

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

Mr ROY ORMEROD, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Harriss) - I think everyone here knows Roy Ormerod from the many representations he has made to the Council over his time, particularly with consumer affairs. It is probably in that capacity - your former role as the Director of Consumer Affairs and Fair Trading - that we want to discuss issues with you first of all. We might then come to you later with regard to Workplace Standards and your new role there.

Roy, you would be very familiar with the process of committees such as this, the fact that you are protected by parliamentary privilege as a result of being here. We are confining our deliberations, pending the outcome of the court processes relating to the service level agreement, to our term of reference 2 primarily. Obviously we will stay away from the other issues because they are of a sub judice nature. We thought it prudent to have you here before the committee so we can talk about process with regard to the application which the Consumer Affairs office was processing at one stage to be considered as an authorised body, how that started, how it progressed and why it was terminated. That is the broad overview of where we are now. Does anybody want to ask a question to lead off or are we happy for Roy to explain the process of Consumer Affairs in the early days?

Ms THORP - That sounds good.

Mr ORMEROD - For the committee's information I have a copy of the file held at Consumer Affairs and Fair Trading on this process. I am not sure whether you have received this before but I will tender that to you now.

CHAIR - We will determine that but thank you very much. We are not sure whether we have received that. We have asked the Attorney-General to provide us with every piece of correspondence which has been in existence since the accreditation of building practitioners was contemplated. We are not convinced that we have ever received everything.

Ms THORP - The big unknown. To quote Rumsfeld, 'You don't know what you don't know you don't know'.

Mr ORMEROD - It looks a lot but it is actually fairly easy to pick up. I received a request from a number of industry bodies, commonly known as the Joint Industry Group, around June 2003, requesting that the Consumer Affairs and Fair Trading lodge an application to become an authorised body under the Building Act. I was prepared to participate in that process. I thought at the time that Consumer Affairs and Fair Trading was able, under its authority under the act, to become an authorised body and therefore agreed to the process. We lodged a submission with the Director of Building Control on 20 June 2003.

Mr WILKINSON - Therefore you felt it must have been an appropriate body to do just that.

Mr ORMEROD - I did so at the time, yes, for sure. Certainly for our office it was nothing new to be involved in regulating occupational groups, and so we felt we had the expertise to offer to do that. We lodged a submission on 20 June. I actually personally handed it to Robert Pearce at the time as the Director of Building Control. Then shortly after that they wrote back to me on 7 July requesting clarification of a few points in relation to the submission. That went back to them and then further requests were made later in the month on 21 July. Then I received a copy of a letter from the Solicitor-General on 11 August advising that Consumer Affairs was not a statutory body in accordance with the Building Act and therefore could not legally be appointed an authorised body under the act, so on 18 August I withdrew my application on the basis of that advice.

At the same time I offered assistance to the Tasmanian Compliance Corporation in respect to complaints or an audit function that we may be able to offer to them on a cost recovery basis. I did meet John White once and we discussed briefly what we could do to assist them. I made it quite clear that I did not want to have any role in respect to the process of accreditation, because we could not, but certainly I felt we had some expertise we could offer to them.

Mr WILKINSON - It is an interesting point in relation to your saying you withdrew the application because of the advice that you received from the Solicitor-General. That is as I understand it, is that right?

Mr ORMEROD - That is correct.

Mr WILKINSON - Was there any way that that could have been overcome? One would have been to make it a statutory body. The process in relation to that would have been what?

Mr ORMEROD - I guess the process would have been an amendment to the Building Act to make it feasible.

Mr WILKINSON - That is right, yes. So it would not have been a major hurdle, would it, for you to overcome because it would have just been an amendment to the act for you to become a statutory body, and therefore for your application to be in the mix?

Mr ORMEROD - Yes, that is certainly an option that could have been taken at the time.

Mr WILKINSON - Yes, okay.

CHAIR - Did you consider that option?

Mr ORMEROD - No.

CHAIR - Why not?

Mr ORMEROD - We are a body, part of a government agency, and we carry out the rules of government in respect to legislation on which we act. We were told that we did not have authority, therefore it is really up to the policy-maker or decision-maker to determine

whether we had a role to play in the future. I should mention, by the way, that through that application process the then Attorney-General was fully supportive of our application. She certainly knew of the process and supported it. But once advised that there would be a problem with the act itself, that discussion ended.

Ms FORREST - Could I clarify that this application only went to the complaint side of it? It did not ever include accreditation auditing?

Mr ORMEROD - I probably did not make myself clear. The application itself for the authorised body was for whole package.

Ms FORREST - It was for the whole package?

Mr ORMEROD - Yes, it certainly was. It is only when the Solicitor-General advised that we could not become an authorised body that I made an offer to assist in complaints and investigation or audit work for the TCC.

Ms FORREST - You made that offer to assist in the complaints process to the TCC after the TCC had been appointed the accrediting body?

Mr ORMEROD - That is correct.

Mr WILKINSON - In relation to the advice that you received, was that some weeks down the track from the time you put in your application?

Mr ORMEROD - Yes it was. We lodged the application on 20 June, and 11 August was when we received the advice.

Mr WILKINSON - There were some matters that you had to clarify in that intervening period. Was that one of the matters that you had to clarify?

Mr ORMEROD - It was. It was a question that was put in a letter from the Director of Building Control. He did pose the question because he doubted whether in fact we had the authority, based on his understanding of the act. He simply raised it as a question.

Mr WILKINSON - But did you write back at all and say, 'Look, I am not too sure, but whether we are or not would not make much difference because we would be able to make application through the act, or the act could be worded to enable us to do just the thing we have applied for?'

Mr ORMEROD - I was applying under the existing law. At that time I believed that I was right. My response back to Robert Pearce was that I think I am entitled to under the act, and by the way our act was written. It was obviously appropriate to get that clarified.

Mr WILKINSON - The Attorney was not supportive, though, of your application. Did anything happen in relation to the Attorney at that stage to say, 'I am supportive of it'? Being supportive, you must assume they thought you would be an appropriate body to carry out the business. We can make a couple of tweaks to the act in order that you are allowed to do that.

Mr ORMEROD - Yes, could have been. But we had a huge legislative caseload that the minister had given us to do anyway, so we just directed our attention to something else. We pushed it to one side. We thought the TCC is a body that appears to be the one that would be accredited. We will offer assistance, then move on with our other areas of concern that we were working on.

Mr WILKINSON - How did you know the TCC was the body that appeared to be the one that was going to be accredited at that stage?

Mr ORMEROD - Through discussions with Robert Pearce. When I was first approached by the Joint Industry Group, they said in their correspondence to me that they understood the TCC was about to be accredited. So they had that idea.

Mr WILKINSON - Who was this?

Mr ORMEROD - The Joint Industry Group, who signed the back of my submission, agreeing to it. They had that knowledge. I think it was through that group that I assumed the TCC would be accredited.

Mr WILKINSON - So in other words you were putting in place in work priorities as a result of the information that you had, other priorities that would be better dealt with rather than this?

Mr ORMEROD - That is right, exactly.

CHAIR - Roy, can I take you to the chronology. On 20 June you hand delivered your application to Robert Pearce?

Mr ORMEROD - That is correct.

CHAIR - When did you commence preparation of the submission?

Mr ORMEROD - That is a good question. I was going through the file here and the closest date was early in June when we started work on it.

CHAIR - In 2003?

Mr ORMEROD - Certainly in 2003. It was all done very quickly. It would have been May or June when we started work on it.

CHAIR - Was it only as a result of representations to you by industry that you generated that interest?

Mr ORMEROD - Yes.

CHAIR - You made the comment that, having been advised by the Solicitor-General that you were not a statutory body, you therefore could not proceed. Are you aware of what generated the Solicitor-General's intervention or his advice?

Mr ORMEROD - I would imagine it would have been a request from the Director of Building Control. You obviously have to check due diligence with every application and he probably thought that was a question to clarify.

CHAIR - You further indicated that, having received that advice from the Solicitor-General, it then became - and I wrote down - 'a matter for a policy maker to determine otherwise'. Jim has asked some questions along this line and my question is this: after having received advice from the Solicitor-General that you did not fit the mould, what action did you take?

Mr ORMEROD - I just wrote 'End of application' and closed the file on our attempts to become an organised body. I dropped it and moved onto something else.

CHAIR - You did not see that there might have been a need to approach the policy-maker, the minister, to take a different track so that you could in fact proceed with your application?

Mr ORMEROD - No. We made our comments known on the development of the Building Act way back in 2000. We determined that the Building Act would be in the form that it was approved and commenced on 1 July 2004 and so I accepted that. Certainly my personal view was that it would be good for us to have had it, but looking at it now I was not prepared to pursue it further.

CHAIR - The then Attorney-General was supportive of your position. What was the Attorney's reaction? Did you report to the Attorney -

Mr ORMEROD - Yes, I did.

CHAIR - when you decided to discontinue with your application? What was the Attorney's reaction?

Mr ORMEROD - She was disappointed that it went that way, but we had some other things we needed to work through so I think it was just a case of let's move on. That was the general view.

CHAIR - Did the Attorney give any indication that she was going to pursue the cause with another minister?

Mr ORMEROD - No, she didn't. It was not her reaction to pursue it.

CHAIR - Was there any ministerial communication with you as to discontinuing your application?

Mr ORMEROD - No, there wasn't.

Ms FORREST - The advice from the Solicitor-General was that it was a statutory body so it could not be accepted. That was probably enough for you at the time but was there any other suggestion that the proposal you had on the table was compliant or non-compliant with the act or the minister's ministerial guidelines for it?

Mr ORMEROD - There was a lot of correspondence between myself and the Director of Building Control on the application itself. There were a lot of questions he raised apart from those he wanted us to address, none which we probably could not have been able to deal with. I think we all had the feeling that we could get over the line fairly easily, but the main sticking point was that technicality.

Ms FORREST - Besides not being a statutory body, was there an area that you were not complying with? There was no indication that there was a problem?

Mr ORMEROD - No. There were areas that we had to improve on in our application because it is an intricate process, but nothing in there which led me to believe that we would be rejected if we had ticked off on a particular scheme.

CHAIR - I want to go matters related to housing indemnity insurance. We are all aware of course that we now have a policy of last resort, but in the early days it was a policy of first resort. Can you explain to the committee why the change from first resort to a policy of last resort?

Mr ORMEROD - Yes, I can. It arose through intense lobbying by the major insurers because the claims on policies were substantial. It was not economically viable for them to continue in the market as a first-resort insurer. We introduced the act in July 2003 following a lot of consultation with major stakeholders and we were one of the first States to actually have mandatory first-resort insurance. At the time, South Australia and the ACT had indemnity insurance but it was last resort, and Western Australia had a voluntary scheme. Queensland, of course, were set to one side because they are unique because it is a government run scheme so we will not put that in the mix. As far as a private scheme is concerned, we were one of the first. Victoria and New South Wales adopted a lot of the features contained in that legislation, including managing first-resort insurance. We gave a lot of input and assistance in developing legislation.

When the HIH collapse arose there were questions as to viability from an insurer's point of view. They had been complaining for some time to me that it was not a viable model.

Mr WILKINSON - They still took the premiums, though, Roy?

Mr ORMEROD - Yes, they did. They were losing money, according to their figures. They were able, remarkably, to get New South Wales and Victoria to amend their legislation very quickly. We dragged our feet to the extent that we were virtually told, 'If you don't agree to the amendments we're going to pull out of the market'. It was certainly contained in the minister's speech in the House when she said that she felt that we were put into a position where we had no choice but to agree to the amendment. It certainly wasn't a preferred option. But there is certainly an amount of information to show that their payments far exceeded their revenue on premiums coming in.

CHAIR - Payouts?

Mr ORMEROD - Their payouts, their claims to consumers; figures of 120 and 130 per cent in value of claims to consumers over the premiums generated in Tasmania.

Mr WILKINSON - Is that about the same now but in the opposite direction?

Mr ORMEROD - I know of one claim in Tasmania - it was a substantial claim. I am not sure because I have been out of that area for some time now.

Mr WILKINSON - It's a bit like your Clayton's insurance now, though, isn't it?

Mr ORMEROD - It is interesting because some of the figures that we have looked at show that a lot of the claims that were under the old model were basically claims arising from builder failure, not just the builder refusing to come back. I think it can be perhaps too easy to dismiss the mandatory scheme on the basis that it is no longer value for money. We have not really given it that proper rigour of assessment yet but, as the previous speaker mentioned, there is a need to link it to some sort of dispute-resolution process. That is another part of the complaint that the insurers had - not only was it costing a lot of money but they felt they were in a position of being the meat in the sandwich. They were being asked to be involved in mediating a dispute: 'The builder's at fault; the builder won't come back and fix. Our policy says in those circumstances you must step in and do it'. The insurer said, 'Just a minute. We go in there and we're told by the builder that it's this and we are told by the consumer that it's that. It is a building dispute here. How can we make a proper assessment of this claim?', and so they tended to drag their feet. Sometimes it took two years to process because they used to say, 'Go to the builder. Just go back and fix it'. They lacked that expertise, and that was a valid argument and I supported that view. I think that is something we can address by having a dispute-resolution process.

Mrs SMITH - Are you telling me that one of the arguments of the insurance industry was that they did not have an assessor? We do not expect the insurance industry to know anything about a car that they are doing a claim on, but they have assessors who are expert in those fields. They were saying they did not have assessors with expertise to decide builder right or client right?

Mr ORMEROD - They had assessors; they appointed qualified people to go out and look at these jobs. What they found, for argument's sake, is that the consumer would say, 'The builder hasn't put the window in that wall, he's put it in that wall and it breaches the plan'. The builder said, 'Just a minute, I had a discussion with the consumer and we agreed to that, but there's nothing in writing'. Some of those complaints arose from that type of argument, so they became very much a dispute.

Mrs SMITH - So it was about contractual issues, not about poor workmanship issues, is that what they are saying?

Mr ORMEROD - That is what the insurers are saying in some instances. I am not sure how much of that was exaggerated.

Ms FORREST - Do you believe that could be overcome in some way by ensuring that every amendment to a plan or a decision - whether to have that wall taken out or that one - is in a contract so that it is clear and there can be less toing-and-froing about whose fault it is and who said what and when?

Mr ORMEROD - The industry has come a long way since 1993. Both the HIA and the MBA and most building associations have recommended contracts. Those contracts

contain requests for variations to be invited. It has been quite a significant improvement process in the industry since 1993 since we first introduced housing indemnity insurance.

Ms FORREST - Are we seeing fewer claims now as a result of that?

Mr ORMEROD - I don't know, to be honest.

Mrs SMITH - In some States it is mandatory to have a written contract. Do you support the concept that Tasmania should move down that path, that it is mandatory that we have a written contract, if we are going to employ a builder, to protect both sides?

Mr ORMEROD - As a former director of consumer affairs, I always recommended that people should get things in writing in their own interest.

Mrs SMITH - There is a difference though in that mandatory is under law as against -

Mr ORMEROD - That's the other thing. Whether you need that level of intervention is a good question.

Mrs SMITH - I believe it would solve a lot of these disputes if the law required written contracts.

Mr ORMEROD - Yes, it is interesting, but I doubt, to be honest, whether either the builder or the consumer actually read what they sign. They grab out their process form and contract, they fill it out and exchange it and then they talk about what they are really going to do, so I am not sure whether that is really going to help that much. I think a lot of the issues are about educating both. Personally I think the biggest problem is communication. Builders are atrocious communicators. The second thing is when we talk about building tolerances, which the previous speaker spoke of, that level of tolerance which is supposed to be known as the industry norm is not understood by consumers and so there is a need also to improve consumer education on what are normal levels of building tolerances.

CHAIR - Would your preference from your vast experience be to resort to a policy of first resort, turning the clock back?

Mr ORMEROD - One of the concerns the insurers had was the issue around not being able to end a dispute. If we can develop a good dispute-resolution process which has at the bottom first-resort cover where the builder refuses to cooperate, I think it would solve a lot of our problems.

CHAIR - But then as part of that do I presume that there needs to be a robust dispute-resolution process?

Mr ORMEROD - Absolutely.

CHAIR - When that fails, you activate the insurance policy, the recalcitrant builder could then be pursued in another jurisdiction, may not get housing indemnity insurance again and without it would not be able to build anyway, would have his licence taken away by

the licensing body. Would you see the best model as being one which has a separation of powers?

Mr ORMEROD - Absolutely. I think that dispute resolution should rest in the domain of - this is my personal view - Consumer Affairs and Fair Trading - they are good at that - with expert external assistance in mediation and arbitration when it gets to that point, and that should be separate from the accreditation process. The accrediting body should be separate from Consumer Affairs and Fair Trading, but there should be some feeding in between so that if a dispute-resolution process resulted in a builder being directed to come back and fix the building and refusing to, not only does it result in the insurer stepping in and paying out, but also it serves as a black mark back to the accreditation process and after so many of these you start to question whether the builder should perhaps go back to school to learn how to conduct themselves in the process. But there needs to be that separation, I believe.

CHAIR - Thank you.

Mr ORMEROD - Do you want me to stay?

CHAIR - We might get you to stay, Roy, in case there are questions which flow as to the broader issues of Workplace Standards. I understand your role now is Director of Workplace Standards?

Mr ORMEROD - General Manager.

CHAIR - General manager, okay. There might be some issues that arise, so feel free to stay at the table.

THE WITNESS WITHDREW.