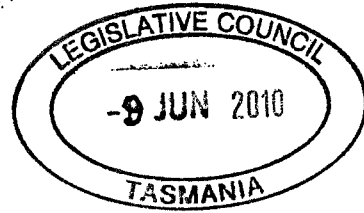


Tabled by  
Hon. D. Parkinson MLC  
9/6/10.

# **Government Response**

to the



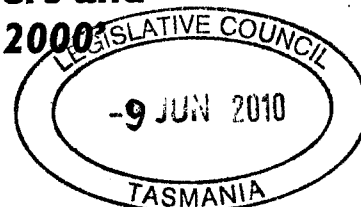
**Report**  
of the

**Legislative Council  
Select Committee**

on the

**Accreditation of Building  
Practitioners and  
Administration of the  
*Building Act 2000***

**Government response to the  
Report of the Legislative Council Select Committee  
'Accreditation of Building Practitioners and  
Administration of the *Building Act 2000***



**General comments**

Institution of this Select Committee by the Legislative Council in 2006 was at a time of a number of concurrent investigations in relation to the Service Level Agreement that had been signed by the Government and the Tasmanian Compliance Corporation Pty Ltd (TCC) prior to the 2006 election.

- It sought to uncover more information related to the appointment of the Tasmanian Compliance Corporation Pty Ltd and did not examine in depth wider building regulatory matters.
- The Terms of Reference (Item 2) is unclear. It seems to be a 'catch all' provision for a deeper investigation into Mr Green's dealings with the TCC.
- The Select Committee had to suspend its hearings until 2008 allowing time for other legal processes to take their course.
- When the Select Committee met again after this interruption, major changes to the administration of the *Building Act 2000* had occurred, rendering evidence given earlier by many witnesses as out of date.

The Select Committee's Report in December 2009, in the Government's view, has not met its Terms of Reference of developing an 'optimum framework' for building regulation.

**Background**

Matters in relation to the Service Level Agreement signed between the TCC and the Government were thoroughly investigated by a number of other inquiries or agencies including the Director of Public Prosecutions (DPP), the Auditor General and the corporate auditors KPMG.

In relation to the Service Level Agreement signed by Bryan Green MP and the TCC, Mr Green was charged with alleged breaches of the *Criminal Code Act 1924*. During two trials held in the Supreme Court of Tasmania in 2007 and 2008 two separate juries were unable to reach a verdict. The end result was that the DPP dropped criminal charges against Mr Green.

The Justice Department (Workplace Standards Tasmania) took over the accreditation functions under the *Building Act 2000* that were performed by the TCC in November 2006. The TCC has been wound up.

### **Select Committee Terms of Reference: Item 1**

“The accreditation of building practitioners including in particular all details of the agreement entered into between the Tasmanian Compliance Corporation and the then Minister responsible, the Hon Bryan Green”.

#### **Government Response**

It is noted that the Select Committee has not made any conclusions in relation to this Term of Reference and therefore the Tasmanian Government cannot make a specific response.

### **Select Committee Terms of Reference: Item 2**

“The optimum framework for the accreditation of building practitioners and administration of the *Building Act 2000* including the appropriateness of all consequential costs imposed on builders”.

#### **Government Response**

##### ‘Optimum framework’

The Select Committee’s Report neither provides guidance on an ‘optimum framework’ for accreditation nor on the administration of the Building Act. It merely contains some ‘Conclusions’ and ‘Recommendations’ on certain matters that the Committee wished to comment on.

The Building Act covers the accreditation of building practitioners. The Act was the result of ten years of consultation with industry and was based on the Model Building Act. A number of licensing options were considered before accreditation of building practitioners was adopted.

The Act represented the optimum framework at the time the Act was passed and at the time of its implementation in 2004. Five Reference Groups composed of industry representatives from 35 associations assisted with the implementation of the Act between 2001- 2004 including the development of accreditation processes and the Ministerial Guidelines for Accreditation in 2002. That framework implemented a co-regulatory system for the accreditation of building practitioners.

##### ‘Costs’

Accredited Building Practitioners include the responsible assessors, designers and builders of building work. This includes many different professions and occupations, not just builders.

The costs to industry and consumers associated with the introduction of the accreditation provisions of the Building Act were adequately covered by a Regulatory Impact Statement (RIS) on the Building Bill 1999. The Select Committee’s Report has not questioned this RIS.

### **Government Responses to Select Committee’s Conclusions (page 8 of 2009 Report).**

#### ***1. ‘TCC failed to deliver services’.***

##### **Government Response**

The TCC was a contractor working for the Government as the regulator. Its services were provided to the Government. It did not provide ‘services’ to industry or to individuals. It worked under an Authorised Scheme that had been approved by the

Minister and the TCC followed Ministerial Accreditation Guidelines developed by the five Reference Groups composed of Government and industry representatives.

The Government was primarily concerned during the period 2004 – 2006 with the introduction of accreditation which proved to be more difficult and complex than expected. The KPMG Report conclusions did find that the TCC made effective progress with the accreditation of a larger number of applicants than had been expected (see page 49 of KPMG Report 2006).

## **2. 'Last Resort Home Warranty Insurance and consumers'**

### **Government Response**

Housing Indemnity Insurance was required between 1994 and 2008 under the *Housing Indemnity Act 1993*. It was in operation for the decade before the Building Act became law. The mandatory component of this insurance was abolished in 2008.

The Terms of Reference of the Committee does not mention the Housing Indemnity Act.

This compulsory insurance was not administered under the Building Act.

## **3. 'Accreditation system should be competency based'**

### **Government Response**

Prior to the introduction of accreditation in 2004 there were temporary transitional provisions to enable persons to continue working and not to cause hardship. These provisions ceased to apply to new applicants after July 2004.

The accreditation system followed the Ministerial Guidelines developed in 2002. This was based on applicants achieving a particular qualification in accordance with the Australian Qualification Framework and relevant experience at the level of accreditation they are applying for. For example, a builder has to achieve at least a Certificate IV in construction and have two years relevant experience.

The current *Scheme for the Accreditation of Building Practitioners 2008* is also competency based. Persons who can prove that they have the specified qualification and experience are therefore competent and can be accredited.

## **4. 'CPD is important'**

### **Government Response**

Agreed. Workplace Standards has employed a Continuing Professional Development Officer and an Education and Training Officer. The Workplace Standards' website has listings of upcoming CPD events. A wide range of activities is available including training courses and learning opportunities offered by Workplace Standards, industry groups or training organisations.

## **5. 'Alternative Dispute Resolution process needed'**

### **Government Response**

The *Consumer Affairs Act 1988* gives the Director of Consumer Affairs powers to investigate complaints. Over 100 domestic building work complaints are satisfactorily resolved each year. However, the Director cannot order restitution, he can only conciliate.

A new Bill, which will be released for public comment in July 2010, will contain provisions for the Director to order the rectification of faulty building works. It is anticipated that the Bill will be introduced into the Parliament before the end of the current sitting year and be in place early in 2011. The Bill will also enable the Director to engage alternate dispute resolution processes where these are appropriate.

The Bill will also contain a provision to make rectification orders. A rectification order will be able to be appealed in the Magistrate's Court.

The Tasmanian model will not rely on the use of formal alternate dispute resolution as a primary dispute resolution tool. In many cases a referral to formal mediation may result in additional costs and delay in the resolution of a dispute. From this perspective, mediation will be used only in those limited circumstances where a clear benefit is achievable.

The Bill will also acknowledge that there are circumstances where direct access to a court is appropriate and where delays might cause unnecessary costs to the parties. This would be the case, for example, where there are complex legal and contractual issues that need to be resolved and these matters are clearly outside of the scope of building officer's expertise. The Bill will also ensure that consumers do not use the dispute resolution process to avoid or delay payment.

The *Building and Construction Industry Security of Payment Act 2009* commenced on 17 December 2009. This Act introduces an entitlement for certain persons who carry out building and construction work (or who supply related goods or services) in the building and construction industry to timely payment for the work they carry out and the goods and services they supply.

## **6. 'Registration by professional bodies'**

### **Government Response**

It should be noted that joining an occupational body or professional association is entirely a private matter for individuals in the same way as joining a trade union or becoming a member of the local golf club. These bodies look after the interests of their members. They have no regulatory role in licensing or accreditation. This can only be performed by government as it is independent and at arms length from the commercial interests or internal politics of the professional associations. There is no requirement that these associations assess applicants prior to accreditation.

The provisions of the Building Act allowed industry groups to set up an Authorised Body to accredit building practitioners. The 'professions' did not do so when given the opportunity by Government in 2002.

## **7. 'Expert Review Panels required'**

### **Government Response**

Building practitioner accreditation since July 2004 has been based on qualifications and experience. There is no demonstrated need for "expert panels" to assess applicants and the current accreditation system is working well.

**8. 'Further investigation is required as it is impossible to know if all practitioners are properly classified'**

**Government Response**

The introduction of building practitioner accreditation in 2004 was a significant change and there were temporary transitional provisions to enable persons to continue working and not to cause hardship.

Since 2004 all new applicants have had to meet qualifications and experience requirements. The introduction of an accreditation or licensing system which disadvantages existing non-qualified practitioners by withdrawing their right to work, or by mandating the gaining of qualifications, is repressive and impractical.

There is no evidence of widespread mis-accreditation of practitioners. In 2008 new categories of builder were introduced to mirror categories developed nationally. These have been working well.

Any practitioner is liable for disciplinary action for misconduct including the loss of accreditation if their behaviour results in a formal complaint to the Director of Building Control of either unprofessional conduct or of professional misconduct.

**Government Responses to the Select Committee's Recommendations (page 9 of Report):**

**1. A review of the process of accrediting of building practitioners since the takeover by Workplace Standards Tasmania (in 2006)**

**Government Response**

A review of the accreditation functions of Workplace Standards is not justified and would create a costly and unnecessary disruption of activities. The following reforms have taken place since Workplace Standards took over all accreditation functions in 2006:

- A new Accreditation Scheme commenced in 2008 after consultation with industry.
- Accreditation fees are now set by the *Building Regulations 2004* and these have the support of industry.
- Audits of Accredited Building Practitioners, owner builders and councils are progressing as Workplace Standards now has three full time Building Control Branch Audit and Compliance staff.
- Workplace Standards has no role under the Building Act in the resolution of disputes. See the response to the Committee's Conclusion number 5.
- The Government performs a regulatory role under the Building Act and must ensure a quality standard is met, it is not a service provider to the building industry.

## **2. *Dispute resolution process***

### **Government Response**

See the Government response to Committee Conclusion number 5.

Inclusion of this item in the Report's Recommendations is not applicable as the Second Term of Reference of the Select Committee refers to the administration of the Building Act. However, that Act has never included any laws, process, or other methods to resolve disputes or order rectification of faulty building work. Neither the TCC nor Workplace Standards has ever had this role, or any powers to assist in resolving contractual disputes between parties to a building dispute.

## **3. *Architects Act 1929 be retained***

### **Government Response**

There is already mutual recognition of architects accredited under the Building Act through the operation of the *Mutual Recognition (Tasmania) Act 1993* and equivalent legislation in other states and territories. The Architects Act is currently under review.

## **4. *To avoid unnecessary and unreasonable duplication: -***

### **(1) *Registration under the Architects Act 1929 be acceptable for accreditation under the Building Act 2000***

#### **Government Response**

Since the Building Act commenced it has recognised that a person who has been registered by the Board of Architects under the *Architects Act 1929* can apply for accreditation as a building practitioner in the architect category. The Architects Act exists primarily to prevent the unauthorised use of the word 'architect' by persons who are not registered by the Board. The Architects Act has no provision for mandatory professional indemnity insurance. The range of disciplinary actions under that Act that could be made by the Board of Architects against architects is very limited. The Architects Act is currently under review.

### **(2) *Registration by building surveyors and engineers by their professional bodies is an acceptable qualification for accreditation as a building practitioner***

#### **Government Response**

See also the response to the Committee's Conclusion number 6. It is important to note discretionary private membership does not equate to government mandated registration. There is no duplication and there is no unnecessary hardship involved with becoming accredited as a building practitioner. Professional associations look after the interests of building surveyors and engineers and do not operate under a statutory framework. They are solely responsible to their members, not to the community.

It is also worth recording the recent criticism of private bodies (such as the Tasmanian Compliance Corporation) carrying out government regulatory functions, so a Recommendation that private professional bodies should be acceptable for accreditation activities is questionable. The Select Committee's Report Executive Summary at page 4

states that: 'The evidence raised concern about the motivations and difficulties encountered by having a private company in charge of the accreditation process'.

**5. *Expert Panels be established to assess those applying for accreditation***

**Government Response**

See the response to the Committee's Conclusion number 7. There is no demonstrated need for 'expert panels' to check clearly mandated qualifications and experience requirements.