

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET COMMITTEE ROOM 2, IN PARLIAMENT HOUSE, HOBART, ON FRIDAY 13 OCTOBER 2006.

Mr PAUL GREEN, CHAIRMAN, AND **Mr DAVID RICHARDSON**, DIRECTOR, KPMG WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Harriss) - By way of preliminary contribution, we usually do this with any select committee so that the people can be aware of the protection which is afforded anybody as a witness, you need to be assured that anything which you say here today is absolutely protected by parliamentary privilege and no action can be taken against either of you for anything that you say here in this forum today. An act of parliament of course supports that and that is unequivocal and so you need to be aware that there is no pressure on anything which can be alleged of you as relating to the day's hearings. Any misrepresentation outside this protection of privilege is something which you would need each to be personally accountable for and you would be aware of that as well. As we have said to every person who has come before our committee either here or interstate, we choose to be pretty informal so if you do not mind, we would like to use first names and you are very welcome to use first names when you are addressing us. We want it to be that way. That is the way we prefer to conduct ourselves and we find that very useful.

The only other contribution I would like to make from a preliminary point of view is to go to the matters which seem to me as Chairman as being relevant to today's consideration. You would both be aware that we received from the Premier just two days ago, on 11 October, his letter plus a copy of the report which you provided to the Government as your client. No committee member, apart from me, has even seen the cover sheet of that document because simply people have not been able to get hold of it. We have had three members from the north who flew from Brisbane straight back to their home towns on Wednesday night and did not arrive until in some cases only half an hour ago here. I have not had much time to go through the report either. I have probably read three pages in total, if that, because of other commitments and likewise the commitments surrounding this issue yesterday.

It seems to me that it would be a reasonable process to progress the matter as best we can today to ask you questions of procedure, process but without going to the body of the report. Every other submission which we receive from anybody for us to consider all member receive a copy of and they can do their own homework and prepare themselves well for detailed questions on the content. It just seems to me that that is a reasonable way forward for today. If that is a reasonable way forward, my proposition further would be at the end of today's deliberations to indicate to you that we will go away and study the report in detail and that we would invite you to appear before the committee again after that adjournment on Tuesday 24 October when we next have an opportunity to meet after the Launceston sittings next week. We can discuss that with you in terms of whether that is convenient. With those preliminary comments, that seems to me a reasonable way forward.

That being the case, can we ask you first of all to table the document which was in the summons similar to the one we issued to the Premier. Some might say, 'Why should you table the document when we already have one from the Premier?'. But we note that yours is much more nicely bound than the one he gave us.

Can I ask you, first of all, to state your full name and the circumstances under which you appear today, your company representation and then we will go into questions.

Mr GREEN - Paul Joseph Green, Chairman of KPMG. I was, in our terminology, the engagement partner responsible for the conduct of the investigation into the TCC.

CHAIR - Thank you.

Mr RICHARDSON - David Brian Richardson, Director of KPMG and I have been the lead assistant for this investigation.

CHAIR - Thank you very much. Members, the forum is now open to questions of either Paul or David.

Mr GREEN - Is it appropriate to raise the issue of conduct of this session in camera?

CHAIR - Certainly, that is your prerogative, yes.

Mr GREEN - As I mentioned to you in correspondence, from our point of view we are subject to a couple of obligations which we undertook to our client and to the TCC and the conduct of this review. I appreciate that obviously this committee's powers supersede those. In terms of us meeting those obligations, I guess I would like the committee to consider conducting this session in camera. Those obligations require us to maintain confidentiality in respect of the information that we have been provided with. As that relates to the TCC, the agreement that we had with the TCC was that, given that they are not compelled to provide information, they would do so on the basis that we would treat that confidentially, other than as represented in our report.

I am not absolutely familiar, at this point, about the nature of the questions you are going to ask. But, to the extent that they go beyond the information that is the report then that would put me in a position where I would be breaching that obligation. Similarly, with our obligation to our client and to every client, really, is that the information that we gather through the course of any engagement remains confidential between us and them. It is their determination as to whether that goes any further. I have those two obligations and I would ask the committee to consider those.

The third matter that is relevant to that request is that this is obviously a very sensitive matter, one that has received a lot of press. I am keen to have free flow of discussion with the committee on it. I would feel more comfortable, personally, if we could do that in an environment where we are not subject to that scrutiny. If there were ultimately matters that the committee felt would best be discussed in open format then I am more than happy to deal with those as such. But until we have done that initial discussion it is hard for you to know what may or may not be discussed. I respectfully request the committee to consider these points.

CHAIR - Does anybody have a question to Paul for this matter or are you clear on what he is requesting?

Mr DEAN - If we reached a stage of where you would be likely to breach the confidentiality of which you have talked about, could you not then identify to us that position so that other evidence could be taken publicly? Is that not a position you are in?

Mr GREEN - It is, other than I think there are two dimensions to the confidentiality debate. As it relates to my client, everything is confidential. As it relates to the TCC, only those things that are not otherwise produced in the report that remain confidential. In terms of the strict position, everything I have dealt with in respect of my client in the conduct of the investigation is confidential. I guess the third element of the request is the one that suits both of those and that is really the level of comfort that an environment like this creates - we are here, we want to have a brief conversation with the committee but from our point of view, that environment is probably best in camera.

CHAIR - Just on that matter, Paul and David, can I indicate to you the nature of the standing orders which govern the operation of a select committee and they are precise. Perhaps because they are precise I should read them rather than try to go by my best memory. Standing Order No 202, it is available on the web and people can have a look later. It says:

'Certain evidence not to be published' -

This goes to a later time after the committee deliberates.

'A Select Committee may in its report recommend that any evidence taken by it or any document presented to it -

- (a) which discloses any trade secret or secret process of manufacture;
- (b) which discloses any private matter of a personal or commercial nature unrelated to the subject-matter of its enquiries; or
- (c) which the committee has resolved unanimously should not be made public,

be not published, and shall so recommend' - no choice -

'in the case of any evidence or document which the Committee has told the witness giving or presenting it will not if given or presented be published'.

I will just explain in my words what that means; it is parliamentary-speak. That indicates clearly that the committee can take any evidence or receive any document in public forum. The committee then is at liberty to either, upon its own resolution, cause that to be published when we finally report to the House in total, or we can make our own judgment that there were those significantly sensitive matters outlined in those three paragraphs that I read - trade or other matters - of our own resolution.

The flip side of that is this: if we receive a document or take evidence in camera we have no choice but to retain it under that cover. No choice because it says 'and shall so recommend'. I think it is important for you to know that because after your request we will clear the room so the committee can deliberate on your request and we will make a decision about that. It is important for you to know that and whatever decision we reach will be the way we proceed for today.

That standing order in particular provides the committee with very broad powers and very broad flexibility to keep anything in private after due deliberation and before reporting to the Council in full, even though it might have been tendered in public. So the document or any evidence you give, even though given in public can be kept private. That is our decision at some later time. That is our choice. Other committees do not have that flexibility.

Mrs SMITH - Before we adjourn to discuss this, I believe we asked for the terms of engagement of KPMG by the Government. I think it would help us in our deliberation if they could be presented at this stage so that we can be aware of those terms of engagement.

CHAIR - Thank you for reminding me of that.

Mr GREEN - In terms of those if you have any questions about them there is a standard set of terms and conditions of business which are attached to that engagement letter. They really establish our obligations. The letter itself then seeks to clarify the scope and nature of the engagement and, to the extent it is relevant to that engagement, vary the standard terms and conditions. KPMG operate by virtue of a standard set of terms and conditions with all of our clients and that is the basis upon which this engagement is conducted.

Mr WILKINSON - As I understand it, Paul, what you would be doing - and tell me if I am right - is sending to every client you act for a terms of engagement, which would be the same or pretty well the same as the document you have provided just then.

Mr GREEN - That is it and if there is any need to vary standard terms that is done through the cover leaf.

CHAIR - We will invite you to leave for a few moments and likewise the media and we will deliberate.

The committee suspended from 1.16 p.m. to 1.27 p.m.

CHAIR - The meeting is recovered. The committee has obviously deliberated. The committee has resolved that, consequential to my opening comments, the fact that we are not going to the body of the report today and that we are discussing process, procedure, et cetera, means that we will not accede to your request to take your evidence at this stage in camera. However if there is any question that arises from around the table that you feel will go to those matters which affect your confidentiality obligations to your client then you could at that stage indicate that you would prefer that we go into camera. And if that means during the day that we are in public forum and then in camera that will be

the decision of the committee. We think that will be a productive way forward. Mr Wilkinson, you were about to ask a question.

Mr WILKINSON - I will open the batting because nobody seems to want to put the pads on. What I am going to ask if I can is nothing in relation to what is contained in the body of the report. I have not read it, and, as Paul was saying, he is the only one who has had a copy of it so I do not know what is in it. However, I am endeavouring to ascertain how it came about and how the evidence was obtained for the report that was tabled and that we have not seen. Please tell me if I am wrong.

In relation to the report, the Government engaged you to carry out an investigation with the terms of reference that are described?

Mr GREEN - It did.

Mr WILKINSON - Right. Am I right in saying that those -

Mr GREEN - The Attorney-General engaged us. Correctly, that engagement is with the Attorney-General.

Mr WILKINSON - Sure, and those terms of reference, would it be fair to say, only related to: one, the assessment of the extent to which the TCC complied with the provisions of the scheme; two, terms of reference 2 involves an investigation into the finances of the TCC to assess the three dots points that you have mentioned; and three, the assessment of whether stakeholders were receiving value for money in terms of the fees paid under the services provided? The terms of reference, as I understand it, only related to the TCC.

Mr GREEN - That is exactly right.

Mr WILKINSON - It in no way related to the Government?

Mr GREEN - No.

Mr WILKINSON - And therefore at no stage did the report have to investigate the Government's actions in relation to the engagement of the TCC and the way they monitored the workings of the TCC?

Mr GREEN - Incidental to the evaluation of compliance with the scheme were considerations of any mitigating factors that might have influenced the TCC's performance in that area and a part of that was the interactions that the TCC had with government, but in the context of the way we managed the investigation, recognising that the Auditor-General had that as a more specific term of reference, we did not go into extensive evaluation of that.

Mr WILKINSON - And so the report did not have to come to any conclusion at all, I take it, in relation to the Government's involvement or workings in the process, in the workings of the TCC?

Mr GREEN - No.

Mr WILKINSON - In relation to the terms of engagement and the terms of reference, more importantly, were these terms of reference, for want of another word, set out by yourselves or were they set out by the Government, were they given to you by the Government?

Mr GREEN - The process operated whereby the Government effectively said there were three areas they wanted investigated and they were the three heads of the terms of reference. We then drafted something in response to those suggested areas, provided that back to Government and they then reflected on that and broadly adopted it.

Mr WILKINSON - One area, and it was certainly an issue in the news at the time obviously was the Government's involvement in it all. Was there ever any reference in relation to the Government's involvement with the workings of the TCC and the monitoring of it, as the stakeholder minister?

Mr GREEN - As part of our scope?

Mr WILKINSON - Yes.

Mr GREEN - No. From the point at which our scope was established it was compliance by the TCC, financial affairs of the TCC and value for money. There was never any discussion about those other things.

Mr WILKINSON - The way the Government involved themselves with it?

Mr GREEN - No.

Mr WILKINSON - Okay, thank you, or whether they did a good job of monitoring it or things like that?

Mr GREEN - No.

Mr WILKINSON - Great, okay. Were the terms of reference that you went away and drafted changed to any extent that they differed from the principles of the terms of reference that you had first set out?

Mr GREEN - Not really. It would be normal in this sort of situation for us to be provided with terms of reference but in the process of developing those and it was at a time when the TCC saga was evolving, I suggested in fact to the Government that it would be best, given we were going to have to respond to them, if we could draft them in the first instance using a set of words that we then would understand, so that is what we did. We provided those back to Government and I think there was only one or two minor amendments to the version we got.

Mr WILKINSON - But they did not in any way alter the intention or the substance of what you wanted?

Mr GREEN - It did not change the words in the terms of reference but I would have to go back and check. If it is important I can do that for you. There was a couple of minor edits but not of any substance.

Mr WILKINSON - There was talk at the time of this news in relation to the involvement or otherwise of the minister at the time, Bryan Green. Were you ever at any stage requested to look into that?

Mr GREEN - No.

Mr WILKINSON - Did you ever ask whether you should or you should not?

Mr GREEN - It was not within our mandate to ask whether we should or should not look at anything. Ultimately the three areas were the three as stated and we drafted in response to that.

Mr WILKINSON - That is what I was going to get to. In the end you are totally restricted to the questions that were asked of you and the work that you were asked to complete by the Government.

Mr GREEN - Absolutely.

Ms THORP - In your quest to get the information that you felt you needed or that you required to write the report, were you able to access all the material and information that you required?

Mr GREEN - Absolutely. In fact I would say that the TCC were not obliged to but were fully co-operative and responded to every request for information that we made.

Ms THORP - Could the same be said of witnesses or people that you needed to speak to? Did you find that you had access to all persons?

Mr GREEN - There was no restriction at all from anyone that we sought to interview.

Ms THORP - At no time were you working in the dark?

Mr GREEN - No.

Ms FORREST - In relation to the terms of reference, do you feel they were broad enough to actually collect and collate all the information you required to adequately assess all of those areas, or were there limitations within those terms of reference that restricted your collection of the information in any way?

Mr GREEN - You may not have had a chance to read the letter. I think the letter refers at some point, after the statement of the terms of reference, that it was an evolving issue and that there may have been a need to revisit the terms of reference depending on what we found as we went. As it turned out we did not need to do that. What we did seek to do was obtain some clarification on the interpretation of one sub-element of term of reference two, which relates to what we could reasonably characterise as appropriateness of payments to directors. There was a difference of opinion between us and the TCC on how that should be interpreted. I thought the best way to deal with that was to get direction from the client which we asked for.

Ms FORREST - You felt that that was adequately addressed. You thought you had enough information -

Mr GREEN - Absolutely

Ms FORREST - to make a judgment that truly encompassed the appropriateness of payments?

Mr GREEN - I went back to my client and said that this is an issue of some contention. I discussed what I felt was the right way to interpret it. I suggested a form of words, which were agreed to, and that was the basis of it.

Ms FORREST - The terms of reference I am looking at here, are they the original terms of reference? You said it was a potentially evolving issue document.

Mr GREEN - They are. Not changes to the term of reference. There was a clarification to that element of the terms of reference. Obviously you have not had the benefit of reading the report but that was drafted prior to the need for clarification. In the report the clarification is summarised as to how to interpret the term 'appropriateness'.

Ms FORREST - That was the only area that required any ongoing review or further consideration.

Mr DEAN - Just so that I am clear in my mind, when you did the terms of reference you provided them to the Government. The Government then made some minor changes to those terms of reference. The minor changes to the terms of reference, are you saying, did not change or alter them in any way at all?

Mr GREEN - Under term of reference 1, it requires us to assess the extent to which the TCC has complied with the provisions of the scheme as authorised and its obligations under the ministerial guidelines. Then there were a set of things that we were to consider as part of that. The term of reference itself did not get amended, but in terms of the steps to go through one that was added was that we should review factors that could properly act as an impediment to the TCC's ability to comply. Were there factors outside their control so that we needed, in a sense, to provide a balance assessment. That, from my recollection, was the only change to the first draft that was considered.

CHAIR - That was on your recommendation to the Government?

Mr GREEN - No, that was on the basis of feedback.

Mr DEAN - It was the Government back to you?

Mr GREEN - Yes.

Mr WILKINSON - In relation to how you obtained and collated your evidence, Paul. I take it you did that by obtaining and getting business documents?

Mr GREEN - I can talk to you in a little bit of detail if that would help and this is spelled out in the report. So you can refer to that at your leisure.

Mr WILKINSON - You can see we have not read it!

Laughter.

Mr GREEN - I understand that. In summary, we initially met with officers from the department and went through a process of discussing circumstances. Following that, we provided them with a list of information requirements that we had which was fully satisfied. We then met with the TCC and went through a similar process of explaining terms of reference and what our process would be. We provided them with a preliminary list of information that we required which, again, was fully provided. We then subsequently had in the order of five or six lengthy meetings with the TCC and at each of those meetings they responded to our inquiries, provided additional information if that was requested.

Mr WILKINSON - You would say they were thoroughly cooperative with you?

Mr GREEN - Absolutely and we acknowledge that. There has been no constraint, I am sure.

Mr WILKINSON - So you have documents and you had face-to-face meetings with different individuals, where it was a question-and-answer type of forum, I take it?

Mr GREEN - Yes.

Mr WILKINSON - Was there any other evidence that you obtained?

Mr GREEN - We requested submissions from industry bodies - and there is a list of those bodies that responded to that request. Then, after reviewing their submissions, we conducted interviews with those bodies with whom we wanted to clarify issues or from whom we wanted further contribution.

Mr WILKINSON - Did you take any evidence or seek any advice from other States in relation to, let us say, Queensland? They set theirs up approximately 15 years ago and it has been running for 15 years. There were teething problems at the start but it seems to be running well now. Did you take any advice or seek any assistance from other jurisdictions?

Mr GREEN - The terms of reference required us to evaluate other models, more from the perspective of their related costs, not how they are structurally set up in comparison. So we did not do a comparison on that basis. But we certainly obtained information on each of the State models, their fees and charges and how that may or may not compare.

Mr WILKINSON - I am thinking more of the situation where, if there were industry bodies out there which were not content, did you take any advice from other States to see when they first set up their licensing of builders, whether there was the same disquiet in the community?

Mr GREEN - No. I think it would be fair to say - and it is the same with any of these exercises - that when you are taking information from parties you have to take it on the basis of their position in providing it. Obviously the industry bodies are representing

people who are being regulated. Some parties like being regulated and some parties do not. You have to appreciate that and we did.

Mr WILKINSON - After you asked those questions and after you received the documentation that you wanted, then you obviously made a draft report, is that right?

Mr GREEN - In a sense. It was evolved as we went. I cannot say we arrived at a point where we stopped talking to people and then wrote a report. We were broadly bringing it together as we went and as the brought the draft of the report together we would then perhaps have a subsequent meeting to clarify points that we felt we needed to clarify.

Mr WILKINSON - I understand that. In relation to that clarification, did you go to the Government with the draft report?

Mr GREEN - Yes.

Mr WILKINSON - How many draft reports were there because it was an evolving process, prior to final report?

Mr GREEN - We had a lot of internal drafts. I could not answer how many exactly but I can tell you who saw drafts.

Mr WILKINSON - Sure.

Mr GREEN - The TCC saw a draft. The Government saw a draft. When I say the Government, there were two individuals within government who saw -

Mr WILKINSON - In the Minister for Justice's office, I take it.

Mr GREEN - In the Department of Justice. They saw two drafts of the report and in my understanding and not by virtue of our process but the DPP saw a draft of the report.

Mr WILKINSON - Did anything substantial alter in those drafts in any way or anything alter in them as a result of comments made to you first from the office of the Minister for Justice, the Attorney-General's office?

Mr GREEN - The drafts were evolving and we took on board the comments that we were provided with but ultimately we were providing those drafts for factual comment, not impacting our opinion and that was clear to the parties that provided it. It did not stop certainly the TCC providing opinion on our opinion but that was a process of really clarifying fact. We considered those matters further if we felt they needed to be.

Mr WILKINSON - First from a government's point of view, were you asked to at all alter the report in any way by the Government?

Mr GREEN - No.

Mr WILKINSON - Do you believe that you gave TCC what would otherwise be classed as natural justice, giving them opportunity to answer the matters that were raised in your drafts?

Mr GREEN - Absolutely.

Mr WILKINSON - Did they do that?

Mr GREEN - They did.

Mr WILKINSON - How did they do that?

Mr GREEN - They provided us with a written summary, referencing the draft with which they had been provided, with their observations and comments. At times they suggested alternative wording for issues, that sort of thing.

Mr WILKINSON - Did they at any stage say, 'You are wrong in relation to that and we can show that you are wrong'?

Mr GREEN - There are areas in the report that they clearly have a different opinion on. I do not know whether you could say that is right and wrong. What we were asked for was to provide our opinion and that is what we did. There is no doubt there are areas in the report where TCC would contest our opinion and they presented that back to us. We considered those responses and reflected those in the final draft as we thought it was appropriate.

Mr WILKINSON - If, at some later stage, because it would seem appropriate to require a document given to you by TCC, if there was one, setting out the mistakes they believed or the differences of opinion they held in relation to the report, we would be able to get a copy of that so we could weigh the two up against each other if necessary? Have you got a copy of that?

Mr GREEN - Yes.

Mr WILKINSON - Would you have any objection to providing the committee with that?

Mr GREEN - No, I don't. I would like to give that some thought but I don't expect any objection to providing it.

Mr WILKINSON - Okay. Did the TCC have a look at the final report?

Mr GREEN - No, they did not.

Mr WILKINSON - Who has actually, to your knowledge anyway, seen the final report? Obviously you cannot say if you were not present.

Mr GREEN - The final report was provided to the department for transmittal to the Attorney-General. My understanding is copies of the final report were then provided to the DPP and to the Auditor-General and beyond that I am not aware of anyone else.

Mr WILKINSON - Did you believe at any stage your job was frustrated at all by anybody's or any party's involvement?

Mr GREEN - Absolutely not. Despite what was a fairly sensitive issue for the people concerned, we got absolutely full cooperation all the way through and did not feel at any stage under any constraints or any influence to do other than what we were asked to do, which was to provide an objective assessment.

Ms THORP - Would it be fair to say when you talk about differences of opinion between the TCC and yourselves when it came to wording of the report that one of those matters was to do with the area raised by Ruth in terms of the appropriateness of fees?

Mr GREEN - Appropriateness of?

Ms THORP - Compensation or whatever the words are.

Mr GREEN - The payments to directors?

Ms THORP - Payments, yes.

Mr GREEN - Yes.

Ms THORP - Do you know how or why the DPP saw drafts of the report?

Mr GREEN - We were asked to provide them with a copy of the draft on the basis that they were undertaking their own investigation. I think this committee was provided with the same advice, that the DPP investigation was, in a sense, taking precedence over the remaining three investigations because of the nature of it. We did not see any reason why, given that status, it should not be provided. It was not at our insistence, though, it was at a request

Mrs SMITH - I just want to clarify that one, following on from Lin. You made the comment that your client was the Attorney-General so the final report was delivered to the Attorney-General and his department and reports went to the DPP and Auditor-General -

Mr GREEN - By them, not from us.

Mrs SMITH - On the instruction of the client?

Mr GREEN - Yes. I do not know that for a fact, I only know that because someone has told me that.

Mrs SMITH - Right, thank you.

Ms FORREST - Considering that the client was the Attorney-General, is it normal practice within your work to provide a draft report to the party involved for clarification of facts?

Mr GREEN - Yes, absolutely.

Ms FORREST - Would you have discussed that requirement or your expectation that you would do that with the Attorney-General prior to doing that?

Mr GREEN - This is to provide a copy to the TCC?

Ms FORREST - Yes, for their comment.

Mr GREEN - At the end of the day it was my client's call but I think their process would generally dictate that that was the way it should be done and that was the resolution that we had.

Ms FORREST - Okay.

Mr DEAN - I just want to be clear. You have said that the TCC made some suggestion or asked you to look at some terminology, I think, within the report -

Mr GREEN - Sorry, they did not ask; I will clarify that. In our discussions with the TCC over that element of the terms of reference, their submissions were reflective of an interpretation of what 'appropriateness' meant and our judgments were that appropriateness had a slightly different meaning in the context of the term of reference. Rather than getting to a point where we were debating that, I thought the best way to proceed was to get that clarified from my client, which we did.

Mr DEAN - Is that reflected within the report?

Mr GREEN - There was a letter provided which clarified the interpretation and that clarification is included in the report.

Mr DEAN - And likewise with the issues that were raised by the government officers, is that similarly referred to in the report where they raised issues or I think you asked them to correct factual information?

Mr GREEN - Sorry, I think we are slightly at odds here. We sought a clarification on the terms of reference and that was provided to us in writing and that is reflected in the report. What I thought you were then talking about was whether feedback from the TCC or -

Mr DEAN - Okay, I might have misunderstood but I thought that you said you provided a copy of the draft report that you had done or were doing to both the TCC and to the government officers. I thought that you said that you sought to clarify with the Government some factual data or detail that you had referred to in your draft report.

Mr GREEN - Yes.

Mr DEAN - Were there any significant changes then as a result of that to the factual data that you had referred to in the report from the government officers?

Mr GREEN - I am not quite sure I understand the question.

Mr DEAN - Okay. You provided the draft report to the Government -

Mr GREEN - Yes.

Mr DEAN - and you sought to have some factual information in that report clarified. Did they in fact clarify any of the factual data and alter it to any extent?

Mr GREEN - I -

Mr DEAN - Or suggest to any extent?

Mr GREEN - Yes, they certainly provided input to the draft.

Mr DEAN - Is that information referred to in the report? So if I picked that report up could I see where that occurred?

Mr GREEN - No, that sort of happens in an iterative process, I guess. We get feedback from various processes.

Mr DEAN - So there is no documentation from those government officers attached to the report where they clarify that factual data?

Mr GREEN - No.

CHAIR - I would like to follow on from there then. It would seem to me that, because you had proceeded to amend, you had accepted the proposition put to you by the people in terms of correction being required?

Mr GREEN - Yes.

CHAIR - Paul, you have spoken about the word, 'appropriateness' and you have been challenged on that by the TCC, was that in relation to term of reference 2 - 'The appropriateness of payments made current or former directors?'

Mr GREEN - That is it.

CHAIR - Did they challenge you on the appropriateness on the current level of accreditation fees, et cetera, in that same term of reference?

Mr GREEN - No.

CHAIR - Can I then follow on from some questions which have already been asked of you in your response to this? You have indicated that some government employees saw the draft or some drafts, which of that is it? Is it a draft or some?

Mr GREEN - Two drafts.

CHAIR - First question: what is your best recollection of the date of that and who where those government people?

Mr GREEN - The two people who saw the two drafts were Peter Hoults and Robert Pearce. As to the dates, I will have to check that.

CHAIR - We might get you to do that and let us know. With regard to TCC - I guess you would take this on notice as well - what date did they see the draft? Am I right in assuming you will need to take that on notice?

Mr GREEN - Yes. They saw the final draft after review by the Government. So it was a sequential process.

CHAIR - Following that comment of yours, can you tell the committee whether the draft that the TCC saw has any substantial differences, compared to the final document?

Mr GREEN - We received about a 35 to 40-page response from the TCC on that draft. There was some editorial done. It did not substantially change our conclusions. But it was more the interpretation of the way that we were representing things, and whether we had picked those things up. They refuted some of the conclusions, but we had heard already and considered the basis for those arguments.

CHAIR - It is true, isn't it, as you said earlier, that they were TCC's opinions versus yours? They had a difference of opinion with you.

Mr GREEN - They did pick up again errors, what they saw as differences of fact. I recall there were a few of those which we addressed as well.

CHAIR - Are you aware that in recent days the Tasmanian Compliance Corporation has issued a media release headed, 'Procedural fairness severely lacking?' Have you seen that media release?

Mr GREEN - I have not seen that media release. I saw how it was written in the paper but I have not seen the media release.

CHAIR - I will not go into detail then, except to seek your response to a comment of theirs, where they say:

' "We were shown a draft of the KPMG report and on three occasions we and our solicitors sought to redress, what we perceive as bias, lack of procedural fairness and denial of natural justice. As we have not viewed the final report we are unaware if these issues have been correct", Mr White and Mr Milliner said.'

Do you have any comment to make about that in terms of procedural fairness?

Mr GREEN - We believe there has been a fair process.

CHAIR - Clearly, as we said at the outset, we will come to the content of your report at a later time. But are you convinced that that which you have reported in your document is defensible?

Mr GREEN - Unreservedly.

Ms FORREST - You said that you received a 35- to 40-page response from the TCC which you are willing to provide to the committee. When you sent the two drafts to government representatives in the department, did they provide written responses?

Mr GREEN - No.

Ms FORREST - How did they communicate?

Mr GREEN - They marked up comments or made comments in the draft.

Ms FORREST - Are you happy to provide that marked-up copy to the committee?

Mr GREEN - I am not sure whether we have still got that. I do not think we have. That is normal process. If we have had drafts through the process that we would not necessarily keep every draft. If somebody had written to us we would have.

Ms FORREST - So there is no concrete evidence of the recommendations or changes or amendments to the report, whether just for clarity or for accuracy, made by the Government department.

Mr GREEN - I have to check the files; I cannot be sure.

Ms FORREST - So they did not provide those recommendations in any other way aside from marking up the document?

Mr GREEN - That is right.

Ms FORREST - If you do have a copy of the marked-up document, would you be willing to provide that to the committee?

Mr GREEN - Yes. In the process of preparing draft reports, it is not unusual. I do not want you to misinterpret what is going on here. I suggest we do four or five drafts of this sort of document on a daily basis.

Ms THORP - You are not trying to imply that there was undue influence put upon you to make changes.

Mr GREEN - There was absolutely no influence. The only influence that has been exerted was by the TCC. They obviously had their position, and they were very strongly advocating their position, and our investigation was into the TCC.

Mr WILKINSON - They were the only ones under the gun, though, weren't they? The Government were not at all under the gun because of the way the terms of reference were worded.

Mr GREEN - The Government's interest was in the process being conducted. They had no real interest otherwise.

Ms FORREST - In the marking up in the margins of the draft report, were those comments merely clarifications of a point you have made or were they corrections?

Mr GREEN - It was a combination: was it on this date that this happened and so on. Part of the report that goes through the history of when things happened, who said what. The people who were involved in those things, Robert Pearce particularly, were very interested to correct that it did not actually happen on this day or that sort of thing. The opinions in the report are absolutely our opinions.

Ms FORREST - In the marking up of the draft report there was no direction from the Government to change an opinion; it was a clarification of things such as dates and times.

Mr GREEN - It was, 'Have you considered this, or did you realise that happened' and so on.

Ms FORREST - Providing further information rather than changing what was already there.

Mr RICHARDSON - Yes. I can certainly comment because I had fair carriage in terms of processing some of these things and most of the suggested mark-ups and so on are fairly minor, as Paul has just said - factual accuracy and so on.

Mr DEAN - You have said that most were minor, so very clearly having made that comment some were major?

Mr RICHARDSON - No.

Mr DEAN - How would you classify the others.

Mr RICHARDSON - We had a spectrum of suggested edits, from typographical errors to changes of dates and those sorts of things, but certainly nothing that changed the raft of opinions that are contained in the report.

Mr DEAN - Is that report that you have tabled today an identical copy of the report that you tabled to the Premier. There have been no changes to that document since the time it was produced?

Mr GREEN - None. That is the copy out of our file.

Mr WILKINSON - When new departments are set up for reasons which had been mooted for a number of years, is it fair to say that there should be close liaison between Government and the new body?

Mr GREEN - I think it depends on the model. In this model it was a co-regulatory model which envisaged three parties participating in a process.

Mr WILKINSON - Those three parties were?

Mr GREEN - The industry, the TCC and the Government.

Mr WILKINSON - Did you at any stage look at all or investigate at all to see whether the Government kept in close contact or continual contact with the TCC to see that they were abiding by the act that they enacted in Parliament?

Mr GREEN - We did look at that. In terms of the context and the process and the guidance and those sorts of things, we have plenty of comment in the report on that.

Mr WILKINSON - Did you have to report on that?

Mr GREEN - In terms of mitigating factors, which is one of the things we were requested to look at, we had to consider whether or not Government's role in guiding the TCC gave the TCC the appropriate -

Mr WILKINSON - So that is in the report, is it, if I read the report?

Mr GREEN - Yes. That was a factor that we considered in terms of the raft and there is a section in there which covers the mitigating circumstances.

Mr WILKINSON - Okay, thank you.

CHAIR - I wanted to go to another question first before that matter about process and the scheme which you investigated et cetera. You have indicated in your evidence earlier that the final report went to the department. Why would that be rather than directly to the Attorney as your client?

Mr GREEN - I guess the conduit for the conduct of the whole process was the department and that is the normal way these things are done; in fact even the engagement level is directed to the secretary of the department.

CHAIR - On the matter that Jim and Ivan have just addressed their mind to, that of interviews which you conducted, and you have indicated that in the report there is a list of people you interviewed -

Mr GREEN - Yes.

CHAIR - what account did you take of the TCC's submission to the Government in terms of the scheme that it intended to put in place if appointed and authorised under the act? Did you see their submission?

Mr GREEN - Yes. In terms of what account, that was the fundamental definition of the scheme so that became the premise upon which the first term of reference was tested. The first term of reference required consideration of compliance with the scheme. The submission to government was the authoritative document and that was the basis upon which we then measured compliance.

CHAIR - And you would have also referred to the guidelines for schemes for the accreditation of building practitioners produced by the Government?

Mr DEAN - The ministerial guidelines.

CHAIR - Yes, the ministerial guidelines commonly referred to. I want to come back to that closer to the end of our deliberation today.

On the process which has unfolded so far before we get an opportunity to read the report, we will have you back in a week-and-a-half's time, can I then go to a question which has exercised my mind and I will preface it with the fact that it is in the public domain as to much speculation about your findings and to the extent that the TCC - this is public speculation - must not, and I will come to the question, have delivered an accreditation scheme which complied with either the ministerial guidelines or statutory obligations which has now brought about the impending withdrawal of the TCC's authorisation to accredit building practitioners. In an overarching sense, is that what you found, that they had not delivered a scheme to accredit building practitioners which met the ministerial guidelines or indeed did not even meet the terms of their own submission to the Government to have been so authorised?

Mr GREEN - I think we need to clarify a couple of things here. The guidelines were established to provide a basis for people to then submit their schemes so ultimately the TCC's obligation was to its scheme. The Government then evaluated that and said, 'Yes, it meets the guidelines.' So we focused on the scheme. I was not sure whether we were going to go to the content of the report today, but we raised concerns in our report about compliance with all of the elements of the scheme. In terms of term of reference 1, we have raised questions about whether those elements have been fully and satisfactorily met.

CHAIR - In that overarching sense, you have concluded that the TCC did not meet the terms of their own scheme as presented to the Government?

Mr GREEN - Did not meet all of them.

CHAIR - Until we read the report and familiarise ourselves with the detail in there, can you give me an indication of the percentage of non-compliance with their own scheme proposition to the Government?

Mr GREEN - Not really. You would probably need to read the report to understand how we have gone about assessing compliance. To come up with an arbitrary percentage, I think, is misleading. But also, you have to understand the relative import. It is one thing to say that we have complied with x percentage, but if x percentage is of a lesser obligation than y percentage, it is not necessarily useful way of looking at compliance.

CHAIR - That is entirely fair. Any further questions at this stage?

Mrs SMITH - Considering KPMG is recognised widely in the financial world, can you give us an interpretation of what you believe a not-for-profit public administration company would be?

Mr GREEN - I had not hear the term until we started this process.

Laughter.

Mrs SMITH - I cannot then lead on to whether you believe TCC was such a company.

Mr GREEN - A not-for-profit company is a company that does not have it prime motive as making a profit. It does not mean that it will not make a profit or a surplus or however

you want to characterise it, but it just means that is not its prime motive. So in terms of coming back to that initial definition, the two words at the end, I have not seen typically attached to the term 'not-for-profit'.

Mrs SMITH - Public administration?

Mr GREEN - Yes.

Mrs SMITH - I just wanted to know if you had heard the terminology before, whether you felt TCC fitted the criteria of a not-for-profit public administration company?

Mr GREEN - TCC is clearly a for-profit entity. That is the opposite to not-for-profit.

Mr DEAN - So you found that in your inquiry?

Mr GREEN - Absolutely. That is TCC's position.

Ms FORREST - How do you define a public administration company?

Mr GREEN - As I said, putting those four words together, I have not -

Ms FORREST - I am not putting the four words together, I am saying public administration company?

Mr GREEN - I do not think there is an entity. It does not have a status, in terms of commercial. I guess it is how you want to interpret those three words put together. A company which is involved in public administration but you could not look at the corporation as well and say, that is a particular status.

Ms FORREST - Would it be reasonable to say then that we clearly understand what a not-for-profit company is? It has clearly been identified. It is recognised in corporate law. A public administration body may not be defined in corporate law but it would indicate, by its terminology, that it is to administer a public entity body or function. Would that be a reasonable suggestion?

Mr GREEN - I think that yes, that is a fair interpretation.

Ms FORREST - So when you put the four together, you could reasonably expect that there would be a company that would administer that function in a not-for-profit manner?

Mr GREEN - Yes.

Ms FORREST - If we assume, for a moment, that is the case, that this is what was being described, the TCC, even though they described themselves that way, did not fit that description?

Mr GREEN - This goes to the content of the report and that there is some discussion on this in the report, about what TCC was, what people interpreted it to be and what they still think it is. It might be a topic that we had better discuss after you have read what is in

the report. It does go, I think, a little bit to exactly what was going on, what people thought TCC was and what they -

Ms FORREST - What they actually were.

CHAIR - Can I just indicate to you, Paul, that those kind of questions have arisen from evidence previously given to us. We have not spoken to the TCC.

Mr GREEN - I understand that. No doubt we have talked to the people you have talked to. They are similar discussions.

CHAIR - Jim was pursuing a line of questioning about your interaction with the government department, the Building Standards and Regulations people. To what extent did you discuss these matters with them?

Mr GREEN - Which matters?

CHAIR - Your terms of reference internally. In terms of investigating the TCC's compliance with their own scheme, is it true that you met with the Building Standards and Regulation people?

Mr GREEN - Absolutely.

CHAIR - So that they could give you some information.

Mr GREEN - Absolutely. They were our first port of call in understanding what the scheme was, what documents were lodged with government that actually constituted the scheme, and how did they interpret the scheme. Our first interaction with them was to get them to give us an overview of their understanding of the scheme. We then asked them to provide information about where they felt the TCC were at with in terms of compliance with the scheme, so they provided a view on all those matters. We asked TCC to provide a view on all those matters as well, and the industry to provide their view. Then we thought what can we draw out of this to actually form an independent view.

CHAIR - When you indicated earlier to the committee your client-business confidentiality obligations, my best understanding is that that relates to the information which you may obtain during the process of your investigation, keeping that information confidential. Apart from what we know and what has unfolded publicly, there was no request by you to your client for your client to keep the report confidential, was there?

Mr GREEN - No, not at all. When we presented the report we pointed out to our client that, and it is represented in the report as well, the TCC do not agree with a number of our findings and that they made certain representations in respect of those. We had considered them and they needed to be aware of that in their dealings with the report. My understanding is that TCC provided government with a copy of the paper they provided to us, which was their critique of our report as well. But we did not, other than saying you need to be aware, as our client, that the subject of this investigation has different views and that you should form your own judgment as to where you want to go with it.

Ms FORREST - You met with the department heads to discuss the terms of reference and to fine tune them initially?

Mr GREEN - We did not actually meet. This was done by e-mail.

Ms FORREST - You liaised with them to do that. Did they at that time provide you with any information about how they sought to monitor the scheme? Obviously they had considered the scheme, assessed them against the minister's guidelines, and determined that the scheme met their requirements. I assume they discussed how the scheme was to work and how they saw it. Did they discuss how they saw it would work so that you could fully understand the scheme? Otherwise, how can you assess it if you do not know it is trying to achieve. Did they discuss with you at that time how they had or would be or intended to continue to monitor the functioning of that scheme under their guidelines?

Mr GREEN - They did not; we did not discuss those matters in detail in drafting the terms of reference, but in fulfilling the terms of reference we investigated all those, yes.

Ms FORREST - That is within the report, then?

Mr GREEN - Yes.

CHAIR - My proposal is that we adjourn the hearing. As indicated to you, we will be taking account of the full document and requiring you to return to this forum on Tuesday, 24 October.

Mr GREEN - We might need to discuss that date. While you were considering the in-camera discussion David mentioned he is going to be interstate that day.

CHAIR - How does 25 October look?

Mr GREEN - I don't have the diary.

CHAIR - We will certainly be in touch but clearly you would appreciate that we are keen to see a finalisation of our deliberations and we need to proceed with haste as far as that is concerned. With regard to the matter of the contentions of the TCC that they have provided you with that document which indicates their dissatisfaction, if I can put it that way - they are my words not yours - do you require us to issue you with a summons to produce that or will you simply provide it, recognising that nothing changes, you are still under parliament privilege and so on?

Mr GREEN - Okay.

CHAIR - Paul has undertaken to provide that for us. In fact, Paul, if you could make that fairly quick so that we can consider that in conjunction with our consideration of the report before we return. Sue has just reminded me that you are going to provide us with the dates that Peter Hoult and Robert Pearce were provided with the drafts and also the date on which the TCC was provided with it so that we can make some judgments about that as well. Thanks very much. We appreciate the fact that you have been open and frank in what you have provided the committee thus far.

THE WITNESSES WITHDREW.

**ACCREDITATION OF BUILDING PRACTITIONERS, HOBART 13/10/06
(GREEN/RICHARDSON)**

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