

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

Mr MAX SMITH, DEPUTY DIRECTOR-GENERAL, DEPARTMENT OF PUBLIC WORKS, QUEENSLAND, WAS CALLED AND EXAMINED.

CHAIR (Mr Harriss) - Max, can we indicate to you at the outset that most of the deliberations of our committees are pretty informal, so if you are happy to be on a first-name basis then we would appreciate that. Do not feel any need for formality with us either, please. We are recording the proceedings which will be transcribed so that our committee will have a formal record of them.

I think you are probably aware that we are here to investigate as best we can the operation of builders and professionals licensing in Queensland because it has been suggested to us that the operation here is quite a good operation. We are going down the path of talking to as many stakeholders as we can over the three days that we are here. We will have a range of questions for you no doubt. We have spent a couple of hours with each of the other stakeholders in the last two days.

If you would like to give us an overview of your position because I understand it is much broader than just being with Engineers Australia and that you come to this hearing with a great deal of expertise.

Mr SMITH - Thank you very much. My position is within the Department of Public Works. I am the Deputy Director-General for the Department of Public Works. The way our organisation is structured, I look after the works division of the group, so it means all matters associated with delivery of social building infrastructure. That is, in a very broad sense, schools, hospitals, and so on. Also in that role I have administrative responsibility for the Board of Engineers and also the Board of Architects, and I am also a government representative on the BSA, the Building Services Authority. That is the broad picture of, I suppose, the formal role.

We have also within our own department a formal pre-qualification registration for delivery of government projects, so there is a mixture there of, as I said before, responsibility for administering architects and engineers, boards, BSA. I am on the board. I am not responsible or accountable for anything within the board. I am just the Government's representative there, and also there is the Government's building programs. I suppose there is a fair smattering of responsibilities, and might I say we helped the Tasmanian Government with the prison down there in recent times, which we believe you are very happy with. The contractor used there in actual fact was from our organisation. Our legal man was down there yesterday, as a matter of fact.

Mr WILKINSON - Were you spoken to by the TCC or the Government in relation to setting up something down in Tasmania?

Mr SMITH - No, I wasn't. I do know one of the gentlemen there obviously who was involved in that.

Mr WILKINSON - Who was that?

Mr SMITH - Glen Milliner. He was one of our ministers some years back.

Mr WILKINSON - One of the questions we have been asking, Max, is in relation to engineers, accountants, surveyors, building surveyors and architects as well. Do you believe they should be registered by a body like the BSA or alternatively do you believe that the accreditation they obtain by concluding university, or whatever it might be, to give them their professional qualification is enough?

Mr SMITH - To answer your question, I think, firstly, they should be registered by a body. I think the debate about what that body should be is another matter, but certainly in Queensland we have the Architects Board which is a board set aside which reports directly to the minister. They then manage the registration and also the discipline, if you like, of architecture in Queensland. I would have to say that over the years we have had no problems with that one whatsoever.

Ms FORREST - Are all architects members of that board?

Mr SMITH - No, sorry. I apologise there. I will go through the process, if you don't mind. The way that sits is that effectively you can't call yourself an architect unless in actual fact you are registered with the board. In other words, an architect in Queensland is registered by the board.

Ms FORREST - They are the registering body, they are not a professional body?

Mr SMITH - No, they are not a professional body. The Royal Australian Institute of Architects, which is a professional body, sits separately to that, and you can be a member of the Royal Australian Institute of Architects. I am pretty sure you'd have to be an architect but whether that means that you have to be a registered architect in Queensland to be a member of RAIA, I do not know, but I do know that you cannot call yourself an architect in Queensland unless you are registered through the Board of Architects.

CHAIR - We will be talking to the board later on.

Mr SMITH - Which is interesting. I am an engineer by profession. What I am saying is that word 'architect' in actual fact is registered and legislated. The engineers is a different thing altogether because there is no law against any of us in this room, with due respect, calling ourselves engineers so that is the distinction. Regarding the RPEQ - Registered Professional Engineers of Queensland - to get that registration you need to be able to demonstrate competence and the law virtually says you cannot practise engineering in Queensland unless you are registered. So there is a subtlety there between being called an architect and an engineer. The problem they have with architecture is actually describing the practising of architecture - can you understand what I mean - as against engineering. There is no law against you calling yourself an engineer but you cannot actually practise engineering. Can you see the difference there?

Ms FORREST - Yes.

Mr SMITH - I know that it is subtle but they are the things that we are grappling with with both of those boards because on the one hand the architects work pretty well, except the classic there is when an architect retires, as an example, and still would like to call himself an architect. In theory they are not allowed to call themselves an architect because they are not practising, therefore they are not sustaining their competency in a whole range of issues there. It is not the biggest issue and if I am digressing, please tell me.

CHAIR - No, it is all relevant because we need to understand who is licensed in this State, who is registered, who is not. We have been accrediting everybody - architects, engineers, building surveyors, builders.

Ms FORREST - Can I draw on that point you were making about the architect when you say he or she is practicing. What you are saying is that it is a little bit unclear what practising actually is because if someone retires from drawing and they then went on an advisory board, the way it is here they could not call themselves an architect even though they were in that advisory capacity. Is that right?

Mr SMITH - That is correct, but having said that - I hope this isn't an overload, I am just trying to tell you everything that is going on - there are things that I know that are going on and that we are wrestling with, and I guess what you want to know, effectively, is the issues.

CHAIR - Very much.

Mr SMITH - Architects practising in Queensland is the only one I know of and that is the only one I am working on. If I could jump to the engineers, their issue is to do with the recognition of competence. It is an issue of mutual recognition. The easiest way at the moment is if you are an engineer and you are a member of the Institute of Engineers, as an example, then that, by logic, will give you entrance to become a registered practising engineer in Queensland, subject to you being able to demonstrate competency in a range of things. But the only way we have been able to do that really is to take Engineers Australia's accreditation system as being a fair and reasonable one. But because of a number of competition laws and other things that provides sole recognition so we are looking, at this stage, in the act of enabling that to be just one of a range but knowing that there is not too much else around.

Ms FORREST - There would not be a problem, don't you think, if - it wasn't Engineers Australia. What was the other group of engineers?

Mr SMITH - There are mining engineers, as an example. Engineering is a very, very hard one because you have chemical engineers - my daughter is a medical engineer, for example. They are all engineers but they do not necessarily all practise in the building area. When I talk about registration of engineers, I am talking about the gamut.

Ms FORREST - Would you agree that you need someone skilled in that particular field of engineering to assess the competence of otherwise of an engineer making an application?

Mr SMITH - I would say that. One of the reasons for that is that it is to do with any matters associated with discipline because what you are then making a judgment on is what is reasonable in that profession. For somebody to make that judgment you would have to say that you are being judged by your peers. For example, for an electrician vis-a-vis an engineer, there is an entirely different approach for that very reason.

I think the question you asked me, Sue, was to do with whether all these parties should be registered, accredited or licensed or whatever.

CHAIR - Yes, the processes going forward. Your institute or association has probably addressed its mind to where you have been, what the current situation is. You have raised some of the issues of concern. It is a matter of looking forward. You are aware, Max, as I said earlier, that we have been requiring the accreditation of all those professions and of course the architects and engineers would say they have their accreditation from their own professional body and they don't need to be required to have a separate licence. There is no requirement for any of your profession to be licensed by the BSA here, is there?

Mr SMITH - No, because we have the board, but not every State has those boards. Queensland is relatively unique in the way it regulates the professions. I know that the Engineers Board is unique in Australia. I am not sure about the architects personally. If you are representing the consumer in all this, you could say in Queensland that there is a process to ensure that a person who calls themselves an architect has gone through specific educational qualifications and also that there is some process in place to ensure continuous development and all the other things that go with it. On the other coast where somebody is practising engineering in Queensland then it is the same regime. That is through legislation. You would say, 'From a consumer's point of view, if I did engineering work for you then it is illegal for me to do it unless I have an RPEQ number xyz', which I personally do have. That is through those two boards.

Ms FORREST - Do you think it would be more streamlined if there was one registering body for everyone, not for the engineers, the architects, the building surveyors and the builders?

Mr SMITH - I am an engineer so I would say there is a bit of culture and all the stuff that goes with it. There is this issue of a peer group assessment. If you want to rope the lawyers and the accountants into it as well - it is that sort of debate that you are having here. Even though they are in related industry, it doesn't necessary mean that -

Ms FORREST - I couldn't agree more. Midwives are the same here. It is good to hear your view. There is that parochial division in that - and correct me if I am wrong here - engineers don't really want to be lined up with the architects because they are a separate and unique profession involved in the same industry. I understand what you are saying here.

Mr SMITH - There is a bit of tradition in all this as well. Architecture is a very old profession; they reckon it is the second-oldest profession, whereas engineering is a relatively young profession. It has only been practising for about 100 years and it is predominantly an employee group, as opposed to architecture which is very much self-employed. We have subtleties. I didn't mean to give you a history lesson there, but you

can see how they grow, just by culture and by nature. Their institutes do work differently. If I then start to talk about quantity surveyors, they are an entirely different group altogether. That is an old English group that normally runs out of the Royal Institute of Construction Surveyors. They are all by royal charter. So you have this other group over there. Then there is the Australian Institute of Building, which is builders by royal charter. Each one of those professions, if you like, is steeped in history and very much to do with academic learning, codes of ethics and a regime of professionals. You can make your judgment about whether that is good or bad.

Ms FORREST - But I think it has been part of the process of developing that professionalism within your occupation, as opposed to calling it a profession. The aim I think of many of these areas, whether it be health, education, building, surveying, engineering or whatever, is about developing that professionalism within the community, because once you have that you have much greater credibility. If there is any threat that could see an erosion of that professionalism and standing in the community, then that would be a serious issue and could undermine the whole process if you had them all under the one banner. Am I right in saying this?

Mr SMITH - Yes, and also it is the definition of a service. You are now talking about intellectual property rather than physically doing something. When you are licensing electricians and tradesmen et cetera, they have been through their training and they have their experience, but, at the end of the day, it is about somebody physically providing you with a product. It is quite easy to determine whether that product is fit for the purpose or not - whether this table is in fact is rectangular or not. So, the determination as to what is fair and reasonable is quite easy because really the proof is in the pudding. You do not come over and ask what was a fair and reasonable design. There are a thousand designs that you could provide for the one group, and then it comes into judgment. It is about mind and design rather than physical things. How does one say to a doctor, for example, that you made a mistake. You know what I am getting at.

Ms FORREST - There is more than one way to treat a condition.

Mr SMITH - If you asked an architect and said, 'I want 5 000 square metres of office accommodation', how many solutions do you think you would get?

Ms FORREST - Quite a few.

Mr SMITH - But if you are a licensed plasterer and I want you to plaster that wall, then it is an entirely different thing because it is very prescriptive. That is probably the difference. There is so much more prescription in the trades. There is only one way you can do it. Whereas with the other ones it is not about prescription; it is about innovation and creativity. So you break a lot of that down. The more I think about it, there are two different services that you are talking about.

CHAIR - Max, for anybody in your profession to operate here in Queensland to provide an engineering design service in the building industry, do you have to have accreditation from your professional body?

Mr SMITH - There is the Board of Engineers Queensland. You have to be registered with the Board of Engineers Queensland. That means that your title then becomes registered

practising engineer, Queensland - and you get a number. To sustain that you also have to provide evidence that there is continuous development and all the other things that goes with that. The same logic goes for the architects, except that it is the main rather their practice.

CHAIR - Is there any requirement to be on the National Professional Engineers Register?

Mr SMITH - No, that is what we are grappling with at the moment because what we would like to do is to have mutual recognition. I am on the NPER as well, but that does not necessarily follow at the present time. To answer your question, it is not mandatory. The easiest way for us to assess whether an engineer has the technical skills is to say, 'Look, mate, if you have the NPER then it makes it pretty easy', so we are moving towards that. One of the problems there is the issues of competition policy and all those things and how we get around those, because you could be providing an exclusive licence, particularly to Engineers Australia, as an example. That is where we are heading. There are not too many others around, except that the mining profession have their own. We would recognise the mining engineers. We would probably just have a series of recognitions. It is the same with New Zealand. The Institute of Engineers New Zealand, like all the other ones around the world, would just go bang, bang, yes.

CHAIR - What gives a professional engineer here in Queensland reciprocal rights in the other States now?

Mr SMITH - I don't think they do.

CHAIR - Okay, so if you were to transfer to Tasmania, under our current legislation you would be required to be accredited by this current body which is going to be soon taken over by the Government - similar to your BSA. Has there ever been a suggestion that engineers ought to be licensed in Queensland under the BSA? Has that ever been suggested? I am not suggesting for one moment that it ought.

Mr SMITH - I have heard that suggestion.

CHAIR - Is that right?

Mr SMITH - Yes, but that is like anything. The question of suggestion has been around and probably still persists out there today. I think you said before, why not just have one licensing board for everybody associated with the building industry, as it would make it a lot easier. I think that is the proposition, isn't it. Because of the recognition of professionals and all the other things, we run the professions differently than we do the trades, if you like. We get some interesting ones like fire engineering, where most of the fire engineering is actually by prescription, which means that you have to have so many sprinklers, et cetera, et cetera. So they license fire engineers up to a certain level for both design and installation, but at a point where then you start to provide it as a fire-engineered solution, which is more to do with how the whole site would react if a fire hit, then that is an engineering activity. Most of the large buildings anywhere, including your prisons, note, are actually fire-engineered solutions because you cannot use a prescription. A prescription will not work in complex environments. So we drew the line there. At one stage it moves from just installation prescription to an engineered solution. I have to say we are grappling with that. I think that is a classic area and

probably the one we are dealing with at the moment. There is a small number of engineers to do the fire-engineered solution covered by that one and then there is the rest of the licensed engineers are over here.

Do you have an insurance scheme?

CHAIR - Housing indemnity scheme, are you taking about?

Mr SMITH - No, you do not have a home insurance scheme in Tasmania at the moment, do you?

CHAIR - Yes.

Mr SMITH - You do, so that is linked to the -

CHAIR - We have housing indemnity insurance which requires the builder to give to the consumer six years of protection for death, disappearance or insolvency.

Mr SMITH - Yes, but not for defects and a whole range of other -

CHAIR - That is right, only if those defects arise and the builder has died, disappeared or gone broke and then the insurance scheme can be invoked.

Mr SMITH - My colleague Ian Jennings can explain this far better than I. Within the scheme there is what you call a subsidence policy. The engineer in a lot of cases would actually be designing the footings based on the type of soil, et cetera, and the engineer's practice, if you like, is being managed through the engineers over here. However, the subsidence policy includes the design and construction of the footings, so the consumer then claims on the builder who then says, 'It is the fault of the engineer'. So we take on the engineer with the board in terms of a question in competency et cetera, for possible deregistration on the board. However, the liability for the defect actually sits with the BSA. That is an interesting one that we are trying to get our heads around at the present time. My personal view is that I do not think licensing of engineers is going to make it much better than what it is.

My recommendation to government is that we have got to increase the sanctions on the engineers for poor performance because we have not got too many things we can do to the engineer except to deregister them at the present time and seek costs. You can see that the liability has actually been taken by another insurance scheme over here for a poor performance. I am trying to give you all the arguments around it, the different ones that I have seen.

CHAIR - Yes, because the BSA picks up the liability problem as a result of some defective designs, shall we say, by a person over whom the BSA has no control?

Mr SMITH - Well, not their registration.

CHAIR - That is right.

Mr SMITH - It has gone to the contract but then that is through the builder. The real strength in the licensing scheme is effectively scaring the hell out of the builders, because the big stick there. They can lose their licence. You have probably heard of the three strikes and you are out clause. I do not know whether you have got to that one yet.

CHAIR - Yes.

Mr SMITH - In terms of rectification of defects, you find that it steels the builders that still want to trade. For anybody who wants to continue to trade in Queensland, if the BSA says, 'That is defective over there,' you find that they fix it because their trade is effectively at risk, but the onus of proof is not that great compared with this tortuous mind game I was talking about over here with the engineers. In practice, it is really the threat of losing your licence, which is a threat of losing your livelihood - notwithstanding the costs.

If the company has decided it is going to get out of the business, then that is where that insurance hits. Consumers are covered because the builder has gone out of business. The builder might have made a conscious effort to go out of business. Not all the time; they are only a very small minority.

CHAIR - That same threat that hangs over the builder for him to lose his licence, also hangs over a registered practising engineer, doesn't it?

Mr SMITH - In Queensland?

CHAIR - Yes.

Mr SMITH - He could go to the sunny state of Tasmania, couldn't he, the next day and that is what we are trying to do in all this. I am trying to get mutual recognition within NPER such that if you get an X here then it goes on your record. Otherwise this person could end up on your shores. One would hope that now we have learnt how to do Google searches that they might actually check the backgrounds beforehand.

Mr DEAN - That portability was raised this morning. There is a need for portability right across the country, is there not, and not only in your profession. You have partly covered this issue. One of the architects we were talking to in Tasmania was saying that when they complete all their training, they complete the practical side and they become a fully fledged architect. They then join, and are required to join, the -

Mr SMITH - They have to sit for an exam.

Mr DEAN - Yes, do all that and once they have done all that, though, and they qualify, they then become a member of the Board of Architects. To do that, as I understand it, they have got to be a competent architect in certain areas.

Ms FORREST - They have got to pass their uni course.

Mr DEAN - That is right. So this guy's argument now was, having done that and having been registered and accepted and licensed, why then is there a need to go before another

organisation and be licensed again to be able to carry on your profession. You have touched on that as an engineer in exactly the same way. You have to be the member of -

Mr SMITH - The Institution of Engineers -

Mr DEAN - That's right but then again to -

Mr SMITH - which is the NPER at the end of the day. In Queensland at the moment we don't have an exam that somebody sits for if they haven't a degree in engineering in the first instance. We do not have anything like that so we are relying on the professional qualification in most instances. That is why we want to effectively firm that up and virtually link the NPER as part of the prescribed qualification. You can see in the not-too-distant future that if we can get that through then we start to get a uniform approach across Australia.

With the architects, for example, they sit for an exam in front of a board. They actually sit for it two years after they have finished.

Mr DEAN - Is that right?

Mr SMITH - Yes. In front of their peers. It is pretty gruelling for them. So most of the effort in their architects' board and most of the costs are in running the exams - the practice exams, as they call them. So you can see that they've really upped the ante, but I believe that it is a different regime from the one you have in Tasmania.

Mr WILKINSON - Tassie has a five-year architect course, with three years of environmental design. You then go on to two years architecture. I know that one of my boys is doing it and he has a year to go. After he finishes, hopefully, at the end of next year he then has to go out and practise for two years then he sits that exam that you were talking about.

Mr SMITH - From my understanding, he can't come to Queensland tomorrow morning and set-up a shingle.

Mr WILKINSON - No.

Mr SMITH - He has to go through -

Mr WILKINSON - There are no reciprocal rights.

Mr SMITH - That's right and I think that's the point you're making, because that is the nature of the States and Federalism and so on.

Mr WILKINSON - But in all professions now, Max, they're endeavouring to do that aren't they?

Mr SMITH - Yes that's right.

Mr WILKINSON - I know in law we are getting that in the process now and I think it might be in. In most of the professions they're endeavouring to make it portable throughout

Australia, which I think is a good thing. It would seem to me that you do as well, but as yet engineers haven't got it.

Mr SMITH - Without presupposing what the Government might do in the future, that's what we are working towards. Certainly the engineering profession supports it. We can't see any problems for the community or the consumer - it actually tightens things up a bit.

Ms FORREST - So the Board of Engineers is the registering body and Engineers Australia is the professional body?

Mr SMITH - It used to be called the Institution of Engineers and from there they rebadged. It is actually a bit of a branding issue - everything has to become contemporary these days. Engineers Australia is a body of engineers of which a component thereof will provide assessment to your suitability to go on the register. But the registration or the NPER is within Engineers Australia but it is not the whole. We have had the same argument with Standards Australia because Standards Australia sets the standards but they also then accredit. This has been one of the issues with the NPER, that Engineers Australia are not only setting the standard but also accrediting.

I am probably getting a little bit out of my depth but a lot of this is to do with this whole separation of accreditation and standard setting all the time and Engineers Australia does both. I have to say personally I don't have problem with it, but that's it.

Mr WILKINSON - To summarise, Max, it seems to me that if a professional body says that this person is able to practise as an engineer, the licensing body being the BSA have to accept, or should accept, that recommendation from the professional body in whatever profession it is.

Mr SMITH - If you were the registering body or now the BSA over here, you would have to feel confident that they have a regime in place that satisfies your needs. You wouldn't want to suddenly be licensing all these people when it's getting a bit dodgy over here and you're registering on the basis that -

Mr WILKINSON - Most professional bodies, such as the AMA, are more than strict on who they have in the colleges, are they not?

Mr SMITH - I agree. If you ask me about Engineers Australia, I am personally confident. I am probably playing the devil's advocate here a bit in saying that that is on the premise that the registration or the accreditation that you are accepting is fair and reasonable in the first instance. I can't figure out any of those professional bodies in Australia that wouldn't be.

Mr WILKINSON - It's the ones that come from the professions overseas where you are not too sure about the course they have gone through to give them that qualification. In Australia it would seem to me that they are the ones you have to be careful of. Is that right?

Mr SMITH - Yes. That's why the NPER act as they do. If you come into Australia with a string of PhDs you will still have to prove to Engineers Australia that you meet their

qualifications, so it is not an automatic entry. There is a bit of a screening on entry, whether you have done it through education or coming in from another country.

Ms FORREST - Is there a national standard in engineering education? Does every university around Australia provide engineering to meet the same standards?

Mr SMITH - Yes. How they do that - I'm running an engineering degree, say, at the University of Tasmania. Unless I can get accreditation through Engineers Australia that that course would be recognised for registration on the NPER, I am not going to run the course.

Ms FORREST - Who is assessing all these courses?

Mr SMITH - Engineers Australia.

Ms FORREST - Engineers Australia assesses every engineering degree course and post-grad course.

Mr SMITH - Where they are going to use that as an entry point and accept that as being a reasonable form of education, yes. I think you will find that for the architects as well.

Mr WILKINSON - Can I run through with you a flow chart that I did this morning? I am probably boring everybody with this.

Laughter.

Mr WILKINSON - I was looking at a way of setting up. It would seem to me that you have to have this overarching body in Tasmania, a body which should be a government body.

Mr SMITH - Yes, I agree with that.

Mr WILKINSON - Let us call it building services. Under that you have a board encompassing experts in certain areas: accountants, building residential, building commercial, consumer, insurance and legal. They have their special powers - the legals look after the dispute resolution; insurance is obvious.

Mr SMITH - So this is not the governing board? This is the disciplines within the board.

Mr WILKINSON - The disciplines within the board. You have the Government up top with the building services and they have -

Mr SMITH - These are the operatives within the organisation, they are not the governing board; it is the operatives.

Mr WILKINSON - No, they are the governing board.

Mr SMITH - But you wouldn't be expecting the governing board then to exercise their professional qualifications in managing the show. Am I losing it a bit here?

Mr WILKINSON - That is what I am asking you? To me, if you wanted to set up something - how many builders do we have in Tasmania? About 2 000?

CHAIR - That includes architects, engineers, building surveyors - so there are about 2 500 people registered.

Mr WILKINSON - We don't want a big bureaucracy; that would cost. It seems to me that we don't have the critical mass to support that, unless the Government is going to throw in some money, which they wouldn't.

Mr SMITH - Can I go back to governance in the first instance? The way our boards are set up, they all report to the minister, Robbie Schwarten. Each one of them has a governing board, which is that board I keep on describing, but they only meet on a monthly basis to assist the minister in determination of policy. They do not have the executive powers to do a lot of things; it is the CEO or the registrar who has, through the board. You have this interesting governance arrangement where the stakeholder minister has the overall accountability to the people and the Parliament. Underneath that he has advisory boards. The architects and engineers have what they call registrars and the BSA has a general manager. I am the government representative on the board of the BSA. Policy is to do with whether we should license all the things you are just mentioning, but none of us have executive powers to tell the general manager to lift his game - it is not like a true board of directors where those directors have accountability to their shareholders. In this case the stakeholder minister is the accountable officer at the end of the day. But underneath that, in the proposition that you are putting forward, the BSA does exactly what you are talking about. They have a series of sub-committees which effectively manage their finance, their insurance and their technical and their policy which are the disciplines, and underneath that they have their technical services group, their insurance group, their licensing group, and they all run the engineers - I forget, but I think there must be at least 40 000 on the books. Even in Queensland, there are 5 500 engineers, from memory, and about 3 000 architects. But I have to say that for the numbers that you have, you wouldn't set up separate boards - even though I am probably pushing for those separate boards here in Queensland if the numbers are enough. The critical dynamics are just about there, but with anything below 2 000 I think you would be wasting the cost of actually running it. The only way you will get economy of scale is to have as many as possible.

I haven't answered your question, Jim, except to separate the governance from the management. I think if you are talking to management, we are agreeing. Also, in each one of the government boards they have a mixture - a consumer rep, a professional rep, a legal person and a financial person. That is the governing board that is providing advice to the minister. Once upon a time they were groups of old engineers and old architects, and that didn't work very well either because you become very much introspective; you forget about the consumer, you forget about this and that. I think the mixture is about right now.

Mr WILKINSON - In a place like Tasmania couldn't you have your governing board really acting along with your CEO to assist with those things that you have just spoken about - your legals, your dispute resolutions, your insurance?

Mr SMITH - No. I think you have to have a mixture. You have this problem between policy setting and delivery, and you can get mixed up pretty quickly. What you could do - and this is just a suggestion - if you were going to run just one licensing authority which seems logical for reasons of scale more than anything else - even though I have argued strongly the other way in our State - is to have representatives from each one of those entities. In other words, you have somebody from the engineers, somebody from the architects on your governing board to ensure that the policy was consistent with the professional bodies that they represent, which is the RAIA and Engineers Australia. Then you are getting ownership that way, because you would then mutually recognise pretty quickly NPER - or I would, anyway, if I was there. With the architects, RAIA in Tasmania would run a similar board, you would have exams which you would then accept that. The organisation only takes direction from that board on policy, and exercises policy which is effectively to sign them up if they have accreditation from ABC, whoever that might be, and this just becomes an administrative department. I think you have to be very careful you don't mix both of them up. You would also have somebody from the MBA on there, a government rep, but I am separating governance from delivery.

Mr WILKINSON - You then really have two boards.

Mr SMITH - No, no. You have only one board, which is the governance board.

Mr WILKINSON - That's right. Then under that you've got -

Mr SMITH - They're just the worker bees, if I can use that expression. That is just the humble public servants who are going to be there to license the people. If you look at BSA, you will see that their licensing arm is very simply, tick, tick, tick, to ensure that they've met criteria. Where's your trade qualification, and so on, and here's your blue card or whatever. See you later. That is a pretty dumbed down approach because all the policy has already been made by policy committees. You can have your professions on your policy committees but do not get them into the licensing area.

Ms FORREST - So the licensing area should be where your auditing and your complaints resolution is? That is where that should all sit within that part?

Mr SMITH - Yes. I would suggest that when you are talking to Ian Jennings tomorrow his model is quite good and he has all those disciplines within there and if you have a look at his structure, he has the compliance section - which is the policeman, if you like - and the licensing section which is effectively the revenue stream and making sure that you are up to date. Compliance is about whether you are playing by the rules and then the insurance group is effectively there managing that component. Remember that in the insurance that it puts you in the same group. You have the person who goes out there and assesses whether it is faulty but it is the same entity that is actually going to pay the insurance so one could argue in one respect why would they say there is something wrong there because it is going to hit the insurance.

Ms FORREST - There is a potential conflict of interest there.

Mr SMITH - There is a potential but it does not work that way, I can assure you; it actually works quite the reverse. It is a government entity that is there to protect the consumer

and so its mantra is more driven that way. That is why I am putting an emphasis on the governance of the whole thing. If you can get your governance right the rest flows.

Mr DEAN - Are you in yourself convinced that the system that you have here is a good system?

Mr SMITH - It has evolved over a number of years. I just described where we are going to head with the architects and where are going to head with the engineers and where we are with the board. Given all of that, it is not a bad system. We are really seeing that effectively the consumer has fair protection in all of this because the Government is really saying -

Mr DEAN - That is what this is all about. This is all about protecting the consumer, isn't it, I think?

Mr SMITH - Well, I think it is. But when you, the Government, are actually saying that I am licensing these people and they are all duds well, quite frankly, you hold the accountability here because you said those people are good. So because you have given a government guarantee you want to make sure.

Mr DEAN - Generally here then the engineers - and I guess you can only speak for the architects - are reasonably happy with the system?

Mr SMITH - The engineers and architects are quite happy and the percentage of bad would be very, very low, and we do take them to court and we do deregister them. On the other side, my minister has the three strikes and you are out for licensees and I will tell you what, we actually have this on the web. You can get into the web and find out how many defaults people have had and it is pretty open.

Ms FORREST - If you get a strike against your name -

Mr SMITH - It is on the register.

Ms FORREST - does that drop off after a certain number of years?

Mr SMITH - Yes. I think, from memory, two years or something.

Ms FORREST - It is like with your licence and if you get a speeding fine it only appears for five years.

Mr SMITH - Yes, it is not forever.

Ms FORREST - They are always there on your record but you get them back - you can regain them to lose them again, if you need to.

Mr DEAN - I need to correct you. They are not always on your record now; you can have them removed after a period.

Ms FORREST - On the point of protection of consumers, and this is what this is really all about, would you agree that there is a need or there is a provision in fact for protection of

the builders and building practitioners - the engineers, architects - from consumers who may make a vexatious claim or a claim generally?

Mr SMITH - I think that is where your licensing group comes in. That is effectively your break between that. That is the interface between both. Yes, you are right, there are sometimes potentially vexatious complaints but unless there is a proven finding against that builder then that complaint gets dismissed. Yes, you are right; it is a two-way street here. One of the rules that they have, and it is to do with protection of the consumer or protecting people against themselves, is that it is illegal to do building work without a signed contract over a certain amount. That is designed to make sure that the consumer does not, in actual fact, do something stupid and say, 'Can you come and build me a house? \$100 000, no worries'. So there is something inbuilt there to pursue it both ways so I think it is -

Ms FORREST - Do you believe there is enough protection for the builder as well?

Mr SMITH - Yes. We do not get too many builders crying foul because all the inspectors are qualified practitioners as well so when they are making a judgment about shoddy workmanship it is not the consumer. The consumer can make the complaint but the Building Services Authority has to judge whether it is a reasonable complaint or not because remember the insurance is sitting on it as well.

Ms FORREST - What are your views about continued professional development for engineers? Should it be compulsory?

Mr SMITH - It should be. I think in any profession it should be. That is how our society evolving now and also engineers and all practitioners, through their code of ethics, have a responsibility not to practise in areas where they are not qualified and that is probably the big issue. I am that far out of engineering I would go and get someone. Even though I am qualified, my view is that I am no longer qualified because I do not practise in certain areas anymore. That is a professional judgment that you make but that is probably the difference and I suppose there is that judgment that an individual has to make, even though you can have CPD but it is still in here to say to yourself, 'No, I'm not going to design the structure of that high rise. The last time I did one was 20 years ago.' I am making that judgment.

Ms FORREST - Are you saying that self-regulation should really be the key here?

Mr SMITH - No, I have probably gone down to the human there, haven't I? I am an engineer. I could still be registered but I am making a judgment to what I am competent in doing, and that is all part of your ethics within your professional body. You say that is pretty high and mighty but that is the way most professions work.

Ms FORREST - Getting back to the CPD issue then, do you think that CPD should be compulsory, it should be voluntary?

Mr SMITH - Yes, it should be compulsory if you want to remain as a practising engineer and it should be in those areas where you are practising, for the very reasons I have mentioned.

Ms FORREST - Should there be a process of an individual needs analysis?

Mr SMITH - What we have is a number of streams so you will have structure, civil, mechanical, electrical and so your streams are not completely confined but as long as I am only registered as, say, in civil, then I don't practise outside that and a structural one only stays in structure. You could be both but you would have to be competent in both, and you cannot be an electrical engineer if you are a civil engineer, so you are covered a little bit by the disciplines.

Ms FORREST - Does the Board of Engineers then have a requirement that you have to take a certain number of hours of continuing professional development?

Mr SMITH - Yes. I have not got them off the top of my head. I could find them out for you but they are tied up. To maintain your NPER you have to do the same thing so it sits back on the NPER. I purposely only save for those areas that I am still working in. This is the other thing, you can have a management stream as well. You have to make a professional judgment as to what areas you are still competent in. You can see that there is still some grey area but you will never be able to legislate that, I can assure you. At least stick with your disciplines because at least then they are sitting with the NPER and then that way you are pretty well covered

Mrs SMITH - From your position as a member of the BSA Board, we have heard evidence from both sides on the insurance aspect in-house versus competition. Do you have an opinion on that?

Mr SMITH - I see the operation of the one in Queensland at the moment as being the best that I have seen and I have my consumer hat on when I say this because I have yet to see a consumer being let down. The question you asked me, should the regulator and the insurance body be one and the same, a lot of the discussion then comes down to economy of scale, to start off with, and what also has happened is that prevention is better than cure. The BSA spent a lot of time and effort over the years in effectively educating builders in what not to do. So the driver in all of this is in fact always to stop the fault. It is not to say we are shielding, in any way, the insurance fund but by nature, by spending a lot of your effort in the front end, then there is a duration somewhere along the line. You can question whether it should be the Government or a private provider. But the behaviour of an insurance company in the private sector is entirely different from the behaviour of an insurance company in the public sector. That is why I have said to you before, Sue, that I firmly believe, as a consumer, that we have the best scheme because there is no reason we would not try to help the consumer. I had to cut corners when I had to make a quid. The reason insurance is there, if all else has failed, what you are trying to do is put your effort up here to stop it from happening through licensing et cetera and educational courses on footings and all these things. When all else fails then you get paid, and you can never stop people from going broke, even though we have laws on that in terms of the amount of net tangible assets.

I am answering the question by saying that I think if you got them together then it gives you the opportunity to strengthen up your front end. By nature, if it is in government it will be a better outcome for your consumers. The negative would be that they would say, 'It's the Government and they are all fat on the land and that is all inefficient', and all the other stuff in life. But you have to reinsure. So we are living with the prudential

rules which means that, at the end of the day, the rules on the insurance scheme are no different than, dare I say - I was going to say HIH. But you know what I mean. Really, we cannot run that scheme without a reinsurer and the reinsurer is asking for 70 per cent. So you can see it sits within it because most of your exposure is sitting with the reinsurer.

Mrs SMITH - But having it in-house gives you some capacity to manage it up-front and then hopefully, at the end of the day, you don't -

Mr SMITH - You don't need one. You need one but you don't -

Mrs SMITH - It keeps the costs lower because you have fewer claims because you are managing it up-front?

Mr SMITH - Yes, and from a government's perspective you, as the elected government, once again they are going to look at you anyway, aren't they? If you have an insurance policy, whether with AMP or somebody else, they are still going to look at you and say, 'The Government has this pretty shoddy scheme and they're not paying. You're damned if you do and damned if you don't.

Ms FORREST - Just on that line a little further, Queensland is a much bigger State than Tasmania, obviously, and so there is much more critical mass to support.

Mr SMITH - But you can get it reinsured, that is what I am saying.

Ms FORREST - My suggestion is that in a small State maybe it is more manageable because you would have fewer complaints to deal with, hopefully. Do you think it can be more manageable with an in-house, public system?

Mr SMITH - Yes. The other problem you have is with a low statistical base you could have a couple of aberrations which would cause you problems too.

Ms FORREST - True.

Mr SMITH - The smaller your insurance pool, if you have a couple of catastrophes early in the piece, you are in deep trouble. That is the reality, isn't it?

CHAIR - Max, thank you very much giving your time and appearing on a voluntary basis. You would understand that we have no particular jurisdiction out of our own State and we appreciate you being prepared to give the advice to this committee on the record. We can then reflect on this later as part of our deliberations and chart a path forward.

THE WITNESS WITHDREW.