



Tasmanian Audit Office

Accountability on Your Behalf

Report of the Auditor-General

SPECIAL REPORT NO. 64

Implementation of aspects of
the *Building Act 2000*

November 2006

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and therefore the Tasmanian Audit Office, are set out in the *Financial Management and Audit Act 1990*.

Our major responsibility is to conduct financial or 'attest' audits of State public sector agencies' annual financial reports. We also audit the Treasurer's Annual Financial Statements which report on financial transactions in the Public Account, and the consolidated whole of government financial report.

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In the main financial reports by agencies are prepared consistent with Accounting Standards and other mandatory professional requirements in Australia. On occasion reports are "special purpose financial reports" such as the Treasurer's Annual Financial Report. In all cases our audits are conducted in accordance with Australian Auditing Standards.

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We also conduct performance audits and compliance audits. Performance audits examine whether an agency is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or part of an agency's operations, or consider particular issues across a number of agencies.

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Management of agencies are provided with opportunity to comment on any matters reported. Where they choose to do so, their responses are detailed within the reports.



2006

PARLIAMENT OF TASMANIA

**AUDITOR-GENERAL
SPECIAL REPORT No. 64**

**IMPLEMENTATION OF ASPECTS
OF THE *BUILDING ACT 2000*
November 2006**

*Presented to both Houses of Parliament in accordance with the provisions
of Section 57 of the Financial Management and Audit Act 1990*

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29 November 2006

President
Legislative Council
HOBART

Speaker
House of Assembly
HOBART

Dear Mr President
Dear Mr Speaker

SPECIAL REPORT NO. 64
Implementation of aspects of the *Building Act 2000*

This report has been prepared consequent to examinations conducted under section 44 of the *Financial Management and Audit Act 1990*, for submission to Parliament under the provisions of section 57 of the Act.

This report deals with the implementation by Workplace Standards Tasmania of aspects of the *Building Act 2000*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H M Blake', with a long horizontal flourish extending to the right.

H M Blake
AUDITOR-GENERAL

CONTENTS

Foreword	i
List of acronyms and abbreviations.....	ii
Definition of key terms.....	ii
Executive summary.....	2
Recommendations and management responses —.....	6
Introduction	10
Anticipated advantages of the new Act	12
Co-regulatory model	12
1 Appointment process	18
1.1 Background	18
1.2 Establishment of policies and procedures	18
1.3 Relevance of conventional procurement guidelines	19
1.4 Effectiveness of the due diligence conducted by WST.....	21
1.5 Undue influence by any Minister in appointing TCC.....	22
1.6 Conclusions	22
2 Decisions to exclude certain entities.....	24
2.1 Background	24
2.2 Applicants to be authorised bodies.....	24
2.3 Appointment of multiple authorised bodies.....	24
2.4 Application by Building Professions Accreditation Corporation Tasmania Ltd (BPACT)	25
2.5 Independence and viability	26
2.6 Conclusions	28
3 Management of the TCC arrangement	30
3.1 Background	30
3.2 Role played by WST	30
3.3 Experience in Victoria.....	30
3.4 What TCC was responsible for?.....	31
3.5 ‘Grandfathering’ implementation.....	32
3.6 TCC’s performance	32
3.7 Contract management approach to monitoring the performance of TCC	33
3.8 Legislative support for managing the TCC	33
3.9 TCC’s views of its performance.....	34
3.10 Impediments to TCC’s performance.....	36
3.11 Conclusions	37

4	Functions of the Director of Building Control.....	40
4.1	Background	40
4.2	Appropriateness of these powers	40
4.3	Appropriateness of the resources available to the DBC.....	40
5	The need, or otherwise, for a formal agreement with TCC	42
5.1	Background — legislative requirements	42
5.2	A contract could have made expectations explicit.....	42
5.3	Type of contractual arrangement	43
5.4	Was the approved scheme a contract?.....	44
5.5	Conclusions	44
6	Recent reports	46
7	Future projects	48
	Appendix 1: The objectives of the Building Bill 2000	50
	Appendix 2: Relevant extracts from the <i>Building Act 2000</i>	51

List of tables

Table1:	Differing views of TCC's performance	34
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Foreword

The *Building Act 2000*, which came into force on 1 July 2004, introduced a number of initiatives aimed at establishing, maintaining and improving standards for the construction of sustainably designed buildings. One such initiative was a new compulsory requirement that participants in the building industry be accredited.

Previously, accreditation arrangements existed but were voluntary. This requirement was introduced to protect consumers of building services by requiring that industry participants be competent. The Act established the appointment of ‘authorised bodies’ for the purpose of providing accreditation of categories of building practitioners and other related activities.

To date only one entity, a private company, has been appointed as an authorised body. Effectively this resulted in the outsourcing, in 2003, by Workplace Standards Tasmania (WST), at that time a division within the Department of Infrastructure, Energy and Resources, of a regulatory function. Outsourcing requires the establishment of very clear processes and other arrangements that will ensure the services being provided meet agreed objectives in a timely manner, the inclusion of contingency arrangements and protection of respective assets including intellectual property.

WST worked hard to prepare for the implementation of the Act and it continued to do so post implementation. This resulted in the core activity required of the appointed authorised body, the accreditation of building practitioners, being done quite well. However, there were gaps in some of the other functions that were required although there was disagreement between the parties as to the level of performance achieved.

A formal agreement between the parties should have been entered into at the outset. Such an agreement should have specified expectations and how performance was to be measured and actions required in the event performance did not meet expectations.

HM Blake

Auditor-General

29 November 2006

List of acronyms and abbreviations

Agencies	Collective term used in this Report to cover Government departments and other entities reviewed
AQF	Australian Qualifications Framework
ARG	Accreditation Reference Group
BPACT	Building Professions Accreditation Corporation Tasmania Ltd
BRAC	Building Regulation Advisory Committee
BG	Builders Group
CA&FT	Consumer Affairs and Fair Trading
CPD	Continuing professional development
DBC	Director of Building Control
DIER	Department of Infrastructure, Energy and Resources
DoJ	Department of Justice
DPP	Director of Public Prosecutions
SLA	Service level agreement
TCC	Tasmanian Compliance Corporation Pty Ltd
TAO	Tasmanian Audit Office
The Act	<i>Building Act 2000</i>
TIs	Treasurer's Instructions
WST	Workplace Standards Tasmania

Definition of key terms

Authorised body	Established under the Act to carry out the function of accrediting building practitioners.
Building practitioners	All entities/persons wishing to carry out building related work including builders, architects, plumbers, engineers, and building surveyors.
Director of Building Control	A position established under the Act responsible for assisting the Minister in the administration of the Act.
Schemes	Schemes put forward by applicants to be authorised bodies, which had to comply with the Minister's guidelines.

Executive summary

Executive summary

Introduction

Review of material provided by Workplace Standards Tasmania (WST) relating primarily to the appointment of authorised bodies under the *Building Act 2000* indicated to me that aspects of the administration of this legislation could be improved. It is acknowledged that the legislation introduced ‘green-field’ concepts in that, for the first time, building practitioners were required to be accredited by authorised bodies that had to be an incorporated body or a statutory body. This meant that WST had to develop systems and processes to facilitate the outsourcing, to the private sector or to a statutory body, a regulatory function.

The Minister appointments authorised bodies under the legislation. It is possible for more than one body to be appointed.

Applicants to be authorised bodies had to satisfy various requirements prior to being appointed including compliance with Ministerial guidelines. These guidelines were developed by WST with input from the building industry.

I performed a compliance audit examining whether the provisions of the *Building Act 2000*, as they relate to the appointment and role of authorised bodies, operate effectively and efficiently. The audit was conducted through documentation review and interviews with relevant staff at WST, with selected industry representatives and relevant Ministers and staff.

In determining my scope of work, I took into account the facts that:

- accounting firm KPMG had been appointed by the Secretary of the DoJ to review various matters including the performance of TCC in meetings its obligations
- the Director of Public Prosecutions (DPP) had decided to examine certain matters relating to the SLA.

As a result these matters were not included in my scope of work. However, I did consider the performance of TCC in delivering on its scheme from a WST perspective.

This audit was largely completed prior to the Premier’s announcement on 25 September 2006 that legislation is to be introduced to amend the *Building Act 2000* to make the Director of Building Control the sole entity responsible for accrediting builders. Despite this proposed change, it was decided to complete and table this Report. Recommendations are made on the basis of the arrangements existing prior to this announcement.

Findings

I found:

- WST had appropriate procedures in place to ensure that all applicants to be authorised bodies met a consistent set of guidelines and it worked collaboratively with all groups expressing an interest to ensure final applications met necessary guideline requirements.
 - The process followed by WST in appointing Tasmanian Compliance Corporation Pty Ltd (TCC) as an authorised body was both consultative and reasonable which resulted in the development of a scheme compliant with the Ministerial guidelines.
 - The inclusion of conventional procurement procedures would have enabled the appointment process to be even more transparent than it already was and, importantly, it would have gone a long way to avoiding the two matters which subsequently arose:
 - performance issues
 - rejection of one of the applicants.
 - No evidence was found of any undue influence by any Minister in the appointment of TCC as an authorised body.
 - Ultimately, the *Building Act 2000* provides discretion to the Minister to consider other issues when making a decision to appoint an authorised body regardless of the compliant nature of an application. In effect the Minister introduced new selection criteria.
 - The need for applicants to be authorised bodies to demonstrate their independence of the building practitioners that they were proposing to accredit is supported but this should have been identified as a requirement sooner.
 - The viability of individual applicants to be authorised bodies was assessed. However, introducing the need for consideration of the financial impact of more than one authorised body providing accreditation services was valid but this was a matter that should have been tested by WST.
 - There is evidence that TCC commenced the accreditation process promptly but that there were delays in implementing some other aspects of the scheme.
-

However, views on TCC's performance varied and while WST managed this well, a formal contract between the parties would have assisted.

- Such a contract would have assisted WST in managing its relationship with TCC, could have provided for the protection of intellectual property and enabled the establishment of appropriate contingency arrangements in the event of either party wishing to withdraw.

Recommendations

The recommendations made were aimed at improving the processes, and minimising the associated risks, for appointing, and subsequently managing, authorised bodies and at the need to assess the viability of more than one authorised body being appointed. It was also recommended that a contract of agreement between Government and TCC should have been entered into. This would, for example, have enabled the protection of intellectual property for the government.

Recommendations and management response

Recommendations and management responses —

List of recommendations

The following table reproduces the recommendations contained in the body of this Report.

Rec No	Report section	Recommendation
1	1.3	When arrangements are made that are substantively similar to a contract for services consideration should be given to including the following processes: <ul style="list-style-type: none">▪ a rating system for assessing suitability and viability of applicants▪ the development of a probity plan▪ completion of a risk assessment▪ the development of a contract management plan▪ the development of a contingency plan.
2	1.4	Where due diligence is part of a process of appointing authorised bodies, steps should be included to ensure that responses are checked and confirmed.
3	2.5	WST should make an economic assessment of the financial viability of more than one authorised body providing accreditation functions.
4	5.2	A contract of agreement between the parties is entered into.

Management responses

Department of Justice

Thank you for the opportunity to comment on the final draft of the above audit.

You will recall that the Department of Justice through the General Manager of Workplace Standards Tasmania (WST) responded to your original draft of this audit. I also recall you met with the General Manager and with Mr Graeme Hunt of WST to discuss that first draft. Thank you for the changes you have made as a result of that input.

I still believe that it is not reasonable that there should have been any expectation that WST should apply the procurement guidelines described in the Treasurer's Instruction relating to projects of a value of in excess of \$500,000. I do accept from my point of view that having a contract with TCC may well have been of value in managing the relationship but I do not think it is reasonable to expect that those procurement guidelines would have been used. This was not an outsourcing of a government service nor was it in anyway a normal contract for service involving the expenditure of funds allocated to an Agency by the Parliament.

Staff at WST have also asked that I ask you to note that the introduction of contract procurement and probity requirements would require the application of expertise that did not reside at WST at the time.

However, I note that you mitigate your comments in a number of places and I accept that the comments, as they remain, are reasonably yours to make.

Once again, thank you for the opportunity to comment and I apologise for the brevity of those comments but understand that you are very limited in your time to table this documentation and therefore I thought it more important to get back to you promptly.

Department of Infrastructure, Energy and Resources

I acknowledge receipt of the confidential draft of the above report and I advise that my Department has no issue with the facts detailed therein nor the contents generally.

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Introduction

Introduction

This audit was largely completed prior to the Premier's announcement on 25 September 2006 that legislation is to be introduced to amend the *Building Act 2000* to make the Director of Building Control the sole entity responsible for accrediting builders. Despite this proposed change, it was decided to complete and table this Report. Recommendations are made on the basis of the arrangements existing prior to this announcement.

Background to the audit

In June 2006 it became evident that the then Minister for Infrastructure had signed a 'service level agreement' (SLA) with Tasmanian Compliance Corporation Pty Limited (TCC) in February 2006. The SLA related to the provision of services by TCC as an authorised body under the *Building Act 2000* (the Act).

Workplace Standards Tasmania (WST) administers the Act, and at that time it was a division of the Department of Infrastructure, Energy and Resources (DIER) although it is now part of the Department of Justice (DoJ).

On 14 July 2006 I confirmed that I would audit certain matters relating to the administration by WST of the Act. Prior to this I had read significant material provided by WST relating to the introduction of this new legislation from which I formed the preliminary conclusion that aspects of the administration of the Act could be improved. In determining my scope of work, I took into account the facts that:

- accounting firm KPMG had been appointed by the Secretary of the DoJ to review various matters including the performance of TCC in meetings its obligations
- the Director of Public Prosecutions (DPP) had decided to examine certain matters relating to the SLA.

As a result these matters were not included in my scope of work. However, I did consider the performance of TCC in delivering on its scheme from a WST perspective.

Relevant background to the Building Act 2000

The Act introduced significant change for participants in the building industry. Considerable work over a number of years leading up to 2000 resulted in this legislation, a copy of the objectives of which is included at Appendix 1.

Some changes were welcomed whilst others were not and the various participants responded differently to the proposed legislation. These

changes were not unique to Tasmania although implementation timeframes and models varied.

One change of particular relevance to this Report was accreditation arrangements. Previously accreditation arrangements existed but were voluntary with the Act introducing compulsory accreditation of all participants in the building industry. This was done to protect consumers of building services by requiring that industry participants be competent. One way to achieve this was the requirement for industry participants to be accredited and the Act established the appointment of 'authorised bodies' for the purpose of providing accreditation of categories of building practitioners and other related activities.

While the Act was passed in 2000, it was not implemented until 1 July 2004. During the period leading up to 1 July 2004, a number of transition steps were taken to facilitate implementation including:

- the development of Ministerial guidelines to be satisfied by entities applying to become authorised bodies
- the appointment of authorised bodies with an objective being to commence accrediting participants in the industry in advance of the implementation date of 1 July 2004.

It is relevant to highlight some important features of the legislation:

- The management of the building industry would be one of 'co-regulation'. In other words, government would set the regulations and the industry would manage itself within these regulations.
 - The legislation allowed for the appointment of more than one authorised body although such appointments are completely at the discretion of the Minister.
 - Entities applying to become an authorised body must be incorporated or be a statutory body.
 - Appointment of authorised bodies is made under section 20 'Granting application' of the Act. This section does not require the entering into of an agreement between WST and the authorised body although the Minister may impose conditions and issue guidelines.
 - There is no cost to government of the accrediting process. Authorised bodies charge fees to applicants for their accrediting services.
-

Anticipated advantages of the new Act

It was anticipated that implementation of the Act would lead to greater protection for consumers therefore requiring a number of reforms including:

- mandatory accreditation of building practitioners
- improved insurance arrangements — mandatory insurance to ensure that insolvent building practitioners do not disadvantage consumers under a proportionate liability scheme. Such insurance is a pre-requirement for accreditation
- audits of building practitioners aimed at identifying areas of non-compliance and lifting standards
- the establishment of a register of accredited building practitioners
- continuing professional development schemes for accredited building practitioners.

Co-regulatory model

The Act introduced a model whereby the industry would regulate itself with surveillance by, and support from, WST. Conforming to legislated accreditation requirements was key to this model. It was anticipated that:

- Entities appointed to carry out accreditation of categories of building practitioners would be formed from representatives within the building industry.
- There could be situations where some participants in the industry would accredit their sector — for example, an incorporated body representing Architects could be established to accredit Architects (the *Architects Act 1929* was subsequently amended specifically to permit this).
- There might be more than one body established to carry out accrediting functions.

What does not appear to have been anticipated was that one incorporated body, from outside of the industry, would be appointed to fulfil the accrediting function for the whole industry. The appointment of the TCC challenged these expectations because:

- It was independent of the industry.
- It applied to accredit all categories of building participants.

Legislation introduced 'green-field' concepts

The appointment of authorised bodies to provide, amongst other things, an accreditation function was a new requirement. It also represented the possibility (which did occur) for outsourcing to the private sector of this function. WST had to develop guidelines for the Minister under which authorised bodies would operate and these guidelines formed the basis for their subsequent appointment.

Involving the private sector as a service provider providing a regulatory function introduced the need for elements that would normally be part of a traditional contract management approach.

Appointment of authorised bodies

Applications for the appointment by the Minister of authorised bodies were processed by WST during 2002, 2003 and 2004. To date only TCC has been appointed.

Requirements of authorised bodies

To become an authorised body, the following requirements must be met:

- The body must be an incorporated or statutory body, which can be appointed for the purpose of accrediting a specified category, or categories, of building practitioner.
- The application must be to the Minister and it must be accompanied by a statement detailing:
 - the accreditation scheme under which an applicant proposes to grant accreditation
 - the code of conduct by which the applicant proposes to measure the performance of accredited building practitioners
 - the categories, and classes of categories, of accreditation available and the scheme
 - the minimum qualifications and experience or competency required for the categories and classes
 - the representation on proposed committees of the body
 - a prescribed fee.

Note that 'schemes' referred to here are developed by applicants and must comply with the Ministerial guidelines.

Ministerial guidelines

In June 2002, WST finalised, and the Minister at that time issued, comprehensive guidelines for schemes for the accreditation of building practitioners which in effect required the establishment of the following:

- a governance model — establishing a co-regulatory model to oversee the operation of the scheme
- accreditation — the task of reviewing the credentials and experience of building practitioners and then accrediting them to undertake work to specified levels
- continuing professional development (CPD) — this required the development of a CPD framework and monitoring the CPD hours undertaken by building practitioners
- a code of conduct — the formal documentation of a code of conduct to which all building practitioner must comply
- complaints process — the establishment and operation of a mechanism for dealing with complaints by consumers about the conduct of accredited building practitioners
- auditing — which requires authorised bodies to review the work of building practitioners to verify ongoing competence.

Other key elements of the guidelines included:

- a system (based on the Australian Qualifications Framework) that recognises experience and competencies as well as formal qualifications
- minimum requirements for assessing accreditation applications
- minimum requirements for the audit and investigation of building practitioners based on a code of conduct
- minimum requirements for reporting to the Director of Building Control.

Role of industry bodies in the development of the Minister's guidelines

The guidelines referred to previously were developed after consultation with a reference group comprised of representatives of the building industry. These guidelines were available for public and industry comment, revised by the Accreditation Reference Group (a group established by WST) following receipt of public submissions

and endorsed by the Building Regulation Advisory Committee (established to advise the Minister on administration of the Act) prior to issue.

Objective

The objective of the audit was to ensure that the provisions of the *Building Act 2000*, as they relate to the appointment and role of authorised bodies, operate effectively and efficiently.

Scope

The audit examined implementation of certain provisions of the Act covering the period 2002 to 2006.

Criteria

Documentation at WST was examined with a view to answering:

- Was the appointment process efficient and effective and was compliance with the Treasurer's Instructions relevant?
- Were decisions not to appoint applicants to be authorised bodies appropriate?
- How effectively did WST manage the arrangement with TCC?
- Does the legislation enable the Director of Building Control to effectively fulfil his/her functions?
- Should the appointment of TCC as an authorised body have resulted in a formal agreement with Government?

Audit methodology

The audit was conducted through:

- documentation review
- interviews with relevant staff at WST and with selected industry representatives
- interviews with relevant Ministers and staff.

Timing

Planning for the audit began in July 2006 with fieldwork conducted in the period July to October. Audit fieldwork was held up by the DPP's work. The Report was completed in November 2006.

Resources

The total cost of the audit excluding report production costs was approximately \$57 000.

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1 Appointment process

1 Appointment process

1.1 *Background*

The appointment of TCC as an authorised body was made under legislation and its appointment did not involve expenditure of public monies. As a result, and because of the ‘green-field’ nature of this arrangement, the appointment did not follow ‘traditional’ procurement processes. However, I chose to assess the processes by comparison with a conventional procurement. Therefore, this section compares the process followed to the more traditional procurement approach and in doing so makes the assumption that the appointment resulted in a procurement contract in an amount of at least \$500 000.

In assessing efficiency and effectiveness I set out to answer the following:

- Did WST establish policies and procedures prior to calling for external parties to apply to become authorised bodies?
- Were conventional procurement guidelines relevant in this situation?
- How effective was the due diligence conducted by WST?
- Whether or not there was any undue influence by any Minister in the appointment of TCC.

I then explored the relevance of the concepts of ‘independence’ and ‘viability’ in decisions to appoint, or not appoint, authorised bodies.

1.2 *Establishment of policies and procedures*

Prior to calling for interested parties to apply to be authorised bodies, staff at WST, with input from the building industry, developed the Ministerial guidelines that were applied in the selection process. The guidelines, along with the application requirements of the Act, provided a consistent and comprehensive basis for potential authorised bodies to make their submissions.

Information was sent to 30 industry groups seeking expressions of interest, which initially led to three entities applying to become authorised bodies. Initial applications to be authorised bodies, including the application by TCC, did not satisfy the guidelines. This is not considered surprising particularly due to the green-field nature of the new arrangements, and the outcome was that WST spent time assisting these applicants develop their proposals towards the point where they satisfied the Minister’s guidelines. Ultimately, the TCC’s application was regarded as compliant and in August 2003 it was

appointed an authorised body by the then Minister. This appointment involved a letter of appointment under the Act and no contract of appointment was entered into nor was one required by the legislation.

Of the other two applications, one withdrew and the other did not meet the requirement of being an incorporated body or a statutory body.

1.3 *Relevance of conventional procurement guidelines*

While the appointment of authorised bodies did not result in any public expenditure, in order to assess the effectiveness of the appointment process, I compared the process followed to conventional procurement instructions issued under Treasurer's Instructions. My objective was to assess which, if any, conventional procurement processes were appropriate and should have been applied.

Early indications were that, based on accreditation fees proposed, the TCC would earn more than \$450 000 annually by the provision of accreditation services. Therefore, I compared the appointment process to procurement rules applying to situations where expenditure of \$500 000 or more was involved.

Public tenders

Under Treasurer's Instructions No. 1107¹, tenders are required for purchases in excess of \$100 000. The process followed to appoint authorised bodies was not strictly a tender, as it did not involve the exchange of money and there was no one-off timeframe for applications — the legislation allows for potential bodies to apply to the Minister at any time. I concluded that a conventional tender process was not relevant.

Nonetheless, inclusion of the procurement procedures outlined below would have enabled the appointment process to be even more transparent than it already was and it may have avoided two matters which subsequently arose:

- performance issues
- rejection of one of the applicants.

From this assessment it was concluded that the appointment process could have been improved by following some conventional procurement processes including:

- establishing selection criteria and an evaluation panel

¹ Treasurer's Instruction No. 1107 - Goods and Services procurement valued at \$100 000 and over (excluding GST)

- development of a probity plan
- preparing a risk assessment and contract management plan
- the establishment of contingency plans.

1.3.1 Selection criteria

In an outsourcing of an accreditation function of the nature outlined in this Report, two selection criteria omitted from the process should have been included and made clear to potential applicants at the outset:

- the need to demonstrate independence from the building participants to be accredited
- any impact on the financial viability of existing authorised bodies of appointing a further applicant(s).

In addition, the appointment process followed did not appear to include any rating framework for assessing applications, which raises the questions: had there been numerous applications that ‘met’ the legislative guidelines, how would WST have decided which ones were more suitable and how would the viability of the applicant(s) be assessed?

1.3.2 Probity

Treasury guidelines on probity are very useful but were not applied. Whilst there is evidence of significant consultation with the building industry by WST in the 2002-03 period, the risks — both political and performance-related — associated with appointment of authorised bodies was high. Development of a probity plan and engagement of a probity auditor would have reduced the risks and added credibility to the process.

1.3.3 Risk assessment and preparation of a contract management plan

I found no evidence of a risk assessment or a contract management plan. The lack of a contract management plan was possibly because the appointment was not seen as outsourcing of a government function. However, in my view, such a plan is essential to understanding respective (WST and TCC) responsibilities, expectations and timeframes and for taking action should either party not be complying.

It is, however, acknowledged that the scheme(s) proposed by authorised bodies could be regarded as a contract and that WST viewed the scheme in this light. The scheme developed by TCC outlined how it would implement the Minister’s guidelines.

However, the scheme did not deal with matters that would normally be included in a contract for the delivery of specified services such as:

- specified timeframes for the delivery of specified services
- action to be taken by either party should agreed procedures not be complied with
- ownership of intellectual property developed as part of implementation of the scheme
- termination protection for either party
- penalties for non-compliance.

1.3.4 Contingency plans

A conventional procurement of an outsourced activity would normally establish contingency arrangements in the event that appointed suppliers withdraw or are withdrawn. The process followed for appointing authorised bodies was extensive and inclusive and the risk of withdrawal was low. However, a contingency plan should have existed.

Recommendation 1

When arrangements are made that are substantively similar to a contract for services consideration should be given to including the following processes:

- **a rating system for assessing suitability and viability of applicants**
- **the development of a probity plan**
- **completion of a risk assessment**
- **the development of a contract management plan**
- **the development of a contingency plan.**

1.4 Effectiveness of the due diligence conducted by WST

It was pleasing to find that the process followed by WST included completion by applicants of a comprehensive due diligence checklist that asked numerous questions of applicants, including details of:

- the financial arrangements for the proposed scheme
- details of the directors.

However, I found no evidence that WST checked the information provided. Such checks may, for example, have assessed and independently confirmed the financial capability of the applicants including any potential impact on viability should more than one

authorised body be appointed. It is, however, acknowledged that such further checks may not have changed the decisions or appointment made.

Recommendation 2

Where due diligence is part of a process of appointing authorised bodies, steps should be included to ensure that responses are checked and confirmed.

1.5 *Undue influence by any Minister in appointing TCC*

No evidence was found to indicate that any Minister influenced the decision to appoint TCC as an authorised body.

1.6 *Conclusions*

WST had appropriate procedures in place to ensure that all applications met a consistent set of guidelines and that it worked collaboratively with all groups expressing an interest to ensure final applications met necessary guideline requirements.

The process followed by WST in appointing TCC as an authorised body was both consultative and reasonable which resulted in the development of a scheme compliant with the Ministerial guidelines.

The inclusion of conventional procurement procedures would have enabled the appointment process to be even more transparent than it already was and, importantly, it would have gone a long way to avoiding the two matters which subsequently arose:

- performance issues
- rejection of one of the applicants.

No evidence was found of any undue influence by any Minister in the appointment of TCC as an authorised body.

2 Decisions to exclude certain entities

2 Decisions to exclude certain entities

2.1 *Background*

Sections 19 and 20 (refer Appendix 2 for relevant extracts of the legislation) of the Act are relevant to this chapter. Under section 19 an incorporated body or statutory body may apply to the Minister to be an authorised body for the purpose of accrediting a specific category of building practitioner.

Section 20 allows the Minister to appoint authorised bodies if satisfied as to certain matters and the Minister may:

- authorise more than one body to be an authorised body
- impose conditions on the authorised body
- issue guidelines in respect of matters relating to a scheme under which accreditation of building practitioners is granted.

2.2 *Applicants to be authorised bodies*

Information on the WST files indicated there was considerable interest by entities wishing to become authorised bodies. However, to date only four applications have been received, all during 2003:

- Tasmanian Compliance Corporation Pty Ltd (TCC) — appointed as an authorised body in August 2003
- Joint Industry Group (JIG) — withdrew its application
- Consumer Affairs and Fair Trading (CA&FT) — WST received advice from the Solicitor-General to the effect that CA&FT did not satisfy section 19 of the Act in that it was not an incorporated body or a statutory body resulting in CA&FT withdrawing its application
- Building Professions Accreditation Corporation Tasmania Ltd (BPACT).

This chapter focuses on the application by BPACT.

2.3 *Appointment of multiple authorised bodies*

The Act allows the Minister to appoint more than one body as an authorised body. One of the reasons provided (discussed further below) for not appointing BPACT was that it might not have been viable for there to be more than one authorised body. While this may have been valid, the contention was never tested.

WST and the industry estimated that there would be approximately 1 200 accredited building practitioners. The financial components of

the scheme proposed by TCC estimated that it would earn \$452 250 in year one, \$349 312 in year two and \$379 867 in year three. Subsequently these estimates are understood to have been conservative mainly because many more building practitioners sought accreditation.

However, in my view, consideration of whether TCC earned more or less than estimated in its original scheme is not relevant. TCC is understood to have based its business case on the possibility that more than one authorised body would be appointed and the risk that another player could enter a competitive market was one for TCC to consider.

2.4 *Application by Building Professions Accreditation Corporation Tasmania Ltd (BPACT)*

This application was also received in 2003 although after TCC had been appointed. A similar consultative approach was adopted by WST and the application was worked on until it reached the point where it was regarded by WST as compliant with the Minister's guidelines.

BPACT applied to accredit engineers on the National Professional Engineers Register, registered architects and some building surveyors on the Professional Engineers Register. It is noted that TCC had been appointed to accredit all types of industry participants.

Consistent with the manner in which the TCC application was handled, once WST concluded that the BPACT application was compliant, it recommended BPACT's appointment as an authorised body to the Minister (now Minister Green). This occurred in February 2004. This recommendation was received by the Minister's Office on 18 February 2004 and rejected on 15 March with the Minister seeking, at a meeting held between the Minister and representatives of WST on 9 March 2004, further information as to whether or not it was in the public interest to appoint BPACT. Following further consideration of the matters raised by the Minister, on 29 April 2004 WST recommended to the Minister that BPACT not be appointed and that this decision be reconsidered at a future date.

The Minister identified the following reasons for rejecting the recommended appointment:

- lack of independence and transparency (for example because there was no external/community representative on the proposed BPACT board)
- viability of more than one authorised body.

These matters are considered further below.

There is evidence that efforts were made by WST to seek changes to the BPACT application to satisfy the Minister's concerns. It is understood that these efforts failed partly because BPACT was reluctant to revise its scheme on the basis that it had been judged as compliant by WST and BPACT believed they satisfied the independence requirements as originally documented. Ultimately the matter was taken to Court.

2.5 *Independence and viability*

These two matters are explored further because of their relevance to the decision not to appoint BPACT as an authorised body.

2.5.1 Independence of authorised bodies

In recent years the independence of professionals has been topical with a recent change being that, in the auditing profession, only the Australian Securities and Investments Commission can appoint registered company auditors.

The concept of 'independence' used here is one whereby participants in an industry do not self accredit or regulate. In this context the question is asked — for example, should plumbers accredit, regulate, audit or manage complaints about plumbers?

Prior to the introduction of the Act, the building industry applied a process of voluntary accreditation where the issue of independence was not relevant.

The new arrangements were introduced as a co-regulatory model. This was always the intention and represented a model whereby the building industry would regulate itself with oversight from government, via WST. This model envisaged the appointment of authorised bodies to separately accredit building practitioners and it did not, at least not initially, explicitly require the inclusion of independence as a criterion for selecting authorised bodies.

Instead, the Ministerial guidelines established requirements whereby a form of independence was achieved by the requirement for authorised bodies to include in their schemes:

- proposed committee structures including relevant industry representation thereon
- codes of conduct with which building practitioners must comply
- an effective governance model.

The application by TCC effectively challenged these independence arrangements and following its appointment, it openly promoted the

facts that it was independent of the industry and that this was to the benefit of consumers.

2.5.2 Viability

Viability is addressed in two contexts:

2.5.2.1 The viability of individual applicants

To be authorised bodies, applicants were required to demonstrate, via a due diligence process, how the financial arrangements they proposed enabled each to be viable. In this respect, viability was included as a selection criterion to the extent that due diligence required applicants to demonstrate their financial viability. The proposed financial arrangements also provided indication of fees to be charged to building participants applying to be accredited and for WST to assess the reasonableness of these fees.

As has been noted earlier, the TCC application was made on the basis that there might be more authorised bodies appointed. In any event, the fact that more than one might exist, resulting in competition, was a risk it had to factor into its own business case.

2.5.2.2 Viability of more than one authorised body

This is an entirely different matter. The Act anticipates the appointment of more than one authorised body. However, the building industry promoted, at the outset, the concept of only one authorised body and this led to the application made by the Joint Industry Group. The industry is understood to have considered that the sector was not large enough to sustain more than one authorised body.

However, and as noted earlier, whether or not it was financially viable for more than one authorised body to operate was not tested. BPACT applied knowing that one authorised body already existed and, at least initially, WST supported BPACT's business case.

2.5.2.3 Was there a change in policy?

I held discussions with relevant Ministers (Minister Cox and Minister Green) to ascertain whether or not there had been a change in policy in applying the concepts of independence and viability; particularly as these concepts were applied in the decision not to appoint BPACT but were dealt with differently earlier. It is also noted that the Minister has absolute discretion under the Act in making appointments of authorised bodies. I am satisfied that:

- The concept of independence was appropriate in the context of appointing authorised bodies.
-

- The need for applicants to demonstrate their own viability was satisfied although the due diligence process should have been stronger.

However, the need for applicants to demonstrate that the existence of more than one authorised body was not financially sustainable or in the best interests of all concerned, whilst being a valid consideration, was not tested and this should have been done.

Recommendation 3

WST should make an economic assessment of the financial viability of more than one authorised body providing accreditation functions.

2.6 Conclusions

Ultimately, the *Building Act 2000* provides discretion to the Minister to consider other issues when making a decision to appoint an authorised body regardless of the compliant nature of an application. In effect the Minister introduced new selection criteria.

The need for applicants to be authorised bodies to demonstrate their independence of the building practitioners that they were proposing to accredit is supported but this should have been identified as a requirement sooner.

The viability of individual applicants to be authorised bodies was assessed. However, introducing the need for consideration of the financial impact of more than one authorised body providing accreditation services was valid but this was a matter that should have been tested by WST.

3 Management of the TCC arrangement

3 Management of the TCC arrangement

3.1 *Background*

The comments below have been made following discussion with WST and documentation review, which included minutes of the Building Regulation Advisory Committee (BRAC). The primary link between WST and TCC was via the Builders Group (BG), a committee established by WST that contained representatives from WST, TCC, Local Government Association of Tasmania, a representative from the Minister's office and other builder groups.

3.2 *Role played by WST*

WST is responsible for implementing the Act. It did so in an environment of disagreements amongst participants in the industry. WST completed a great deal of work in the period leading up to implementation of the Act on 1 July 2004 including, of relevance to this section, development of:

- a detailed program for the implementation of the Act
- guidelines for schemes for the accrediting of building practitioners (referred to as the Minister's guidelines). Entities wishing to apply for appointment as authorised bodies were required to develop schemes compliant with these guidelines.

Recommendations to the Minister for appointing, or not appointing, authorised bodies were made by WST.

3.3 *Experience in Victoria*

While the size of the building industry in Victoria is significantly larger than that in Tasmania, comparative assessment is helpful in considering WST's effectiveness in implementing aspects of the Act.

The Victorian Auditor-General examined the way in which various statutory bodies in that State undertook their respective roles in relation to their *Building Act 1993* (the Victorian Act). The outcomes from this work were tabled in a report in 2000. Relevant information and findings include:

- Five statutory bodies, including the Building Control Commission (the Commission), were established to manage the new arrangements relating to building control. None of these bodies were outside of the public sector.

- Implementation of the Victorian Act allowed for the registration of building practitioners under transitional arrangements between July 1994 and June 1997.
- The Auditor-General commended the Commission for its implementation of the new regulatory requirements.
- However, suggestions were made for improvements in the way in which some aspects of the building control framework had been established and administered in Victoria. Examples of where improvements were noted related to practitioner registration, complaint investigation and auditing processes.

Of relevance to this Report and, therefore, to the situation that has arisen in Tasmania is that:

- The audit report in Victoria was completed after the Victorian Act had been operating for approximately six years — the legislation has been operating in Tasmania since July 2004.
- Some of the issues identified by that audit have also arisen here — practitioner registration, complaint investigation and auditing processes.

3.4 *What TCC was responsible for?*

It is reasonable to expect that once TCC was appointed it would take steps to deliver on its proposed scheme. However, because it was starting from scratch it was recognised by WST that it was not possible for TCC to complete all of the designated functions at once. The activities that TCC was required to perform were detailed in the Introduction to this Report and are repeated below:

- a governance model — establishing a co-regulatory model to oversee the operation of the scheme
 - accreditation — the task of reviewing the credentials and experience of building practitioners and then accrediting them to undertake work to specified levels
 - continuing professional development (CPD) — this required the development of a CPD framework and monitoring the CPD hours undertaken by building practitioners
 - a code of conduct — the formal documentation of a code of conduct to which all building practitioner must comply
-

- complaints process — the establishment and operation of a mechanism for dealing with complaints by consumers about the conduct of accredited building practitioners
- auditing — which required authorised bodies to review the work of building practitioners to verify ongoing competence.

TCC's appointment was confirmed in August 2003 and, in order to facilitate commencement of the Act by 1 July 2004, it was essential that the accreditation process start quickly.

3.5 *'Grandfathering' implementation*

An important component of the new legislation was that, to achieve accreditation, building practitioners had to be competent based on the Australian Qualifications Framework (AQF) and national competencies and benchmarks. The TCC was appointed in August 2003 and its scheme incorporated this requirement. However, at that time some building practitioners did not comply with this framework and, to allow bona fide builders to continue in the industry upon implementation of the Act on 1 July 2004, WST agreed transition arrangements. This included 'grandfathering' under which, for example, builders who could not provide evidence of qualifications, could be accredited to certain levels based on recent building projects undertaken.

3.6 *TCC's performance*

There is some evidence in WST's files that indicates that TCC initiated the accreditation process promptly and a number of building practitioners were accredited by 1 July 2004. Senior management at WST confirm their satisfaction at TCC's performance in this regard.

However, minutes of BRAC meetings, discussions with senior staff at WST and review of documentation held by WST suggest concerns were raised early on regarding TCC's performance in other areas. There were suggestions that TCC was behind in establishing processes for, and actioning, the following:

- establishment of a process to deal with complaints
- promotion of an agreed code of conduct for the industry
- establishment of industry committees to facilitate co-regulation
- audits of building practitioners.

WST established internal systems and documentation to assist it to monitor TCC's performance but this was only formalised in mid to late 2005 when more substantive steps were taken by WST to

demonstrate to TCC where there were gaps by it in delivery against its scheme. There is evidence that, prior to this, WST met with TCC frequently to both assist TCC to implement its scheme and to monitor TCC's performance.

Ultimately, WST saw the opportunity provided by TCC's request in late 2005 for a formal agreement between the parties (see further comment on the need or otherwise for an agreement in Chapter 5) to include particular matters that WST regarded as priorities for actioning by TCC. For example, the SLA entered into in February 2006 included performance requirements relating to the conduct of building practitioner audits and the development of a new code of conduct.

3.7 Contract management approach to monitoring the performance of TCC

The TCC had been appointed based on a scheme it developed that satisfied the Minister's guidelines and it would appear implicit that the proposed scheme would represent a minimum standard for TCC to achieve. The Act did not envisage the need for WST to enter into a contract with TCC.

It is WST's view that the scheme(s) could be regarded as a contract. There is some validity to this but ultimately it did not enable WST to require compliance and I found little evidence prior to mid-2005 of documented expectations between the parties. A traditional contract management approach is likely to have overcome this.

A contract management approach enables the contract manager (being WST in this case) to:

- develop a good understanding of the contract, and the responsibilities of the parties involved
- establish a system against which the performance of both parties can be monitored and problems can be identified early — either before or as they occur.

Contract management principles should have been applied and a formal contract entered into. It is acknowledged, however, that the existence of a contract may not have made it any easier for WST to withdraw authorisation under section 21.

This matter of the need or otherwise for a contract to have existed is considered further in Chapter 5 where one recommendation is made.

3.8 Legislative support for managing the TCC

When considering whether or not a formal contract should have been entered into, I had regard to the legislative ability of the Minister to withdraw authorised body status. Under section 21 of the Act, the

Minister may withdraw authorised body status if the appointed body fails to comply with any condition of the authorisation or the Minister is no longer satisfied that:

- the body has competence and expertise in accrediting building practitioners and/or
- there is a change to the Ministerial guidelines which the appointed body cannot satisfy.

It is my view that the risk to TCC of the Minister invoking section 21 was small as long as it demonstrated to WST competence and expertise and that it fulfilled the requirements of its scheme. The legislation does not explicitly address how WST is to manage the withdrawal process in the absence of other authorised bodies and of any right to the assets and intellectual property developed by the departing body.

I remain of the view that the engagement of authorised bodies should have been by way of a formal contract that should have addressed ownership of intellectual property and contingency plans in the event an authorised body voluntarily departed or was withdrawn under section 21. This matter is considered further in Chapter 5.

3.9 *TCC's views of its performance*

In an effort to reconcile perceptions about TCC's performance, its own claims that it had delivered 90% of its responsibilities and with assessments made by WST, I decided to review this further. I had also noted that some members of BRAC had been expressing disquiet regarding TCC's performance in some respects and that it had been calling for an audit by the DBC of TCC as early as mid 2005.

Table 1 summarises the differing views of TCC's performance as assessed in the period up to December 2005.

Table 1: Differing views of TCC's performance

TCC responsibility under its scheme	TCC view	WST view
Establish a governance model	Completed	Agree that a governance model was established but not fully implemented although an effective mechanism existed via the

		Builders Group.
Accrediting building practitioners	Completed and ongoing	Agreed
<p>Establish continuing professional development (CPD) arrangements for building practitioners. There were two components to this:</p> <ul style="list-style-type: none"> - development of a CPF framework and 	<p>TCC put forward a framework, which was rejected by the industry so WST developed frameworks, which TCC had to implement.</p>	Agreed
<ul style="list-style-type: none"> - - monitoring CPD hours undertaken by building practitioners 	Monitoring CPD hours undertaken was being done	Agreed
Development of a code of conduct	<p>A code of conduct was developed and included in the original scheme. TCC did not promote this scheme because it wished to develop a simplified code. TCC considers that it did promote a summary of the original code. TCC subsequently sought to change this code but ultimately resorted to the original code although this was post entering into the SLA</p>	<p>Acknowledged the code of conduct was developed but it was not adequately promoted in the industry. The proposal for a simplified code was made in late 2005 and rejected</p>
<p>Establish a complaints process. There were two components to this:</p> <ul style="list-style-type: none"> - establishment of a process whereby building practitioners who were refused accreditation could complain or appeal 	<p>No such complaints were made because the process followed by TCC facilitated the resolution of issues at the time of application.</p>	Agreed

<p>- establishment of a process for receiving complaints from the public about the performance of accredited building practitioners</p>	<p>TCC acknowledged there were delays in establishing this process but argue that it did not have to be established immediately due to the likelihood that complaints would not be made early on</p>	<p>TCC took too long to establish effective complaints processes and to respond to complaints from the public</p>
<p>Establish arrangements under which the performance of accredited building practitioners would be audited</p>	<p>Audits had commenced. TCC’s scheme envisaged the audit of 10% of the industry within the first three years of its appointment. TCC argued it was on track to achieve this 10%</p>	<p>Agree some audits had commenced, but this took too long to get started</p>

I indicated in the Introduction to this Report that I would not set out to assess TCC’s performance because this was a matter being considered by accounting firm KPMG. However, I was concerned at the different views being expressed by the parties, which Table 1 confirms. The existence of a formal contract between the parties may have facilitated better understanding of respective expectations and prompted relevant action earlier.

3.10 *Impediments to TCC’s performance*

TCC argued that matters occurred which delayed implementation of some of the functions for which it was responsible (discussions with WST indicate their concurrence with some of these views). This included:

- unexpected number of applicants — the TCC scheme was based on about 800 applicants — to date more than 2 200 have been accredited
- boycotting accreditation — one professional body advised its members not to register with TCC whilst another advised its members to delay application until the day before the Act was due to commence
- the need to apply transitional accreditation provisions was a requirement introduced after the TCC scheme had been approved

- the Supreme Court action by BPACT
- the departure of the Registrar (a position within TCC responsible for receiving and assessing applications for accreditation) and appointment of a replacement.

The inclusion of TCC's perspective within this Report is not done to suggest in any way that I support the reasons provided for any actual or perceived delays in their performance. There is little doubt, however, that it faced challenges and, based on the fact that this was a 'green-field' activity and on the experience of introducing this change in Victoria, the expectations by the industry and WST of TCC were quite high.

Regardless of these factors, TCC should have done everything in its power to deliver on its scheme as effectively and efficiently as possible. To do so would have avoided any threat to its appointment.

3.11 Conclusions

Despite significant efforts by WST, the Act was implemented in an environment of uncertainty and disagreement within the building industry. It was not anticipated that an entity would be appointed from outside of the industry to conduct builder accreditation nor that it would accredit all categories of building participants.

There is evidence that TCC commenced the accreditation process promptly but that there were delays in implementing some other aspects of the scheme.

Views on TCC's performance varied. WST managed this well although a formal contract between the parties would have assisted.

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4 Functions of the Director of Building Control

4 Functions of the Director of Building Control

4.1 *Background*

A Director of Building Control (DBC) may be appointed under section 6 of the Act and section 7 notes that this person's functions include:

- advising the Minister about all matters under the Act and the administration of the Act
- reviewing the performance of authorised bodies, building practitioners, permit authorities and councils
- carrying out any other function the Minister determines.

4.2 *Appropriateness of these powers*

In my view, as it relates to the appointment and management of authorised bodies, the powers of the DBC are adequate.

4.3 *Appropriateness of the resources available to the DBC*

During the course of this audit it was suggested to me that the resources available to WST to manage the implementation of the Act were inadequate. Whilst I made enquiries in this regard, and I concur with the view put to me that the Act brought about significant change, no conclusions were drawn. In my view this is a matter for WST to negotiate with DoJ.

5 The need, or otherwise, for a formal agreement with TCC

5 The need, or otherwise, for a formal agreement with TCC

In view of the investigation under way by the Director of Public Prosecutions (DPP), I make no comment on the validity or otherwise of the ‘service level agreement’ (SLA) nor do I comment on the circumstances that led to the development of the SLA.

5.1 *Background — legislative requirements*

The Act does not require the entering into of an agreement between WST and any appointed authorised body. Appointment of an authorised body is made under section 20 and under section 21 the Minister, by public notice, may withdraw authorisation if —

- (a) the body fails to comply with any condition of the authorisation or
- (b) the Minister is no longer satisfied as to any matter referred to in section 20(1).

Therefore, subject to change in the legislation, as long as the appointed authorised body is performing its functions in a manner satisfactory to WST, and therefore satisfactory to the Minister, and consistent with the terms of the authorisation, there would appear little risk of withdrawal of authorisation.

5.2 *A contract could have made expectations explicit*

It is normal with outsourced government functions for a contract to exist, which would often include minimum performance expectations, reporting requirements and completion timeframes. Such agreements are designed to protect the interests of the government and of the service provider.

In my view, there are four reasons why the existence of a contract, in which appointment conditions are identified more explicitly, would have been beneficial to both parties. The following sub-sections deal with these reasons in turn.

5.2.1 *To establish TCC’s obligations and responsibilities*

Whilst these obligations had initially been documented as part of the application made by TCC, their inclusion in a formal agreement would have made these explicit. Such an agreement could have included completion timeframes and the responsibilities of WST.

5.2.2 To establish a system to monitor performance

An agreement would have establishment minimum performance expectations and how this was to be monitored by both parties. This would include reporting obligations.

5.2.3 To provide for protection of intellectual property

As might be expected, TCC developed significant intellectual property, for example in setting up systems to accredit building practitioners. In circumstances of outsourcing government functions it is not uncommon for agreements to be entered into whereby the government owns intellectual property developed as part of the outsourced functions. This was not addressed by WST exposing it to the risk of having to re-establish such intellectual property should TCC collapse or withdraw, or should the Minister take action to withdraw the authorisation.

It is acknowledged that WST did attempt to deal with this in the SLA.

5.2.4 To establish respective withdrawal arrangements

The Act establishes situations in which the Minister can withdraw appointment of authorised bodies. No similar provision exists for authorised bodies. No arrangements were in place to assist in managing any outcomes from a decision by either party to withdraw or to replace the services being provided.

Recommendation 4

A contract of agreement between the parties is entered into.

5.3 Type of contractual arrangement

Consideration has been given to the type of contract that is most suitable to the circumstances of an outsourced regulatory function. In my view, an alliance contract would have been suitable — an alliance contract is one where the service provider opens its books to the government agency involved and there is significant sharing of information and shared management of risks. The opening of books is aimed at ensuring the service provider is making a reasonable return on its investment.

There is evidence of significant sharing of information between WST and TCC although this did not include matters such as the financial

performance of TCC. TCC did not satisfy, in a timely manner, its reporting obligations as it related to its financial performance.

5.4 Was the approved scheme a contract?

WST argue that the approved TCC scheme was in the nature of a contract. This is accepted but, as outlined earlier in this Report, the scheme documentation did not contain a number of features that a conventional contract for services might have done.

5.5 Conclusions

An agreement between the parties would have assisted WST in managing its relationship with TCC, could have provided for the protection of intellectual property and enabled the establishment of appropriate contingency arrangements in the event of either party wishing to withdraw.

6 Recent reports

6 Recent reports

Year	Special Report No.	Title
2001	36	Collection of receivables and loans in Tasmanian government departments
2001	37	Archives Office of Tasmania
2001	38	The implementation of Goods and Services Tax in government agencies and local government entities
2001	39	Bank account reconciliations
2002	40	Environmental management and pollution control
2002	41	Keeping schools safe
2002	42	Follow up of performance audits
2002	43	Oral health service: Something to smile about?
2002	44	Managing community service orders
2003	45	Business names and incorporated associations: What's in a name?
2003	46	Leave in government departments
2003	47	Public sector web sites
2003	48	Grants to the community sector
2003	49	Staff selection in government agencies
2003	50	Police response times
2004	-	Ex-gratia payment to the former Governor Mr R W Butler AC
2004	51	Special purpose and trust funds: Department of Health and Human Services
2004	52	Internal audit in the public sector
2005	53	Follow-up audits
2005	54	Compliance audits
2005	55	Gun control in Tasmania
2005	56	TT-Line: Governance review
2005	57	Public housing: Meeting the need?
2005	58	FBT, Payment of Accounts and Bridges
2006	59	Delegations in government agencies, Local government delegations and Overseas Travel
2006	60	Building Security and Contracts appointing Global Value Management
2006	61	Elective surgery in public hospitals
2006	62	Training and development
2006	63	Environmental management and pollution control by local government

7 Future projects

7 Future projects

Details of performance and compliance audits that the Auditor-General is considering are:

PERFORMANCE AUDITS:

Business case and recurrent funding for new Risdon Prison

Examines:

some economic aspects of the business case for the new prison

adequacy of planning and provision of recurrent funding to run the new prison.

Follow up of previous performance audits

Examines the degree of implementation of recommendations in selected performance audits between July 2001 and December 2004:

No 37: Archives Office of Tasmania

No 40: Environmental management and pollution control

No 43: Oral health services: Something to smile about?

No 44: Managing community service orders

No 45: Business names and incorporated associations: What's in a name?

No 50: Police response times

No 52: Internal audit in the public sector.

COMPLIANCE AUDITS:

Building security part 2

Continuing on from Special Report No. 60, the audit will examine physical security at public access sites such as schools, hospitals and libraries.

Selected allowances and nurses' overtime

Examines allowances paid to Ambulance Officers, Visiting Medical Officers and Custodial Officers. Also reviews trends in nurses' overtime at the Royal Hobart Hospital over a three-year period.

Appendices

Appendix 1: The objectives of the Building Bill 2000

The Objectives of the Building Bill 2000 are:

- (a) *to establish, maintain and improve standards for the construction and maintenance of sustainably designed buildings;*
- (b) *to facilitate-*
 - (i) *the adoption and efficient application of national uniform building and plumbing standards;*
 - (ii) *national accreditation of building and plumbing products, construction methods, building designs, building components and building and plumbing systems;*
 - (iii) *the adoption and efficient use of performance-based technical standards;*
- (c) *to enhance the amenity of buildings, to meet the social needs of people who use buildings, and to protect the safety and health of people who use buildings;*
- (d) *to facilitate and promote the cost effective construction of buildings and the construction of environmentally and energy efficient buildings;*
- (e) *to provide an efficient and effective system for issuing building, plumbing and occupancy permits and administering and enforcing related building, plumbing and safety matters and resolving disputes;*
- (f) *to protect consumers who use building practitioners;*
- (g) *to reform aspects of the law relating to legal liability in relation to building and plumbing matters;*
- (h) *to aid the achievement of an efficient, innovative, competitive and sustainable building and plumbing industry.*
- (i) *to promote the consolidation of building legislation;*
- (j) *to promote the sustainable development of existing buildings and their maintenance;*

Appendix 2: Relevant extracts from the *Building Act 2000*

3. Interpretation (relevant definitions only)

(1) In this Act unless the contrary intention appears –

"accredited building practitioner" means a building practitioner who is accredited under [Part 4](#) and whose accreditation is in force;

"Advisory Committee" means the Building Regulation Advisory Committee established under [section 9](#);

"Appeal Board" means the Building Appeal Board established under [section 203](#);

"authorised body" means a body authorised under [Part 4](#) to accredit building practitioners;

"builder" means –

(a) a person engaged by the owner of a building to manage or carry out building work on the building; or

(b) if such a person does not exist or is unable to be found, the owner of that building;

"building permit" means a permit referred to in [section 60](#);

"building permit levy" means a levy referred to in [section 270](#);

"building practitioner" means a person of one of the following categories:

(a) a designer, other than a plumber, who is responsible for the design, documentation or certification of the design or inspection of building work, plumbing work, buildings or plumbing installations;

(b) a building surveyor or assistant building surveyor who is responsible for document assessment, certification, determination or inspection of building work or buildings;

(c) a builder who is responsible for the management, carrying out or certification of building work;

"designer" means an architect, engineer, draftsman, building designer or building services designer;

"Director" means the Director of Building Control appointed under section 6;

"insurance" includes –

- (a) professional indemnity insurance; and
- (b) a performance bond; and
- (c) a guarantee; and
- (d) an indemnity; and
- (e) public liability insurance; and
- (f) insurance relating to a particular building work or plumbing work; and
- (g) insurance taken out by any body or person which relates to the work of a building practitioner; and
- (h) any agreement or instrument in the nature of an item set out in paragraphs (a) to (g);
 - (a) a system of water supply; or
 - (b) a system of sewage or sullage drainage or disposal; or
 - (c) a system of stormwater drainage, roof drainage or trade waste drainage; or
 - (d) an on-site waste water management system;

"required insurance" means insurance required under section 48;

6. Director of Building Control

The Minister administering the *State Service Act 2000* may appoint a person employed under that Act to be the Director of Building Control and that person holds that office in conjunction with a position or an office under that Act.

7. General functions of Director

The Director has the following functions:

- (a) to advise the Minister about all matters under this Act and the administration of this Act;

- (b) to advise the Minister on legislation regarding matters relating to building and plumbing;
- (c) to liaise with any permit authority or council on its functions under this Act;
- (d) to liaise with the building and plumbing industries and other interested groups or bodies on matters relating to building and plumbing;
- (e) to liaise with, and represent the State on, in respect of any matter under this Act, any national body established to deal with matters relating to building and plumbing;
- (f) to facilitate training in respect of matters under this Act;
- (g) to publish reports and disseminate information on matters relating to building and plumbing;
- (h) to review the performance of authorised bodies, building practitioners, permit authorities and councils;
- (i) to carry out any other function the Minister determines.

8. Assistance to Director

(1) The Director may make arrangements with the Head of an Agency, within the meaning of the *State Service Act 2000*, for employees employed in that Agency to be made available to the Director to enable the Director to perform his or her functions and exercise his or her powers under this Act.

(2) A person may be made available to the Director in conjunction with a position in the State Service.

19. Application to be Authorised Body

An incorporated body or statutory body may apply to the Minister to be an authorised body for the purpose of accrediting a specified category of building practitioner.

(2) An application is to be accompanied by –

(a) a statement detailing –

(i) the scheme under which the body proposes to grant accreditation; and

(ii) the code of conduct by which the body proposes to measure the performance of accredited building practitioners; and

(iii) the categories, and classes of those categories, of accreditation available and the minimum qualifications and experience or competency required for each category and class; and

(b) a statement specifying the representation on proposed committees of the body; and

(c) a prescribed fee.

20. Granting application

(1) The Minister may authorise a body to be an authorised body if satisfied that –

(a) the body has competence and expertise in accrediting building practitioners; and

(b) the statements referred to in section 19 demonstrate that the body is suitable to be an authorised body; and

(c) the proposed scheme meets any guidelines determined by the Minister.

(2) The Minister may authorise more than one body to be an authorised body for accrediting a specified category of building practitioner.

(3) The Minister may authorise a body to be an authorised body subject to any conditions the Minister considers appropriate.

(4) The Minister, by public notice, is to notify the authorisation of an authorised body.

(5) The Minister may issue guidelines in respect of matters relating to a scheme under which accreditation is granted.

21. Withdrawal of authorisation

The Minister, by public notice, may withdraw the authorisation of a body to be an authorised body if –

(a) the body fails to comply with any condition of the authorisation; or

(b) the Minister is no longer satisfied as to any matter referred to in section 20(1).

22. General functions of authorised bodies

An authorised body is to –

(a) monitor compliance by accredited building practitioners with this Part; and

(b) provide a report to the Director as required by the Director.

AUDIT MANDATE AND STANDARDS APPLIED

MANDATE

Section 39 of the *Financial Management and Audit Act 1990* states that the Auditor-General is:

'... the auditor of the accounts of the Treasurer, of all Government departments and public bodies and of the financial administration of each appropriation referred to in Column 1 of Schedule 2. ...'

The conduct of such audits is generally known as financial auditing.

Under the provisions of section 40, the Auditor-General:

'... (1) On performing an audit under this or any other Act of the financial statements of the Treasurer, a Government department, a public body or the financial administration of an appropriation referred to in Column 1 of Schedule 2, the Auditor-General must, except as provided by any other written law, make a report on those financial statements in accordance with this section.

(2) Subject to subsection (3), a report made under subsection (1) -

(a) is to include an opinion as to whether the financial statements have been drawn up so as to present fairly the financial transactions during the period specified in the statements and the financial position at the end of that period; and

(b) may include particulars of any other matter arising from the audit which the Auditor-General considers should be included in the report.

(3) Where, under this or any other Act, the financial statements are not required to make full disclosure of financial position, the Auditor-General's opinion as to financial position may be limited to such components of financial position as may be specified in the Treasurer's Instructions and such other components of financial position as are included in those statements. ...'

STANDARDS

Section 43 specifies that:

'... The Auditor-General shall perform the audits required by this or any other Act in such manner as the Auditor-General thinks fit having regard to -

(a) this Act and any other relevant written law relating to the financial management of the Government department or public body concerned; and

(b) recognised professional auditing standards and practices. ...'

The auditing standards referred to above are Australian Auditing Standards as produced by the Australian Auditing and Assurance Standards Board.



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