

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

**REGULATION OF BUILDING STANDARDS, BUILDING QUALITY
AND BUILDING DISPUTES**

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Friday 16 August 2019

The Committee met at 9:30 am

PRESENT

Mr David Shoebridge (Chair)

The Hon. Robert Borsak

The Hon. Mark Buttigieg

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Courtney Houssos

The Hon. Matthew Mason-Cox

The CHAIR: Welcome to the second hearing of the Public Accountability Committee inquiry into the regulation of building standards, building quality and building disputes. The inquiry is examining the adequacy of building construction regulation including consumer protections, flammable cladding and the role of bodies like strata committees and private certifiers. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land and I would like to pay my respect and the respect of all the Committee members to the elders past, present and emerging of the Eora nation and extend that respect to other Aboriginal people present. Today's hearing will start with evidence from the new Building Commissioner. We will also hear from a number of key stakeholder organisations.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I would also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, and so I urge witnesses to be careful about any comments you may make to the media or others after you complete your evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take question on notice and provide a written answer within 14 days. I remind everyone here today that committee hearings are not intended to provide a forum for people to make adverse reflections of others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the terms of the inquiry and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to committee members through the committee staff.

To aid with the audibility of this hearing, may I remind both committee members and witnesses to speak into the longer microphones. The room is fitted with induction hoops compatible with hearing aid systems that have telecoil receivers. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. Finally, could I ask everybody to please either turn off their mobiles or turn them to silent for the duration of the hearing, and that includes Committee members.

DAVID CHANDLER, NSW Building Commissioner, sworn and examined

ROSE WEBB, Deputy Secretary, Better Regulation Division, and NSW Fair Trading Commissioner, on former oath

The CHAIR: I welcome our first witnesses. I note, Ms Webb, that you have previously been sworn so you are on an oath and you are not required to take a further affirmation. Mr Chandler, you have been in the job for ages now, so we invite you, if you wish, to give the Committee a brief opening statement.

Mr CHANDLER: Thank you. I would like to make a statement; this being only the third day with my knees under the table, that would be appropriate. Thank you for including me as a witness in the inquiry. It is time for the New South Wales building industry to be different and to rebuild its reputation. To some it may seem that to have the New South Wales Government's new Building Commissioner in front of an inquiry just two days after the job has commenced is probably a bit premature, but I felt it was appropriate to get before you as soon as possible. What I bring is hands-on experience in the building and construction industry spanning over 40 years. I am confident I will be able to provide early useful insights to the Committee to better understand the Government's objectives and what they could mean in practice.

I think I may be the first witness to appear before the Committee who has the applied experience. This is a great privilege and also comes with a great deal of responsibility. With this experience, I am able to provide first-hand knowledge of the practices that have ultimately resulted in the rightfully challenged confidence the community now has in how buildings should be made and how they perform. Part of the reasoning for this is that the construction industry has been a late starter in the consumer facing transformations that have redefined other industries over the last 20 years. Our industry is overly self-effacing and it has an unsustainable culture of risk-aversion and "what is in it for me". This culture has too often become defensive and adverse to accountability. That is why the Government's initiatives are so important. They will provide leadership, which is critical at this time. There are many fingers in this pie.

For those who may be in any doubt about the Government's or my intent to get on top of this, please let there be no misunderstanding. The New South Wales Government intends to lead the nation on building reforms and ultimately deliver a framework that is considered amongst the best in the global construction market; we now work in a global construction industry. With that said, I am also happy to advise the Committee that I intend to engage Ms Bronwyn Weir, co-author of the Shergold Weir report, to help me during the first stages of implementation because I think that she will have a lot to offer that process. Her comprehensive knowledge of the necessary reforms will then become a great asset and help our team to have the expertise to draw from wide-ranging resources.

But while regulation and compliance are the centrepiece of this picture, they are not going to solve all the issues. The picture is much bigger than this. We need to a sea change in industry culture and that culture needs to be one of accountability and pride. The industry must be accountable to regulators, the broader market and particularly the customers. That is why I will establish a building and construction stakeholder advisory committee very early to make these messages very clear. For the first time, through this reform process, we have seen a full range of interest groups and industry leaders engaged and happy to sit around one table to achieve outcomes the Government has in mind. The Government intends to capitalise on the success of these discussions to ensure stakeholders, whether they are builders, developers, architects, insurers, financiers, owners, strata managers or certifiers, all work together to get the reform outcomes that we believe are possible. With the engagement of the stakeholders we can more easily address outdated industry work practices and models of operation that are no longer relevant in a modern construction environment. We need to redefine how we operate as a customer-centric industry and one which attracts the next generation of young construction professionals. We need to win over the confidence of their parents that, in fact, these are worthy careers that they should be pointing their young people at.

There are many areas to focus on. For example, we will look at how our national building standards can best serve as an enabler for the industry and not be seen as red tape. Too often, these are not treated as an enabling tool, but they are seen as red tape. We will also have a look at how we manage building contracts and how to strengthen performance rating systems. This will be aimed at pointing to the best players going forward. It is also an excellent opportunity to explore how we can adopt modern technologies to better manage building construction and how we can build future-fit capabilities. We have not invested in those capabilities for some time. This should enable a more transparent and trustworthy platform of activities through the construction process, the life cycle of buildings and capturing the inputs of suppliers, materials, companies and workers involved in projects. A more

trustworthy platform of building information will also benefit our first responders, who turn up with an enormous amount of personal commitment to act in the public interest on occasions when buildings are stressed. I have to say they are always at the front of my mind and they are very brave and dedicated folk.

The Minister has also asked that I gain an understanding of the perspective of homeowners undergoing hardships from properties with substantial defects relating to structure, waterproofing, fire rating and enclosure. Yesterday, I visited two of these projects. With the reform process that has commenced, we will work towards building the foundations of a more confident future. I believe the New South Wales Government has offered an exceptional opportunity to change the way we think about building and construction in New South Wales. The transformation will not be easy and it is going to require everybody's support and commitment to get there.

There will be continuing consultation with the community at all levels of government and the private sector, including insurance companies, banks, infrastructure and construction companies, material producers, educators, other professionals and, of course, customers. Under the New South Wales Government's reform process we have a once-in-a-lifetime opportunity to transform the building and construction industry. That is why I have put my hand up to lead these initiatives. Working in collaboration with everyone who has skin in the game, I believe we can create an environment where future generations are confident in the quality of construction, the security of their investments and the prospect of great places to live. I can assure the Committee that there is a very clear mandate for me—from the Premier and from the Minister—to deal with today's issues and then to set a direction for a stronger, more confident construction industry.

The CHAIR: Thank you, Mr Chandler, for that opening address. There is a lot to do, isn't there?

Mr CHANDLER: Yes, there is.

The CHAIR: What is the budget of your office?

Mr CHANDLER: Chairman, what I have done is to set out my plans for the first 180 days, which is actually going to enable me to define the resources that we will need. I have already got the first folk on board, who are going to be my immediate help, but—

The CHAIR: It is not a hard question.

Mr CHANDLER: I am not trying to avoid your question. I just want to say that there is an organisation there that has a huge amount of resources. I have done a lot of work-outs over the years—I have done projects in companies and in organisations—and what I found is that you do not take a lot of people in with you. What you do is you take in leadership—you may have to replace the odd CEO along the way—and generally the troops are all pretty keen to do good stuff. I think you can be pretty confident that the resources are there.

The CHAIR: What is your budget?

Mr CHANDLER: I do not have a budget at the moment.

The CHAIR: How many people work for you?

Mr CHANDLER: You have seen the brief for the Building Commissioner. There are four to five people who will be my direct resources but I have the whole of the organisation at my availability.

The Hon. ROBERT BORSAK: What organisation, Mr Chandler?

Mr CHANDLER: Customer Service New South Wales.

The Hon. ROBERT BORSAK: Who are they?

Ms WEBB: Fair Trading sits within the Department of Customer Service.

The Hon. ROBERT BORSAK: So we have the usual suspects, do we?

The CHAIR: Fair Trading, which has comprehensively failed to date to regulate the industry, they are the troops on the ground that you are going to be calling upon, Mr Chandler? In addition to the five people who work for you?

Ms WEBB: As Mr Chandler was trying to explain—

The CHAIR: Perhaps let him.

Mr CHANDLER: I am not going to take a step back on that question, Chairman. I took this job on with my eyes wide open. I was satisfied during the interview process—which, by the way, I did not apply for this job, there was a decision to actually seek someone from outside the Government to take this role on. I interviewed the

representatives of the organisation as part of deciding to accept this challenge and I was absolutely satisfied that the resources that will be required will be available and the directions to be taken will be followed.

The CHAIR: Mr Chandler, the only resources you have identified are the existing resources in the department which everybody—every single submission, apart from the Government's—say have been comprehensively inadequate, in addition to four or five additional staff who you bring on. How can you possibly satisfy this Committee that the people who are currently failing, who are the resources that you have to call upon, are anything like adequate for the challenge?

Mr CHANDLER: All I could ask you to do is to—

The CHAIR: Hope and pray?

Mr CHANDLER: No, I am not asking you to hope and pray at all because I am not in the business of hope and pray. That is a bit like playing a snooker game and just hitting the balls and hoping they will drop into the pockets.

The CHAIR: Sounds like a good description of what the Government is doing.

The Hon. SCOTT FARLOW: Let him answer the question.

Mr CHANDLER: In my view, that is not what it is doing. What it wants is someone who has broad industry experience and wide industry credibility to come in and reshape a plan for going forward. I will have available before the next three months a work plan—I already have a draft work plan; I am just not sharing that publicly at the moment because I would like to bring the rest of the team on board with it—but I have a work plan that will actually start to turn around the very issues that you are taking issue with.

The Hon. JOHN GRAHAM: Mr Chandler, this Committee wants to know that you have the resources to do the job. We have talked about the budget and the staff. The job description for your job says that you will have, "no line of authority over other agencies"—that includes the planning department, it includes customer service. How are you going to do the job?

Mr CHANDLER: The job is about leadership; it is about developing policies and recommendations for the whole of the organisation to take on. Some of that is across departments. As I progressively reveal the work plan, you will see how the resources that are there will be better applied to achieving the outcomes to build stronger foundations for the construction industry.

The Hon. JOHN GRAHAM: We want to know that you have the tools to do the job. One of those tools is the regulatory power. This Parliament passed legislation in October last year; Government witnesses at the first hearing were very hesitant to tell us when that power would actually come into force. Crucially, this contains the penalties that are being increased. At the moment they are very light, until this comes into power. We know now that that will not come into place until 2020—next year. Is that too late, in your view?

Mr CHANDLER: I do not want to get ahead of announcements as to how the impact of what is about to happen will play out.

The Hon. JOHN GRAHAM: It is a very simple question: Is that too late?

Mr CHANDLER: No, I do not believe it is because I believe that the moment that the legislation is tabled and approved—

The CHAIR: It has already been tabled and approved—last year.

The Hon. JOHN GRAHAM: There are no penalties without this legislation; there is a light touch.

The Hon. SCOTT FARLOW: Let Mr Chandler answer.

Mr CHANDLER: There is new legislation currently being brought forward and that will also pick up—we are having a look at it at the moment to see the sorts of powers that I need—

The Hon. JOHN GRAHAM: The old legislation has not even been put into place, until next year. This contains the penalties, including on people who are routinely breaking the law. We know now that this is a handful of people breaking the law. We want to put those penalties into place but the Government has not acted. The Parliament has; the Government has not. Why is this taking so long?

Mr CHANDLER: I am going to take that question on notice because I have not been across all of the details of the work that you are talking about so I am not going to debate that with you, other than to say I am looking at the regulations and the legislation currently being prepared to make sure that it is adequately focused

on where we need to go. I am very comfortable and confident that the direction that will take will be quite impactful, and I will take the other question on notice.

The CHAIR: Mr Chandler, last year the Government trumpeted these changes, saying that they were pushing legislation urgently through Parliament to put tougher penalties against private certifiers who failed. Parliament assisted them by getting the legislation through at record speed and we are now here—the better part of 12 months later—and it has not commenced. It seems they have not even briefed you on it. Are you aware of those changes?

Mr CHANDLER: Yes, I am.

The CHAIR: Are you aware they have not commenced? Can you tell us when it will come into force?

Mr CHANDLER: As I said, I will take the question on notice, Chairman, and I will come back to you, as you have suggested at the early briefing.

The Hon. JOHN GRAHAM: We have talked about the budget, the staff, the powers and the lines of authority. At the moment one of the things that is being called for is not just a Building Commissioner but a building commission. There is no sign of that in New South Wales. It happened in Queensland and Victoria. Do we need a building commission in New South Wales, in your view?

Mr CHANDLER: On the face of it, I do not believe we need that at the moment. I think the first thing we need is to be very clear about what leadership we need to start turning this industry around. This is not a bureaucratic solution; this is not going to require a heavy hand of government; this is not going to require a huge amount of legislation.

The Hon. JOHN GRAHAM: You disagree with Mr Lambert that we need a building commission?

Mr CHANDLER: Yes, I disagree with Mr Lambert.

The CHAIR: You disagree with the Campbell report, you disagree with the architects, you disagree with engineers, you disagree with local government. You disagree with everybody who has said we need a building commission and have for more than a decade.

Mr CHANDLER: I believe we shouldn't be rushing into that—

The CHAIR: The recommendation for a building commission was in 2002. It is hardly rushing into it; it is 17 years down the track.

The Hon. SCOTT FARLOW: David, let Mr Chandler explain.

The Hon. ROBERT BORSAK: In 2015 Mr Lambert made the recommendation.

The CHAIR: We are not rushing into anything.

Mr CHANDLER: Chairman, there will be a very clear plan of implementation available in the next month or two and I will be quite happy to be accountable for the delivery of that change of perspective of the industry.

The Hon. JOHN GRAHAM: I accept that, Mr Chandler, but you have ruled out some important—

The Hon. SCOTT FARLOW: Can we let Mr Chandler answer something, please?

The Hon. JOHN GRAHAM: —you have ruled out today some important elements of what has been accepted might be the answer. When we look at this, this looks like a set of answers already on the shelf in search of someone willing to ask the question, "When can we get this in place?" That is what it looks like with State and Federal reviews with a set of answers there. Only part of those have been picked up by the Government.

Mr CHANDLER: May I speak to your question? I think there is a sufficient body of evidence to see my criticisms and some of the things that have been brought forward. I do not resign from any of those, in fact, I have not seen any change asking me to take a different position. If anybody thinks for a moment that I am here doing the industry's bidding or any other particular interest's bidding, they should take that off the table.

The Hon. JOHN GRAHAM: I accept that. I think you have been critical of the Government; I think that is to your credit. You have said that you are being critical of bandaid solutions but we want to know: Do you have the power to do the job? You do not have a budget. You have few staff. You do not have a line of authority. You do not support a building commission. This looks like a bandaid solution.

Mr CHANDLER: This will not be a bandaid solution. I would not have taken this role on if I thought it was going to be a bandaid solution.

The Hon. ROBERT BORSAK: Mr Chandler, they have set you up.

Mr CHANDLER: Well—

The Hon. ROBERT BORSAK: How do you respond to that?

Mr CHANDLER: I disagree with that. I do not think this is a set up at all. If we are going to start off with it, "Let's put a one line over it—Building Commissioner set up—" I am sorry but I reject that entirely.

The Hon. ROBERT BORSAK: So you are Building Commissioner with no commission, no budget, now support in law. What you actually intend to do then, apart from make recommendations over the next three months as to why this structure might be?

Mr CHANDLER: I have a very clear plan of how I am going to move forward to implement this task. I have already shared that with—

The Hon. ROBERT BORSAK: Can you walk us through that?

Mr CHANDLER: Not at this particular forum because I think that the first thing we need to do is to socialise that internally. We also then need to carry that through with the other stakeholders involved. I have got to tell you that you would be surprised at the overwhelming response that I have had from the industry in my taking this role. This is a compass change. This is a chance where people who have been previously looking at this thing through regulation and those sorts of interventions rather than the leadership that this industry needs, investing back in TAFE colleges and rebuilding the skills that this needs, unpacking the construction contracts that are absolutely being dismembered by lawyers who think that they can vary construction contracts to make them fit any set of circumstances, looking at developers who are currently using in-house builders and they cut them off whenever it suits them so that they can move away from one place to the next.

The big challenges here are getting organisations like the insurers back in the tent. At the moment, they are walking away from this industry. We have got to change the way we manage risk and we have got to make sure that the way we rate and see risk. That compass has got to turn around. With due respect to people who have issued lots of reports, including the Weir report, it is a narrow cast. It is not a silver bullet; do not think for a minute that it is. I agree with everything that is in it but it is not the whole answer.

The CHAIR: Mr Chandler, do I get it you do not believe in re-regulating and putting more prescriptive regulations to it and your solution that you are giving this Committee is that you got a work plan that you are going to socialise internally. That is it.

Mr CHANDLER: Yesterday I sat through the industry-first briefing of the proposed legislation that will be brought to the Parliament. I just sat as an observer to have a look and see what is being brought forward. I can tell you that there will be some changes but the most important thing is that everyone who should be licensed has a licence and that the people who get a licence are properly accredited for those licenses.

The Hon. ROBERT BORSAK: That is a very good point, Mr Chandler; I thank you for that. Who should be licensed?

Mr CHANDLER: There is a list of people that we are socialising at the moment.

The Hon. ROBERT BORSAK: Can you enumerate those for us, please?

Mr CHANDLER: They are pretty clear. For example, all the engineers should have been licensed in the first place.

The Hon. ROBERT BORSAK: And?

Mr CHANDLER: Then there are a number of other people who perform critical functions in the construction process who also should be licensed. Those people will come forward.

The CHAIR: "Those people will come forward." Mr Chandler, that is not an answer. Who should be licensed? Many witnesses have said that everybody doing building work should be licensed. Do you agree with that proposition?

Mr CHANDLER: I believe everybody who is in charge of managing the building process at various stages should have a licence. Designers should have licences, people in charge of construction sites should have

licences, people who are in charge of safety on construction sites should have licences, people who certify progress payments should have licences. There are a number of people who need to be licensed.

The CHAIR: There is a bunch of people you have forgotten, though, who are the people doing the actual work—and that is critical for building standards.

Mr CHANDLER: We are talking about including in that plumbers, electricians, people who are doing fire-rated work, people who are doing waterproofing—all of those people are in the line of sight to be licensed. You will see that in the draft legislation when it comes forward. I am not talking to a blank sheet of paper here.

The CHAIR: Mr Chandler, what lawyers do you have that you can call upon to review the legislation the Government is presenting? Are you just reading it yourself?

Mr CHANDLER: That is why I will appoint in the next week from Bronwyn Weir to come on and provide that second opinion advice and to look at this from the perspective of the work that she has done nationally.

The CHAIR: If you are going to seriously critique Government's proposed legislation you need staff. You need a team of experts, not one person you can call on. But at the moment it is you sitting in a room reading the legislation and may be having a chat with Bronwyn. That is not the commission and it is not going to be adequate, is it?

Mr CHANDLER: With due respect to you, sir, I have got to manage my work plan, not you.

The CHAIR: Show us your work plan, Mr Chandler.

Mr CHANDLER: You will see that in a very short period of time.

The CHAIR: More importantly, as we said in the beginning, tell us what your budget is.

Mr CHANDLER: Mate, I am three days into this job.

The CHAIR: Don't "mate" me.

Mr CHANDLER: Sorry, Chairman, I am three days into this job and you will be progressively exposed to the way we are going to take it forward.

The CHAIR: I do not want to be progressively exposed if it is all the same. I would like some answers about your budget and about what your work plan is but you are not willing to give those answers to the Committee.

Mr CHANDLER: You have asked that question, I think, with respect, about three times; I have noted it and within 14 days you will get a written response.

The Hon. SCOTT FARLOW: Mr Chandler, how many days have you been in the job?

Mr CHANDLER: This is my third day.

The Hon. SCOTT FARLOW: Mr Chandler, I think you indicated that at the moment you have four or five supporting staff but that is not a capped amount of staff, is it?

Mr CHANDLER: I do not believe it is capped. The resources that are required for this job will be made available, okay? I think that is—

The Hon. SCOTT FARLOW: That is the remit you have been given and the undertaking you have been given by the Minister and by the Government?

Mr CHANDLER: That is the remit I have been given. This is going to require the resources that it is going to take. The first thing we are going to need to do is to scope the tasks that are going to be undertaken and then we need to resource those tasks. I believe that most of the resources we will find internally, within the organisation, but if we need to go outside we will go outside and get those resources in addition.

The Hon. ROBERT BORSAK: So we are back to the usual suspects.

Mr CHANDLER: Well, sir—

The Hon. ROBERT BORSAK: Regulation has been poor, to say the very least, in this industry. It has been presided over by Government, at least this Government for the past 8½ years and then you are telling us that they have the resources. You do not support anything that Lambert really says. Shergold Weir is flawed. How are you doing to get this done?

Mr CHANDLER: I am very confident we will get it done; that is why I have got the job.

The CHAIR: But an assertion of confidence is one thing, tell us how, Mr Chandler? Pretty much nobody says the answer lies in Fair Trading, yet that is what you are telling us—or were going to—for the answer.

The Hon. ROBERT BORSAK: Fair Trading has got to supply you the resources, the knowledge, the skill and the expertise, something that they clearly have failed that and are, obviously as public servants, under direct supervision of the Government. You need a free hand if you are going to do this; you need a commission, do you not? You need a decent budget. You need to be able to stand alone with your own authority and get it done. That has not been given to you, has it?

Mr CHANDLER: I believe that I will have sufficient powers and resources made available to me to get this job done.

The Hon. ROBERT BORSAK: So you do not have them now. That is what you are saying.

Mr CHANDLER: That is okay. What do you want me to do? Put an ad in Saturday's paper and just hire a bunch of people?

The Hon. ROBERT BORSAK: That might help.

Mr CHANDLER: No, I do not think it will help.

The Hon. ROBERT BORSAK: Why will it not help?

Mr CHANDLER: Because I think there is a bunch of talent that if we could deploy it in a more positively focused direction—

The Hon. ROBERT BORSAK: With all due respect to you, they are just words, are they not?

Mr CHANDLER: No, they are not.

The Hon. ROBERT BORSAK: That is just fluff.

Mr CHANDLER: I am not going start trading those sorts of comments at this first engagement with you, sir.

The Hon. JOHN GRAHAM: Mr Chandler, what we want to know, though, is what resources do you think you will need to do the job? You said that you will get the resources. I hope that is the case. What resources do you need to do this job? You have heard our concerns.

Mr CHANDLER: I have outlined a series of tasks that I believe are the way to work into this project. We will start Monday morning scoping those tasks—or adding the scope to those tasks—and then we will attach resources to them. That starts Monday morning.

The Hon. COURTNEY HOUSSOS: Mr Chandler, you have outlined a 180-day plan for what you plan to do. Will you commit to coming back to this inquiry at the end of that 180 days and tell us what you have done?

Mr CHANDLER: I will be most happy to.

The Hon. COURTNEY HOUSSOS: Secondly, my colleagues have raised questions about the nature of the support that you are going to be provided with. Now, you have already outlined that you believe in a Building Commissioner. You said to us this morning you believe in an advisory committee. The third plank of Mr Lambert's recommendations was a building commission to support you. Do you disagree with that part of Mr Lambert's proposal?

Mr CHANDLER: I have publicly disagreed with Mr Lambert for a number of years.

The Hon. COURTNEY HOUSSOS: I understand that but I am asking you if you specifically disagree with Mr Lambert on this question of a building commission.

Mr CHANDLER: At this time, I do, yes.

The Hon. COURTNEY HOUSSOS: You do not believe that there is a need for a building commission in New South Wales?

Mr CHANDLER: I do not believe there is a need at this time.

The Hon. COURTNEY HOUSSOS: Can I read this quote to you from Mr Lambert to this inquiry earlier? He said:

[A]t the level of the public service, in particular Fair Trading, it is an ideological viewpoint that there is a hostility towards effective regulation; a view that you do not need regulation, you just need to basically have reaction to consumer complaints and that is sufficient.

Mr Chandler, if you do not need a building commission and you are relying on Fair Trading public servants who do not believe that the appropriate way to regulate building in this State is through an active participation in the process, how are you going to undertake your role?

Mr CHANDLER: The first thing I think everybody in this industry needs to come to terms with is the days of individual State jurisdictions running the building industry is becoming progressively irrelevant.

The Hon. COURTNEY HOUSSOS: With fairness, that is the regulatory system that we are operating in.

Mr CHANDLER: Well, it is but—

The CHAIR: It sounds to me as if you have just described yourself as irrelevant.

Mr CHANDLER: No. If we are going to have a relationship over the next couple of years of this sort of tension and perhaps it is just going to be this, I would like it to be much more positive than that. What I would like to share with you is—

The Hon. COURTNEY HOUSSOS: Mr Chandler, I say to you—

Mr CHANDLER: I would like to answer your question.

The Hon. COURTNEY HOUSSOS: You have just said that this relationship is going to be characterised by tension. We invited you to appear—

The Hon. SCOTT FARLOW: That was a comment to the Chair, not to himself.

The Hon. COURTNEY HOUSSOS: —and your first correspondence to this Committee was declining our invitation.

The CHAIR: That was the Minister declining on the commissioner's behalf. I do not think the commissioner declined, it was the Minister.

Mr CHANDLER: The very first question you asked me is would I be prepared to come back to you in 180 days and report to you on what my plan was and what I achieved against it. My answer is yes, I would. I will be back here in 180 days very keen to see you and report to you. That is the first question.

The CHAIR: Mr Chandler, I think you were going to answer the broader question. You were starting by saying—

Mr CHANDLER: The broader question is this: This industry now sources its inputs from a global construction ecosystem. We bring curtain walls, timber buildings, everything that goes into buildings now is sourced out of a global economy. At the moment we do not have the modern systems to trace the sourcing and the compliance of those inputs from where they currently come. Part of this will be in fact developing a future-fit regulatory system that will work. I have spent the last two years working on a pro bono basis at the University of Western Sydney and part of that has been a project with Data61 to start having a look at what are the appropriate platforms that can be used that will help enable a modernised industry to function more trustworthily. We will start that next week as well. That technology is well advanced and I am hoping to see within two years that that is available. It is no good us trying to plug holes in a system that was designed in the last century and all we are doing is putting fingers in the dykes. That is what I have been critical about up until now. These band-aids are not recognising the fact that the nature of the global construction industry has changed.

The Hon. ROBERT BORSAK: Mr Chairman, there is no dyke. There are no fingers in any dyke. There is no dyke. It is an avalanche of water coming over that is destroying people's lives, their investments. Did you go yesterday or sometime in the last few days to Mascot Towers?

Mr CHANDLER: Yes I did, I went yesterday afternoon.

The Hon. ROBERT BORSAK: Did you meet any of the residents there?

Mr CHANDLER: I met the building manager and the engineer on the site yesterday. I went to an informal inspection of the site to have a look and see firsthand.

The Hon. ROBERT BORSAK: Did you ask to see Mr Vital or Mr Chen, who gave evidence in this Committee earlier in the week?

Mr CHANDLER: No, I did not. I went to have a look at the building and see what the issues were from a first blush look at them.

The Hon. ROBERT BORSAK: But if you wanted to really know what the first blush was—

Mr CHANDLER: Yesterday I was also at Gadigal Avenue and I met residents at Gadigal Avenue.

The Hon. ROBERT BORSAK: Gadigal Avenue, what is that?

Mr CHANDLER: That is the Zetland project, that is the loft apartments in Zetland.

The Hon. ROBERT BORSAK: My question relates to Mascot.

Mr CHANDLER: Sure.

The Hon. ROBERT BORSAK: Do you think you would have got a better and more enlightened answer to what is actually happening from real people on the ground talking about their investments and their lives? Would you, having done that, be making recommendations as to how this might be fixed financially for these people?

Mr CHANDLER: The Government has, in the first instance, provided support to these people. I am not going to walk away from the fact that this is a terrible situation. These people should not be in it. I empathise with these people. I am embarrassed frankly that the industry has allowed a product like Mascot Towers to turn up on the marketplace. But the first thing that I would like to be looking at in my mind is how we are going to fix it because it is no good me just going and simply being empathetic. What I am also convinced of is, is there a way to fix this project and how are we going to have an intervention that may help get it fixed.

The CHAIR: Mr Chandler, pretty much everybody says—apart from yourself—that there has been a dangerous experiment with privatisation, deregulation and industry self-regulation and that a key part is having a much tougher regulatory regime going forward. But your evidence and your previous statements are that you do not support another sea change of legislation and you want to have what is called an exposure exercise. You are pretty much out on a limb on this by saying that we do not need more regulation.

Mr CHANDLER: In that particular instance at Mascot Towers the certifying agency was the council.

The CHAIR: Yes.

Mr CHANDLER: That was not a private certifier, that was council.

The Hon. JOHN GRAHAM: Who is to blame for Mascot Towers?

Mr CHANDLER: I do not have the answer to that.

The CHAIR: You are not suggesting, Mr Chandler, that that is the beginning and the end of the issue with Mascot Towers?

Mr CHANDLER: No, it is not.

The CHAIR: It was the design, the construction, the deregulation. I am asking you again—

Mr CHANDLER: Sorry, the—

The CHAIR: You are out on a limb on this.

Mr CHANDLER: I am not out on a limb. You are criticising private certifiers.

The CHAIR: No, I was criticising two decades of deregulation, which as you would know, is vastly more than private certification. Top to bottom these apartments have been built by people who are without regulation, without licensing, without insurance, and that needs re-regulation. When you say it does not, you are out on a limb.

Mr CHANDLER: I did not say it did not need re-regulation.

The Hon. SCOTT FARLOW: He did not say that.

The CHAIR: It needs comprehensive re-regulation; it needs a tough regulator.

Mr CHANDLER: It needs comprehensive solutions and that is what we want to bring forward. The first thing I did yesterday visiting that site was to try and scope just what is the scale of the situation there and what are going to be the key issues to get that fixed. It is pointless just turning up and being empathetic. The thing

that people are wanting is someone who might show some leadership to actually try and get the people to sort this out.

The Hon. ROBERT BORSAK: We are not saying that you should not be or we would not be empathetic, but we agree with you, we need something done. We agree it is not a matter of empathy at all.

Mr CHANDLER: I will be back at that site next week, you be rest assured. I am very keen to see a technical solution identified by the people that are advising the strata.

The Hon. JOHN GRAHAM: When it comes to Mascot Towers, you have talked about your experience in the industry. The public wants to know who is to blame. What is your early view—I accept it is an early view—about who is to blame for that situation?

Mr CHANDLER: First of all, I think the engineering is poor. In fact, my personal observation of the engineering design is that it is poor, and I have built a lot of buildings. I have to say, when I walked across that job yesterday I do not think I have seen many buildings as poorly built as that—on the record. Second of all, I am quite certain that the builder did not know how to read any construction plans because the faults that are in that building are simply someone who did not pay any attention to them. The control joints and cracking that is in there is fixable, but it is going to take a lot of work to fix. There is a builder there that was operating that really should not have been in the space doing it. He did not have the capability. He certainly did not know how to read a construction drawing, but perhaps the drawings in the first place were flawed. I am going to have a look at all of that because that will come out as we are working through to find some ways of assisting these people to get this project back into play.

The Hon. JOHN GRAHAM: These residents turned up to this committee and they gave evidence about what happened to them. It was pretty shocking—two hours' notice. Notice from the neighbour and they are out on the street with one suitcase. Another one notified by text message.

Mr CHANDLER: It was terrible and the same thing at Opal Towers, it was terrible.

The Hon. JOHN GRAHAM: You are saying the engineer, not licensed at the moment—what needs to change to make sure this cannot happen again?

Mr CHANDLER: The council was the certifier on this project, so we will have to go back and have a look at that.

The CHAIR: The council was not the engineer, the council was not the builder. That is where the problems you have identified earlier happened. Why do you keep going back to the council?

The Hon. SCOTT FARLOW: The council was the certifier.

Mr CHANDLER: Council was the certifier.

The CHAIR: Agree.

Mr CHANDLER: They did their critical inspections. I am not sure what they did. I am not sure what they looked at because it did not have much of an impact.

The CHAIR: Correct, there is obviously a gross problem with the way that certification happens in New South Wales. It needs re-regulation.

Mr CHANDLER: You are drawing a long string. You are drawing a very long bow. I was on Mirvac's project in North Sydney yesterday at St Leonards. There are many, many projects out there, in fact by and large projects out there are constructed very well in this State. We have got some outliers, which are absolutely scandalous.

The Hon. COURTNEY HOUSSOS: You are saying that there is an outlier and yet this Committee has received evidence that 97 per cent of buildings in New South Wales have a defect in them. Do you dispute that figure?

Mr CHANDLER: No, I do not dispute the figure but let us put that in perspective. Having a defect and having something that goes to a building becoming dysfunctional, like Mascot Towers—there is a huge difference between a building having defects—

The Hon. COURTNEY HOUSSOS: But we received evidence from the residents that there was already a defect program that was underway at Mascot Towers. They were already paying high strata fees. Are you indicating that there is not a problem with defects in New South Wales?

Mr CHANDLER: I am not saying that all. I am saying that the industry can produce a far better product than it is. It needs better tradespeople, it needs better skills, it needs better supervision—

The Hon. COURTNEY HOUSSOS: Absolutely and you outlined earlier that there needs to be licensing in place, right the way along the chain.

Mr CHANDLER: Absolutely and there is going to be that as well.

The Hon. COURTNEY HOUSSOS: Mr Chandler, let me bring you back to the question of resourcing.

Mr CHANDLER: Are we talking about Mascot?

The Hon. COURTNEY HOUSSOS: No, I am asking you about the enforcement of licensing in New South Wales, which you have outlined is a key part of your response. Fair Trading currently has 14 inspectors for gas and electrical across New South Wales, 33 for plumbing and about 20 for building. Do you think that that is an appropriate number?

Mr CHANDLER: It may or may not be the appropriate number.

The Hon. COURTNEY HOUSSOS: Is that part of your work plan?

Mr CHANDLER: I will be reviewing that.

The Hon. COURTNEY HOUSSOS: You will be reviewing the number of inspectors?

Mr CHANDLER: I will be.

The Hon. COURTNEY HOUSSOS: Will you be reviewing the training that those inspectors have?

Mr CHANDLER: I am not sure. I want to have a great relationship with you going forward but I do not believe—

The Hon. JOHN GRAHAM: We are open to that.

The Hon. COURTNEY HOUSSOS: Mr Chandler, I respect your experience.

The CHAIR: We would just like a professional one; we do not need to be friends, Mr Chandler.

Mr CHANDLER: No, I do not want to be friends. I would like to have a respectful relationship. I did say—

The Hon. JOHN GRAHAM: This needs to get fixed.

The Hon. SCOTT FARLOW: Let Mr Chandler answer.

Mr CHANDLER: One of the very first things I want to do, and I will be meeting with the TAFE colleges next week, is to sit down and say here is a bunch of areas that we are not preparing: constructors who are going into this industry, not just constructors but designers—we are not preparing these people adequately with the practical and applied knowledges that they need. We have to start building the box back into this at the training platform.

The Hon. COURTNEY HOUSSOS: Mr Chandler, will you be sitting down with the private colleges and doing the same thing?

Mr CHANDLER: I will be open to all educators. I think what we need to do is to create a spine of, what I would call, commonly shared knowledge, that everybody does and that they can then add to with their own bits of expertise. We have to focus on the stuff that is core and to make sure that there is an adequate body of academic content and teaching content out there that deal with the core.

The Hon. COURTNEY HOUSSOS: I would thoroughly agree with you on that point. But training people is only part of it; enforcing the licences is a crucial part. To have 14 inspectors for gas and electrical work, 33 for plumbing and about 20 for building, surely you would say that that is inadequate and needs more resources?

Mr CHANDLER: Can I have the opportunity to answer that question? I think that is a really good question. There are a lot more people involved in observing the construction process than just those people. There is no way in the world, if we had 100 or 1,000 people, that we are going to observe all the construction. If you go to a construction contract, it says that you build the project in accordance with the design, in accordance with the Building Code of Australia and in accordance with the law. Contractors are entitled to a progress payment for work completed in accordance with the contract. The people who are superintending contracts at the moment are basically not focused on what their job is. Superintendents can sue and be sued and some of those people need to

start thinking about their situation because they are at the front line of assessing, on a monthly basis, whether work has been done. We have banks who sit on both sides of the transaction—they fund the developer and then they go on the other side of the line and they fund the purchasers.

All of the banks—because I am familiar with what goes on with all of this—have a panel of quantity surveyors and certifiers who advise them that when a developer wants a drawdown for a payment for a project, the payment is due and in order. I know that most of the people who sit on that panel have been screwed down in their fees and only provide somewhat of a lip service in that space. It does not reduce their responsibility and I am meeting next week with the first of the risk management groups and the banks to say, "Guys, you need to put far more focus on the fact that the quality of what is coming to you to enable a developer to drawdown a progress payment has got much more rigour to it and much more accountability than the parties who are signing."

The Hon. COURTNEY HOUSSOS: Mr Chandler, I respect your experience in the industry; I respect the fact that you see this as a broad-ranging response. The issue that we have in this inquiry is around building standards and the protections for consumers and for home owners at the end of the process. While some of these things may proactively affect future change, we have a significant problem with the existing building stock in New South Wales. Do you agree with that?

Mr CHANDLER: I agree that there are significant issues with the building stock.

The Hon. COURTNEY HOUSSOS: Would you characterise it as a crisis?

Mr CHANDLER: No, I do not characterise it as a crisis. I think that there is going to be a series of buildings that present themselves as being in crisis.

The Hon. COURTNEY HOUSSOS: How many buildings?

Mr CHANDLER: I do not know what the number is, I have to say, because the more we dig into it—

The Hon. JOHN GRAHAM: You have said that it is reportedly thousands.

The CHAIR: Let Mr Chandler finish.

The Hon. JOHN GRAHAM: I am just going to quote Mr Chandler, "reportedly thousands—

The CHAIR: No, John, let Mr Chandler finish.

Mr CHANDLER: I accept the fact that there are thousands of buildings that claim they have defects. I accept that. In fact, I spoke to the author of the report at the University of New South Wales, Professor Randolph, the other night and he is coming in to see me in the next week because I want to unpack what that means so I can understand the scope. I want to have a really good look at just what the details are, what the clustering of those defects are, so that I can get a much better handle on what the truth is. I am a data-driven person. Opinion to me does not really count for a lot; I prefer data. There is some additional information that we will probably ask Professor Randolph to seek. We want to have a look and see what the scope of the retraining exercises that are going to be needed to upskill the certifiers and people who will be licensed because there will be a skilling requirement: we are going to need to go back and verify the capabilities that people have currently got. Some of them have got competencies that have not really been updated for many years, as you would find in the university report.

The Hon. ROBERT BORSAK: Mr Chandler—

The Hon. COURTNEY HOUSSOS: Mr Chandler, you agree that there needs to be a new approach to licensing.

The CHAIR: One at a time.

The Hon. ROBERT BORSAK: Mr Chandler, your aims and objectives are highly commendable. I do not think anyone on this Committee would be criticising you for what you want to achieve. But it does sound to me a bit like a man that might be drowning. You are jumping from one area of defect to another area of defect to another area of shortage. This goes back to the original question that you were asked by the Chair, that of resourcing. It is going to be very hard for you when you do not have any line of authority over Fair Trading to get these things done through Fair Trading. Do you not think it would be better in accepting this brief, which is a massive brief by any stretch—

Mr CHANDLER: Correct.

The Hon. ROBERT BORSAK: You have 40 years worth of experience in industry. We know and understand that and appreciate it. We also know and understand that you have the best possible professional motives for getting things fixed. This is such a goddamn mess that this industry is in. They should be resourcing you separately so you can get on and do it without having Fair Trading or some other vulture sitting on your shoulder making sure that you are not delivering in a timely fashion.

Mr CHANDLER: All I will put to you is that in 180 days from now you come back and take me to task and you tell me if you can imagine or see some difference. I have a number of priorities: the first thing is to see the shaping of the current legislation in response to the Shergold Weir Report. That is the first priority and we are working on that. The second thing is to get out and have a look at these buildings, the ones that are most pressing. As I say, second day on the job—yesterday—I went and had a look at two of them.

The Hon. ROBERT BORSAK: Does that extend to the point where you might say—and I am not saying that you will say it—that you would recommend to the Government that they should condemn Mascot Towers? The whole lot, the whole goddamn mess that that building is in, which you just described—and it does not sound like you can actually put defective, basic engineering right—

Mr CHANDLER: I didn't say—

The Hon. ROBERT BORSAK: —that they should actually buy it out and pay the poor residents who are effectively on the street? Pay them out so that they can get on with their lives?

Mr CHANDLER: First thing I am going to do is go and have a look and see what the challenges are in rectifying that building. Then I will make some conclusions based on some advice that I will take. The same thing was when I was at Gadigal yesterday. Frankly, I was unimpressed with the available information as to what the causation of the problem was and therefore how we might solve it. If I am going to bring forward recommendations to the Government as to how we should intervene, I think we should make sure that we get set before we go. The Government, at Mascot, is helping residents out there. I understand the grief that is causing. If I was one of those residents I would be putrid. I would be absolutely putrid.

The Hon. ROBERT BORSAK: I can assure you they are.

Mr CHANDLER: I know. I have seen them on television and I listened to the proceedings here the other day. They are putrid—and I would be putrid, too. I stand in their shoes. Also, as deputy chair of the Building Education Review task force, I had to go around the country and sort out schools that were being built badly by the industry. People should just speak to the school principals and see whose shoes I stood in in getting those things turned around. There should be no uncertainty about where I stand.

The Hon. ROBERT BORSAK: No-one is suggesting for one moment that you are anything other than what you represent yourself to be, Mr Chandler.

Mr CHANDLER: Thank you.

The Hon. ROBERT BORSAK: What I am asking you is do you have the resources to do this because this is not just a massive job, this is an industry that has been allowed to get on and do its own thing for far too long. That deregulation has got worse under this Government—not better. I am not just talking about certifiers.

Mr CHANDLER: I am not going to buy the criticism of folk that I know, that are potentially able to do the sort of work we need to turn this industry around. I am not going to take that interpretation. That is a view and I respect your view, but the alternative view is that on all the turnarounds that I have done over my many years is that once you actually bring the right leadership in and you bring the right level of confidence in and you point the ship in the right direction, actually people jump on board and you start doing good things.

The Hon. COURTNEY HOUSSOS: So you are conceding that the leadership has been wrong?

Mr CHANDLER: I have said the leadership has been poor. Really, I have said that. Read what I have published in the last two years.

The CHAIR: Mr Chandler, your evidence on a series of occasions has been leadership, leadership, leadership. That is the kind of evidence that somebody gives when they are a one-person commission. It is about much more than leadership. It is about hard work. It is about analysis. It is about getting people on the ground. It is not about one man tripping around the State with good intentions and good experience fixing a mess the size of the New South Wales construction industry.

Mr CHANDLER: I will take your statement on notice, Chairman, and I would be very happy to be back here in 180 days and account to you.

The CHAIR: Mr Chandler, on a number of occasions you have said you are meeting with this academic, you are meeting with this person, you are reviewing the legislation. It is not possible for one person to do anything like the level of tasks that you are doing.

The Hon. ROBERT BORSAK: You may be highly experienced and a highly commendable professional. But you will not live long enough to do all the things you are talking about.

The CHAIR: Mr Chandler, you cannot do it all yourself.

Mr CHANDLER: That is your opinion, that I am doing it all myself. I do not believe I am. There is a huge team that is committed to support what I am about to do.

The CHAIR: Mr Chandler, you said you have four or five staff.

Mr CHANDLER: I will take that question on notice, again.

The Hon. JOHN GRAHAM: I want to ask about a pressing issue that cannot wait 180 days. The issue of flammable cladding, evidence to the Committee, the suggestion that there might be 629 high-risk buildings out there with dangerous, flammable cladding. The Victorian Government has acted; the New South Wales Government has not acted to get money in the system to deal with this. Do not we have to follow Victoria's lead?

Mr CHANDLER: I am personally unimpressed with the Victorian response because I do not see any clarity there. That would be evidenced by the number of people who have reached out to me from Victoria in the last couple of weeks saying "We are really keen to work with you and go down the path that you might go down".

The Hon. JOHN GRAHAM: How do you say that when there is money on the table, \$600 million in Victoria but not in New South Wales—

Mr CHANDLER: We have got to be very careful with how money is spent. There are a number of people who are now running around offering body corporates a fix. I am a bit concerned about that because I do not think that the level of triage at the projects that are exposed is adequate. I am told that when you start to unpack on a building that has got, say, flammable cladding you will find some other issues.

The Hon. JOHN GRAHAM: I accept those details but how does zero dollars here compete against \$600 million there?

Mr CHANDLER: You are making an assumption that there will not be a recommendation to do something positive.

The Hon. JOHN GRAHAM: Will there be a recommendation? That is my question.

Mr CHANDLER: I will be making a recommendation within the next couple of weeks.

The Hon. JOHN GRAHAM: It will not be in the next 180 days—the next couple of weeks?

Mr CHANDLER: It will be within the next couple of weeks.

The Hon. JOHN GRAHAM: Can you give us a clue about where your thinking heads on that? People are waiting.

Mr CHANDLER: I think it is inappropriate for me to be doing that at the moment. I will be making a recommendation in the next couple of weeks on what I believe is the sensible way forward. What I am really interested in doing, in making that recommendation, is that when buildings are fixed they are taken from what I would call the "bad bank" situation and put back in the "good bank". I want to make sure they stay in the good bank when they go back there. You would be aware that under some of the work that has been done fixing problem buildings in the past is that we end up with some of the circular defects—they actually get fixed, then they keep going around and around.

The Hon. JOHN GRAHAM: In your recommendation, in a couple of weeks, will you be recommending—like Victoria—that there is money on the table from the New South Wales Government?

Mr CHANDLER: I will be recommending a way forward which may include a variation of that model.

The Hon. JOHN GRAHAM: So it will not all be left to the residents. The Government will come to help with money on the table.

Mr CHANDLER: Why don't we let the Government have a think about what I might have to say?

The Hon. JOHN GRAHAM: With respect, there are people in these buildings—629 of them—waiting to hear. They have been waiting a long time, a couple of years.

The CHAIR: They often do not know they are on the list.

The Hon. ROBERT BORSAK: Nobody knows who is on the list.

The Hon. COURTNEY HOUSSOS: Do you know who is on the list?

Mr CHANDLER: No. I have got that list coming to me on Monday.

The CHAIR: Can we all agree on this? At the moment, there has not been a clear direction from the Government about what is required for individual property owners to actually fix and identified cladding problem. That is a big gap in knowledge at the moment. We have not got a clear statement from the Government, that if you have got cladding, there are different issues on cladding. This is what you need to do to fix it. It is surprising that we are so far down the track and we do not have this yet.

Mr CHANDLER: The Government has elected, on this occasion, to put an industry expert into the chair. That is what you have got. Let us not use the word leadership again. Let us get back now to doing the business. The intention is to do the business and get the business sorted. There are a number of priorities and, as I said to you, the first one is to make sure that the legislation currently being shaped is adequate and goes through as soon as possible. That is why I have taken Bronwyn Weir on board to help through that phase so that I have a second opinion as that legislation is prepared and brought forward. The second thing is to get out there and have a look at the front edge of these buildings that are in serious strife, and to make some recommendations that can have some universality because the situation is not just simply flammable buildings. There are other things. There is waterproofing, there is flammable buildings, there is cladding. There are a multitude of issues that will need to be considered in the way that we bring this thing forward. In my view, just coming out and saying "Here is a solution for flammable buildings" is not going to be the answer.

The CHAIR: But we need a solution to flammable buildings. How do you eat a large pile of tofu? One bite at a time. How do we fix the flammable cladding? What is your recommendation for fixing flammable cladding? Because these building owners want a solution now.

Mr CHANDLER: I am not going to spend much more time talking about detail. I will take that question on notice and come back to you with an answer.

The CHAIR: You are not going to spend time talking on detail. I am asking a simple question about when building owners with flammable cladding are going to get a clear statement from the Government about how to fix their buildings.

Mr CHANDLER: I have said that within a fortnight I would be making a recommendation to the Government about how to go forward. That is what I have said and I am happy to stand by that.

The Hon. ROBERT BORSAK: So you are waving not drowning, that is what you are telling us?

Mr CHANDLER: Please use words of your own choice but do not attach them to me. I am not drowning. I am going to be all over this. I am not drowning.

The Hon. JOHN GRAHAM: But our question, Mr Chandler, is you and whose army? Who is behind you? Who is helping? Have you got the resources to do the job?

Mr CHANDLER: I do not know how many times to say it again in a way that is convincing. I will have whatever resources available to me that are needed. But the last thing I want to do is to build another organisation that duplicates existing organisations.

The Hon. COURTNEY HOUSSOS: Our submission to you, Mr Chandler, is that there is no organisation that is doing this work.

The Hon. ROBERT BORSAK: With all due respect, no such organisation exists.

The Hon. COURTNEY HOUSSOS: There is a need for that, and that is exactly what Mr Lambert told this Committee. That is exactly what Mr Lambert made in his recommendations, that Fair Trading does not have the appropriate attitude. It does not have the appropriate approach and it does not have the appropriate skills or resources. That is why we need a Building Commissioner in New South Wales.

Mr CHANDLER: Well, I disagree. So there you go.

The Hon. COURTNEY HOUSSOS: I have one more question for you. The Mascot residents are currently only receiving accommodation assistance for three months. Do you think that it will take longer than three months to get them back into their building?

Mr CHANDLER: Yes, I do.

The Hon. COURTNEY HOUSSOS: Do you think the Government should be offering that assistance for longer than three months?

Mr CHANDLER: I believe that that consideration is currently being made.

The Hon. COURTNEY HOUSSOS: Have you made representations on that?

Mr CHANDLER: I have not needed to because I have been told that the matter is currently being reviewed. I think I can predict the answer but I am not going to get ahead of the answer being made publicly available. That is the Minister's call.

The Hon. JOHN GRAHAM: Mr Chandler, in the past you have said that the Government could or should offer low-interest loans to affected strata titles dealing with historical defects. Is that still your view?

Mr CHANDLER: I think that is one of the answers. As I say, I have been asked to look at a couple of alternatives. When I put my recommendation up in a fortnight, that will be one of the options, but I have been asked to consider one or two variations of that.

The Hon. JOHN GRAHAM: You have called for an unconditional 10-year warranty to be implemented by July 2020. Is that still your view?

Mr CHANDLER: I did not say 2020; I said from 2023 onwards.

The Hon. JOHN GRAHAM: You still support that measure, though?

Mr CHANDLER: Yes, I do. I believe that where we are going with this industry is that there are a bunch of really good firms out there who want to move to offering something better to the customers than what is currently on the table. At the moment, the current homeowner warranty scheme is a last-resort exercise that everyone has been critical of, including me. It causes a lot of grief and undue angst to owners and quite often does not get them the answer that they need. They certainly do not get that answer in the time frame they need. I believe the industry needs to—instead of rolling this ball forward inch by inch, we actually need to say, "Right, here is the light on the hill." My goal would be that, yes, some time from 2023 on we have created a situation where an option is available to the quality developers to actually offer a 10-year guarantee on the structure, the envelope, the waterproofing of a building and the fireproofing of a building that is a front-end option. There are products like that available in the market now in the UK.

The Hon. JOHN GRAHAM: Lastly, do you still regard the 2 per cent levy that is in place as a "get out of jail free" card?

Mr CHANDLER: I think that for the developers that we are trying to target, I think it is more of a "get out of jail free" card perhaps than—I think it is a burden, for example, to people like Mirvac who are really great developers.

The Hon. JOHN GRAHAM: But for the corner-cutters, it is a "get out of jail free" card?

Mr CHANDLER: May I just finish answering the previous question, because I think it is important. This is why I am attracted to a legislation-light approach. In the UK, for example, there is a product there called BOPAS, which offers insurance at the completion of a building for a period of time: 10 years or more. That was not legislated, in fact, that it be taken up. But what has happened very quickly is that it is becoming a condition of the lend. So when the developer says, "I want to apply for funding for a development," the banks intervene and say, "Well, we want a condition of lend is that at the end of this, you will have a 10-year guarantee on the table." That does not require any legislation. I have already spoken to a number of developers out there who are saying, "You bring that forward and we will be very supportive," because this is going to be about the first movers, not about—

The Hon. ROBERT BORSAK: That requires insurance.

Mr CHANDLER: Absolutely.

The Hon. ROBERT BORSAK: How are you going to bring the private insurance market back into the game?

The CHAIR: No-one is willing to insure a multi-level building in New South Wales because of the dreadful lack of standards which is the result of this deregulation experiment.

The Hon. COURTNEY HOUSSOS: Which you yourself conceded before you took this role.

The CHAIR: Feel free to answer.

The Hon. SCOTT FARLOW: Any question? Which one?

The Hon. ROBERT BORSAK: How do you intend to bring the private market back into the game?

Mr CHANDLER: Would you like to call out the questions and I will answer them.

The CHAIR: I will put the question to you, Mr Chandler. Insurers are not going to move in—

Mr CHANDLER: Well, I disagree with you, sir.

The CHAIR: —because of the gross lack of building standards and the dreadful—

Mr CHANDLER: No, I disagree with you. The insurers are lining up to come back in.

The CHAIR: That is your evidence. We are going to end on that, Mr Chandler: on your evidence that insurers are lining up to come back in. Thank you for your assistance to the committee today. I think we all wish you well in what is undoubtedly a challenging task.

The Hon. ROBERT BORSAK: And good luck.

The CHAIR: Good luck. We will no doubt see you again.

Mr CHANDLER: I look forward to seeing you again. Thank you very much.

(The witnesses withdrew.)

CHRIS SEET, Assistant Secretary, NSW Plumbing Trades Employees Union, affirmed and examined

JUSTIN PAGE, Secretary, Electrical and Trades Union of Australia, NSW Branch, affirmed and examined

The CHAIR: Thank you. You are both welcome to make a short opening statement.

Mr PAGE: Firstly, thank you for the opportunity to appear and highlight our growing concerns regarding unlicensed electrical work being carried out across New South Wales and Sydney. This can lead to poor workmanship and put the public, workers and consumers at significant risk. Poor workmanship in the electrical work is benign and when the building is complete, this means that when not identified for some time, it is costly to repair and can potentially present itself in a dangerous way via fires and electrocution. The electrical industry is a high-risk industry. We need good safety and quality standards enforced to ensure that public and individuals are not put at risk. There are no second chances with electricity; it is fatal. In New South Wales we have the Home Building Act and the Gas and Electricity Safety Consumer Act that define electrical work. Those Acts prescribe that electrical work must be carried out by licensed electricians.

There is currently an infrastructure boom in Sydney, which has led to a higher demand for electricians. We have seen the influx of unlicensed electricians, overseas electricians and trades assistants and backpackers into our industry. Legislation in New South Wales does not allow these workers to carry out electrical work, yet it is rife in Sydney. These workers are on major government-funded projects such as the NorthConnex, the WestConnex, the light rail project, the North West Rail Link, metro projects and universities across Sydney and New South Wales. There are contractors and labour hire firms blatantly advertising for unlicensed electricians, overseas electricians and trades assistants to carry out electrical work. They are on the renewable energy projects such as solar and wind across New South Wales. Currently New South Wales has two regulators that are supposed to regulate the electricity industry in New South Wales: Fair Trading should regulate licensing and the safety and compliance regimes, and SafeWork should regulate safety.

The ETU's view is that Fair Trading and Safe Work are deficient in properly regulating the dangerous and hazardous work performed in the electrical industry in New South Wales. In addition, we have noticed a decrease in inspectors and inspection regimes in the distributors such as Ausgrid, which also have a responsibility to ensure electrical installation work is to standard and inspected. That is why we are recommending a dedicated electrical safety regulator in New South Wales, such as Victoria and Queensland have. We do not have to reinvent the wheel. There are good models in place in those other states. We would say Victoria is the benchmark and that should be replicated in New South Wales. I also have some evidence I would like to table as well.

The CHAIR: Thanks, Mr Page. By all means table it with us and I think the secretary will have a chat with you about how we address that material. Mr Seet?

Mr SEET: Thank you for the opportunity to contribute into the Inquiry into the Regulation of Building Standards, Building Quality and Building Disputes. There are risks to the public and individuals which are inherent in plumbing and fire protection work. Central to the safety of any building, whether it be commercial or residential, is the effectiveness of these systems. The best way to manage those risks and hazards is to ensure that individuals are trained and skilled to perform the work. How we achieve this is through licensing. In New South Wales, a licence is required to install fire protection systems. Yet, no licence is required to inspect, test and maintain those installations. Fire protection is a complex system which involves interconnected components from design and construction through to service and testing. It is imperative that all aspects of fire protection work be carried out by competent practitioners with the appropriate qualifications and credentials, as it is in Victoria and Queensland.

You would have read in my submission numerous examples of near disasters in Melbourne. If it were not for the well-functioning and properly maintained fire systems in place, those situations would have become tragedies. Plumbing, drainage and gasfitting requires a licence in New South Wales. Yet, mechanical services work, a major part of plumbing which involves heating, cooling and ventilating residential and commercial buildings, does not. This work is highly specialised and technical. The failure of these systems can lead to things like legionella outbreak, major flooding and flammable explosions. Medical gas systems, which are part of mechanical services plumbing, deliver gases to hospital wards and surgical theatres—the same system which failed resulting in the Bankstown hospital tragedy. Again, these are licensed in Victoria and Queensland and used to be in New South Wales but not anymore.

Due to these systems dealing with extreme pressures and temperatures, not to mention toxic chemicals, explosive substances and materials, effluent waste, waterborne bacteria and disease outbreaks, all plumbing and

fire protection work needs to be carried out by licensed professionals from start to finish. High-quality training needs to be provided in order to keep up to date with ever-changing systems, modern standards and public safety. Licensing and quality training go hand in hand. The PICAC model of training shown in my submission, which has been successful in Victoria and Queensland, not only works to create leading licensed tradesmen, it also works as an advancement to the TAFE system, with TAFE offering the base qualifications of certificate III for fire protection and plumbing, whereas PICAC can advance from that, offering training which keeps up to date with the ever-changing modern systems, specialising in the safest, most efficient and greenest ways possible to advance our plumbing and fire protection in New South Wales.

The response rate is quicker with the training being run by the industry for the industry. Licensing and training is only an effective risk mitigator if it is properly oversighted and enforced. An adequately resourced building industry regulator, which would include a legislated plumbing trades council, is an option which we see fit. We suggest this would also be the licensing authority for plumbing and fire protection. The relevant community and financial risks are so significant, we believe the Government plays a vital role in managing those risks and not leaving it to the market and contracts to manage. Thank you.

The CHAIR: Thank you to both of you. We have benefitted from your submissions. Mr Buttigieg and Ms Houssos, did you want to ask questions?

The Hon. MARK BUTTIGIEG: I declare what I would characterise as a potentially perceived conflict on the basis that I was up until recently an employee of the Electrical Trades Union.

The Hon. COURTNEY HOUSSOS: I also make a declaration that my husband works for the Electrical Trades Union.

The CHAIR: All right. So the wiring on that side is all good.

The Hon. ROBERT BORSAK: No questions from you people, then?

The Hon. COURTNEY HOUSSOS: Thank you, Mr Page and Mr Seet, for your attendance and for your submissions to the inquiry. Mr Page, you refer in your submission to unlicensed electrical work that you have reported to Fair Trading. How many times have you reported that to Fair Trading?

Mr PAGE: In the evidence it will show that I think I have outlined there is—since January, I think we have written to the Department of Fair Trading at least seven to 10 times with basically no response and we have written to Safe Work a number of times and that is just a snapshot, and that is just within Sydney.

The Hon. COURTNEY HOUSSOS: So you have highlighted that there has been a lack of licensed operators within the sector and you have highlighted that to the Government and you have received no response?

Mr PAGE: Basically we received a response to say, "Here is a reference number. We are looking into your concerns", but nothing has followed that. The evidence also shows that what we have outlined to them, we have gone onto specific building sites and outlined a specific builder and electrical contractor, and through our book inspections that we are able to do through work health and safety we were actually looked at the ratios of how many are licensed, who is not licensed, trade assistants [TAs] and apprentices.

Within that evidence it shows—on one instance there were three electricians supervising six non-electrical people doing wiring work. On another instance there were six electricians supervising 11. And on the third occasion there were two licensed electricians supervising 13, most of those being apprentices. So we keep highlighting those concerns. So within the Home Building Act, within the Gas, Electricity (Consumer Safety) Act and within the Work Health And Safety Act there are all these requirements around who needs to carry out licensed work and is there are also supervision requirements around when you have TAs and apprentices also assisting with that work. And so what we do is continually highlight to the regulator, Fair Trading, that these requirements are not being met and nothing comes back.

The CHAIR: Is there a direct supervision requirement for that? If an unlicensed apprentice or other is doing the work, is there an obligation for a direct supervision by a licensed professional?

Mr PAGE: The supervisory requirements are not legislative, but they are recommendations and it is direct. Specifically for a first-year apprentice those recommendations are that you must supervise one to one and obviously as they become more experienced it is a bit lesser. But I think for a fourth-year apprentice it says you should be supervising 60 per cent of the time the work that they are doing and then checking all the work they have done at the end of that. We are saying that cannot be done under the current—when you look at these ratios of two electricians supervising 13—the correct supervision is not being put in place.

The CHAIR: Would you say that is unlawful, what is going on?

Mr PAGE: Definitely. Again, if you take it back a step and say that electrical work is defined in the Home Building Act and the Gas and Electricity (Consumer Safety) Act, it defines that it has to be carried out by licensed electricians.

The CHAIR: And has Fair Trading commenced a single prosecution or removed a single licence as a result of these complaints?

Mr PAGE: No, it has not.

The CHAIR: How would you describe Fair Trading's performance?

Mr PAGE: Totally inadequate. The concern we have with Fair Trading, I think it has been highlighted to us that there are 14 inspectors in Fair Trading that do gas and electricity. All they inspect is advanced metering. So when there was a change in the advanced metering bill, the responsibility went from the distributor to Fair Trading. Our understanding is they do not inspect any electrical installations, any infrastructure, any domestic, commercial. None of that is being inspected by the Department of Fair Trading.

The Hon. MARK BUTTIGIEG: Can I just clarify that? So if I am an electrician and I go out and wire up a new House, there is no inspection that ever gets done on that?

Mr PAGE: There is still a requirement on the distributors to do an inspection. But what we have learnt—I will use Ausgrid as the best example because it looks after all of Sydney, but you have three distributors across New South Wales. Four years ago Ausgrid had 60 inspectors. They now have approximately 31. They used to do inspections of regimes and basically inspect 10 per cent of all electrical work completed in New South Wales and it was 100 per cent of work that was over 100 amps. So for big infrastructure projects, for big commercial buildings, big high-rise towers and that, if it is over 100 amps they would inspect that. Now what they do is they have taken this risk-based approach where they only basically—their words are they focus on high risk to the network safety.

They inspect things that are added onto their network that they perceive will create a risk—like adding rooftop solar. This is the really scary bit: There are more than 30,000 electrical contractors or electricians licensed in New South Wales. Of those, 20,000 are registered with Ausgrid. They actually register with Ausgrid to say, "I am doing work that connects to your network". In the past 12 months only 8,000 certificates of completion of electrical wiring work [CCEW] have been lodged—that is the safety and compliance aspect that department of Fair Trading needs to regulate. Think about that. How many jobs would 30,000 electricians be doing per year?

The CHAIR: Probably more than one every two years.

Mr PAGE: Some 20,000 electrical contractors or electricians register with Ausgrid and only 8,000 safety and compliance regime certificates have been lodged. The Department of Fair Trading receive all these safety and compliance CCEWs as well.

The CHAIR: Is it a statutory obligation to lodge the certificate?

Mr PAGE: Yes, it is a statutory obligation.

The CHAIR: Whose job is it to police that?

Mr PAGE: Department of Fair Trading.

The CHAIR: How would you describe Fair Trading's performance?

Mr PAGE: Totally inadequate.

The Hon. MARK BUTTIGIEG: What happened with the change in the regime requirement from a proactive regime that went out and actively inspected installations to a risk-based approach? When did that change? I am presuming that was when it went to the Department of Fair Trading.

Mr PAGE: Yes, so only in recent years. Part of it was when they hived off metering. Metering used to be the responsibility of the distributor. It got hived off into retail. That function of safety and compliance through the metering bill took over 12 months to come in, but I believe it came in in January of last year. Again, my understanding is that these inspectors within Fair Trading are not inspecting electrical installations; they are only inspecting advanced metering.

The Hon. COURTNEY HOUSSOS: You talked about the complaints that you have lodged with Fair Trading NSW. Is there any unlicensed work that is happening on major projects?

Mr PAGE: Definitely. In the evidence as shown we have highlighted projects we have been on and done the ratios. Part of the evidence I have tabled is a snapshot over the last two weeks, knowing I was coming into this inquiry to give evidence. When you look at companies and social media actually advertising for electricians in Sydney, in that short snapshot we have identified 19 companies and labour hire blatantly advertising for unlicensed electricians, overseas-qualified electricians and trades assistants to do electrical work. They were blatantly advertising in breach of the legislation in this State. I just want to quantify that in New South Wales it is not adequate to have an overseas licence—such as from Ireland, England, whichever country. You cannot use that licence to carry out electrical work in New South Wales, yet here are 19 companies advertising for these workers. Again, in two weeks we identified 28 ads that I have highlighted in the evidence—

The Hon. JOHN GRAHAM: This is going on right now? This is not historical; this is happening right now in Sydney, in New South Wales?

Mr PAGE: Those 28 ads were in the last two weeks.

The Hon. COURTNEY HOUSSOS: So in the last two weeks there have been 28 ads that say, "You don't need a licence; come and work for us here in New South Wales on electrical projects"?

Mr PAGE: And that is only the ones we could find.

The Hon. COURTNEY HOUSSOS: On major projects?

Mr PAGE: On major projects. They actually list, you know, NorthConnex, WestConnex in those ads.

The Hon. MARK BUTTIGIEG: Government-sponsored projects?

Mr PAGE: Government-sponsored projects.

The Hon. MARK BUTTIGIEG: Unlicensed electrical work?

Mr PAGE: The key players in that are labour hire. The industry is now rife with labour hire. What they do is source the labour and then feed it to the contractors on these major projects. Again, the significant demand for electricians—I think on the NorthConnex at its peak we had 600 electricians on that infrastructure project. Then you add WestConnex, you have the Metro, all these infrastructure projects happening and there is really high demand.

The Hon. COURTNEY HOUSSOS: Mr Page, let us just be really clear: There are current advertisements in the last two weeks that are recruiting unlicensed electricians for work on government projects?

Mr PAGE: Yes, definitely.

The Hon. MARK BUTTIGIEG: Have we got any statistics on electrical accidents in recent times?

The Hon. JOHN GRAHAM: Just before we move to that, can I follow up on the licensing question? I thought the most alarming part of your submission was about who is enforcing that licensing requirement. Your submission states: "This department has no inspectors that enforce the licensing requirement of electrical work being performed". Is that correct?

Mr PAGE: The evidence we have seen is that they have allegedly 14 who look after electricity and gas. However, when we keep specifically raising the question with them no-one goes out to those building sites and those contractors that we identify have got 13 electricians on one site. We highlight the day, the site—we actually get the names of the people for them. Through our book inspections that we are legally able to do through work health and safety, we highlight all the evidence for them. They have little work to do; we have done it for them. Unfortunately, that is the extent we have had to go to because, to be frank, they are not doing it.

The Hon. JOHN GRAHAM: And then you have seen the consequences as you have surveyed over the last couple of weeks. That is why this is happening: No-one is inspecting.

Mr PAGE: No-one is inspecting. We also raised it with SafeWork, the regulator. We raise safety issues with SafeWork. We actually had a meeting with the head of SafeWork to raise our concerns about licensing and a range of things. Its response was that it is not in their domain; the department of Fair Trading has a responsibility for licensing. Technically we agree with that; that is unfortunately how it is. However, there is a presence of SafeWork inspectors that go out onto job sites. We do not see that from the Department of Fair Trading. We will try with anyone who will listen to us and highlight it to those two regulators but SafeWork actually put its hands up and says it does not have the power to enforce licensing on job sites.

The Hon. MARK BUTTIGIEG: Is that largely then a tick and flick exercise from the department of Fair Trading? When the electrician submits the certificate it is pretty much tick, tick, tick rather than "Let's actually go out and see what they have done"?

Mr PAGE: Yes. I do not believe they are actually going out at all.

The CHAIR: Mr Seet, just a couple of questions directed to you.

Mr SEET: Yes.

The CHAIR: We can come back to the Opposition.

The Hon. MARK BUTTIGIEG: Yes, sure.

The CHAIR: The first is fire protection. In terms of ensuring the safety of residents in multistorey apartments in particular, ensuring the fire protection system is working according to specifications and is properly serviced is crucial, isn't it?

Mr SEET: Yes.

The CHAIR: It is kind of a life-or-death thing.

Mr SEET: Yes.

The CHAIR: You cite some recent instances of fires and apartment blocks with a fire protection system was crucial to saving lives. Do you want to detail those?

Mr SEET: In Victoria we had the Lacrosse tower, which was clad with a flammable aluminium cladding—the same type as the Grenfell Tower disaster in London. The fire in the Lacrosse tower spread to 13 storeys in 13 minutes. If it was not for the well-functioning fire protection system there that could have been disastrous.

The CHAIR: You say the same about the Neo200 apartment building in Spencer Street in Melbourne.

Mr SEET: Yes.

The CHAIR: It was another dangerous fire where lives were saved by a functioning fire protection system.

Mr SEET: Yes.

The CHAIR: Is it true that in New South Wales you do not need a licence in order to service and maintain a fire protection system?

Mr SEET: That is correct. In Victoria and Queensland, from start to finish you need your licensing—from installation right through to testing and maintenance—whereas in New South Wales you do not need it for testing and maintenance. Our argument is that these are very complicated systems that you need years of understanding in how to—

The Hon. MARK BUTTIGIEG: Can I just tease that out a little bit? You are talking about what is intrinsically plumbing work? They are pipes and outlets so that the water can spray out. In Victoria, where the regime is actually functioning, you have got an oversight mechanism that ensures that you have a licensed plumber doing that sort of fire protection work; however, in New South Wales you can get anyone to do it?

Mr SEET: A licensed sprinkler fitter. We have got the plumbing licence and the sprinkler fitting licence. It is a licensed sprinkler fitter that we believe should be doing that work.

The Hon. MARK BUTTIGIEG: But at the moment—

Mr SEET: You do not have to have any qualification. In New South Wales you can just walk off the street and do it.

The CHAIR: But fire protection systems can be quite complex systems, where you have a series of interrelated safety measures.

Mr SEET: Yes.

The CHAIR: I would have thought that would require a reasonably high degree of competence to ensure that that was being maintained.

Mr SEET: Yes, I would agree with you, absolutely.

The CHAIR: I could start up a business tomorrow and do inspections and there would be no legislative prohibition on that?

Mr SEET: That is correct. You do not need anyone to have a licence to work for you.

The CHAIR: I take it from your submission that your view is that that is prejudicing people's safety and we should immediately move to licensing for the full gamut of fire protection systems?

Mr SEET: That is definitely what we are saying. It is a major safety issue across Australia, especially with the cladding crisis. That is a perfect example of when a building is on fire, the fire protection system is the first line of defence before the firefighters get there to deal with the fire. It is common sense.

The CHAIR: What about mechanical services licensing? Here I am talking about air conditioning, gas distribution networks—apart from flammable gas—there is even less regulation there, isn't there?

Mr SEET: Yes. With mechanical services, that is a major part of plumbing; that is heating, ventilation and air conditioning. I actually did mechanical services for five years. These are very complex systems, which are just as complicated as plumbing, drainage and gas fitting—which is licensed in New South Wales—if not more. If you need to have all of the qualifications—these are engineered systems—to be able to design this stuff, you need qualifications to install these systems as well. There are inherent dangers within mechanical services work—like I said, Legionella outbreak, if it is not properly installed or maintained. Not to mention that these systems are high-pressured systems, with nine-inch pipes running through buildings and pump and plant rooms. You are dealing with flammable materials. The actual pipework is mounted to the structure of the building and this weighs in the tonnes. There are so many inherent dangers and complications. It needs to be licensed.

The CHAIR: Literally anybody can walk off the street and install it?

Mr SEET: That is correct.

The CHAIR: And maintain and test it?

Mr SEET: Yes. I know that from personal experience. From the 20 years that I have been in the industry, I was 10 years on the tools and now 10 years at the union. In the 10 years I was on the tools, mainly on construction as a plumber and mechanical services installer, I have never been asked before, first of all, by an employer to see my licence. I know all the people I have worked with have never been asked. Also, I think there are 33 inspectors in New South Wales for plumbing. I have never, ever seen an inspector come on and look at any form of work, and I am talking major government jobs to small construction jobs. I have been on many jobs over the last 20 years that I have been in the industry and I have not seen one inspector come onsite to check any work.

The Hon. MARK BUTTIGIEG: Mr Seet, have you seen any of the practical outcome consequences of this lack of an inspection regime?

The CHAIR: Or licensing regime.

The Hon. MARK BUTTIGIEG: Or licensing regime? Presumably you come across things that are a bit off-putting from time to time?

Mr SEET: The perfect example is the Bankstown Hospital tragedy, with medical gas. There was a cross connection in the pipework and instead of oxygen being fed through the line it was nitrous oxide, which led to a fatality of a newborn baby and permanent health issues with another baby. That is the result of unqualified people coming in and doing complicated plumbing work.

The Hon. COURTNEY HOUSSOS: Do you need a licence to do that?

Mr SEET: Medical gas?

The Hon. COURTNEY HOUSSOS: Yes.

Mr SEET: No, not in New South Wales.

The Hon. JOHN GRAHAM: You would in Victoria and Queensland but you don't in New South Wales?

Mr SEET: Yes, that is correct.

The Hon. MARK BUTTIGIEG: And what was the Government's response to that? In the sense that if that had been properly licensed work and there was a regulatory regime in place, presumably you would have prevented that. Was there any response to that?

Mr SEET: We have had no response.

The CHAIR: In terms of mechanical services, you are also talking about services that extract exhaust gases out of what can be quite large multistorey underground car parks, aren't you?

Mr SEET: Yes, ventilation.

The CHAIR: What is the consequence of getting that ventilation system wrong?

Mr SEET: People are breathing in whatever substances that could be hazardous to their health. It is a health issue.

The CHAIR: As you understand it, when a multistorey apartment block—when those mechanical services works are finished—is there anybody who is signing off on the quality of the mechanical services work?

Mr SEET: I don't know if there is a third-party survey or someone signing it off, I am not sure.

The CHAIR: Have you been onsite and seen some sort of qualified, competent person coming on and checking and signing it off?

Mr SEET: That is what I was saying. I am just going off my experience of 20 years in the industry. I have never seen anyone sign off anything. I have never been asked by several employers when I started with them, "Can I please see your licence to show me that you are—?" That is a separate issue. Working for a plumbing company, not a mechanical services company, which does require a licence in New South Wales, I have never been asked by an employer when I start with them, "Can I see your licence to make sure that you are a plumber?"

The CHAIR: Particularly large air conditioning units in either commercial, retail or residential buildings, inadequate servicing, inadequate construction and installation could have significant health concerns, can't it?

Mr SEET: Yes. Ultimately, Legionella outbreak. But just with unsafe practices of installing these systems, which are under high pressures, carrying tonnes of water and dealing with extreme temperatures, these pipes are encased in buildings such as these. If these have failings, then there could be deadly consequences. It is one of those things where stakeholders in the industry, who have been around the industry for a long time, we are trying to let the Government know that the potential dangers could be catastrophic. We are trying to get to the problem before it becomes too big an issue down the track.

The CHAIR: The industry has attempted to meet with Government on this. In fact, the industry has gone ahead and on its own industry partnership, the Plumbing Industry Climate Action Centre [PICAC].

Mr SEET: Yes.

The CHAIR: Can you tell us about that and what the Government's response was?

Mr SEET: Okay, so the Plumbing Industry Climate Action Centre is a collaboration between the industry: The Master Plumbers Association, the National Fire Industry Association [NFIA] and the Plumbing Trades Employees Union. We have all come together in order to work next to TAFE. So TAFE does your base courses for certificate III in fire protection and plumbing whereas the PICAC model of our training is advancing from that—the ever-changing systems that occur all the time. So we can keep up-to-date and be responsive as quick as possible due to the fact that the people that are part of the industry are involved in this training model. We can be responsive straight away. It is not working against TAFE—that is the basic certificate III that is at TAFE—but our training system is to keep up to date.

The CHAIR: Do you think if we are going to move to a comprehensive licensing regime that that kind of model—an industry and union-led model providing up-to-date training—there should be an obligation to continue to update your skills with that kind of training model?

Mr SEET: I believe so. I think we need to keep up with the times of the ever-changing building and construction industry and be responsive to that straight away.

The CHAIR: What about from a year-to-year perspective—that ongoing, continuing professional development, if you like?

Mr PAGE: Yes, we support that wholeheartedly.

The CHAIR: Is it a part of the regime at the moment?

Mr PAGE: No.

The CHAIR: Has Fair Trading put it on the table or suggested these kind of innovations to either of your industries?

Mr PAGE: No, not at all.

Mr SEET: For us, this has come up from our industry to push this. PICAC has been well underway in Victoria and Queensland for years now and the success is evident with the training scores and the quality of training in those States.

The Hon. MARK BUTTIGIEG: Could I ask Mr Page first and then Mr Seet in terms of the analogy, if there is one, with the plumbing trades. There was a fundamental change in the way that licensing was carried out in New South Wales some years ago with the advent of private training provision. You outline in your submission the superiority, in the ETU's view, of the Victorian licensing system and how that deals with private certification. Could you explain to the Committee how it used to work, how it works now and what the defects are with the current system?

Mr PAGE: Yes. Currently under New South Wales to get your electrical licence you basically do a four year apprenticeship through an RTO and you need four years training and four years on the job experience. As soon as you get that trade certificate from an RTO such as TAFE you would apply to the department of Fair Trading for your licence and they would look at the experience and basically tick it off or not. Obviously with the advent of these private RTOs coming in place where you could do it online you basically were not getting the training experience and you could still rock up to the department of Fair Trading and apply for a licence. They identified this as an issue years and years ago in Victoria and so what they did was at the end of the apprenticeship they put in place what is called and ELA, which is an electrical licensing, basically an exam at the end of it on top of the capstone to try and ensure that the training that they received was adequate before rocking up with a certificate from a private RTO and being handed an electricians licence.

They built this safety net in place where you had to jump that last hurdle to gain your electrical licence and we fully support that and say it should be implemented in New South Wales. Again, there is a model that we say is the benchmark across this country that we do not have to reinvent the wheel. It works. It is proven to work. They have statistics in Victoria where they had the failure rates of apprentices coming through the system to now when they implemented this model. When they first implemented it there was a huge failure rate, people could not jump the hurdle because they were not being properly trained. They have shown that it has led to better training outcomes and better licence outcomes as a result of implementing that.

The Hon. MARK BUTTIGIEG: Under the current system the issue is, correct me if I am wrong, that you have some private training institutions which actually there are some out there who do a good job but others are basically some poor kid comes in, pays \$10,000 to a private provider, RPL, RPL, tick, tick, tick, when they really do not know what the trade is about by the time they get to the department of Fair Trading tick off: Is that what is happening?

Mr PAGE: The private providers have slowly been weeded out of the system. There still are a few. In my understanding at the moment there are only three RTOs that can provide electrical training across New South Wales, TAFE being one of them.

The CHAIR: Were both of you here for Mr Chandler's evidence?

Mr PAGE: About the last half hour, 40 minutes.

Mr SEET: Yes, I was.

The CHAIR: It is hard to summarise his evidence, but in large part he was saying we do not need a sea change of legislation, he was talking about a light regulatory model, and more of a leadership approach to get a sea change in industry culture.

The Hon. ROBERT BORSAK: He said he is waving, not drowning.

The CHAIR: He was talking about a sea change in industry culture. Do you have any observations about Mr Chandler's approach?

Mr PAGE: It is very alarming, to be honest. There is this ad hoc approach at the moment and his response, I cannot see any major change in that. Blatantly now you have people, we have demonstrated there is 19 companies and labour hire firms out there blatantly advertising for unlicensed people to do electrical wiring work in this State.

The Hon. COURTNEY HOUSSOS: Including on government contracts.

Mr PAGE: On government contracts they do not care. No one has taken them to task and we have demonstrated, we can take you to those building sites and we can do book inspections and we have highlighted that to the regulator, the department of Fair Trading, and they do nothing. The sea change is not going to fix that.

Mr SEET: I believe that what he said does not reflect the facts. The facts have been brought to this Committee and it does not reflect what is going on out there on the building sites.

The Hon. JOHN GRAHAM: Can I ask about another aspect of Mr Chandler's evidence and that was where he said he turned up as the Building Commissioner and said, look, we do not need a building commission. We do not need the sort of institution that exists in Victoria or Queensland. Mr Seet, in your submission you say fixing licensing will not be enough, you call for "an adequately resourced dedicated industry regulator". What did you think of the view put by the Building Commissioner today that we simply do not need a building commission?

Mr SEET: I completely disagree with it. I think we really need to have a robust body which has influence from people from the industry. For example, a legislated plumbing council, people from the industry, people from the unions, people from the employer associations, we have all come from this profession. A lot of us have been doing this since I was 17. We need to have input into how these things need to be done safely and properly.

The Hon. JOHN GRAHAM: Otherwise it is all just down to Mr Chandler, isn't it?

Mr SEET: That is right, which you guys were saying, it is on one person. It should not be on one person. It should be on more than one person.

Mr PAGE: From an electrical point of view, we have robust legislation in place that defines what electrical wiring work needs to be carried out by licenced electricians. That legislation is robust but with no-one policing it, it is running rife right across this State and especially in Sydney. As I said 600 electricians on one infrastructure project with not one person going out there to check whether they are actually complying with the legislation in this State.

The CHAIR: Would it be unfair to summarise Fair Trading's performance as woefully and dangerously inadequate?

Mr PAGE: I would say that is a very accurate description.

The CHAIR: The thought that Mr Chandler is primarily relying upon the assistance and advice from Fair Trading in his work, what do you make of that?

Mr PAGE: The current system is failing. Unfortunately the evidence I seen Mr Chandler give today does not give me any confidence that is going to be turned around any time soon.

The Hon. ROBERT BORSAK: Mr Page or Mr Seet, just in light of what you just said now, do you want to comment or give us your views in relation to what Essential Energy are currently doing in relation to losing jobs?

Mr PAGE: In what context?

The Hon. ROBERT BORSAK: Essential Energy are in the media, and we saw Mr Barilaro yesterday talking about trying to save the jobs of 165 electrical trades employees.

Mr PAGE: In the context of this inquiry it is very alarming as well because the proposed job cuts will be one in five. Again, the distributor has a responsibility to oversee electrical inspection as well. To take that amount of workers out of that industry will ring alarm bells. Looking at Essential Energy, it is 95 per cent of the State. There are many contractors out there putting ceiling fans, light fittings, new kitchen renovation in mum and dad electricity consumer installations that should be inspected. I fail to see how Essential Energy is actually keeping up with now, let alone if they go to these job cuts, what that will actually mean. The department of Fair Trading, I cannot see the department of Fair Trading inspectors running around regional New South Wales checking mum and dad electrical contractor installation work.

The CHAIR: How long have you been in the industry, Mr Page?

Mr PAGE: Thirty years.

The CHAIR: Have you ever seen one of them out there?

Mr PAGE: In my early days as an electrical apprentice we did used to see electrical inspectors on the job out and about. I have been off the tools for 10 years now, but even 10 years ago I was lucky to see an electrical

inspector. Even now, as I said, the statistics we understand, if you look at Ausgrid alone, it has halved its inspectors in the last four years.

The Hon. MARK BUTTIGIEG: A lot of that Ausgrid reduction is a by-product of not just the lack of requirement on them to do the inspection any more but also privatisation resulting in job losses. The irony of what you are saying is that you have Essential Energy, a publicly owned distributor, actually doing the same thing, presumably still accountable to the government. But still doing the same thing as the privatised distributors.

Mr PAGE: Yes. And it worries me when they say they are focused on high risks to the network safety. What about the safety of the public? They are only worried about what will happen when they do their installations. They have an obligation to ensure that electrical installations right across the State are safe and comply with legislation.

The CHAIR: Another way of phrasing that is that mums and dads can be electrocuted provided the system does not wobble.

Mr PAGE: And it does not affect their network.

The CHAIR: That is an extraordinary proposition for a regulator, is it not?

Mr PAGE: They are saying things like, "We have had to take a more risk-adverse approach" because they have reduced their budgets and their numbers. But that gives us no confidence in terms of safety and compliance. It is scary, to be honest. We had a fatality of a member of the public just recently with Ausgrid when lines fell on the ground. Again, if they keep reducing the distributors the way they are it is only going to get worse.

The Hon. COURTNEY HOUSSOS: I want to ask about the question of where this inspection regime should be located. On Monday we heard from Mr Lambert that Fair Trading fundamentally has a light-touch approach to regulation. That is fine when you are buying a new fridge or toaster, but when you are purchasing a new home or new apartment you need to have a stronger regulatory approach. Would you agree with that?

Mr PAGE: Yes, definitely. Consumer safety legislation covers both products coming into the country and products being sold, as well as installations and people installing those products and putting the wiring in place. At the end of the day when it ends up in a building it is hidden behind walls and ceilings. We are talking about fire systems, electrical systems and smoke systems. All of those things needs to be of good quality to ensure the safety of the public. Again, the legislation is there, but there is no-one enforcing it, which allows builders and contractors to fight against each other to do jobs cheaper. No-one is policing whether the licencing requirements are being met.

The CHAIR: It is a race to the bottom based upon profits, and people's safety is paying the cost.

Mr PAGE: And labour hire, unfortunately in our industry, is driving that significantly.

The CHAIR: Some of the discussion in the submissions has been about \$2 companies and that corporate structure in the industry. Do you have any observations about the corporate structure?

Mr PAGE: If you look at it from an electrical point of view, subcontractors are competing with the multinationals and the multiplexes on infrastructure projects. Those bigger companies are, in my words, screwing the subcontractors down. They are trying to compete on lower costs. Again, the job ads that you will see show that the rates of pay are significantly lower. That is why they are blatantly advertising for unlicensed workers and trade assistants—so they can pay them less.

The Hon. MARK BUTTIGIEG: The business model is that you would have maybe one qualified electrician and then 20 or 30 people would be running around under him or her, essentially doing unlicensed work, and then she or he has to take responsibility for everyone.

Mr PAGE: They are doing licenced work unlicensed and then, supposedly, that one person is supposed to supervise and ensure that the quality of all the work they do is to standard.

The Hon. COURTNEY HOUSSOS: And the current regulatory system is relying on them to sign it off but there is no-one else coming to have a look.

Mr PAGE: Evidence shows that people are not complying with the safety and compliance aspect, which is the Certificate of Compliance for Electrical Work [CCEW]. People are not submitting them. Out of 20,000 registered contractors with Ausgrid, only 8,000 applications were made last year. How many jobs are happening across the Ausgrid franchise—

The Hon. MARK BUTTIGIEG: Not only is there no inspection or regulatory oversight, but also people are not even registering to say they have done the work.

Mr PAGE: They are not using the safety and compliance mechanism that is in place.

The CHAIR: But surely a competent regulator would have a look at those numbers—it would not require you to tell us—and realise that there was a problem.

Mr PAGE: The significance of that is that it is that in the past 12 months there has been a 30 per cent to 40 per cent reduction in the number of CCEWs being submitted.

The CHAIR: We might ask Fair Trading some questions about that on notice.

The Hon. JOHN GRAHAM: How long ago did that number start to drop in the way you are describing?

Mr PAGE: The drop in the number of installation inspectors, which started to drop four years ago in the distributors, has led to that decline. That was when there was talk of moving metering off in retail. When the legislative framework started to change and there was a question about whose responsibility it is, it was chucked sideways.

The Hon. COURTNEY HOUSSOS: Mr Seet, I have a question for you. In your submission you talked about the dangers to the public from waterborne diseases if plumbing works are not installed correctly. Can you explain exactly what that means?

Mr SEET: In particular it would be drainage. A major part of plumbing is drainage, which gets rid of effluent waste.

The Hon. COURTNEY HOUSSOS: How is the public in danger from that?

Mr SEET: A perfect example was one shown on *9News*. I will not name anyone here but there was an apartment building in Parramatta where there was major flooding of all the floors of an existing building—again, residents were living there. That was effluent waste.

The Hon. COURTNEY HOUSSOS: Sewage?

Mr SEET: Sewage, yes.

The Hon. COURTNEY HOUSSOS: Going into people's houses?

Mr SEET: Yes, it was going into people's houses. That is common. It really needs to be done by a licenced professional.

The Hon. ROBERT BORSAK: Mr Page, you talked about the lack of accountability of the certificates that are issued by licenced electricians. How long has that been going on for in that sort of way? Is it just being ignored? On Monday we received evidence from Mr Lambert that certificates issued by almost any subcontractor are not worth the paper they are written on. Do you want to elaborate on that?

Mr PAGE: How the systems works is that Ausgrid looks at the contractor's history over 10 years to see whether they were issued defects when they were inspected. If the contractor is given an A grade they will have one in 20 of their jobs inspected. Again, let us be clear, if they submit a CCEW that is classed as a job. They will have one out of 20 of those jobs inspected. If they are given a B grade it is one in 10 and if they are given a C grade it is one in five.

The Hon. ROBERT BORSAK: So it is even worse than that because there is no requirement or follow up to see whether they are actually registering jobs under the system. How can we possibly have any sort of reasonable audit process? That is what you are saying.

Mr PAGE: Yes, definitely. It used to be one in 10 for everyone. Now there is this graded system and nothing goes against them if they do not submit the certificate, which is supposed to be the sign-off. They are supposed to have done all the electrical jobs and all the electrical tests.

The Hon. ROBERT BORSAK: We have just got a mad goldrush mentality here.

Mr PAGE: They know they can get away with it.

The Hon. ROBERT BORSAK: And they are getting away with it. Mr Seet, is there a similar regime going through the plumbing industry?

Mr SEET: As far as I can see there is nothing and there is no regulation. I can get more information for you.

The Hon. ROBERT BORSAK: Do you want to take it on notice?

Mr SEET: Yes, I will take it on notice.

The CHAIR: There is no cop on the beat though, is there?

Mr SEET: From my observation, after being in the industry for 20 years, there is no regulation.

The Hon. ROBERT BORSAK: We have just taken an hour's worth off evidence from the new Building Commissioner, who said he does not want more red tape. He said he is going to provide the leadership and is going to run round every building site in the State personally to sort out the issues. On top of all that he is going to stick a broom up the proverbial and sweep the floor as he goes along. He is going to rely on Fair Trading, which, from your evidence, has no demonstrable professional capability to sort any of this out. It is your evident that there should be a separate commission to support the role of the commissioner. I do not think that anyone argues that Mr Chandler has the ability to do it. But he does not have the mindset, obviously, to demand that the Government provide the budget and the structures to support him in what he is trying to do. I think his aims and objectives are good, but he is not going to get there based on where is going and how he thinks he is going to achieve it.

Mr PAGE: The issue I see is that he is trying to do it as a whole industry, when there are segmented parts. When you look at the specifics of the electrical industry, we have a licensing regime, whilst the plumbing industry—

The Hon. ROBERT BORSAK: From my simplistic way of looking at it, he should have an assistant commissioner specialising in electrical works, an assistant commissioner specialising in plumbing works and an assistant commissioner specialising in engineering. He was saying that he thinks everyone should be licenced. That is great but how is he going to achieve that?

Mr PAGE: And if no-one is policing it, it does not matter.

The Hon. ROBERT BORSAK: He does not like red tape.

Mr PAGE: We have got a good electrical regulatory system, but no-one is policing it.

The Hon. ROBERT BORSAK: The system is there and the regulation is there but there is no cop on the beat.

Mr SEET: And the issue is that if it is cheaper to employ people who are not licenced and it is not being regulated it is very tempting for builders to employ non-licenced people.

The Hon. COURTNEY HOUSSOS: With tragic consequences.

Mr SEET: With tragic consequences for the public and the workers on site.

The CHAIR: We have run out of time, I am sorry. I thank you both very much for your written submissions and your assistance today. Mr Seet, the secretariat will talk to you about the question you took on notice and getting it back within 14 days. I thank you both not only for your assistance here today but also for the work you do in the industry.

Mr SEET: Thank you.

Mr PAGE: Thank you.

(The witnesses withdrew.)

LAURA CROMMELIN, City Futures Research Centre, University of New South Wales, affirmed and examined
HAZEL EASTHOPE, City Futures Research Centre, University of New South Wales, affirmed and examined

The CHAIR: Thank you for coming today and for taking the time to assist the Committee. Do we ignore that "e"?

Dr CROMMELIN: Yes.

The CHAIR: Okay, good. Would either or both of you like to give a brief opening?

Associate Professor EASTHOPE: Yes, please, on behalf of us both. We are researchers at the University of New South Wales [UNSW] City Futures Research Centre where we have run a program of research focused on strata title developments for the past 12 years. Currently we are working on a research project on building defects in residential strata properties, which is in its early stages. We are doing research on this because the strata industry stakeholders that we have been working with have told us that building defects have been a concern to the industry for a long time. Based on our research to date we have three comments we would like to make.

First, much of the current focus on the defects issue has been on improving building practices and regulatory oversight. This is appropriate and essential but the benefits of this will not be achieved for a number of years. In the meantime, there are people living and owning in buildings with defects who may or may not yet know their extent. In the absence of the goodwill of developers, builders and other industry stakeholders, in making right building defects, owners currently are in a very weak position when it comes to having the defects rectified. It is important that the reform process works to improve the position of these people as well as improving the quality of new buildings.

Second, we believe that the reform process needs to consider the broader drivers of current building outcomes, particularly in relation to residential multi-unit development. At present, the strata development model has an inherent issue with split incentives as building practitioners and developers have little involvement in buildings after construction, which limits the incentive to consider the longer-term performance of those buildings. At the same time the ultimate owners have little, if any, input into how the building is designed or built. The issue of split incentives contributes to the occurrence of building defects, but it is also a bigger issue affecting the quality of building design and the capacity for good management and maintenance of those buildings.

Third, in order to assess the benefits of future reforms, there will be a need for base-line data and ongoing data collection and recording. Our current research demonstrates that such data is not currently readily available. Access to good quality data is an issue for everyone involved—the owners, industry stakeholders, regulators and researchers like ourselves. We would like to see the reforms ensure new reporting systems in place to remedy this data absence. We are both here because Dr Crommelin is managing the project on defects and I have been managing the program of works. We can comment on both aspects.

The CHAIR: Dr Crommelin, did you wish to make any initial observations?

Dr CROMMELIN: No. That is a statement of behalf of both of us.

The CHAIR: Okay, terrific.

The Hon. JOHN GRAHAM: I am happy to kick off, Chair. Thank you for your submission. I found it really helpful. I want to start referring to your evidence on the strata building bonds a scheme, the 2 per cent bond that exists. You are quite critical of it some of the time. You say it may not cover the full costs of defect rectification. You might have heard the Building Commissioner say he continues to hold the view that for some developers, this is a get-out-of-jail-free card. Would you agree with that description? What are the issues that the existing bond scheme creates?

Associate Professor EASTHOPE: The existing bond scheme was better than what came before, which was—

The CHAIR: Nothing.

Associate Professor EASTHOPE: —nothing. It is beneficial in that it does require owners to rapidly undertake a review of the quality of their buildings, which I support. Our comments are really about the 2 per cent and whether that is adequate.

The Hon. JOHN GRAHAM: Yep.

Associate Professor EASTHOPE: Our experience is that that will not be adequate in many cases, especially where there is systemic defect that repeats across the development.

The Hon. JOHN GRAHAM: How much of an issue is this? How often might it not be adequate?

Associate Professor EASTHOPE: We are not in a position to give you a percentage on that. I have spoken with owners in defective buildings and we have published case studies which are referenced in our submission. In those cases the 2 per cent would have been insufficient, but I cannot give you a percentage.

The CHAIR: To get some idea of the data, can you give us a summary about what your initial research has shown about the number of defects and the proportion of defects—just some of that scene-setting?

Associate Professor EASTHOPE: I will start and pass on to Dr Crommelin, if that is all right. We did a project quite a number of years ago, which reported in 2012. It was a project on governance issues in strata generally. As part of that, we surveyed strata owners and we asked some a series of questions. It was not a project about defects, which is important. One of the series of questions we asked within a much larger survey was about defects and the results that we got were shocking to us at the time, perhaps less so to our industry partners.

What they were is we asked owners if they were aware whether there had ever been any building defects in their strata schemes. We were quite specific about what a building defect was and was not so that we could exclude maintenance. We also asked them to describe the defect so we could exclude things that were unlikely defects. The result of that was that 72 per cent of our sample, which was a representative sample of owners across New South Wales, said that they were aware that there had been defects in their building. Some were not aware or whether they had or had not. Some said that they were aware that there had not been.

We then took a subsample of that sample, and the subsample was about 300 owners. I can take it on notice and give you the actual figure, if required. It was of owners and buildings built since 2000 and, unsurprisingly, the figure was higher. That was an 85 per cent response, but those figures, because they are a subset, are not a representative sample. So the 72 per cent we are very confident on. We have a confidence interval of just over 3 per cent on that.

The Hon. JOHN GRAHAM: You say you were surprised at the time, given what has unfolded, are you still surprised given what you have now learnt?

Associate Professor EASTHOPE: I am no longer surprised after that research, it was then that I started speaking with owners on defects cases, writing those cases up and discovered more about what was occurring.

The Hon. JOHN GRAHAM: That has reinforced that initial research?

Associate Professor EASTHOPE: Yes. I will allow Laura to tell you about our current research, which has flowed from that.

Dr CROMMELIN: As Hazel mentioned, part of what came out of that research was a desire of the partners that we work with to try and come at the same issue from a different perspective, which is really what we are working on now. In the current project that we are working on, which started at the beginning this year and runs through to the end of next year, we are trying to go to other sources other than the owners and find more systematic evidence of whether those figures hold up when you look at the defects problem from the perspective of defects reports, data from legal cases, data from councils, all of the sources that we can try to pull together. Currently we have 635 buildings in the sample, although that might shift slightly, trying to find out as much information as we can about what is going on with those buildings and whether they have had any defects issues that have emerged.

The CHAIR: Have you got any initial observations from that?

Dr CROMMELIN: The primary observation I would make is that it is extremely hard to find out, even with the support of industry partners, with the support of local government, State Government, there is just not a comprehensive set of information about this issue. We are really pulling together bits and pieces and trying to knit them into something coherent. I think we will get something interesting out of that, but we certainly would not be able to say it was a definitive representation of the defects problem, because the information just is not there.

The CHAIR: Can you tell us where the information is found at the moment? You have said local government, I presume some of it is with icare, with the insurance home building scheme.

Dr CROMMELIN: We do have some insurance data, not specifically from icare at the moment, although they may have some information. Part of what we are still doing is finding out where all the bits and

pieces exist. That is an ongoing process. We have industry partners who have been able to provide some data in relation to insurance claims.

The CHAIR: Are they construction companies?

Dr CROMMELIN: No, that is strata insurance. We have a defects rectification expert who is able to provide some information about cases that he is aware of. We have data from financing companies who help to finance rectification works. There is also some information that we are hoping to get from local government, NSW Fire and Rescue potentially.

The CHAIR: Fair Trading?

Dr CROMMELIN: Fair Trading potentially.

The CHAIR: Planning?

Dr CROMMELIN: Planning, we have development application [DA] data that comes from Planning, which is useful in understanding more broadly. One of the things that would be very helpful to get a sense of if there are particular problems in certain types of buildings, for example, so DA data can help to inform that.

The Hon. JOHN GRAHAM: Is there any information which you have been unable to get hold of that you would like to see that has been unable to be supplied by government agencies?

Associate Professor EASTHOPE: It is not a question of having been refused data, it is a question of the data not existing.

The Hon. JOHN GRAHAM: Which goes to some of the incentives here. Often there might be confidentiality agreements in place you observe or real life incentives not to have this information out in public. That is part of the issue, yet it is making your job more difficult, is it not?

Associate Professor EASTHOPE: It is part of the issue but it is also because there is not a centralised place where this information is collected.

The CHAIR: There is no building commission, you might almost say.

The Hon. ROBERT BORSAK: I am just going to lead into that question Professor Easthope. Do you want to comment on the appropriateness of regulation of this industry by Fair Trading? Is it the appropriate organisation and government structure that can manage properly this industry?

Associate Professor EASTHOPE: I do not know that I can comment on that directly.

The Hon. ROBERT BORSAK: Feel free to comment indirectly.

Associate Professor EASTHOPE: There is always a challenge with the splitting of responsibility between Planning and Fair Trading when it comes to issues around strata title developments. I am sorry, but I cannot comment on the appropriateness of one over the other.

The CHAIR: Do you find it surprising though that it is so hard to even just get baseline data in the industry?

Dr CROMMELIN: I am not sure surprising is—

The CHAIR: Not given your recent history, but if someone was to come into this issue fresh, I think most people would assume that there would be one part of government that would have their handle on the industry.

Associate Professor EASTHOPE: I suppose it is a question of who has the incentive to collect that information and currently no-one has an incentive to collect that information. It is not information that has been seen as valuable.

The Hon. ROBERT BORSAK: That is a good indirect answer.

The Hon. JOHN GRAHAM: One incentive here across the system is market confidence. Without the information it is very hard, when the spotlight turns on this issue, for the market to have confidence. You have talked about the problems for people living and owning in these apartments with defects. That is a part of the problem. Another part of this problem is the people who are living in recently constructed buildings that might be fine but are in this category of buildings that now have a question mark over them. The building might be fine, but these people living in these buildings with a question mark over them that has real market consequences for a whole class of buildings that might have been put up, say over the last decade in Sydney.

Associate Professor EASTHOPE: We ran some figures this morning actually which we thought might be useful for the inquiry. Our best estimate is that in the 20 years prior to December 2017 in terms of residential strata properties in New South Wales, there were over 30,000 strata schemes, containing 370,000 lots registered. That is the scale of the properties we are talking about when we say that these reforms need to take into consideration buildings that may have defects.

Dr CROMMELIN: As well as the future buildings.

Associate Professor EASTHOPE: As well as the future buildings.

The Hon. JOHN GRAHAM: To that point, even if this problem was fixed today—

The CHAIR: It is a legacy problem.

Associate Professor EASTHOPE: And it is a large legacy problem.

The Hon. JOHN GRAHAM: —if you looked at what has happened in these couple of buildings, there is now a question mark over those 370,000 lots.

Associate Professor EASTHOPE: The other thing that has changed in that period is that the average size of those schemes has doubled. The more recent buildings tend to be much larger and more complex and therefore, the defects perhaps could be more significant.

The CHAIR: I welcome into the public gallery a delegation of six local councillors and 16 administrative staff from the Jeju Special Self-Governing Provincial Council from South Korea. Welcome to the committee. This is a committee looking into building standards in New South Wales. We hope you find it interesting and informative.

The Hon. JOHN GRAHAM: I thought your description of split incentives was a useful way to think about it. The developers have little involvement after construction and then the owners do not know much about how things have been designed and built. That is a good description of some of the tensions here. I am interested in your views about how that can be addressed. Obviously, one of the things you point to is that New South Wales has shortened the timeframe that the developer has a stake in that building. The tension was always there, but with the shorter timeframes—now down to two years for some defects, six years for major defects—it is truer than ever that the developer has a shorter engagement with the building. What are your views on this issue?

Associate Professor EASTHOPE: On the one hand when developers are building buildings, they want some surety as to how long their liability is going to last for, presuming they are not planning to set up a shell company which they are going to wind up immediately after building. I think that is important and should be taken into consideration. I think it was taken into consideration with the introduction of the two per cent defects bond. I think the requirement for an initial inspection of the building by an expert to determine whether there are any defects is an excellent requirement. It is important that that happen early on. But the problem is that not all defects will become apparent at that point and that is likely to be a visual inspection. Many defects are not picked up during a visual inspection. They are also unlikely to be picked up within two years of completion of the building. We are not talking two years from when someone buys, we are talking two years from completion of the building.

The CHAIR: Is that from the issuing of an occupancy certificate?

Associate Professor EASTHOPE: The time frame is too short to pick up what those—

The Hon. JOHN GRAHAM: In your experience, in the cases you have looked at, you say owners may well not even know they have a problem until well into the sixth year for major defects? Can you take us through some examples of that?

Associate Professor EASTHOPE: We know, for example, some of the most common defects—which were reported in the previous study I mentioned, where we surveyed owners—were water ingress from outside and waterproof membrane failure inside. The waterproof membranes failing may not occur or may not be a problem until the first heavy rains. It certainly cannot be visually inspected. Those kinds of issues tend to become apparent later on. That is why we say that two years is not sufficient.

The Hon. COURTNEY HOUSSOS: Surely you would say that there is more than ever a need for a strong regulatory approach. If there is no incentive from the developer, and the consumer is the one that is going to be left—as we have seen in this inquiry—holding the can, so to speak, then there is a need for Government to step in and to protect the consumer during the building stages to provide them with that certainty.

Associate Professor EASTHOPE: Absolutely, there is. There is a need not only for regulation but also for enforcement of that regulation, and for resourcing that enforcement.

The CHAIR: Did you hear any of the evidence from the Electrical Trades Union [ETU]?

Associate Professor EASTHOPE: No.

The CHAIR: Their position was, in short, there is fine regulation for the electrical industry—the regulation is great—but nobody is checking. They gave case study after case study of unlicensed people performing electrical work. Even when they tell Fair Trading, nothing happens. Does that sound unusual to you?

Associate Professor EASTHOPE: It is certainly something that we have come across in our research as well, yes.

The Hon. ROBERT BORSAK: Do you have any views or any ideas about what it would take to get better, more substantial and more robust private participation of the insurance industry in building? It is going to be very hard to do anything in the areas you are talking about unless there is a very robust market there. Right now there is no one except the Government standing there in icare.

Associate Professor EASTHOPE: Yes. One of the things that I have been talking about for quite some time is the inequity of home owners' warranty insurance not being required for buildings of four or more storeys. The only reason I can see for that is that no one is willing to underwrite that insurance.

The Hon. ROBERT BORSAK: Including the Government?

Associate Professor EASTHOPE: Including the Government. That is a concern. I do not think the Government can expect private insurers to underwrite that insurance when that risk is not a risk that is feasible for them to take. The solution to having private insurers move back into the system is to reduce the risk by reducing the incidence of defects and, therefore, claims.

The CHAIR: It comes back to standards. Absent enforceable, decent standards, no insurer is going to want to insure any of these multistorey buildings in New South Wales.

The Hon. ROBERT BORSAK: That is a comment by itself. When the market is not there for private insurance, they cannot assess the risk. They have no appetite to even consider it. Then the Government has to step in. Even the Government has no appetite to guarantee the risk of anything over four storeys—there it is in a nutshell, isn't it? They condemn their own regime by doing that.

Associate Professor EASTHOPE: Yes, absolutely.

The CHAIR: One aspect of Mr Chandler's evidence—the new Building Commissioner—surprised me. He said that insurers are lining up to enter into the insurance contracts in the New South Wales construction industry.

The Hon. ROBERT BORSAK: Should have asked him to name them.

The CHAIR: You have been looking at this aspect of the industry. Do you know of any insurers that are lining up to insure the New South Wales construction industry?

Associate Professor EASTHOPE: I don't.

The CHAIR: I found that evidence quite extraordinary, given the fact that we have seen pretty much all private insurers withdraw from the market. Do you want to tell us what has happened in that regard?

Associate Professor EASTHOPE: Sorry, could you clarify?

The CHAIR: Could we start with the home building warranty? Now there is one rump insurer, is the Government insurer, which is running at a \$100 million-plus loss per annum. What is happening in that market?

Associate Professor EASTHOPE: Are you talking about home owners' warranty insurance?

The CHAIR: Correct. Home owners' warranty insurance for three storeys and below.

Associate Professor EASTHOPE: I am not sure that I can answer that question to the level of detail you would like.

The CHAIR: In terms of the Government's proposal for the 2 per cent levy for buildings four storeys and above, that has been criticised in a number of the submissions as saying that it is allowing, if you like, shonky

developers to get away with paying a very small amount, but quality developers are having to pay perhaps more than they should. That design is almost sending the wrong signal.

Associate Professor EASTHOPE: Well, not really, because if the 2 per cent is not claimed back for rectification, that money is returned to the developer. If the developer has no claims against 2 per cent, they get that money back.

The CHAIR: But what about at the bottom end of the market, the ones that are not living up to standards?

Associate Professor EASTHOPE: Absolutely, the 2 per cent is inadequate, as I have said before. It is not enough. It is better than what we have now, but it is not enough.

The Hon. ROBERT BORSAK: There really is no hope for a decent, developing, robust insurance market in the foreseeable future?

Associate Professor EASTHOPE: There is for certain buildings, but not across the whole sector, obviously. Buildings that exist now that do rectify their defects and can record that will be able to get insurance, because it will be on record that their building has been rectified. If future buildings are better built—which, hopefully, they will be after the regulations that we hope are coming are enforced—they will also be insured. So you will end up with a sub-sector that will be uninsurable until those buildings have been rectified. The concern that we have is that rectifying those buildings is expensive, stressful, costly and may not be possible in all cases.

The Hon. COURTNEY HOUSSOS: And unfairly being left to the consumer to pay for.

Associate Professor EASTHOPE: Yes, absolutely.

The Hon. JOHN GRAHAM: Which is the point I wanted to ask about, because if the insurers are not at the table bearing the risk, if the Government is not at the table bearing the risk, someone is bearing the risk. It is really the owners who you describe have little, if any, input in how the building is designed and built. They are really spinning the roulette wheel here, aren't they, taking their own chances, bearing all of the risk. Would you agree with that?

Associate Professor EASTHOPE: Absolutely. If you look at housing, it is much more than a product. But if you just look at housing as a consumer good, the consumer protections on four-or-more storey, multi-unit strata title housing in New South Wales are terrible. They are very poor. They are poorer than many other products.

The Hon. JOHN GRAHAM: Which other products? What would you compare that to?

The CHAIR: Used cars.

Associate Professor EASTHOPE: The obvious one that you will see in the media is toasters.

The Hon. JOHN GRAHAM: You believe that is the case?

Associate Professor EASTHOPE: Yes.

Dr CROMMELIN: Just to add to that, I think it is worth making the point that part of that issue as well is that, in our experience speaking to people in relation to strata, many strata owners do not understand that they are taking on that risk when they buy into strata. The whole relationship between your apartment and the common property is complicated to understand and, in many cases, people get sold apartments as, "It is just a small version of a house, it is exactly the same". Part of the challenge of getting defects dealt with is actually beginning the process of convincing everyone that this is everyone's problem and that you need to understand what you are looking for before you buy in.

The CHAIR: You talk about a necessary education element, that when you are buying into an apartment you are not just getting an apartment, you are accepting responsibility for all of the common property, which is pretty much everything from the paintwork back.

Dr CROMMELIN: Absolutely.

The CHAIR: Do you think people understand that at the moment?

Associate Professor EASTHOPE: I think there is an increasing understanding of that, especially in the Sydney market, and in New South Wales more so than in a lot of other States. But I still think that it is not what is sold.

The CHAIR: Can I ask you a simple question: does Fair Trading have a pamphlet or an information package that you get when you buy a strata—?

Associate Professor EASTHOPE: Yes, they do.

The CHAIR: Do they give it to people?

Associate Professor EASTHOPE: Yes, they do. I received one when I bought my apartment. Strata managers will often send them out in new packs. They are available online and they are quite good.

The Hon. ROBERT BORSAK: How old was the strata that you bought into?

Associate Professor EASTHOPE: Mine was built in 1998 and we have just completed rectification of defects.

The Hon. ROBERT BORSAK: It had completed rectification work?

Associate Professor EASTHOPE: No, we have just completed.

The Hon. ROBERT BORSAK: When you bought into it, did you review the strata minutes?

Associate Professor EASTHOPE: I did and I was aware that there were works that needed to be undertaken but I think I am a special case.

The CHAIR: You might say that you have a high-level alert.

The Hon. COURTNEY HOUSSOS: Even if you do that due diligence, even if you do go through and read the strata minutes, there are still situations where people who are buying in are not aware. You can exercise all of your care and diligence but the regulatory system in New South Wales is such that you can still be left with a devastating financial burden, even if you have taken every possible step, because of the regulation.

Dr CROMMELIN: The extent of the information about things like building defects that you find in the strata inspection report varies quite significantly. It depends on who does the report, how well the building has been managed, how well the records have been kept—a whole bunch of things. To really do your due diligence you potentially want to get a number of strata reports done but, even then, things can absolutely fall through the gaps.

The CHAIR: Other States have a conveyancing regime where the person selling the property is required to get a strata report, which is then available for inspection by all purchasers; whereas in New South Wales it is up to the purchasers to do them individually. Sometimes there can be five, 10, 20, 30 inspection reports done, many of them inadequate, for the one purchaser. The New South Wales system seems strange.

Associate Professor EASTHOPE: There are two sides to that. One is that in many cases real estate agents will purchase one strata report and then make that available to purchasers, sometimes for a fee and sometimes the purchaser who eventually purchases, pays that fee. The other is that I think in this case it is good to allow owners to decide which inspection company to hire because some do a better job than others and you do not necessarily want the seller to choose the cheapest inspection company, if they are not going to provide the best report.

The Hon. JOHN GRAHAM: Surely there is a way to tackle that part of the problem by addressing the issue of multiple reports, particularly in a hot market—just report after report after report on the one property?

The CHAIR: Are there any set standards of what that report has to include? Are there regulatory standards or a minimum standard for what a strata inspection should do? Or, do they all just make it up as they go?

Associate Professor EASTHOPE: They have templates. As to whether there are regulatory standards I am afraid I do not actually know. I can take that on notice.

The CHAIR: That would be good. At a minimum, if you are getting an inspection report, most people would assume that it is reporting to a standard, so that you can rely on the report. My understanding is that there is no such standards and that different companies choose their own quality of reporting. But I could be wrong.

Associate Professor EASTHOPE: The bigger issue really is that those reports report on the written documentation and if the written documentation is inadequate, the report is never going to be adequate. The question of the underlying record keeping is the more important question, rather than the nature of the strata inspection report.

The CHAIR: Some have suggested there is a conspiracy of silence on some strata committees, where you do not want to have some things recorded on the minutes because it can devalue the property. Have you had any evidence of that?

Associate Professor EASTHOPE: I have heard the same thing anecdotally but not directly through my research.

The CHAIR: Dr Crommelin?

Dr CROMMELIN: No, I have the same answer.

Associate Professor EASTHOPE: When we are talking about confidentiality, a bigger concern, from my perspective, is the practice of developers and/or builders settling with owners' corporations on the condition of confidentiality agreements. I find it unsettling that that is allowed because that means that those developers or builders are not on the public record as having delivered a defective building. That is a problem.

The Hon. COURTNEY HOUSSOS: You would also concede that there is a financial imperative for owners of strata committees to keep their problems internally, rather than publicly disclosing them? Because if there is a disclosure of—

Associate Professor EASTHOPE: There is in the short term but if they are intending on rectifying the defects, or having them rectified, then it is in their medium- to long-term interests to report that in the strata reports.

The Hon. COURTNEY HOUSSOS: Sorry, I mean more broadly than the strata records.

Associate Professor EASTHOPE: Again, the only reason not to talk about a building defect is if you want to on-sell your property before that defect is rectified. If you are going to rectify the defect, then you want that reported.

The CHAIR: But if it is going to cost you \$30,000 or \$40,000 in a special levy to rectify the defect, there is a clear market incentive to offload the property—not have it recorded and make it someone else's problem. Is that happening?

Associate Professor EASTHOPE: I have no direct evidence of that happening but I can imagine that it would happen.

The Hon. COURTNEY HOUSSOS: I am not saying that even if there is some actual intent, but merely the appearance before the market that you are in a building that is requiring consistent rectification of defects could reduce the market value. That is true, right?

Associate Professor EASTHOPE: Yes, until those defects are rectified, at which point it would increase its market value. Purchasers who do know what they are looking for, will be looking for buildings in which defects have been identified and rectified, before they purchase. That is what I was looking for and I believe that is what Dr Crommelin looked for when she bought her apartment.

The Hon. SCOTT FARLOW: Is that part of an assumption then, that all buildings will have defects, or a high proportion of buildings will have defects? So, you would prefer to buy a building that has a noted defect and a plan to repair that defect?

Associate Professor EASTHOPE: In my case, yes, that was my assumption.

The Hon. COURTNEY HOUSSOS: That is a very interesting take on how we should be approaching it.

The CHAIR: In other words, a strata search of a building built since 1998 that shows no defects is almost like a warning signal that there is something going wrong, is it? Is that not a fair summary of your evidence?

Associate Professor EASTHOPE: It may be that there are no defects but you would want to do as much investigation as you could to be sure of that.

The CHAIR: Dr Crommelin?

Dr CROMMELIN: In my own experience, I did not find any records of significant defects. I subsequently found out that there had been some problems that had been rectified but I do not know that I would consider them major defects. That is a classic example of the fact that even when you are looking for this information, you do not necessarily find it. Ultimately, to do your research well you have to look at a whole range of things, which is not just defects specifically but a broader questions of, "How well is the building managed?", "Does this look like a building that if there had been a problem, it would have been dealt with appropriately?" That can also relate to how the financial record keeping and financial management is going and whether there is a building manager and the role that that person is playing in terms of maintenance. It is not a simply the case that

if there is nothing in the record, there must be a terrible problem or a cover-up. It is more a question of trying to understand the building situation as a whole, which is difficult.

The CHAIR: The Owners Corporation Network said that basically when you are buying into a strata, you are buying into a complex little business and, in some of the larger apartments, quite a sophisticated business, run by people who do not have any training. It suggested there might be a role for a strata commission. What do you say to that proposition?

Associate Professor EASTHOPE: One thing that we talk about a lot when we talk about strata is, we talk about it as a fourth tier of government. Strata buildings elect representatives to make decisions on their behalf, through their committees; they levy taxes through their levies; and they set rules that govern the behaviour of their citizens through their by-laws. They do that as volunteers and the volunteers are commercial owners in the building. There is a whole group of other residents in the building—renters—who are not part of that or are not able to be quite so much a part of that. It is an unusual situation and a lot of the roles and responsibilities that used to be the responsibility of local government, now fall to strata buildings. That is how we look at these entities: they are important social institutions; they underpin the governance of cities; and where they do not work, you have problems. In terms of a strata commissioner, who can operate within an understanding of the context and provide support to those additional levels of citizen government, it would be beneficial.

The Hon. JOHN GRAHAM: You mentioned in your evidence the use of shell companies; it has been raised by others. In the work you have done and the examples you have looked at, how widespread an issue do you think this is?

Associate Professor EASTHOPE: I think it is quite widespread. I have come across instances of it.

The Hon. JOHN GRAHAM: Obviously where companies are using those shell arrangements, this is really going to be concentrated exactly where the problems are. Would you agree with that?

Associate Professor EASTHOPE: The fact that that is allowed is problematic. In many cases developers and builders will come back and make right defects, and that is how it should be. The problem is at the moment that it is kind of on the goodwill of those developers and builders to do that. There are so many ways to not do that—one of them being these shell companies—that they cannot do it if they do not feel like it.

The Hon. JOHN GRAHAM: It is a very unequal relationship already, but if you are dealing with a company which could declare bankruptcy and disappear, it is even more.

Associate Professor EASTHOPE: Yes. A company that has done that is probably indicating that perhaps they are not willing to come back and fix something if something is identified.

The CHAIR: That is very polite language, Professor Easthope.

The Hon. SCOTT FARLOW: Building Commissioner Mr Chandler's evidence before was that he had been in touch with some University of New South Wales researchers. Were they you?

Dr CROMMELIN: They were another member of our team, I think—Professor Martin Loosemore.

The Hon. SCOTT FARLOW: What information have you provided him with and offered to help and assist him with?

Dr CROMMELIN: I do not think we have provided him any detailed data or anything like that; it was more just an explanation of what we are doing and how we are going about it and sort of saying that we would be very keen to stay in contact once he gets up and running, basically. But it was just a preliminary discussion, as far as I understand it.

The CHAIR: In the last two years, I think it was, the Government made significant changes—or Parliament made significant changes to the home building warranty insurance, particularly for what used to be called structural defects and are now called major defects. Do you have any observations about those changes in terms of consumer protection?

Associate Professor EASTHOPE: They have reduced consumer protections.

The CHAIR: In what way? What is the real impact, then, for strata owners?

Associate Professor EASTHOPE: In terms of defining major defects, many defects that are common and can have a significant impact on a building could fall outside of that definition.

The CHAIR: That means that if you are a major defect and you are not picked up within—

Associate Professor EASTHOPE: Major defects have six years and everything else has two. If your defects do not fit within the very narrow definition of major defects, you have two years. As I have said before, two years is an inadequate time to address defects in a strata building.

The CHAIR: So you could have hideously expensive problems, like waterproofing—

Associate Professor EASTHOPE: Some fire safety non-compliance issues.

The CHAIR: —or terrible problems with the facade dropping off, that can become apparent after two years. If the building is not unusable or unliveable, there is no claim on the warranty insurance. Is that how it works?

Associate Professor EASTHOPE: Yes.

The CHAIR: Do you think that is fair?

Associate Professor EASTHOPE: No.

The CHAIR: Do you think it is good practice?

Associate Professor EASTHOPE: Well, it is not good regulation.

The CHAIR: So if we are talking about fixing up home building warranty insurance for apartments four storeys and above, it is not just a question of rolling out the current scheme; it is also about, at a minimum, fixing that problem in the current scheme.

Associate Professor EASTHOPE: So there are two schemes. The two- and six-year is a statutory warranties. The homeowners warranty insurance is a last-resort insurance. So the statutory warranties are warranties that you can claim against a builder or developer who is operating, and the homeowners warranty insurance is a last-resort insurance. So if you have got a shell company that is wound up or the builder and developer has become insolvent, you could claim on that insurance if you have it, if you are in a building of three or less storeys.

The CHAIR: I know you have said there were 30,000 strata units registered before 2017.

Associate Professor EASTHOPE: Sorry, just to correct that: in the 20 years prior to 2017.

The CHAIR: We had some evidence on Monday that there had been something in the order of 18,000 strata schemes registered in the last 12 months.

Associate Professor EASTHOPE: Our latest data is from January 2018, which is why I have reported that date. So I do not have that data, but it could be that that is the case.

The CHAIR: If that is the case—we have had that sort of level of registrations in the last 12 months, 18,000, against an historical picture of the 20 years leading up to 2017 we have 30,000—the level of defects and problems that have become apparent up to now, we may just be at the start of an extraordinary rising curve of problems in the industry.

Associate Professor EASTHOPE: I would agree with that observation, yes.

The CHAIR: Which, given the level of concern we have seen to date about building defects and the numbers we have seen to date, the next 12 to 24 months might become, maybe, quite extraordinarily difficult. It is a frightening prospect, is it not, really?

Associate Professor EASTHOPE: Yes, it is.

The CHAIR: On behalf of the committee, thank you for your submissions. Thank you also for being some of the few people out there actually looking at the industry, so we appreciate that. I think there were a couple of questions taken on notice, and the secretariat will speak with you about getting those to us within 14 days.

Dr CROMMELIN: Thanks for having us.

(The witnesses withdrew.)

(Luncheon adjournment)

LINDA SCOTT, President, Local Government NSW, affirmed and examined

VANESSA BUROW, Senior Policy Advisor—Planning, Local Government NSW, sworn and examined

The CHAIR: Welcome back to the afternoon session of the second day of hearing of this inquiry into building standards, building quality and building disputes. We are fortunate to have Local Government NSW before us this afternoon. Councillor Scott, did you want to start by giving a short introduction?

Ms SCOTT: Yes, thank you. I thank the committee for the opportunity to appear today to discuss this very important issue. As the peak body for New South Wales local governments, Local Government NSW has called on successive State governments to address the deficiencies with building and certifier regulation in New South Wales. As part of those repeated submissions, have called for New South Wales to develop a strong regulatory framework that ensures the building and certification system delivers well-built, safe and compliant buildings. This means having a system where all parties are responsible and accountable for their actions and the community and public interest is protected. It also needs a strong regulator, which to date for many years we have not had in New South Wales. We welcome the appointment of the new Building Commissioner and see this as a positive step. But make no mistake: This role must be properly fully resourced and supported by staff with relevant experience and skill for the commissioner to have any real success.

While the failures of Opal Tower, Mascot Towers and several buildings in my own council electorate—Zetland, Erskineville and Alexandria, for example—were the focus of media attention, these are, of course, a few extreme examples of the fundamental issues with the building industry that councils see every day. The Government's latest response, while welcome, represents only a portion of what is needed to fix these problems. We need the fundamental issues at play to be comprehensively addressed once and for all. The Lambert review and the Shergold Weir Report laid the groundwork for a program of change. Local governments are calling for the Government to make a commitment to fund the recommendations from these reports and ensure that they happen.

Had the New South Wales Government established and funded a solid program of reform at the time the Lambert review some three years ago, we would claim that we would not be in the situation we are in today, which has been amplified by the rapid pace and scale of development in New South Wales. But we are here, and so we understand as local governments we cannot shy away from our collective responsibilities. We call on the State to do the same. Our submission to this inquiry details what we think those responsibilities are, which include that the New South Wales Government commits to a comprehensive set of reforms with an implementation plan; meaningful, achievable time frames; proper resources; and to ensure that there is expert and local government input. When it comes to regulation and certification, councils in New South Wales want to see a solution across all areas of industry. We would like to see tighter, proper regulation of all building practitioners; a comprehensive program of actions to address all the issues identified by the Lambert and the Shergold Weir reports; the Building Commissioner supported by a well-resourced, effective and accountable regulatory body; and provisions to protect consumers against the unscrupulous or not well trained building professionals. Thank you; happy to take questions.

The Hon. JOHN GRAHAM: Thank you, Councillor Scott. I think it is fair to say, listening to your submission, this was not news to Local Government NSW that there were major issues in this building standards area. Is that correct?

Ms SCOTT: That is correct.

The Hon. JOHN GRAHAM: You have really drawn these to the attention of the Government?

Ms SCOTT: That is right. As far back as 2002 we said in response to that then Campbell inquiry, "The State Government must address the failures of private certifiers to act properly in their responsibilities with great urgency to ensure that the public safety is maintained and development standards are complied with." That was 17 years ago. In the intervening time we have raised at least 13 submissions.

The Hon. JOHN GRAHAM: Did you have the benefit of hearing the evidence this morning from the Building Commissioner?

Ms SCOTT: I did not but I understand the general tenor of it.

The Hon. JOHN GRAHAM: Very good. Obviously, he has only started in the job. We wish him well. To your submission, though, this is some of what he told us: That he has few direct staff, no budget, the advertisement for the job indicates no line of authority over departments such as planning and fair trading. Do

you have concerns about the nature of this role? No matter how good the individual is in the job, do you have concerns about the way this job has been put together, if that is the evidence we have been given today?

Ms SCOTT: Yes. We welcomed the Government's commitment in the lead-up to the State election—that they would make an appointment of this nature. We subsequently welcomed the fact that, you know, there had been an appointment made. It is fundamental to the reform that this sector needs and the success of the position that the Government properly resourced the position with skilled, expert and capable staff and that the position have very clear accountabilities and roles, within government and also in their regulatory powers.

The Hon. JOHN GRAHAM: You have referred to the views of Local Government NSW about certifiers. Legislation was urgently rushed through this Parliament and passed on 31 October 2018 which increased the penalties in this area. We were told it was urgent. We were told these were important changes to the penalties. That legislation is not yet in force. We now know that it will not be in force until next year. Is that acceptable, given the multiple submissions you have made over the years?

Ms SCOTT: No. We have, from at least 2002, consistently called for there to be proper regulation with appropriate penalties. In response to the discussion paper the Government put out in preparation for that legislation, they asked us—and the public—to consider multiple models for the regulation of private certifiers. Our submission in response to those at the time was noting that none of the models out for public consultation were sufficient to address the concerns that we had for a long period of time. Nevertheless, regulation is important. Now that the Parliament has considered the matter, it is better to have regulation in place than not.

The Hon. JOHN GRAHAM: Something that was a surprise in the Building Commissioner's evidence today, he was clear cut that, I think unlike your submission, he does not support a building commission as there is in, say, Queensland or Victoria. Having heard that the Building Commissioner is opposed, do you support the existence of a building commission? Why do you support that?

Ms SCOTT: We support a well-resourced, proper regulator, the form of that. What it is called different local governments will have different views on.

The Hon. JOHN GRAHAM: Do we have that at the moment?

Ms SCOTT: But we do not have that at the moment. We would strongly support a properly well-resourced body of government.

The CHAIR: A commissioner without a commission is a bit like a jockey without a horse, is it not? It is going to be kind of slow getting around the paddock.

Ms SCOTT: That is a view that could be taken. Local governments cannot see a way forward to ensure safety for people who are living and working in our buildings in the State of New South Wales unless there is an appropriate regulator with resourced ability to enact appropriate powers in place.

The CHAIR: We can all agree that fair trading does not currently satisfy that need at the moment. It is not an adequate regulator. It does not have adequate resources and does not have the appropriate mindset. That is what we have heard from a number of witnesses. What do you say about those observations of fair trading?

Ms SCOTT: I personally, as the Deputy Lord Mayor of the City of Sydney, have referred constituent concerns to fair trading and appreciate their work. It is not the case, however, that they have been able to have powers to prevent the issues that have arisen to date. That is manifestly evident by the problems that we have seen arising. I have worked with them. We appreciate the work that they have done, but it is certain manifestly evident by the building faults that we have today in New South Wales that their powers and their funding have been insufficient to prevent the problems.

The CHAIR: The commissioner's evidence was that he is going to have a leadership model. Through his leadership model, he is going to drive cultural change in the construction industry. In that regard he thinks that a leadership-cultural change approach should take precedence and he would have a very light-handed regulatory approach. What do you say to that kind of approach, given the challenges that we see?

Ms SCOTT: We have not called for a light-handed approach. In the 13 submissions that we have made on this issue since 2002, we have called for proper regulation with firm powers and the ability for the State to take action. There are numerous examples of where this has not occurred and numerous examples from councils across the State of problems with the current certification system.

The CHAIR: Could we just spend a little bit of time on private certification? For many members of the community, the problem begins and ends with private certification. I know it is a lot more complex than that, but

from the moment the proposal was floated by the State Government to privatise certification, what has been the attitude from local government?

Ms SCOTT: Moving forward, different councils take a different view about whether or not private certification should be resumed back into council functions. However, councils have been unanimous in New South Wales in their concern about the gaps in the current private certification system. I can highlight, if you would like, some examples from various councils.

The CHAIR: Do.

Ms SCOTT: In Blacktown council, non-compliance of industrial building with the Building Code of Australia [BCA]. A complying development certificate [CDC] for a two-storey industrial building. However, the design clearly did not comply with the Building Code of Australia. In, again, Blacktown, a townhouse was flood-affected and had inadequate stormwater drainage. The certifier issued an occupation certificate [OC] for a flood-affected townhouse development when the floor levels did not comply with prescribed levels, stormwater drainage was not functional, and stormwater could pond into subfloor areas.

In my own electorate, the City of Sydney, apartments in Zetland with water and safety defects, the occupants evacuated over water and safety defects eight months ago. The property is still vacant with extensive and severe water damage. A contaminated industrial site at Erskineville in the old Ashmore industrial estate has not been remediated prior to apartments and terraces built. The "Sugar Cube" building apartments and the 18 "Honeycomb" terraces were built; however, they are non-compliant with the consent conditions requiring site remediation. What that means in practical terms is the soil is contaminated. The residents cannot move into their properties. They have been sitting vacant for many, many months. The neighbouring properties are obviously also concerned about living across the road from properties that have clear soil contamination.

The CHAIR: And that was all given an occupation certificate by a private certifier?

Ms SCOTT: It was privately certified.

The CHAIR: In each of those circumstances where the private certification system fails, residents inevitably go to the council and expect you to be able to fix it.

Ms SCOTT: That is correct. I note there have been other submissions from resident action groups in the City of Sydney. I note that Friends of Erskineville, for example, have made submissions on these developments. As a councillor, of course, it is the case that my residents approach me and other councillors and council staff to explain this situation. I did not know about the faults in this building until I read it in the newspaper. We cannot answer these questions, as the elected officials of the area, for our residents. It is a system that is clearly failing.

The Hon. ROBERT BORSAK: Ms Scott, you talked about the soil contamination on that site and the certifier certified it. Do you know, as it is not clear to me, how that knowledge did come to the public notice then?

Ms SCOTT: As the Deputy Lord Mayor, I read about it in *The Sydney Morning Herald*. I do not know how it came to public notice.

The Hon. ROBERT BORSAK: Sorry. Not how you found out about it, I read about it in the paper too. How it got from the certifier certifying it, to the public domain. That it was not a proper process. That the soil was, in fact, contaminated. Do you know that?

Ms SCOTT: I have no knowledge of that.

The CHAIR: Do you want to take it on notice, though, and make some enquiries of council?

Ms SCOTT: Sure.

The Hon. COURTNEY HOUSSOS: The situation that you outlined there is absolutely shocking from a consumer perspective. People have purchased homes. They have been constructed. There is clearly an issue with the soil remediation. They are sitting vacant. This is not just a one-off. This is multiple examples of buildings being left vacant for varying reasons. What support is in place for residents? I am not implying, that at a local government level you should necessarily be supplying that. But what support is in place for people who have purchased those homes in the "sugar cube" building, or the other property in Erskineville that is lying vacant?

Ms SCOTT: As I understand it, the State has not yet made any commitments about providing support for the owners or potential future occupiers of those buildings. Obviously, this is in contrast to what has happened in a state like Victoria, where there has been some funding made available. My understanding is, that at the

moment in New South Wales, financial liability would lie with the owners had they completed a contract of sale. There has been public discussion about the issues in the City of Sydney, but I want to make very clear that we are aware of issues in many council areas.

In Ryde, for example, they also have been undertaking a significant amount of advocacy through us over the past years about private certification. They made a submission to the proposed Building and Development Certifiers Bill in 2018, again, like Local Government NSW, lobbying against certifiers being able to provide sensitive medium-density developments. Instead arguing this should be the responsibility of council certifiers. They have cited, for example, an Eastwood development—an approved secondary dwelling, with an attached double garage, with an internal access via garage and attached storage structure, all in addition to the principal place of residency. Another development in Eastwood, an approved secondary dwelling with an attached games room and garage, all in addition to the principal place of residency. Numerous examples of complying development certificates being provided when the development does not comply with the State Environmental Planning Policy [SEPP], the council's Local Environmental Plan [LEP] or Development Control Plan [DCP].

The CHAIR: Basically, entire second houses being approved unlawfully by private certifiers. That would be a summary of that, would not it?

Ms SCOTT: That is correct.

The CHAIR: How would you describe the current private certification system?

Ms SCOTT: Failing.

The CHAIR: It is not as though State Government has not been on notice of this. From the time it was conceived, local government said that this reform was likely to be a failure.

Ms SCOTT: That is correct. We made submissions in November 2011 to the NSW Planning System Review, The Way Ahead for Planning in NSW in February 2012—an issues paper—we made a submission. In September 2012, we made a submission to a New Planning System for New South Wales. In June 2013, we made a submission to the New Planning System for NSW white paper process. In March 2014, we made a submission to the Building Certification and Regulation review. In June 2015, we made a submission to the independent review of the Building Professionals Act. In October 2015, we made a submission to the independent review of the Building Professionals Act draft report. In April 2016, we made a submission to the Expanding complying development to medium-density development discussion paper.

In April 2017, we made a submission on the draft Environmental Planning and Assessment Amendment Bill 2017. In September 2018, we made a submission to the Building and Development Certifiers Bill 2018. In October 2018, again another submission, to the Improving Certifier Independence options paper. July 2019, submission to the Building Stronger Foundations: Discussion Paper, and August 2019, a submission to this enquiry.

The Hon. JOHN GRAHAM: I am hoping that is the last one.

Ms SCOTT: These are the formal submissions. Obviously, we have also undertaken significant advocacy when we meet with Ministers, shadow ministers and—

The Hon. JOHN GRAHAM: Can I ask what you think of Mr Lambert's strong view that he has put in public and also this Committee, really calling for a stronger relationship between councils and certifiers? The view he has put is that, one of the things that is going on is that certifiers should have a mandatory responsibility to report to the council if there is a council-approved situation and the council must be responsible for compliance—given the powers they have got in that area. What is your view given the submissions you have referred to about Mr Lambert's view in this area? He really highlights that he thinks this is crucial.

Ms SCOTT: We certainly recognise that in the current system, the inherent conflict of interest whereby a developer can choose the certifier, is incredibly problematic. In terms of a way forward, there are a number of councils in New South Wales that would support that view. There are a number of councils in New South Wales that would support the view that in a local government area, the councils should be the only certifier. It is difficult to characterise patterns except to say that in my experience, in regional areas where there is a skill shortage, many regional councillors take the view that they should be the certifiers of the area, to address in-part the skill shortage.

The Hon. JOHN GRAHAM: Mr Lambert thinks this relationship is working better in regional councils and less well in metropolitan councils.

Ms SCOTT: Regarding metropolitan councils, it is fair to say we would need to do more consultation to get a sector-wide view about where certification powers—either in-part or in-full—would need to return to councils. On the surface, councils will of course note with concern that any proposal to move the system back to them, in the short-term, would be difficult. They do not have the staff to do that at the moment.

The Hon. JOHN GRAHAM: So they would be looking for a lot of resourcing.

Ms SCOTT: It would be costly.

The Hon. JOHN GRAHAM: If that were to be the case.

Ms SCOTT: It would be a cost-shift onto councils.

The Hon. JOHN GRAHAM: If the resourcing did not flow.

Ms SCOTT: If the resourcing did not flow.

The CHAIR: So for certification to return to councils, there would need to be detailed consultation with local government, first of all. There would need to be a reasonably lengthy time frame to implement it and it would need to come with a commitment from the State Government that, either through fee-for-service or through State Government provisions, that it would be at least cost-neutral to local government?

Ms SCOTT: Correct. Those would be the three main criteria that we would like to see should a decision such as that be considered by government.

The Hon. JOHN GRAHAM: Can I just be clear on the position you are putting to the Committee? Is it that you believe that should be returned, or that if it is returned these are the circumstances? Is the position that it should be returned or you have drawn attention to the conflict that you think many councils have expressed a view about—

The CHAIR: Or is the position that some councils have some view and some councils have another and you are trying to represent that diversity of views in local government?

The Hon. JOHN GRAHAM: Once again the diversity of views in local government.

Ms SCOTT: We love diversity. Councils, of course, were opposed to private certification when it was proposed for all the reasons we have discussed. One of the complications of taking a one size fits all approach is that at the moment councils may not support that. Should the Government consider a proposal to return certification to councils, we would call for more time for consultation with them first to better establish their views on this. At the moment I would characterise that there are different views across the State on this issue.

The CHAIR: Councillor Scott, if you want, we are happy for you to give us some further detail about that on notice, but also to address quite specifically Mr Lambert's proposal about that improved statutory obligation to have a direct communication and working relationship between councils and private certifiers if they remain on the record books.

Ms SCOTT: We know, for example, that councils like the Central Coast and Kyogle would consider having certification returned to them or would be happy to take on an expanded role in relation to the certification process. Other councils have mentioned in their submission that they would support this kind of role. For example, Willoughby and Moree Plains. Other councils would have reservations about taking on the risk and would be very interested in some of the details around the timeframe and funding.

The Hon. JOHN GRAHAM: We would definitely appreciate some of those details on notice. Do you mind if I move onto an issue about which I suspect there might be less diversity of views on and that is cladding?

Ms SCOTT: Yes.

The Hon. JOHN GRAHAM: In Victoria there is a new agency, Cladding Safety Victoria. There is a \$600 million package to deal with particularly high-risk buildings and some of that money is being raised by a levy on building permits. None of those three things are the case in New South Wales. Is it time for New South Wales to act?

Ms SCOTT: Yes. Can I just give you one further example and quote on the private certifier issue, just to highlight the regional example?

The Hon. JOHN GRAHAM: Certainly.

Ms SCOTT: A quote from the Moree Plains council staff:

While our problems are not as acute as the major cities, we do have some issues. In short, every privately certified building that we have had in the last three years has had issues. These predominantly relate to what they call certification by remote control, as we have no private certifiers in the town of Moree.

The Hon. MATTHEW MASON-COX: Would your council members be interested in an opt-in scheme?

Ms SCOTT: I think there would need to be a lot more consultation with the councils to establish support for proposals such as that. I could not comment. On the cladding issue, it has obviously been very challenging. Unlike in other States, here in New South Wales the Government has taken the role of identifying buildings with potentially non-compliant external combustible cladding and providing sections of that list to councils to manage. It has been the case that coordination between State agencies and councils has been what we would characterise as limited and in the absence of state-wide guidance, each council has currently been left to take its own approach. Councils are expected to work through the list that they have been provided to determine whether and how property owners should rectify the cladding on their building. Of course, this is what councils have been doing, but the result is that there is no consistent approach to the treatment of buildings with cladding and how any rectification requirements are determined. Obviously, this is causing confusion and uncertainty for property owners and residents.

We have worked very closely at Local Government NSW with the New South Wales Cladding Task Force over the past two years providing informal communication conduit between councils and the task force. From the outset we have advocated for leadership from the State Government on this issue. We have called for a coordinated and consistent approach to managing cladding issues across the State, including residential, commercial and government-owned buildings. Resourcing is also problematic, with the process requiring detailed work, expertise and time to review relevant approvals and certification, obtain fire engineering reports, specialist advice, issue letters, notices and—

The Hon. JOHN GRAHAM: But is that not the heart of the issue here, that with all the goodwill in the world, this is a very big issue. The suggestion has been made there are 629 high-risk buildings out there. Without the resourcing, this is not going to move quickly enough. Surely that is the heart of the issue?

Ms SCOTT: Councils are reporting to us that they think currently the process of undertaking the identification work will take years.

The CHAIR: Years?

Ms SCOTT: Years.

The CHAIR: It is more than two years ago we saw the Grenfell disaster and the State Government has not yet issued a set of guidelines about how to undertake rectification work for cladding. It has not even set the rules in place. It has had a task force going for two years—I do not know what it has been doing. More than two years after Grenfell the rules have not even been set in place. That surely means that local councils are pretty much making it up as they go; I am sure with as much diligence and competence as they can, but with no help.

Ms SCOTT: We have and continue to call for guidance and protocols from the State to allow consistent assessment of buildings and consistency about mitigation of the risk. We know, for example, if you are a member of a strata committee and you live in an apartment and you do not know whether there is combustible cladding in your building—

The CHAIR: Pretty hard to fix it.

Ms SCOTT: But the requirement is, as I understand it, to report if you think there may be. For example, in a strata that does not have enough reserve funds to commission the necessary reports, they may report even if they are not aware that there is combustible cladding in their building in order not to breach the current rules. This, of course, means then the council has potentially a very large number of buildings to inspect because there may be over-reporting. Similarly though and to counterbalance that, there is inadequate training for stratas, so they may not even be aware of this requirement and therefore, may not have reported because they did not understand they had an obligation to even check. We know that councils have, at one point in time, had three separate State agencies giving lists in our areas of the potential cladding that was flammable.

The Hon. JOHN GRAHAM: Do those lists correlate?

Ms SCOTT: No, they do not correlate.

The CHAIR: Who are the three agencies—Fire and Rescue?

Ms SCOTT: Fire and Rescue were doing some work on this. I might have to take that on notice.

The CHAIR: Planning and Fair Trading, would they be the three?

Ms SCOTT: Department of Fair Trading, Department of Planning, Industry and Environment and Fire and Rescue NSW.

The CHAIR: Three agencies giving you three different lists about cladding?

Ms SCOTT: Yes.

The CHAIR: You could not actually make this up, could you?

The Hon. COURTNEY HOUSSOS: And yet they are supposed to have a task force that is actually working on this.

Ms SCOTT: There has obviously been some media about this issue. For example, in the case of Blacktown Council, *The Daily Telegraph* obtained emails between Fire and Rescue and Blacktown Council allegedly showing that the council had failed to respond to requests for checks of fire safety. The council though had responded to requests and lists from one of the other agencies and were, of course, inspecting those buildings.

The Hon. JOHN GRAHAM: But they were just struggling to keep up with the blizzard of letters from different government agencies.

Ms SCOTT: Some of the lists were arriving by fax and in the case of Blacktown City Council it became clear that some of the buildings on the list were State government buildings, including Blacktown Hospital. Councils are working very hard to uphold their obligations in a system that is inconsistent and difficult.

The Hon. JOHN GRAHAM: Would you call on the Government to implement a Victorian-style scheme with funding with an agency that coordinates this in a better way than it is being coordinated at the moment?

Ms SCOTT: It is clearly the case that New South Wales needs a better system to identify buildings and needs very clear guidelines for the remediation works and how that should be done in a consistent way. It is clearly not in the public interest to have 128 different councils with different views about the remediation works that might need to be done. We would continue to call on the Government to have a consistent approach to this.

The CHAIR: We have heard from a number of witnesses and stakeholders, not least of which was the Insurance Council Australia, that one of the key difficulties about knowing what is built and being able to, in the case of insurers, price risk is that there is no obligation for developers to actually keep records of what is built. Indeed on key issues such as performance-based solutions to difficult engineering issues and the certification of fire safety, the documents can sometimes be handed to insurers once a building is finished in a shoebox of different receipts, reports and records. The building industry would have to be one of the last bastions for a paper-based twentieth century, at best, record keeping system. What is local government's experience of that?

Ms SCOTT: I would probably have to take that on notice. I do not have details of the practical day-to-day systems of how these arrangements are being managed in general or even specific instances. It is the case however that there remains no consistent system for developing the list of buildings. There remains no consistent system for councils to respond to if there is flammable cladding identified in a building.

The CHAIR: The Government is rolling out an ePlanning portal, which identifies each property across the State. It will include the planning approvals, the DA documentation and the like. It would seem the obvious place to go if you wanted to have an online, real-time documentation set about the construction of buildings would be to use that architecture. What is local government's thoughts on that?

Ms SCOTT: That is one possibility. We have met with Victor Dominello, the responsible Minister, to speak with him about the ePlanning portal, the potential for that and the risks that councils have identified as part of that. We have written to him and are waiting on a response from him on a range of questions we have about the ePlanning portal. For example, under the Local Government Act councils are required to undertake procurement for any services and goods that we procure. At the moment ePlanning, as we understand it, is not subject to charges from the State Government to councils. If councils move their planning systems over to the ePlanning portal and then at some point in the future the system became subject to State Government charges to councils, it may well be the case that we would be in breach of our procurement obligations. We would call on the Government to commit to not charging councils for using this system in the future.

Similarly, when any public body procures any information technology solution there is obviously a requirement for maintenance and for keeping the system up to date as the planning laws change. We are seeking from the Government some commitments around that. Finally, we are working with the other planning agencies and commissions—for example I have personally spoken to Lucy Turnbull, Mary O’Kane and a range of other planning agencies—to seek to work to form an agreement so that councils, as the government of the area in the ePlanning system, can have access to information about planning applications that are in their area that are progressing through other planning channels outside the council.

The CHAIR: It should be comprehensive. It cannot be that local councils end up paying for the State-wide system; it should be provided by the State Government as a service. If those commitments were made do you think local government would be much more likely to get on board and support it?

Ms SCOTT: Those two things are correct, yes. And that councils have access to the information with other planning mechanisms outside the council.

The CHAIR: If that was in place that would be the kind of avenue you might see for the electronic record keeping of the construction end of it as well.

Ms SCOTT: We think, ideally, that if there was an integrated technology system to house information about the whole of a planning application, including certification, the development application and a range of other sets of documentation—as long as those guarantees were met—councils would feel very comfortable about moving towards that system. I should say that a number of councils already have really great systems in place. Randwick City Council, for example, has a great online system in place already. It has already done this work itself. It has a great system in place and it is very happy with that and it does not see any need to move.

The CHAIR: At a minimum they should talk to each other.

Ms SCOTT: Correct.

The CHAIR: One of the concerns that has been raised about the current construction process is about performance-based solutions. That is when a novel engineering solution is given for a multistorey apartment block. They are currently being signed off by unregistered and uninsured engineers—well, there is no obligation for registration or insurance. Has the City of Sydney, where many of these things are implemented, had any experience with that or does it have a view on that aspect?

Ms SCOTT: I cannot speak on behalf of the City of Sydney. It is the case, however, that Local Government NSW has worked with other groups that are calling for proper regulation of engineers. We understand that at the moment the local governments of New South Wales all have at least one engineer working for them. Councils obviously work very hard, given the extreme shortage of engineers in New South Wales, to make sure they have an engineer working for them. But generally councils are very supportive of making sure that engineers are qualified and are properly regulated. We want to see a system that ensures that all parties are responsible and accountable for their actions. The community and public interest is at the forefront of that.

The CHAIR: One of the Government's four-point reform proposals is to regulate and licence those people involved in the design of buildings. The proposal does not go to regulating and properly licencing the people involved in the construction of the buildings. Your submissions suggests that the Government's approach is piecemeal. Is that one of the pieces that is missing?

Ms SCOTT: Yes. We would call for a system that ensures that all parties are responsible and accountable.

The CHAIR: We have run out of time. Thank you both for your assistance to the Committee today. I think you took a couple of questions on notice. You have 14 days to provide those answers. The secretariat will assist you in that regard.

(The witnesses withdrew.)

KATE HURFORD, National Policy Manager, Australian Institute of Architects, affirmed and examined

LEANNE HARDWICKE, General Manager, Policy, Advocacy and Education, Australian Institute of Architects, affirmed and examined

KATHLYN LOSEBY, New South Wales President, Australian Institute of Architects, sworn and examined

The CHAIR: We have read your submissions. Thanks very much for that. You may give a brief opening address.

Ms LOSEBY: Thank you very much for allowing the Institute of Architects [AIA] to sit before you and give evidence. Community safety must be paramount. It is particularly distressing to hear and watch what has unfolded in the apartment sector. The AIA code of conduct expects architects to improve standards of health and safety for the protection and welfare of all members of the community. This is not just for the client, the developer or the financial institutions—it is for everyone. Poor quality buildings leave a lasting legacy that diminishes the overall quality of our built and living environments. We acknowledge the New South Wales Government has appointed David Chandler as the inaugural NSW Building Commissioner and we look forward to working with him. We hope he will be given the support and resources needed.

We have now all seen many high-profile cases of quality failure. These failures are of significant and ongoing concern and have occurred for three main reasons: first, quality is not embedded in the design and construction process; second, the roles and responsibilities of those involved are not clearly defined; third, there is a general lack of appreciation of good quality design and the value of thorough documentation. This is what typically happens. In the current market we have a design and construct contract. This sees the developer client handover the quality and the intelligence, which is in the architect and the engineer's head, to the builder at novation. This occurs when the documentation package goes out to tender. The documentation at this stage can be as little as 30 per cent to 50 per cent of what is actually required to build a complex project.

The builder then has to put in a competitive price and commit to a very tight program in order to win the contract. That is what everyone is expecting them to build to. The builder now engages the design team. Fees are questioned. They will potentially shop around and get a cheaper alternative: outsource overseas, go to a documentation house or not employee a tertiary trained designer but go straight to the trade designer. Even if the original designer is engaged, the final component of the documentation is driven by minimising the cost and the program. The designers are rarely asked on-site, sometimes not at all. This erodes continuity of critical project knowledge, quality is ignored and, ultimately, outcomes are not optimal. Now add in substitution of products and value engineering. These words are just a fancy way of saying cost cutting.

Yes, the building is less expensive. Yes, it is completed sooner. But this is short-sighted. When remediation costs, rectification works and expensive maintenance are counted, it is far more costly. So what is needed? Mandate detailed documentation at the stage where documents are declared to meet the Building Code of Australia [BCA]. For large and complex projects, oversight and quality assurance needs to occur continuously on-site. For this, we strongly recommend the appointment of a clerk of works. Only regulated practitioners should be involved in the design and project management of high-risk, multi-unit residential and commercial buildings. Ideally, the architect should not be novated to the builder, but stay engaged to the client. In summary, quality needs to be the focus. Only then will we have a system that protects the public interest. Thank you.

The Hon. COURTNEY HOUSSOS: I thank all of you for your time today and for your really informative submission. I want to take you to a couple of comments from your opening statement first. You talked about how there are significant steps within the design and build process where—forgive me for characterising it like this—the quality is stepped down. What Government, regulatory or independent oversight is present at any of those stages in the current scheme?

Ms HARDWICKE: Very little.

Ms LOSEBY: Yes, that is actually the problem. When it comes to the documentation—it is actually called design and construct in Australia—we do the absolute minimum documentation that has to occur in order to then get it through the construction certificate [CC] or complying development certificate [CDC] and then it will go out to tender. When that documentation is taken and developed by the builder, the novated contractors or the new consultants, who does the checks and balances to make sure that it is actually okay? If it comes to anything that is signed off to the BCA, it is typically the private certifier that needs to say it is finally okay. We are all asked as the designers to say, for instance, "Does this building meet the design that you prepared?" We will say that,

ostensibly, from the outside, "Yes, it does". You have to bear in mind we are not there all the time, we do not see it happen, there are no eyes on the site actually watching what happens.

The Hon. COURTNEY HOUSSOS: That is my point.

Ms LOSEBY: That is it. There is none. Even the certifier who goes along—at most, it is 10 per cent of bathrooms that are looked at. What happens to the other 90 per cent? What even happens to that one bathroom that is approved and okay if then, for instance, the waterproofing is checked and approved and then 20 minutes later someone comes in and scratches the waterproofing? There is nobody there watching. For example, with Opal Tower, the quality of the concrete that was used was not what was specified. Who was watching that there was a certificate, a statement or a receipt to show this concrete that has been delivered matches what was specified? There is no independent observation on-site watching that.

The CHAIR: And nobody with an interest in it either because the company building it is not going to have ongoing responsibility for it. They are going to hand it over to either whoever they contracted with or to individual property owners and more often than not they will disappear.

Ms LOSEBY: That is right.

The Hon. COURTNEY HOUSSOS: Did you hear the testimony from the building commissioner this morning.

Ms LOSEBY: I have not had a chance, I am sorry.

The Hon. COURTNEY HOUSSOS: I will put to you one of the things he said to us, which was that a key way of improving the building system in New South Wales will be licensing at every stage of the system. Do you believe that there is currently expertise within Fair Trading to evaluate that licensing system?

Ms LOSEBY: No, we do not.

The Hon. COURTNEY HOUSSOS: I will go back a step: Do you agree there should be licensing at every step?

Ms LOSEBY: Absolutely.

The Hon. COURTNEY HOUSSOS: We heard from the ETU that it is one step to have a licensing regime in place, it is quite another to have an effective enforcement regime.

Ms LOSEBY: Absolutely. There are two stages here: One is the upfront design stage of the professionals which we suggest. On a large scale multi-unit apartment building there can be up to 25 consultants, I have listed them here, that we need to get information from in order to sign-off on what the BCA requires. Each one of those should be regulated, should have a barrier to entry in terms of formal qualifications, they should have an expectation of registration, there should be exams, there should be annual CPD, there should be a process if something is wrong in order for them to be regulated against.

Then when it comes to on site with the trades, absolutely. Because what is the point if you have the intelligence up the front making sure that it is okay if the hands-on approach is not there. I can use my mind and I can document something, but I cannot physically build it. So even from the outside if I was to look at it and say, "Yes, this looks okay", it may not actually physically be put together and strong enough because I do not have the skills to do that. If I am expected to have the qualifications and PI insurance whoever the tradespeople are that are putting it together should similarly. We have heard too many scary stories.

The Hon. ROBERT BORSAK: In your opening remarks you talked about designs 60 per cent complete going out to tender at that stage, is that right?

Ms LOSEBY: Yes.

The Hon. ROBERT BORSAK: Is there an optimum level? Is that too low too high? Are we relying too much on the builder?

Ms LOSEBY: I do not think anyone wants to stop innovation. When I first graduated I was very fortunate to work in the sector when we did full documentation. I have seen that change over time. The reason for bringing it in is that we want things to open up so if you go out to tender you go out to various different builders. Each builder may have a different way of building and we do not want to stop the innovative approach that is coming in and being developed. When we say further documentation of certain areas and details they are the ones that relate to the building code of Australia and I think that could easily be written into the codes so that anything that affects waterproofing, anything that affects some components that are particularly of concern, structural

issues, any performance based issues, they should be detailed. If you are going to ask me a percentage, it is not necessarily the percentage, it is what the area is.

Ms HARDWICKE: Can I just add to that. We have recently done a national survey of all our members around the concept of design and construct novation. A lot of them came back and said there were varying levels. Sometimes it goes out at 10 per cent design documentation, so 60 is not necessarily the average.

The Hon. ROBERT BORSAK: I take that as a general comment. To me as a layman 60 per cent sounded on the low side.

Ms HARDWICKE: It certainly is and what our architects have said is that they would prefer at 100 per cent design documentation or at 50 per cent construction documentation. So there is a lot more documentation before it goes out to tender.

The Hon. ROBERT BORSAK: At the design/construction documentation. At what stage does the architect actually disengage?

Ms LOSEBY: The architect may never disengage, it is what the scope of service is that is required. Traditionally before we had design and construct the architect would be engaged the whole way through. They would remain as the agent of the client and an independent assessor and administer the contract and watch everything. Now that it is design and construct if the same architect is kept they will continue to work on the project but their involvement will not be as much, so you will not detail to the same extent, you will not be involved on site, you will not watch things happening. Things can change and you will not know what they are.

The Hon. ROBERT BORSAK: I noticed in the media before your evidence today you talked about going back to a clerk or works process. That seemed to me rather an old fashioned thing to say. I preface that by saying I do actually agree with what you are saying. It is going from where we are now, which is laissez faire in the extreme, to a very controlled environment. I think that is what we need. We need to get confidence back in the industry. At what level of contract size or dollar amount would that type of engagement cut in at, do you have any feel for that?

Ms LOSEBY: We would have to take that on notice if you want detail. As a general feeling the response would be: Anything that is the multi-unit apartments over three levels in particular. That is where we have the major issues because of complexity.

The Hon. ROBERT BORSAK: Could you take that on notice?

Ms LOSEBY: Could I also say that the clerk of works model is used in the UK. The Royal Institute of British Architects [RIBA] have a manual and guide. They use it on their design and build projects and this is very similar to design and construct. It could very easily fit in. What they have found is it significantly improves the quality on site.

The Hon. SCOTT FARLOW: On that point: Did you hear Mr Lambert's evidence on Monday afternoon?

Ms LOSEBY: I did.

The Hon. SCOTT FARLOW: The gist of his evidence was that when it came to the clerk of works it was a little bit difficult to implement with design and construct and to go back to the old architect led model where he viewed the clerk of works was integral. You would dispute that, would you?

Ms LOSEBY: I highly respect Mr Lambert, but I do have a different opinion. Maybe I should meet with him because I think we could demonstrate how it works in the UK very successfully.

The Hon. SCOTT FARLOW: The clerk of works model can still work with the design and construct model?

Ms LOSEBY: Yes, it can, because they use it with the design and build model in the UK.

The CHAIR: You put a quote in your submissions from the British adjudicator and barrister Tony Bingham, "The cost of a clerk of works per annum is cheaper than a single day in court."

Ms LOSEBY: That is right.

The CHAIR: It puts things in context, doesn't it?

Ms LOSEBY: It does I think the whole design and construct process has been to make things happen cheaply and quickly. The problem is that quality has been missed out. I actually think it costs substantially more by the time you work out the rectifications. I am not even including trying—

The Hon. ROBERT BORSAK: The point is the same people are not paying for it.

Ms LOSEBY: That is the problem.

The CHAIR: That is why you need good system design and reregulation in this area.

Ms LOSEBY: Yes. The point is you need independent eyes watching what is happening.

The CHAIR: Your submission is about licensing and about consequences for professionals and for the construction side of it: licensing and consequences. What I do not hear in your submission is about the obligation for professional indemnity insurance for all of the trades and for all of the players in the area.

Ms LOSEBY: All of the designers most definitely need to have professional indemnity insurance. In that we include project managers for instance. In the trades, the trades that are involved in designing obviously need to have PI insurance, fire protection for instance. There are a few different ones, mechanical, if they are doing any design they must have PI insurance.

The CHAIR: I now understand that position. The area where there may be dissonance between you and Mr Lambert is about the concept of individuals being held individually accountable. Individual architects, individual engineers, individual professionals being held accountable as opposed to a corporate accountability.

Ms LOSEBY: Architects have always had public indemnity [PI] insurance. We have always been held responsible. We have a very clear duty of care. The way it is at the moment is that an architectural company has their public indemnity and public liability [PL] insurance—all the different insurances that you need and it is to the company and there are nominated architects. Those nominated architects are responsible, but it is the company that has the PI insurance and the PL insurance. We actually think that that is better because the whole company, then, is responsible rather than an individual.

The CHAIR: I think Mr Lambert's position, as I understood it, was having the individual on the line gave you greater individual responsibility and buy-in. But I assume you would say in the architectural space individual architects already have that obligation?

Ms HARDWICKE: Individual architects are actually subject to disciplinary action and can be deregistered. So that is the stick in that case. So the PI insurance, who pays—I do not know that if an individual had to have PI insurance and be directly accountable, I do not think it would make a difference.

Ms LOSEBY: I also think you probably do not understand the value of the PI insurance that needs to be kept. It is a lot. An individual—I would not be able to take out the PI insurance necessary.

The CHAIR: I have spoken to some people about the premiums. They are quite extraordinary.

Ms LOSEBY: As a company? Yes, we do and we always do. And we have had it for—well, the company I work with—54 years. So that is an extremely good track record.

The Hon. ROBERT BORSAK: How many claims have you had?

Ms LOSEBY: At this company? A couple.

The Hon. ROBERT BORSAK: Were they large?

Ms LOSEBY: I would have to take that on notice, but the company is still going so we are fine.

The Hon. ROBERT BORSAK: You do not have to tell me the particular claims. I am just trying to get some idea of the level of—

The CHAIR: Disputation.

The Hon. ROBERT BORSAK: Yes. Disputation is the right word. That is right. You may have experienced it in your company over that period of time.

The CHAIR: I do not think it is intended as a personal question about your profession.

The Hon. ROBERT BORSAK: No, no.

Ms LOSEBY: No.

The CHAIR: It is just about the experience you have of dealing with disputes and defects. I think that is where the question is coming from.

Ms LOSEBY: Okay. So I have had about 30-plus years post-grad experience. I have been involved in one case that was rather large and went on for a long time. It was resolved and paid. What I must say, that I think is very important, is that proportionate liability and civil liabilities should not be opted out of. It should be made illegal for that because in this particular case we were involved with several organisations, designers, builders and it needs to be proportionate because otherwise those that have the insurance are the ones that are left standing.

The Hon. ROBERT BORSAK: Those that have the biggest insurance are the ones that get sued?

Ms LOSEBY: Absolutely. And it does not necessarily mean that you are responsible.

The Hon. ROBERT BORSAK: No.

The CHAIR: It does not reflect culpability, does it?

Ms LOSEBY: No.

The Hon. ROBERT BORSAK: No. It is just who has got the biggest insurance policy.

Ms LOSEBY: Yes.

The CHAIR: You put in a number of essential elements that you believe a building commission should oversight. And I could read out the list. But rather than me read out the list, do you want to give us some detail about why you say that package of responsibility should lie in the one place, being the building commission? It is at the bottom of page 2. While you are looking, I will read. "Residential building investigations, building plan regulation and audit, residential building dispute resolution, plumbing regulation, electrical and gas safety regulation, strata building bond schemes, building product safety, building and construction security of payment scheme, engagement and strategic collaboration with local government and engagement of principal certifying authorities."

Ms LOSEBY: Yes. And I think that is not inclusive. That is—

The CHAIR: It starts it.

Ms HARDWICKE: Ideally, I think you need one body that is responsible for all of these things to coordinate it all and to make it all happen and to be responsible for compliance and responsible for enforcing things. Currently, it is all over the place.

The Hon. JOHN GRAHAM: And how far away are we from having that one body at the moment? How far spread are those responsibilities you have listed here?

Ms HARDWICKE: I think at the moment the responsibilities are all over the place and sometimes there is no responsibility. So I think until we get more detail about what the Building Commissioner is going to be supported to do, we cannot really comment on it. But we think that it really needs to be pulled together.

The Hon. ROBERT BORSAK: He told us this morning he has got 120 days to work it out.

The Hon. SCOTT FARLOW: 180. I'll give him 60 more days.

The Hon. ROBERT BORSAK: I beg your pardon. I was getting ahead of myself. 180 days to work it out and then he has got to tell us.

Ms LOSEBY: Right. The point is at the moment it is between Finance, Planning, Better Regulation, and I think there is another one as well. And there are so many different, disparate groups, it is—

The CHAIR: I was personally troubled by the Building Commissioner, on day three of his job, rejecting the concept of a building commission. Particularly in light of the submissions that we have had that have almost to a person or to a body said, "You have to have a single place of authority. You have to have a single overseeing agency." And that is pretty much a—without that, it is pretty hard to see how any of these reforms will bed down effectively.

Ms LOSEBY: That is right.

Ms HARDWICKE: We agree.

Ms LOSEBY: We will not have any legs.

The Hon. ROBERT BORSAK: How does Fair Trading measure up to your expectations?

Ms LOSEBY: At the moment they are trying, which is good.

The Hon. ROBERT BORSAK: I will give them a gold star for trying.

Ms LOSEBY: We think their approach at the moment is, with the discussion paper anyway, rather piecemeal. It is only looking at disparate, different items. We do not think that it is holistic.

The Hon. ROBERT BORSAK: So they are not across their brief in that sense? Is that what you are saying?

Ms LOSEBY: I believe that they want to get something happening very quickly, so therefore they have cherry-picked certain items. We think that unless, holistically, there is a larger approach, it actually will not be purposeful, we certainly will not get competence back and we will not get the insurance industry back.

The CHAIR: Is the Shergold Weir report a sort of gold standard here?

Ms HARDWICKE: We would say we agree with all of the recommendations in the Shergold Weir report and we think that if they are put in place, it will actually go an enormous way to building more confidence in the building industry.

The CHAIR: What about the Lambert report?

Ms HARDWICKE: I could not comment on the Lambert report because I have not been through it in any great detail.

Ms LOSEBY: The Lambert report was good. I do not think it is as broad as the Shergold Weir report. However, that was done several years beforehand. 2015, I think.

The Hon. JOHN GRAHAM: Returning to the licensing question, I just wanted to ask about Mr Lambert's views, because we received quite different evidence on the first day of this hearing from Fair Trading and also from Mr Lambert on that licensing question. So I was interested in your view about these two clashing views. Fair Trading told us that there are different categories of certification that those people are accredited under the law and have qualifications. So specialist categories of certification.

They said that they would all have to have insurance to maintain their accreditation and that in the discussion paper—I think they were referring to—while the discussion is about building designers, they are in the process of consulting on licensing a much broader range of practitioners, all of whom would have to positively declare the plans, the designs, the specifications comply with the National Construction Code. So that was Fair Trading. Mr Lambert then turned up and said, "Look, in practice, very few of these categories of people are licensed for them and none of them actually provide compliance certificates. Compliance certificates are allowed under the Act but they are never used because they are legally onerous. The only effective certifier operating at the moment is the building certifier." They are two very different views about how the—

Ms LOSEBY: Yes, but Michael Lambert is representing what is happening now and Fair Trading is representing what we want to happen.

The Hon. JOHN GRAHAM: Fair Trading is talking about both what is happening now and what is anticipated. Yes.

Ms LOSEBY: At the moment we do not have anywhere near the amount of people who are professionally trained that actually have those qualifications and have the PI insurance behind them. So for instance, if we need to sign off on documents to meet the Building Code of Australia [BCA] or National Construction Code, I would need the advice of an acoustic consultant, a BCA consultant, a Disability Discrimination Act and access consultant, et cetera. But they do not necessarily all have any particular PI insurance behind them. They do not have to. They do not have to necessarily have the same rigour that we do in terms of being regulated, continuing professional development [CPD], registered, numbered. There is no body to go to for complaints, no—

The Hon. JOHN GRAHAM: Why is Fair Trading saying they would all have to have insurance to maintain their accreditation?

Ms HARDWICKE: I believe that Fair Trading is saying it because in their Act, there is a section that allows for people who want to offer those types of certificates to become registered under the Act. But nobody is becoming registered.

The Hon. JOHN GRAHAM: So it is an option; it theoretically exists in practice.

Ms LOSEBY: That is right. I am very fortunate that where I work we only work with the best of all of these consultants, and so they do have insurance and I am fine. But there is a lot of building out there.

The CHAIR: Only a tiny handful of people with those relevant specialities are actually registered under the State scheme. Is that not right?

Ms LOSEBY: That is right.

Ms HARDWICKE: It is not mandatory, is the point.

The CHAIR: So when we ask those questions of Fair Trading about the inadequate level of certification and insurance protection, and then they point us to the list of potential certified persons—

Ms HARDWICKE: It is only potentials.

The CHAIR: —as though that is an answer, without telling us that the bulk of this work is done by non-certified and non-registered because it is all optional, I would categorise that evidence from Fair Trading as deeply misleading. I suppose it is unfair to ask you to characterise it on the record, but perhaps we might give you an extract of their evidence and you could give us your observations on it and how it relates to real-world practice, on notice.

Ms LOSEBY: On notice, thank you.

The Hon. JOHN GRAHAM: As I understand it, you are really saying that difference is—one is, in theory, the option is there; in practice it is not exercised.

Ms LOSEBY: That is right.

The Hon. JOHN GRAHAM: That explains the gap.

Ms HARDWICKE: The ideal would be that you mandate that anybody who is going to a particular type of work has to be registered, has to have professional indemnity [PI].

The Hon. JOHN GRAHAM: And without mandating, it is simply not happening.

Ms HARDWICKE: That is right.

The CHAIR: The fact that, in some alternate nirvana to New South Wales, people could is not really an answer to what is happening on the ground.

Ms LOSEBY: Also what is absolutely imperative is that that skill base needs to be clearly stated so that if you are a structural engineer, you have a bachelor of structural engineering. The same for your acoustic consultant, your Building Code of Australia [BCA] consultant—they need to be specific. We cannot just say somebody has a number in this list of building professionals; it needs to have what the qualification is.

The CHAIR: That does not exist at the moment.

Ms LOSEBY: No, and I am not even sure, from the session I sat in yesterday, if that is actually even going to happen.

The Hon. COURTNEY HOUSSOS: As a result of this new paper that is being—

Ms LOSEBY: What was on the table yesterday—certainly the group that was there was wanting those qualifications to be known.

The Hon. COURTNEY HOUSSOS: It is fine if you do not want to say this, but was Mr Chandler at that particular one yesterday?

Ms LOSEBY: He was in for 10 minutes, I think, to say hello.

The Hon. COURTNEY HOUSSOS: That is not quite how he characterised his participation to the committee today.

The CHAIR: He is a very busy man.

The Hon. COURTNEY HOUSSOS: I understand he is a very busy man.

Ms LOSEBY: It might have been 15 minutes; I do not know.

The Hon. COURTNEY HOUSSOS: I am not wanting to put you on the spot, Ms Loseby. I had a question—and this is kind of coming full circle to the conversation that we started at the beginning—which is, is

there a need for a commission to support the commissioner? This is highly specialised knowledge. This is something that requires a fundamentally different approach to the way—and we have had it characterised elsewhere as when you purchase a toaster, as opposed to when you are purchasing a home. There is a need for a fundamentally different approach to regulation than is currently existing in Fair Trading. Irrespective of the advice that they might be providing to us, their approach actually means that they are not well positioned to be providing this advice. Would you agree with that?

Ms LOSEBY: We would wholeheartedly say that the building commissioner needs a commission—needs incredible support.

The Hon. COURTNEY HOUSSOS: Because it is a different approach that you need. I think Mr Lambert characterised it as an ideological approach to regulation when you are looking at building regulation. Would you agree with that?

Ms LOSEBY: Yes.

Ms HARDWICKE: Yes, and I think you do need a different skill set entirely. It is not all about the regulations—actually having an understanding of what happens on the ground so that you can actually enforce the regulation properly.

The CHAIR: It is not about ex post facto consumer protection, because that is a sort of "ambulance at the bottom of the cliff" model.

Ms LOSEBY: Exactly. Let's fix it beforehand. The building industry is now really quite complex. You need a lot of skills.

The CHAIR: You do not have to persuade us. It is enormously complex, and this is one of the issues about private certifiers. There is going to be no magic private certifier who knows everything about mechanical systems—

Ms LOSEBY: No, they do not.

The CHAIR: —about fire safety, about construction, the BCA. That is why you need layers of accreditation, layers of licensing and layers of protections.

Ms LOSEBY: I also think that there is a huge misunderstanding of certifiers. Certifiers do not know everything; they never have been required to. They really just collect other people's certificates. The thing is, what are those certificates? What are they worth? If the person behind them redesigned the mechanical ducting and built it themselves and then they are out of business next week, where does that have any—

The CHAIR: What is that certificate worth?

Ms LOSEBY: The self-certification has got no value.

The CHAIR: It is like a Weimar Germany Deutschmark.

Ms LOSEBY: Yes, that is right. Fine today.

The Hon. JOHN GRAHAM: I wondered if you could help us with this: On that question about how broadly the licensing might spread, both Fair Trading and then the Building Commissioner have given evidence that while we talked about building designers, this might actually spread now far further into the actual construction side of things.

Ms LOSEBY: It really needs to.

The Hon. JOHN GRAHAM: We have had a lot of evidence that it should, but evidence from both of those that it might now spread further onto the construction side. Can you give us any sense of where that might go? Is that something you are aware of from any of the meetings you have been across?

Ms LOSEBY: Anecdotally from my involvement with master builders. I think I would need to take that on notice because it is only what I have heard. But, really, the oversight of the tradespeople on site does not seem like it is appropriate.

The CHAIR: As you say, the best design in the world is kind of meaningless if you do not know what is actually built.

Ms LOSEBY: That is right.

The CHAIR: A number of submissions, including from the Insurance Council of Australia, have said that one of the key problems is a lack of documentation about what is built—a lack of clear requirements to even record key elements of the construction process. Do you have any observations about that?

Ms HARDWICKE: We do.

Ms LOSEBY: Absolutely. That was sort of the story that I was trying to relate to you in my opening comments. The problem is that at the novation point, because it is a design and construct, it can be quite flimsy, the documentation. Then what actually occurs during the construction period is that it could be done by the tradespeople. The point that we are saying is to make sure that there is a higher quality at that actual documentation point where it is regulated: the Construction Certificate [CC] and the Complying Development Certificate [CDC]. It would not be problematic to actually nominate the areas that are absolutely important to have further documentation and detail.

The CHAIR: There is public visibility about the plans that are approved at a development application [DA] level, but they are very rudimentary. Would that be fair to say?

Ms LOSEBY: Yes, that is right.

The CHAIR: It is just the basic shape and feel.

Ms LOSEBY: Yes.

The CHAIR: Then there is public documentation about the construction certificate, and that is more detailed.

Ms HARDWICKE: But not detailed enough to allow complete construction.

The CHAIR: And that can vary from—some of your evidence, Ms Hardwicke, was that it could be as little as 10 per cent of the final detail, up to—

Ms HARDWICKE: Fifty—whatever.

The CHAIR: —50 or 60, but it can be very incomplete. So, then, if you want to know what is actually built, where is the records of what is actually built?

Ms LOSEBY: Construction documentations. You have the DA, then you have either the CC or the CDC, then you have the construction documentation set. However, if you are asking what is available when it is actually finished to do a comparison—

The CHAIR: Correct.

Ms LOSEBY: —what would they be? Because there can be quite a vast difference between what was documented and what was actually built.

The CHAIR: But it has to be built in accordance with the construction certificate. That is what the law says.

Ms HARDWICKE: Which is fairly loose.

Ms LOSEBY: So if you are only getting documents up to a certain percentage, there is a whole—

The CHAIR: You just colour in the gaps, basically, between there and the construction?

Ms LOSEBY: Yes. So what is requested are as-built or record drawings at the end. Sometimes they will be given; sometimes they will not. We have done quite a lot of collaboration and consultation with other member groups, including the Owners Corporation Network. In order to get a better quality as-built set of documents at the time of practical completion—handover to when the units become owned by the strata owners—we think a clerk of works who reports to a site or a managing architect with those documentation being updated as you go, so that actually what happens means that you get the reality of what the as-builts are.

~break

The CHAIR: And rather than being a collection of documents in a shoebox, should those detailed records—should there be an online register of them?

Ms HARDWICKE: Absolutely. We have said that our submission that we really think that all of these documents need to be lodged electronically, in one place.

The CHAIR: Contemporaneously?

Ms HARDWICKE: Yes, in one place. Well, they can be done as they go. In one place, held by the Building Commissioner, for instance, and be searchable by authorities when they need it, be available certainly for the owners corporation so they can do the things that they need to do in terms of maintenance. All of those kind of things.

Ms LOSEBY: At that stage there should also be the manuals and the warranties that are handed over, the updates to the specification. These are the tools that will be needed by that strata unit body in order to see what needs to occur if there is any maintenance or any changes that need to happen in the future.

The Hon. ROBERT BORSAK: We get a manual when we buy a car. But you do not—

Ms LOSEBY: That is right. Why wouldn't you get it when you get—

The Hon. ROBERT BORSAK: Why wouldn't you get it if you are buying—Ms Loseby, Mr Lambert in his evidence the other day said that New South Wales was probably the worst jurisdiction for regulation in Australia. Would you concur with that statement?

Ms LOSEBY: I cannot, I am sorry, because I am principally New South Wales-based.

The Hon. ROBERT BORSAK: Ms Hardwicke, would you do that?

Ms HARDWICKE: I would say that New South Wales is certainly not at the same level as other states.

The CHAIR: Is it above them?

Ms HARDWICKE: I do not know that I would characterise it that way.

The Hon. ROBERT BORSAK: You would not characterise it that way.

The CHAIR: Not at the same level and you would not characterise it as above?

Ms HARDWICKE: No.

The CHAIR: I think we know where you are going.

The Hon. ROBERT BORSAK: Okay. This may sound like a silly question, and it probably is, but could we actually build a Sydney Opera House today that would actually stand for more than 20 or 30 years?

Ms LOSEBY: Absolutely. I think there is a fair bit of doom and gloom around the room. We still have really talented designers and builders, an incredible amount of them.

The Hon. MATTHEW MASON-COX: Great architects, too, mind you.

Ms LOSEBY: Thank you. I am saddened by the lack of consumer confidence, because there are an incredible amount of talented people in Australia. We are a first-world country. We are hearing the worst. This is unfortunate, but I think there can be a positive that comes out of it.

The CHAIR: You do not legislate for angels, though, do you?

Ms LOSEBY: No.

The CHAIR: That is the problem.

The Hon. ROBERT BORSAK: We would rather not be here either, talking about this, but the reality of this is we are. And that is only because of the failures. And the high-profile failures, of course.

Ms LOSEBY: Yes. This is actually an international situation. It is not just New South Wales. It is not just Australia.

The Hon. JOHN GRAHAM: I think that is exactly the point. There are good operators out there.

Ms LOSEBY: Absolutely.

The Hon. JOHN GRAHAM: And their work is being undermined by this rogue element of our industry.

Ms LOSEBY: I wish you had all come to our architecture awards about a month ago. You would have been very impressed.

The CHAIR: Thank you all for your evidence. We have run out of time. I am sure we would all love to come to next year's awards. We need something light-hearted after the inquiry. I think you did take a number of questions on notice. The secretary will help you with understanding the scope of those questions, and thank you again for your submissions.

Ms LOSEBY: Thank you very much for the opportunity.

Ms HURFORD: Thank you.

(The witnesses withdrew.)

(Short adjournment)

DAVID CHRISTIE, Group Managing Director, Brooker Holdings, sworn and examined

JONATHAN BOYLE, General Manager, Australian Foundation Systems and MacDonald Sheet Piling Holdings Pty Ltd, sworn and examined

DAVID DICKSON, Consulting Engineer, Brooker Group, sworn and examined

The CHAIR: Welcome back to the afternoon and final session of this day's hearing of the Public Accountability Committee. We have a series of witnesses now from Australian Foundation Systems. Before I go to each of you gentlemen, Mr Borsak?

The Hon. ROBERT BORSAK: I have to make another declaration. They are making me declare all sorts of things. I refer to my previous declaration that I am a director and shareholder of Australian Foundation Systems and MacDonald Sheet Piling Holdings Pty Ltd.

The CHAIR: Mr Christie, Mr Boyle, Mr Dickson, thank you for coming. Mr Christie, do you want to make a brief opening statement?

Mr CHRISTIE: Thank you. Our companies first entered the screw piling segment of the New South Wales building industry in 2007. It was part of a strategy aimed at allowing the Brooker group of companies to further integrate into the building and construction markets. More recently, 12 months ago, we purchased control of the MacDonald sheet piling business and commenced business in the Sydney market. Both businesses met our key criteria of unique solutions to standard engineering problems in the building industry, both civil and residential. And that can be fabricated steel, into which we owned registered designs and gave us an edge, or so we thought. That edge, we believe, was based around registered design, quality of product and service and just-in-time delivery of unique solutions to customer specifications.

This edge has not proved to be the case in trading reality. Since our entry into the industry in 2007, we have found that despite trying to talk higher standards to customers, despite offering better service, despite trying to encourage an enforceable code for the industry, everything is being based just on price only. Of course, the lowest possible price at that. Not to mention that fly-by-night installers have therefore proliferated to populate this low-price, shonky market that builders are seeing today. Also, ongoing bad debt experience has been horrendous not just in this market segment, but also throughout all the building industry support companies that we own and manage.

The Brooker group, including Australian Foundation Systems [AFS], has literally written off millions of dollars in bad debts in years past, necessitating the purchase of very expensive trade debtor insurance, costing currently some \$12,500 per month to \$150,000 per annum last year alone. Dead and wasted money that should not have been spent in this industry if it was better regulated and recovery was easier. Companies such as ours are often used as lenders of last resort by small subcontractors and large builders alike. We look forward to the findings and recommendations and hope that the New South Wales Government will act to fix these problems permanently and quickly. We do not seek an easy street, but what we require is fair competition, safer standards and properly enforced building codes. The reality is that none of these exist currently. There can be no doubt all this can be laid at the feet of the Government regulation—or should I say lack of it. We are happy to take your questions and further discuss the problems.

The CHAIR: Mr Dickson, did you want to make any initial opening observations?

Mr DICKSON: I had actually prepared something but I think I would do better just to tell it how it is. I am a consulting engineer. I have done a lot of design work for the Brooker Group over the years, but I work as a geotechnical and structural engineer through the entire business. I consult not only to Brookers but to the largest tier one piling companies in Australia and I have worked on projects—notably Barangaroo, the Sydney Metro, Melbourne Metro that I am working on at the moment, Prince of Wales Hospital, Parramatta Stadium, so large and important projects.

My concern about the industry, like Mr Christie's, goes to the chain of responsibility from the developer all the way through to the worker on the floor. There is a lack of chain of responsibility and there is a culture that has developed where builders—building foremen in particular—rely upon receiving a piece of paper that says everything is okay and by having that piece of paper they believe that both legally and more importantly morally relieves them from any responsibility in the work that they do. This goes all the way through the industry and it is what I think is the base cause of the issues that you are seeing today.

How this is going to affect the industry, in my opinion, is extremely badly. Firstly, I have enough grey hair that I am not intimidated by a builder or a building foreman and I am lucky that I have the financial independence that I am not reliant upon them withholding money and I can outlast the invoice game. A lot of young engineers coming through are not. And so they succumb to the pressure—they succumb to being coerced into giving certificates for things they have not seen or do not know have been changed in the time between when they have seen it and the concrete poured.

Further, junior engineers generally do not have the experience to understand some of the ramifications of decisions that they are forced to make on site by a builder who is constantly changing the design in the search for an extra dollar in margin. Some of these things are the root cause of problems that you see in the larger disasters that we are seeing at the moment and some are down to the way the approvals process is managed. I think there is a lack—and it is an understandable lack—of skills in councils looking at approval processes and saying, "We can approve this building because this one has been built and it's on a raft that has been signed off by an engineer, and this one is going to be on piles that has been signed off by an engineer," but they do not know the difference between the interaction between those two models side by side. They need to be able to bring in independent experts to be able to advise them on approvals of that sort of nature. That would help to eliminate some of the problems.

In my case I have just been informed by my professional indemnity [PI] insurer that next year they are not going to be in the business. I have gone to another PI insurer who has told me that my PI insurance will be triple what it is today and I spend nearly \$50,000 a year in PI insurance—and that is before I do a single job. There are reasons for that—one is I work on very large projects that are worth a lot of money. I am an independent engineer—I do not have a large company behind me doing this sort of work. And the fields that I am in are high risk even though in the 42 years that I have been in the industry I have not had a claim that has been substantiated against me.

So it puts me in a position where I look at it and go, "Well, if I'm going to have to pay \$150,000 in insurance next year my firm is looking very pleasant and very enjoyable by comparison." I would have to increase my fees by a minimum of 30 per cent, which would probably price me out of the market for a lot of building firms. Luckily I have a choice and I can make that choice without any issues. But, again, younger engineers who I have mentored over the period are telling me that they are just closing up and going and getting a job in advertising because there is no risk, which leaves the industry very vulnerable to a lack of good skills over the next few years.

I think there is a solution and I would take it very simplistically. I would break things down into little pockets and then have a look at those. If you cannot manage those on the back of a bus ticket you are doing something wrong because it is not that complicated. That chain of command and responsibility needs to involve insurance for not only the developer, the builder, the building foreman and the trades underneath that so that they are personally responsible for the work that they sign off and do. That then increases the pool of insurance, it splits the PI cost and it ensures that those people who are running the building industry all the way down the chain have an involvement that keeps them looking at the way they are doing the job and the way that the job is performed. I think that would go a long way to solving some of the problems that we are going to see in the future because of the way things are run at the moment. Thank you.

The Hon. JOHN GRAHAM: Thank you for your evidence and thanks for appearing. I think it adds to the picture we have overall to have someone who has these pressures on them in the way you are describing. Just to take it back to basics though, when you have operators in your part of the industry coming in, where you are looking at the foundations of the building, what are the consequences of getting this wrong when it goes wrong? Just take us through what it means for the public.

Mr CHRISTIE: I think Mr Dickson would be best to answer that from the engineering point of view because there would be massive consequences—massive.

The Hon. JOHN GRAHAM: Just talk us through those briefly.

Mr DICKSON: The geotechnical field, piling and foundations, is probably one of the most complex in the construction industry and it is one of the least understood because it gets buried straight away. We have really good Australian standards but what a lot of people do not understand is that that is the minimum standard. A lot of the issues come about when people do not understand that that is a minimum. So you put a pile in and that pile fails. If that pile fails you get settlement where that pile fails under the load. That means that things go down and it can be differential, so then the building cracks—you get a fracture in the building. It can be even worse than that, where the whole building collapses. However, generally speaking it is not so severe that the building will collapse unless it is a load that was not envisaged—like an earthquake load. One of the big issues in the piling

industry is people not designing piles to earthquake standards—earthquake loads—and assuming that they will carry the load. We have not had an earthquake in Sydney equivalent to the Newcastle earthquake since the 1980s—

The Hon. JOHN GRAHAM: Which I lived through, so I am familiar with the experience.

Mr DICKSON: Yes. If we get something of that nature in Sydney—and it is possible; the Robertson fault is not that far away and is still active—you are going to see some major failures of buildings that have been built on piles that cannot carry the shear forces, which is the horizontal acceleration. We are also going to see retaining wall failures and permanent anchor failures because of that. It may not mean that buildings collapse but the incremental cost of all of that is going to be enormous.

The Hon. JOHN GRAHAM: Presumably that is known across the industry. How is it that these companies are coming in and doing substandard work, cutting costs and really bidding in so low?

Mr CHRISTIE: At the end of the day I think the whole industry is price driven. I think what David alluded to earlier is that there are too many companies now and it all comes down to this: As long as you have got a piece of paper no-one has the knowledge to actually say, "Is that true, what is there?" As long as they have a piece of paper it just seems that is the answer to it all. That is correct, isn't it David?

Mr DICKSON: It is. There seems to be a culture that has developed where the morality of that situation does not count any more. We used to have clerks of works. We used to have building inspectors who were builders. Builders these days have lost the skill of building. They are subbie managers. They rely upon the skills of their subcontractor and the subcontractor relies upon the skills of his employees. If they say, "Yes, we did it the way it was on the drawings" we do not have a way of checking. On the major projects like Barangaroo we would put sonic tubes in a pile and then I would go in after the fact and run a sonic log down there—it is like a form of sonar—so I can measure the pile diameter and depth. I can then calculate what its capacity is. However, in most building sites that is not done. One of the issues is that the Australian standard recommends testing of piles and foundations but allows an out in that we use a factor of safety called a geotechnical derating factor. If you do not test, you use a factor of 0.4 on the serviceability of that pile.

Mr CHRISTIE: Just interrupting for a minute, David, I think it is a very important point where the testing plays a big part but very few jobs get tested.

Mr DICKSON: Exactly. Testing has been expensive. To test a small pile might only cost a couple of thousand dollars; to test a large pile can cost up to \$100,000.

The CHAIR: Worse still, it may actually show a fault, which—

Mr DICKSON: Exactly.

The CHAIR: —is even more expensive and actually the worst outcome for them.

Mr DICKSON: But testing does another thing for you: If you put in a test pile before you start building it allows you then to taper the design and you may save half a million dollars in piles by not having to build them quite so long or quite so big. That was the idea that the committee had when they designed the standard. However, it has not been used that way. I think it has not been prescriptive and saying that if you want to use pile foundations you must test the pile. There is a recommendation in the standard for the percentage of piles depending on the load and the serviceability of those piles—that needs to be enforced. Yes, to start with it will be a bit expensive but as more people get into testing and testing companies—which will develop out of it—get into the marketplace testing of piles will become a lot cheaper. I think that saying testing is mandatory is one way that the foundations of buildings can be improved.

The CHAIR: That is about being more prescriptive because you realise that there is a problem with the way the current practice is operating.

Mr DICKSON: Correct.

The CHAIR: Is there anybody from Fair Trading or Planning or the Building Professionals Board who is on the ground looking at these kinds of issues and talking about additional regulation?

Mr DICKSON: They have not been. There are three tiers in the piling industry. You have got tier one contractors who test their own piles as a matter of course; you get tier two contractors who will test if they are asked to but prefer not to because it is quicker and easier just to put a bigger pile in and move on; and you get tier three contractors who do not even know what testing is—they are just saying, "Well, we put a pile in. It should be okay". You have got this mixture that you are dealing with.

The CHAIR: Mr Boyle, I can see you have wanted to add something.

Mr BOYLE: On David's point that there will be companies to come from this that will independently test, I think that is a process that needs to be implemented: The independence of the testing rather than the company testing their own piles.

The Hon. COURTNEY HOUSSOS: It goes to the heart of so many of the challenges we are facing right across the building industry, which is this idea of self-regulation. I liked the way Mr Dixon put it about removing the legal and the moral obligation of individuals. This morning we heard from the Electrical Trades Union. They tabled evidence to us that there are large government contracts like the ones you have worked on that are, through various contracting abilities, currently advertising for unlicensed electricians to be working on those projects. This contracting out of responsibility is a central challenge and the person who is left holding the can at the end is the consumer.

Mr DICKSON: That is exactly right. By the time a lot of the problems are found the developer has closed that two-dollar company and he is already onto another one that is doing something else. It is the insurance companies in the middle who are saying, "Well, hang on, who was the electrical engineer on the job? He is the only one with professional indemnity [PI]. They are the only one we can chase".

The CHAIR: Or the private certifier is the only one with PI and they are the one they chase. So rather than try to work out who is actually responsible or applying proportionate liability across the various culpable individuals it is a race to find the last person with insurance.

Mr DICKSON: Exactly.

The CHAIR: That is what is driving up your indemnity insurance.

Mr DICKSON: Yes, and that is what is making insurance companies say, "Hey, hang on a second—we're out of here".

The CHAIR: Should there be a prohibition on contracting out of proportionate liability?

Mr DICKSON: I do not think you can stop that. However, I think what you can do is make each person at each part of the chain more responsible by saying, "You must carry insurance as well".

The Hon. JOHN GRAHAM: Your point is that would build the insurance pool. That is a way of really—

Mr DICKSON: Exactly. You cannot hide behind a company to do that. If you are going to be the director of the company you have to do personally hold the insurance.

The CHAIR: That is what Mr Lambert makes very clear: There needs to be personal professional responsibility for the work that has been done.

Mr DICKSON: Yes. I do not think it should just be the professionals that have that cover. I think it needs to be the people in the responsible positions within the industry—such as the developer, the builder, the building foreman. The reason I bring that up is that the building foreman is actually the person on the ground doing the work or supervising the work.

The CHAIR: Hopefully.

Mr DICKSON: If you build up to three storeys high you have got to be licensed for that position. You have got to be trained. Build over three storeys and you do not. Is that sensible?

The Hon. COURTNEY HOUSSOS: It is almost like this bizarre inversion of the way things should actually be.

Mr DICKSON: Exactly.

The Hon. MATTHEW MASON-COX: Is that related to the provision of home warranty building insurance?

Mr DICKSON: Correct.

Mr CHRISTIE: What has happened in the last five, ten years because of the low interest rates—and you probably know yourself—everyone has become a developer. Anyone can do it. As long as you have got some money, they just go and buy a block of dirt, they engage Joe Blow the builder to go and build and there is not enough onus—as David alluded to earlier—on a chain of command. They just get all the cheap prices, all the

shonks under the sun and just throw this stuff up. At the end of the day it is the poor consumer that wears the full brunt of it all. I am coming up for 70 and I have run my own business since I was 20—this is my fiftieth year—and I have never seen some of the stuff that I have seen in the last few years.

The CHAIR: Do you want to give some examples, Mr Christie?

Mr CHRISTIE: People cheat on the thickness of concrete slabs and where they are supposed to pull walls. Instead of doing 150 milligrams to 200 milligrams they will put in 120 milligrams. They put small reinforcing in. They space it out. All sorts of things go on, and it is very hard to police.

The Hon. JOHN GRAHAM: Particularly if, as you say in your submission, this is a \$2 company. That was the thing I was keen to ask about. Your submissions states, "The industry is full of \$2 companies doing quick and dirty developments with little oversight and control." How is that working in practice?

Mr CHRISTIE: It is what I said earlier: Every man and his dog can become a developer. What a lot of these developers do is that instead of having one holding company that does three or four developments, they open a specific company for each development for the very reason that if something goes wrong, even half way through, they can just pull the pin and walk away. Mr Dickson would see a lot of that too.

Mr DICKSON: I do see a lot of it. Another thing that is happening that is going to cause even more problems is that most of the good land sites—easy build land sites—are gone. We are forced into looking at re-zoning other use sites. We are building on old tips, we are building on swamps and we are building in areas that have known water charge problems.

The CHAIR: Converting industrial to residential.

Mr DICKSON: Correct. A lot of those sites have inherent problems. It is okay when you are dealing with companies that are going to get the right people in and do it properly. I am working on a job in Goulburn at the moment where we are rehabilitating an old gas works and it is being done properly. But that site should never be a residential site. It will probably get sold to become a residential site. Immediately that introduces another problem. I worked on the Sydney Park Village, which is on the old brickworks site at the back of Alexandria. The site that I worked on in particular had a 45-metre deep brick pit. We were driving piles in and at about 40 metres all of a sudden the piles stopped and then they dropped two metres. We thought, "This is very interesting". We kept driving because we knew at 42 metres they should have been in shale and eventually we got them into a footing. An old gentleman walked passed and he said, "Have you found the Silent Nights yet?" I asked him what he meant and then I looked up and there was a big Metters sign on the chimney next door. There were old rejected Silent Night fridges that had been dropped into the bottom of the hole.

A piling contractor who did not understand that or who did not have the right driving equipment would have set those piles on top of those fridges. One earthquake shake later they would have dropped two metres. You can imagine what that would do to the building. There are some sites that are inappropriate for pour-grade construction. Another example is Botany Sands. Councils have decided that all car parking needs to be underground. In Botany Sands that is fine if your builder is capable of building a properly tanked basement, which involves secant piles, which are not waterproof—they do not understand that—or a diaphragm wall, which is more waterproof but not totally waterproof. With the buildings that have been built there, certain builders are putting buildings and designs in using contiguous piles, which means that the piles just touch together and do not actually overlap. They leak like a sieve. Those buildings have to have a pump running day and night to keep the water out. But by de-watering the ground around the property they are causing large settlement issues with buildings up to even a kilometre away from where those buildings are. That sort of development should never have been allowed.

The CHAIR: It is that accumulative impact. You need to not only look at the building in front of you—particularly the excavation and piling work for the building in front of you—but also what is happening next door, and have an understanding of the cumulative impact. Is anybody doing that or required to do that?

Mr DICKSON: Councils used to do it but they do not necessarily have the expertise all the time. Often the town planners would look at it and say, "We need to get independent advice from a geotechnical firm because we are not sure whether this is going to have an effect on another building." But we should turn that around and say that the designers of the building need to prove, prior to the DA, that their building will not have an effect on the buildings next door. The laws do say that you cannot remove support for a building that is already existing. There have been lots of arguments around that and what support includes. The way foundations work is that if I am pressing down here, they rely not only on the soil underneath the foundation, but also on the soil beside it, because when the soil fails it fails in an arc. So I am relying on the soil over here to provide support as well. If I

dig that away and I have no support for that then I am taking support away from this building or the raft that already exists. Things like that are not taught to town planners. They are taught to engineers. Therefore, the engineers and architects working in unison with the engineers to design buildings should need to be able to prove that to council.

The CHAIR: You also need to know what is built next door, and it can be a nightmare to find that out.

Mr DICKSON: That is very true. But that is why we have investigation engineers who go out and investigate. That is why underpinning was developed as well, so you underpin a building to provide that support.

Mr CHRISTIE: But technology plays a big part in this today. If you go back 20 years, in the suburbs you would not go higher than four or five storeys. Now you go to any suburb and the apartments are 15 storeys and 20 storeys high. You had no underground car parks and now they are going down two or three levels because of the technology and the smart people around. You would not have even entertained that idea back then. In our area—David used to live down in the Manly area near me—the water table is high. They are going down two, three or four levels, with water pouring through. You would not even have had any idea how to build that 20 or 30 years ago. The technology that we have today for waterproofing means that we are building in areas that we should not be building in. There are high-rise buildings being plonked everywhere.

The CHAIR: Mr Boyle, I could not help but detect a trans-Tasman accent.

Mr BOYLE: Correct.

The CHAIR: Did you ever work in New Zealand in the industry?

Mr BOYLE: Yes, I worked in Christchurch until October last year.

The CHAIR: I would hope that Christchurch has a high degree of regulation given its particular challenges. How would you compare the regulation in New Zealand with what you see in Sydney?

Mr BOYLE: It does not compare.

The CHAIR: How so?

Mr BOYLE: There is nothing here. In New Zealand, for example, if I use a screw pile driver, before we start the job we have to have a full design independently done by an engineer that tells us the depth, size and requirement for concrete for each pile. Then that independent engineer will be on site to inspect the first pile going into the ground to ensure that it is satisfactory. Then he will ad hoc come to site during the job to make sure that everything is still as per his design. Then, as David touched on earlier, we would be doing static load tests on every screw pile. In comparison, in Sydney we will get given a load, which is on the structural engineer's drawings. That is probably one of the biggest problems because it is open to interpretation. They might say you have a 50 kilonewton load on a pile. As Australian Foundation Systems [AFS], we might say we need a 101 diameter pile to satisfy that load and then someone else might say they need a 76 but it is the geotech information that pile size needs to satisfy the soil conditions that are in the ground. It is just a matter of putting in that pile to two metres. It might take that load if it is in gravel but if it is in sand or clay it is not satisfactory for that job.

Mr CHRISTIE: What Mr Boyle was saying is that there is a very grey area of interpretation. I will give you another example. We supply piles to some of our own opposition because we are in the lucky position that we are also manufacturers so we manufacture piles and—believe it or not—sell them to our opposition. We had an instance about three weeks ago where one of our guys quoted a job at \$70,000 for a three-storey House—\$3 million build. The builder to accepted it and said, "Yes, that's okay", because he was passing all the costs on plus. The owner of the property said, "It seems that's ridiculous". He said, "\$70,000 for a few screw paths." He called in an independent guy himself. He got a price off him. Do you know what the price was? \$11,000. The dinky-die price is \$70,000. We had a look at the job. We were about how much—\$65,000 or—

Mr BOYLE: A figure of \$67,000.

Mr CHRISTIE: —\$67,000. So \$70,000 and \$67,000 is on the money—\$11,000.

The Hon. JOHN GRAHAM: So how is that possible? What happens?

Mr BOYLE: They have interpreted the drawings differently to what we have and they are prepared to give the builder of piece of paper that says that this pile meets this load. Yes, that pile might meet that load but does it meet that load for the ground conditions that is found in it?

Mr CHRISTIE: We say we are using a 114—a 114-mil diameter pile, 12 metres deep—and they come in and say—I cannot mention the name—"Don't listen to him; he doesn't know what he's talking about. All you need is a 76 diameter, 1½ metres deep". We are going 12; he is going 1½.

The Hon. JOHN GRAHAM: In a three-storey building, what are the potential consequences if that happens?

Mr CHRISTIE: Like I say, it is a \$2 ½ million to \$3 million build.

The CHAIR: But if you are not licensed, you are not registered, you are a two-dollar company and no-one is going to hold you to account, that produces that kind of—let us be clear about it—shonky, dodgy construction.

Mr DICKSON: That is correct.

Mr CHRISTIE: It gets back to what we said earlier because it is a residential block the builders are responsible. The builder has gone to the owner. He said, "If you want to use the cheap price, count me out. Go and get another builder because I'm not going to put my name to it and I'm not going to be responsible".

Mr DICKSON: There is another issue and that is in the description of loads. As a structural engineer, I will describe a load as being a safe working load or service load. That is not the load that you actually design the pile to but that is where a lot of people take an interpretation. They say, "I will use, let us say, 100 kilonewtons"—which is 10 tonnes—"as that safe working load. We will design it to carry 10 tonnes". The correct way of designing that would be to factor that, to start with, to an ultimate load, which might be a load case of 1.5 times that—that is 15 tonnes or 115 kilonewtons. Then I might even apply a geotechnical derating factor of 0.4 to that because I am not going to do any testing. Then I have a much larger load again. If I do not tell my client that that is what I am doing and I put in a pile that takes all of those loads, they look at and go, "Gee, that pile is big". But someone else comes along and says, "I will put a 10-tonne pile in there. There it is." It is an interpretation and I think a lot of owners and builders do not understand the difference between the load that is calculated to start with and the load you need to factor back to say, "This size will now be a working load factor pile of 100 kilonewtons".

The CHAIR: Do you think there should be compulsory registration, licensing and insurance regime for engineers?

Mr DICKSON: Yes, I do. I am registered in Queensland; that costs me \$600-odd a year. I am registered a National Engineering Register [NER]; that costs me \$800 a year. I have to be registered in Victoria; that costs me another \$260. I am also registered in Tasmania. All of that could be done with one register—the National Engineering Register—but every State has their own rules. New South Wales does not. You only need—I am what is called a chartered engineer. I have a charter from the Institution of Engineers that allows me to be registered on the National Engineering Register. By being a member of the Institution of Engineers in New South Wales, they will accept that if I sign something I am capable of doing that. I do not actually have a degree in engineering; my degree is in science but I have worked as an engineer all my working life. I have several other degrees now: I have a masters of building administration and I also have a Certificate IV in building. But that does not mean that I am actually registered for anything in New South Wales.

The CHAIR: But then there could be people who come straight out of graduation, get their degree and then they go on to a multilevel building site and are signing of a really complex engineering solutions with no industry experience or no requirement for registration. Does that happen?

Mr DICKSON: It does, but if they joined the Institution of Engineers, one of the tenets of being an engineer is that you will not practice in an area outside your area of expertise. That is where our moral obligation comes in that we are not going to do something that we are not familiar with. To give you an idea, I actually design all the keels for the super yachts around the world, which has got nothing to do with geotechnical engineering, but have been a sailor all my life and I got asked to do this many years ago. I am actually registered with Germanischer Lloyd in Hamburg to do that. A lot of other engineers have had a go at it but because they do not have those skills there have been some notable disasters on boats where the keels have fallen off because they are practising outside an area of their own expertise.

The CHAIR: So you say that there is a moral obligation on engineers in New South Wales to not practice outside of their skill base?

Mr DICKSON: Yes.

The CHAIR: That is a nice thing but we are talking what the New South Wales construction industry and morality in the New South Wales construction industry, we have heard from evidence, are sometimes at odds. What happens in reality?

Mr DICKSON: In reality, generally, on the larger buildings, a large firm will win the engineering for that building. They will have a person within the large firm who has that experience.

The CHAIR: But what about a 10-storey apartment out the back at Liverpool or a 15-storey job down in Sutherland?

Mr DICKSON: Again, most of the engineers who work on that actually have those experiences or they have someone within the office who does and they are looking over the shoulder of the juniors coming through. But I agree: We do not have the registration basis in New South Wales for a particular skill for an engineer.

The CHAIR: Would there not be a temptation, if you have a particularly novel—I say that were politely—performance-based solution to do at level one to do is bring in a young consultant engineer, get them to sign off on the plans, issue a worthless piece of certification and then get on with the job?

Mr DICKSON: That can happen.

The CHAIR: Should we not prohibit that? Before you went into some form of legislation about that, though, I think it would be important to consult with the institution and see if—because there is more than just the institution. You have got the Association of Consulting Engineers Australia [ACEA]. So there are several associations. You would not be able to sign off on any kind of building and be accepted by a council or a certifier unless you were a member of one of those organisations. They have their own disciplinary methods and boards so that they keep those engineers in control. But it is something that needs to be considered. Legislation in Queensland for registered engineers has been around for 30 years. In Victoria it has been around now for 10 years, and the same in Tasmania. It is about time New South Wales caught up with that.

The Hon. COURTNEY HOUSSOS: I have just got one last question for Mr Christie. You talked about, in your introduction, how you sought to position yourself within the market as being a quality supplier of building products and that you were concerned that there was—I am extrapolating. Would you say that there are substandard operators supplying products within the market, then?

Mr CHRISTIE: I would say for sure.

The Hon. COURTNEY HOUSSOS: How are they doing it?

The CHAIR: No-one is watching.

Mr CHRISTIE: We were discussing it early on. A lot of people today got no morals and principles and everything comes down to dollars. I think we know that today in everyone's life, everything comes down to dollars and cents. A lot of people just turn blind eyes to things and we see it day in and day out. I think you can see—and this is why we are very fortunate that we have got a bloke like David, because he has got a very, very broad background into a lot of things. David will vouch for us and we will walk away from a lot of jobs because we will not compromise quality. If we cannot do the job how it has got to be done, which is in my thing, we just have to walk away from it. A lot of people will come to us and say, "Look, can you look at the price? We want to use you." We just say, "That's the price. We're giving you a fair price. We can't do any better." We are finding it more and more so, I think, in the last six months.

Mr BOYLE: Yes, 100 per cent.

The Hon. COURTNEY HOUSSOS: You are actually saying that the problem is getting worse; it is not getting better?

Mr CHRISTIE: Hundred per cent.

Mr BOYLE: Yes, it is getting a lot worse.

Mr DICKSON: In the industry, a lot of the industry requires you to have quality assurance [QA] systems, to be traceable, to have all sorts of paperwork to say that your whole system complies with occupational health and safety. Then you become expensive. Because you have got two or three people in the organisation working on that all the time, it costs money. So immediately they say, "We've got another firm that can do it for half that." You say, "Where is their quality system?" "We'll get around that." That is how it works.

Mr CHRISTIE: The dollar drives it all. Then at the end of the day, the QA out the window. You might get four different quotes and you have to quote the job according to their specs, and it is QA-approved. Obviously

it costs money, so you go in and quote it and you will get a variance of 15 per cent. So they look at the cheapest price and go, "Yeah," and they get "It's big money—we have to look at it." So they will run with that quote and then the QA is out the window. But if we win the job, you are expected to go and do that QA. It makes a huge difference.

The Hon. COURTNEY HOUSSOS: As we have found out, there is no-one inspecting the job at the end. I really appreciate your time. Thank you very much; your evidence has been very valuable.

The CHAIR: Mr Christie, Mr Boyle and Mr Dickson, thank you very much for your evidence today and for coming today. You have been a voice that we have not heard a lot of, and I think one of the reasons is because of the competitive pressures and the fact that it takes a bit of courage to come forward and say what you have done. We appreciate your evidence today.

Mr CHRISTIE: I am very much like David. We are very similar ages and we have been in the industry a lot of years. It comes to you have got to go and do jobs at a price, we would rather not be in the industry.

The CHAIR: Again, I think on behalf of all of the committee, thank you for your evidence today.

(The witnesses withdrew.)

ALISHA FISHER, Chief Executive Officer, Strata Community Association, affirmed and examined

The CHAIR: Ms Fisher, welcome to the Committee. Did you want to give a short opening statement?

Ms FISHER: Yes, absolutely. I just wanted to provide some background about the Strata Community Association [SCA] in New South Wales. We are the peak industry body for the strata and community title management. Our membership does cover strata managers, support staff, owner committee members, and suppliers of products and services direct to the strata industry. We also provide committee training and education focusing on the owner committee members' roles, their duties, responsibilities et cetera. Our strata managers are members that act as professional advisors and advocates for owner corporations and have obviously been dealing with some of these issues for many years. We just wanted to say that obviously in 2016 the Australian Bureau of Statistics has advised that more than 10 per cent of people are living in apartments Australia-wide, and obviously that number is growing.

We want current buyers to have more consumer protection. At the moment it is seen that you can have more protection buying a television than an apartment. The current issue with cladding for us that we see is going to cost every homeowner in an apartment up to \$60,000 each. We then find that there is failed or non-existing waterproofing, fire safety non-compliance, and the list of defects continues. People live in apartments for cost, security, convenience, low maintenance et cetera; obviously the low maintenance factor has been thrown out the window. We understand that there is a loss of credibility for current developers, whether they are good or bad, and that is unfortunate because it is damaging the reputation to apartment living. For us, we strive to work with apartment advocacy groups to enable people to live in apartments.

We do believe that the Government has a role to play in fixing the chaos that we are currently in. Someone does need to give a solution and some direction moving forward, and there also needs to be a lot of transparency for our homeowners to know where they need to go. We do, as SCA, applaud the appointment of the Building Commissioner. We are eager to see the reforms he implements on better quality buildings of tomorrow, but today our members—being our owners—are asking for the answers. They have frustration, concern, fear and a lack of clarity. Where they currently see that we are at is that the consumer confidence needs to be restored. Relief packages for owners who are displaced need to be formalised. Owners are unwilling to highlight issues due to impact on property values. There is complicated and costly legal system to pursue parties responsible, and the cladding funding needs to be agreed in some form. We have put forward a seven-point plan and are happy to discuss.

The CHAIR: Thank you, Ms Fisher, and thank you for your perspective. In many ways it is your members who are having to pick up the mess, is it not?

Ms FISHER: Correct. Provide gardens.

The Hon. JOHN GRAHAM: Thank you for your submission. I am interested in just how the issues you are seeing reported through by your members have changed over time. Obviously the high-profile cases have really put the spotlight on this and driven up concerns, but were you seeing increasing reports or increasing concerns before that public discussion has really kicked off?

Ms FISHER: Yes. There have been many years of building defects that have been disclosed. I suppose the issue is that—not issue, but most of it is being unravelled now. More and more is being talked about, and in the past it just was not talked about. So I am not sure—in my expertise I do not know if there has been an increase; I just think it has not been raised.

The Hon. JOHN GRAHAM: But there is certainly an increase in the discussion and the reporting of those things at the moment?

Ms FISHER: Yes, absolutely, but definitely it is a new build. That is the main issue.

The Hon. JOHN GRAHAM: Yes. And when you say "new build", how far back, in your experience of the things that have been reported to you, is the key bit of the concern?

Ms FISHER: Most of the association members would say around the 10-year mark.

The Hon. JOHN GRAHAM: Okay. In your submission you say you support the increase in the two-year statutory warranty period to at least three years. That is quite a modest increase compared to some of the

other views that have been put to the Committee. I am interested in why you think of a quite modest extension to just three years?

Ms FISHER: Are they thinking a lot more than that?

The Hon. JOHN GRAHAM: I think they are thinking longer.

The CHAIR: They said 10 years.

The Hon. JOHN GRAHAM: Yes. Seven years, 10 years.

Ms FISHER: Yes. I mean, obviously it was seven and that was changed to two.

The Hon. JOHN GRAHAM: Yes. Will three years do the job? I guess that is my question.

Ms FISHER: I think three years would have to be the minimum that we would hope the Government moved towards. Obviously we would expect more. We have had comments that we would like at least six but we are not sure if that is going to be where it is going to head.

The Hon. JOHN GRAHAM: So you have taken a very pragmatic view, really, in this submission. You would not be offended if it was longer.

Ms FISHER: One of the comments I was going to make, which came out with their report that Nicole Johnston and Sacha Reid made, was about the defining of major defects, minor defects, what is that determination. I think that is where we need some transparency and clarity around as to what that means. Obviously different things require different time periods. Definitely, we do believe that 10 years would be fantastic, if that is the case where we could get it to, but there are smaller defects.

The CHAIR: Have you looked at the change in definitions that went from structural defects to major defects? Do you have any issues with the definition of major defects under the current statutory insurance scheme? You can take that on notice?

Ms FISHER: I was going to say I will take that on notice. It is outside of my actual scope. I am obviously aware of that but I do not want to make a statement on that.

The CHAIR: You said you welcomed the appointment of a Building Commissioner, and you are not the only witness to do that, but was that on the assumption that the Building Commissioner would have a commission to actually work with?

Ms FISHER: I think for us it was about actually having, I suppose, a voice. That is again probably outside of my scope because I am national. If I can take that on notice, I will get our New South Wales board to provide a bit more background on that.

The CHAIR: That would be helpful. In other States besides New South Wales, do you have a sort of greater degree of experience in any other State?

Ms FISHER: Our Queensland representatives work closely with their Building Commissioner on a range of issues and he talks quite often to the owners corporations and shares information that they require. Yes, I think we are hoping that there is a relationship where we can work closer with government for the home owners.

The Hon. JOHN GRAHAM: I am certainly interested in your national perspective on your Recommendation No. 3—cladding. Victoria has acted with an assistance package. New South Wales has not. Victoria has got an agency, has funding—\$600 million—has a levy in place to support that. You have called for that to be done in New South Wales. How urgent is that assistance?

Ms FISHER: It is absolutely urgent. I think the main thing that we have to realise is that there are people's lives in danger while these products are on their buildings. It does need to come off immediately. I mean, even if you say immediately, it is still going to be, for some of these properties, up to five years away for that to even come off their properties. You have got home owners. Investors cannot have tenants in their properties at this stage. There are still people living in those buildings. It would be interesting to know the actual high-risk buildings, the number in New South Wales, and what is even the time frame to get that off those buildings.

The Hon. JOHN GRAHAM: We heard evidence from Local Government NSW that just the process of working through these buildings at the moment, that process could take years.

Ms FISHER: Absolutely.

The Hon. JOHN GRAHAM: Maybe even longer than you are suggesting.

Ms FISHER: Well, they have not even identified the total number yet in New South Wales.

The Hon. JOHN GRAHAM: Yes. How does that compare, when you look at progress in New South Wales and progress in Victoria? How would you characterise the relative progress?

Ms FISHER: They have said they have already identified just over a thousand private buildings in Victoria and they have already noted the top high-risk. I think there is 9 per cent extreme and the other 38 per cent are high risk. They have already determined where they are going to start in their process.

The Hon. JOHN GRAHAM: There are still some things that are unclear in Victoria.

Ms FISHER: Oh, absolutely.

The Hon. JOHN GRAHAM: So there are still some things that really need to be clarified, but they are starting at the start.

The CHAIR: Can I take us back to the issue of flammable cladding? First of all, I will give you the opportunity to answer this: What is the situation on the ground for strata committees when they are dealing with flammable cladding in New South Wales?

Ms FISHER: I think the first thing is they really do not even know where to start. You know, who do they call? What are the decisions they make? What is the expense of this? I think it is an absolute mess. They are looking at strata managers to provide them that guidance. Again, on our end, we have a lot of strata managers that are not even qualified to be dealing with this. They are basically providing a secretariat role. All of a sudden you have been thrown on building defects and cladding, and you have people who have been in the industry for a short amount of time, so it is our role as the association to try to provide education and up-skill them as fast as we can. But at the end of the day they are making decisions on: We have got to find lawyers and who do we even call? I think that is a major. We do not have a five-step plan of what you do when you find cladding on your building.

The CHAIR: Well, New South Wales has had a cladding task force. That sounds kind of impressive and forthright. It has had a cladding task force for the better part of two years. Has that offered any solutions to strata committees?

Ms FISHER: I would have to take it on notice on how many have actually used the service and found the support.

The CHAIR: We have had a series of submissions that said there is no five-point plan on how to fix cladding. There is not even a guideline about what you are meant to do—

Ms FISHER: No, correct.

The CHAIR: —or how you take remedial steps.

Ms FISHER: No. There is nothing.

The CHAIR: Is that not surely the starting point—for the Government to say, "Well, if you've got flammable cladding, this is what you do to address it. These are the kind of standards we expect you to meet." Surely that is the starting point.

Ms FISHER: Oh, yes, absolutely. I think there was confusion around the start just with people trying to identify does their building even have flammable cladding. The cost alone to do that assessment has been massive nationally if we look nationally where we are at. Therefore, what do you then do when you do find out that you have it, and what is the seriousness of it?

The CHAIR: Has any State got that right—identified what should be done?

Ms FISHER: No. I would say no to that.

The CHAIR: Is that because one of the reasons the New South Wales State Government said it was not requiring building owners to lodge a rectification plan or a make-good strategy is because the indemnity market for private certifiers, the insurance market, collapsed and no-one could get insurance to write the reports. Have you had that kind of problem fed back to you?

Ms FISHER: It is probably a bit out of my expertise. Yes, I am not going to comment directly about that.

The Hon. COURTNEY HOUSSOS: Can I ask a slightly related question, which is that Local Government NSW told the Committee today that there is a problem of both over-reporting and under-reporting

in terms of approaching councils. We have strata schemes who are saying, "We think we've got it, but we don't have enough money to do a proper report"—or there are not enough people to provide a report—"so we're going to report it", but then at the same time there are buildings out there that have flammable cladding but do not even know that they do.

Ms FISHER: Correct.

The Hon. COURTNEY HOUSSOS: Is that a correct characterisation?

Ms FISHER: Yes, absolutely.

The CHAIR: Are the registers accurate? The Government has been championing the fact that it has a register. It will not show anyone its register. Do you believe it is accurate?

Ms FISHER: The Queensland Government has a register but pretty much everyone who filled in the form went on the register because their breadth of what is cladding is so broad that everyone's building had it, so therefore everyone is going to the next phase. Then when you have people looking at it in New South Wales, they are making the assumption that they also have that cladding. Yes, you are paying up to \$5,000 to just have someone come out and even tell you that you have got cladding. Then, if you need to have that next phase, you are talking about \$20,000 to \$40,000 to have a fire engineer come in and do the next phase. The dollars keep adding up just to tell you that you have even got it.

The Hon. COURTNEY HOUSSOS: In your submission you talk about how there are at least 1,500 or perhaps 2,000 buildings. Is that characterised as a bit of an educated guess? Is that how we could characterise it?

Ms FISHER: On our end we are obviously looking at how many strata properties that we have our members managing. That is where they are coming up with those numbers.

The Hon. COURTNEY HOUSSOS: Perhaps committee members can tell me, I understand there were 629—

The CHAIR: I think it was 692.

The Hon. COURTNEY HOUSSOS: —on a public register but yet you are saying that there could be 1,500 which is implying that it is at least twice, possibly three times as much as is actually on the register.

Ms FISHER: Yes, and it goes back to that point you made about people not knowing that they actually have cladding and that they have not joined the register yet.

The Hon. COURTNEY HOUSSOS: We have got two years on from Grenfell and we still have got no clear understanding of even the scope of the problem, let alone an ability to actually start to address it.

Ms FISHER: Correct.

The Hon. COURTNEY HOUSSOS: That just seems unbelievable. Can I just ask you, I know in your submission you said there is a strong case for retrospective legislation to deal with the builders and suppliers who have shut down companies and started new ones to avoid their responsibilities. Do you have any ideas about how we would be able to do that? Or is there anyone in any other jurisdictions who are doing that?

Ms FISHER: I am going to say that we do not know of anyone that is in other jurisdictions that are taking that action. Not at this point, no.

The Hon. COURTNEY HOUSSOS: We heard from the Owners Corporation Network that they would like to see a strata commissioner and to see strata be taken on by a more senior portfolio within Government. Is that something that you would support as well?

Ms FISHER: Absolutely. We would support that.

The Hon. COURTNEY HOUSSOS: Okay. And I just have one last question which is from the City Futures Research Centre at UNSW that talked about the split incentive between the developer and owner requirement. You have developers who want to maximise their profitability and then you have got owners who are essentially left, as I have said a couple of times today, holding the can at the end. But there is no incentive there to actually create a quality product from a development perspective. The current regulatory system really reinforces that. Would you agree with that assessment?

Ms FISHER: Absolutely. We have been doing some research currently from the recommendations from the Shergold Weir report. Recommendation 20, a building manual guideline, New South Wales is the only

Government that has, within an Act, has a clause that even asks for a building manual. It then talks about that the regulations may make provision but the regulations have never been written from what we can tell.

The CHAIR: They will get around to it.

The Hon. COURTNEY HOUSSOS: From what we understand Mr Lambert drafted a manual five years ago. It just has not been enacted.

Ms FISHER: We have actually taken the step and re-drafted a manual.

The CHAIR: Is there a jurisdiction in the country that you would point to that is doing it better than the others?

Ms FISHER: No. I am not going to say anyone is doing it better than anyone else. I think that every State and territory has different rules and regulations. It makes our life complex as strata managers and definitely for owners that have properties in different States to actually manage the different regulations across the board. I do not know that anyone has got it right. If someone had it right there would be a State that does not have issues. But we have cladding issues everywhere, we have building defect issues everywhere, the numbers keep growing. I cannot say anyone has got it right.

The CHAIR: Assume, if you will, that over the next 12 months or so, Government and Parliament together managed to put in place a good system going forward. We have got this big legacy problem, do we not. What do you think needs to be done to address that legacy problem: the buildings with flammable cladding, the buildings with substandard foundations, the buildings that are going to be dealing with the consequences of deregulation?

Ms FISHER: The challenge is that we can change the future and fix it for those that do invest in properties moving forward. But I do not know how you are going to be able to provide confidence back to anyone who is currently dealing with these issues, who is currently potentially going bankrupt because they cannot fix the defects and there has to be some form of support for them and as we have said, it does not need to all be just the Government paying for it. There can be many opportunities and ways for the Government to provide that assistance. There are, which has come out of many of the witnesses, there are a lot of construction companies that are setting up, building and running away and those are the properties that probably need urgent support. But we do note it is broader than that.

The CHAIR: Are you suggesting some kind of legislation that retrospectively attaches liability to the directors who have run away?

Ms FISHER: Absolutely. Definitely. Anyone who runs any business, the directors are liable, Why is this able to occur in construction when we are talking of multiple, hundreds of millions of dollars—

The Hon. JOHN GRAHAM: And not just occur but occur repeatedly.

Ms FISHER: Over and over again.

The CHAIR: What about the prospect of a levy on the industry going forward. This is an industry that has benefited from deregulation. Is there an argument that there be a levy applied to the industry going forward rather than taxpayers as a whole, but having the industry fund some of the substandard work that it has been responsible for over the last few decades?

Ms FISHER: I think you could put that forward. I think it is unfortunate that those good builders are actually going to be slapped with that levy when they actually have not done something wrong. I think that is where you are going to have a big challenge on that. I think people should not be able to build if they cannot put 10 per cent away of the property value of the construction. What is it at the moment? 2 per cent. Then you should not be building. I read an article the other day that for someone to build an apartment complex you need to sell 80 per cent of the apartments before you can even start getting finance. Well, hold on. If you have not got the finance up front you should not even be building. I think that is where it comes down to.

The CHAIR: None of the options are super attractive in terms of finding the money to fix the legacy problem. I think we would agree, would we not, that just leaving it to the individual homeowners who happened to have been saddled with it is—

Ms FISHER: That is not the solution.

The CHAIR: That is not the solution. Simply asking Government to tip-in as the funder of last resort and looking only to taxpayers, do you think that is the solution?

Ms FISHER: I think there needs to be a range of parties that are held accountable.

The CHAIR: That is what I am inviting you to give us some detail on now.

Ms FISHER: I do not want to make an assumption of who that should actually be.

The CHAIR: Do you want to take that on notice and have a think about it?

Ms FISHER: Yes. We will take that on notice.

The Hon. COURTNEY HOUSSOS: Can I ask you about some specific proposals, Ms Fisher? Mr Chandler before, he is the Building Commissioner, talked about 20 year or long-term, very low-interest loans for Strata schemes as a means of bringing insurance companies back into the system and providing some stability. Do you think that that would be a way of doing it?

Ms FISHER: That is of around giving them support to fix the repairs. The Strata Community Association has requested interest-free loans for a period of time. That would definitely be something that would be of interest.

The Hon. COURTNEY HOUSSOS: I appreciate that in the worst situations that that might not even be a sustainable means of funding.

Ms FISHER: I was going to say. The other thing comes down to is it does not matter how much you loan, there are people that have put their life savings into buying an apartment. There is no spare money around. They do not earn enough to pay off, do they want another 20 year loan, which is also on top of their probably 30 year loan that they have already got, to pay off an apartment. There will be people who just cannot pay the fees. When you are talking of millions and millions of dollars of defects and cladding, people do not have spare change just hanging around.

The Hon. COURTNEY HOUSSOS: And strata schemes do not either.

Ms FISHER: Absolutely not. No.

The CHAIR: Can I ask you about the practice of the developer appointing the strata scheme? I think there is a prohibition for appointing a strata scheme for more than one year after the construction certificate at the moment, but the Owners Corporation said that at the end of that year you often have a fairly dispirit group of home owners and they largely just roll over that manager for a longer contract period. What is your understanding of how it works?

Ms FISHER: That is not my expertise. I have heard that there are a range of managers that do roll over from that first year because, in most cases, home owners have not occupied the premises for more than six months before that year comes around. Then it does easily fall over and they lap over into another year.

The Hon. JOHN GRAHAM: That makes the two-year period extraordinarily relevant, does it not?

Ms FISHER: Yes. Particularly if the strata manager has been appointed by the developer, who may have a real interest in nothing coming to light in those first two years.

Ms FISHER: There are a lot of managers that we know of who work closely with developers and they are the ones left picking up the pieces for homeowners and they are about the homeowners' interests. They are not all bad.

The CHAIR: As I said to someone earlier, you do not legislate for angels, do you?

Ms FISHER: No.

The CHAIR: It is the ones that are not doing their jobs and the ones that are not acting proactively in the interests of homeowners that we need to be looking at.

Ms FISHER: Absolutely. I would like to take that question on notice because I do feel there is a way that they can remove the strata manager within the time period of the extra year. If they miss the first one I am sure they can.

The Hon. JOHN GRAHAM: That may be true but I think the evidence we have is about how this works in practice.

Ms FISHER: The common practice.

The CHAIR: Ms Fisher, we have run out of time. Thank you for your assistance. The secretariat will contact you about the questions you took on notice. We would like answers within 14 days. Thank you again.

Ms FISHER: Thank you.

(The witness withdrew.)

BRETT DAINTRY, Director, Daintry Associates, sworn and examined

The CHAIR: Would you like to give the Committee a brief opening statement?

Mr DAINTRY: This is the Deja vu committee. On 24 May 2002 I appeared before the Parliamentary Inquiry into the Quality of Buildings. I will read from page 29 of the transcription from that day. I stated that:

The big issue with compliance certificates is that many common building components and processes have no accredited practitioners under the Act. Therefore, accreditors, certifiers and councils accept certification in the form of avadavat, statutory declarations or, as I said, useless pieces of paper purporting to be certificates certifying a building, process or matter.

...

The Act must be amended to provide that each tradesperson and persons on a site must issue compliance certificates for the work they do and they must be held accountable for that work.

That permeates the whole system. It goes from design to the manufacturing and materials that go into buildings to the installation of building components or the building itself down to the fellow who puts the wet area in or paints the building. Unless you have a complete system in place and a complete and consistent approach to checking compliance at every stage there is no guarantee that you are going to have quality buildings at the end of the process. Going back to what has been observed by this Committee, and I have been sitting here this afternoon, the real issue is that at the end of the process you do not even know what the building looks like below the skin. You do not know where the latent defects lie. You do not even know what waterproofing compound has been used in the showers, so you cannot even go back and say they used the proper compound and that it was certified.

The building manual is a great idea. But more pressing than the building manual is bringing accountability back into the system through compliance certificates. I have one more comment. I agree with the idea of a clerk of works. The clerk of works is a must. They must be completely engaged and connected with a project architect on buildings over three storeys. What I find as a town planner is that we can be in the Land and Environment Court for a week on a large residential flat building to ensure that it complies with SEPP 65 and the apartment design guide. I would hate to think how much those cases cost, but it is probably in the order of half a million dollars to get a building approved at a high quality. The developer who shopped around for the best architect to get him a development consent will then say ta-ta to that architect because that architect is too good. They instantly engage an architect at the CC stage to dumb it down.

The classic example of a building that was completely dumbed down was Ralan out in Burwood. The building did not look anything like its base approval. There should be licencing for everybody—every consultant and trade must issue compliance certificates. They need to be part of the ePlanning system. I do not see why this perfectly good electronic development application system that is going in now—it is in testing—cannot be expanded to capture everything from the issue of the application documents all the way through to the issue of the occupation certificate. Then, afterwards, it should capture annual fire safety statements in perpetuity. Buildings do not finish their existence the day their occupational certificates are issued. There are annual fire safety statements that follow afterwards as well. I am sorry if that was a bit long. I am happy to take any questions.

The CHAIR: Thank you for your submission, which I personally found provided a great deal of assistance. On Monday Mr Tansey from Fair Trading was asked about the issue of certification from different trades and the various elements of the construction industry that sign off on the different aspects of a building, which are then relied upon by the private certifier. A proposition was put to him that those certificates are often provided by unlicensed and unregulated people. His response was to point to the different types of certifiers found in the Building Professionals Act. There is a list of them that covers certifiers from principle certifiers down to stormwater management and so on. He said:

But if you look at the appendices, it sets out all of the different specialities which go to your question around components of construction. There are different categories of certification that go to those different elements and capabilities. The people performing those parts of the total certification function are accredited under the law and do have qualifications in order to get those—

What would you say to that?

Mr DAINTRY: The list is incomplete and the answer is found section 6.17 of the Environmental Planning and Assessment Act. When this legislation was written in 1997 Mr Brett Whitworth, who was one of the key architects of the legislation, sat down with many of us and explained the purpose of compliance certificates. They were an integral part of the proportional liability in this system—and accountability and responsibility, which are those key words that come out of the Campbell report. Section 6 (17) states:

A compliance certificate may be issued by:

- a) a certifier [that is that list], or
- b) a person of a class prescribed by the regulations as being authorised to issue a compliance certificate in relation to the matters to be certified.

Ever since 1 July 1998 that provision in a similar form has been in the Environmental Planning and Assessment (Amendment) Act.

The CHAIR: Who is that second class of person?

Mr DAINTRY: There has never been a regulation passed to list them. Sorry, there are one or two references to fire engineers in relation to fire safety alternative solutions but that is it. These statutory provisions are already in the Act and have been since 1 July 1998. Even after evidence I gave to the Campbell inquiry nobody has taken time to go back and say, "We need to prescribe persons to issue a compliance certificate". I will give a small but very important example in New South Wales. The biggest single building defect in this State remains leaking wet areas. Australian standard AS3740 governs how wet areas should be waterproofed. You can choose a material that has been certified and tested by the National Association of Testing Authorities [NATA] and you apply the material in accordance with the manufacturer's specifications. The person installing that wet area should be a class of person under section 6.17(b) who is prescribed to issue a compliance certificate for that purpose. That compliance certificate becomes an integral part of the final package of documents attached to the occupation certificate application and therefore that person is proportionately liable for what they did. There is an audit trail. There is a record.

The CHAIR: That is how it should look.

Mr DAINTRY: That is how it should be. That has never been the case.

The CHAIR: Then how does it work in practice?

Mr DAINTRY: Often wet area inspections are not called for so they are missed. Some 10 per cent of wet areas in large buildings get inspected; the other 90 per cent do not. Sometimes the tiler or the company who is putting the wet areas in provide a certificate. That certificate is accepted as evidence of suitability under part A2 (2) of the Building Code of Australia. That's it.

The CHAIR: The person issuing the certificate does not have to be licensed, does not have to be registered, does not have to be insured?

Mr DAINTRY: Correct.

The CHAIR: What value does that certificate have at the end of the day?

Mr DAINTRY: A useless piece of paper. That is exactly what I said in 2002 to the previous inquiry: A useless piece of paper.

The CHAIR: At the end of the day if a private certifier's job is to gather together these certificates—for the wet areas, for the structural steel, for the cladding—and rely upon them to issue the final occupation certificate or the final certification on the job it is like a castle built on sand.

Mr DAINTRY: Essentially, yes. When you read part A2.2 of the Building Code of Australia it talks about what is acceptable evidence of suitability. I will not get into the technical side of it—it can be read. However, evidence of suitability can be a certificate from a professional engineer. Obviously one gives more weight to an engineer certificate than one would to a certificate from a wet area waterproofing company. In the absence of a regulation that could be made under the existing legislation that provides for compliance certificates, there is no true proportional liability in the system.

The CHAIR: That means at the end of the day if there is a building defect in place it is a hunt for that one person who actually is insured and their professional indemnity gets slammed. That is what we are seeing at the moment with private certifiers.

Mr DAINTRY: Yes. In fact on 1 July 1998—and I said this in my submission—I had a conversation with Mr Beaumont, my then director, and I gave this system ten years. I thought it would implode under the weight of insurance within a decade, to be honest. The fact it has stumbled on for 20 years—only because of multiple legislative amendments that have propped it up—is amazing. What is not amazing to me is the amount of building defects we now see. It was inevitable.

The CHAIR: In his submission Mr Lambert talks about not just corporate entities having responsibility but the individual players and principal participants in the design and the construction of a building having to have some kind of personal responsibility. What do you say to Mr Lambert's proposition?

Mr DAINTRY: I absolutely agree. Professional indemnity insurance should cover the company but it should also cover the individuals in the company. They should be personally liable through that process.

The CHAIR: I went back and read the Campbell report some time ago. It almost reads like a perfect description of the industry now, only of course it is 17 years ago. It gave a series of recommendations, almost none of which have been implemented. The most obvious one is mandating those various certificates. That was a recommendation of the Campbell report. Do you have any observations about why that has not been implemented? Are there such obvious structural barriers that we are not seeing?

Mr DAINTRY: I am going to give you a long winded answer if I may. It is a good history lesson. Prior to the Local Government Act 1993 coming into force every council in New South Wales had a chief health and building inspector—their job was obviously to look after health and building. In 1993 there were substantial changes in local government whereby the chief health and building surveyors position was seen as very unimportant and that role diminished. Then in 1997 we had reforms that led to the privatisation in 1 July 1998. At that point in time everybody in local government saw it was a very unimportant thing to have building inspectors and that we could privatise that and send that off. The outcome of that is that there are no real building inspectors left, full stop. They mostly do critical stage inspections only as required by the Act and there are not a lot of them really in the scheme of things. They collect the useless piece of paper still, as I said in 2002.

The CHAIR: Is it about a deskilling in the industry?

Mr DAINTRY: It is about liability, too. Originally when the system was created there were no critical stage inspections required under the 1998 Act. It was not until after the Campbell inquiry that mandatory critical stage inspections were put back in to the regulation. Mind you, at that point in time the Government decided it did not need home warranty insurance on buildings over three storeys. I was in the room when the then Minister said, "We do not need to have insurance on these buildings because we now have critical stage inspections".

The CHAIR: How has that played out?

Mr DAINTRY: Look, if builders cannot get insurance they should not be building. If a painter cannot get insurance to cover his painting he should not be painting. At this point in time certifiers are amongst the most accountable of everybody. The architects are under the Architects Act 2003, registered surveyors are under the Surveying and Spatial Information Act 2002 but everybody else is not terribly accountable. Everybody has sought to avoid and duck liability in the process for two decades.

The CHAIR: Can I take you to the oversight of private certifiers? There is a complicated history since the creation of private certifiers to where we are now. How would you describe the performance of the Building Professionals Board [BPB] in oversighting private certifiers?

Mr DAINTRY: It has been completely under-resourced. My observation, from chairing the disciplinary committee for a number of years, was that they only ever had enough resources to barely stay on top of complaints so the auditing functions of the Building Professionals Board were never really serious. They did do auditing, and it was a reasonable amount of auditing given the resources they had. So I am not overly critical of the staff involved in the process. I am more—

The CHAIR: Either of them.

Mr DAINTRY: I am just more critical of the resources available to the investigators. To be frank, what evolved since 1 July 1998 has been a very, very complex system. And there are that many rules and regulations, when a private certifier is alleged to have done the wrong thing and further when there are alternative solutions involved—and I might come back to that—it is very hard to sometimes pin the blame on the certifier. I might touch on alternative solutions right there, because a lot of the complaints that were heard by the Building Professionals Board were about dodgy alternative solutions. So for instance in a building that has an effective height greater than 25 metres, you are supposed to have two fire exits. It makes sense; if a fire is in a tall building, you want to have a couple of options to get out. There were certifiers ripping out the second exit, the second set of stairwells, out of buildings over 25 metres in effective height.

So the 1998 reforms lowered the standards immensely because we moved building surveyors from a controlled environment within local government where there was a hierarchy of expertise above them, supervising them, and we moved the building surveyors out into, generally, single men in consultancies. And then we had

level one certifiers peer-reviewing level one certifiers ripping out stairwells out of buildings. So I felt a little sorry for the investigators at the building professional board dealing with a complaint about a fire exit being ripped out of a building when there is another fellow over here who has done the peer one review and said, "No, that is fine," as well. So there is nothing pleasant about what happened on 1 July 1998 in terms of the rigour of building surveyors. And private certifiers, unfortunately—I said it in my submission. The majority of private certifiers are very upstanding, fine people. But what it has allowed the shonks to do is to flourish. As has been reported in the media recently, it is a handful of shonks that have the majority of actions against them by the board, not the majority.

The CHAIR: I have heard examples of quite notorious private certifiers who might have even had significant disciplinary action taken against them, having had their certification removed. And what they simply do is they continue to run a business of private certification. It is just that they go from being a certifier to, if you like, a general manager and they employ a bunch of other certifiers under them to do the work.

Mr DAINTRY: And that is true. And I can name them. I will not. They are out there, they are functioning and that is how they have functioned. They have lost their accreditation and they are the director of the company. And then they have, essentially, given—in three cases I am aware of, their sons have been part of the company. So the sons are then—and the other accredited certifiers are doing the accreditation work and these guys are running the company.

The CHAIR: But they are still directing the culture, they are still directing the business and the problems continue?

Mr DAINTRY: Yes.

The CHAIR: Is not that kind of a pretend regulation system? Or at best substandard?

Mr DAINTRY: I do not know how you write law, and you write the law or Parliament writes the law. I do not how you write the law and maybe Parliamentary counsel can help you, but obviously if you lose your accreditation you should not be functioning in any way in the business.

The CHAIR: Well, you prohibit them from having any material involvement in that industry.

Mr DAINTRY: That is correct.

The CHAIR: But that prohibition does not exist?

Mr DAINTRY: No.

The CHAIR: They can go from being a certifier to the boss of a certifier, having had their accreditation taken off them by the board?

Mr DAINTRY: Yes.

The CHAIR: Who oversights that?

Mr DAINTRY: The Building Professionals Board.

The CHAIR: And who oversights the Building Professionals Board?

Mr DAINTRY: I am not sure now.

The Hon. COURTNEY HOUSSOS: It used to be the Minister for Planning. Now it is the Minister for Better Regulation.

The CHAIR: I think it has moved from Planning to Fair Trading.

The Hon. ROBERT BORSAK: Better Regulation.

The CHAIR: Better Regulation?

The Hon. COURTNEY HOUSSOS: And their excellent light-touch approach to regulation.

The Hon. MATTHEW MASON-COX: Thanks for coming in, Mr Daintry. Your experience certainly historically goes back a long way, sitting in those early meetings of the home warranty insurance debate and the like. I just wondered, drawing on all of that and obviously the Shergold Weir report, is there anything else that needs to be done apart from just following the blueprint of the Shergold Weir report, in your view?

Mr DAINTRY: I feel sorry for mum and dads—and I have always said this—buying off the plan. The reality of it is—and the strata lady mentioned it—I am hearing the same thing. They need 80 per cent pre-sales

now before they can get their finance to build a building. So you put your money down to buy an apartment. You are one of the 80 per cent, putting your money down. You have no say pre-settlement. You have no access to the site. You have no rights to go and inspect the building during its construction, even separate to the principal certifying authority [PCA] doing the inspections. But there is no clerk of works on that site protecting your interests as one of the 80 per cent. Effectively, the developer is left with the 20 per cent at that point in time. They are really the majority owners of the building. They are the people who are investing and securing the finance for the developer, yet they have no rights.

A clerk of works needs to make a big comeback in this system. And I would go as far as to say that if you use an architect to design a very nice building at the development application [DA] stage and it goes through a massive process under part 4 of the Environmental Planning and Assessment Act to get assessed and you have engaged that architect because they are highly competent and diligent, they should remain on the job until the occupation certificate is issued. And at the end of the job, they should complete the owner-builder manual. And there was a question asked why the owner-builder manual has not been done in regulation. It is because a very fond colleague of mine died during the process of writing it, working for the Department of Planning. He had a heart attack and died. I think the people, again, in the building section of the then Department of Planning were also under-resourced to write the regulations. And that is why you do not have regulations. I just cannot begin to imagine the pressure that was on—and I will name him—Mr Alan Host, who passed away. I just cannot begin to think about how much pressure he was under on a daily basis to try and deal with writing regulations to solve this problem.

The Hon. MATTHEW MASON-COX: Can I ask you about the clerk of works?

Mr DAINTRY: Yes.

The Hon. MATTHEW MASON-COX: When should you have a clerk of works on a building? What sort of complexity? What sort of threshold?

Mr DAINTRY: Every class 2 to class 9C building under the Building Code of Australia, in my opinion, should have a clerk of works on it. And that is what used to be under the purview of a clerk of works.

The CHAIR: Are you going to demystify what class 2 to 9C is?

Mr DAINTRY: Class 2 is a residential flat building. Class 9C are your nursing home type buildings, at the other end. Your class 1 buildings are houses and villas and townhouses that are joined together by common walls. So anything in that low, low range probably does not need a clerk of works on it. Class 10 buildings are sheds and pools. So yes, everything that is class 2 to 9C should have a clerk of works on it.

The Hon. MATTHEW MASON-COX: One suggestion we have had from another person who has put a submission in is that it should perhaps be just linked to everything that home warranty insurance does not cover.

The Hon. MATTHEW MASON-COX: No, I do not agree. Although problems with commercial buildings are not as great because there are a lot of build and keep models out there, there are still problems in the commercial building sector as well.

The CHAIR: You may have been speaking slightly at cross-purposes. I thought your question was everything where home building insurance does not apply?

The Hon. MATTHEW MASON-COX: Yes.

Mr DAINTRY: Everything above three stories.

The CHAIR: Which would pick up all of the commercial and pick up all the industrial, but you probably do not need it for the sheds.

Mr DAINTRY: No. Definitely not.

The CHAIR: Everything class 2 to class 9c.

Mr DAINTRY: Unless. One of the complaints I dealt with at the Building Professionals Board when I was there was the certifier who classified a factory as a shed.

The CHAIR: A very big shed.

Mr DAINTRY: Yes it was.

The CHAIR: A series of submissions have said private certification, just of itself, has such an inherent conflict of interest. It creates such a complicated array of regulations to try and make work and fit for purpose that

it should be abandoned as a failed experiment and we should move back to having certification by either officials employed by an expanded building commission or local government. Do you have any observations about that?

Mr DAINTRY: I would like to see it go back to local government. My fear is that we have, over 20 years, gutted local Government of the expertise to have it handed back to them. The challenge if it was to go back to local government is rebuilding the capacity both in expertise and boots on the ground, the numbers to do it. The problem, on the other side of the coin, you have got with private certifiers full stop at the moment is, and at every conference you go to with building surveyors, they are an ageing industry. There are those who are functioning as private certifiers who are getting hammered by builders wanting to cheat in many cases. They are not getting paid on the flipside in some other cases. They have openly talked about exit strategies out of the industry.

The Hon. MATTHEW MASON-COX: The insurance will encourage them down that path.

Mr DAINTRY: It has encouraged many of them down that pathway already. The insurance is that their professional indemnity is just intolerable. I have heard amounts, big six-figure amounts, bandied around.

The Hon. MATTHEW MASON-COX: And deductibles are ridiculous.

Mr DAINTRY: Yes.

The CHAIR: Could I ask you about documentation. There is good documentation at the DA stage, there is reasonable documentation at the construction certificate stage. But we had one witness, and I think it was from the Landmark building in Newcastle, who said that they had been trying for the better part of a decade to get the documentation about what was actually built. The as-built plans. We had evidence from the insurance Council of Australia that some of the key engineering documents about a performance-based solution are handed to them in a shoebox at the end of a construction. Can you give us your observations about that documentation issue.

Mr DAINTRY: Yes. I run a small business. I cannot afford an electronic document management system in my own business, so I use Dropbox. There is solutions out there with technology today. There is no excuse for us not having good documentation: good PDF copies of every plan, every report, every compliance certificate, the building manual, all in one place. The start this process, and I have to give credit to the Department of Planning, this electronic DA system they are implementing at the moment has got real promise and we have been asking for that for 30 years, some of us. We wanted one place, one central database for all DAs as far back as 30 years ago and building approvals at that point. We now look like getting one central, one place of truth for DAs as a starting point.

That system needs to just grow and develop so that the next thing that plugs into the DA is the related construction certificate documents and they sit in that database as well. Then when the notice of commencement is provided, the notice of commencement goes in and the supporting documents that support the notice of commencement, such as for instance, your validation of your remediation before you commence work on the site may be a critical document. All those documents need to slot into this process. Then during the construction phase, as compliance certificates are hopefully issued in the future by licensed people who are authorised to issue them, they could be issued like a BASIX certificate through the portal. Somebody could logon with a phone with their licence details connected, issue the compliance certificate for what they are doing. And geotagging is on it too so there is no reason why it could be geotagged to prove he was on site the day he issued the certificate. We live in a lucky time where all of this technology is coming through and the documenting process should not be difficult.

The CHAIR: At the moment we have no requirements for licensing, no requirements for legislation, no requirements for lodging those documents, and we have a shoebox solution.

Mr DAINTRY: Yes.

The Hon. ROBERT BORSACK: We are well off.

Mr DAINTRY: You get lucky sometimes, I must admit. Some councils have got very good archives. I am biased but Woollahra has great archives, I have worked there for a period of time. City of Sydney council has very good archives. You can often go to those archives. I did a GIPAA the other day at City of Sydney and pulled out all the structural plans for a big building that was built by Meriton in the city. You can get lucky. But more often than not you go to the council and they say, "Oh look, we had a flood and we lost all those documents" or "We had fire in our archives and we lost documents." Bankstown is the classic because they actually did have a fire.

The CHAIR: We have not got time to inquire into that fire, Mr Daintry.

Mr DAINTRY: I hear you and I agree with you that something needs to be done with the documentation side but it is not that hard these days.

The CHAIR: And there is a system in place that is the natural place which you would extend that planning portal.

Mr DAINTRY: Absolutely. And if you can go online, and you can do it on a phone or an iPad or anywhere, if you can go online and generate a BASIX certificate for your Environmentally Sustainable Design [ESD] commitments to your house online, then you should be able to generate a compliance certificate as a licensed person online. And it should be seamless.

The CHAIR: A building commission. We had the Building Commissioner in here this morning and his evidence was he does not support a building commission, that he is happy by being Building Commissioner, showing leadership. What do you say to that?

Mr DAINTRY: It is a bit like *The Castle*—tell him he is dreaming, son. It is not going to happen. The experiment has gone on for 20 years and it has not worked. I worked in local government for 26 years and I do not defend it. There were a lot of problems with local government and it could not regulate properly. But if we are going to have a system where private certification is going to be the way forward and we are going to bring more accountability and responsibility and liability to it then the building commission should oversee all of that. It has an integral role in putting in place a system to support the players.

There are a lot of good people out there who work very hard in the building industry, whether they are at the architects end of the process or, like I say, the guy putting the coat of paint on. At the end of the day all those people, most of them are good people, but the system needs to support them. And the building commission needs to be the player that drives it. For too long in my opinion, ever since the Local Government Act 1993, the importance of building in New South Wales has been hived off and shoved into other departments. It got put into the Department of Planning as a small little department and not given a lot of resources. The building professionals board was formed, again it stayed within the Department of Planning, and was not given a lot of resources. The building commission needs to exist. Recommendation No.1 of the Campbell inquiry in 2002 actually recommended that as well. It needs to be given resources and it needs to fill a proper function: regulating the building system in New South Wales.

The CHAIR: And bring together what is currently a very disparate group of regulators, whether that is some of the powers from Fair Trading and the residual powers from Planning brought together in a single comprehensive commission that has responsibility for making buildings work.

Mr DAINTRY: Look, the Department of Fair Trading has a great job to do in regulating automotive dealers and a lot of other people as well, but the regulation of tradesmen and builders should be part of the building commission, not part of the Department of Fair Trading. I might go back to an example as a young building surveyor back in the eighties. I got a call from what was then the Building Services Corporation inspector. There was a building inspector at the Building Services Corporation that investigated complaints against builders and he called me up at the council and said, "You're the district inspector for this area. I've got a problem with one of your houses." We both went out to the site.

Now that worked because there was an entity that was responsible for building licensing actually talking with the building inspector about a problem build. The building commission needs to bring those disparate functions back together. The Department of Planning writes local environment plans [LEPs], deals with statutory and that is its forte. The building commission should deal with everything from the construction certificate [CC] or the complying development certificate [CDC] onwards, including licensing of all the trades and the regulation of building. The Department of Fair Trading can regulate automotive dealers and dodgy products. There is a real pressing need to once again raise the pre-eminent importance of building control in New South Wales.

The CHAIR: Mr Daintry, thank you for your evidence and for your submission. For myself, I think the fact that you come here with the better part of 30 years' experience in dealing with this on the ground and you have watched this unravel gives weight to your evidence today. On behalf of the Committee, we really appreciate you taking the time.

Mr DAINTRY: Again, thank you for the opportunity. I do not want to be back here again in 20 years.

The Hon. MATTHEW MASON-COX: It is sad that you are saying the same things that you said in 2002. That is the sad thing.

Mr DAINTRY: Yes. I might make this observation to the Committee. When a heap of us vehemently objected to privatisation in 1997, it happened. We then all worked in local government and we got behind it as best we could. There were many in local government who got behind it and tried to make it work. Then when the wheels fell off and we had the Campbell inquiry we went along and we wholeheartedly tried to say what needed to happen to fix it. Then when the Building Professionals Board was formed, many of us went in and gave our time for free to a committee before the board to try to help the system work. It is not just myself. A lot of people were involved from local government and the building surveyors' profession who gave a lot of their time for free to try to make this system work. It does not please me to be here 17 years later saying, "It still doesn't work."

The CHAIR: We have just heard from a Building Commissioner who says he does not need a commission. That is how our day started. Thanks Mr Daintry.

Mr DAINTRY: Thank you.

(The witness withdrew.)

The Committee adjourned at 16:58.