to ask yourself what the difference is. The difference is not about warranty insurance; the difference is about the regulation of owner-builders in those

States. In each of those other States they have effective regulation of owner-builders; in this State we don't have effective regulation of owner-builders. In this State the closest we have come to regulation of owner-builders is a form called 'R34' that owner-builders are meant to sign when they go to councils. It says that they have in place public liability and workers compensation insurance. Beyond that, there is no regulation of owner-builders.

CHAIR - Except if they can do two projects in a ten-year period.

Mr CLUES - But that is not managed. Yes, it sits there in the Building Act, but Joe Public does not know that. It is not enforced, it is not regulated. Anybody who is wanting to go as an owner-builder, who might be an unlicensed, uninsured builder, can go and service the owner-builder market, which is now comprising 34 per cent of the market. It is as a consequence of that that you now see advertisements in the *Mercury* on a Saturday morning: 'Builder, specialising in owner-builder work'. There is a whole black market that has been set up around servicing the owner-builder market. The greatest threat to this whole Building Act and to builders accreditation is the capacity of the people to simply opt out if it does not suit them.

Mrs SMITH - So how does South Australia, for instance, manage their owner-builders at 6.9 per cent? What is different in their act from ours?

Mr CLUES - In every other State there is effective regulation of owner-builders. They have a multiple approach. First of all, the owner-builders have to be registered. They are registered with the same body that registers the builder, and that is what we are arguing should happen here. So if you want to be an owner-builder, that is fine. HIA does not oppose genuine owner-builders, whether you want to do it directly or whether you want to manage the project, but you should be registered as an owner-builder. Secondly, you should be educated about what it actually means to be an owner-builder, because it is not about saving $2 000 on your warranty insurance. It is about potentially taking on a $200 000 to $400 000 risk. So often it goes pear-shaped because halfway through the project things go astray, but there is no recourse because you are the ultimate backstop. You become the owner-builder.

Mrs SMITH - But I would argue there's no recourse under this last resort if halfway through the project something goes pear-shaped. Under our insurance virtually all the cover that people really have is if you are broke, you die or you go out of business, and there is plenty of testimony to that. So that is a bit of an irrelevant argument. We have had evidence of some registered builders with whom things have gone pear-shaped halfway through a job and you are still in trouble.

Mr CLUES - I could spent an hour or two talking to you about warranty insurance and the necessary reforms there, but in terms of the Building Act and builders accreditation you have a situation in this State where anybody who wants to be in the building industry, who doesn't want to be licensed or insured, can simply go and service an owner-builder market. The numbers do not change. The reality in this State is that 34 per cent of work is done by owner-builders. It is three times the national average. In other States, where owner-builders are effectively managed, it is done through registration, education and a situation where people cannot just opt in and out as they see fit. If you are going to build a good system going forward, those things need to be addressed, because if they are not

then when people don't want to pay the accreditation fees or they do not wish to be insured they will simply go and service 30 per cent of the market as an owner-builder.

Ms THORP - So you are basically saying that genuine owner-builders are fine -

Mr CLUES - It is not a problem at all.

Ms THORP - but we are talking about a situation where someone pretends to be an owner-builder and then gets people to come and work for them as if they were getting someone else to build their house?

Mr CLUES - We are concerned about individuals who are operating as building companies but all they do is serve as owner-builders. They advertise in the newspaper to serve as owner-builders. We are not concerned about mums and dads who want to manage the project themselves, or a young couple who want to build their own home. That is all great. Every Australian should have the right to do that. What we are concerned about is that we are setting up an unequal playing field where you are asking some people to be legitimate in terms of complying with the act, being licensed, being accredited and being insured, but failing to set up a safety-gate. We are saying that anyone who doesn't want to do that, that is fine; you just go and operate it, servicing the owner-builder market. What I say, and our industry says, and all of our members say, is that the greatest threat to the Building Act and accreditation going forward is going to be the mismanagement of owner-builders and the lack of regulation of owner-builders. That is the greatest threat. It is not to say that people cannot build their home. It is to say that we should not have people being able to opt out so easily.

Mr WILKINSON - Are you saying therefore that it is in contravention of the intention behind the Building Act?

Mr CLUES - Absolutely, Jim. If you read the Building Act it is actually, in those three points, trying to achieve everything that I have just said, but it fails to do any of those.

Ms FORREST - You are saying, too, that there is no actual process in place to ensure that owner-builders do only undertake two constructions within a ten-year period?

Mr CLUES - People get hung up about two houses in ten years. That is about the person who owns the home, but what we are concerned about is the person who is building the home.

Ms FORREST - There is no way of checking on that?

Mr CLUES - No. The builder can go and build ten homes in a year, because none of them are his. He is not putting his hand up saying he is the owner-builder. He has gone and serviced this person as an owner-builder and so on, but that has nothing to do with two in 10. The two in 10 is about me putting my name down and saying, 'I want to build a whole heap of things as an owner-builder'. I am not talking about the owner-builders, I am talking about the people who service them as owner-builders.

Ms FORREST - There is no way of tracking that at all in the current situation?

Mr CLUES - No, not at all.

Ms THORP - Stuart, when my husband and I were owner-builders, which is some time ago now, there were quite complicated forms you had to fill for the Taxation department to track where we had spent the money so that we could not then employ people illegally for cash. We had to show where the money that we were spending on the building went. Has there been a change since that time because I would have thought that would cover off on the concern that you have?

Mr CLUES - I am not 100 per cent sure on that. What I am sure of is that under our Building Act we do not regulate owner-builders. Just for this committee, for example, an owner-builder at the moment can do anything they wish. There is no restriction. In other States owner-builders are restricted to doing residential homes and in this State they can go and build a casino. There is no restriction under the Building Act that says they cannot do a multistorey commercial development in their own right - nothing. They can design it and they can build it under our Building Act. That is ludicrous; in no other State is that able to happen. In other States owner-builders are restricted to building their own residence; it is a residential development. They cannot build a commercial development that is going to be used by the general public. That has to be done by a professional licensed builder.

Mrs SMITH - Can you tell us from your experience in the past, was this something we have just missed in the Building Act or is there some reason we did not restrict it to residential and have a recorded system?

Mr CLUES - We certainly alerted the Government to it before the act came into effect and they were of the view that it would require amendments to other acts to try to address the issue. We have never accepted that argument. We think that the Building Act was overdue, people were in haste to have it implemented and the prospect of addressing any faults in it may be something that they could look at down the track, but in the last two years, whether you get the MBA in here, the Builders Collective, the independent builders group or us, every time we have rocked up at that builders group meeting the first agenda on the item is, 'What are we doing about owner-builders?' and for two or three years we have been stonewalled and nothing has been done. Time and time again we have been promised that things would be done and nothing has ever been done about them and what we say is that if we are going to go forward and build a successful accreditation system that gives consumers comfort then you need to address the owner-builder issue and, as I said, we think it is about registration, education and it's about making sure that it is a transparent system.

We would argue that in this recent disclosure document, for example, for purchasers it should be disclosed whether the property has been built by an owner-builder or whether it has been built by an accredited builder and we think that would be great for the consumer to know that this has been knocked up by a backyarder or it has been knocked up by a large professional building company.

Mrs SMITH - There are some limitations, you would accept, though, because if I am an owner-builder and I want to sell under I think it is a six-year period because of transfer or something, it is quite difficult to get some paperwork you need to put with the real estate sign to show that the building is compliant - and I am not quite sure actually; some

genuine owner-builders are aware of that. They get caught four years down the track and have to go back through the whole process.

Mr CLUES - Yes, but I do not want this committee to believe that HIA does not support owner-builders, we do, but it needs to be genuine owner-builders and not unlicensed, unregistered, unaccredited builders just servicing a black market.

CHAIR - Stuart, can we go to housing indemnity, and you could speak to us for hours but we will not do that today. Housing indemnity, as the committee is aware, has moved from being a policy of first resort to a policy of last resort. What is the HIA's position with regard to housing indemnity insurance?

Mr CLUES - Our view is that when it was first implemented it probably represented quite good value for money in terms of premiums and coverage but I think that there have been considerable market shifts and legislative changes that now render a situation where you have 30 per cent of the market voting with their feet, saying that they do not consider it to be a good value for money proposition. So I think the market has spoken, that it is not a product that is valued or cherished or is seen as doing the job that it was intended to do, so HIA's national policy is that it should be a voluntary warranty scheme where people have the choice as to whether or not they take out warranty or not, and they do that based on the perceived value and risk associated with their particular project, just as you take out home and contents insurance. I always find it a difficult proposition that we feel as though we need to put a safety net around people and wrap them up in cotton wool when they are going through the building process and then the moment they are given the keys we don't care whether they take out home and contents insurance. They can leave the gas on or have the place flooded and we don't care. There is no mandatory home and contents insurance but we think it is mandatory that they have warranty insurance. It is an unusual proposition, that we are terrified that the builder is going to fall over during this process but we don't care about whether they leave the gas on the day they take possession of the keys. We are happy for people to run around in $500 000 Mercedes on the road without appropriate comprehensive insurance, but again we need warranty insurance. We say it should be a voluntary product where people are duly educated as to whether or not it is something that they want. That is what operates in the UK and the US. In those countries, where it is a voluntary warranty scheme, they have a 90 per cent take-up. The reason they have a 90 per cent take-up is that the insurers offer a product that people value. In this State, where it is mandatory, we have a 70 per cent take-up.

Mr SMITH - Would you accept that, as we have an accreditation process where legislation demands that builders must be accredited, that puts some onus back onto the Government and the Parliament that when there is a demand for accreditation, off that unfortunately comes a mandatory process of insurance until the job is finished on a consumer protection basis? I would imagine a person would come back to a State government if there was no warranty insurance and something happened, like a builder going broke three years in, and say, 'But you accredited that builder and you should have known his forward capacities of finance et cetera. He went broke and you have some liability in this process because you accredited him at the time'. I would see the insurance link to the accreditation link - I may be wrong - as against your argument, which I accept. We cannot control home owners insurance for fire, risk or car et cetera, but there is nothing mandated in law that restricts people once they get to that stage, whereas we are saying these builders are accredited. I would

imagine the consumer could say to the Government or the TCC or whoever, 'You accredited them, you must carry some of this risk'. That is the difficulty I have with mandatory versus voluntary. Can you expand a little on that?

Mr CLUES - I accept your argument, you can run counter-arguments to everything that I put up, but I think you have a situation where the current system isn't working - and that is evidenced by these numbers. I don't think that people need to be treated as though they cannot make educated decisions of their own. I do not necessarily accept that every licensing regime is underpinned by an insurance regime. I think there is plenty of scope for improvement.

CHAIR - Is it the HIA's position that housing indemnity insurance as part of a dispute resolution process ought to be part of a fully integrated system of builder accreditation so that you have all of the operation in the one authority, similar to the Building Services Authority in Queensland?

Mr CLUES - No. I think there needs to be a complete integration of the system on the basis that you have licensing of builders, that you have an appropriate dispute settlement process for basic consumer-builder-type disputes and then, if that dispute fails, there should be some sort of insurance mechanism in the event that the builder simply walks away from his obligations, having had the matter mediated or arbitrated. I think what would be most helpful is that we use the building levy going forward to develop a really great consumer alternative dispute resolution process, something that is quick - $200 in; most of these things are not that complex - have intelligent, experienced people preside over the matter and make a determination: no, this building isn't acceptable; yes, you are entitled to your progress payment - matter resolved. Then, if the parties are still in dispute, they can go to an alternative jurisdiction, whether it be the Magistrates Court or whatever. I think having an integrated system, which you are talking about, where you have accredited practitioners, you have a proper dispute-settling process and then sitting in the background you some insurance, whether it be voluntary or compulsory - our argument is that it should be voluntary - would make for a completely integrated system that would work well. I think, going forward, the need for warranty insurance to be compulsory would be largely mitigated if you had a proper conflict dispute resolution process in place. That is certainly what we see in Victoria and it seems to work well but I would suggest that all of those bodies need to be independent of each other. I would like to see licensing completely separate from the dispute resolution process because I think where the Queensland model falls down is on the basis that are trying to be all things to all people - we will insure you, we will license you and we will resolve the disputes - and you have a situation whereby you can strong-arm builders on the basis that we do not want to have to rely on our insurance, therefore we can take away your licensing if you do not fix this problem up. The easiest thing is to always go and bash a builder up as opposed to saying to the consumer, 'No, you are wrong'. What I would say is that if we do set up tribunal here, it needs to be independent of the licensing, independent of the insurance and it should not be a builder-bashing exercise; it should be a situation where both parties go in on an equal platform. The builder, in our experience, quite often gets very rough treatment when it comes to the final progress payment issue, as you would be aware, where there might be $20 000 or $30 000 outstanding and suddenly there is a whole raft of problems that the consumer is identifying, simply to not have to make that final

payment. We would like to see a situation where a builder can pay $200 and drag the consumer in and say, 'I'm owed $40 000. He's saying that particular cupboard is out of alignment or there's a chip on one of the skirting boards and that's a $200 job, it's not a $40 000 rectification'. So I think there is a lot of scope for improvement. I am really looking forward to the opportunity of working with the Government to build that new system.

Ms FORREST - You made a comment a little while ago, Stuart, about the voluntary versus the compulsory insurance and you said that in the United Kingdom and the United States there is a 90 per cent take-up of the voluntary option because that is a product they value. What is it about that product that makes it a product of value in your opinion?

Mr CLUES - If you take somewhere like the United Kingdom where there is about a 90 per cent take-up, the product runs for 10 years, not six. It is a situation where in the first year the builder is completely liable for any defects and then the insurer takes over for the remaining nine years. The view there is that if there are going to be any major problems, they are likely to rear their head in the first 12 months and so the builder should fix them and after that the insurer takes over the risk.

Ms FORREST - It is like a first resort?

Mr CLUES - Yes. It is a first resort proposition and they have a rating system. I think any good insurance model needs to do a number of things. One is that it needs to hold a builder accountable. One of our grave concerns about first resort insurance is that it just abrogates the builder. Builders build the project, there is a fault with it, he does not have to go back and fix it or rectify it; insurance will cover it. That is why insurers requested to go to last resort because consumers who did not want to have that difficult conversation with the builder would just lodge a claim with the insurer and the builder had no idea the claim had even been lodged or there was a problem and was not given the opportunity to rectify the issue at all.

Mrs SMITH - But isn't that a fault with the insurance industry itself, that they like to take the easiest option rather than follow proper processes? Everybody else in life has to. It is easier to pay and put up the premiums than it is to find out who is guilty and who is innocent?

Mr CLUES - You could argue that and I am not here to defend the insurers, but you could argue also it is all of our natural ability to try to avoid conflict. So rather than having a difficult conversation with the builder and saying, 'Fred, I'm really not happy with these cupboards or the finish on this bench top' or whatever, you just have a chat with a third party insurer and say, 'Can you fix this building work?'

Mrs SMITH - But then shouldn't my expectation be that the insurance company will go back to the builder and say, 'Tell us why it's the consumer and not you that's wrong'?

Mr CLUES - I think that did happen a lot of the time. But what also happened was that insurers would simply tap the builder on the shoulder and say, 'You fix it', regardless of the rights of wrongs or whether or not it was something the consumer did after they took possession or was never a part of the scope of the building works in the first place. So you had a situation where, under that first resort insurance, there was a high level of

claims being made, builders were not being given the opportunity to rectify it and I would say that any good model going forward always needs to be able to give the builder the first opportunity to rectify their own work and it also needs to be a model where builders who do not have claims made against them and do good work have the opportunity to pay a lower premium in recognition of that. It should not be some uniform system where everyone is equal when the reality is that they are not all equal. Some are bad builders, some are good builders; some have lots of claims and some do no have any claims. That would be the fundamental platform under which any warranty insurance, going forward, should be -

Mr WILKINSON - That latter matter you mention, though, would be different to other professional bodies, wouldn't it? If you were in the medical profession, the legal profession or whatever you might not have a claim made against you for your whole life, but you still pay the same premium?

Mr CLUES - But it doesn't make it right.

Mr WILKINSON - Yes.

Ms FORREST - Just going back to that UK model, for the first 12 months the builder is responsible for any defects -

Mr CLUES - That is right.

Ms FORREST - and I don't know whether you can answer this question, but in that 12-month period if defects are identified, is it like a mediation-type process or is the big stick taken to the builder who is told, 'Fix it regardless'?

Mr CLUES - Because it is a voluntary model, the builders still want to demonstrate to the insurer that there are risks that they want to take on board, so the insurer does not have to insure the builder. If the builder is not rectifying the work and consumers are going back to the insurer, then the insurer will say next year 'I am not interested in insuring you' or 'I will up your premium'. So there is a constant incentive for the builder to do the right thing in that first 12 months so that he can go forward and say to consumers as a marketing exercise, 'I have warranty insurance behind my business because the insurer believes I am a good builder. If you build with me I can offer you this particular product.

Ms FORREST - But in the case where there may have been some damage done by the owner, not the builder, within that 12 months, is there a process within that scheme that allows -

Mr CLUES - I am not 100 per cent sure, but I imagine that it would be appropriate to have that there, this ADR-type process that we are talking about, to sort out all of those things, because a lot of the time it is just about people's expectations. This is their dream home and they want it to be perfect, but work is done within particular tolerances, and if an expert comes in and says that the work is within those tolerances and it is good workmanship, even though it might not meet your expectations, then that should be the end of it. Or alternatively they could say, 'No, this is lousy building work and you

should really go back in there and fix it'. To have an independent expert do that at a low cost would be wonderful for the system here in Tassie.

Mrs SMITH - That is why I struggle to come to terms with your dissatisfaction or disenchantment with the Queensland system, where they call for a register of builders. If I, the consumer, have a problem they send out one of those builders, who is experienced, to have a look and come back and say, 'No, it is the consumer who is a fusspot; the builder is okay' or 'No, there is a problem here', and then the system moves on. It does have a carrot-and-stick approach that can say to the builder, 'You're right, okay' and the consumer goes away, or, 'You will fix it or we will bring someone in to do it and we will deal with you monetary-wise, licence-wise or whatever down the track'. At least the consumer gets the product. You do not have three years of trying to find someone who will -

Mr CLUES - I hear a lot about the Queensland model from a lot of different people, and it is touted as being the panacea to all our problems, but I don't accept that. I think it lacks independence. I do not think the insurer should also be the person doing the accreditation. I think it should be completely separate, and I think the dispute settling process should be separate as well. There is a conflict of interest between the people who are insuring them and the people who are accrediting them. That is not a marriage made in heaven, because if you end up with claims blowing out you end up with the licensing body coming down unnecessarily hard to try to rein back their risk, their exposure or their claims as opposed to dealing with the professionals concerned. So I think we can learn some things from the Queensland model, but I do not think people should be grabbing it and saying this is the panacea to all our problems. I think Paul touched on it when he said we need an integrated system, but I think within that integration there needs to be independence from the accreditation, the insurance and the dispute resolution.

Mrs SMITH - If our insurance companies are left in the system, where does the pressure come from to have insurance companies perform, from a builders' and a consumers' point of view, to an expectation that we should expect and receive rather than it being easier to pay out and not even go back to the builder, as has been the case in the past, evidently, with insurance companies on a first-resort type of process.

Mr CLUES - I would argue that people should only be able to make an insurance claim once they have gone through the ADR process. I think that would knock out 99 per cent of the disputes and claims up-front and I think the insurers would be happier with that on the basis that they are not dealing with frivolous and vexatious claims. Ninety-nine per cent would be knocked out in the ADR process.

Mrs SMITH - So if we had that proper process we could go back to first-resort insurance, is that what you are saying?

Mr CLUES - Potentially we could, but the difficulty I have with that is whether or not the insurers would want to do so. Potentially that could be the case if you had a proper ADR process in there.

CHAIR - Stuart can I go to a matter which came to our attention when we visited the BSA in Queensland and that is the BSA, as the licensing body, acknowledges that it doesn't have

the broad in-house expertise to assess the various applications for licensing to come through. I think particularly of an architect who might be seeking a licensing process. A registered architect has to go through a whole range of practice requirements to be given authority to practise as an architect. From my best recollection, an architect can then present to the licensing body in Queensland and say, 'I have my professional organisation which has assessed me as to my competence and my suitability for you now to consider me to be licensed'. The licensing body then says that that is fine; as the architect comes from a professional organisation, it accepts that accreditation by that body. Then without too much further complication the architect is licensed to operate.

I understand further that is similarly what happens here. The TCC through a process - and other members will correct me if I am wrong - acknowledge that they do not have the in-house expertise, liase with the architects' registration board or whatever and likewise with the engineers. Is that a reasonable way for any authorised body, now the government organisation, to assess a level of competency by professional people, be they architects, engineers, building surveyors or designers?

Mr CLUES - I really wouldn't want to comment on architects, engineers and surveyors. I would have to address the question from our perspective in terms of whether HIA would like to make an assessment as to whether or not somebody was appropriate for accreditation, based on their skills and qualifications, and to put a recommendation forward. The answer would be no; we would not want to be in the position of judging our own.

We are a membership organisation and I think we have inherent conflict of interest in saying, 'Come and join the HIA and we will make an assessment of whether we can give you a builder's licence that will enable you to operate in this industry'. We would end up with a situation whereby we have a direct conflict of interest: it is in your interest to get them on as a member; it is in their interests to have their licence so they can feed their families and have a livelihood. Suddenly we have something that they want and hence your membership is not based on the wider benefits of being a member of the HIA but rather you are the gatekeeper, deciding whether or not they have a builder's licence. I think we have an inherent conflict of interest there and that is not something I would want to do.

Nor would I want to be in the unenviable position of denying somebody if they were completely hopeless and saying to them, 'You are good enough to be a member of the HIA, but you are not good enough to have a builder's licence'. So there is a conflict of interest there and it is not something that I would want to have happen. I would think that the whole benefit of having an independent licensing body is that they can make a judgment as to people's competence, based on their experience and qualifications. They should have that experience either in-house or be able to tap into it through external resources. I do not think it is the role of industry bodies to go and license their own.

CHAIR - Not license.

Mr CLUES - Or even make a recommendation. If that recommendation is we are going be given so much weight that it has to be the integral part of whether or not someone gets a licence then I think we have a conflict of interest there and it is not something I would want to take on as a member of the HIA. But others might have such rigorous processes

for their membership that it might be appropriate, but it is certainly not something that we would want to do.

Ms FORREST - Just following on from that. I think it is a slightly different situation with engineers and architects because my understanding is that it is a vigorous process -

Mr CLUES - It may have been.

Ms FORREST - They have a university degree, they have their experience and they have their internship or whatever they call it -

Mr CLUES - And that is why it is not for me to make comment on those bodies, but certainly from our part -

Ms FORREST - The builders with whom HIA are involved - and correct me if I am wrong - can come from a variety of entry points, so there is not a standard process they would undertake. Is that why you are concerned about -

Mr CLUES - There is now on the basis that they all have to have certificates - the AQF4 qualification - and *x* number of years under their belt. But I still maintain that if we end up having to make a recommendation as to whether or not somebody gets a licence, there is a conflict of interest there.

Ms THORP - It is a bit like the separation between the Nurses' Registration Board and the ANF or the Teachers Registration Board -

Ms FORREST - Not the ANF so much as RCNA - their professional body as opposed to their regulatory body.

Ms THORP - Yes. I think the lawyers are the only ones who find that a bit confusing.

CHAIR - I guess the position I was trying to get to was just that that you have explained, and that is that with some of the professions they maintain that there is a rigorous process required by law for them to be registered. Why then should an authorised body - the TCC in the past - second-guess that professional assessment? That has been an issue, I think. You are indicating clearly to the committee that your organisation does not want to be in that position.

I was going to go to the matter that you have just raised about AQF4 qualifications. Somewhere in the act there is a proposition that qualifications or experience can be contemplated in being given accreditation. Does the HIA have a view about the 'or' or should it be AQF4?

Mr CLUES - It definitely should be 4, in our view. Experience counts for everything in the building industry. I would rather have my house built by somebody who has had 20 years experience than someone who rocks up with a masters degree in building and has never laid hands on the tools. Under the AQF4 model, we have the capacity to do recognition of prior learning, which provides a rigour as to how you assess that experience against what they otherwise might learn through an academic model. I think there is definitely scope to measure somebody's experience in a rigorous way and

definitely both qualifications or experience should remain in the act. As I said, I would rather have an experienced builder over a qualified builder.

CHAIR - Yes. I had overlooked the matter of recognition of prior learning, and that it is rigorous.

Mr CLUES - Yes, it is.

CHAIR - Thank you very much, Stuart.

THE WITNESS WITHDREW.