

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET AT DEVONPORT, FEDERATION ROOM, UPPER LEVEL ON 31 AUGUST 2006

Ms CHANTAL WILLIAMS AND Mr GLYNN WILLIAMS WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Harriss) - Thank you for being here. Your submission is detailed. It sets out the chronology of your plight and what has happened, or not happened.

Ms WILLIAMS - I would like to preface what we are going to say by saying there is court action against the builder. It is still in process but it is going to be another year or two before that is resolved. It has already been going for a year. The decision that the TCC handed down is also the subject of an appeal before the Building Appeals Board.

CHAIR - By the builder?

Ms WILLIAMS - No, by us.

CHAIR - Okay.

Ms WILLIAMS - The investigation for that appeal is over. The report has now been handed to the board and they will meet fairly soon to decide what they are going to do, whether they hold another hearing to hear more verbal evidence or whether they will make their decision based on that investigation.

CHAIR - Which board?

Ms WILLIAMS - The Building Appeals Board. That is the first time we have dealt with anybody outside of the TCC because it would appear that everyone's hands have been tied because the TCC had to be the body to deal with it. I will give you a quick outline so you have some sort of context to work in. I own a house in Ulverstone and in March 2005 I sought a quote from a builder, Robin Jack, of Ulverstone. He gave us a verbal quote of \$20 000 for the work we wanted done, and if we wanted a verandah continued around with French windows it would be \$30 000. He tried to start work without any contract or any insurance in place. When we stopped him and said, 'No, we have had issues in the past with builders where insurance has been needed and resolved; we are not doing this without insurance', he was quite heated about it. But he did do it, he went ahead and got insurance but it did put it off by another month or two.

Mr WILLIAMS - We also knew, from my conveyancing experience, that you cannot sell a property where there has been building work of more than \$6 000 - that is in the requisitions that one commonly gets - unless you have that insurance and you would not have had it.

Ms WILLIAMS - The plan was to sell the house, so we needed that insurance. The two-week job was finished last week, so that is a year and a bit. From his point of view, two weeks went out to something like 26. The \$20 000 job went to \$49 000 with no

warning whatsoever until the final bill arrived. We have only paid out the \$20 000 and we are fighting the rest of it in court.

The main problem that we came up against was that a Central Coast Council building surveyor came and looked at the work, a mandatory notification stage to have foundations looked at before they were poured. The building surveyor came and the trench had been full of water the day before. The Central Coast Council said verbally and then in writing later in the day, 'Do not pour that concrete until the engineer has seen it because it is in reactive clay.' An hour and a half later he poured the concrete, after phoning the council to say that the engineer had given the go ahead. In fact, he had rung the engineer and the engineer said, 'I can't get there; you will have to wait three days.' He rang the council and said, 'No, the engineer said that is fine.' We knew none of this until November when the final bill came for \$49 000 and we decided to go down to house. We had been living in our other house at North Motten. We went down to the house to see if we could work out where \$49 000 worth of material went because most of it was simply underpinning and replacing the front wall of the house.

Mr WILLIAMS - You are talking about an eight-metre wall?

Ms WILLIAMS - Yes, and a new deck. Glynn promptly trod in a puddle that was 10 centimetres deep on the inside of the house, not the outside. That started us looking around. We found untreated pine had been used for foundation work, straight into dirt. We found bracing missing, and the verandah was too low. There was a whole raft of things. We contacted Central Coast Council first thing on the Monday morning. They came along and agreed that there were major problems with the building work. Moreover, they were very surprised that the concrete not only had been poured but the building had been finished. The building surveyor's first response to me was, 'He wouldn't have been able to get much further than that, would he?' I said, 'What do you mean?' He said, 'We told him not to keep going.' That was the first we knew about it. Not only that, he had missed all the mandatory notification points under the Building Act. He had committed a whole series of offences. We have come up with 38 breaches of the law between the Building Act and Housing Indemnity Act. That day, when we contacted him and we said that we were going to make a complaint, his attitude was, 'Oh, well, good luck', as if he knew something we did not know. In hindsight, I would say that it may have been that the TCC is fairly toothless.

We had no idea who to go to. We rang MBA straightaway and they informed us that the insurance paperwork was not even filled in properly. We have never received a copy of it. On it, he had put that he was replacing something. I cannot remember the word of the top of my head but the paperwork did not have 'underpinning'. They said they would not have insured him if that is what it was because it turns out that is a specialised thing, which was unknown to me.

Glynn is a barrister and he knew where to go and where to look. He contacted Alan Humphreys at Workplace Standards who put us onto the TCC. He indicated to us that he would be very interested in hearing where this went because, as far as he knew, no other case was able to get through the TCC's process; they had all been stopped. We went to the TCC and the chronology is outlined in the submission. The Building Act, in part 4, divisions 4 and 5, is really clear as to what the TCC has to do. Once the complaint is made it needs to be in writing in the form of a statutory declaration. They can then

request additional information. They need to let the builder know and they can supply the builder with our information which was never an issue. They can dismiss it if further particulars are not given, if it is not supported by a statutory declaration, or if it is vexatious or frivolous. We did not meet any of those criteria but within a couple of days we were told, 'No, we do not get involved in contractual disputes. We are not going to do it. Good luck, we would like to hear the outcome.'

Mr WILLIAMS - It had all the indicators of being a pro forma letter.

Ms WILLIAMS - Yes, and it was not even signed by anyone other than the admin assistant. Then it was put back to them in the form of a legal pleading. Again, fortunately there is a lawyer in the house so he could do that, otherwise it would have cost us a fortune and we probably would have given up on it. Then John White decided that we needed to go to mediation. As we have put in the chronology, I told him specifically several times that he was not mandated to mediate. In a contractual dispute he might mediate but we are talking about professional misconduct and unprofessional conduct. I cannot mediate on that; he cannot mediate on that. He has to decide whether there has been misconduct or not.

He argued and argued and argued for two months. In late January I put it to him in an e-mail that if he did not do it I would take it straight to the ombudsman. Within three hours there was an e-mail back saying, 'All right. We have appointed an investigator,' because that was one of the things they have to do. It actually states they must conduct an investigation as soon as practicable. Two months down the line is not as soon as practicable and I do not care about the Christmas/New Year bit in there either. The builder's lawyer was playing games. The TCC was letting it happen: 'Yes, we will get a response to you at some stage, mate.' That was the attitude whereas it was very clear he had three weeks to respond.

We were told the investigator was David Murfet. When I asked some more questions I had a letter back to say Mr Murfet was in charge of it now, to shut me up. Then when he rang the investigator told me that he would be here at a certain time. I explained to him I had a meeting with Paula Wriedt in Hobart and it was not one I could change. It was not an afternoon tea party with the girls; it was one that had been in the diary for quite some time. He said, 'I have probably got everything I need from you, so don't worry about it.' I said, 'I will be around on the Thursday'. He said, 'No, I have got to be somewhere else. We will do it. I will talk to the builder. Leave a key at the house and we will have a look.' Against my better judgment I did so.

That was very early February. We did not receive the report until 1 May. Every time we said, 'What is happening with this report?', it was a case of, 'He is sick,' or, 'He is not finished,' or, 'He has sent it to Workplace Standards because he wants it double-checked. We will get back to you at some stage.' The fight so far, in terms of the repairs, the costs, the legal costs, is totalling at around \$70 000 and climbing. The builder was fined \$1 000 and asked to attend two TAFE classes.

The work has to be completely redone. Had it simply been that he was inexperienced or had got in a bit over his head, that would be one thing, but these are clear intentional breaches of the act. The council was very clear in telling him on the building permit what he had to do, right down to spelling it out that untreated timber could not be used,

that the engineer had to be consulted at every single step and there were several other conditions on the building permit. Not only did he defy all of those, he also, when it came time, did not even go through the mandatory notification stages. The first the council knew he had gone any further was when I turned up with a house that, I might add, I had paid off completely six months before but is now worth zero. I cannot sell it because there is no completion certificate on it. I cannot do anything with it and it is obviously attracting publicity, but that is the risk we have to take if we want to sell it.

We would also like to bring up that the act talks about, in part 14, division 2, infringement notices that can be issued by council. I would like to strongly recommend that it should not be a 'can be' but a 'must be'. We brought the 38 breaches to the attention of the Central Coast Council. We gave them the evidence in writing, most of which was their own evidence that we had got from council files to say that he has breached all these things. When I met with Kathy Schaefer, who is the council General Manager. and Jeff McNamara, who is the head of building, I was told - and they have denied it to the Ombudsman - very clearly, 'Mrs Williams, we like the relationship we have with the builders in this town and we don't want to rock the boat'. That is a quote. When I said, 'So you're going to tell me that it's okay to go to the pub and say, "Mate, she's right, do what you like, council won't do anything about it", Mr McNamara said to me, "Well, no, I think he'll go to the pub and say to his mates, "Well, don't do it because it will get you into a lot of trouble."'

When I pointed out their obligations to them he also said to me, 'My department has a legal budget of \$1 000 a year. I'm not going to spend it on getting into strife with the builder because what if he comes back at us?'. I know, because Glynn was their lawyer until about this time, that their council budget is a lot more than \$1 000 a year for legals.

I was told that this wouldn't resolve the situation, but what I tried to impress on them was that this man didn't accidentally get it wrong; this man chose to defy everything that council told him to do and they were letting him get away with it. Shortly after, the writ was lodged with the Supreme Court and council is listed on that writ. It hasn't been served on them yet, just the builder. The reason is that we think they may not be taking action against the builder. After the concrete was poured, a week later the building surveyor rang the builder and the engineer and said, 'Look, where's the cert 55 to say that this is okay? He told me you'd get me one.' The engineer said, 'No, I told him not to pour.' At that point, it is our contention that council should have said, 'Do not take one more step. Until we've investigated this, do not do another thing'. They even have the power, under the actual order, to issue an uncover order to check those foundations. They didn't do it, they let it go; they knew it had gone on in that intervening period, so that is why they are listed on the writ. That is why I am certainly not their best friend, which bothers me none, I can tell you.

So our recommendations would be, if there were to be changes to the act, that the TCC's procedures and policies must be set out. I run child-care services and to get a licence I have to have something 89 policies in place, plus procedures. I have to be able to tell you exactly what will happen if there is a complaint made to me. Now, until all of this happened, this didn't even exist. This appeared on their web site - how to make a complaint - and it doesn't even follow what is in the Building Act. There are bits in there that still aren't quite right. We couldn't even find their web site. It was only when we kept hunting and hunting to find somebody to say, 'Look, this builder needs to be

dealt with', that Allan Humphries was discovered through Workplace Standards and he put us onto them.

So this is the new information sheet that they put up as a result. That is a start, however, they have obviously had no policies or procedures. In part of the submission I asked John White a whole series of questions in an e-mail and he has responded to me, but even those responses are not what is necessary under the Building Act. He has actually contradicted the Building Act.

If there is to be any authorised body - and my understanding is that anyone can be - then, for me, they have to go through a rigorous process to say, 'These are our policies, these are our procedures'. They need to be accountable for their decisions. They need to be approachable and findable by the public. I would suggest that, just as builders need to give out insurance paperwork and contracts, they also need to give out details of who to contact in the TCC so that at least the owners know who to go to.

The other recommendation would be that the infringement notices need to be compulsory. I am sure that creates a legal headache somewhere along the line. Kingborough Council, for instance, in last financial year up until March, had issued 30 infringement notices. Central Coast have issued none. I do not believe that that is because Kingborough Council have lots of bad builders; I think it's because Central Coast Council are just choosing not to do anything about it.

The TCC needs to be accountable, they need to have processes in place and we seriously need to look at infringement notices under the Building Act.

Mr WILLIAMS - I would probably go further than that in saying that, under the way this act is written, the experiment in private regulation has failed. You might think that is hypocritical as a lawyer saying that, but it clearly has. The whole saga has demonstrated to me that, despite Tasmania having some of the most sophisticated legislation in the country, which no doubt a lot of bureaucrats spend an awful lot of time preparing and having drafted, it ends up that you have to be able to help yourself in this State to get justice. Sadly, that is what we have had to do. Fortunately for us we have the ability to interpret badly written legislation, to apply it as best as we can and we have had the resources to do so.

The way in which the TCC approached our complaint was appalling. The submission that my wife comprehensively prepared contained enough detail in terms of fact that it made it very clear that what the TCC was being asked to do was to investigate the professional conduct or otherwise of a builder. It was summarily dismissed in a way that, as I have stated earlier, indicated to me that it was pro forma rejection. It would be my expectation that the TCC had a routine approach of knocking back complaints. If someone did get a complaint up - that is, they couldn't throw the pro forma at them - then they would embark upon a process of mediation because at the end of the day all the people are interested in is money. As we have seen from my wife's presentation, she wasn't just interested in money; she was interested in this builder being disciplined.

I was in the position to overhear a telephone conversation, thanks to the marvels of Bluetooth in a car on a mobile phone, where Mr White shifted four times in five minutes when he was asked, 'What actually is the mediation going to do?' He had no idea. I

learnt in the profession that I got into, very quickly, that if you don't have credibility you are not going to get any clients, you are not going to win anything, you are not going to do anything for anyone. For some years he had been in this privileged position of being in control of the only authorised body under the act, and yet even in his own mind he had not established a process, let alone through the formal operations of his private business that had a monopoly position over the builders in this State.

It is not, if you are charged with an offence, that the police will encourage a mediation. It doesn't happen; it should never have happened. It should not have ever entered his head, but it did because it was too hard, he didn't want to deal with it. He was sitting back and receiving the regular remittances that you have heard a lot of evidence about, but when it came to the business end of his job there was nothing there for the consumer.

Ms WILLIAMS - I actually got to a point where I asked for everything to be in writing, because during the one conversation I had, on 23 December and that Glynn had heard in the car, I asked him over and over why it was that we needed to go to mediation, and he couldn't tell me. I was refusing to get into a 'he said, she said' hearsay situation down the track. I wanted everything in writing, having no idea that this would all blow up in the way that it has. We are really grateful that it has because we really felt we were just belting our heads against a wall. I had contacted Bryan Green's office, I had spoken to Guy Nicholson. I said, 'This is ridiculous, they want me to go to mediation', and Guy Nicholson said, 'It's all fairly new and they're all working through it. Just let them go through it'. I said, 'Mr Nicholson, you can't do that, it's not in the law. The law states very clearly what they need to do'. He said, 'Oh, well, we just need to let them work it out'.

Again, like the gentleman that you have just heard from, I was not allowed to get an appointment with Bryan Green. The wife of one of his senior advisers is one of my senior staff, but I did stop short of going through him because the last thing I wanted to do was end up with personal relationships ruined over this as well. So I stuck with Guy Nicholson instead of John Dowling and I was not allowed anywhere near Bryan. I have had dealings with Bryan in the past but in terms of the TCC it was a case of, 'No, let them go through it. It will be okay'.

Mr WILKINSON - It seems to me that they believed, even though it was a misconduct argument, that mediation was going to settle it. They got it mixed up because mediation is really when you are looking at remedying the damage or paying for the damages that occurred; they thought they could deal with that by way of mediation -

Ms WILLIAMS - No, they stated in their letter, and they state in this information sheet, 'We do not deal in contractual disputes and we cannot give you an outcome.'

Mr WILKINSON - The way that this was run, it would seem, was contrary to what was in their letter.

Ms WILLIAMS - Absolutely.

Mr WILLIAMS - If we got the money, or the job fixed, then we would withdraw the complaint. I imagine that would happen because you make a complaint strategically in a sense to do that and to get information on the builder. I am speaking there as a

practitioner advising someone, but of course that is not the end in itself. The end was dealing with the builder's professional misconduct so when a pro forma knock-back said, 'We do not get involved in contractual disputes,' it struck me as more than ironic that that was the way that Mr White was then pushing us.

There has been a whole raft of legislation, as you would be aware, from the 1990s where Tasmania has become more uniform with other states and we have got some incredibly sophisticated statues out there. The Building Act was sat upon for years before it was proclaimed. When it was proclaimed the mechanisms that the act is supposed to put out there simply were not there and our experience demonstrates that emphatically. It is appalling. It has cost us so much money and heartache. The \$70 000 goes no way towards the time that we have both had to spend in pursuing this, knowing that there is no-one out there, there is no government department, there is no adviser, who will lend any help other than pushing it ourselves.

Ms WILLIAMS - We had to take five different avenues in this. The first lot was to go to insurance but then we realised that he had to be either dead, insolvent or missing so we did not even put in a claim. There was absolutely no sense in putting in a claim except maybe there would be a black mark against his name with the insurance company. We went to the MBA, who said to us, 'No, you have got to let him fix the work.' We said, 'If he is a defective builder, why would you get a defective builder back to fix the problem. That does not work either.' Then we went through the TCC. Then we went through the Supreme Court. Then we went through Central Coast Council and so far none of those avenues have done us any good.

Supreme Court action will still always be Supreme Court action. You cannot overrule the courts but there needs to be something where it is all tied in together, where we put one complaint in and, whatever the avenue, all have a look at. We went to Consumer Affairs. Roy Ormerod, who has now since moved over to Workplace Standards, he was excellent but he said, 'The best avenue is this other one.' We went to the DPP. We said, 'There are breaches of the law here.' They said to us, 'We are not investigators. We are only prosecutors so you have to get all of this together before we can lay charges because it was not so much a police matter'. It was something the DPP could do, but how do you do that?

Mr WILKINSON - Did the DPP send you back to council with that and say, 'This is a matter that council should be looking at.'

Ms WILLIAMS - Yes.

Mr WILKINSON - They did?

Ms WILLIAMS - Yes. The investigator appointed by the TCC is a building surveyor who had been in Burnie and who I believe may do building inspections in Hobart - I think that is his position. It would still be my guess that he was plucked from the air that day because I had threatened to go to the Ombudsman. The investigator that the Building Appeals Board sought was actually from the Victorian Building Commission because the appeals board said, 'We do not have anyone qualified in this State to carry out this investigation,' so the TCC is just plucking someone out of the air. The State body is saying, 'I do not think there is anyone good enough to do it. We are going to go and get

expert advice'. Peter Pereira from the Victorian Building Commission came over. I do not know much about their act but he did give me a few insights as to how theirs works and why it is successful. One of the things you cannot do in Victoria is a 'do-and-charge quote'; you have to have a fixed cost price. Your \$19 371.04 is it. You cannot accidentally get to \$49 000. We found out last Friday, too, that this is not the first time this builder has done this. It was exactly the same scenario - 'It will be about \$20 000 but it will be cheaper if I do it by the hour, so let's do that' - and it came in \$30 000 dearer. Exactly the same, just change the names and address.

Mr WILLIAMS - If you have been getting paid the way through, then the builder is okay and you have no real redress because, under law in Tasmania, set-off is the only argument you have.

Ms WILLIAMS - They took action and received their money back as well. So for this builder, for me, that is a pattern. That is serial. This builder has done it twice and nobody is prepared to take him on. A slap on the wrist and \$1 000. 'You beauty, that is \$1 000 out of the extra \$29 000 I charged'. That is absorbed into costs, no worries.

Mr WILKINSON - What did they say was his misconduct for that \$1 000 to be imposed?

Mr WILLIAMS - There was no concept of natural justice or any procedure in that decision because it did not deal with the 38 points that were raised and put to him.

Ms WILLIAMS - No, he only dealt with one part of the statutory declaration. He did not deal with the rest of it, which is why it is subject to appeal.

Mr WILLIAMS - It is not so much an appeal. This is a de novo; it is a new investigation.

Ms WILLIAMS - They have to hold a new investigation. They don't just look into what the TCC did. So the TCC is no being investigated. The claim is being re-investigated and the Building Appeals Board make the decision, rather than the TCC. So my understanding is that the TCC do not even get their fingers slapped. Someone says, we are going to overrule this decision, full stop.

When we put in our statutory declaration to them about our issues, that was sent to the builder. We have never, ever seen all of the builder's evidence. We were never allowed to see that. Nobody ever gave it to us. When we requested it under FOI, it turns out that they are not subject to FOI, so we have no natural justice whatsoever. He could have said what he wanted and lied through his teeth if he wanted to. We have no way of knowing or fighting his evidence. Yet, in this new investigation, the investigator had 85 pages of questions for the builder. That is 85 pages just of questions, without the spaces for the answers. What does that tell you about the way it should be investigated compared to the two-hour chat? The investigator from Victoria rang the builder to say, 'I am going to be here on this date' and he said, 'Yeh mate, I'll have a chat with you, I spoke to the other guy for a couple of hours.' He was told it was not just a chat, this was an investigation and he said, 'Yeh mate, that's all right.'

If it had been done properly the first time, my assumption would be that you would be thinking, 'Yes, all right I will do it', not, 'Yeh mate, she'll be right'. I feel really let down

by a system. If they are accrediting builders then you would assume, as everyone else has said, that you are getting some quality.

CHAIR - We can indicate to you both that the committee will be having the TCC before this committee and we will be asking those questions about their procedures, modus operandi and all of their documentation. You have raised a number of very important matters in this submission of yours as to question you have asked and lack of answers. I and I am sure other committee members have made similar notes and we will be pursuing those issues with the TCC.

Ms FORREST - You made reference to the TCC, stating that they do not deal with contractual complaints - that is, professional misconduct and unprofessional conduct. I cannot see without having a look at your contract, obviously, how the majority of the matters can be considered contractual matters, rather than misconduct matters. Did the TCC give you any indication of what they could look at and what they could not?

Ms WILLIAMS - No. All the letter said was that we do not deal with contractual disputes; we only deal with professional misconduct and unprofessional conduct. So we then went back and reformulated the whole thing. We grabbed the Building Act; we got the statutory warranties from the front and from the Housing Indemnity Act. We went through all of those and we went through all the statutory warranties. There are things about working to a timeline and making sure that you have done the right thing by the homeowner. So we had to go at it from that point of view.

It is also really clear in the act that they have to follow the directions on building permits, and directions from bodies such as councils, so we outlined that he hadn't done those. Even if he had come in on \$20 000 and we paid him \$20 000, in all of those things he'd still breached the law, he'd still poured without permission and so on.

Ms FORREST - In a misconduct manner, rather than a contractual?

Ms WILLIAMS - Yes, that's right.

Mr WILLIAMS - It is a breach of contract, too, because those things are implied by force of law.

Ms WILLIAMS - Yes, but we were taking that action through the Supreme Court.

Mr WILLIAMS - But we had to set it out, 'In the matter of the Building Act', and, 'In the matter of CS Williams', and so-and-so, and give full particulars. It was a five-page document that he just couldn't argue with. But it was not putting in one different word other than the legal words, the jargon, than were in the first one, but of course when it was put that way they said, 'Oh, gee, we're going to have to deal with this one', and he did, in a sense.

Ms FORREST - Are you suggesting also - and this came from an earlier comment that you made - that the monopoly of TCC is definitely an issue because it doesn't give you an opportunity to look at other avenues, not just as consumers, but also builders? I know you can't comment for builders, but there's only one body.

Mr WILLIAMS - Yes, they're also the body that adjudicates on it, so they are put in a difficult position. I can't really think of a parallel. You can't go through the Ombudsman's office; there's no Workplace Standards-type body that will investigate and prosecute. If there was a competitive private body out there, but if the builder wasn't a member of that, then why should it deal with another person, and so on. Hiring whoever had the best reputation for giving builders a hard time, I think it would become farcical.

Ms WILLIAMS - My parallel is to go back to the child-care unit. I have to be licensed by the child care unit through the Education department. If there's a complaint made against me, it goes back through the child care unit. Then, if it's not dealt with at that stage it goes from the Ministerial Advisory Council through a committee and other senior people. So you have peers on that board.

Tas Compliance should be doing the same thing. They should be saying, 'All right, the complaint's come to us, we will investigate' - just the way the child care unit would - and then it goes to a committee or a board who decides. That's the way it says it does it.

Ms FORREST - An investigative committee with builders or architects or whoever on board?

Mr WILLIAMS - Imagine the Nurses Registration Board. If there was Builders Registration Board that had a secretariat and so on, then it may work differently, but this is nothing like that.

Ms WILLIAMS - He refers in this and in paper work to us that the Independent Review Tribunal would take over, but when I asked him who was on that he gave me a really cloudy answer.

Ms THORP - Did you ever track down the review tribunal?

Mr WILLIAMS - I do not think there is one; I would be fascinated to find out.

Ms WILLIAMS - We know who is on the appeals board.

Ms THORP - Who is on the appeals board?

Ms WILLIAMS - Mostly builders, and that is a body that is put together from the industry.

Ms THORP - It's not directly -

Ms WILLIAMS - It's not TCC.

Mr WILLIAMS - It also deals with other things. It deals with arguments about building permits, and so on.

Ms WILLIAMS - Yes. So that's outside the TCC, and they hear appeals against decisions. The TCC talk about an independent review tribunal but they could never tell us who was on that. When I asked who sit on it, it was 'Oh, two people from the east and someone from that', but it was so airy-fairy that my first response was, 'There isn't one, you haven't set one up'. I would assume that if you are going to set yourself up as the accrediting

body, the authorised body under the act, you have to actually prove that you are capable of doing it. You have to prove that you've got your systems in place. There were no systems in place other than a receipting system, that was it.

Ms FORREST - You made a comment about several complaints not being progressed, or just sent to mediation. From other evidence we have received, it is very difficult to ascertain how many complaints have been presented to TCC, ranging from possibly none to possibly quite a few from your submission here. Do you know the extent of the number of complaints, and how do you know they have actually been not progressed?

Mr WILLIAMS - My suspicion would be there is none because of the indication given to me by Workplace Standards. The secretary of the Building Appeals Board is Workplace Standards in fact, and he indicated that they would be interested in seeing how the complaint went because they weren't aware of one going through.

Ms FORREST - Through the TCC process?

Ms WILLIAMS - Yes, that had actually got past the door.

Ms THORP - Which implies, I suppose, that they stopped at the mediation point.

Ms WILLIAMS - They did not even accept complaints. They all got the same letter we got. That is an assumption.

Mr WILLIAMS - When you are stretched financially, to think that so many people are doing the false economy of not paying the insurance, they are not going to spend \$220 an hour to go and see someone to set up a proper complaint, are they, because it will cost them thousands in that sense for no return.

Ms WILLIAMS - If I had not had a lawyer in the family, I would not have known which act to look at, who to contact, how to write a legal pleading, all of those things, and so if you are Joe and Jane that live down the street and you have had a problem with a builder, who do you go to? Nobody had heard about the TCC before March. Nobody knew anything about the TCC.

Ms FORREST - Could you give us an estimate of the cost of your time that you would have spent preparing the submission and the process you have gone through? If you were charging your wife for your services, have you any idea of much it would have cost?

Mr WILLIAMS - \$5 000 or \$6 000 by now.

Ms WILLIAMS - It would be thousands, Ruth, absolutely thousands, and that is not even considering the heartache behind it, and I do not mean between us.

Mr WILLIAMS - It is such a constant thing.

Ms WILLIAMS - You wait and wait and wait for an e-mail and it can take weeks for them to respond. Then it is, 'He is away,' or 'No-one else can deal with it,' or it is a, 'Yes, we are coming. It is all right.' Yet the act is really clear. It has to be quick and it has to be

handled in a certain way. We really thought it would be over within a month to six weeks, but it was six months.

Mr WILKINSON - It seems like the foundations were not laid properly in your building, and the foundations have not been laid in this whole process of the TCC. It seems like it has suddenly been decided to have a Tasmanian Compliance Corporation and they thought we will appoint it first and then we will get all the foundations into action after we appoint it. It seems to have been done totally the wrong way around. Would you agree with that?

Mr WILLIAMS - I would, yes, and even then, given the luxury of time that they had, they still did not do it. We have uncovered that.

Mr WILKINSON - Because of your experience in the process, and because of your legal experience as well, what do you believe the best process would be to run a body like the TCC?

Mr WILLIAMS - To be a model akin to, let us say, the Nurses Registration Board, which I have had the honour of appearing before on behalf of a nurse on one occasion. There is a rigorous attention to the standards of the practitioner and there is enough statutory independence and weight to give the body credibility.

Ms WILLIAMS - If you are seeking registration as the authorised body, from the start the TCC should have put their application in to become an authorised body and have been given an outline of what their role was, the outcomes that the Government expected when they put the legislation together, and the processes that are necessary. Some standards should have been issued with the Building Act, as there are in the licensing standards for childcare. You have these policies and procedures in place and there should be a flow chart. If a complaint comes in, this is how we are going to handle it. If I had said to them on day one, 'How is this going to work?', they should have been able to send me out a sheet to say, 'This is the time frame, this is what we require from you and this is the process that you are committing to.' We could have given up a thousand times along the way but I just will not. It is not good enough.

CHAIR - When I look at the decision by the TCC as against the builder, I have written alongside points 6 and 7 and probably 8 that they are in fact matters of a contractual nature and/or workmanship.

Mr WILLIAMS - Yes.

CHAIR - You indicated earlier that it was your view that, by virtue of the contract and the drawings to which the builder should have complied, these are findings relating to contractual matters. Is that entirely what you meant?

Mr WILLIAMS - It's consistent with the fact that, through processing a decision, there were a lot of contradictions all the way through.

Ms WILLIAMS - With reference to points 6, 7 and 8 I am assuming we are talking about the northern wall, the untreated pine and the balustrade?

CHAIR - That's it, yes.

Ms WILLIAMS - Okay, that would be because he had defied an order from council, so those things were very clear from council. Neither six nor eight were on the council stuff - the untreated pine certainly was. So they could easily have found that he had defied an order from council, which is professional misconduct, but the other two, you are right, have nothing to do with that.

CHAIR - But also my contention would be that they are contractual matters because they were matters that he had to comply with as a result of the defined drawings and engineer's design.

Ms WILLIAMS - Yes, and that would still come under professional misconduct because the building permit would state that you must follow the engineer's drawings which have been submitted to council and approved. I would say that there is maybe a long connection in that bad building work is in breach of what the permit said. That might be the way they would get around that.

Mr WILLIAMS - I've had a lot of experience in building matters from time to time and, of course, it is the worst case the lawyer will have coming into their room. The Supreme Court rules were amended at some stage in the late 1990s to try to develop an easier system for building disputes to go through the courts. There was the case in Launceston that led to the housing indemnity legislation - Bryan and Maloney. We knew that we had heavily reactive clay that we had to get right because back in the 1950s or 1960s the person had not done it properly, so we retained an engineer. It was just outrageous that this builder not only did not follow what he was told but then he lied about conversations that had not taken place with council, so those things are very properly an issue of misconduct.

If there were a complaint against me, if I had been a solicitor not following instructions, then I would be meat and my peers would happily pounce on me for doing that, but this was dismissed in that way.

CHAIR - Okay, thank you both very much for the detailed submission. There is so much information in there for us to pursue, which we will.

THE WITNESSES WITHDREW.