

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET IN THE COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON TUESDAY 24 OCTOBER 2006.

Mr CHRIS ATKINS, EXECUTIVE DIRECTOR, MASTER BUILDERS ASSOCIATION OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Harriss) - Welcome, Chris. We have been advising people who have been appearing before the committee in recent times, since the Solicitor-General's been mentioned, that you need to be assured that you are protected by parliamentary privilege. Anything you say before this committee is thus protected and you can't be pursued legally for what you might say.

Thank you for your written submission. Is there anything you would like to add to that or draw our attention to particular highlights?

Mr ATKINS - I have nothing further to say in relation to the written submission. There was an opportunity previously provided to us to come and address the submission but at that time we declined that. I am more than happy to answer questions in relation to what we have written.

Ms FORREST - At point 3.23 there is, 'completion of these AQF level qualifications do not provide the student with the skills required to be a builder'. I made the comment that that alone does not ensure competence as a builder. Would you like to further elaborate on that from your point of view?

Mr ATKINS - I think there is a fair assessment going forward in relation to who the Building Act is seeking to accredit here. Having seen it in operation for some time, I think they are trying to accredit tradesmen and upskill tradesmen as opposed to a builder. Quite clearly, very few builders are actually on a building site. The public would recognise that the person walking around with a tool belt and a claw hammer is a builder. Well, quite clearly they are not; they are a tradesperson. Particularly in large businesses it is that person who is on the building site, who may not be carrying tools, who is actually the accredited practitioner for that particular business. So the AQF level 4 qualification is very good for those people, as is the AQF level 5, 6 and 7. They equip these people with the skills and knowledge to be the employees of a building business. That is the subtle difference that we see. We did not support the academic qualification because when this was being mooted it did not provide you with the skills to do the course and then become a builder. It might teach you how to draw and estimate but there is a whole range of other issues - financial liability, PR, marketing, business management and those other things - that are not taught in these courses but all joining together to become a builder. I have a slightly different view to most other people in relation to who is being accredited here. It is a step above accrediting trade practitioners who are on site, as opposed to a building business. Does that answer your question?

Ms FORREST - Yes, thanks.

CHAIR - Can I pursue that a step further? Is it a reasonable assessment to suggest that the average residential builder in Tasmania fits into that category that you have just described as a tradesman on site?

Mr ATKINS - I would suggest that most of them, if you are talking about a building business in the domestic sector, working on site, are working with the tools during the day and the books at night and in fact generally supported by a very proficient spouse or partner who is looking after the business management processes going forward. So I understand the technical aspects of building but with business management you actually buy in the resources or rely on the resource that your partner is providing.

CHAIR - Still on that line, I think, regarding the grandfathering positions which were provided in the current accreditation arrangements was that an unreasonable path to walk?

Mr ATKINS - Pare back the core essence of the Building Act, it is consumer protection legislation, and from that point of view our argument or the association's argument was that if a builder could clearly establish that they have been providing the product that the Building Act was seeking to secure into the future for the benefit of consumers, and they were doing that prior to the introduction of the act, why should they not be accredited from day one as an accredited building practitioner when you pare it back to that basic concept? Having said that, there needed to be some rigour in that assessment process rather than just grandfathering - because you were operating yesterday you are going to be a builder tomorrow. There needed to be some rigour. To develop that rigour the requirements may have been a bit light on in our opinion but, having said that, there are a number of issues conflicting at the same time and we were prepared to support that particular outcome in relation to it.

CHAIR - Did the MBA play any direct or active role with regard to the grandfathering? Let me expand that a little bit in terms of the TCC being required to assess applicants as to their competence. That was a large task, as history would now show. There were a lot of applicants who wanted to come in under grandfathering and/or the transitional arrangements. What role did the MBA play in regard to that?

Mr ATKINS - We certainly lobbied the minister of the day in relation to accreditation requirements. We had, as part of our platform for quite some time, the accreditation, licensing, registration or whatever you would like to call it for building practitioners in the State. We developed our own model in fact and had an in-house model that had been operating for two or three years prior to the introduction of the Building Act. We were happy that our members had gone through the hard yards, if you like, and we believed our model was an appropriate model for accreditation going forward as it related to builders. We went to the minister and said, just as I outlined, 'This is consumer protection. Why should a builder have to go back to school for the next three or four years in a time of high levels of activity, working with the tools during the day, doing their books at night and then find time to then undertake or obtain an AQF level 4 qualification'.? It generally takes a minimum of 1 800 contact hours to get the core level qualification. It is unreasonable in the extreme.

We did not have a problem with new practitioners seeking to enter the industry maybe having an academic qualification to support them but quite clearly it was unreasonable at

that particular point in time for that to happen. We lobbied the minister, who is Mr Cox, at that particular time. We had resistance from other industry associations considering that issue. I personally believe there were some commercial motivations from the other sectors not wanting to get a grandfather clause, if we could call it grandfathering. There was a meeting convened by the minister with the appropriate parties and the TCC were never part of this particular issue. The industry parties met with the bureaucrats and we got to a position - I think it was the Australian Institute of Builders, the HIA, the MBA, Graeme Hunt, Robert Pearce, and there may have been one other at that particular meeting - where the machinations and requirements of this were agreed to or basically the tenet that was going to go forward in relation to transitional provisions of the bill was agreed to. HIA drafted the transitional provisions for both commercial and domestic builders. We would have preferred some slightly stiffer requirements to be met but, having said that, regarding the political issue we were actually supportive and we were able to agree with the particular outcome in that circumstance.

I believe the TCC were told that these were going to be the requirements you will need to assess at that particular time.

CHAIR - You just commented about the buoyancy of the industry at the time and that it was an unreasonable proposition to expect people after a day at work then at night to embark upon other training. Even if you strip away that buoyancy, is it still an unreasonable proposition?

Mr ATKINS - In today's market?

CHAIR - Can I just expand on that a little bit before you answer. Given the things which you have heard us discuss with the ITB just now of longstanding experience in the industry - some may have a trade qualification, some may not, but in the event of having no claims or complaints against a person to strip away the buoyancy of the industry, is it still reasonable -

Mr ATKINS - I think it would be fair to say that the association's reluctance or my reluctance in relation to the AQF4, 5, 6 or 7 issue was based on the fact that those courses did not equip the participant. It was start and finish the course and be a builder.

The AQF level 4, 5, and 6 are being reviewed and new courses are being developed as we speak. If those courses did equip the younger person to obtain those skills in a technically controlled environment prior to being let loose on the public I still support that but that is the tension that I have. Those courses, in my opinion, do not equip you with all the knowledge and skills to be a builder and until they are at that stage I am reluctant to support them. Across all the sectors of the building practitioner categories we have the professional sectors which are the architects, engineers, building surveyors et cetera, who are required to have certain levels of qualifications which equate - and everybody understands this - to their level of outcome and control. I don't have a problem with builders being taken to that level of professionalism. It will take a long transitional period but, once again, it all comes back to the academic qualifications.

CHAIR - Could taking the builders to that level that you just mentioned come under the umbrella of the accreditation which your organisation requires of its members? Then having satisfied the accreditation of your professional group similar to the way in which

an architect or an engineer satisfies the accreditation arrangements of their professional group, is that a reasonable proposition going forward?

Mr ATKINS - I think it is a very reasonable proposition and that is one of the reasons we started the minister previously about the transitional provision for recognition of our accreditation scheme. We believe it is robust enough to withstand the scrutiny at an appropriate level. Having said that and competition being what it is with may the tension between industry associations and the number of industry associations representing builders, it will never happen. That is the conundrum but I think the builders within the industry have agreed on appropriate levels of accreditation or qualification to be suitable and commensurate with the necessary outcomes that we are seeking to achieve.

CHAIR - Do you feel that AQF4 is a reasonable level or is AQF3 a more reasonable level?

Mr ATKINS - AQF level 3 is the trade qualification. It does not contemplate business management, financial management those - all those sorts of issues, which are as important to the whole regime of a builder as anything else. So I think it certainly needs to be something post trade. As I said, I think a builder is not the person who is actually doing the construction on site. In some cases they are doing that but they need to be able to manage the business, they need to be managing cash flows, they need to ensure that they know what is going on in the building project and how it all fits together.

Some of the trade training at the moment is very sectorised and the TAFE processing at level 3 in particular is starting to now combine trades so that they can understand exactly the processes going forward in the complete building project.

Carpenters have the best understanding of the complete project because they are on the project for the longest period of time so they can understand scheduling and a complete path. Bricklayers, plumbers and electricians don't have that same level of understanding. So I certainly think it has to be above cert 3, the current cert 3 training.

Mr WILKINSON - How many years is certificate 3?

Mr ATKINS - Certificate 3 under the trade regime you could do the technical component of that over three years. In the old days it used to be one day a week for 40 weeks for three years - so 120 days. They are now doing it in block and competency based so some of the better kids can knock off a two-week block in five or six days without too many problems.

Mr WILKINSON - It seems to me that there is no problem with architects - they go through the course at uni, go out and spend a couple of years in the profession then they can be classed as an architect and go by themselves if they want to. The same applies with engineers, but it is a different thing with builders.

Mr ATKINS - Exactly right.

Mr WILKINSON - We are looking at body to look after the builders. I said, 'Could it MBA, could it be HIA, there is always competition between those two.' One would be arguing and they would say, 'It should be us.' The other one would say, 'It could well be us.' So

there has to be a body overarching all of that to encompass the builders, the plumbers and the electricians, et cetera. Who would that be?

Mr ATKINS - I think that it can be drawn from industry parties that already exist. I think I have mentioned that in my submission as well, that because of those tangents between industry organisations, if the Government were to give an industry organisation imprimatur to accredited or non-accredited practitioners, I can imagine there would be hell to pay from both sides and there would be a lot of rocks thrown one way or another. I think there is an opportunity for a board to be developed from the current industry representative organisations, the same as the architects and the engineers, be convened with the appropriate template of accreditation requirements and able to make decisions about assessment of new entrants into the industry.

Mr WILKINSON - You heard the training board a moment ago. They appeared to be saying that they can do it; they have the right structure. They look at the training and the accreditation, while Consumer Affairs looks at dispute resolution. Could it come under that?

Mr ATKINS - It has the potential of doing that. Sometimes you need to look at the motivation for a proposal. I am not trying to suggest anything about that proposal. It is not too far divorced from what I am suggesting, about a group from the industry being selected to do that. Certainly, if that were to happen, we would want to nominate for somebody to a board, as the HIA want to preserve their position and maybe also the Master Builders Association of Northern Tasmania, whether it is coordinated through the Industry Training Board. But I think the Industry Training Board might have a number of conflicting attitudes to the rest of the industry.

Mr WILKINSON - Like what?

Mr ATKINS - I heard Peter make a reference to the mandatory competency outcome and the only way you can achieve that is by doing an academic qualification. I think that you can present those by your track record, to some degree. I do not think that is the major issue going forward, and most probably rightly so - about the academic outcomes. I do not necessarily concur with that particular position.

Mr WILKINSON - When we were in Queensland a few weeks ago and spoke to the BSA, they have now been out and about for 15 years. The first couple of years were fairly stormy. It seems to me, with what has happened down here, the first couple of years have been pretty stormy as well. Therefore, out of all of it, there is a real focus now on getting it right, a focus which to me, as a layman, did not appear to be there beforehand. So what we are looking for is the best system. If was handballed to you, Chris, and you were asked to set up the best system, what would you do?

Mr ATKINS - I would certainly be grabbing the industry and representative of the builders and I am not ignoring architects and engineers, I think they are well served and the same model could be used by them. Because of their structure, I think the architects and with the engineers and building surveyors, we have appropriate processes in place to provide a level of a consumer surety in relation to engaging services of building practitioners that they would accredit. I think that the industry associations representing builders perhaps should do the same thing.

The issue about the appropriate items being checked or confirmed in relation accreditation, certainly, an appropriate academic qualification - and I am talking about appropriate - is necessary. The AQF level 4 that is currently available, as I said, does not equip you with the skills to be a builder. But if there was an appropriate course that we could agree on that would provide that, that would be fine. We need to make sure that we protect those who have done the hard yards in the industry as well; we do not want to make it too easy for people to come in. We want to make sure that the bonafide people enter the industry. So an academic course of study is necessary because the people who are aspiring to be builders have the opportunity of making decisions. Those who were already in the industry with the introduction of the act, had no decision. The decision was, step up to plate or you step out, quite clearly.

My forecast was that we would not see any new builders from the State for three years after the introduction of the Building Act because the academic qualifications have not been pre-advised to the industry. So that is likely to be a tension.

I think the academic qualification is one step of assessment. There are a whole raft of other issues that can be assessed in relation to going forward. Of course, there is also, if you like, using the current industry term of an apprenticeship, I do not think there is any reason why provisional accreditation cannot be applied to practitioners where a watching brief is maintained over their performances and more closely guarded because otherwise it's going to be too difficult for someone to establish that they've got the experience to operate at the level that they're seeking accreditation at and in my opinion, the current regime of not having accreditative courses that equip you with the necessary skills is going to create a further tension going forward in that area.

Mr WILKINSON - That's your accreditation. What about your dispute resolution?

Mr ATKINS - It is Caesar judging Caesar. I notice the Premier actually quoted that. The time I heard that before, John White quoted it to me. I don't know what's happening there, but having said that -

CHAIR - You're protected.

Mr ATKINS - quite clearly, I think that the dispute resolution process needs to be fast, fair and friendly. The arbitration process that is inherent in the building industry today is inappropriate: if I've got the most money, that will mean whether I am right or wrong, I will still win. The legal process - no disrespect - is not too dissimilar to that if you want to play that game.

Mr WILKINSON - And it's time, too; it takes time.

Mr ATKINS - Exactly right. Legislation needs to be drafted that provides a panel of appropriately qualified practitioners who can hear disputes - and it might be a range of different-skilled practitioners depending on which way they go forward - who can make legally binding and enforceable decisions in relation to disputes. Unfortunately consumers, with all of the consumer protection information that is available, think that all issues relevant to buildings is a claim.

The perfect building is yet to be built and possibly will never be built because of the materials that go into it, but a consumer believes it is going to be a manufactured item not dissimilar to their airconditioner or their television set; that they all come out perfect and exactly the same. The building industry isn't like that. I think that is the process of dispute resolution: faster and friendly, it has to be cost-effective, and the amount of money in your pocket isn't going to influence the outcome. I do not mean by bribing people, I mean that because you can keep on going and have appeal after appeal until you get a decision, or the other party doesn't have any money to continue.

Mr WILKINSON - Insurance?

Mr ATKINS - It's a moot point. I suppose that might have been the fallback position to allow people to start businesses. People who didn't have the resources otherwise to get into industry or into business were using the insurance regime to stuff up their financial liability issue. That's the trade-off; it's insurance or financial liability.

Regarding tax minimisation strategies for businesses and all those other things, most businesses run fairly leanly and most probably will not get the level they would otherwise like or be allowed to do, so we haven't stood up in an open forum and said, 'Financial liability test for all practitioners'. Quite clearly the trade-off is insurance. At this stage, I don't think anybody is too keen to stabilise the commercial insurance market for the sake of making them take retribution, and if you don't get the outcome and you've been branded as being against the commercial insurance sector, they will take action. It won't be direct action, but they will actually lever against you in relation to outcomes.

The Master Builders Association has, in my opinion, experienced that particular issue when HIH collapsed, and then Dexter withdrew from the housing indemnity market. We got approval from the Government to run our own scheme as an interim measure, which had a high level of support from our members because of a number of issues. They knew that the decision-making process was made by a panel, and the Director of Consumer Affairs representing the Insurance Council and building practitioners was going to adjudge the claims. So everybody's interest was being represented.

The builders provided us with deeds that gave us access to personal assets, and also access to personal assets of jointly owned assets as well, so there was a significant undertaking from the builders. But the sideline of that is we couldn't get PI cover at a reasonable cost. We eventually got it from the UK, so that was some recognition, but the PI cover that we had had ad infinitum, going back in my history, was now no longer available from the same organisation and we had to source it from alternative sources at a significant premium. So in the destabilising commercial insurance sector or speaking against them, there is an opportunity for retribution because of how we all operate today..

Mrs SMITH - One of the significant failures in the system has been the insurance sector because builders in all legitimacy take out insurance. It appears to have no value unless they are dead or have gone bankrupt. Insurance companies take money off everybody and yet in some evidence we have been given, nobody appears to want to address the issues of some consumers out there who have been left with particular issues outstanding.

Mr ATKINS - If I can just address the reason that it is now last resort, the only reason for that would be the diminishing market and the lack of attractiveness of the housing indemnity market to insurers. That is where it is high risk insurance.

Having the advantage of some hindsight and being involved in the drafting of the Housing Indemnity Act, the Master Builders Association introduced its own voluntary housing indemnity prior to the introduction of the legislative scheme, which was quite interesting. But the concept of the Housing Indemnity Act was to provide a quick remedy to disenfranchised consumers, so let the insurance companies deal with the builder who has caused their problem so that the insurance companies determine, 'Yes, there's a problem. We'll fix that. We'll sort it out between the insurance company and the consumer', removing any need for litigation from the consumer; they just make the claim. That was the intent.

Commercial insurers saw it as being high risk or it became high risk for whatever reason and by giving it to anybody, seeing it is a market generating an income stream and those sorts of things, appropriately managed under that scheme it was fine.

Mrs SMITH - So they took the money on intent but then did not fulfil what was needed.

Mr ATKINS - And governments, with no disrespect to any government, fell over and played the game with insurers under the pretext of making it a more attractive market, which has not manifested itself, by making it last resort. Our scheme - and I am not trying to promote our scheme or the reinstatement of it but I am very aggrieved that it was removed - was going so well that we offered to the Government that we would be happy to make our scheme first resort. Obviously we wanted to continue the scheme and we said that the management of our scheme could be first resort. We had 38 claims from 1993 until the collapse of HIH and there was an approximate average payout of \$9 000. During that same period there was something in the order of 1 800 projects identified so 24 cents in the dollar was being paid out in premium - zero in more recent times - and I think in 2003 there was a quoted claim ratio of \$1 to \$1.40 I think, so for each dollar premium they would end up paying \$1.40. The management figure identified makes a big difference to the viability rates issues.

Mrs SMITH - For every dollar they were getting they claimed they were paying out \$1.40?

Mr ATKINS - \$1.40 to a \$1.

Mrs SMITH - In Tasmania?

Mr ATKINS - I won't say it was in Tasmania -

Mrs SMITH - I would be interested to see their figures. I would like them to table them.

Mr ATKINS - but that was when it was first resort as well.

Mr WILKINSON - It seems to me, Chris, that a lot of the insurance companies say, 'That's the case' and yet then you say, 'Don't do it'. 'No, look we have to do it'. Workers compensation is a particular example. They are always saying, 'Look, we are losing with workers compensation' and you say, 'All right, don't get into it'. I know we have to keep

into it. I just cannot accept that they are not making money out of it otherwise they would not be there. That is why I find it hard to accept.

Mrs SMITH - Have you studied the Queensland system at all?

Mr ATKINS - Our accreditation model when we drafted it was based on a hybrid system between Queensland and New South Wales to some degree.

Mrs SMITH - And the insurance aspects of the Queensland system?

Mr ATKINS - Apart from understanding it is government based, I do not have a great deal of knowledge in relation to that.

Mrs SMITH - You would accept the argument that if your accreditation process and your competencies are correct, first resort insurance should not be a problem because you should not have to use it in most instances?

Mr ATKINS - Yes, depending on the decision makers and, no disrespect, if a decision maker has an affinity with a consumer who presents a particularly poor outlook going forward in not getting an issue resolved, some of those issues are resolved and are claims.

Mrs SMITH - The evidence we have received is that they do not seem to be able to find a decision maker, one way or the other, in the processes - and this even came from people with legal background - that it is convoluted, they do not know where to go, anything that is happening and that appears to be -

Mr ATKINS - That is in Tasmania?

Mrs SMITH - Yes - a failing in this current system that no-one looks to take responsibility to hear those consumer complaints.

Mr ATKINS - I would disagree. In my time as Executive Director of the Master Builders Association, which has been since the middle of 2000, we have attempted to change the processes, acknowledging the shortcomings and weaknesses in the processes and changing the processes such that consumers can be responsible.

Mrs SMITH - Do you accept that the TCC were the body that were to look at consumer complaints?

Mr ATKINS - That was one of their responsibilities from the Building Act but, having said that, their complaints are fairly restricted to professional misconduct.

Mrs SMITH - So you do not find it unusual that in the initial stages, when the consumers went to them, they said, 'It's not our place, go to consumer protection', but in latter times they actually appointed one of the directors as their consumer a complaints person, then started to take on the process and accepted that it was their role.

Mr ATKINS - I took great umbrage at having consumers referred to myself from the TCC.

Mrs SMITH - So the TCC referred them to you as well?

Mr ATKINS - I can recall at least one instance where a client was actually referred to myself. They obviously had their own filter in relation to what was a complaint relevant to the scope of complaints that they were meant to handle, and I assume that they deemed it was not a complaint under that scope.

Ms FORREST - Can you tell us the nature of the complaint that was referred to you?

Mr ATKINS - I have to be honest, I really cannot recall. I think it was something fairly negligible about a builder not turning up when he said he was going to turn up to fix a defect.

Ms FORREST - So it was in relation to the fixing of a defect?

Mr ATKINS - Yes. If you look at the web page from the TCC I do not think there was anything on that particular issue based on what they are saying on the web page. Anything that is relevant to building that a consumer was unhappy about would have been a complaint under their scheme.

Mrs SMITH - So you have process in your Master Builders' Association where you were actually on five criteria -

Mr ATKINS - Of assessment.

Mrs SMITH - looking to assess and accredit them et cetera. To protect the good name of the Master Builders' Association, if you have a rabid builder that is creating angst how would you deal with it?

Mr ATKINS - We require an official complaint and under our constitution, clause 36, we actually take disciplinary proceedings. We have actually even stiffened that up.

Mrs SMITH - If it is proved?

Mr ATKINS - No, we will investigate it.

Mrs SMITH - Right.

Mr ATKINS - But it has to be an official complaint. The problem with our complaints procedure, or a disciplinary action against the member, is that it does not produce results for the client. It allows us to maintain a quality of membership but it does not actually resolve things for the client. We actually use that to some degree as being the lever to get a resolution between the client and the member.

Mrs SMITH - The Queensland system has this carrot and stick approach. They have no formal CPD program; they tend to work on a needs basis. When we were there, waterproofing issues were being thrown up, so it became mandatory. If you were in that business, you come to some of our training courses and you will up-skill yourselves. Whether you were the best or the worst in the business, it is mandatory. If you do not come, we could look at your licence. There is also the aspect of looking at consumer complaints. If they hear the complaint and decide the builder is at fault, they say 'You

will go back and fix it or we will fix it ourselves'. Your disciplinary action might be, 'We'll take your licence off you'. Do you think that is a fair and reasonable process that Tasmania should look at?

Mr ATKINS - As I said, we actually modelled our own accreditation requirements very much as a hybrid between Queensland and New South Wales. When we were running our own housing indemnity scheme, that was the process. Once the defect had been established, the builder was given the first opportunity. Builders cannot build perfectly all the time and we recognised that in our process. The builder was actually given the opportunity to go back and there was also an opportunity for a time frame to be dictated and for the builder to comply. If the builder either did not comply or could not comply, the item would be fixed by us and then we would take action against the builder.

Mrs SMITH - How many instances would that have happened for the MBA in, say, a ten-year time frame?

Mr ATKINS - That process is aligned with our housing indemnity scheme. It started off on 22 May 2002 and because of the change in the legislation we had no complaints for the first resort.

Mrs SMITH - Okay.

Mr ATKINS - With the change of legislation we have had no builder, so we have not actually had to use that particular issue.

Mrs SMITH - So you have not had an issue where you have had to discipline one of your members.

Mr ATKINS - We need to remember that there are two heads of discipline in our organisation. One is through the housing indemnity scheme that we had operating, and also our constitution. Certainly we have had reason to discipline members and get to appropriate stages of doing that, but we have used our disciplinary process to lever to get an outcome for the consumer. So some disciplinary action that may otherwise be warranted has been withdrawn on request of the consumer because their issue has been resolved.

Mrs SMITH - So if I am a member of the Master Builders' Association and I am disciplined I can say, 'Tough luck, I just won't pay my membership and be a member of your organisation'.

Mr ATKINS - That is the problem. In recent times we have had disciplinary action. We have been at the threshold of issues. The advice that we were given is that we should not take this further action until the court processes had been finalised, but we had actually started our disciplinary process for that particular member, but we were not able to take action. Disciplinary action is the big stick. If a member values their membership, quite clearly the threat of disciplinary action is going to produce a better outcome to a consumer because these are the consequences of not doing what the consumer wants now in relation to their membership. If they have no value in their membership, if they do not care and just resign, then the client's resolution process is through the courts.

Mrs SMITH - Can you tell me how many members you would have in Tasmania?

Mr ATKINS - Just shy of 500. There are other organisations with more, but I think it would be fair to say that our members would do 65 to 70 per cent of all construction work on a value basis.

Ms FORREST - Within your membership do you just have builders or do you have tradesmen as well?

Mr ATKINS - We have everybody.

Ms FORREST - Not engineers and architects, or do you have them as well?

Mr ATKINS - They could actually be members of our organisation but they choose not to. We have in the past had a number of architects.

Ms FORREST - So you have electricians, plumbers, plasterers, carpet layers -

Mr ATKINS - There is certainly opportunity for that. The Carpet Company is a member, as an example, as a trade supplier. K&D Warehouse is a member.

Mrs SMITH - If the company is a member, are tradespeople members as well or is the company the member?

Mr ATKINS - The company is the member; it is a global issue. Obviously for the sake of legal requirements one individual is actually nominated as their representative to transact business between the Master Builders Association and any other organisation.

Ms FORREST - So your categories of membership would be something like corporate as opposed to individual membership?

Mr ATKINS - No, if you are a member you are a member. Royce Fairbrother is no longer the nominated representative of Fairbrothers; it is actually Craig Edmonds but Craig Edmonds has the same vote as a sole trader. So we actually have all ranges of membership within our organisation from the sole trader to the large corporate.

Ms FORREST - Can you just briefly tell me what the benefits of membership are? Why should I, as a supplier or builder or plumber, be a member?

Mr ATKINS - The services we provide, is the very simple answer - the ability to buy standard form contracts, training, development to the industry, IR advice, contractual advice. In fact I think the simplest description I can give you is that the MBA are the backroom boys for businesses who do not have the expertise in-house to actually deliver. We actually provide those resources for them.

Ms FORREST - So you do not currently provide insurance for them?

Mr ATKINS - Not directly. The Master Builders Insurance Services is a brokerage firm which we are a party to. In providing insurance we were able to secure CGU as a housing indemnity provider to our members who wanted to sell our portfolio when the

Government was saying that they were not going to support us going forward. We entered negotiations with Vero who were keen but then decided not to. CGU did not want to buy our book, but they were prepared to offer our members access to their product on a preferred rate, recognising our own internal accreditation requirements.

Ms FORREST - For one of your corporate members - say, Fairbrothers - could any of their employees come to you for IR advice.

Mr ATKINS - If it is for the benefit of Fairbrothers, yes they could. If it was for the benefit of themselves, no.

Ms FORREST - They would have to join as an individual member to access that service?

Mr ATKINS - Yes; then they would not be able to join as a builder-member. Fairbrothers is a commercial contractor and a member of our organisation. That individual could only ever join as a service provider. They have to be in their own business, effectively. You are either running your own business or managing your own business.

Ms FORREST - So tradesmen?

Mr ATKINS - Trade contractors, providing they are running a business, could actually join.

Ms FORREST - But a tradesman working for someone would not be able to?

Mr ATKINS - Not at this particular point in time, no. We do not have a category, though we are reviewing categories.

Mr DEAN - I am just interested in following up the complaint process from a consumer point of view. I just make this comment first in asking the question. Consumers out there often now say, 'I want a builder. If I get a person who is registered with the MBA then I'm assured of a quality builder'. Having said that, what you are saying, if I have this right, is that if a consumer makes a complaint to you about the work ethic of a builder who is registered with you, you cannot really assist that consumer other than probably to deregister the builder. Having investigated the complaint, if you found the complaint proven, you may dismiss that builder from your organisation and that is it. But the consumer is still standing out there in the cold with their matter to fix.

Mr ATKINS - I might just take the opportunity, very quickly of going through our complaints procedure as it is currently drafted. It is currently with Ray Groom for vetting at the moment. The first point in a complaint is that we need to determine whether the builder is an MBA member or somebody else, or is the person who is being complained about an MBA member.

The next question is, have you spoken to the particular builder about the complaint. If the answer is no, we suggest that they communicate their concerns to the builder. If they have and they have had no response, we then tell the client that they should put their complaint in writing to the builder and give the builder 14 days to respond to that. We should also get a copy of the letter. If they do not get any result from that, they then write to us. We try to make sure everybody is given as much opportunity here as possible. We ask them to write to us if they are not able to receive a resolution from that

process. We then write to the builder. We tell the builder that if there is a problem he should fix it and we tell him, maybe off the record, that these are issues as we see them and we think x, y and z. We do not tell the consumer our opinion in relation to those areas.

We then tell the builder that they should get back and do something within 14 days. They either fix the problem, or agree to fix the problem and then provide a time frame, or conversely they tell the client it is not a defect or it is not an issue and why. If the consumer is still unhappy with that or that fails to produce a resolution, the matter is then referred to our president from our regional offices. The president then identifies an appropriate, qualified practitioner to review the matter.

Initially the costs are shared 50/50. If the consumer was identified to be 75 per cent correct and the builder 25 per cent correct, then the cost would be shared on that basis.

Mr DEAN - So the consumer has to pay?

Mr ATKINS - The consumer would have to pay a contribution to an independent party. If the consumer is 100 per cent correct they pay nothing. So there is a bit of a sharing of the issue there. A direction is then issued, based on the expert's report, to the builder. If there is a defect, he must fix the defect in a particular period of time. If it is not fixed within the particular period of time, then it goes under our disciplinary procedure. We can only bind our member to that process; we cannot bind the consumer. The consumer would be told, at any stage, that if they wish to step outside that process or conversely seek their own legal action, then they are entitled to do that. However, if they do take their own separate action, we curtail our action pending the outcome of the legal process.

That is significantly greater than most others are doing in way, shape or form. It allows the association and staff to maintain its integrity, relevant to the process. We often get the claims of bias from MBA staff. Quite clearly, that is not the process I want to see. I think it is a marketing tool to be seen as unbiased and being able to produce appropriate outcomes for clients where warranted.

CHAIR - I can only go by media coverage to pose this question to you. When the Government announced that on 1 November it would be taking over the scheme, am I right in recalling that the MBA expressed opposition to the notion that the Government run builder's accreditation?

Mr ATKINS - Concerns, yes.

CHAIR - Would you like to expand on that?

Mr ATKINS - Historical evidence of the Government's involvement with builder's registration back in the early 1980s, though quite honestly I only have anecdotal feedback on that. But all the builders remember that as being a particularly poor period of registration, for whatever reason. There were also concerns about the high amount of revenue that was generated in that process but was never returned to industry, not dissimilar to some circumstances being manifested today.

The second component that I have is more about the organisation, the party within the Government who are looking after it under the auspices of the Director of Building Control. I understand that is a statutory position. In my experience in dealing with the bureaucrats within that department, I can only describe them as being hamfisted. I am recalling one particular circumstance in relation to making that comment and it relates to the owner-builder concerns that the association has about the Building Act. We were given information about the client by one of our members that they had engaged a builder to undertake some substantial building works, \$830 000 worth. That manifested as an owner-builder. Information was provided to me that the particular party was not an accredited builder, based on the database that the TCC provided and Workplace Standards maintained. The matter was referred to the Director of Building Control for investigation. He investigated it and provided a response along the lines of investigations have been undertaken, the person is an owner-builder, the person who is going to be doing the work is operating as an agent of the client because they had limited English - they are qualified doctors - and they required his assistance to deliver the project.

I received that correspondence, I tabled it at a particular meeting, only to find that the builder who referred the matter to me in the first place had said that the clients did not know anything had happened. So I then confirmed with the client that nobody from the building control had spoken to them about their situation and received a letter in relation to that from the client which I forwarded to the Director of Building Control, asking, 'How is it that the prime person here has not been consulted in determining their status under the act?'

I received correspondence back to say that not only had the client not been spoken to, nor had the builder or their agent been spoken to during the investigation process. Inquiries had only been made to the Launceston City Council in relation to the matter; the fact that there was a form 34 signed, which is the building application from an owner-builder, and a statutory declaration signed by the council was taken as being prima facie evidence of a particular outcome going forward. That is one of the weaknesses. The clients, in response to that particular aspect, said that they relied on the integrity of the builder who provided them with a form which they were required to sign to start their building process - which they signed.

I was somewhat incensed when I received the correspondence confirming that particular issue; also, to have it identified that the MBA did not support the appointment of an owner-builder audit officer which was going through due process and once they were appointed the matter would be finally investigated.

These are issues which we have been concerned about since 1 July 2004 and this is their best detected investigation of a hand-up brief, if you like, in relation to the circumstances.

Mrs SMITH - So did your association progress those issues with the minister when you had dissatisfaction with the department, as in your president to the minister perhaps?

Mr ATKINS - When I received a letter back from Robert Pearce who is a lawyer - I am not too sure who the letter said about their investigation - confirming my thoughts about the investigation. I rang the minister's office wanting to make an urgent appointment with

him. I was unable to speak to the minister but I was able to get in touch with Roy Ormerod, the General Manager of Workplace Standards, and in hindsight, I suppose, I rang and cancelled the appointment with the minister. I thought it was appropriate to at least let the bureaucrats get their act into line in relation to that particular matter. So I think it is fair to say that he may have broached the situation with the Attorney-General over lunch but didn't actually give him the information. So this is of more recent times. That matter is still being investigated, as I understand it, and is now being investigated for the second time in approximately four weeks.

So when you say you are going to give the accreditation of building practitioners to the Director of Building Control, my response, based on that recent experience, is gee, I am concerned.

Mrs SMITH - Are you concerned where it went in the first instance, the TCC?

Mr ATKINS - There is a significant history-rumour, innuendo, reason for motivation. All the industry parties were agreeing to develop their own authorised body going forward, on the basis that if that was the only show in town going forward, that would be an appropriate outcome. As soon as there was a second party putting their hand up to be accredited or the authorised body, the industry body agreed that they would withdraw their activity of going forward in relation to that.

I think it would be fair to say that the history of the whole issue of the Building Act was very inflexible and that is the personality of the bureaucrats involved in it and their closeness to the drafting of the act and ownership of it. They did not really want to support any changes.

The Master Builders Association considered in its own right becoming an authorised body as a service to its members. Business plans were put together on it and the only issue that we could not corral was the cost of complaint investigation. We were also a bit concerned about swearing warrants, searching premises and seizing documents as a responsibility, under the act, of an authorised body. So we did not proceed with it.

Mrs SMITH - So you would be comfortable for the industry to be the accreditation body - any section of it - and somewhere else to have the role of being the arbitrator of disputes, accreditation queries?

Mr ATKINS - The formal process of assessing somebody's bona fides to be an accredited practitioner against set criteria is not difficult. There may be some grey areas which saves gentlemen from the industry, or women. They may be able to make a value judgment about the bona fides of an applicant, but that's not a difficult role; it is the actual enforcement component. Assuming the requirements go forward, we would be, as an association, quite happy to confirm or certify CPD compliance and commercial insurance requirements as well. They are not big issues, and we would do that as a member service.

The big issues are the audit, which needs to be undertaken independently, dispute resolution and the complaints investigation. Certainly I would not want to be party to those particular roles going forward because irrespective of how unbiased I am, there will always be that taint of bias.

Mrs SMITH - So if the Government of the day makes the decision - and it is their right to do that - to leave the system within the government bureaucracy but decides to have an advisory group of practitioners to give advice to the minister to make all this happen, the Master Builders Association would be interested, one presumes, in being part of that advisory body?

Mr ATKINS - We would certainly be applying, nominating ourselves, or whatever the requirement would be, to be party to that particular role, and we would fully support the decisions going forward because a lot of this is untested areas. It was better, despite where we are at today, to try the circumstances, albeit some issues were pre-identified as being concerns going forward, than not having anything.

Mrs SMITH - Could that not then solve the issues that appear to be there with the bureaucracy and their lack of action, that an advisory body would then give you the ability to go straight in to the minister to make those up-front comments all the time about bureaucracy that is not managing the process as they should?

Mr ATKINS - I think that would be the opportunity. The ministers certainly need to take all the information that they receive on board, and have it recorded and tested against the bureaucracy, but having said that, the bureaucracy we currently have in relation to this matter has been inflexible going forward. If it meant communicating directly with the minister, we would create a more flexible outcome, or at least a reasoned response for the lack of change where industry is subjected to change.

Mr SMITH - Thank you.

CHAIR - Your submission puts the proposition that it's not unreasonable to accredit the organisation, then the members who fall under that organisation ought be reasonably accepted for builders licensing or builders accreditation. That presupposes, of course, that somebody has made an assessment of the industry organisations' assessment of standards, I suppose, or their own accreditation standards. Who would make that assessment?

Mr ATKINS - The same sort of deal. If our model was the organisation the TCC would have made that assessment under the old regime. The issue here is about having someone accountable in relation to the actions of the organisation. Quite clearly, as I have tried to demonstrate, whilst this person could be deemed to be a builder, doing their technical work on site, actually doing their business management at home or their accounting work at home, as the case may be, a business could present those skills through a number of employees. It may be that there's a key person or key man involved in that particular organisation that would hold the licence. It may not even be a builder, it may be the company director or the general manager or somebody of that ilk who would be the person that would represent the organisation in relation to issues going forward, with the global skills presented by the organisation. It could be that during that process some personnel may be identified as, 'You maintain your accreditation while you have this person still employed. If they are not replaced, or if they leave, then you may need to advise us and identify how you are going to fill that void of skills'.

CHAIR - On the matter of housing indemnity insurance, you have indicated the success of the scheme which you ran through your association with HIH. What would be stopping a decent system going forward of the two, or something like that - allowing these two organisations to run a scheme such as you had. You have given us the figures at an earlier time of the number of claims and, I would have thought, a fair amount of access to builders information? Do you see any venture barriers to going down that path?

Mr ATKINS - I think politically there are a number of politicians that would not want to see industry organisations making money or whatever out of insurance that was mandated by government, which was an issue. There are some industry organisations that may not have the asset backing to be able to quantify or support claims that they may accrue a liability for going forward. There are a number of issues. If one organisation could do it and others could not, it creates a huge amount of tension for membership and all those sorts of issues so there would be a lot of political lobbying from others, irrespective of the fact that it might be opened up to any organisation that can establish their bona fides to actually do that.

CHAIR - You suggested that there would be opposition from MPs to an industry organisation making money from a government-mandated insurance, why does it have to be mandated? Why could it not be voluntary and therefore a marketing component of doing business with a member of yours?

Mr ATKINS - I think it is fair to say that in recent times - within two years - a review of the Housing Indemnity Act was announced. At that particular point in time, recognising our scheme as an interim scheme, it would have been in our interest for housing indemnity work to have been made as a voluntary outcome and our members could actually use that as a marketing tool going forward. So we had no problems, but it was not mandated. As we did in 1991, we actually introduced a voluntary scheme that the MBA were running as well. So it does not have to be mandated but certainly if it was not mandated it would be something that we, as an organisation, would look to resurrect formally as an opportunity for that as a safeguard marketing point, as you said, and also a safeguard to consumers.

CHAIR - Do you have a preference as to compulsory or voluntary?

Mr ATKINS - The compulsoriness is only ever about financial viability and ensuring consumers have some resource to rectify the defect if they are disenfranchised by this supposed professional or expert. If you go back to the insurance issue, it comes about with proportionate liability and the fact that builders potentially or traditionally have not had the balance sheet to support the operations. To cover that it was the Attorney-General back in the late 1970s or early 1980s decided that a model building act should be introduced on the basis of proportionate liability supported by insurance. That is to address this issue of builders traditionally not having the balance sheet to support their activities. That is the history, as I understand it, relevant to and mandated insurances in the building industry.

CHAIR - Are you aware of any overriding reason why you would change to a policy of first resort from a policy of last resort?

Mr ATKINS - The insurance market. My understanding of that particular aspect is that the insurers saw it as a high-risk insurance. I think it was high risk because they managed a falling and the old issue - of I may be so bold - that it was easier to pay someone \$10 000, whether it was a legitimate claim or not, particularly if the client was likely to take legal action to recover. It was the line of least resistance and we just kept on paying it. It looked like it was a great cash cow for commercial insurers. Then they thought, 'Wait a minute we're losing money' so I believe a number of them withdrew from the market and to entice them back last resort was the proposition that was suggested by them to government, and government has adopted it for the sake of having this consumer protection.

CHAIR - With the scheme which you ran after the collapse of HIH, is it reasonable to presume that there would be very few reasons or very few occasions where you would activate the policy because if there was a complaint you would investigate a complaint and if you found that the builder was at fault you would require him to go and fix it?

Mr ATKINS - Exactly right. It was significant lever about minimising consumer complaints. Chris Atkins said, 'Hey, Jo Blow, you have done the wrong thing here.' There are two ways forward, as far as I can see. They can fix it, so that there is no claim or, conversely, let the claim process go, we will get someone else to fix it and you will be footing the bill anyway. That was a significant lever that we now do not have. But I think it is fair to say that complaints of consumers on issues, post the quota of our scheme, has increased. I would have to do some research to confirm that. But certainly, since 1 July last year, the number of consumers coming to us with complaints that do not seem to get resolved very quickly has increased.

CHAIR - Isn't it true to say that was the intention of the housing indemnity insurance as a coregulator proposition in 1993, that it was a non-prescriptive registration process?

Mr ATKINS - It could certainly take on the pseudo role going forward because it was not in the builder's interest to have a claim. The consequence is a higher insurance premium, becoming a risk to the insurer, because we don't know whether we are going to be able to give you the next policy, which had the ability to affect their capacity to generate an income.

CHAIR - Why then, with that as a backdrop, did the industry lobby for licensing or accreditation or registration - whatever you wish to call it?

Mr ATKINS - This was an issue about putting in some level of control and rigour in the process of protection, if you like. Builders operating in Victoria - and it is only 300 kilometres of water away - could relocate, drive their ute, their dog and their tools and come down here and start as a builder with immunity and no level of control. They have just done millions of dollars of damage in Victoria, they may be delicensed or deregistered, whatever it is, and come here and operate with immunity. We are a haven for that sort of activity. That is one particular reason, another is recognising that the industry is bigger than just housing, it is commercial as well.

CHAIR - Any further questions.

Mr ATKINS - Can I just add this: we were talking about the Building Act and defects insurance for commercial builders. We supported the introduction of the Building Act with all its problems from day one, in the belief that it was going to provide a better industry and greater level of consumer protection going forward. We spoke at some length about the different levels of professionalism within the industry, particularly in the commercial sector where, essentially, the deals are between commercial clients.

Why doesn't the Government see that they need to have a role of consumer protection at the commercial level? If they are mandating or dictating to commercial builders, they have to provide a defects insurance cover for their project to maintain it for 10 years. Defects insurance is about structural components in the building failing. Commercial builders were already required, in most cases by contracts, to have contract works insurance and whilst it may have detected the structural defect, any defect or damage that was caused from the structural failure was paid for out of contract works insurance. Generally, in the commercial sector architects and engineers are employed to look after those issues and sign off on major structural components of a building. They are required to a mandatory PI cover which would also cover the structural defects. So there seems to be a doubling up. All commercial builders who carry contract work because of their contract obligations are now required to have this defects insurance.

The other issue is that in my opinion, it becomes insurance for insurance sake. The second component in relation to this is that commercial builders were the only building practitioner category that had a mandatory insurance imposed on them that was not already commonplace in the industry, either by statute or good business practice. It was always good business practice to have PI if you were an architect or an engineer and most professional organisations mandated that. Domestic builders always had the requirement since 1993 to have housing indemnity insurance. Commercial builders generally operated on contract works insurance and, to a limited degree, PI insurance. This defects insurance was invented, if you like. It was mandated just so that there was a mandated insurance that the bureaucrats could be happy with - it is insurance for insurance sake. Statistically, Victoria has had it for quite a number of years and, despite numerous attempts to obtain statistical evidence of the number of claims on this policy, I have come up with zero. The Government is still refusing to move on in any way, shape or form. We have been lobbying, with that as the No. 1 lobbying item, since 1 July 2004, after the introduction of the Building Act.

The other issue that is still of concern is the ability of existing practitioners moving between levels of categories based on an AQF qualification and experience in the level required. That needs to be addressed to identify some opportunities of apprenticeships or provisional accreditation at the next level up. That is something that has not been contemplated in any great degree and that is going to curtail the market opportunities for a lot of builders and also dictate whether they are going to be boxed or barred because they cannot get into the next level to get the experience. They close their own business and go and work for somebody on the next level and then seek accreditation. So that is another issue that I think is curtailing the building industry through the operation of the Building Act.

The other issue is about owner-builders. There are 2 500 accredited practitioners. That needs to be taken in the light of the fact that a number of practitioners have numerous or multiple accreditations. So that figure might really be closer to 1 700 accredited

practitioners if you looked at the actual individuals that have been accredited. There are a lot more builders around than that and I can produce evidence of those that did not seek accreditation, could not get insurance, but were builders before that are still building today and generating an income, albeit, not complying with the market requirements that have been dictated or imposed by the Building Act. That is another area that we should provide the opportunity for those people who are legitimised or becoming employees of builders because it is distorting the market significantly.

CHAIR - Thank you very much, Chris.

THE WITNESS WITHDREW.