

29 October 2010

Dr Shona Batge  
Committee Secretary  
Senate Education Employment and Workplace Relations Committee  
PO Box 6100 Parliament House Canberra ACT 2600

Dear Dr Batge

## **Primary Schools for the Twenty First Century**

### **Summary**

- Do the BER Implementation Taskforce, the Department of Education, Employment and Workplace Relations or the ACT Block Grant Authority have explanations for differing figures on the same BER projects that have been submitted to the Taskforce and those published by DEEWR, *ACT PS21 30 September 2010*, for ACT BGA projects?
- Have the ACT BGA and the NSW Catholic Block Grant Authority been informed of significant implementation issues or project variations in projects managed by the Catholic Education Office, Canberra-Goulburn, and, if so, was this information provided to DEEWR?
- Do the management fees estimated by the Taskforce tally with the advice that John Barker, CEO C-G, informed the Committee that the CEO C-G had limited project management fees to a maximum of 10% of the construction cost and the 8% (to maximum of 10%) figure provided by William Walsh, NSW CBGA?
- By what means did the NSW CBGA achieve total project management fees, of 8% (or a maximum of 10%) of construction cost in its BER projects?
- Has the NSW CBGA discussed with the CEO C-G imposition of a cap on fees?
- Does Mr Barker' statement to the Committee that the way fees have been capped by the CEO C-G meet the provisions of the *Trade Practices Act* and acceptance by the Australian Competition and Consumer Commission?
- Do the ACCC and TPA allow a agency commissioning on behalf of the Australian Government to accept or reject fee proposals after projects are well advanced and significant progress claims made?
- Do the ACCC and TPA allow unilateral reductions in such fees?
- Does the Committee know why information requested by the Committee and agreed by Mr Barker, CEO C-G, to provide costings for BER projects has not been posted on the Inquiry web page?

### **Block Grant Authorities**

The Australian Government has agreements with each Block Grant Authority for its financing and the provision of the Building the Education Revolution Program. The BGAs report on behalf of schools in their respective jurisdictions as set out in the *Building the Education Revolution Guidelines* and are required to address implementation issues as a matter of urgency.

Through its Program, Building the Education Revolution, Primary Schools for the Twenty-First Century, the Australian Government has given \$89 million to 46 schools for building projects in the Catholic Archdiocese of Canberra and Goulburn.

The ACT Block Grant Authority administers the BER program for the projects in the 23 Catholic primary schools in the ACT that are managed by the CEO C-G. The NSW Catholic Block Grant Authority administers the BER program for the projects for 445 schools including the 23 Catholic primary schools in NSW that are managed by the CEO C-G.

### **NSW Catholic Block Grant Authority**

William Walsh, Executive Officer, NSW CBGA, was a witness to the Committee on 18 May 2010:

**Mr Walsh**—I am just referring back to the Rawlinson material. Professional services normally run at about 12 per cent of the cost—and we would normally operate somewhere between eight and 10 per cent, and maybe get to 12 per cent.

**Senator BACK**—Does that include administration and contract management?

**Mr Walsh**—Yes, it does. Traditionally, we have used our architects as the project managers. That may vary from school to school, depending on how they want to frame it.

**Senator BACK**—So the architect fees on that occasion would be included in your professional fees?

**Mr Walsh**—Correct. ...

Refer to the Report No. 35 on the Building the Education Revolution Program by the NSW Legislative Council, General Purpose Standing Committee No.2, 20 September 2010.

#### **Project management fees and charges in NSW Catholic schools**

**3.40** Apart from the Sydney Archdiocese, the most common project management practice used in NSW Catholic schools was to engage either an architect as both designer and project manager, or engage an architect as the designer and a separate individual or company as project manager (both on an individual school basis).

**3.41** The Catholic Education Commission advised that in both situations, the project management fee is usually up to 8 per cent of construction costs, or, in some special cases, up to a maximum of 10 per cent.

Refer to Catholic Education Commission NSW to NSW Parliamentary Committee, 2 July 2010:

In the case of the architect as project manager, the project management fee is part of the standard negotiated fee and charged as a project cost. Such a fee is usually up to 8% of construction cost as for any school building project ... Up to a maximum of 10% maximum fee may be allowed in some cases.

Refer to Building the Education Revolution Implementation Taskforce Interim Report, 6 August 2010, p29, Figure 11. Cost Comparison by Selected Education Authority and Selected Product.

NSW Catholic  
Agency Management and Design Fees – 18%

- Is the NSW CBGA able to reconcile its total project management fees, including design by consultants, of approximately \$82 million with the BER Implementation Taskforce's estimate of approximately \$198 million for agency management and design by consultants across the total number of 445 schools? That is, a difference of approximately \$116 million measuring similar work.

### Cap on fees

Mr Barker to the Committee on 19 May 2010:

**Mr Barker** - ... The management fees or the professional fees of our architects have been capped within 10 per cent. I have seen no evidence of any price gauging in any of our programs.

Refer to Government Senators Dissenting Report

Mr John Barker, Head, Finance and Planning, Catholic Education Office, Catholic Education Commission (Canberra and Goulburn), told the committee of their processes around achieving value for money:

...our tenders remain strong and competitive. They are always around or within the quantity surveyor estimates before we go to tender. The management fees or the professional fees of our architects have been capped within 10 per cent. I have seen no evidence of any price g[o]uging in any of our programs.

- By what means has the CEO-CG set a 10% cap on project management or architect's fees?
- In projects with a construction management contract did CEO C-G include the fees of the construction manager in the 10% cap?
- What has the BER Implementation Taskforce established as the agency, management and design fees for each of the CEO C-G schools?
- Does the imposition of the cap meet the requirements of the *Trade Practices Act 1974* and the approval of the Australian Competition and Consumer Commission (ACCC)?

### The ACCC

Your Committee has discussed with representatives of DEEWR the lack of clarity and consistency of definitions within the program. Throughout discussions by the Senate Committee, the NSW Legislative Council Committee and the Building the Education Revolution Implementation Taskforce references to design fees only mention architects. Architects are only one part of the team that designs, documents and administers building projects.

The professionals engaged by the Catholic Education Office Canberra - Goulburn included construction managers, architects, interior designers, quantity surveyors, civil, structural, mechanical, electric, hydraulic, acoustic and environmental engineers and landscape architects.

The Australian Competition and Consumer Commission does not allow professional associations, such as the Australian Institute of Architects, to publish recommended fees, fees guides or graphs showing fees as a percentage of the cost of a project for generic building types.

From an ACCC publication - What all professionals must know:

- Avoid discussions and, most importantly, agreements with other professional practitioners about prices
- Take care to ensure that prices are set by each individual practitioner independently.

All agreements between competitors that fix, control or maintain prices, either directly or indirectly, are illegal.

The ACCC and the TPA do not allow groups of professionals and their professional associations to indicate fees as a percentage of construction cost for various generic types of buildings. Does not the ACCC and the TPA similarly protect the provider of services from the acquirer setting limits to fees as a percentage of construction cost for various generic types of buildings? Each proposal is required to be assessed on its merits.

Through its Program, Building the Education Revolution, Primary Schools for the Twenty-First Century, the Australian Government has given \$89 million to 46 schools for building Projects in the Catholic Archdiocese of Canberra and Goulburn. The CEO C-G decided that each Project would be designed specifically for each school and template designs would not be used.

Each project had its specific budget, brief, building type, mix of new work and refurbishment, requirement for recording of the existing site and buildings, site conditions, location, scope of works, type of building contract, timetable and differing involvement of consultants to satisfactorily design, document and administer the project. Each project involved several consultants. Each consultant developed its fee proposal for each project taking such criteria into consideration. The CEO C-G was also required to consider each fee proposal on its merits.

Instead, it sought to impose a cap of 10% of the construction cost for total design fees on each BER project

Mr Barker to the Committee:

We have such a range of projects, from new construction to refurbishments, that we do not have an average rate, ...

Mr Barker acknowledged the types of construction varied between projects but sought to impose an across-the-board cap on design fees.

### **Timing of introduction of 10% cap**

The CEO C-G commissioned architects for its BER projects in March 2009. In February 2010 the CEO C-G informed the architects of the projects at 46 schools that it had neither accepted nor rejected any of the fee proposals. At that stage many of the BER projects were at an advanced stage of construction and the CEO C-G had paid fee claims that reflected the completeness of the work. It then sought to introduce a fee cap of 10% of construction costs on the total fees of all consultants.

### **DEEWR**

I rang Michael Manthorpe, Deputy Secretary, DEEWR, BER national co-ordinator, on 18 May 2010. Mr Manthorpe said the Australian Government had not indicated to the commissioning organisations any limiting for consultants – only in general terms that the projects provide value-for-money. Mr Manthorpe asked the name of the commissioning agency and if I required assistance which I declined at that stage.

## **Provision of costings**

From the Committee Hansard, 19 May 2010:

**Senator BACK**—You heard the same questions asked earlier. Would the sorts of costs per square metre for the different categories of buildings that are being constructed or have successfully been constructed—be they library, general purpose learning area, canteen, hall or gymnasium—appear on your website?

**Mr Barker**—No, they would not. The New South Wales schools would have been covered under Bill Walsh's responses to you yesterday, as I understand, from the New South Wales Catholic Block Grant Authority. The ACT still has to go through the joint block grant authority. We have such a range of projects, from new construction to refurbishments, that we do not have an average rate, but we could come up with something for various categories of construction if you like.

**Senator BACK**—Yes. Obviously one of the questions that the committee is addressing itself to is across the board value for money. Then, needless to say, we want to also observe that within the different sectors.

**Senator MASON**—That will need to include management fees...

**Senator MASON**—Senator Back asked about comparative costs. Mr Barker, you will provide the committee with those?

**Mr Barker**—Yes.

**Senator MASON**—I know we have done that for New South Wales already but it would be useful to have the figures for the ACT to add to the quantum of evidence for the committee's appraisal. Thank you.

I had been waiting in anticipation for five months for these details to be published as they are not available to the public elsewhere.

Would the Committee please examine the activities described above?

Yours sincerely,

Jeremy McGrane