

**REPORT ON PROCEEDINGS BEFORE**

**PUBLIC ACCOUNTABILITY COMMITTEE**

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

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney, on Tuesday 27 August 2019  
The Committee met at 9:30**

**PRESENT**

Mr David Shoebridge (Chair)

The Hon. Robert Borsak (Deputy Chair)

The Hon. Mark Buttigieg

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Courtney Housoss

The Hon. Trevor Khan

The Hon. Matthew Mason-Cox

**The CHAIR:** Welcome to the third hearing of the Public Accountability Committee inquiry into the regulation of building standards, building quality and building disputes. 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 Engineers Australia. We will hear from a number of experts and stakeholder organisations. We will finish in the same way we began our first hearing, by taking evidence from New South Wales Government officials. This will give the Government a chance to respond to the evidence given over the three hearing days.

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 a question on notice and provide a written answer within seven 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 loops compatible with hearing aid systems that have telecoil receivers. Finally, could I ask everybody to please either turn off their mobile phones or turn them to silent for the duration of the hearing.

**GREG EWING**, General Manager for the Sydney Division, Engineers Australia, affirmed and examined

**JONATHAN RUSSELL**, National Manager for Public Affairs, Engineers Australia, sworn and examined

**The CHAIR:** Thank you for coming today. Would either or both of you like to start with a short opening statement?

**Mr RUSSELL:** Yes. I have a few brief comments to make to provide some context for the Committee and anyone in the public gallery. We are representing Engineers Australia, which is a professional association. We are a national association representing engineers. We have 100,000 individual members. We do not have businesses as members, it is the individual engineer themselves. Our membership crosses all disciplines of engineering. Our members are heavily involved in the building and construction sector but other members are involved in a wide range of other engineering endeavours. Our core role at Engineers Australia is to promote the science practice of engineering for the benefit of the community.

Key ways we do this is by setting and maintaining standards for engineering practice. Two key ways we do that is we accredit all undergraduate engineering programs in Australia at university level and we also created and maintain a voluntary registration scheme for engineers called the national engineering register. Together those two activities put us in a good place to advise government how to ensure that the engineering standards in the building sector are of a high standard. The scope of our submission was focussed on term of reference E which is about the status of implementation of recommendations and within that the focus of our submission was, as you might expect, around the registration of engineers. We are happy to take questions on a wider range of things but that is where our focus is.

**The Hon. JOHN GRAHAM:** I found your submission quite helpful. I want to take you to part of it. You recommend a two-stage registration process, first for engineers in the building industries but then a broader registration scheme. Take us through why that is important and how that might be staged?

**Mr RUSSELL:** The two stage approach is recognising the reality of the situation in New South Wales and the Government's appetite for reform. The ultimate goal in our view is to have a system of registration that matches what we see in Queensland and has been in Queensland since 1930. In Queensland to provide engineering services without supervision you have to be registered, no matter the discipline and no matter the industry. In New South Wales at the moment there is no requirement to be registered to provide any sort of engineering service. We want to get to a point where we are the same as Queensland but we recognise that the government is clearly focussed on the building sector. It is a good place to start. The main thing we urge the Government to do is in creating a registration scheme within the building sector in New South Wales make sure it does not become ring-fenced to staying with the building sector. For example, do not create a building engineers regulation Act, create a professional engineers registration Act and then through regulation you can set the scope.

**The Hon. JOHN GRAHAM:** Even if that step does not happen we should design a scheme that leaves that as a second step?

**Mr RUSSELL:** Definitely. It would be a huge missed opportunity if we did not. We did some polling in July around the country asking a question of the general public, lay people: Should engineers be registered to practice in the same way that doctors and plumbers are? In New South Wales 91 per cent of people said: Yes, of course they need to be registered.

**The Hon. JOHN GRAHAM:** Including the Minister?

**Mr RUSSELL:** Yes, indeed.

**The Hon. JOHN GRAHAM:** You have got 60,000 people in engineering occupations in New South Wales. More engineers but 60,000 of them working in engineering occupations and you say that about 25 per cent of those might be involved in directly building or design in the building sector. About a quarter. Of those what you are proposing is 15,000 engineers might be registered under that initial building scheme, leaving the rest of the 60,000 for later under your proposal? That is the rough shape of it?

**Mr RUSSELL:** The specific numbers, I assume you are quoting the submission.

**The Hon. JOHN GRAHAM:** From your report.

**Mr RUSSELL:** Yes, that is the general gist of it.

**The Hon. JOHN GRAHAM:** The second thing I want to ask is, how does this compare to Victoria and Queensland? Just talk us briefly through Victoria and then I have a specific question about the comparison.

**Mr RUSSELL:** Sure thing. In Victoria they already have a system of registration for engineers in the building sector across five disciplines. There is a bill being debated today in the upper House in Victoria to broaden

the registration requirements to an extra discipline. The big thing is it is going to be extended beyond the building sector to, for example, if you are a civil engineer working anywhere you will need to be registered. The other thing it does, the Victorian Building Authority registration requirements do not include, for example, a requirement for continuing professional development. The new Act, if it passes, will impose that requirement as well, which is something we fully support.

**The Hon. ROBERT BORSAK:** Just a quick question while you are talking about CPD, does your association already require members to have CPD as part of their ongoing qualifications for membership?

**Mr EWING:** Yes, it does. Particularly if those members are chartered professional engineers. There is a requirement that they should do 150 hours of CPD spread across the year. So roughly speaking an hours worth of CPD a week. That covers a whole range of different topics; some of it very discipline technically specific.

**The Hon. ROBERT BORSAK:** How much is structured and how much is unstructured?

**Mr EWING:** They have to do 15 per cent of their time on risk, for example. They have a lot of structured CPD that they will go to but some of it can be when they are learning a new specific product, or it could be they are doing a different style of development. You can have people that move from one State to another who will have to look at the different regulations that are in place and the different standards that are in place. It varies depending on the discipline of engineer. The requirements for someone who is a biomedical engineer are very different to the requirements for someone who is an aeronautical engineer. It is tailored around their specific disciplines and also the wider generic professional skills of an engineer.

**The Hon. ROBERT BORSAK:** Interesting stuff for an accountant.

**The CHAIR:** So the accountants and the engineers could just nerd off for the next hour.

**The Hon. ROBERT BORSAK:** With a public practising certificate in accounting you effectively double the amount of continuous professional development [CPD]. Does that apply in engineering?

**Mr EWING:** Could you repeat that, please?

**The Hon. ROBERT BORSAK:** With a public practising certificate—basically in an accounting office you have those who offer their services to the public and those who offer their services within corporations. Both have CPD requirements but those who offer services to the public—have standards to the public as a principle of practice, with a practising certificate—have to effectively do double the amount of CPD. Does something like that apply within your organisation?

**Mr EWING:** No it does not. The crux of the matter is that if you are not somebody who is a member of Engineers Australia or any of the other engineering institutions, or you are not registered or you are not a chartered engineer, from whichever part of the world you come from, that requirement for the CPD is not there. That is one of the changes that is being addressed in Victorian legislation. The importance of continuing professional development is in that phrase—"CPD"—it is about that continued professional development and the importance around that is that we are looking at the capability and competence of people, but also their currency. It is making sure that they are current. That currency of knowledge is really important when we look at changes within any of the engineering sectors.

**The Hon. ROBERT BORSAK:** Just to finish up, you would envision is that being reflected in legislation?

**Mr EWING:** Yes.

**The Hon. TREVOR KHAN:** Can I just ask something that flows on? You say that the Victorian legislation seeks to pick out the issue of, I will call them, "outliers". How does the Victorian legislation do that?

**Mr EWING:** It is moving more towards the model that is in place in Queensland, I believe.

**Mr RUSSELL:** When you say outlier, are you talking about the people who are not within the building sector?

**The Hon. TREVOR KHAN:** No, those who are not members of your organisation, for instance. I am a lawyer and it was compulsory to be a member of the Law Society—before, you do not have to now. You get people who practise in various professions who do not belong to the professional bodies and therefore subject to their requirements.

**Mr EWING:** An important point to remember here is that in terms of the registration of engineers, you do not have to be a member of Engineers Australia.

**Mr RUSSELL:** In Victoria, assuming the legislation passes, any engineer within those five disciplines will have to be registered. They will not have to be a member of Engineers Australia or Professionals Australia or anyone else. What we expect the Government to do is to nominate assessing authorities, much like they do not Queensland—organisations that have the skills and expertise to be able to assess someone's qualifications and experiences, will assess them and then take their letter of assessment to the governing agency and it will be the governing agency that will register them. It will then conduct the investigation and monitoring and enforcement and all those normal regulatory authority functions. The role of a body such as ours will be to assess their eligibility as an engineer and then the Government takes on the rest of the role.

**The CHAIR:** So the Government maintains the register but you are in many ways a gatekeeper and standards monitor and there may be other organisations that the Government will nominate?

**Mr RUSSELL:** That is right. There will be. In Queensland there are nine organisations that do the assessment function. We do a very broad range of them. For example AusIMM, the mining professional association, focuses very tightly on the mining sector engineers.

**The CHAIR:** At the moment in New South Wales, can you tell me what, if any, requirements there are for engineers before they act in their professional capacity and say, sign off on a performance-based solution. What are the requirements, if any?

**Mr RUSSELL:** The statutory requirements are not there. The typical path for an engineer is they will do a four-year degree, graduate with the basic academic knowledge but they are not work ready. That phase then takes another five years of on-the-job, under supervision work. Their employer will then realise when they are ready to start doing things without supervision and start trusting them to do the designs and sign off the designs. A lot of companies require their senior engineers to be chartered but that is a voluntary scheme. If employers see the value in having a continuous development framework, which includes graduation and then maybe being put on our voluntary national register and then as they get more senior putting them through the chartership program. But that is all voluntary.

**The CHAIR:** That is how it should work, if everybody is nice and they do the right thing?

**Mr RUSSELL:** That is right.

**The CHAIR:** But what is actually happening on the ground in New South Wales, now?

**Mr RUSSELL:** Good companies will follow the system I just described but there are obviously a lot of engineers who do not even bother going onto our voluntary register. Our voluntary register has 21,000 across the country—

**The Hon. JOHN GRAHAM:** And I think you say 5,000 in New South Wales?

**Mr RUSSELL:** Ok, yes. I think that describes how the quality control checks are relatively informal. We are far from saying that there are tens of thousands of engineers being dodgy. What we are saying is that most engineers are out there practising very competently in their own risk-management framework within their own company. But there is no mechanism at the moment when someone is found to be wanting, to get them out of the system.

**The CHAIR:** So literally, you can graduate from university and immediately start offering high-level technical engineering advice on complex building projects and nobody is checking you have the competency, nobody is checking you have the insurance and nobody is going to hold you to account if things go wrong, other than through civil mechanisms?

**Mr RUSSELL:** That is right.

**The Hon. TREVOR KHAN:** But is that happening, to your knowledge?

**Mr RUSSELL:** Within a company—you mentioned complex projects and that is probably going to be run by complex company and that company will have its own mechanisms in place to ensure that the people they are using are competent. If there are less complex projects where you have uninformed purchasers, the uninformed purchaser of the engineering service is at higher risk from the junior engineer. When you have Victoria, if it introduces its scheme and Queensland with its long-standing scheme, if people are struck off the registers in those States then the natural flow for those people is south or north to New South Wales. It is about having a mechanism in place to have better quality control of those who are providing the services.

**The CHAIR:** Do we know that is happening? That engineers who are literally being struck off in Queensland or Victoria are coming to New South Wales because that is where they can work?

**Mr EWING:** I think the real difficulty is that there is actually no way of knowing because there is not any regulation. They may not necessarily physically move—you can be doing work in New South Wales. You do not know unless you look at every single project. That is assuming that they have a four-year university degree because there may be people offering engineering services of some sort or another who do not have that base level of qualification.

**The CHAIR:** So literally New South Wales can be a refuge of scoundrels because there is nothing to stop them?

**Mr RUSSELL:** Yes, that is right.

**Mr EWING:** And whereas the top of the tree in New South Wales is filled with highly competent and capable people, further down that particular tree there is much less visibility.

**The CHAIR:** I know both Mr Graham and Mr Houssos wanted to ask a question.

**The Hon. COURTNEY HOUSSOS:** Just jumping in on your national registration scheme, in your submission you say that of the roughly 60,197 engineers working in New South Wales, only 5,248—which is about, you say, 8.7 per cent—how does that compare with other States, in particular Queensland and Victoria, that do have some kind of registration model?

**Mr RUSSELL:** The actual data? I would have to take that on notice. We can get it to you.

**The Hon. COURTNEY HOUSSOS:** That is perfectly fine. I think it would be useful for us to get a sense of comparison. The other question I have is about a publicised example of an engineer in the Northern Territory who was cast off. As the Chair outlined, that person would then have the opportunity to work in New South Wales, under the current scheme. If New South Wales was to introduce an engineering registration scheme, how would we ensure that if people were struck off registers in other States that they could not practise in New South Wales? As a national body, you would be well-positioned to provide us with advice.

**Mr RUSSELL:** The more joined up the registration schemes are, the better. It would be lovely if we had a single Commonwealth registration scheme but that is not possible, it is a State responsibility, so we need to have a federated scheme of registration where they are all interlinked. That allows both mutual recognition of the practitioner who is doing a good job so they can work across borders, but also allows a system where if you are struck off one, you are struck off everything.

**The Hon. TREVOR KHAN:** Or at least if there is a notification to the other registration bodies that action has been taken.

**Mr EWING:** Exactly.

**The Hon. COURTNEY HOUSSOS:** Is that a provision in Queensland at the moment?

**Mr RUSSELL:** It is the only State that has.

**The Hon. COURTNEY HOUSSOS:** Do you know if there is a provision in the Victorian legislation to provide for it?

**Mr RUSSELL:** Again, I would have to check. I think it is probably going to be coming out in the regulation. The bill, if it passes, you know the system.

**The CHAIR:** It is one of the core recommendations of Shergold Weir that everybody needs to be talking in a comprehensive national system.

**Mr EWING:** Yes.

**Mr RUSSELL:** Yes.

**The Hon. JOHN GRAHAM:** To that question, in your submission you set out what you believe should be the essential elements of a registration scheme, which is quite helpful. You run through occupations to be registered, minimum requirements, mandatory skills and insurance. How does what you have set out as the essential elements compare to Queensland and Victoria? I am happy for you to take that on notice in detail. I think that would be helpful for the Committee. You have set out those requirements, how do they compare to what is proposed in Victoria or in place in Queensland, but give us a general flavour?

**Mr RUSSELL:** It is aligned. The Queensland system matches what we recommend and vice versa, and the Victorian Government is very committed to making it aligned.

**The Hon. JOHN GRAHAM:** If we pick up the essential elements as you have recommended here, that would bring us into alignment with—

**The CHAIR:** —Queensland as it currently is and Victoria as to where it is going?

**Mr RUSSELL:** That is right.

**The Hon. ROBERT BORSAK:** In your report you say that both those models do not currently recognise the tiering of engineers; professional, technology and associate. But you are recommending that for New South Wales?

**Mr RUSSELL:** No, we are not actually. We are recommending three tiers; professional engineer, engineering technologist and engineering associate. The associate, I guess if you say the least comprehensive education, a two-year vocational education training level degree; the technologist has a three-year higher education degree; and the professional has a four-year degree. In Queensland they only register the professional engineering service provider. In Victoria it is the same. We propose that in New South Wales they keep it aligned with those. There is merit in the future broadening that out to the other areas, but that is not something that we are pushing for at the moment.

**The Hon. ROBERT BORSAK:** Why would we not take the lead now?

**Mr RUSSELL:** You could. So long as it did not result in a misalignment of the broader registration scheme with the other jurisdictions, then it would not pose big problems. If you saw the merit in registering those lower tiers of engineering service, then it could work, but it is not something that we are proposing.

**The CHAIR:** Your proposal though is to register for professional engineers and then prohibit other persons purporting to be professional engineers.

**Mr RUSSELL:** That is right.

**The CHAIR:** So you know what you are getting.

**Mr RUSSELL:** That is right and there is definitely a role for engineering technologists and engineering associates. Whatever is created, there should not be the unintended consequence of shutting those people out of doing their work. A lot of engineering work is done at that level, but it is the professional engineer who does the original thinking, finding out-of-the-box solutions. The engineering associate, for example, applies known standards, they follow more prescriptive workflow, established engineering systems, as opposed to thinking outside the box and creating new ideas.

**The Hon. MARK BUTTIGIEG:** In terms of the level of what appears to be extensive deregulation of this industry, to use an extreme example, and it may not actually be extreme, I do not know, but what is to stop an unqualified engineer who may have done a couple of years at university, and a dodgy developer using that sort of a person? Is there anything to stop that at the moment?

**Mr EWING:** There is nothing in the regulations in that space really.

**The CHAIR:** Mark Buttigieg Engineering Services.

**The Hon. MARK BUTTIGIEG:** So we have a situation in New South Wales where an unqualified person can carry out engineering work and there is nothing to vet it, really.

**Mr RUSSELL:** They can purport to.

**The Hon. MATTHEW MASON-COX:** But you are not aware of that, you were saying earlier. I think that is worth stating. Obviously we can improve the system.

**Mr RUSSELL:** Yes.

**The Hon. MATTHEW MASON-COX:** Can I take you to something else?

**The CHAIR:** No. I think Mr Russell wants to answer that, rather than leave it at your observation.

**Mr RUSSELL:** Yes. But there are instances of people being struck off registers. Queensland does investigate complaints and strike people off the register. In Victoria, even within the Victorian Building Authority [VBA] system, there are people who are investigated for doing work that is very substandard, then they are fined and removed from the system. In New South Wales there is no mechanism for removing people from the system.

**The CHAIR:** There is no-one to complain to even.

**The Hon. MATTHEW MASON-COX:** There is no system. Can I ask you about professional indemnity insurance of your New South Wales members? Under the registration with Engineers Australia do you have a requirement that they hold professional indemnity insurance?

**Mr RUSSELL:** Yes, we do.

**The Hon. MATTHEW MASON-COX:** What level of insurance do you require them to hold?

**Mr RUSSELL:** We do not stipulate the level and type of insurance. If you want further specific details I have to get back to you.

**The Hon. MATTHEW MASON-COX:** That would be excellent.

**Mr RUSSELL:** But, it is just coverage.

**The Hon. MATTHEW MASON-COX:** Can I ask a different question? Can you give me some feedback about whether there have been any problems with your members getting insurance in New South Wales as a result of what has happened in the building industry recently?

**Mr RUSSELL:** Yes, for sure there has. I think it is very well documented and known that within the current building confidence crisis, insurers are less willing to provide coverage, and where they are the premiums are much higher.

**The Hon. MATTHEW MASON-COX:** Can you give us some examples of that, perhaps on notice?

**Mr RUSSELL:** Yes, on notice. I would probably need to get permission from members who are keen for that.

**The Hon. MATTHEW MASON-COX:** That is okay. That should be useful for us.

**The CHAIR:** What sort of quantum are we talking about, in terms of professional indemnity? What was it, and what are we looking at now for your standard chartered engineer?

**Mr RUSSELL:** The actual price of insurance, I do not know. The feedback I am getting from some members is that it is causing them to think about the viability of their business, so, significant. Do you have anything?

**Mr EWING:** As for the quantum, I could not say. But the feedback is that viability of their business, and also projects they are willing to expose themselves to, because they have to think about that sustainability of their business should something go wrong in the chain that may or may not necessarily be of their making, but they could get embroiled in a situation that can be very costly to them.

**The CHAIR:** Once we start talking about compulsory insurance, in your answers on notice would you mind picking up the issue of tail claims as well, when somebody exits the industry, what your position is in terms of compulsory insurance at that point?

**The Hon. MATTHEW MASON-COX:** If you could also in that question on notice give us an understanding, not just of the quantum of perhaps the change over the last few years, some examples of that, but also the deductible. We are getting some evidence that deductibles for some insurances are moving very significantly, so in essence it may not be useful insurance for somebody trying to cover their business.

**The CHAIR:** I think it is deductibles and exclusions, both.

**The Hon. MATTHEW MASON-COX:** Deductibles, exclusions and indeed any thoughts you might have from your membership about how we might better facilitate insurance for engineers, and indeed the wider industry, given your on-the-ground experience.

**The CHAIR:** I assume part of the answer to that is the Government stepping in and ensuring standards. If insurers can rely upon a set of high-quality standards mandated by the Government, they are more likely to offer insurance

**Mr RUSSELL:** That is in fact pretty much verbatim an answer I gave to a member just the other day. Our role in this insurance problem is to do what we can to set and maintain standards of engineering. But the message that we are giving to the Government, and I hear in open forums, that everybody is saying the same thing, we need to rebuild confidence in the system so that the insurance market can have confidence that they can accurately price their risk and I am sure the Insurance Council of Australia has got plenty of ideas on exactly what they need to better price their risk.

**The CHAIR:** They talk about transparency and visibility, knowing what is built, knowing who built it, and having that sort of credibility in the system. That was their submission to us.

**Mr RUSSELL:** Okay.

**Mr EWING:** I was going to say there is that sort of provenance in and around the whole reputation, liability and risk part. Building confidence is about bringing comfort and confidence into the market for all who are involved in it, and that would include the insurers. If they have that comfort and confidence, then they will

insure. If they see that there are issues in and around risk, or a lack of transparency, or that provenance along the food chain—for want of a better phrase—then they are less likely to come to market.

**The CHAIR:** It can descend into Donald Rumsfeld discussions with the insurance industry about known unknowns, and unknown unknowns.

**The Hon. COURTNEY HOUSSOS:** We have talked about Queensland and Victoria now and you have referenced the VBA, obviously both of those States have building commissions or building authorities. Does Engineers Australia have a view on the need for a building commission to support the work of the building commissioner?

**Mr RUSSELL:** No, it is not actually something I have given too much thought to, no.

**The Hon. COURTNEY HOUSSOS:** You have not thought about where in government the registration should be done or what is most appropriate?

**Mr RUSSELL:** Not particularly. I mean the Fair Trading agency is the one that controls licensing for most other building trades at least. That may be an appropriate place but I am not too concerned about where it sets. In Queensland they have the Board of Professional Engineers of Queensland which administers the scheme and does investigations. In Victoria it is going to be slightly more complicated because they already have the Victorian Building Authority and they are also broadening it out to other industries beyond building. If that is something that New South Wales can avoid happening in the future, that is an example of why you should not just sit up to be ring-fenced on the building sector but make it about engineering as a whole.

**The Hon. COURTNEY HOUSSOS:** That is a good point. I have just one more question. In your submission on page 12 you talk about the different types of engineers—civil, structural, hydraulic, mechanical, geotechnical, fire safety engineer and a fire protection system engineer.

**Mr RUSSELL:** Yes.

**The Hon. COURTNEY HOUSSOS:** Obviously, as you outlined, with engineers, there are different structures but even below that there are other licensed professionals who you expect to be, for example, maintaining and testing underneath that—for example, a fire protection system. In New South Wales as an example, you are not actually required to be licensed to test or to maintain a fire protection system. How does that expose your members to increased liability when there is not all the way across the construction chain quality assurance?

**Mr EWING:** I suppose the Opal Tower is an example, perhaps not specifically around fire safety. But things change from the original designs and the implications of those changes that are quite often made for good reasons and with good understanding are made to play off in isolation, so the compounding effect of those changes can be quite significant. Allied to other circumstances—perhaps not quite the right specification of concrete or a component being damaged as it is being installed, or some decisions in and around the depth of grouting—a whole range of things can have compounding effects on each other.

One of the conversations we have been having is around ensuring that it is not, you know, around the decisions that have been made; it is the recording of the decisions that have been made and why those decisions were made and making sure that we are able to track the provenance. At that level it is nice to know where your steak came from but we do not know where our apartments came from, so if we are in that situation being able to track back how we got from the original architectural designs and structural designs and all the other engineering components that come into the finished product is the challenge because we cannot see the different parts of that process.

When it comes then to whether it is about making sure that something is watertight or that it is fire safe, we need to know all the decisions that have gone into that, and that is just in the design and construction part of it. As with anything, if we know what is in situ then the maintenance of that asset and the use of that asset going forwards has much more surety. If we do not know those things, we have some real challenges because we do not know what we are dealing with quite often by the time that product, this block of apartments and individual apartments, are handed over. There is a lack of understanding of what is in situ.

**Mr RUSSELL:** Thinking about your fire safety example, the engineer might design an extremely good and effective fire protection system in a high-rise building but the residents or the people who manage the building, as soon as they start chocking open doors and having higher occupancies per apartment or not changing the batteries in the alarm panels, then as good a job as the engineer has done, the system is no longer functioning as intended. We do not have really too much of an opinion on the licensing regulation of other professions but it stands to reason that there should be appropriate licensing of anyone who has a safety-critical function within the broader system.

**The Hon. SCOTT FARLOW:** I just want to follow up on the Opal Tower example. The Opal Tower investigation report recommended the regime of critical stage onsite inspections by an independent registered engineer, stating that it would be preferable to have a registered engineer onsite who certifies that all elements of building are as per the approved design. If that were in place, do you think that that would rectify some of those issues you have just outlined?

**Mr EWING:** It would certainly go a long way to mitigating that. The difficulty is in the situation we have now, just to touch on certifiers, that certifiers are effectively certifying after the fact of something. Quite often they cannot see underneath the skin of what has happened so it is knowing what changes have been made and why, and how they were actually done onsite at that particular point in time, those critical stages. You know, the architect and the engineers at the beginning can design a diamond and the product that comes out at the end can be a lump of coal. They are both still carbon but, you know, can you recognise the original and the finished product because of the number of changes that may have happened for whatever reason. But knowing why those changes were made, the thinking behind them, recording them and actually seeing as they are put into the structure, that they are done with cognisance of the impact of that overall change, I think that is really important. Professor Hoffman nailed that one as far as I am concerned.

**The CHAIR:** So real-time online recording of those decisions and any changes would obviously be part of it.

**Mr RUSSELL:** Yes. That is a big part of the Shergold and Weir report recommendations as well as the Opal Tower report recommendations. The Opal Tower report recommendations are extremely similar to a lot of the ones that are in Shergold-Weir. When you are talking about how is the Government going in implementing reforms I think it is reasonable to take them as a single set.

**The CHAIR:** But one of the issues the architects raised is that it is one thing to say, yes, be compliant with the construction certificates but there is a lack of detail often in that and there is a vast amount of decision-making—intricate engineering and design decision-making—that happens after the construction certificate is issued. Do you have any thoughts about how we can ensure that that is done in a way that maintains, hopefully, consistency with what the development approval [DA] is but also ensures that it is safe and fit for purpose?

**Mr RUSSELL:** The original architectural and engineering design often gets delivered to the person who is going to build the thing. There needs to be sort of referral back to the original designer for things that are going to have a significant effect on the final outcome. The other part of it—and I am pretty sure the architects would have talked about this—is having someone onsite who is relatively independent to check that the reinforcing bar that comes onsite is what was specified in the original drawing, that the cement that comes in in the bags is actually of the quality that was originally designed for the building. They call it a clerk of works. A role similar or like that has a lot of merit, I think, in being able to make sure that what is intended to be built is actually built. The certifiers role, as Mr Ewing has mentioned, is—

**The CHAIR:** Collecting paper at the end?

**Mr RUSSELL:** Right. They see things after the fact and they see a small percentage of it. That is their role. That is a weakness in the system if you are worried about the final product not matching what was intended.

**The CHAIR:** Good design requires someone on the ground also making sure that it is built in accordance with good design.

**Mr RUSSELL:** Yes.

**The CHAIR:** It is not rocket science here, really, is it?

**Mr RUSSELL:** No. That makes sense. The builders will have people—a good builder should have people who are qualified—to make intelligent engineering decisions about how to modify the original design, but it is a matter of making sure that those people are definitely qualified to do so and are qualified enough to be cognisant of when they need to talk to the original designer and what sort of documentation is required so that the final owner of the building, like the strata body, actually knows what was built. They do not just have the original plan and what was missing in the middle.

**The CHAIR:** We have been hearing this concept called value engineering, which for me is a warning light, surely—value engineering? Are these the kind of issues we should be having extra scrutiny on when you have a value engineering solution?

**Mr EWING:** I think it comes back to if somebody has the capability, the competency and the currency to understand the implications of decisions they are making, to actually make well informed judgements on how

something should be done, that goes a long way to mitigating those risks. Then the problem is when we bring people in who do not have the qualifications, they do not have the experience, they are not current. That can bring in a whole raft of potential risks that, if you have a number of people onsite doing the same things in that same manner, you are going to cause yourself some difficulties. If you think around the situation, we are looking at the residential construction industry here. We would not build cars or aircraft the same way. We would not run those the same way. In fact, we would know everything that goes in and out of those and every single change that is made.

**The Hon. TREVOR KHAN:** Indeed, I think 737 MAX has demonstrated, actually, that that does not occur; that changes were made without, actually, oversight.

**Mr EWING:** Yes, and when it goes wrong it goes wrong, but it is interesting when you look at that, the fact that you can recall all these components off a Toyota car or any other make of car because they know what went into them and what the design was and the provenance. And it is the same even build. In the construction industry we do not have that information.

**The Hon. JOHN GRAHAM:** Can I just briefly return to Mr Mason-Cox's line of questioning earlier which was just about what the size of the problem is on the ground. I just want to ask about Queensland. I accept that it is a totally different market, totally different regulation, but how many people are struck off in Queensland, off the register there?

**Mr RUSSELL:** Not many. It is fairly low numbers. We have some people who say that is an indication of it not working, but, conversely, I think it is an indication that people who are only suitable and competent are getting registered in the first place and are maintaining their continuing professional development requirements. And, importantly, it does not take many people to spoil the engineering work.

**The Hon. JOHN GRAHAM:** Yes, to undermine confidence.

**Mr RUSSELL:** To undermine confidence. Also, registered doctors are dealing with a single human body at a time, but then if you have got an engineer who is not up to the task, they are building structures or overseeing structures that can affect multiple people all at once. It does not quite make sense. The scale of the issue is quite large.

**The Hon. JOHN GRAHAM:** Thank you.

**The Hon. TREVOR KHAN:** Are you able to take notice, say, over the last 10 years on an annualised basis how many people have been struck off in Queensland, just so we get the feeling?

**Mr RUSSELL:** Sure. We can write to the Board of Professional Engineers Queensland. Hopefully, they will give us that information.

**The Hon. TREVOR KHAN:** In your hands.

**The CHAIR:** But give us the context too because, as you say, if you have got a system that maintains standards, hopefully you would be striking off a lot less than a system that does not have any standards being maintained.

**Mr RUSSELL:** That's right.

**The Hon. TREVOR KHAN:** And do I take it off. An event like bankruptcy would have somebody getting struck off as well. It is not only misconduct. It is impecuniosity or—

**Mr RUSSELL:** I do not actually know.

**The Hon. TREVOR KHAN:** Right.

**The CHAIR:** That is just lawyers.

**The Hon. TREVOR KHAN:** It is not only lawyers.

**The CHAIR:** It is especially lawyers.

**The Hon. TREVOR KHAN:** Don't be like that.

**The CHAIR:** Mr Russell and Mr Ewing, we have run out of time but we really appreciate you taking the time and the cogency of your written submissions and your answers today in the Committee hearing. Thank you very much.

**Mr RUSSELL:** Thanks very much, Chair. Thanks, everyone else.

**Mr EWING:** Thank you.

**(The witnesses withdrew.)**

**(Short adjournment)**

**ROBERT MARINELLI**, Vice-President, Association of Accredited Certifiers, affirmed and examined

**CRAIG HARDY**, President, Association of Accredited Certifiers, sworn and examined

**TIM TUXFORD**, NSW/ACT Board Director, Australian Institute of Building Surveyors, sworn and examined

**BRETT MACE**, Chief Executive Officer, Australian Institute of Building Surveyors, sworn and examined

**The CHAIR:** Welcome back after that brief morning tea. The Committee is in a much better mood following a bit of coffee and morning tea. I welcome the Australian Institute of Building Surveyors. Starting with you, Mr Mace, will each if you give your name, the position in which you are appearing today and then take either an oath or an affirmation? Thank you all, and I thank you both for your submissions. Do either or both of your organisations wish to make a brief opening statement?

**Mr HARDY:** I would like to if that is okay, Mr Chair.

**The CHAIR:** You start, Mr Hardy.

**Mr HARDY:** For more than 15 years the Association of Accredited Certifiers [AAC] has been arguing for greater accountability in the construction sector. For well over two decades governments of all stripes have failed to do a lot about this, in our view. Back in 2002 the New South Wales Joint Select Committee on the Quality of Buildings chaired by David Campbell investigated the same kinds of issues. I personally made a submission in April of that year that expressed some of my concerns and, amongst other things, drew attention to the quality of these buildings. A fundamental keystone of that submission was that the issues of accountability and transparency were key to the success or failure of this industry.

Despite a string of reports—this one in 2002, then Maltabarow in 2013, Lambert in 2015 and Shergold Weir in 2018, these issues still exist. Therefore, we hold the view that it is hard to come to any other conclusion that all governments, successive governments, and relevant ministers have been asleep at the wheel while this has happened for the last 20 years.

We think the terms of reference for this particular issue are narrowly focused on private certification when it is a wider issue of the building system overall. The key to all of this, as I mentioned just previously, was ensuring that accountability of all practitioners currently involved in this process is fundamental. It is partially the reason why we have this issue now with insurance and professional indemnity insurance generally.

We think that accountability is necessary right across the sector. It is critical that all people who participate in the process of construction are accountable for what they do but in a manner where it is transparent so that we can see what they have done. There are a few things I would like to make clear regarding more recent events—things like the Opal Tower. I quote comments in those investigation reports:

While it was not within the scope of our review to look closely at the certifications that took place on the Opal Tower, we found no evidence that the building certifiers had been deficient in regards to statutory expectations.

Regarding Mascot, it has not been widely reported that it was actually a council, not a private certifier, that was involved in the certification of that building. The third point I would like to make is that, regarding council certifiers and private certifiers, I want to make it clear that the payment structure is the same. Council certifiers, like private certifiers, are paid by the property owners. Historically, the number of complaints made against certifiers is relatively small. The Building Professionals Board report annually states there was 150 complaints received in 2017 and 2018. Given the size of the sector and the number of building projects undertaken, it is relatively low. In terms of the size of the sector that private certifiers are involved in, my rough guesstimate is that it was something like about 48,000 or 49,000 CCs or CDCs. If you need clarification on what they are, please let me know.

**The CHAIR:** Feel free to expand the acronyms for Hansard.

**Mr HARDY:** Sorry about that. A "CC" is a construction certificate that is issued subsequent to the issue of a development consent. A complying development certificate is a "CDC". The best way to describe it is like a DA and a CC rolled into one for more simplified developments. Roughly about 47,000 certificates were issued by the private sector in the year 2014-2015. We do not have more recent data available to us yet. The vast majority of certifiers, both private and council, are hard-working and diligent men and women who are carrying out their responsibilities according to the statutory requirements set by people in this building.

We think the continual attacks on the profession generally, regardless of who our employer is, is unjustified and unfair. The AAC supports the view of the recently appointed commissioner that the industry is too self-facing and needs to rebuild its reputation. Once again, I would like to reinforce the issue that accountability and transparency are key aspects of that report that, we think, are fundamental to the process. We have been advocating that since 2002.

**The CHAIR:** Thanks, Mr Hardy. Mr Mace or Mr Tuxford?

**Mr MACE:** Thank you. On behalf of the board and members of the Australian Institute of Building Surveyors [AIBS], I thank the Committee for the opportunity to make a written submission and to appear before this public hearing to represent the profession of building surveying.

Building surveyors, or certifiers as they are known in New South Wales, play a crucial role in upholding building standards and we see part of that role as making a positive contribution to any exercise that aims to improve the system of building regulation. That, of course, includes this inquiry. The community lacks confidence in our current system of building regulation and that is why we are all here today. For our part, we intend to be part of the solution to the current issues the committee is inquiring into. Why does the system need fixing? Over the years, governments have introduced measures to cut red-tape and entered into free trade agreements with other countries. This has led to a greater variety of building products in the marketplace. As is readily evident in a number of our cities across the country, the landscape of the built environment has changed significantly in recent times. These and other changes have brought all kinds of issues for all building practitioners. The Australian Institute of Building Surveyors [AIBS] has held a position for many years that a complete overhaul of Australia's building regulations is necessary to keep pace with the changes actually occurring within the industry.

In most jurisdictions, the systems of regulation currently in place have been there for several decades. There have been amendments along the way to address points of concern and, in several jurisdictions, the regulatory system in fact resembles a patchwork of amendments rather than a cohesive system of deliberate design. The structures established in this way are often not capable of dealing with a contemporary building and construction industry. They actually lack the essential rigour to properly provide safe, compliant buildings. We note also that the title of this inquiry and the terms of reference relate to "building standards". We expect this does not refer to the technical documents that are produced by standards writing bodies such as Standards Australia and the Australian Building Codes Board, rather that you are referencing the degree of satisfaction with work performed, a matter associated with building quality. We note that by far the majority of building disputes relates to matters of contract between a builder and their client and outweigh disputes that relate to matters of conformity with mandated technical requirements.

The lack of confidence in Australia's building regulations has led to the now well documented crisis in the availability and viability of compulsory professional indemnity Insurance for building surveyors across the country. It is a clear sign that insurers have little confidence in the current regulatory system and the quality of buildings, a fact confirmed recently by insurers in London. Worse still, we are aware that the few insurers still in the Australian market are saying they intend to reduce their exposure around cover for buildings over three storeys. This will have a serious impact especially for apartment owners.

Building surveyor or certifier? Only in New South Wales, the Australian Capital Territory [ACT] and Queensland is the term certifier used for what is actually a qualification in building surveying. This causes great confusion among lay people in the different jurisdictions about what a certifier might do compared to a building surveyor. It also confuses a building surveyor with the completely different role of organisations that certify building products as complying with Australian Standards. For this reason, AIBS has asked the Building Ministers' Forum to agree to adopt the title of statutory building surveyor to alleviate existing confusion about the function of building surveyors in the approval, inspection and occupancy verification process.

The role of a building surveyor is a statutory one defined in legislation. A key role is to ensure that a building complies with the technical requirements set out in the National Construction Code which is overseen by the Australian Building Codes Board. Building surveyors acting in their statutory role are often accused of failing in their duties when all kinds of building defects occur. It is of great concern to us that some governments have allowed such criticisms to circulate, particularly where there has been a misconception of the responsibility of a statutory building surveyor's role in preventing a defect that has given rise to a dispute.

Building surveyors are not on site every day. We cannot be present on site at all times because legislation does not provide for this. The sheer numbers of products, complexity of materials, construction system and services that go into buildings make visual detection of non-conforming products near impossible for almost all of these items. The true responsibility for compliance rests with the person undertaking the work and there needs to be much greater accountability for all in the building supply chain. There are no viable alternatives to private involvement in this process, so it makes sense to have in place strong controls about statutory building surveying roles. The local government sector remains a service provider in New South Wales as with other jurisdictions in Australia. The capacity of the local government sector to deliver certification services is limited.

We know that the issues relating to certification are not just the responsibility of government. Industry must also take responsibility to raise the standards of the profession and contribute to an improved system of building regulation. Our work to develop a professional standards scheme for building surveyors is well advanced

and we expect this scheme will provide increased consumer protection and raise the standards of our profession immeasurably. A professional standards scheme will further establish the competencies and skills required of a building surveyor which, as it is now, vary from State to State and in some jurisdictions are not clearly defined. Thank you again for this opportunity to appear before this Committee. We hope through our submissions and our recommendations, we can make a positive contribution to addressing the issues related to the terms of reference in this inquiry.

**The CHAIR:** Thank you all for that, and thank you for your detailed submissions in advance.

**The Hon. COURTNEY HOUSSOS:** Thank you very much for your time and for your submissions. I just want to take you to the first recommendation of the Shergold Weir Report, which was a system of registration for a number of different professionals across the construction and supply chain. What do you think is the duty of responsibility across the supply chain? Is it fair to characterise that the certifiers are the ones left holding the can?

**Mr HARDY:** I can say yes. I firmly believe that. I have been a strong advocate for, what I mentioned earlier, that if you want to participate in the building game and you bring your skills to the game, you should be accountable for what you do. But it should be in a transparent process, which means that members of the public should be able to get onto a portal or a website and investigate any trader at any time and find out what they are doing, what they have done and what their history is. If you look at a certifier's history, we are on a public website that goes back to 2004. So people can learn the history about us going back 15 years. The transparency is not a concern of ours but we think it should be relative to everybody.

**The CHAIR:** Mr Tuxford or Mr Mace, did you want to address that?

**Mr TUXFORD:** I would agree with what Mr Hardy has said. The other thing is, as far as the other practitioners and professionals being held accountable, they also need to have adequate training. They need to have adequate ongoing, continuous professional development, and they need to have adequate levels of insurance. Anecdotally, we are aware that certifiers in New South Wales are largely joined in proceedings against builders and the like, because the certifier carries insurance, whereas few other professionals in that group are required to have statutory insurance. That is part of the registration process for certifiers. We have advocated for a broadening of those people that require either registration, licensing and accreditation across the industry.

**The CHAIR:** We had Mr Tansey from the New South Wales Government give us evidence that we did not need to worry about these other professionals because there is a list of other professionals in the Building Professionals Act, found in a schedule of that, which includes those giving subdivision certification, private road and drainage, building inspector, swimming pool certification. He pointed out there is a long list of other professionals and paraprofessionals, where people can be certified or be accredited. He said because there is that long list, there is nothing to worry about, it is all covered.

**The Hon. TREVOR KHAN:** I do not know if you can characterise—

**The CHAIR:** What he said was, that that list is there, it is functioning, it is working and that provides for certification and for the maintenance of standards. Other witnesses have said that nobody uses that list, none of these other professionals get accreditation under that list—that it is voluntary and that is a major problem.

**Mr HARDY:** If I can, I can maybe put that into a bit of context. In the construction of an average house there are 162 Australian standards. There is something like 60-plus trades that the department recognises that participate in the understanding of those standards of implementation. It cannot be left to one person to know all 162 standards. That is not possible. These 60 trades need to be—I do not know whether it is formal accreditation but it needs to be under the general term of recognition somehow. They have to be recognised as people that are experts in their field. It may not be a full accreditation like the Building Professionals Board [BPB] scheme but it may be recognition for lots of other things that happen on building sites by way of a simple license.

**The Hon. COURTNEY HOUSSOS:** Do you believe they should all then hold their insurance? If they are accredited, then they should hold their own insurance?

**Mr HARDY:** I do, 100 per cent.

**The Hon. COURTNEY HOUSSOS:** Mr Tuxford, you wanted to say something?

**Mr TUXFORD:** I was just going to go back to the Chair's comments. There is a list of other professionals that are accredited through the Building Professionals Board. They do not for a large part have the same statutory obligations on them. They are not called up in the legislation to the same extent. So the reliance on those other professionals from an accreditation point of view is a lot less than what it is for building surveyors. Your E1 certifiers, which are your swimming pool inspectors, they obviously have a function within a Swimming Pools Act 1992 and they have responsibilities there, which are spelt out in that Act.

**The CHAIR:** Inspection, though, but not construction?

**Mr TUXFORD:** Correct.

**The Hon. JOHN GRAHAM:** Mr Tuxford, the view was put to the Committee that this was really a potential accreditation but in practice it did not really happen in New South Wales. Do you agree with that?

**Mr TUXFORD:** If you go to the list, there are a number of people who are accredited, but I do not think as far as the building certifiers would be concerned that they are able to have certificates coming from those accredited professionals by way of what is known as compliance certificates that would then provide a statutory degree of protection for the building surveyor. They are largely not used.

**The CHAIR:** Can we explore that "largely not used" part of it? Because that is what we have heard, there is the potential for people to register and provide certificates under an accreditation scheme, but nobody registers and they are not being used.

**Mr MARINELLI:** Chair, if I may, the original architects of the legislation actually put the right triggers in place. One of the main issues has been that the framework that was put in place was never activated correctly. So they saw in the nineties the necessity for anyone involved in the design and engineering to also be accredited. What happened was the A-grade, which are the building surveyors, were switched on; however, all of the remaining were not. Unless you mandate this level of licensing registration accreditation, people will not take it up.

**The CHAIR:** Which brings us back to where the Hon. Courtney Houssos started us, that at the end of the day the private certifiers or the principal certifying authority ends up carrying the can because they are the only one with accreditation and professional indemnity insurance, and you are not getting proportionate liability.

**Mr MARINELLI:** That is correct, because what is happening as we are relying now on certificates from the people that are installing and designing, but there is no—

**The Hon. COURTNEY HOUSSOS:** But they are not worth the paper that they are written on.

**Mr MARINELLI:** Correct. We agree with that. We try to create guidelines, we try to use the framework of that legislation which was put in place at that time as a ready reckoner to a degree. However, if you cannot get a person with a license number, accreditation number or the like insurance, then how are you going to hold them accountable? We want people to be able to have a number, be accredited and have insurance, which then will mean something to them. If they do not have that they cannot price work and they cannot do work, whether it is design or whether it is installation and construction.

**The Hon. MARK BUTTIGIEG:** If it was set up to be a holistic approach with across-the-board accreditation can you offer any explanations as to why that was not activated? Was it just an easy fix to target one particular qualification?

**Mr MARINELLI:** In all honesty I can't. The reality is, the paperwork sits before us. In 2000 Campbell did the inquiry. The outcome of that was to basically turn everything on.

**The CHAIR:** That was the recommendation but it was not the outcome.

**Mr MARINELLI:** Correct. No, it was not the outcome.

**The CHAIR:** How did politics fail, do you know, at that point? Do you have any observations?

**Mr MARINELLI:** We are very simple people. We are given a set of rules—

**The CHAIR:** Good answer.

**Mr MARINELLI:** —and we basically go hard against those rules. We are measured by the statutory requirements that are given to us and we try to work within that framework.

**The Hon. TREVOR KHAN:** When the Campbell report was delivered, was there a response from your organisations to the recommendations that were made?

**Mr MARINELLI:** We actually did not exist until 2003. Sorry, in all fairness, Mr Hardy was at the inquiry.

**Mr HARDY:** Yes, I made that submission in April 2002, along the lines of what we have just discussed. Maybe I have been around too long but I was sitting at the same tables back then in 2002 discussing the same issues. The compliance certificate mechanism was a statutory mechanism to provide us with protection for the certificates that we received. But even with that system that will not cover the 60-plus trades, because they are not accredited under that scheme. I always argue that when I go and look at a house the head of a nail does not tell

me much. I do not know how long the nail is, how deep it is, what diameter it is or what it is made of. It does not tell me a great deal and there is probably a million of them in the house. People can change things the second I walk away. Part of that role is a critical mandatory inspection, which we do, but in many respects it is not as comprehensive as the person that does the work. I am not a builder, I am not a project manager and I do not strap a nail bag on when I go to do these inspections, so I cannot tell with 100 per cent confidence that everything—but I can certainly go there and look at it for the glaringly obvious problems, which is the intent of what our statutory role was. It is not too dissimilar to the same role that has been in local government since 1919.

**The Hon. JOHN GRAHAM:** Just on that point, because the most useful thing in your—

**The Hon. TREVOR KHAN:** Sorry, Mr Tuxford or Mr Mace, I am wondering—what I am interested in is, was there pushback within the industry as to the recommendations from Campbell, or did it just sit there?

**The CHAIR:** Fall in some other hole?

**The Hon. TREVOR KHAN:** Yes.

**Mr TUXFORD:** Unfortunately I was not as involved as I am now in our institute at that time. I am confident that we would have put in a submission. I am confident that we would have been disappointed with the outcome, not of the Campbell review but of what was actually put in place, because we would not be sitting here today if the Campbell recommendations had been taken up. We have advocated for a number of the recommendations that are in the Campbell report. There would not have been pushback from our industry.

**The CHAIR:** So it is not resistant from your sector?

**Mr TUXFORD:** No.

**The Hon. ROBERT BORSAK:** Mr Hardy, we took evidence the last time we sat, it was a Monday one or two weeks ago, from the newly appointed Building Commissioner that he could tell what was wrong with the building site and the building when he went there. For example, he gave us his run-down after his visit to Mascot Towers. In evidence he also said that he did not need a building commission behind him, that he could do all this with existing bureaucracy, and that the certification processes that were in place, obviously by definition, were adequate or just needed a little bit of tweaking. Have you got any idea or any comments to make in relation to that?

**Mr HARDY:** I am of the view that the solution to this problem is holistic. Everybody who plays in this game needs to be responsible for what they do. Certifiers—and I agree with what the Mr Mace said earlier, it is a poor choice of language, because we do not certify the whole building. It is unreasonable to expect us to do that, because we can't. I believe that the system as outlined in the Act can work. I think that we need to broaden the issue of accountability in a transparent way, but if we can achieve that the general framework is pretty much there, if we address the issue of accountability.

**The Hon. ROBERT BORSAK:** So the term or the title "certification" is a misnomer, then?

**Mr HARDY:** I think it is a bad word. We have long held the view with our association that certification is probably not the best choice of word to represent what we do. It was not back in local government and it is probably not now. When you meet someone at a function and they say, "What do you do?" You say, "I am a certifier". They say, "What do you certify, toasters? What do you certify?"

**Mr MACE:** At the Senate inquiry into non-conforming building products, when we gave evidence there, there was confusion even by those senators on the panel as to the role of certifiers and the confusion with certification of building products and certification of buildings. So it is a quite confusing term for the layperson.

**The CHAIR:** What is the alternative? Mr Tuxford, you are going to tell us.

**Mr TUXFORD:** The problem is that when certification came in, it took what was then known as building approvals and building permits out of local government. I think the architects—and this is just pure speculation—wanted to stay away from using terms that had previously existed within the Local Government Act and therefore they looked for another alternative. What we are doing is we are giving a permit to build, rather than giving a certification as far as the construction certificate. The terms that were in place up until that point had been in place for quite some time.

**The CHAIR:** It is a permit to build and then a permit to occupy.

**Mr HARDY:** If I might just add, if you look at the entire system of who is accredited to be a certifier, they are not just building surveyors. This is the hard part that you have to deal with. They are engineers, they are surveyors and there is a whole range of other persons that are called certifiers within the framework of the Building Professionals Board [BPB]. I do not know whether collectively that is the right word; maybe "building

professionals" would be better and there may be a number of other options. I think to generally call us certifiers creates a misconception in the community that I certify everything.

**The CHAIR:** But to get a handle on what is a very complex industry with multiple professions, multiple trades, with competing tensions between profit and quality and public interest, the current architecture is not fit for purpose, is it? It is in a variety of different government departments, with a variety of different partial powers. The current architecture is not fit for purpose, is it?

**Mr MARINELLI:** My question is always: Why do we not have a ministry of construction?

**The CHAIR:** Or a building commission.

**The Hon. ROBERT BORSAK:** That is why I asked about the Building Commissioner.

**Mr MARINELLI:** I have met with the Building Commissioner and I might say that his purview and I think his scope are actually very, very broad in terms of what his charter is going to be. I think it is going to be a very difficult charter to address properly, given limitations and given the amount of widgets in construction per se. As you say, it is very complex. People cannot downplay the complexity of construction. There are different factors and I think, if you do have a homogenous and, as Mr Hardy said, a holistic approach then it will take some time. But I think it needs to be brought together a bit.

**The CHAIR:** Brought together in one place under a building commission, which is the recommendation from the Campbell inquiry in 2002, which I thought you said your profession has been supporting for the last 17 years.

**Mr HARDY:** That is right. If I can go back to the question of the Deputy Chair. Maybe I misunderstood where the question was coming from, but we are strong supporters of a building commission and having it all together. There is an existing legislative framework and it probably has the elements in it to make it work, but it needs to be under the control of one body.

**The Hon. ROBERT BORSAK:** It seems to me that the title "building certifier" is a catchall phrase that, if anyone wants to abuse the building industry, a certifier gets the blame.

**Mr MARINELLI:** You are right.

**The Hon. ROBERT BORSAK:** The fact is you do not have the power, you do not have the scope, you do not have the control and nobody really understands that you do not certify the whole thing.

**The Hon. JOHN GRAHAM:** To that question, because I think you set out in your submission what you do and what you do not do and you have reiterated that today, who is doing the checking? Who is in charge? You say it is not the accredited certifier's role to check that the builder developer has complied with every aspect of the project. Who in New South Wales is checking? Is it happening?

**Mr HARDY:** It is pretty clear that there is a failing in those buildings somewhere. Who has that responsibility? It just simply cannot be a building certifier that is there for less than half a per cent of construction time.

**The CHAIR:** We know certifiers are not checking, but Mr Graham's question is: Who is?

**Mr HARDY:** Your question is: Who is? It has to be the builder or the project manager or his appointed person.

**The Hon. JOHN GRAHAM:** My question, though, is that in the system at the moment that checking really is not happening. Is that what you are saying to us?

**The Hon. ROBERT BORSAK:** Independent of the builder.

**Mr MARINELLI:** That is correct. The traditional method was to have on large and more complex buildings a clerk of works, an independent person that effectively inspected and was on-site the whole time of construction.

**The Hon. JOHN GRAHAM:** That was the old system.

**Mr MARINELLI:** That was, let us say, the old system. Like every system, it has pros and cons, but it did have that level of independence, which actually took up the gap where we sit. We sampled the buildings.

**The Hon. TREVOR KHAN:** You said it has pros and cons. I can guess what the pros are, but can you identify the cons of the clerk of works system?

**Mr MARINELLI:** Cost; commercial cost was one of them.

**The CHAIR:** We have had evidence to say that the cost of a clerk of works for a year is less than the cost of one day in court.

**Mr MARINELLI:** I do not dispute that.

**The CHAIR:** If you are looking at the cost-benefit on this—

**The Hon. ROBERT BORSAK:** Only if you go to court.

**The CHAIR:** —the cost of the clerk of works in terms of the economic cost of a unit holder to buy a property is, in the scheme of complex multistorey buildings, minuscule, is it not?

**The Hon. TREVOR KHAN:** I do not want to make a speech; I will leave that to others. It seems to me, if there is an appetite for a clerk of works system then you would have to identify a scale of construction to justify the requirement for a clerk of works. You would not require it on a residential property, for example.

**Mr MARINELLI:** No, of course.

**The Hon. TREVOR KHAN:** If there is that cost, where is the—

**Mr MARINELLI:** Sweet spot.

**The Hon. TREVOR KHAN:** —yes, the sweet spot.

**Mr MARINELLI:** It is a little bit outside of our purview in terms of what we do; we are not close enough to that. But there are other legislatures internationally that do have a similar type of system, where they get an independent review and engineers on the basis of size of the project et cetera.

**The CHAIR:** The United Kingdom [UK], for example.

**Mr MARINELLI:** Possibly the UK, I am not sure. I think I have come across it possibly in Singapore, for instance.

**Mr TUXFORD:** I was going to say that it is an interesting proposition, because it is actually something that we identified in the Senate inquiry and a number of people put that same position forward.

**The Hon. TREVOR KHAN:** I am not putting forward a position, I am just asking the question.

**Mr TUXFORD:** I am just saying that a number of people have put forward the idea of the clerk of works. Again, it is a matter of going back in history. A clerk of works was in place up until the mid-1980s, I think. Then you had certification come in and the clerk of works had already gone. The clerk of works was there to protect the owners and the architects. They were employed by the architects to supervise the work. The other thing you have to look at between that time and now is the completely different building environment that we are dealing with. The clerk of works, at that time, would have only been on a number of high-rise jobs and had a proper place to be. Perhaps you need one more now, because there are a lot more products involved, there is a lot more complexity in the building industry. You drive through this city and you just see cranes everywhere. That is good, but it is very different to how it was when a clerk of works was in place. A clerk of works went by the wayside.

**The Hon. MARK BUTTIGIEG:** Are you actually saying that the demand for that sort of holistic oversight has increased as a result of the modern form and the quantity of building that has gone on in Sydney?

**Mr TUXFORD:** I would think so. It is about quality assurance. That is what the clerk of works was; he was a quality assurance.

**Mr HARDY:** If I could add to that, I would not limit this to complex buildings, because there are many, many buildings at a residential level constructed in this State where you need adequate supervision as well. You do not have one person per job, but you might have one supervisor that looks after 10 jobs, 20 jobs or 30 jobs. The more you spread them, the less quality control you have over the build.

**The CHAIR:** There can be quite complex individual residential properties.

**Mr HARDY:** Of course.

**The CHAIR:** Mr Tuxford, I know that you are on Woollahra council and I can think of some major excavation works and the like there. We had the same said about Manly council and some of the complex issues for individual properties in those areas.

**Mr TUXFORD:** Yes, that is exactly right.

**The Hon. TREVOR KHAN:** Indeed, I went for a ferry ride way up the Parramatta River on the weekend and what struck me was the townhouse developments. Whilst they do not have the complexity of some of the

high-rises, the scale of the development itself is extraordinary. Whilst you may not get the complexity issue, the value that is being stacked up is extraordinary in those projects. If they are all built badly, it is a disaster.

**Mr MARINELLI:** It is quantum of those modern buildings.

**The CHAIR:** There is a number of trigger points, not just above three storeys.

**Mr TUXFORD:** I would say it is something that will need to be looked at in more detail to try to find where is the place to bring them in. It would seem to be that there is not adequate on-site supervision across the board, and I guess that is what a clerk of works would provide to you. I want to go back to make a point—

**The Hon. MATTHEW MASON-COX:** Can you go away and give us your considered view as to where those trigger points are?

**The Hon. TREVOR KHAN:** Not right now!

**The CHAIR:** On notice, I think.

**The Hon. MATTHEW MASON-COX:** You guys are saddled with a lot of responsibility, whether you like it or not.

**Mr TUXFORD:** We can give it some consideration.

**The Hon. MATTHEW MASON-COX:** Obviously the insurance and how that all trickles through is very important, but where do you think the trigger points are? It has been put to us that maybe it should be where home warranty insurance ends. There are some issues there. The complexity of the building, you have mentioned. What other factors might be relevant? I think it would be useful for us to understand your view on this.

**The CHAIR:** I am sorry; that is a request to both organisations. Mr Hardy, would you be happy to consider that, as well?

**Mr HARDY:** More than happy.

**The Hon. JOHN GRAHAM:** Also any views about the potential cost implications. You may or may not be able to go into detail on that, but I think you can draw attention to that.

**Mr MARINELLI:** We can ask about that.

**Mr TUXFORD:** Just on cost, we advocated when they introduced the 2 per cent strata bond. We highlighted in our submission, in relation to that, that you were fixing the wrong end of the process. That money would have been better invested at the front end, or through the process, to give an assurance of what was going to be a quality build rather than having a safeguard at the end, where you are trying to retrospectively make something a quality build.

**The CHAIR:** It is not even an ambulance at the bottom of the cliff; it is a stretcher at the bottom of the cliff, is it not?

**Mr TUXFORD:** Yes.

**The Hon. SCOTT FARLOW:** I have a question in terms of the clerk of works. With a clerk of works system, where would accredited certifiers fit?

**Mr HARDY:** I do not think our role changes. It is a statutory role that is well documented in the legislation. I think that continues. What we are talking about here is an added layer of protection for consumers at site level. I always say that we are there for such a short period of time fulfilling that statutory role. When we walk away people can hide any thing, any time, any place. We need someone who is accountable for that on site.

**The Hon. SCOTT FARLOW:** Mr Tuxford, is that your view, as well?

**Mr TUXFORD:** That is right. As Mr Hardy said, you have to look at the critical stage inspections that are identified currently in the legislation, which probably need to be looked at. We are most probably undertaking an audit role in the building process. It is a very small audit role, and that role would still continue with a clerk of works—it always has—because it provides just another layer. It helps you give assurance that things are at least on track.

**Mr MARINELLI:** On the back of that, the clerk of works is measuring against the contract. So he is measuring the builder against the contract in terms of quality, fit for purpose and all the other stuff. That is where I said that there is a gap between what we do in terms of just sampling and making sure it is going in the right direction and the bits in between, which are taken up by the likes of an independent like a clerk of works. That

was the framework which basically the builders were working with as well. That accountability would dove-tail back into the owner, making sure he was getting a building to that quality, et cetera.

**The CHAIR:** And that is what is missing now?

**Mr MARINELLI:** I think so.

**The Hon. MARK BUTTIGIEG:** To make a point, you are not putting all the emphasis on resurrecting a clerk of works as a solution for all of this; this is just one plank of an overall strategy which requires each contribution, each input to the building, each trade and each professional to have a vested interest and incentive to comply based on the regulatory oversight.

**The Hon. JOHN GRAHAM:** Can I just jump in on the back of that, because that is very much where I want to head. How do those two things fit together, because one is almost top-down supervision; the other one is really everyone building up, through the system, taking responsibility for what they are doing? It is more of a bottom-up system, coming to the certifier? Which is more important? Do you need them both?

**Mr MARINELLI:** You need them both. There is no question that you need them both, because if you have a regulatory framework which is sampling and relying on the people that are installing, a lot of the contracts also require warranties in terms of the install form. The contractor will require the person who installed the electrical system to give a sign-off and a certification. The water-proofer will be required to do the same. The glazier will do the same. All we are saying is that you need to formalise that. You need to make it hard. What it will do is lift quality because the guys that are vested in it will be accredited, will be licensed—a degree—will have insurance and will be competing on a good quality level.

**The Hon. JOHN GRAHAM:** In fact, the evidence we have—

**The CHAIR:** I think we might go to the balance of the panel at this point and then come back to you. Do you want to answer that question?

**Mr TUXFORD:** We would agree with what Mr Marinelli has said. You would still require all the licensing, accreditation and insurance. The clerk of works would not be the panacea; the clerk of works would provide greater assistance in getting a quality outcome, all being well. But you cannot expect that the clerk of works is going to be on every part of a particular job. So the people who have skin in the game have to have some responsibility for it, as well. That is also key.

**The CHAIR:** And when they produce sub-standard work or issue an inappropriate certificate they can be held to account.

**Mr TUXFORD:** They have to be held to account.

**The Hon. ROBERT BORSAK:** Mr Tuxford, we have had evidence under the current regime—the way build and construct is being run, certainly in New South Wales these days—that a construction process could begin before there is even a finalised set of plans for the building. And quite often in certain situations—maybe it happens in every situation; I don't know—the builder will not even finalise the detail; it will be left to the subcontractor. How does that fit with your model of certification?

**Mr TUXFORD:** That is one of the areas that are being looked at, at the moment, through the Government's review of the Shergold Weir report. As it stands at the moment, the quality of document is most probably poor because—

**The Hon. ROBERT BORSAK:** That is exactly where I was getting to, because by the time the building is up, even though you may have a certifier working through the process, or someone looking at quality as you go, what sort of plans and specs are we actually looking at? When we get to the end is there—to use an old-fashioned term—a blueprint for the whole building in its final form?

**The CHAIR:** As built.

**The Hon. ROBERT BORSAK:** As built.

**Mr TUXFORD:** We are talking about complex, larger-scale buildings.

**The Hon. ROBERT BORSAK:** That is all the more reason; if you design a submarine you want to make sure it does not leak.

**Mr TUXFORD:** That is exactly right. There most probably is not, as it stands at the moment, given the way things develop and process. You might start off with an approved set of plans that will have things saying, "To Australian standard, blah." It will not necessarily have the detail of how they are going to do the wet areas. So you cannot give your set of plans or the details to your wet-area installer and say that this is what you expect.

It is being left to him to go and put in the wet areas. That was one of the shortcomings identified by Shergold Weir—the quality of documentation. It would most probably add some time to the process. Obviously the reduction in red tape has always been key for some jurisdictions but—

**The Hon. ROBERT BORSAK:** Especially this jurisdiction.

**Mr TUXFORD:** --if you are getting a better outcome it is most probably what is important.

**The CHAIR:** Some people have suggested that on-line contemporaneous recording of all of this is an essential end goal to the reform, so that as design work is being done that is entered, contemporaneously, on an on-line portal. What do you say to that?

**Mr TUXFORD:** I think we need to use the technology that we have. There should be no reason why a lot of this stuff is not on line so that it is accessible to a variety of agencies. That goes not just to design and construction but to all the other products that are involved in the construction industry. There should be a centralised repository for this type of information.

**The CHAIR:** There is the planning portal—

**The Hon. TREVOR KHAN:** Who supervises that? Whether it is in hard form or on line, who is responsible during the project, do you say, for ensuring that that is done?

**Mr HARDY:** There are obviously two levels of complexity with these jobs. At the residential level, design and construct does not happen. If they build works before they are approved the construction certificate has no effect in the legislation. They just cannot do that. When it comes to more complex jobs things happen very quickly on site and they are adapted quite quickly. Rob does a lot more work in high-rise than what I do but I think you would say that the complexity of the process might make that a little bit impractical to do. What is important is that these contemporaneous notes are available upon request. We have a board now that can come in and take a look at our files anytime any problems come to their attention. They can go into Rob's office and say, "Let me see your contemporaneous notes. Let me see your files." They are all there. However, if you go to a building site where you have got complex things happening at a million miles an hour I do not know how practical it is going to be to get all that stuff back and put it all on the portal. I am a big advocate of the portal. I have been pushing it in many other places. However, I just do not know if it is as practical as that for complex projects.

**The Hon. TREVOR KHAN:** That is my concern. You can say that all these things are a good idea but if it actually does not reflect—

**Mr MARINELLI:** The process.

**The Hon. TREVOR KHAN:** —what, yes, what is achievable then we just create, in a sense—

**Mr MARINELLI:** Another inefficiency.

**The Hon. TREVOR KHAN:** Well, not only an inefficiency: You create a misconception of what has occurred.

**Mr MARINELLI:** Also, the thing is you do want integrity in terms of what gets uploaded. You want correct information getting uploaded. You want due regard given to the documentation that is compiled, that is correct. In the process that we take we do get drawings—they are maybe not incomplete—and that is done for a reason in that we then review, assist, highlight what the non-conformances are and there is a process of toing and froing. That is the real process in terms of larger projects and small projects as well. When you have got that, it is not a case of that immediateness of uploading. There is no question about the importance of uploading, say, the construction certificate for building approval, the complying development certificate once it is issued. Once there is a line in the sand that it has been assessed then it should be uploaded.

**The CHAIR:** But by the time you have got a building built there should be in one place—accessible to future owners or insurers—a comprehensive set of as-built plans—

**Mr MARINELLI:** Correct.

**Mr TUXFORD:** I agree.

**The CHAIR:** —which identifies all of those decisions.

**Mr MARINELLI:** That is correct. It can be done, but you need to pick the right triggers and events that can inform you correctly along the way.

**The CHAIR:** The only suggested architecture that anyone has put forward is the current planning portal, which is being rolled out for DAs across New South Wales. You could attach this to that planning portal.

**Mr MARINELLI:** Which is what we said.

**Mr HARDY:** We have been strong advocates for a long time about a certification portal—not to dissimilar to it—where the relevant people participate go to register their certificates. They are known persons, recognised persons. They submit the certificate, it goes into the portal and that is transparent for everybody to see at the end of the day.

**The Hon. TREVOR KHAN:** That is the certificates.

**Mr HARDY:** Yes.

**The Hon. TREVOR KHAN:** But what else is uploaded?

**Mr HARDY:** Construction certificates, certificates relating to different methods of construction and the occupation certificate.

**The CHAIR:** And once we bring those other professions and trades on board, if that is where we are going, those certificates and design work would also be uploaded?

**Mr HARDY:** In a prescribed form and a prescribed manner.

**Mr TUXFORD:** That is the critical issue: In a prescribed form, in a prescribed manner. Otherwise you will end up with a PDF version of something online that has got 1,500 pages that is going to be of no value to anyone. We know the way that it should look. We know the way that it should work. How you actually construct that will need some more work shopping with relevant parties—people that are smarter on IT than what I would necessarily be. However, you know that at the end of the day what you want is to be able to have something that is online, readily accessible and you can actually use the data.

**The Hon. TREVOR KHAN:** The hard copy documents that would have been floating around the site: What is to happen to those? It is sort of the variation on this. If all these documents end up frittered around between various offices, what happens to them?

**Mr MARINELLI:** Digital media has really changed that a lot. There is a lot of stuff that is now electronic. The guys on site might be printing drawings or parts of the construction but I think it is not really the way a lot of the larger sites are working. The guys do have a lot of information available electronically. I just want to go back a little bit in terms of these triggers. If you look at the construction certificate requirements, the building permit has attached to it all the documentation that we have relied on in order to issue that approval—that means drawings, specifications, the certificates from the designers et cetera. It is the same at the back end. That is prescribed by the legislation. You have a package that basically gives you a very transparent transposition of everything that has occurred. To take what Tim was saying, to dovetail in and put appropriate certificates by appropriate people who are accredited within that will only bolster that system.

**The CHAIR:** Particularly when the construction certificate—we heard from the architects that those drawings are often very partial, sometimes only 10, 20, 30, 40 per cent of the complexity. We need to fill in the rest of it to have an as-built.

**Mr MARINELLI:** They can. That is one of the threshold problems: How much information do you take? As an approval authority we are looking for enough information on the documentation that they can build to it, but attached to that is also the structural design, the electric design, all the other parts that form the building itself. There is a capability—design and construct is very difficult, because it is very fast. The truth be told, my opinion is there are a lot of builders out there under a lot of pressure. Things are moving very, very fast and they are just getting faster and faster. These guys are feeling the pressure of that and that gets pushed down to subcontractors, to delivery, all that sort of stuff.

**The CHAIR:** Under the current system the complexity of documents that follow the construction certificate is not kept in one place. There is no clear statutory requirement to keep it, there is no registration and therefore in some cases there are big black holes. That is a problem.

**Mr MARINELLI:** No, sorry Chair: The repository is council and our office. We have a 10-year requirement to keep all documentation. So we do have the documentation certifiers and building surveyors—

**Mr TUXFORD:** And councils.

**Mr MARINELLI:** —and a copy goes to council. If we are doing work for the ministry, the ministry gets a copy as well. There is a repository and it can be USB or hard copy, et cetera. However, to put it into a portal—readily available, greater level of transparency—we do not think that is an issue. We think that is actually

probably a very good thing. That can keep us informed because we do rely on that documentation of the past to work on buildings on an ongoing basis.

**The Hon. COURTNEY HOUSSOS:** When you say "we keep it", you mean you as the individual certifier?

**Mr MARINELLI:** I as the individual certifier am compelled and required by legislation to maintain those documents for 10 years.

**The Hon. COURTNEY HOUSSOS:** Because we have received evidence in this inquiry that getting access to those documents was incredibly difficult for home owners, for consumers themselves.

**The CHAIR:** We have heard evidence of a 10-year struggle to get as-built plans, for example.

**Mr MARINELLI:** The issue might be whether council has kept the drawings, because everything should be lodged with council. That is usually the archive of last resort. The certifier does not necessarily give out information.

**The Hon. COURTNEY HOUSSOS:** So the obligation is on you to retain the information but not necessarily to provide it to people in the future?

**Mr MARINELLI:** The Building Professionals Board has jurisdiction to tell us to do that. So we can—

**The CHAIR:** Yes, but if you are an individual unit holder—

**The Hon. COURTNEY HOUSSOS:** But from a consumer?

**The CHAIR:** If you are an individual unit holder and you are having a problem with your strata about maybe the waterproofing, there is no obligation on private certifiers to provide them the as-built documentation?

**Mr HARDY:** Not directly. However, we are compelled under the legislation to give it to the council and then information is available at the council.

**Mr TUXFORD:** As the legislation is currently constructed the council is the keeper of the records. Within two days of issuing a construction certificate that is to be lodged with the council and within two days of issuing an occupation certificate—

**Mr HARDY:** That is right. It goes to council.

**Mr TUXFORD:** —that is to be lodged for the council as well. Then the council would have its protocols with how it would release that information.

**The Hon. COURTNEY HOUSSOS:** I opened by saying that you are left holding the can, but in reality it is the consumer who is being left holding the can at the end of this process.

**Mr MARINELLI:** Yes.

**The Hon. COURTNEY HOUSSOS:** I am interested in ways that we can give them more information to become more informed consumers. Do you have any ideas around that?

**Mr HARDY:** I believe the portal is the first step, but with council being the repository of all information there is no better step than if council makes the information available.

**The Hon. COURTNEY HOUSSOS:** Do you think, for example, that consumers should have free access to building codes and building standards?

**Mr MARINELLI:** They do have the building code now.

**Mr HARDY:** It is available now on the web, yes.

**The Hon. COURTNEY HOUSSOS:** Building standards?

**Mr HARDY:** The Australian standards to support it? Not generally. Even we do not; we have to purchase those. You can get the Building Code of Australia [BCA] for free, but we have contracts to download the standards when we need it.

**The CHAIR:** Taking on Australian standards is beyond this inquiry.

**The Hon. TREVOR KHAN:** Is 10 years long enough? I am just thinking of Mascot, for instance. Some of these problems are not going to become obvious within the timeframe. Ten years is still a relatively young building.

**Mr MARINELLI:** I think in hindsight that is up for grabs. Putting the documentation in the public arena will give it longevity.

**The Hon. TREVOR KHAN:** Excepting you have got documents now, even if you go to a portal that is all well and good going forward.

**Mr MARINELLI:** Yes.

**The Hon. TREVOR KHAN:** The question is in terms of that repository of documentation that you have got going now you could be next week throwing into a skip bin—I am not being critical—10-year-old or 11-year-old documents simply because you do not have enough filing space.

**Mr MARINELLI:** But at the end of the day the council—

**Mr TUXFORD:** The council would still have the documentation.

**Mr MARINELLI:** They have to have the same documents.

**The CHAIR:** Mr Hardy, Mr Marinelli, one of the issues raised about private certifiers is even if there is a rogue certifier and they are struck off by the board they can remain in the industry perhaps as the CEO or general manager of a certification company, continue to set the tone for that corporation but employ other private certifiers under them. I can think of a couple of notorious cases where that is happening. Is that a problem?

**Mr HARDY:** It is very hard to comment from the outside looking in because I am involved in management practices with those companies. But if you see a continuation of the same practices I would be concerned by that.

**The CHAIR:** Mr Marinelli?

**Mr MARINELLI:** Totally agree.

**The CHAIR:** If somebody is struck off by the board surely there should be a prohibition from continued engagement in the industry rather than you cannot be a certifier? Surely there should be a prohibition from being associated with a company or a business or undertaking that does private certification work?

**Mr HARDY:** I think it is a difficult call to make because people train and study all those years and they may have been struck off. That can happen for lots of reasons. There are a number of issues that they are accused of doing.

**The CHAIR:** No, not accused, we are talking about found guilty of serious professional misconduct, that is what we are talking about.

**Mr HARDY:** Found guilty of that, but is it fair to take their whole livelihood away as a building surveyor, not a certifier, working somewhere else?

**The CHAIR:** Fairness needs to be in the context of providing public safety and the public interest. We do not regulate for the fairness of somebody's ongoing income but to protect standards.

**Mr HARDY:** If they are involved in accreditation I would agree with you.

**Mr MARINELLI:** I think there is enough structure in the legislation in terms of discipline that if you have a concern about an ongoing issue like that there is enough teeth for the BPB to then investigate the organisation that they are still running. That is the litmus test as to whether they have changed in the way they practice. If they have not then that should be reflected in the way that they are audited and observed over a period of time if that is a concern.

**The Hon. MATTHEW MASON-COX:** In relation to insurance I wanted to particularly understand from the building surveyor's perspective—and gentlemen, you as well—in terms of the regulation change that occurred to exclude cladding from PI insurance to enable registration to alleviate some of the problems in the market, has that been successful? I want feedback on that, whether there is anything else you think is necessary in the short-term and any other suggestions you have in relation to the Government in terms of action it should take to address the current problems?

**Mr MACE:** It comes down to what is successful. Has it allowed people to continue to practice? Yes. However, they continue to practice under very difficult circumstances, greater exposure and the viability of whether they can continue to do that. They are carrying a lot more exposure than what they would have normally done. As to whether that will continue it depends on given that the issue around PI insurance relates to increases in premiums and increases in excesses. Excess is the big thing at the moment because you can have somebody who is registered practising and they have got excesses of \$100,000 or \$200,000. One or two claims, whether they

are responsible or not, and they are out of business. Time will tell as more and more claims come in whether that is able to be sustained, whether you are going to have enough building surveyors staying in business to be able to sustain that level of claims and that level of exposure.

**The CHAIR:** We have run out of time.

**The Hon. MATTHEW MASON-COX:** The fact that we have a claims made policy system and excluding of cladding and moving down the track just a quick comment—and perhaps you could take this on notice—in relation to dealing with the overhang from cladding of buildings currently in the market place and the implications of that in relation to insurance, given we have a claims made policy arrangement and the exclusion of those clad buildings, potential liability that attaches thereto, the impact of that as an overhang on the market?

**The CHAIR:** You can take that on notice within seven days.

**The Hon. COURTNEY HOUSSOS:** We have talked a lot about the gap between the public perception of what a certifier does and what you are actually able to deliver. Can you tell us how much time does a certifier spend on site as part of a construction build?

**Mr HARDY:** For a residential dwelling?

**The Hon. COURTNEY HOUSSOS:** On average?

**Mr HARDY:** Less than 1 per cent, probably closer to half a per cent of construction time.

**The Hon. COURTNEY HOUSSOS:** Half a per cent of construction time.

**Mr TUXFORD:** I would agree with that.

**The CHAIR:** Which emphasises where we started.

**Mr TUXFORD:** Yes.

**The CHAIR:** Getting private certification to work is important but it is hardly going to fix the series of problems and building faults that we see on building sites. On behalf of the Committee I thank you for your evidence and your submissions. There are a number of questions that were taken on notice. The secretariat will help you identify what those questions are and we ask if you could provide those within seven days because we want to issue an interim report.

**Mr MARINELLI:** Chair, members, thank you very much.

**(The witnesses withdrew.)**

**IAN ROBERTSON**, Secretary, Development and Environmental Professionals' Association, affirmed and examined

**The CHAIR:** Do you want to give a brief opening?

**Mr ROBERTSON:** I would like to give a brief opening because there is a familiarity about this process. It was in 2001 where I did precisely this with the Campbell inquiry. The only difference being that at morning tea before we began giving the evidence David Campbell sidled up to me and said, "Have you got anything to say other than, "We told you so?" Of course the answer to that is, "Probably not". But we are doing it again today. We have been steadfastly opposed to the concept of anyone but local government certifying the adequacy of the construction of buildings. The concept of certifying was alien to local government until it was introduced into the private sector and then flushed back into local government. It was a job done by people with a variety of other jobs as well.

The issue for us has always been, since the Government flirted with it in the late 1980s and again when they introduced it with much more vigour as an amendment to the EP&A Act in 1988, was that the model itself is so fundamentally flawed with the inherent conflict of interest that it is impossible to manage it in a way that allows people to have confidence in it. We keep saying that and have been saying it for 30 years on the 1988 initiative and 20 years on the 1998 initiative. I have high expectations that inspired by John Cleese doing something significant about a dramatic change to the development of comedy that you open minded and enthusiastic lot are prepared to do something that will mean I do not have to come back in five or 10 years time and say, "Well, all you really did was to put a bit more lipstick on the pig or a bit more string on the car held together by string".

That is basically our position. We not think there is anything that can be done to legitimise it or make it transparent. On the issue of construction, we think that if you build it, you fix it. I am not an expert in the area; I am not qualified to do building work of any description at all. I have, in a way, perhaps, the luxury of dealing with an examination of principles and issues of governance that allows me to be able to come along and talk about how it would work better. Our view is that it can only really work effectively and better by returning it to local government. We put that in our submission. It has horrified many; horrified the Property Council of Australia, for one. It would require significant lead time to ensure that, with the cooperation of government and funding assistance, councils were able to retrieve something which they did run, without the dramas that we have witnessed over the last 20 years. We believe that is entirely possible and a realistic proposal to the Committee, notwithstanding the fact that pretty much everyone sitting at the table, apart from you two at that end, have got skin in the game on this—the Liberals moved in the eighties and Labor came smashing through with it in the nineties. So it will be, as Sir Humphrey might say, courageous of you to do something that really reverses what has been an historical commitment. We look forward to that happening.

**The CHAIR:** Thank you, Mr Robertson.

**The Hon. MARK BUTTIGIEG:** Mr Marinelli, who was here previously, made a comment that builders are under significant pressure. I think that went to the core of the problem. Correct me if I am wrong, but essentially what has happened here is that there has been a laissez-faire, deregulatory approach, based on trying to stimulate a building boom, which has engendered a cowboy approach to building—in a nutshell. It encourages bad behaviour and bad outcomes because if you try and do the right thing and comply with paperwork that is there but is not enforced, it actually costs you on the job—you lose profit. That is essentially the issue, is it not?

**Mr ROBERTSON:** I think you are absolutely right. It is the issue. It has been a political product, constructed over 20 years of an obsession with deregulation. When you look back to the Labor Government in the form of Craig Knowles, introducing it in the nineties, which is where the real damage was done, it was all about competition policy and cheaper, quicker, less regulation, less red tape—all of that kind of political sloganeering stuff. What it delivers is a flawed system. I think it was telling that in July the Premier announced that the system was not working, that it had been deregulated too much and something needed to be done—and within a week the CEO of the Master Builders Association was calling for more regulation to make sure that her members get the job done properly. It would be like me turning up to a parliamentary committee saying that my members were idiots and we needed money involved to train people up. I mean, it is a concession unusually made. It really goes to the heart of the fundamental problem that there is no confidence; the developers call for things to happen. Developers have been calling for things to happen for the last 20 years. I think it would be good if they could just calm down a bit.

**The Hon. ROBERT BORSACK:** Was the Premier's statement just putting more lipstick on the pig?

**Mr ROBERTSON:** Well, I do not know. She said in *The Sydney Morning Herald* on 10 July that "it has not worked" — that "we allowed the industry to self-regulate and it has not worked". This is a test of well, yes, fair enough, we all get that but what are you going to do about it?

**The CHAIR:** What do you make of the Building Commissioner's evidence that he thought that it requires a very light regulatory hand—that is about culture change and leadership and a light form of regulatory reform?

**Mr ROBERTSON:** I think the Building Commissioner demonstrated amply, why he got the job.

**The CHAIR:** What do you mean by that?

**Mr ROBERTSON:** I think it is a disappointing response. If you look at the Building Commission in Victoria—and we went and talked to the Building Commission in Victoria in 1987 about what it was doing and the Commissioner had a \$5.5 million budget—which was a lot of money in those days—and 55 staff. His view, when we talked to him about what was being proposed in New South Wales, which had virtually no regulatory mechanism attached to it because the Minister thought that this would be a way of stimulating and doing things cheaper and quicker—notwithstanding the evidence at the time that this was not true in other places where it had happened—the Building Commissioner in Victoria said that the New South Wales proposals were "half-baked" and that they would "create headaches". Now with hindsight, that was quite an understatement.

**The Hon. JOHN GRAHAM:** Do you think there were any issues with local councils dealing with this before that were driving this reform? Excepting part of your view about the public discussion, were there any issues with councils previously?

**Mr ROBERTSON:** The problem with regulating this area, particularly in the application area—mostly we are talking about compliance with things already, so we need to separate the two out. The difficulty for councils is that you have an applicant and you have objectors and someone at the end is going to be unhappy. It is easy to put the boot into the council. When you look at how compliance with the building system operated, prior to 1998—notwithstanding the porkies in the Property Council of Australia's submission—between 1989 and 1998, which is the critical period of the start of the ICAC and the amendments to the Environmental Planning and Assessment Act, there was only one building surveyor in a council caught for taking bribes—and caught spectacularly by taking an envelope, by *60 minutes* on television. Only one.

**The Hon. JOHN GRAHAM:** Were you comfortable with the interaction between councils and council officers making decisions in this area?

**Mr ROBERTSON:** Yes we were, yes we are. The difficulty had been that local government is an industry where—it does sound like I am putting lipstick on the pig, in a way—people work thinking that they are working for the public good. I remember when I first started for the union back in 1985 or 1984, going to an institute of building surveyors conference and Nick Greiner was there and he was a young Turk—from your side, if I have the sides right—

**The Hon. TREVOR KHAN:** Their side.

**The CHAIR:** Basically over there.

**The Hon. SCOTT FARLOW:** It is a happy coalition.

**Mr ROBERTSON:** He got up and he said that the three great lies in life—he was the after-dinner speaker—were, "your cheque is in the mail", "of course I will love the morning" and "I'm from the local council and I'm here to help."

**The CHAIR:** He stole that from Reagan.

**Mr ROBERTSON:** Did he? Well, I hope no-one laughed at Reagan as well, but no-one laughed at that. But it is true to say that these are people who think that their job is working for the community to make sure that standards are upheld in the interest of the community.

**The Hon. JOHN GRAHAM:** On the question about how costs have changed and how the ease for consumers have changed, excepting the significant problems that exist at the moment—I accept that view you are putting. Do you have any observations about what has happened on costs and on convenience for consumers under this regime?

**Mr ROBERTSON:** I do not have any data to demonstrate it but we know that at the time—leading up to 1998—that all of the evidence was that it would increase costs. It might be a bit quicker but—

**The Hon. JOHN GRAHAM:** Do you think that has happened? You do not have data to say, but do you think—

**Mr ROBERTSON:** No I do not. I know that when it was introduced in 1998, councils were criticised by those who wanted to set up a level playing field and have competition policy go crazy, councils were criticised by advocates of the free market because their fees were too low. In fact, Sutherland Council famously doubled its fees so that it could not be said that it had an unfair advantage. That is not how capitalism works, is it?

**The CHAIR:** It is how some people in the property industry wanted it to work from 1998 onwards. One of the criticisms about private certifiers, as opposed to councils, is councils have in place a management structure, internal accountabilities, independent auditing and oversight, whereas private certifiers can either be sole traders or set up their own corporate structure. Do you want to talk about those differences between the structural integrity, if you like, between the two models?

**Mr ROBERTSON:** Sure, I would welcome it. Because that was precisely our argument back in the lead up to 1998, that anyone as a private certifier could be operating out of their garage. If you worked as a building surveyor—which is the title of what the job is called, not a certifier—in local government at the time, you would invariably be allocated work that was consistent with your level of skills, qualifications and experience. You would have oversight while you were getting skills in the industry, you would have a team leader, you may in a larger council have a manager. All of these people were watching what you were doing because they were all liable for the way you were doing the job.

Above the manager would be a director, a general manager, and then of course the elected council, all of whom have an interest in ensuring that the council gets the job done properly. When you compare the two models, there really was no comparison at all. That was a fundamental flaw in the argument. It was a bit rich I think in a way in the 2001 inquiry of David Campbell's for people to be complaining about setting up a level playing field. We are going to set up a level playing field so we want to accredit people who already have such a significantly higher level of management, control and oversight that anyone operating as a private certifier, even now, would have.

**The CHAIR:** We have had a couple of notorious cases more recently where a private certifier has been deregistered by the professional board, but then has remained in the industry by either getting a relative or close associate to be the accredited private certifier but they have been the CEO, or owner, or manager of the same corporation and retained that stake in the industry. What do you say to that?

**Mr ROBERTSON:** I think it is bloody appalling, of course. I am amused by some of the responses you were getting in that questioning about what happens if you are doing the wrong thing: Can we strike you off forever? It becomes an issue about income stream, when it is an issue which is much more important than that. It is about consumer protection and the quality of building. I thought that appalling. I did not know that. Of course, there is nothing regulating that and by any measure the way the Building Professionals Board [BPB] has run their penalties regime and their complaints mechanism, talk about a slap on the wrist with a wet lettuce leaf. It has been a disgrace. In fact, there was one private certifier fined \$100,000 and he had an appeal based upon feeding the family. They cut it in half. He does not work as a private certifier any more.

Really, there has to be something seriously done if that kind of system continues, and that is one of the risks of course with what you are all doing, you are looking at more lipstick or more string, and if it continues there has to be a really serious and punishing regime. Anyone who makes a fundamental error, to be polite about it, in local government can end up sacked, can end up performance managed, all of these kind of things. But these things just sort of bob along. If you look at the penalties page, on the BPB it is quite extraordinary how many complaints are made, and there is reprimand, reprimand, reprimand. For a while we used to joke about running a book on who would be the first private certifier in jail. That might be a good idea to do, might it not?

**The Hon. SCOTT FARLOW:** Prior to 1998 who was the auditor or overseer of certifiers or building surveyors?

**Mr ROBERTSON:** The Local Government Act 1919 up until 1993 regulated building. The Environmental Planning and Assessment Act provided for development applications, and they operated pretty much in parallel so that the more simple not too hugely amenity imposing things could be done by a building application. The development application [DA] was where the developer had a bit of a go and a bit of a gamble about floor space ratio or how many floors they could get or whether they could build eight times over the legal limit in Pyrmont, for example. That is how it worked then. It was a system that worked really well for people who wanted a simple addition done to the back of the house or whatever, which now falls into the exempt and complying, could get it done very fast, almost instant turn around. Applicants, developers, particularly bigger jobs, could file a DA to have the argument about floor space ratio and where it sat and how, and all those things,

and at the same time could be working on a building application to ensure that at the end both those things were completed pretty much at once. Now it is a much more complicated system, which is funny seeing it is meant to be easier.

**The Hon. SCOTT FARLOW:** We have heard a little bit about the void between the clerk of works model and then the current model. I am interested in terms of what happened during that period when the clerk of works was offsite and before we had the introduction of private certification, which I imagine sits in that period you are talking about there and that process. Do you think it worked better during that period, even with the clerk of works offsite?

**Mr ROBERTSON:** I can't remember—we have said it in our submission at some stage there, but the end of the Builders Licensing Board was a big problem for the industry and you sound like a bit of a dinosaur going back. But when there was a system where there was a clerk of works on site, there were people working for the Builders Licensing Board who were builders in their own right and capable of inspecting and dealing with issues, and then there were building surveyors from the council. If there were an issue picked up, those people would go on site and they would talk to the clerk of works, who was responsible for quality control on the job. It would all be resolved with potentially the clerk of works, the council person, or if necessary the people from the Builders Licensing Board. It is going back to an old fashioned model, but nevertheless one that worked well and where we did not have any of this sort of disastrous stuff that is coming out in the five famous buildings in Sydney.

**The Hon. SCOTT FARLOW:** On one of those famous buildings, we have got Mascot Towers, which was certified by the local council in Botany. I think we have heard the private certifiers effectively saying they have had an impossible task. I am interested in your perspective, with Mascot Towers in particular, as to whether that was an impossible task for certification or whether there were other issues with the certification process there?

**Mr ROBERTSON:** The private certifiers have leapt upon Mascot Towers as a nya, nya, nya, kind of experience. But remember that it was certified in 2008 and it operated quite happily for a decade until some bloke dug a giant hole next door.

**The Hon. TREVOR KHAN:** Well, I do not know if that has necessarily been—

**Mr ROBERTSON:** You are absolutely right, unlike the Opal building, there has not been a definitive examination so that you can say—This is the reason.

**The CHAIR:** The evidence was pretty clear, that the owners and I think even the building commissioner do not yet know what the cause of the problem with the Mascot Towers is.

**The Hon. TREVOR KHAN:** The evidence also was that the building had been having various problems. I am not understating it but it seems we might have a series of problems, then this cracker of a one.

**The CHAIR:** I think Mr Farlow's question was, in the current system whether it is a council doing the certification or a private certifier doing the certification, are there still problems in it, even if you have council certifiers?

**Mr ROBERTSON:** There are problems in it because there is not the on the site person who is responsible for the quality of the building, who is there every day, who can go if you have got 100 wet areas, for example—everyone is talking about wet areas—instead of just having that quick sampling of whatever percentage is required. There are two considerations. The first is that you have got your clerk of works onsite overseeing it all happening properly. The second is, of course, that when people do the job properly, no-one gets upset about insurance.

**The Hon. TREVOR KHAN:** Well, less upset.

**Mr ROBERTSON:** Less upset.

**The Hon. ROBERT BORSAK:** Do you want to expand on that last comment? I am sure the insurer gets upset about what is going on.

**Mr ROBERTSON:** The insurer is more likely to get upset about insurance when they are insuring something which is fundamentally uninsurable, which is high-risk construction.

**The CHAIR:** It is not as though this is a novel problem. Two years ago the Government came to Parliament and said it needed to reduce the consumer protections under the rump home building insurance scheme because insurance was too expensive. The reason insurance was becoming very expensive was because building standards were so terrible all these defects were being paid. The insurance problem is really a consequence of a fundamental failure of building standards.

**Mr ROBERTSON:** Absolutely right, and people are focusing on resolving the wrong thing, trying to make insurers insure the uninsurable, rather than making sure that something is done about construction into the future that makes claims on insurance less likely.

**The Hon. TREVOR KHAN:** Are there not two parts to it? You actually want the various trades and the various professionals who are involved in, particularly, major buildings to be insured so that there is skin in the game. I think one of the things that the private certifiers observed—and on the face of it I would accept—is that because there is an obligation for them to have professional indemnity insurance, they become a target for everything that goes wrong in the building because they are known to have insurance. If you have all of the professionals involved required to have insurance then, hopefully, there will be a greater degree of targeting of any litigation that then flows to the correct party?

**The CHAIR:** Proportionate liability.

**The Hon. TREVOR KHAN:** Yes. That is right.

**Mr ROBERTSON:** That was the whole idea in 1998—that there would be some proportionate liability arrangement—and that was regarded as some kind of breakthrough at the time.

**The Hon. JOHN GRAHAM:** Why has that not happened?

**Mr ROBERTSON:** I do not know, I am sorry. I do not know why it has not happened yet.

**The Hon. ROBERT BORSAK:** Your comments feed on quite nicely into the discussion we have had so far in this inquiry in relation to \$2 companies. I know of a number of development companies that do not, let us say, cauterise their potential long-term liability and long tail liability or warranty liability by shutting down the company and starting again.

**Mr ROBERTSON:** But they do. They do cauterise.

**The Hon. ROBERT BORSAK:** No, I said I know of companies that do not do that. That is what I said.

**Mr ROBERTSON:** Oh, right.

**The Hon. ROBERT BORSAK:** The process is exactly to do that—to cauterise their liability.

**Mr ROBERTSON:** Right.

**The Hon. ROBERT BORSAK:** Do you have any comments to make in relation to that?

**Mr ROBERTSON:** Just that it is undesirable to not have someone responsible for poorly constructed buildings.

**The Hon. TREVOR KHAN:** Particularly if you are the strata owner.

**Mr ROBERTSON:** Particularly if you are the strata owner, certainly. You are right.

**The CHAIR:** If the building is built by a \$2 company that then goes into liquidation as soon as it is finished and the profits of been distributed, that puts the additional pressure on the private certifier or the council certifier—the certifier who, as the last person standing, has got a bucket of money attached to some indemnity insurance.

**Mr ROBERTSON:** Yes.

**The CHAIR:** There is a wicked problem that always goes back to the absence of accountability—

**Mr ROBERTSON:** Yep.

**The CHAIR:** —and the absence of standards at the outset.

**The Hon. ROBERT BORSAK:** We have had it put to us that, just as in the case of certifiers, this is the case of, say, accountants and others—that the liability insurance for builders should attach to the individual licensed builder, not just the company. What do you say to that?

**Mr ROBERTSON:** I do not know the answer to that question. It is not really my special expertise. But, clearly, what is going on now is not working. The idea that you can set up a \$2 company, make some profit and then be out of there is just appalling. It is hard to imagine anything you do in life where you are more vulnerable financially than in getting caught up in property transactions.

**The CHAIR:** The Hon. Courtney Houssos has been waiting very patiently.

**The Hon. COURTNEY HOUSSOS:** We have kind of moved on—

**Mr ROBERTSON:** Happy to go back.

**The Hon. COURTNEY HOUSSOS:** —but I just wanted to come back to the current regulatory scheme where you talked about the lack of penalties for certifiers, in particular. We had the Department of Fair Trading who came before us on our very first hearing. Among other things they were talking about the 10,000 building inspections that the department had conducted over the last five years and said that in the last 12 months six certifiers' accreditations had been cancelled. They seemed to tell us that everything is okay here and we do not need to worry too much about it. Would you agree?

**Mr ROBERTSON:** That is a pretty fresh regulatory regime, though. There was some doubt about who was actually in charge of the BPB and all of that for some time. We have met with Fair Trading and they are people who are keen to provide some dignity and respect in the system. I would have thought in a perfect world they would be operating under a Building Commissioner.

**The Hon. COURTNEY HOUSSOS:** Thank you.

**Mr ROBERTSON:** Is that where you were going with that?

**The Hon. COURTNEY HOUSSOS:** I have two follow-up questions. That was one of them.

**Mr ROBERTSON:** Right. That is what should be happening.

**The Hon. COURTNEY HOUSSOS:** So a building commission?

**Mr ROBERTSON:** A commission, yes. A building commission.

**The Hon. COURTNEY HOUSSOS:** That is correct, yes.

**Mr ROBERTSON:** A building commission should be big. If it is 55 people as it was in 1997 in Victoria, it is hard to imagine it would be any smaller in New South Wales.

**The Hon. COURTNEY HOUSSOS:** There are 400 in Queensland.

**The Hon. JOHN GRAHAM:** And a similar number in Victoria.

**The Hon. ROBERT BORSAK:** The commissioner says he does not need one.

**Mr ROBERTSON:** Yes, I know. As I have already said, and I do not want to appear rude—

**The Hon. ROBERT BORSAK:** He is going to provide leadership that will sort all this out.

**Mr ROBERTSON:** Well, good luck to him. But it does demonstrate why he is in the job, does it not? I think we need something a bit more broad and courageous about that. But the Government does not want to appoint a Building Commissioner is going to come in and say, "I want \$20 million and 50 staff and I'll let you know how it's looking in two years' time."

**The CHAIR:** Mr Graham?

**The Hon. JOHN GRAHAM:** I think Mrs Houssos wants to finish up on her question.

**The Hon. COURTNEY HOUSSOS:** I was just going to say on a more serious note the Lambert review, which was a very serious analysis of what we needed to do going forward, said fundamentally that Fair Trading was not the right decision to be doing it.

**Mr ROBERTSON:** Right.

**The Hon. COURTNEY HOUSSOS:** They have the wrong ideological approach because, as you say, buying a house or buying an apartment and buying a toaster are fundamentally different. There is a need for a Building Commissioner.

**The Hon. ROBERT BORSAK:** Or buying a house.

**Mr ROBERTSON:** Yes.

**The Hon. TREVOR KHAN:** Is that a question or a statement? I heard his evidence too.

**Mr ROBERTSON:** I think the answer is yes. Yes, I agree with you for that question.

**The Hon. COURTNEY HOUSSOS:** You answered my follow-up before I got to ask the question.

**The CHAIR:** The question might be this: Did you see Mr Lambert's evidence to this Committee? Have you had a chance to review that?

**Mr ROBERTSON:** I have had a quick read of that. We did in fact spend an afternoon with Mr Lambert when he was doing the review. Like the other investigation done by Tim Moore and—what is his name, the Labor bloke? I have forgotten his name.

**The Hon. TREVOR KHAN:** Oh, there are plenty of them.

**The CHAIR:** He was shorter than Tim. I remember that.

**Mr ROBERTSON:** He was much shorter than Tim, in fact, yes. But that investigation by Tim Moore and the other person and Michael Lambert, they were enthusiastic people who wanted to fix things but they have been mistakenly put into the job by a Government who did not want to do anything. Neither of them was very satisfied with their results, particularly from the look of Michael Lambert's evidence.

**The Hon. COURTNEY HOUSSOS:** And certainly his submission.

**The Hon. JOHN GRAHAM:** On the Lambert review, which is where my question was heading towards, you are really saying, "Look, hand it all back to councils."

**Mr ROBERTSON:** Yes.

**The Hon. JOHN GRAHAM:** That is not the conclusion that Lambert comes to, though.

**Mr ROBERTSON:** No.

**The Hon. JOHN GRAHAM:** Do you have a view about why? That does weigh heavily on me that he looks at it and says, "Look, whether a council certifier is doing it or private certifier, it is regulation here that is the issue." Why do you come to a different conclusion?

**Mr ROBERTSON:** The effluxion of time.

**The Hon. JOHN GRAHAM:** But his view is quite recent. He would still hold that view, I think.

**Mr ROBERTSON:** He may well. I do not know.

**The Hon. JOHN GRAHAM:** Yes.

**Mr ROBERTSON:** But it would be good to have an argument with him about it.

**The Hon. JOHN GRAHAM:** Yes.

**The Hon. MARK BUTTIGIEG:** But is it not essentially about breaking the nexus of conflict of interest?

**Mr ROBERTSON:** Yes. That is entirely the issue.

**The Hon. MARK BUTTIGIEG:** That is the essence, whether it is a council doing the employing or anyone else. The key is to break the nexus of conflict of interest.

**Mr ROBERTSON:** Absolutely right: Someone from a council who goes out to certify whether a building is complying with the conditions of consent.

**The Hon. JOHN GRAHAM:** I am clear that that is your view.

**Mr ROBERTSON:** Yes.

**The Hon. JOHN GRAHAM:** My question is different, which is: Do you have any view about why the key review, the Lambert review, does not come to the same conclusion as you?

**Mr ROBERTSON:** No, I do not.

**The Hon. JOHN GRAHAM:** Okay.

**The CHAIR:** Do you want to take that on notice to review that?

**Mr ROBERTSON:** I am happy to have a look at that, yes.

**The Hon. JOHN GRAHAM:** I think we would be open to a view from you on it.

**Mr ROBERTSON:** Someone tells me the list of things that are on notice, do they not?

**The CHAIR:** The secretariat will. One of the potential solutions, if you like, about the problem of the conflict of interest is to say, "Well, that can all be fixed by having a cab rule provision", where, instead of having the builder choose a certifier, some central authority nominates a certifier and you get who you get, and you do not get upset. What do you say to that as a solution?

**Mr ROBERTSON:** It rhymes as well.

**The CHAIR:** It does.

**Mr ROBERTSON:** You can see it on their masthead.

**The Hon. SCOTT FARLOW:** It works great on five year olds, Chair, to which you could probably attest as well.

**Mr ROBERTSON:** But really it is the cab off the rank and all of those things that they looked at, what?—only last year or the year before as well?

**The CHAIR:** Yes.

**Mr ROBERTSON:** But they are steps people want to take to try to make something that is fundamentally conflicted look better.

**The CHAIR:** At the end of the day, we have not had somebody articulate the benefits of private certification. We have had a variety of models suggested about getting rid of some of the problems with it, but are you aware of someone—you are probably the wrong person to ask.

**The Hon. SCOTT FARLOW:** I was going to say, "I think so."

**Mr ROBERTSON:** Bloody oath I am, yes.

**The CHAIR:** The problem seems to be: Where has somebody articulated the benefits of private certification?

**Mr ROBERTSON:** Well, I would have thought these blokes. If these blokes did not do it, no-one is going to do it.

**The CHAIR:** Some of your earlier submissions point out the fact that the review that was done when Victoria moved to private certification saw a doubling of the cost of certification services. That review also found that private certification was 37 times more likely to have defects than council certification.

**Mr ROBERTSON:** Yes.

**The CHAIR:** Have there been any of those kind of reviews of the New South Wales system?

**Mr ROBERTSON:** No.

**The CHAIR:** Who should do that?

**Mr ROBERTSON:** The Government should do it. If the Government is going to do a proper examination of the exercise, they should be keeping some stats of it.

**The Hon. JOHN GRAHAM:** Can I return to the cab rank issue? I accept you have a strong position on this. Why will the cab rank system not work? Why does that not break the link between the person who is choosing and paying?

**Mr ROBERTSON:** It will break it, but it will still mean that they get paid by the developer and that becomes the problem.

**The Hon. JOHN GRAHAM:** But the developer is not choosing who they are, though.

**Mr ROBERTSON:** No.

**The Hon. JOHN GRAHAM:** So there will be greater rotation. A certifier will not be receiving all their income from one source—that would be a concern. But, crucially, it is that link to the next job, isn't it, that is really the potential conflict here, the potential incentive. Why doesn't the cab rank system break that?

**Mr ROBERTSON:** The cab rank system would break the idea that Triguboff or someone has the same person all the time, but it still has the problem that whoever gets the Triguboff job from the cab rank—for want of any other developer; I am not picking anyone in particular—is still going to be paid by that developer.

**The Hon. JOHN GRAHAM:** Understood.

**Mr ROBERTSON:** And there is still that difficulty of wanting things done that the developer does not really want to do.

**The Hon. COURTNEY HOUSSOS:** But there are plenty of industries where that financial relationship exists; say, for example, financial auditing—that continues to exist, but would you not agree that it is about putting the safeguards in place to mean that there are checks and balances on that relationship?

**Mr ROBERTSON:** Well, yes, you could have a go at that if you like. I think we said when there were three options about how you allocate in the transparency of the system, imagine asking us how we could make the system look more dignified and respectable. What a joke! They had three options at the time. We said we would have them all, "Give them all a go if you insist on it." And the test will be whether it is lipstick, or whether it is string or whether it has worked.

**The CHAIR:** But then even if you have a cab rank rule, you still have, on one hand, certifiers employed by council with all of those checks and balances you spoke about earlier in a sophisticated organisation as against somebody who may be operating out of their garage.

**Mr ROBERTSON:** Yes.

**The CHAIR:** And which is going to better protect the public interest? Some people would suggest someone operating out of their garage is not where you would go.

**Mr ROBERTSON:** No. I think you are right. You would want a more sophisticated organisation. I think it is also a bit of a problem, the cab rank. I get the idea of the cab rank but it is like roulette in a way, isn't it? Flick your marble and whatever the certifier is you take.

**The Hon. JOHN GRAHAM:** Well, it introduces a random element into what, I think, there is some public disquiet about, which is the choosing of the next job. What I certify on this job raises the question will it influence my next job? It would break that aspect.

**Mr ROBERTSON:** It would break that but I would be interested to see, though, whether for those five properties in Sydney—and we know one was done by the council but the other four properties, for example—the certifier had a longstanding relationship with the applicant, with the developer. That may be the case or it may not. We do not know that, do we?

**The CHAIR:** We can all agree it fixes one problem, but what you are saying to us is there is a variety of other structural problems that were not be addressed by that. Again, it is going to be piecemeal reform.

**Mr ROBERTSON:** Yes. And we have been doing this for 20 bleeding years.

**The Hon. SCOTT FARLOW:** Mr Robertson, I am just interested in that point again as well because the mounting evidence is that certification is not the total answer when it comes to this. I think we have heard that from yourself when it comes to Mascot Towers and also when it came to our previous witnesses as well. I am interested in going back again to that period between the clerk of works and then the introduction of certification by the council and then the movement to private certification, and just seeing what were some of the different aspects potentially, from your perspective, when councils were certifying it that improved quality that we have not seen since the introduction of private certification. Has there been anything else that has changed or was there a more rigorous assessment process when council was doing it? What was that missing ingredient?

**Mr ROBERTSON:** There would be a less conflicted inspection process. That is all I can really say, and I am happy if it is noted there. Wasn't that one the first question that was on notice for me?

**The Hon. SCOTT FARLOW:** I do not know if it was the first question.

**The CHAIR:** It was about that.

**Mr ROBERTSON:** Yes. You have just asked me again to see if I was hedging. I am not.

**The Hon. SCOTT FARLOW:** No, no. We have seen the council certification changes and I am just interested as to whether there is some sort of missing ingredient, potentially, that we are not seeing in terms of the clerk of works model's return, and we are looking at in terms of the certification that may be conducted by council and the private certifiers. And then there is the conflict-of-interest argument that we have seen Mr Graham canvas as well and whether there is anything else that could potentially be part of that process that has changed over recent years?

**The CHAIR:** I think Mr Robertson has already said he will take that on notice and come back to us within seven days.

**Mr ROBERTSON:** I do not have the answer.

**The Hon. SCOTT FARLOW:** Sure.

**The CHAIR:** Mr Robertson, nothing happened after the delivery of the Lambert report. Do you know why nothing happened?

**Mr ROBERTSON:** I would guess because governments protect the private certification system. I think also you can go back further and say that the Moore and the other guy—

**The CHAIR:** Dyer.

**Mr ROBERTSON:** Dyer, that is it. The Dyer-Moore report—nothing happened with that either.

**The CHAIR:** Well, yes.

**Mr ROBERTSON:** So nothing happened with that, nothing happened with Lambert—

**The CHAIR:** Well, you could say the same about the Campbell report.

**Mr ROBERTSON:** The Campbell report pretty much only resulted in accreditation of council staff under the facade or the guise of constructing a level playing field.

**The CHAIR:** Did your union or the local government sector, to the best of your knowledge, say when the Lambert report was delivered to the Government, "Get on with this. We will back you . Put these reforms in"?

**Mr ROBERTSON:** I think we were getting sick of it by then. It was good that here were some nice, enthusiastic people that want to do something, but there is a limit to how many letters you can write to people who really do not want to receive them. Maybe we should have.

**The Hon. ROBERT BORSAK:** We have found that out, Mr Robertson.

**Mr ROBERTSON:** Have you?

**The CHAIR:** The last matter I hope to address with you is the Government rushed through some legislation, notionally to toughen up the private certification system last year. They said to the Parliament that it was urgent, it needed to be pushed through. Parliament approved it. It still has not commenced. We have not even seen a draft of the regulations in the public domain. First of all, has the Government engaged with your union on that? Secondly, even if that was implemented, do you think it is going to fix things?

**Mr ROBERTSON:** No, they have not engaged with us. They do not often do that. I would welcome it, of course, but they have not. It should. The financial penalty has to be some kind of deterrent, hasn't it, really? But it is one of those things, isn't it—it was an urgent matter and it has just disappeared again, like poor old Michael Lambert and Moore—

**The CHAIR:** Moore and Dyer.

**Mr ROBERTSON:** Moore and Dyer, yes.

**The Hon. ROBERT BORSAK:** It is indeed more dire than it was before.

**The CHAIR:** Thank you. On that note, Mr Robertson, I will say, on behalf of the Committee, thank you for coming back. You would have to be indifferent to suffering to not realise that this is not the first time you have said this and the frustration you feel on behalf of your members about the failure of the Parliament to act. I can only hope that now is the time that we will have some impetus for some genuine structural change. Thank you for your continued engagement.

**Mr ROBERTSON:** Okay. Thank you.

**The CHAIR:** That concludes the morning's hearings. We will have a lunch break and return at 1.00 p.m.

**(The witness withdrew.)**

**(Luncheon adjournment)**

**ELLIOTT HALE**, General Manager Policy, Media and Government Relations, Urban Development Institute of Australia, sworn and examined

**STEVE MANN**, Chief Executive Officer, Urban Development Institute of Australia, sworn and examined

**CRAIG DONOVAN**, Director of Operations, Master Builders Association of New South Wales, sworn and examined

**BRIAN SEIDLER**, Executive Director, Master Builders Association of New South Wales, affirmed and examined

**The CHAIR:** Thank you for your submission and for the papers you have provided. Do either, or both, of your organisations wish to make an opening statement?

**Mr SEIDLER:** I have a short opening statement. Committee, thank you for inviting the Master Builders Association of NSW [MBA] to make comments this afternoon. Just a brief overview of the MBA, if I may. The association is the oldest employer organisation in New South Wales, having been established in October 1873. Today the MBA has nearly 8,000 members in New South Wales. We have dedicated education and training facilities in Norwest Sydney and in northern New South Wales, as well as nine dedicated regional offices throughout the State. The association, with its Newcastle offices, employs nearly 500 apprentices directly throughout group training schemes. The association's policies are determined by a committee structure, policies that are derived from grass roots consultation and endorsed by a central council of management, much like a union of employees. The MBA is registered both in New South Wales and federally, and reports under the regulations of the Fair Work (Registered Organisations) Act.

Ladies and gentleman, the purpose of giving you this brief outline is to take you directly to the policies document that the MBA has provided to the Committee. The document's purpose was to announce the MBA's policies to the major political parties prior to the last State Election and receive their responses. We did receive responses from the major political parties which were then circulated to our membership. There are 15 policies, I will not go to all of them, but the first seven policies directly relate to the issues that your Committee is dealing with and would be covered by your terms of reference. I condition that comment by explaining that the first seven policies have to be viewed holistically, in that; the establishment of a building commission, the extension of licensing to building designers, architects and engineers, the consolidation of building regulation, the reform of home warranty insurance, the introduction of continued professional development for trade contractors, the reform of security of payment legislation, and most importantly, reporting to one dedicated senior minister.

All of these issues have a bearing on how we rectify problems that are emanating out of the industry. The other issue that must be resolved is the one of non-conforming and non-complying building products which are finding their way onto Australian construction projects, due to no fault of contractors. If I can just take you back to the establishment of an independent building commission. This has been one of the top priorities for the industry for over 15 years. In fact if one reviews the association's policies document of 2003, you will see the number one policy that we enunciated at the time was the introduction of an independent building commission.

The Campbell inquiry of 2002 examined the quality of buildings in New South Wales. It recommended the establishment of a building commission. Many subsequent enquiries into the industry have made similar recommendations. For some inexplicable reason political parties of both persuasions have seen fit not to introduce a building commission. As I said earlier, unless all issues impacting the industry are dealt with holistically, and everyone in the building chain of takes ownership and is held responsible for their contribution, the industry will not produce a better built environment, which is what we as consumers demand.

In a nutshell, if we do not have buy-in from developers beyond the commitment, or beyond their special purpose vehicle, and if we do not have designers, engineers and architects designing buildings well, and supplying adequate information and documentation, and if we do not have realistic clients who understand what a building project really costs, but we have contracts that push the risk to those with the least expertise to deal with it, and if we do not have the skilled tradespeople and builders in the industry constructing the built environment so that projects survive at least to their economic life, we will not have an industry that the consumer can rely on. If I may leave it at that. It is a holistic approach that we seek. What has happened to date is, I guess, a step in that we are now talking about regulating the designers up front. We are also talking about the Building Commissioner, as opposed to a commission. At least it is a step.

**The CHAIR:** Thanks, Mr Seidler. Either Mr Mann or Mr Hale?

**Mr MANN:** Thank you, Mr Chair. Thank you to Committee members for the opportunity to present today. I represent the Urban Development Institute of Australia [UDIA] New South Wales. We have been around since the mid-1960s representing the development industry. We have over 550 member companies, ranging from

large-scale developers, through to small-scale developers, architects, lawyers, builders and 26 councils as members of UDIA New South Wales. It is a very broad church of membership. We support all efforts from the Government to remove rogue operators from our industry. We wish to restore confidence in the building industry and move towards better outcomes for the communities that we build for. Our membership is proud of their work, building homes and communities for the State, and we are equally proud of them.

The reputations of the bulk of the industry are easily diminished by poor outcomes which are not addressed in a timely manner. Moreover, community confidence is diminished by just a few substantial issues, Mascot and Opal Towers, for example. Crisis of confidence are easy to bring into our industry and hard to remove. But that is what we must do to regain the trust of the community. The industry would caution against the overuse of regulation in the handing down of recommendations. The industry is regulated, and overregulation could lead to a reduction in affordability. We must keep the right balance. There is scope to improve building practices, such as licensing and education, contractual review, defects management, quality of construction plans and duty of care. The New South Wales Government and the new Building Commissioner are working on these issues. UDIA will support these efforts with the industry.

We would reiterate our eight points in our submission, and they were: Regularly audit the conduct of activity of certifiers; create a chain of responsibility for certifiers from building practitioners, which can be relied upon by certifiers; increase the ability for members of the public to litigate certifiers; we recommend no certifier receives more than 50 per cent of its revenue from one client and must have at least five clients; New South Wales Government report on the quality of defects and the cost of remediation for those defects; consult broadly on potential reforms, including reviewing liabilities and insurances; the interests of individual lot owners and the owners corporation are more closely aligned; and introduce a working group with industry to determine the scope and the role to work with the Building Commissioner. Chair and Committee, I am here today on behalf of the development industry to be collaborative and solution focused. We do not hold all of the solutions but we wish to be a productive part of improving the built environment here in New South Wales. Thank you.

**The CHAIR:** Thank you both for your papers and for your submissions. We might start with the Opposition, the Hon. John Graham.

**The Hon. JOHN GRAHAM:** Thank you for your submissions and for your appearance. I want to start first with that discussion about the chain of responsibility, and probably that recommendation 2 from the Urban Development Institute of Australia [UDIA] report. You really feel this is one of the key things that needs to be in place, despite the fact you are not for over-regulation, you really think this regulation is required?

**Mr MANN:** We had a good meeting the Building Commissioner last week and his focus on the delivery phase—making sure that during concept and approval there is a clear line of sight and responsibilities as the product is then delivered—is where his focus is, and we support that.

**The CHAIR:** Concept and approval—you say through the process of concept and approval. Is that what you are limiting your position to?

**Mr MANN:** Yes, there are two sides, if you like. There is the initial concept approval and then there is the delivery under construction. His focus is the second part of it, delivery under construction; dealing with any blurred lines between those two to make sure there is a chain of responsibility that ensures what is then finally approved beyond concept under the development application [DA] is then delivered, and any changes are final construction drawings.

**The Hon. JOHN GRAHAM:** So you would like to see certificates that can be relied on by certifiers across both those sides of the process?

**Mr MANN:** It needs to be once it is delivered, but we need to ensure that is the approved DA that is being delivered.

**The Hon. JOHN GRAHAM:** You make the point in your submission that this is not part of the current consultation that is going on with the Government; this is a key accountability measure but it is really not there. So there might be a discussion about the industry wide principle of duty of care but this measure needs to be introduced?

**Mr MANN:** I think the Building Commissioner's focus is to ensure that there is absolute clarity through that process. It is a very complicated process to go and deliver a project, and I think what he is doing is looking to give a narrower set of parameters that give greater clarity—less alternatives and less special conditions in those processes, which makes it more transparent for all parties through the process.

**The CHAIR:** Mr Mann and Mr Hale, I have read your submission in some detail. You suggest that there should be greater obligations on the certification process, both at the design and the construction level. But at each

point where there are propositions that might put further burdens upon your members we get at best a qualified, "We are happy to talk about it" or "We are happy to consult". What are the additional burdens that your members are willing to take on to fix the building standard crisis?

**Mr MANN:** Ultimately the developer sits at the top of all of that process, as the original vision for the future of the city—takes that forward in terms of the approval process, works with building practitioners to develop those concepts into an approved DA, then works with contractors to deliver that DA and sells the product. All of that process is the responsibility of the developer.

**The CHAIR:** But that is not working at the moment, because we have a crisis in building standards, and a good many submissions have pointed out that the developers can be \$2 companies or they can contract out with somebody else to actually deliver on the project. What are the additional obligations that you are proposing for your members—not third parties—to fix the building standards crisis?

**Mr MANN:** I would reiterate what I said, which is that we are responsible for all of it. So the way it is delivered and the way those contracts are put in place, it is the responsibility of the developer.

**The CHAIR:** So you would support an extension of compulsory insurance, indemnity insurance and extension of home building warranty insurance, paid for by your members, that can be then claimed upon by home owners?

**Mr MANN:** I think there needs to be the right balance in that piece but there needs to be certainty and the developer is ultimately responsible, together with the practitioners that have helped and the construction, to deliver the product that he said he was selling. Absolutely.

**The CHAIR:** What about registration and certification of developers, so that if a developer has a poor track record they can be struck off? Rather than just the designers, the engineers and the constructors, why aren't we registering and certifying developers so that dodgy developers can be driven out of the industry?

**Mr MANN:** Potentially. I think the focus needs to be on the professional advisers who are giving the advice that says, "Here is the engineering", or "Here is the way to construct that building". That is the piece that is the professional advice. The developer is the party that is bringing together all of those parties to build the team to deliver the product.

**The CHAIR:** But they are not registered, they are not certified and they are not insured. Surely we should be looking to the developers and saying, "They should be registered, they should be certified, they should have minimum standards and they should be insured so we have proportionate liability."

**Mr MANN:** I think the insurance piece at the end of the project is definitely worth the focus.

**The CHAIR:** Mr Mann, I have read your submission in detail. You point over there to certifiers, you point over there to builders, you point over there to other paraprofessionals and say, "All of them should have additional obligations", but there is not one point where the development industry has stepped up and said, "We as developers are willing to take on more burden, we should have more responsibility and there should be more obligations imposed against us". Why have you not stepped up?

**Mr MANN:** Because I think we take all of that responsibility; we are stepping up to that, recognising that there are gaps in the process that can be improved. We would support those.

**The CHAIR:** Tell me one additional burden you are happy to take on as a result for your members—

**The Hon. TREVOR KHAN:** With respect, Chair, two things: One, I think he has attempted to answer it, or he has given an answer; two, I thought you had handed over questions to the Labor members to ask questions, and then you took it back. So I do not really want to be standing up for Labor but at this stage I think they are entitled to have a go.

**The CHAIR:** It is not just Labor you are standing up for but we will go back to the Hon. John Graham—it is also development industry.

**The Hon. JOHN GRAHAM:** I want to ask about some of those divisions in the development industry, because that is part of what is going on here. There are a range of developers doing the right things.

**Mr MANN:** Yes, sure.

**The Hon. JOHN GRAHAM:** All of those apartments built in recent years, though, now have a question mark over them because of some elements of the development industry in Sydney. Firstly, is that your view? Give us some sense of what the concerns are from the good developers trying to do the right thing in this system.

**Mr MANN:** You made the comment, "All of the apartments". I am not sure what that comment is meant to say?

**The Hon. JOHN GRAHAM:** A range of comments have been made, including by people who have been heavily involved in this process, saying that they would have concerns purchasing apartments recently built in Sydney. I found those comments quite concerning to hear. I imagine your members are even more concerned.

**Mr MANN:** Very concerned about the crisis in confidence. That is the marketplace that we are looking to serve. We need to take steps to improve that confidence and fill in some of these gaps that are creating a lack of transparency and bad outcomes. That needs to be put in some context relative to all apartments. There were under 3,000 complaints in the previous year. There were a huge number more apartments built than that.

**The Hon. JOHN GRAHAM:** Is it the problem at the moment that what you are saying is a small number of complaints, possibly a larger number of defects—because not everyone may be complaining—threatens to be overrun by a lack of confidence now more broadly in the industry unless these things are addressed?

**Mr MANN:** Certainly. That is what we must work together to provide, to improve confidence and provide solutions that the community can rely on. That has to be a combination of greater transparency—

**The Hon. TREVOR KHAN:** What does greater transparency mean? You have used it a number of times.

**Mr MANN:** The Building Commissioner is very focused on that.

**The Hon. TREVOR KHAN:** No, I am asking when you keep using the term "greater transparency", what do you mean?

**Mr MANN:** Sure. Construction of a large building is a very complex process and it has become more complex as we have globalised. There needs to be a greater understanding between the practitioners and between the construction teams that gives greater transparency to any party that is looking to decide whether they are going to buy that apartment or whether they are going to buy any apartment, I guess, as part of that process. It has to become a clearer line of sight and simpler.

**The Hon. SCOTT FARLOW:** How is that realised, Mr Mann? We have had some suggestions today about real-time online portals that would show certificates and the like and show progress of products and show who certified it. It is something like that what you are envisaging?

**Mr MANN:** I think that is absolutely an important step forward.

**The Hon. TREVOR KHAN:** We heard in discussions this morning about whether we should go back to a clerk of works to assure some degree of independence of oversight of building sites. Do you see that as part of the solution, or what do you see as the solution?

**Mr MANN:** Perhaps Master Builders Association [MBA] would be better placed to answer that one.

**The CHAIR:** The question is: Is that part of your greater transparency agenda?

**Mr MANN:** I would have to really consider that in greater detail in terms of how that construction is delivered and whether that is going to make a significant point of difference.

**The Hon. TREVOR KHAN:** Do you think that a certifier losing 20 per cent of their work if they refuse to sign off on a project is not a significant deterrent to that certifier?

**Mr MANN:** We have suggested some significant changes that both improve the perception and the reality of how certification works, so that they do not have that level of exposure. I think that has also been the—

**The Hon. TREVOR KHAN:** That is your solution, is it not, that they have to have more than five clients?

**Mr MANN:** Yes, and less than 50 per cent from any one client.

**The Hon. TREVOR KHAN:** I am just a country boy, but if I lost 20 per cent of my work—

**The Hon. SCOTT FARLOW:** Quartermaster trainer.

**The Hon. TREVOR KHAN:** I was—because I pissed off one client, I tell you what, that would have been my margin gone for the year. You tell me how losing 20 per cent—

**Mr MANN:** You could create that story for any of these practitioners, could you not?

**The CHAIR:** Fifty per cent is the threshold they are proposing.

**Mr MANN:** Is that not the same risk for any of these practitioners?

**The Hon. TREVOR KHAN:** I am saying that you do not instruct the business—

**Mr MANN:** They have to stand on their professional warranties and licences, which is what we are suggesting.

**The CHAIR:** I think the question about the Building Commissioner having been raised, it would be an appropriate time now to ask the MBA what their view is.

**The Hon. TREVOR KHAN:** Can we ask the MBA what they think about the concept of clerk of works?

**The CHAIR:** Sorry, I meant to say the clerk of works.

**Mr SEIDLER:** Historically, the issue of having someone engaged directly by the client to oversee quality assurance of the project on large projects has worked. If you talk to people who have been in the industry for decades, they will go back to the concept of a clerk of works, whether engaged by the client direct or the architect. Unfortunately, over the ensuing decades the clerk of works became too expensive, we are told, and so project management companies were put in place to oversee the quality. But what happened is that the quality was not judged on the outcome or the quality of the product. It became more about how much they could take off the subcontract sector and they were rewarded on that. So we lost the issue of quality assurance and it was replaced by getting the job built quicker and perhaps cheaper. The concept of having an overarching person who is independent, we support.

**The CHAIR:** Who is the client, though, in the current contract model? It is quite different to what it was 30 years ago, where somebody would buy a block of land and they would develop the project, build the project and then sell the project. We now see the developer over here, the builder over there. Who is the client and who is the clerk of works be representing?

**Mr SEIDLER:** From our perspective, the best would be the most independent. You have to look at the way contracts are set up these days. If it is a developer-builder then there might be a problem if the relationship between the developer and the builder is close. If it is a hard contract, where an architect has been engaged to design and produce most of the documentation, it is probably better that the client, as opposed to the architect, oversees the quality. But there is a cost, of course. I am pretty sure that if we had a clerk of works or an overseer of quality who was looking after projects that have 500 apartments with 600 bathrooms and all subject to water problems, which is a really big issue for the industry, then we would have to have someone checking not 10 per cent but maybe all of them.

**The CHAIR:** Mr Mann, who is the client?

**Mr MANN:** The other difficult scenario is design and construct, which is actually a very clean model because it says one party is working out the answers to the design and the construction methods. But a clerk of works would make that more difficult.

**The CHAIR:** But who would do the clerk of works be representing? If they are just employed by the person building it then you have the same problem, have you not?

**Mr MANN:** Exactly. The implication is it is independent and that means it is not going to be a design and construct if it is done in that way.

**The CHAIR:** In the design and construct model, who employs the clerk of works and who is the clerk of works responsible to? Who pays them?

**Mr SEIDLER:** I think in that instance, in a design and construct, the client. If it is a design and construct, the constructor takes over the construction and the design of the entire project. But there needs to be some overseeing quality, which would have to be, I would think, directly engaged by the client.

**The CHAIR:** In that case the client is the developer?

**Mr SEIDLER:** Yes, it would be in that instance. But the developer, in a design and construct, does not necessarily have a closer relationship with the builder on large projects.

**The CHAIR:** What about if they act expressly in the interests of the future owners? Surely that is where they should be not in the interests of either the builder, the designer or the developer but their responsibility should be to the future owners?

**Mr SEIDLER:** I accept that and that would mean that you would have to have some legal entity that would be able to engage them, which I guess is the body corporate-type arrangement.

**The CHAIR:** An early registration of the body corporate for that purpose.

**Mr SEIDLER:** Yes.

**The Hon. TREVOR KHAN:** Or some sort of, dare I say, nominal defendant-style corporate entity that covers all buildings in development.

**The CHAIR:** Maybe a building commission.

**The Hon. TREVOR KHAN:** Indeed—I didn't say that.

**The Hon. COURTNEY HOUSSOS:** I have a follow-on question from the Chair's question to Mr Mann. You said that the design and construct and clerk of works would be awkward together. Who under the current design and construct model then protects the future owners' interests if, as we have been told, up to 80 per cent and perhaps even higher of a new building has to be sold before construction begins? Who is acting in the interests of the owners in that situation?

**Mr MANN:** That is a combination of the certifier doing the ultimate line of sight in terms of the professional advisers and the project manager, as Mr Seidler mentioned.

**The Hon. COURTNEY HOUSSOS:** But the certifier, we have heard is that they spend—

**The Hon. TREVOR KHAN:** But the evidence from the certifiers is it is the head of the nail.

**Mr MANN:** We want to make sure that there is that line of sight in terms of professional advisers.

**The CHAIR:** What does "line of sight" mean? You have said "transparency" and "line of sight" a couple of times. What does that actually mean?

**Mr MANN:** That the professional adviser has done the right steps at the right point in time with the right warranties in place.

**The Hon. COURTNEY HOUSSOS:** But none of those people—

**The Hon. TREVOR KHAN:** But that does not seem to be the evidence that we have received as to the role of the certifier. You seem to be giving greater credence to the effectiveness of oversight of the certifier than the certifiers are giving themselves. That is the evidence, is it not? I am not missing anything.

**The Hon. COURTNEY HOUSSOS:** Mr Mann, assuming that you have not—

**The Hon. JOHN GRAHAM:** Can I put the evidence—

**The CHAIR:** Stop.

**The Hon. JOHN GRAHAM:** I want to follow on—

**The Hon. COURTNEY HOUSSOS:** It is my question.

**The Hon. JOHN GRAHAM:** I am happy to defer to you.

**The CHAIR:** We will wipe the slate clean. There has been some discussion, but we will go back to Ms Houssos to posit the question.

**The Hon. COURTNEY HOUSSOS:** No, it is fine, my colleague can do so.

**The Hon. JOHN GRAHAM:** The evidence to us by the certifiers is that it is not the accredited certifier's role to check that the builder or developer has complied with every aspect of the project. Building construction and the quality of the work are the responsibility of the project manager or the builder and are best managed by those people.

**Mr MANN:** It seems like a funny answer. Where I do agree is that it is not solely their responsibility, but you would have to recognise that those parties are playing roles. If you then add another clerk of works to the process then you will not want those other parties.

**The CHAIR:** What is funny about that answer, because that has been the evidence of pretty much everybody except for you—that that is what certifiers are designed to do in the system? What is funny about it?

**Mr MANN:** What was designed to do in the system? I was not sure how that was put.

**The CHAIR:** Do you want to repeat it, the Hon. John Graham?

**The Hon. JOHN GRAHAM:** It is not the accredited certifier's role to check that the builder or developer has complied with every aspect of the project. Building construction and the quality of the work is the responsibility of the project manager or the builder, and it is best managed by these people.

**The CHAIR:** What is funny about that?

**Mr MANN:** The first line—about every aspect of the project—I think you are right. But we are talking about a clerk of works and whether that would provide the solution. You do not need this role if you have a clerk of works.

**The Hon. COURTNEY HOUSSOS:** My question to you was: in the current system, who is acting for the future owners? Given that the owners, in most cases, have already bought into the construction process—

**Mr MANN:** The project manager and the certifier.

**The Hon. COURTNEY HOUSSOS:** But the certifiers told us this morning that they are on site for less than 0.5 per cent of the total construction time and that if they see an entire floor of bathrooms—I think it was Mr Seidler who said this earlier—they might inspect one on each level. And they do not know what happens after they leave. So how can the certifier be bearing such a huge proportion of the responsibility?

**Mr MANN:** I am not sure if I can add anything more to it. I was trying to answer you in relation to your idea of a clerk of works and the fact that other parties play roles in that process.

**The CHAIR:** You see, you say it is going to replicate the work that is done by a project manager and a private certifier. Is that your position?

**Mr MANN:** Yes.

**The CHAIR:** What possible comfort can we have, under the current system, that project managers are in there checking the works, ensuring the quality of the build so that those future homeowners can rely upon the standard of the work? What are the current protections?

**Mr MANN:** The current protections are the contractual protections of the purchaser.

**The CHAIR:** That is not with the project manager. They do not have a contract with the project manager.

**Mr MANN:** No.

**The CHAIR:** So how does that help?

**Mr MANN:** Because they are representing the developer.

**The Hon. SCOTT FARLOW:** Some of the concerns the committee has heard were in terms of the phoenix companies and the two-dollar companies and where liability is limited in terms of any recourse against the developer. In those situations where would you say those protections would lie?

**Mr MANN:** We absolutely support the Government, in whatever we can do, to stop phoenixing. It is a distasteful, unhelpful process and should not be happening. There is a contract in place to deliver and supply—let's say it is a home unit—and the responsibilities are there to deliver that for the consumer. These are some of the areas where we need more robustness to the process.

**The CHAIR:** What do we do? I have read your submission. I cannot see anything in your submission that is addressing the two-dollar phoenixing company. You say it should be addressed. You are in the industry. How?

**Mr MANN:** I think we have put forward a bunch of ideas in terms of how to improve the certification process to give greater confidence there. Phoenixing is a scenario that the Government is focused on, and should not be part of the process. Perhaps there is more work to be done there. We would definitely support that.

**The Hon. MARK BUTTIGIEG:** Isn't part of the problem having recourse to legal action in a genuine and solid way? Let's say the phoenixing is eliminated; isn't part of the problem that the average consumer in New South Wales does not want it to get to that? The last thing you want to do is to have to go through a lengthy process to recover moneys because there is a shonky regulatory process in place which gets you to that point in the first place. Do you accept that that is a major part of the problem?

**Mr MANN:** I agree, and I think that there are steps being made in terms of the 2 per cent bond for strata to deal with the bulk of concerns, which are these small issues. Ninety-five per cent relate to water penetration issues. Not all of those are minor but most of them are minor, and they should be dealt with in that process.

**The Hon. COURTNEY HOUSSOS:** Do you think that 2 per cent is adequate?

**Mr MANN:** I think it is for those minor issues. Whether it is adequate in a broader sense, I think potentially we need to look at other scenarios to ensure there are protections in place.

**The CHAIR:** If it is adequate for minor issues, but only adequate for minor issues, we can comfortably say that it is inadequate for major issues, can't we?

**Mr MANN:** Definitely.

**The CHAIR:** So what do we do about major issues?

**Mr MANN:** Mostly the major issues are being resolved by the parties. That is what we have seen in the Opal Tower scenario.

**The Hon. TREVOR KHAN:** Really? In all seriousness, are we to take Opal Tower as a shining example of how things should be done?

**Mr MANN:** No, we are not.

**The CHAIR:** What about Mascot Towers?

**Mr MANN:** They are a small handful of major problems that we must deal with.

**The Hon. TREVOR KHAN:** You raised Opal Tower. I expressed a degree of incredulity that you would advance that. I am just wondering how you see Opal Tower as a demonstration, essentially, that the system is working on major issues.

**Mr MANN:** I did not suggest it was. In terms of the rectification?

**The Hon. TREVOR KHAN:** Yes.

**Mr MANN:** We do not want to be there in the first place. That is what we are here to try and find solutions for. I think we are all here for that reason. Agreed; if there is a way of ensuring that the process is more robust, there is greater transparency, that we really do have the right parties in place to understand the complexities of that construction, and the right warranties and certifications then hopefully we do not face that scenario. When we do, it is an awful scenario and—

**The CHAIR:** The current system is not working. It is not addressing the major defects. We could go to Opal Tower, or Mascot Towers or the Landmark building. I am giving you a chance now, on behalf of your members, to tell us what we need to do to make sure the major-defects part of the system works.

**Mr MANN:** The major-defects part of the system?

**The CHAIR:** Correct.

**Mr MANN:** That does not make that scenario not happen, does it? We do not want to be there, but it is a mistake.

**The CHAIR:** But when it happens what is the insurance scheme or another scheme in place that you would recommend so that homeowners do not come to inquiry in tears about the tragedy that has befallen their lives? That is what we are asking you, Mr Mann.

**Mr MANN:** I understand that. I think, potentially, because there is both the reality of needing to solve those situations—they are terrible situations; I fully understand how tough it would be—

**The Hon. ROBERT BORSAK:** Mr Mann, I do not think your submission goes to the heart of the problem. Four out of the eight recommendations you put in your report say, "Go after the certifiers."

**Mr MANN:** It is actually saying, "Support the certifiers." The certifiers do not have enough information coming to them to rely on that line of sight that I was talking about. It does not say that, in fact.

**The Hon. ROBERT BORSAK:** We have heard evidence today from their representatives that the only line of sight they have is the head of the nail, and that they cannot possibly do what you are suggesting they should be able to do. They say there is a lot more to it than turning up half a per cent of the time and then, themselves, being audited perhaps once in a blue moon by the NSW Fair Trading, as enough of a control mechanism on the industry to make sure that that happens. What I am suggesting is that you have not addressed that in your report.

**Mr MANN:** I think we have. We have suggested that there is greater robustness to that process in support of the building certifiers. Other associations have come out in that regard as well.

**The Hon. ROBERT BORSAK:** One area where you do open up a bit—and I have to agree with you—is in recommendation 5, that the Government report on the quantity of defects and the cost of remediation of

defects. How would you talk to the situation currently—for example, where the Government is refusing to issue or provide the public, or even this committee, with information on the cladding problems it has found? Would you publish that information?

**Mr MANN:** I think that is a matter for the Government and the committee to determine. We need to get on top of that situation—absolutely.

**The CHAIR:** We might put some issues to the Master Builders when we come back to this.

**The Hon. COURTNEY HOUSSOS:** I have a follow-up question on the Hon. Robert Borsak's question about the cladding. You have said, in recommendation 5, that there should be ongoing reporting. Should that reporting be made public?

**Mr MANN:** I think that is a real question for the committee and the Government to think through. We need to solve the scenario and there needs to be some decisions made.

**The Hon. ROBERT BORSAK:** That was the question I asked, and I did not get an answer.

**The CHAIR:** You talked about line of sight and transparency, but you are not willing to back-in the public release of critical information. How does that sit with line of sight and transparency?

**The Hon. ROBERT BORSAK:** You have actually stepped back from recommendation 5, which says that it should be made public—modified.

**The CHAIR:** A line of sight on everything but cladding?

**The Hon. ROBERT BORSAK:** That is a robust recommendation.

**The CHAIR:** Let Mr Mann answer. Should there be a line of sight and greater transparency on everything but cladding?

**Mr MANN:** I think it is very much a question to the committee to make that recommendation as to whether that is going to be the right outcome for consumers. We need the right outcome for consumers to resolve the problem and create confidence—not some hysterical scenario that will not be helpful for all those parties. You have got to think of all the stakeholders—

**The Hon. COURTNEY HOUSSOS:** With respect, Mr Mann, we have received submissions that up to 95 per cent of buildings in New South Wales—perhaps higher—have defects in them. Most of them major, is the testimony that has been received here.

**Mr MANN:** Most of them major?

**The Hon. COURTNEY HOUSSOS:** The testimony that we have received is there is in the vicinity of between 95 and 97 per cent of buildings in New South Wales that have defects in them.

**The CHAIR:** I do not think the evidence was that most was major. However, that level of defect undoubtedly was the evidence we had.

**Mr MANN:** I am happy to read you the definition of "major defects", which is—

**The Hon. COURTNEY HOUSSOS:** I can Google the definition of that. Can you tell me, Mr Mann, do you support a building commission?

**Mr MANN:** I think the Building Commissioner can do an excellent job of reviewing the issues and providing solutions to restore confidence.

**The Hon. COURTNEY HOUSSOS:** With respect, Mr Mann—

**The CHAIR:** Ms Houssos, we might come back to this in a bit. We will just go to the Master Builders Association [MBA] for a little while.

**The Hon. SCOTT FARLOW:** I think it is fair for the Hon. Courtney Houssos to be able to ask these questions. I think she has been overridden. I do not want to take a point of order on behalf of my Labor colleagues but I think she has been overridden in most of her questions—

**The Hon. TREVOR KHAN:** It's *Kumbaya*.

**The CHAIR:** Feel free to put the question.

**The Hon. COURTNEY HOUSSOS:** I asked Mr Mann: Do you support a building commission—not a Commissioner, a commission.

**Mr MANN:** I answered you. I feel like the Building Commissioner can—

**The Hon. COURTNEY HOUSSOS:** He has got adequate resources to do what he needs to do?

**Mr MANN:** That is what he has told us.

**The Hon. COURTNEY HOUSSOS:** Did you get invited to be on part of the advisory committee in your meeting with him?

**Mr MANN:** I have met with the Commissioner, yes.

**The Hon. COURTNEY HOUSSOS:** Did he invite you to be part of the advisory board? Or your organisation?

**Mr MANN:** Not at this point.

**The CHAIR:** Mr Seidler, you recommend a dedicated senior Cabinet Minister for the building industry. What would be the benefits of that and why do you make that recommendation?

**Mr SEIDLER:** Thank you, Chair. Historically the MBA has been supportive of an independent building commission for 17 years. As I said in my opening we have not had much traction with that, except in the latest engagement of a Building Commissioner, which we hope is the first step to the development of an independent building commission. At the moment there are four of five Ministers that have an impact on our industry, ranging from Planning to Treasury, Fair Trading as well as Education and Skills. There can be a lot of disconnect over those ministries.

We think that a standalone independent commission with an advisory committee of industry could report to a dedicated Cabinet Minister. We are the second-largest industry in New South Wales and across Australia. We engage over 1.1 million people. We train more apprentices and tradespeople than any other industry, even though that is not enough to make the work in the pipeline. We think the industry has earned having a dedicated Minister. Other States similar to our size—particularly Queensland and Victoria—have a form of building commission. Now, we do not say either of those but we say let's pick the best parts out of that, out of the Canadian experience, the English experience. Certainly we are on the record publically across Australia as supporting an independent building commission. However, we do say in what we are seeing now—and we have had meetings with the Building Commissioner—that this may indeed be the first step to getting to a commission.

**The Hon. MATTHEW MASON-COX:** Welcome, Mr Seidler, and welcome to all of you gentlemen. I wanted to ask about home warranty insurance—Brian, you would be very familiar with that. Indeed, I noticed your recommendations in that regard. Can I ask you specifically what sort of level of increase have you seen in home warranty insurance in a typical builder for the last three years?

**Mr SEIDLER:** It is interesting: Over the last few years we have seen massive increases. In the last adjustment I think we have seen a reassessment of risk, where standalone homes and duplexes have been reduced for what we call medium density—the three-level walk-ups where a lot of the problems are occurring, particularly if you take Zetland into consideration—they are increasing. Certainly the premiums are increasing to at least look after the payouts—and we have a lot of payouts.

**The Hon. MATTHEW MASON-COX:** Yes. Can you perhaps take away on notice and perhaps give us a few examples from maybe the last five years of single dwellings or duplexes versus up to three levels, obviously the apartment style? That would be interesting to see. I just draw your attention to the actual deficit in terms of equity for the home building compensation fund, which now stands at \$616 million.

**Mr SEIDLER:** Indeed.

**The Hon. MATTHEW MASON-COX:** That includes a contribution of \$181 million last year that the Government made as an ex gratia payment. What I am saying—

**The Hon. TREVOR KHAN:** That is a heck of a lot of minor defects.

**The Hon. MATTHEW MASON-COX:** What I am saying is that if you take that out of the equation in the last 12 months to 30 June 2018 we have seen an increase of \$136 million in negative equity in that scheme. You are telling me the prices are going up and the cost to the Government is going up very significantly every year. How do we address this?

**Mr SEIDLER:** It is a total revamp of the home warranty system, in that those who are causing us problems should be excised somehow and maybe attract some sort of extra payment, because the good builders are being penalised. In fact, the people without problems pay the higher premium, which of course is covered in the contract between the client and the builder. If I may, while this is a major project in the Eastern Suburbs of

Sydney I am told that the home warranty insurance premium was around \$140,000. Even for a well-heeled person that is a lot of money. The trigger for that payment by the insurance industry is if the builder dies, disappears or goes insolvent, \$140,000 perhaps on a \$20 million build would not get them the front stairs. So there is a problem in how it is applied.

Certainly if you look at the statistics now coming out of what is causing the problems—and you have to have an insolvency, fundamentally, to trigger the insurance—it is waterproofing, particularly in walk-up units. Last year in December the Government identified 800 projects which were waterproofing. So 50 per cent of the problems last year—or 48 per cent—related to waterproofing. That is one area that we do not hear about as a consumer. We only hear about these problems when we have a Zetland or a Mascot. In those instances the builder is gone, the developer is gone and there is no redress.

**The CHAIR:** But even in walk-ups, if the waterproofing issue becomes apparent more than two years after the occupation certificate was issued it is probably not going to meet the definition of major defect.

**Mr SEIDLER:** I think, Chair, that waterproofing is considered a major or a structural issue. Our information suggests that these waterproofing issues surface between two and three years, so they are covered by the six-year structural definition.

**The CHAIR:** We have heard some of the submissions from strata and the like that unless it makes the property unusable or unliveable that it will not meet the definition of a major defect—and much of the water ingress and egress problems from a lack of waterproofing do not meet that test. Mr Mann?

**Mr MANN:** I think you are right, Chair. I think that it would be helpful to have perhaps a third definition, because there are some very minor things that are being resolved in the 2 per cent. Perhaps there is this in-between piece that does not fit "major", which is very major because it says "property uninhabitable"—

**The CHAIR:** "Major" to you and me, but not the legislation.

**Mr MANN:** That's right. So it would be worth adding in another definition there to help the consumer resolve the problem.

**Mr SEIDLER:** Chair, if I may say that the rectification of waterproofing issues, which is fundamentally a major issue because it goes on to toxic mould, can be rectified. We are working with Government in coming up with best practice. We have waterproofing guides that we want to make sure that those who apply waterproofing—builders—have specialist training in waterproofing so that these issues do not come up. It is a bit of a no-brainer. If we start on that we think we would probably see some tangible outcomes within a three year period.

**The Hon. TREVOR KHAN:** Is there some change in design or building technique that is leading to an increase in waterproofing issues?

**Mr SEIDLER:** I think what we are seeing is that anyone can apply waterproofing products. You do not have to be licensed. You can do courses but there is no compulsion to engage a licensed or a trade contractor with a waterproofing background.

**The Hon. TREVOR KHAN:** Is the solution the licensing of that sub-trade?

**Mr SEIDLER:** I think concentration on the waterproofing sector is absolutely paramount but also that we change standards. The Australian standard for waterproofing has not been changed for 10 years and if we build to that standard many projects will build to fail.

**The CHAIR:** You see, Mr Seidler, your first recommendation for policy priorities in 2019 is the building commission, but then one of your further recommendations is to extend licensing to building designers, architects and engineers. Who we do not get in that list are the people actually doing the work, waterprooferers and others. Do you support that as well?

**Mr SEIDLER:** We support that but if we go on to continuing professional development there is a general approach that we require subcontractors to undertake continued professional development. The extension of that would be to licence those areas.

**The CHAIR:** So why stop at waterprooferers? Surely, consistent with a number of submissions we have heard everybody doing the work, building the buildings, should be licensed and regulated to protect the consumer, not just waterprooferers.

**Mr SEIDLER:** We would agree with that?

**The CHAIR:** In terms of the Government's proposed reform, which is focused upon designers, architects and engineers, would you be urging the Government to go that next step and ensure that people actually undertaking the work are also registered?

**Mr SEIDLER:** That would certainly be the master builders position. At the end of the day if you are not a contractor waterproof applicator, a bricklayer or carpenter doing his or her job properly the consumer is going to be dissatisfied. That is clear. I partly mention that the VET system in New South Wales we have to—there are 11 barriers that we have identified as why young people are not getting into our industry. Putting aside the issue of mum and dad not wanting their kids to do a trade but go to university we have a whole list of reasons why we are not getting people into the industry. We have to make the industry more attractive and we have to produce better outcomes for the consumer via a better trades person, a better builder.

**The Hon. MATTHEW MASON-COX:** In relation to your comment about you need to get the rogues out of the industry. The law at the moment is pretty harsh to identified rogues. Do you think we need to go further in relation to phoenixing? Do we need to go further in relation to attaching personal liability to some of these builders who are out there causing a lot of damage in the industry?

**Mr SEIDLER:** There is a lot of discussion around that point. We would not be too hesitant about going after the person who is the director of a company.

**The Hon. TREVOR KHAN:** That was a double negative.

**The CHAIR:** Are you okay with that?

**Mr SEIDLER:** Yes, we are okay with that. The issues that confront the building industry—if I park the development side aside—what we are seeing is creating a bad environment for us in every way. We want to improve it. We, master builders, think we have the practical experience to improve outcomes for the client, for the consumer but we have to start and it starts in schools with producing better people to come into our industry. It is about getting the rogues out of the industry but it is also about having everyone who is involved in the industry having a buy-in and being held accountable.

**The CHAIR:** Mr Mann, builders need a licence, we all agree that engineers should be licensed and regulated, private certifiers should be licensed and regulated; why not developers?

**Mr MANN:** I think just simply because they are relying on all of those parties to deliver the project, as we discussed.

**The CHAIR:** We give developers a big get out of jail free card and hold everybody else to account?

**Mr MANN:** No, it is not get out of jail free card at all. They have to rely on their expertise of bringing together the teams to deliver the project. Yes, they are contractually liable.

**The CHAIR:** You agree it requires expertise to be a good developer?

**Mr MANN:** It requires a very very broad expertise across all of those areas to put the right team together to deliver a vision.

**The Hon. TREVOR KHAN:** Mr Mann, I am interested that you again used the concept of "contractually liable". If you have a company, whether it is a \$2 company or not, if you have a company the director, who is really the brains of the operation, is not contractually liable at all. It will be the company that is contractually liable, will not it? The directors are not contractually liable for what their company does, are they?

**Mr MANN:** They are for the company.

**The Hon. TREVOR KHAN:** You are saying the developer is "contractually liable", but the reality is that the developer is likely not to be the company. It is the directors of the company that are the developers, are they not?

**The CHAIR:** They hold the expertise but they are shielded by the company.

**The Hon. TREVOR KHAN:** The company is just a shell?

**Mr MANN:** Sometimes.

**The Hon. TREVOR KHAN:** All the time. It is the human beings that are the ones that make the decisions. It is not the company, it is the human beings, the company is a legal entity that we create because that is the way western society works. The contractual relationship is between that legal entity, the company and the consumer, is it not? You cannot keep saying the developer is contractually liable, it is the company not the bodies, you would agree with that?

**Mr MANN:** The company is, correct.

**The CHAIR:** So if there is no contractual liability and there is no accountability to the individuals under contract I put it to you the current system offers a get out of jail free card to developers. I give you a second opportunity to explain why that is wrong?

**Mr MANN:** I do not think it is a get out of jail free card. The developer is working with a group of professional advisors to deliver a project and remains responsible for that delivery and he is actioning change to fix problems.

**The CHAIR:** If they operate through a \$2 shell company—

**Mr MANN:** He is leaving money behind to fix problems.

**The CHAIR:** The corporation does. They operate behind a \$2 shell company, the development goes pear-shaped—terrible structural defects, a mess of litigation, home owners in tears—the developer then puts that company into liquidation and the very next day can open up XYZ corporation number two and do it all again, can't they? That is a problem that you are not willing to address, I suggest.

**Mr MANN:** I think we are definitely willing to address it. The question is whether it is an insurance based solution that adds to that final piece that ensures the different issues of defects can be resolved.

**The CHAIR:** I put it to you it is accountability and it is accountability that you are not willing to take on, and you have not been, in answer to the questions I have put to you on this? Do you accept it is accountability and it is accountability you are not willing to take on board for your members?

**Mr MANN:** I think they are definitely prepared to take it on board and have been throughout the process, as we have said.

**The Hon. JOHN GRAHAM:** Mr Mann, I want to ask about flammable cladding. The Victorian Government has acted in this space in order to intervene with the most at-risk buildings. The New South Wales Government has not at this point. Do you support Victorian style action in New South Wales in order to start addressing this issue?

**Mr MANN:** I think we have to deliver a national solution to this problem. I think that the national solution is being looked at with heads of each Government and we should work on that together.

**The Hon. JOHN GRAHAM:** You would oppose the New South Wales Government taking steps similar to Victoria?

**Mr MANN:** It must be a national solution.

**The Hon. JOHN GRAHAM:** You would prefer to see a national solution than see New South Wales step into this space in the way Victoria has done?

**Mr MANN:** I think it is important to get a solution across the country that is consistent and that works for all the stakeholders.

**The CHAIR:** There were a couple of questions taken on notice and because we want to deliver an interim report fairly quickly there is a seven day turnaround on that. The secretariat will contact you about the details. Thanks to all four of you for your evidence this afternoon.

**(The witnesses withdrew.)**

**BRONWYN WEIR**, Co-author *Building Confidence: Improving the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry Across Australia* report, affirmed

**The CHAIR:** Thank you. The oft-repeated Weir-Shergold report.

**Ms WEIR:** Shergold-Weir.

**The CHAIR:** I was doing you credit there, Ms Weir.

**Ms WEIR:** I have heard it called the Weir-Gold report, as well.

**The Hon. COURTNEY HOUSSOS:** That was the Building Commissioner. We will hold him to account for that.

**The Hon. MATTHEW MASON-COX:** As long as it is not called the Weir-wolf report.

**The CHAIR:** Yes, the Weir-Gold report into Transylvanian buildings. Ms Weir would you like to give a brief opening statement?

**Ms WEIR:** I would because I would like to give you a little more context around the report that is, perhaps, not gleaned directly from the report in terms of the commissioning of Professor Shergold and I to do this assessment. As you are aware, the building Ministers commissioned this report. There are 11 building Ministers—two States have two Ministers—who make up the forum. The forum was established back in the 1990s through an intergovernmental agreement, which has been updated various times since the creation of the Building Ministers' Forum. Under that agreement the Australian Building Codes Board [ABCB] was established and that is the extent to which it exists under that agreement—it is not a statutory body.

The ABCB administers and develops the National Construction Code and it is representative of each State and Territory, the Federal Government, a local government representative and five industry representatives. The board develops the code; the code is not a piece of legislation in its own right. It is then adopted by each State and Territory in their various State jurisdictional capacities. The Building Ministers' Forum, in commissioning this report, was doing so in the context that they are collectively responsible for the National Construction Code and, consequently, the terms of reference were squarely focused on, "How do we make sure that the code is correctly implemented?" "How do we ensure improved compliance with the code?"

In some ways, if we take the analogy of the top and bottom of the cliff, we were being asked to make recommendations about the top of the cliff—how do we make buildings better? Of course, since our report, there has been—as predicted in the report and certainly no surprise to Professor Shergold and I—some pretty catastrophic events that have become quite prominent in the media in terms of failures of buildings. The report was commissioned off the back of the Grenfell inquiry, so there was no doubt that there were potential issues brewing in the sector when the report was commissioned.

With these more public issues and the very disturbing issues for those owners of Mascot and Opal, for example, and buildings with cladding issues, the questions turn clearly to the focus of, "What we do at the bottom of the cliff?" We now have an awful lot of building stock which is defective, unsafe and how do we protect those consumers and are our consumer protection regimes adequate? I accept your terms of reference cover both of those issues in some respect, I just did want to point out that our report was focused on the top of the cliff and that is why we do not address the consumer protection regimes or make recommendations about that. With that further context, I am happy to answer questions.

**The CHAIR:** Thank you, Ms Weir and thank you for your brief submission.

**The Hon. COURTNEY HOUSSOS:** Can I just begin by saying thank you for your submission and for your frankness and your knowledge and sharing that with the Committee. It is very helpful for us in our deliberations. How urgent or how would you characterise the issues that are being faced by the New South Wales building industry?

**Ms WEIR:** They are urgent. I would not say that they are any more urgent than when we delivered the report. We did recommend that the States and Territories implement our recommendations over a three-year period and we thought even that was ambitious at the time, given the extent of the recommendations. Whilst we have had these more sensational events come to light and that does play some great scrutiny in the industry and it does, in fact—we called it the building confidence report because we felt that there was already a lack of confidence in terms of what we had assessed and the findings that we made but, of course, that has all been escalated. So there is a sense of urgency, partly because of those implications for the economic impacts of all of this, not just on the individual owners in terms of rectification costs and so forth, but more broadly on the property sector and the value of property, as well as the industry itself—the employment in the industry. Governments are

always very keen to rely on the economic benefits of the building and construction industry and all of that is being affected. We really are in quite a crisis.

**The Hon. COURTNEY HOUSSOS:** Thank you for that. The Building Commissioner appeared before us and it was day three for him and he informed us that you would be undertaking some work for the New South Wales Government to assist him in his role. Could you outline for us what the scope of that particular work is?

**The CHAIR:** And the capacity.

**Ms WEIR:** That appointment was formalised yesterday and I have had one meeting with the commissioner, this morning. I do not yet fully understand the scope; it is as you describe. I understand that they would like my input into the reforms that they are developing and that is as much as I know.

**The Hon. COURTNEY HOUSSOS:** Do you have a set period? If you could just explain whether there are particular set hours, is there a set end date? What are the parameters of the contract?

**Ms WEIR:** At the moment the arrangement is until the end of October and the discussion is around about 10 days of my time but I believe that that is flexible and is really just a starting point to be able to craft a formal agreement.

**The Hon. COURTNEY HOUSSOS:** Let me say, I am deeply respectful of your knowledge and the ability to bring that in. The Committee has shown some concerns with the actual capacities of the Building Commissioner to undertake the nature of the role—

**The Hon. TREVOR KHAN:** Point of order, Chair.

**The CHAIR:** Members of the Committee.

**The Hon. TREVOR KHAN:** Well, a member of the Committee might have an opinion but I do not think that she can speak for all.

**The CHAIR:** We could try a show of hands, if you want to?

**The Hon. COURTNEY HOUSSOS:** I will correct that: members of the Committee. So we are interested to see how you will assist him in that. What support will be provided to you in undertaking that work? Will you be liaising directly with the Building Commissioner? Do you have some people who will be assisting you in your role?

**Ms WEIR:** No, I am a sole practitioner. I run a consultancy firm and it is just me.

**The Hon. COURTNEY HOUSSOS:** In terms of preparing the Shergold-Weir report itself, how much support was provided to you and to Dr Shergold?

**Ms WEIR:** The Commonwealth Department of Industry was responsible for our engagement and they appointed a secretariat for us. That consisted of around 2½ full-time equivalent positions, which were available to Professor Shergold and I, as well as some other minor administrative support. Essentially, we had around 2½ people who did research, travelled with us and helped us to put the report together.

**The Hon. COURTNEY HOUSSOS:** Thank you. Your submission to us outlined based on publicly available information what the status was of each of our recommendations and how they had been implemented in New South Wales. The building commissioner's testimony to us said that it was not going to require a heavy hand of government, it was going to be not a bureaucratic solution. Your report recommends a range of solutions that require both legislative and also regulatory changes. Will you be assisting the building commissioner in developing those legislative and regulatory changes?

**Ms WEIR:** I believe I will.

**The Hon. COURTNEY HOUSSOS:** Can I ask you about the new proposed legislation? Have you seen the proposed legislation?

**Ms WEIR:** No.

**The Hon. JOHN GRAHAM:** Do you have a timeline for the proposed legislation that you are aware of?

**Ms WEIR:** No, not that I am aware of.

**The Hon. COURTNEY HOUSSOS:** Are you confident that all of your report's recommendations will be implemented in New South Wales within three years?

**Ms WEIR:** Am I confident?

**The Hon. TREVOR KHAN:** That is asking her to look into a crystal ball, I would have thought.

**The Hon. COURTNEY HOUSSOS:** Do you think the New South Wales Government is on track?

**Ms WEIR:** They are moving in the right direction.

**The CHAIR:** Sounds like Morris Iemma.

**The Hon. TREVOR KHAN:** I will not say that went well.

**The Hon. COURTNEY HOUSSOS:** The building commissioner came to this inquiry and talked about a 180-day work plan. Has he shared that work plan with you?

**Ms WEIR:** He discussed with me some of his ideas this morning. I would not say I have had a comprehensive briefing in the time that I have had, so I have some sense of it just from my meeting this morning.

**The Hon. COURTNEY HOUSSOS:** I am happy for you to provide this on notice. Do you have any updates to what you provided to the Committee about the status of your recommendations?

**Ms WEIR:** No.

**The Hon. JOHN GRAHAM:** You have talked about the timing, and I think that was a useful way to put it, about the three years. Some of your recommendations were more time sensitive than others though. Some of them really needed to be driven more urgently. Have you got a view about those for the Committee?

**Ms WEIR:** I am not sure where you get that impression from. We did not identify particular recommendations that should be preferenced, in fact we were asked to do that and were reluctant to, because partly we saw them as a package of recommendations. We did not want to, I guess, encourage States and Territories to cherry-pick priorities or feel that they had done enough if they chased certain ones.

**The Hon. JOHN GRAHAM:** Your biggest concern is that they are implemented as a whole?

**Ms WEIR:** Yes.

**The Hon. JOHN GRAHAM:** Not the timing?

**Ms WEIR:** And in a timely manner, yes. We made two specific recommendations relating to implementation. One was that they be implemented within three years. The second was that there be a transparency around what governments were doing in the implementation through recommendation 24, and included in the commentary around that recommendation we suggested an implementation taskforce be set up at the Commonwealth level or certainly as an overarching body that could provide a level of accountability and transparency over what the States and Territories were doing in response.

**The Hon. JOHN GRAHAM:** You have been quite forthright in your comments about the scale of this problem. I do not know if you have got any observations you want to make in front of the Committee today, but this is a widespread problem.

**Ms WEIR:** It certainly is, and our report really speaks for itself on that. We did call that out very clearly in the report. I guess with the delivery of, for example, the research done by Deakin University, really creates more information that would, I guess, reflect the findings that we made in the report, and of course the events that have happened again confirm the observations that we made that there were significant issues and a real lack of confidence.

**The Hon. JOHN GRAHAM:** The thing that has changed though since your report—and you have referred to it already—is that lack of confidence now in the sector, people unsure what to buy, unsure how widespread this problem might be. How widespread is that lack of confidence and what might that do to the sector? That may well have bigger implications again even than the defects problem itself.

**Ms WEIR:** I agree with you, but I guess I can only comment on what I have read in the papers as well as what you have read. I certainly do not have any particular research that I have done to say how is this manifesting itself. We have talked about property values changing as well as impacts on the activity within the sector, lower rates of starts on construction work and so forth. I think some of that has been coming for a while and probably the interception between the issues with building defects and the fallout from the banking royal commission, for example, and the tightening of finance. There are a number of factors at play, of course, in all of this.

**The Hon. JOHN GRAHAM:** You said it is no surprise to you as a result of your work, but it has been of some surprise I think to the public just how widespread this issue is. What you describe in that complex set of things interacting could now be a major economic problem in New South Wales.

**Ms WEIR:** I agree with you.

**The Hon. COURTNEY HOUSSOS:** Obviously your report did not explicitly deal with cladding but will your work for the New South Wales Government deal with that?

**Ms WEIR:** I am not sure. I should say that I have been an advisor to the Victorian cladding taskforce since its inception, so that is obviously in a separate capacity to the building confidence report. So, I have some experience of what has been happening in Victoria.

**The Hon. MARK BUTTIGIEG:** To follow up on the Hon. John Graham's question about it was no surprise to you that these emblematic issues came up, and your report made it clear that there was a systemic issue out there, did it surprise you on the lack of response and inadequacy of the Government response to that report? Presumably the reason you do these reports is for government to get a picture on whether or not it needs to take pre-emptive action to stop these things happening in the first place. Are you surprised at the inadequacy of the response?

**Ms WEIR:** Okay. So, perhaps if I can answer that by saying that the report was provided in February of last year. In April the Ministers released that report. Between April and February—February was post Opal and the Neo fire—I guess my impression was that I felt confident our report would influence governments from the feedback that I was getting. But I was, I guess, disappointed to some extent that, for example, the recommendation 24 that we made about the States and Territories reporting on implementation plans and setting up implementation taskforces to drive implementation had not occurred. Was I surprised by that? Not necessarily. Lots of reports that are commissioned by governments gather dust. Of course I believe in the work that Professor Shergold and I have done and I believe—and so does industry as it turns out—that these recommendations are the right way forward for governments. So, I do not know if that answers your question.

**The Hon. MARK BUTTIGIEG:** Just a quick follow up; would it be fair to say that if it was not for those emblematic instances subsequently we would be unlikely to have the level of attention and follow up that we are getting now?

**Ms WEIR:** Yes.

**The CHAIR:** Ms Weir, when you started the task of writing the report, did you look at the Lambert report?

**Ms WEIR:** Yes.

**The CHAIR:** Could you identify any of the key recommendations of the Lambert report that had been implemented fully at the time you wrote your report?

**Ms WEIR:** I believe the changes concerning competent fire safety practitioners were just being introduced at the time that we were writing the report.

**The Hon. MATTHEW MASON-COX:** There is a "no" back there.

**Ms WEIR:** I beg our pardon?

**The Hon. MATTHEW MASON-COX:** Sorry, there is a "no" back there. There is this bloke that has turned up called Michael Lambert.

**Ms WEIR:** Oh. Hello, Michael.

**The Hon. MATTHEW MASON-COX:** Sorry.

**Ms WEIR:** That was I believe the first response that I can recall.

**The CHAIR:** Having reviewed the Lambert report at the beginning, did you take the view that the New South Wales Government had been put on notice of a number of the structural reforms that were needed as at that time when Mr Lambert's report was done?

**Ms WEIR:** Yes, they had, and so had a number of other jurisdictions. In fact, one of the things the Ministers asked us to do was to look at existing reports that had been done in different jurisdictions. So, we did that. Some of them were named in our terms of reference but we were asked to look more broadly if we wanted to.

**The CHAIR:** Did you approach the New South Wales Government and say: Here's the Lambert report. You have had it for two years. Where are you on the implementation of the Lambert report?

**Ms WEIR:** No, because I think I recall at the time that there had been a formal response, quite a detailed document that had been issued by the New South Wales Government. So, we were not only aware of the Lambert report but the official response.

**The CHAIR:** Lack of enthusiasm from the State Government for implementing it?

**Ms WEIR:** Well, we were able to see in black and white how the New South Wales Government intended to respond.

**The CHAIR:** As I read your submission, not a single one of your recommendations has actually been fully implemented by the New South Wales Government?

**Ms WEIR:** That is right.

**The CHAIR:** You delivered your report in February 2018 with a three-year time frame?

**Ms WEIR:** Yes.

**The CHAIR:** We are over halfway through, I think, and not a single recommendation has been fully implemented. How would you characterise that response by the New South Wales Government?

**Ms WEIR:** Pretty typical of all the States and Territories.

**The CHAIR:** Typically bad?

**Ms WEIR:** We gave them three years.

**The CHAIR:** Well, if you are more than halfway through and not even one of them has been fully implemented, surely you would find that disappointing, to say the least.

**Ms WEIR:** Well, it is typical. Now, does that mean that all the States and Territories are disappointing? Perhaps it does, but it is not that they are very far behind what other States and Territories are doing.

**The CHAIR:** But is it not even more fundamental in New South Wales?

**The Hon. TREVOR KHAN:** Point of order: Chair, you have asked what is clearly a very learned witness twice the same question and twice she has given you just about the same answer.

**The CHAIR:** Which is why I am asking a different question. So thanks very much, Trevor.

**The Hon. TREVOR KHAN:** Well, Chair—

**The CHAIR:** Are you taking a point of order?

**The Hon. TREVOR KHAN:** I will take it as a point of order.

**The CHAIR:** I will hear it.

**The Hon. TREVOR KHAN:** You do not have free rein simply because you are the Chair, so I just make that point.

**The CHAIR:** What is your point of order? Is that your point of order?

**The Hon. TREVOR KHAN:** Yes.

**The CHAIR:** There is no point of order, so thank you. Ms Weir, the *Building Stronger Foundations—Discussion Paper* does not include any support for your recommendations 3, 6, 8, 9, 10, 11, 16, 18, 19, 20, I think, and also 23, although I could be wrong about 23.

**Ms WEIR:** Are you reading from my submission?

**The CHAIR:** I am reading from your submission.

**Ms WEIR:** In that case I am assuming you are correct then.

**The CHAIR:** I am sure it is right. Does that mean that the New South Wales Government's response that is on the record is inadequate?

**Ms WEIR:** Only if it is intended that this be the only discussion paper and the only bill that is passed. I am not sure that that is the case. I mean, there would be nothing stopping this Government or any other from having a staged process to reforms: That would make sense because there is change management in the industry that has to be managed. So if this is the only response, then, yes, I would say that they are not likely to implement all of our recommendations.

**The CHAIR:** To the best of your knowledge, has the Government said that there will be a further package down—that there will be that further response? That this is just their first response?

**Ms WEIR:** No. They have not said that to me.

**The CHAIR:** Ms Weir, how many hours, or days, or maybe months did you and Mr Shergold work on the development of the report?

**Ms WEIR:** Okay. So we were appointed in August and we delivered the report in February. That was the bookends. What essentially happened after our appointment in August the Ministers asked for us to give them an initial report at the beginning of October, so we had essentially one month where we were being engaged—in fact, I was meeting Professor Shergold for the first time after our engagement—and we were setting a plan for how we were going to respond to the task we had been given.

Of course, that initial report to them on our proposed approach needed to be available prior to that meeting. We then went early in October, had the Ministers endorse the approach, which included identifying who we would consult with from industry, which was one of our terms of reference, and the timing for our delivery of our report. Really it was then from October through until very late November—so two months, essentially—that the bulk of the work was done because what we had agreed with the Ministers was that we would give them draft recommendations by December, which we did.

We then met with or provided the opportunity to meet with each Minister after that December draft was submitted so that we could get their feedback on our draft recommendations, which we did. The other thing that happened after the draft went in was that we had a process where anyone could make submissions to us in writing and that closed after that December draft. So we were looking at those submissions, speaking to each of the jurisdictions about the draft and then we delivered in early February.

**The CHAIR:** Three months of intense work to even get to the draft point.

**Ms WEIR:** Yes.

**The CHAIR:** Then weeks more work after that to respond.

**Ms WEIR:** That is right, yes.

**The CHAIR:** You see, if it takes you that long to identify the problems but then you are contracted for 10 hours to help create—

**Ms WEIR:** No, 10 days.

**The CHAIR:** —I am sorry: you are contracted for 10 days to address the solutions, my initial observation is that that is going to be inadequate to the task of actually addressing the solutions.

**Ms WEIR:** Oh, I cannot say because I do not yet know the full scope of what advice is being asked of me. But, as I mentioned earlier, the 10 days was really a way of defining what the engagement would be. I believe that if there is more time required there will be more time given, but I am not quite clear what role I will have and whether I will need more than 10 days.

**The CHAIR:** I think you have made it clear that you are not clear at this stage.

**Ms WEIR:** Thank you. Yes.

**The CHAIR:** Do you think that if we are really going to grapple with the complexity of the problems that we need a building commission?

**Ms WEIR:** Our report did not comment on the machinery of government that each Government might choose to deliver not just our recommendations but their building regulation approach in their own jurisdiction, and that was quite deliberate. I mean, each State and Territory—remembering we were doing this report for 11 Ministers—we were not about to make recommendations that would identify differences across jurisdictions. In particular, we were very deliberate in not making recommendations which really went to the heart of policy decisions for governments to make about how they operate government—whether they have separate bodies—and there is a range of different models that apply in this space around the country.

Yes, I know that you have heard evidence about Victoria and Queensland having separate building authorities that are independent of government, and very large organisations at that. Western Australia used to have one and it was recently pushed back into a government department over in Western Australia, so it no longer has a separate independent body. The other States and Territories generally have these functions sitting within government departments. There is a range of models and they all depend on that particular government, their policy priorities. Of course, there are pros and cons about having separate statutory bodies, which are perceived

to create additional administrative costs or duplication of costs across government, so we were not in any way interested in making recommendations about those sorts of decisions that governments would make in the context of their own particular government environment. That was quite deliberate and it remains my view that it is a matter for governments as to how they structure their administration of the National Construction Code.

**The CHAIR:** But this is apparently what the commissioner is going to be engaged in—to be working through this implementation regime, which will include who does it and where it is done.

**Ms WEIR:** Yes.

**The CHAIR:** Do you think the current system in New South Wales, spread across four Ministers and four different departments—from the Minister for Better Regulation and Innovation through to the Minister for Planning and Public Spaces through to the Minister for Customer Service and the Treasurer—is fit for purpose?

**Ms WEIR:** It is very fragmented but, again, this is a very similar approach in other jurisdictions. We make the observation in the report that governments have a very fragmented approach to oversight the industry and that is unhelpful for consumers to know where to go to and it does go to lack of transparency around how government is managing and oversighting the industry. But it is not a feature that is common to just New South Wales. Even in those States like Victoria and Queensland, where they have a separate independent body which gives some greater level of transparency, there still are other government departments that have different responsibilities in the overall scheme. Fragmentation is a feature of building regulation and in fact many other sectors that are regulated by governments.

**The Hon. TREVOR KHAN:** Does that make it optimal, irrespective of whether it is a common factor?

**The CHAIR:** Bunions are common.

**The Hon. TREVOR KHAN:** The question is: Is it the optimal model?

**Ms WEIR:** I guess it is that balance that you try to have between a siloed approach and an integrated approach and how you slice and dice these things will be open to opinion. In the regulation of building you have not only State Government but local government. You have then got in many of the jurisdictions the outsourcing of the function of the certifier so you have a private statutory role there as well as the fire authorities having a responsibility, and in most jurisdictions—in fact, all, I would say—some involvement by consumer affairs types of organisations as well. If you are looking holistically, you are not necessarily going to put all those groups together. In some jurisdictions they include energy and electricity and electricians, for example. In others, they do not. There are a range of approaches in the way these things are brought together in terms of the governance and the administration by each jurisdiction.

**The CHAIR:** It is a matter of opinion, Ms Weir, but I suppose we are asking you your opinion. Is less fragmentation, more cohesion, a preferable goal?

**Ms WEIR:** Of course, yes.

**The Hon. MATTHEW MASON-COX:** Thank you, Ms Weir. Thanks for coming in, Ms Weir, and for all the work you have done. I hope it sees a lot more follow-up. I am sure it will. I particularly want to clarify a couple of comments in relation to the response from the Building Ministers' Forum. As I understand things, there is a commitment from that forum to drive these reforms over that sort of three-year period with the Commonwealth providing, if you like, incentives or some sort of project management in that regard. Is that how you understand things?

**Ms WEIR:** Well, not quite. What happened at the last Building Ministers' Forum on 18 July was that there was an agreement by the Ministers that there would be the creation of an implementation team and that would sit within the Australian Building Codes Board [ABCB], and so it would have the oversight and governance of that existing board which, as I mentioned, has full representation, but the team would then be established within that existing infrastructure. That is now underway, I assume. I have not heard any more about exactly how that will work. I am assuming that will be jointly funded in the same way that the ABCB is and that the Commonwealth will not necessarily have any, I guess, overarching directive—it will be done as a collaborative effort.

**The Hon. MATTHEW MASON-COX:** And you are hopeful or confident perhaps that that will drive, if you like, the recommendations from your co-sponsored report with Peter Shergold.

**Ms WEIR:** Yes, I am hopeful.

**The Hon. MATTHEW MASON-COX:** Okay. Can I ask you about your experience with the Victorian Cladding Taskforce?

**Ms WEIR:** Yes.

**The Hon. MATTHEW MASON-COX:** Victoria took a very different approach to everyone else. They came at this with a \$600 million fund. It would be interesting to understand the thinking behind that and why Victoria came out reasonably quickly. Can I ask you, without perhaps betraying any confidences, your views about that and perhaps your thoughts in relation to other potential responses and what we did in New South Wales?

**Ms WEIR:** As you will know, Victoria had the first of our cladding fires in Australia at the Lacrosse building in Docklands which was in November 2014. There was some audit work that occurred in the aftermath of that fire. It was not until almost two years later that Grenfell occurred. The Grenfell fire then sparked, I guess, a more intense interest in this issue across the country. Victoria, of course, had already been motivated by the Lacrosse decision and by the outcomes of its early audits following that which showed a very large percentage of audited buildings—I believe it was around 80 per cent—having allegedly non-compliant cladding. So it was already, I think, aware, perhaps more so than other jurisdictions, and had a more focused interest on this because of its experience with the Lacrosse building.

After Grenfell, Victoria set up the Victorian Cladding Taskforce which had co-chairs appointed from both sides of politics. It was a bipartisan approach. It criticised or questioned some of the earlier audits that had been done and set up a whole new regime. I believe that from the outset the Victorian Cladding Taskforce took the view that it wanted to be sure that the audits of buildings and the risk assessments were done in a way that Government was fully confident in.

The only way to do that was to ensure that each audit was overseen by what they called an advisory reference panel of experts [ARP]. They worked with local government that, of course, had a role in this because of the way their powers are structured—very similar to here in New South Wales. Each and every building that was audited was subject to review by this ARP panel. The ARP panel had a fire brigade representative, a fire safety engineer and a building surveyor on it. That panel was able to apply a consistent approach in terms of the risk assessments of each building and in terms of recommendations that were then made to the various local governments for each building as to the next steps and the level of risk involved in the building.

From the beginning they were very determined that they would have a very strong and centralised process so that there was a level of consistency there and that they wanted to be fully across who was making these expert decisions. Some of the other States and Territories have taken a different approach where they have, more or less, said that it is the responsibility of owners to undertake inquiries about what is on their building and then to engage their own experts to get advice about that. That is not a model that Victoria wanted to follow because they had concerns about lack of consistency or different quality of experts that might be giving advice to owners.

**The Hon. MATTHEW MASON-COX:** In your judgement, is the approach taken in New South Wales pretty comparable to the approach taken in Victoria?

**Ms WEIR:** I believe it is quite different. I have heard concerns about lack of consistency. Certainly, it seems that Victoria, in terms of a timeline, would be ahead of New South Wales and that might be partly because they have been doing this existing work and they hit the ground running after Grenfell, I guess you could say. They seemed to be in a much better position to understand how many buildings and what levels of risk different buildings are. I think what Victoria came to realise quite quickly was that identifying risk was one thing, but then actually mobilising rectification and the difficulties that owners will face, particularly when they are living in communal environments under owners corporations and so forth in terms of how they work their way through rectification, not just who pays for it but what is the rectification that is appropriate—and it varies from building to building—was becoming very difficult so that owners were not able to navigate themselves well enough or quickly enough to deal with the public safety risk.

**The Hon. ROBERT BORSAK:** Ms Weir, you now touch on the rectification side of things. Do you have a view on who should be picking up the tab for this?

**Ms WEIR:** My own personal view has been that governments would need to pick up the tab. I agree with what Victoria has done.

**The Hon. ROBERT BORSAK:** And the Federal Government walking away from it, do you have a view on that?

**Ms WEIR:** Not particularly. That becomes a very political question.

**The CHAIR:** They allowed the imports.

**The Hon. ROBERT BORSAK:** I am not talking from a political point of view. I am just saying in terms of governments set the regulatory framework or lack of it. There is much talk we have heard about setting up national standards and a national approach to this and a national approach to that, but it all seems to be honoured in the ignorance. I mean, nobody is actually doing anything that is even approaching that, yet your report clearly

was meant to take a national view and yet Victoria put \$600 million aside, they indicate to the Feds they would like some money thrown in as well and the Prime Minister, correct me if I am wrong, says he is not interested.

**Ms WEIR:** Yes.

**The Hon. MATTHEW MASON-COX:** So why?

**The Hon. ROBERT BORSAK:** I take that as you agree.

**Ms WEIR:** Well, could you ask me the question again? Do I think the Federal Government should be contributing?

**The Hon. ROBERT BORSAK:** Yes.

**Ms WEIR:** I would rather not answer that. I think the Federal Government has just as much an interest in the solution to this as the States do. They may not have the same level of responsibility for why it has gone wrong.

**The Hon. ROBERT BORSAK:** That is right. I would agree with that.

**Ms WEIR:** But that does not mean that the public would not expect all levels of government to be working together in the interests of public safety.

**The CHAIR:** We hear a lot of talk about proportionate liability. Obviously, the States have dropped the ball in the absence of regulation on cladding, but also the Commonwealth Government has allowed container loads of substandard cladding products to be imported without any checks. Should there be a proportionate response?

**Ms WEIR:** I am not sure I agree with that, Chair, because it is not the product itself that is the problem. It is how it has been used on buildings. There are valid and perfectly compliant uses of 100 per cent polyethylene [PE] panels/aluminium composite panels [ACP] in our country. The problem is that the products have been used inappropriately. The actual existence of it in the country has not been an issue. It may well be with bans and other things, of course, but, certainly, in the time we are talking about it was not illegal to bring the product in and it had a number of uses that were quite legitimate, legal and safe. It is just that they were quite limited uses and, instead, the product was used much more broadly in ways that were unsafe.

**The Hon. MATTHEW MASON-COX:** Why do you think the New South Wales Government should be responsible for making a very substantial contribution towards fixing the cladding crisis?

**The Hon. ROBERT BORSAK:** That is the question I was going to ask?

**The Hon. MATTHEW MASON-COX:** And two, do you believe the existing owners, or any other party, should be making a contribution, be it the developers or others involved in the construction of the building?

**Ms WEIR:** There are people who have inappropriately allowed this product to be used on buildings. There are a number of people that are responsible. The decision in the Lacrosse matter identifies four defendants who have shared responsibility, being the builder, the architect, the fire safety engineer and the building surveyor. There was an apportionment across those four, or certainly findings of responsibility. If that decision is reflective of other buildings, and it will not be reflective of all, then we do have a number of people who have legal responsibility for the use of this product. That, of course, means that owners ought to be able to get compensation from those parties. The question is, can they? They cannot if builders do not exist and the ability to make claims against consultants is not necessarily straightforward because of recent legal decisions around duty of care and other complex matters. The reality is that even if we accept that it is not the owners fault, their ability to seek compensation is quite difficult in some circumstances.

**The Hon. TREVOR KHAN:** And hideously expensive.

**Ms WEIR:** Incredibly expensive. Lacrosse is now in the Court of Appeal and we are almost five years on from the fire. We do not expect people to be having to engage in that sort of effort to get compensation.

**The CHAIR:** We could put a prospective levy on the industry, in addition to a contribution from taxpayers. That might be one model.

**Ms WEIR:** Well, the money is all coming from the same place ultimately, is it not? If it comes from taxpayers, or through a levy, the levy will be passed on in costs. Ultimately we are sharing the cost of all of this as a community.

**The Hon. SCOTT FARLOW:** Ms Weir, you started out your testimony by saying your ambit was looking at the top of the cliff. One of the submissions this Committee has received constantly has been with respect

to a clerk of works and re-instituting a clerk of works as part of the building process. Was that something you considered in framing your report?

**Ms WEIR:** It was something that was being raised. I think back in the time when clerks of works were used, that was not a regulatory requirement, it was a market-driven approach that was taken. It was often taken by owners who were the long-term owners of a property, and had a much greater interest in the quality, the on-going maintenance costs of building and so forth. What we have seen now, particularly in the residential market, is that the owner is no longer the long-term holder of that asset, and in fact, their interests are completely opposite. They want to sell their property very quickly. Special purpose vehicles are created for those developments with the deliberate intention of them being limited to the construction and sale of properties.

There interests are very different in terms of the overall quality and the longevity of the building, and its maintenance costs. We see that play out, not just in quality issues, but in the way buildings are designed these days. There were a lot of reports to us about, for example, fire safety solutions, which essentially pushed costs into the maintenance of buildings. This increased maintenance costs significantly because of the installation of active fire systems, which need to be maintained, in favour of passive systems which are about how thick your walls are and stopping the spread of fire through the physical structure of the building. There has been a lot of pressure, even in design, to have cheaper construction costs—so less cost into passive protection—in favour of the active systems which passes on costs to the future owners and managers of the building. This different approach and different priorities of owners, now developers, has manifested itself in a number of ways which affect the ultimate owners and users of buildings.

**The Hon. COURTNEY HOUSSOS:** I have one final question. You said you were an adviser to the cladding task force. You were also previously a member of the building advisory committee in Victoria, is that right?

**Ms WEIR:** Yes.

**The Hon. COURTNEY HOUSSOS:** Can you briefly explain what was the relationship between the advisory committee and the commission?

**Ms WEIR:** The building commission?

**The Hon. COURTNEY HOUSSOS:** Yes. Sorry, the building authority in Victoria.

**Ms WEIR:** The Building Regulations Advisory Committee is a statutory committee represented by industry and I was the legal representative on that. Our responsibility was advising the Minister on regulatory change which included the National Construction Code. That was where we sat in the umbrella of organisations.

**The Hon. COURTNEY HOUSSOS:** Are you providing advice to the New South Wales Government about establishing its advisory committee as well?

**Ms WEIR:** I have not been asked to.

**The CHAIR:** Ms Weir, thank you for your evidence. I am sure could have had another half hour, without any great difficulty. But we have now run out of time. Thank you for your submissions.

**(Short adjournment)**

**ANITA CAMPBELL**, Executive Officer, National Fire Industry Association, sworn and examined

**WAYNE SMITH**, Chief Executive Officer, National Fire Industry Association, sworn and examined

**The CHAIR:** Thank you both for your submission. Do either of you want to make a brief opening statement?

**Mr SMITH:** If I may, please. First of all, I thank the New South Wales Government for the opportunity to present to today's Parliamentary enquiry.

**The CHAIR:** This was not a decision of the Government. It has been a decision of this Committee and the Parliament, Mr Smith.

**Mr SMITH:** Well I change the sentiment to thank the Committee for the opportunity to present today and give evidence. Secondly, I should congratulate those involved for having the courage to tackle such significant public safety issues that are the fibre of this enquiry. I should also mention in my opening remarks that we have some documents. We have two documents that we have copied and we wish to have tabled for this afternoon's session, if I may? Both of those documents are articles that were published recently, in the last three months, in a building and construction newsletter called *Sourceable*, for which we have had very positive feedback. They both

go to the issues of fire protection that we are speaking to today. They would, perhaps, inform the Committee significantly around some of the views that we will express today.

**The CHAIR:** Thanks Mr Smith. We have all got a copy of those. But we will, at the conclusion of today's evidence, have a closer look at them and resolve whether or not we will publish them.

**Mr SMITH:** Okay.

**The CHAIR:** But we have all received a copy.

**Mr SMITH:** The National Fire Industry Association [NFIA] is an Australia-wide community of commercial fire protection contractors. They are people, suppliers and industry stakeholders, who represent a wide and varied membership, from the smaller subcontractor right through to large Australia-wide design, installation and service businesses. Our members work on the frontline of fire protection with an estimated 80 per cent of the electrical and wet fire protection, which is the core fire protection work, undertaken in New South Wales completed by members of the National Fire Industry Association.

The National Fire Industry Association—I will refer to it as NFIA—carry out almost 100 per cent of tier 1 work—commercial building work—in New South Wales but, anecdotally, do not do as much of the apartment sector work that is generally carried out by smaller tier 2 and tier 3 contractors. I will just refer very quickly in my opening remarks to the documents that I have tabled, where the documents give a much more detailed explanation of the different layers of fire protection that go into a large commercial or industrial building. Many people just see electrical—as in fire alarm or fire detection—or wet fire protection—as in sprinklers—as being the sum total of fire protection in that market. In fact, as I say, it is a multilayered series of fire protection that make up the fire protection system in a building of that sort.

With respect to New South Wales, NFIA believes that fire safety systems in a significant number of buildings in New South Wales may be noncompliant and at high risk of not protecting occupants of the building in the event of a fire. Some of that is a result of a couple of key problems: firstly, the change that can occur in the design and the construction cycle of the building can have quite an impact on what that fire protection system looks like at the end of construction; secondly, incompetent people who participate in the construction of that building, because of the lack of regulation or licensing affecting who the people are that do the work; and thirdly, the maintenance of that building's fire protection system, and the building generally, post the construction completion. That is, into the life of the building over the next, say, 28 years of its life, the maintenance activity that occurs within that building.

NFIA believes that the biggest impediments to insuring New South Wales fire protection systems are properly designed, installed, inspected and maintained is a lack of registration or licensing of fire protection practitioners and a lack of design or sign-off, particularly at the conclusion of the building work. The Lambert report—I said hello to Mr Lambert as I came in here—and the Shergold Weir Report—and I note Ms Weir was in here just before us—have made similar recommendations regarding fire protection; there should be stronger fire protection regulation in place supported by a regulated and licensed certification process, which enables informed and qualified assessment and sign-off of safety systems. The New South Wales Government has responded to those concerns by implementing a package of fire safety reforms for both new and existing buildings.

Under those regulations which came into effect in October 2017 a competent fire safety practitioner must now endorse plans and specifications of relevant fire safety systems prior to work commencing and assess the essential fire safety measures on an annual basis through the issue of an annual fire safety statement. An important part of these reforms is the introduction of a framework for recognising industry schemes to accredit competent fire safety practitioners. In New South Wales the Fire Protection Association has become the first accrediting body capable of accrediting competent fire safety practitioners approved by the New South Wales Government. Under this New South Wales Government-approved accreditation scheme the Fire Protection Accreditation Scheme is effectively an in-house accreditation scheme of practitioners who have completed the in-house training course and eventually will be formally recognised after a phase-in period of approximately 12 months.

The applicable classes of accreditation at this stage are fire systems design and fire safety assessment; that is, the person who signs off on that annual fire safety statement. NFIA's stated preference was that any scheme that licenses, registers or accredits fire protection designers should be administered by the Government. The scheme that is operating in New South Wales is effectively an industry association regulating and accrediting industry association members and non-members, which we believe is a significant conflict of interest and is not best practice regulation, whereby if the Government administered such a scheme the Government has the ability to stand above industry and, with the assistance of industry in partnership providing things like intelligence, feedback, advice about technical issues et cetera, can then take that on board, absorb all that information and make unbiased and independent decisions about correct licensing and correct regulation.

We believe the Government is best placed to ensure the interests of the community are met in an independent and unbiased manner, without the higher conflict-of-interest risk associated with, as I said, member-association regulation of members. In our view, industry run accreditation schemes will always suffer a perception that they are being run to the benefit of the members and will not be in the interests of the community. We continue to have serious concerns about the scheme that is about to kick into operation in New South Wales in its present form. While we applaud the New South Wales Government for addressing the issue of fire protection regulation, we suggest that they rethink the current model, particularly in light of the recent failures in New South Wales buildings and attention to private certification.

We believe that a robust system of company, contractor and occupational licenses for the fire protection industry similar to what is done in Queensland—where all licensed categories are underpinned by nationally recognised trade qualifications and administered by an independent government regulator, the Queensland Building and Construction Commission—should be introduced in New South Wales as a matter of urgency. The Victorian Government has a similar regulation and licensing framework for many aspects of fire protection in Victoria. At the very least the Government should require that appropriate nationally recognised qualifications be recognised as being more than sufficient evidence for competency of accreditation, if that continues in its present form, as competent fire safety practitioners under the Fire Protection Association's accreditation scheme, rather than the current in-house proprietary training course outcomes being promoted as the only form of recognition. If I may, I will leave it there in terms of opening remarks, Chair.

**The CHAIR:** Mr Smith, thank you very much for setting it out. It is a complex area, there have been some recent changes. Thank you for taking us through it.

**The Hon. COURTNEY HOUSSOS:** Thank you very much for your submission and for your testimony today. I am not sure if you were here when Ms Weir was saying that the inherent conflict of interest that we have now between an owner or a developer who is going to be selling a building and the decisions that they make. She gave the example of fire protection moving from a passive system to a more active system; that is, where you might build thicker walls or put in fire safety doors—excuse my terminology—versus being more reliant upon sprinklers and alarms, which actually require much greater maintenance and testing. Do you see this playing out in the New South Wales building industry?

**Mr SMITH:** Yes, it does. There are two forms of fire protection systems: What we call within the industry I suppose active fire protection and the other sort is passive fire protection. The difference being that active fire protection systems are about saving people's lives. They can extinguish the fire, they can put the fire out and they can alert people within the building that there is a cause to be alarmed by fire, which is the other part of saving people's lives and saving people from injury. So active is: kill the fire and let everyone know in the building that there is a problem. Passive fire protection is more about containment of fire and facilitating egress from a building.

I am not sure if you are aware of this but with the current day use of materials that go into modern furniture in an apartment building, the combustibility of that is much, much greater than traditional furniture product from 25 or 30 years ago—to the extent where the egress time for a person in an modern apartment fire with modern furniture today is about six times less than what it was in the nineties. So instead of having 17 minutes to get out of the building, you have like three minutes to get out of the building—to get out of the apartment, not the building. That is why there is much more encouragement these days to go with active fire protection—that is, stuff that can kill the fire.

The modern technology is such that, if a sprinkler responds to a flame—so if there is a flame in the corner of this room—then the sprinkler head closest to it will attempt to extinguish that fire. If it is unsuccessful and it moves a little further and it grows then other sprinkler heads operate. One of the great fallacies is that we do not want to have this stuff in buildings because it is going to flood the floor and there will be significant water damage by that flooding, significant refurbishment costs involved et cetera. But the modern technology of sprinkler systems today is that they only respond to where the flame is. There is often very minimal damage and very minimal cost involved by the use of the sprinkler just extinguishing the fire where it is.

Going back to that argument, if I may, is that you just have to look at some of the cladding fires that have occurred in Australia. There have been only a small number of them, thank heavens, but a key reason why there has not been a death caused by a cladding fire in Australia is because the sprinkler systems within those buildings have been able to defend the occupants from that fire. Would you believe that, while that sprinkler system is the first and best defence, there is no sprinkler system in the world that has been embedded to the point of me sitting here that is specifically embedded to cope with a cladding fire racing up the side of the building. It is just that the technology has by accident been proven to be so good and, in Australia, so reasonably well designed and installed that in those particular buildings, like Lacrosse and the Neo building in Victoria a couple of months ago, occupants

have been saved by those sprinkler systems. That is a long-winded answer to say that the issue Ms Weir raised is a significant issue.

**The Hon. COURTNEY HOUSSOS:** I just want to touch on the final point that you made about the increasing sophistication of the nature of fire protection. Surely that then warrants—and you touched on this in your opening statement—that the people who are maintaining this system should also be licensed. This inquiry was told by the plumbers union that we have this strange contradiction with the people who install the fire protection system needing to be licensed, but the people who test and maintain it, despite its increasing complexity, actually not being required to be licensed. Do you agree that everyone should be licensed? Obviously, you have a view about registration for fire safety professionals.

**Mr SMITH:** To answer the question, I agree with the proposition that people who do maintenance, which includes regular inspection and testing, should be licensed and that work should be regulated. In Queensland and in Victoria—the two other eastern seaboard States—that activity is regulated and the people who do that work are licensed. They are qualified at the same level as the people who do the installation work. They are generally trade-qualified specialist plumbers in wet fire protection. We support the proposition that, once it is built, the people who do the maintenance, including inspect and test, should be at the same level of qualification and must be licensed.

**The Hon. COURTNEY HOUSSOS:** I think that is a very logical conclusion. Do you think that this should be done through a building commission or a central building authority?

**Mr SMITH:** Yes, correct. We believe that it should be a government system. Could I recommend to the Committee an author, whose name is Malcolm Sparrow. You may already be aware of Malcolm Sparrow, who teaches at Harvard and has for many years been a professor in regulation. He is considered a world authority on regulation, not just for buildings but regulation and how it should work. The Committee could be informed by some of the writings of Malcolm Sparrow about world's best practice when it comes to regulation. One of the things that he does advocate is he explains the roles between a regulator and how industry partners with the regulator to get the outcomes. It goes back to what I said before, that there are examples from around the world where member regulating member is not the best form of regulation. To your question about licensing and who regulates, then he would inform some of your thinking and the Committee's thinking about that.

**The Hon. COURTNEY HOUSSOS:** My final question, have you had any interactions with the Building Commissioner as yet?

**Mr SMITH:** Not yet. We have written to the Building Commissioner. We have had interactions with Minister Anderson and his policy people. I have had interactions with the Building Ministers' Forum through their industry roundtable on a number of occasions. We have written to the Building Commissioner and sought an appointment to discuss some of the issues that I am raising here today. As yet, we have not received a response, which is understandable in terms of the short time since he has been appointed and his other business engaging with this Committee.

**The Hon. COURTNEY HOUSSOS:** Thanks very much, Mr Smith and Ms Campbell.

**The Hon. MARK BUTTIGIEG:** Just so the Committee has a very clear picture of what happens in practice now—and, if my memory serves me correctly, we got a bit of an inkling about this from the plumbers union—on a typical install right here, right now I could turn up with "Mr Flame" printed on a T-shirt and someone could employ me to install a fire protection system and there would be absolutely no regulatory oversight to ensure that that thing worked and was compliant. Is that correct?

**Mr SMITH:** Yes. That is pretty close to the mark. I would just say, to be really accurate, that in New South Wales today there is legislation that goes to who can perform certain, let us say, wet fire protection work. In New South Wales today it identifies a specialist fire protection plumber, and those people are commonly referred to as sprinkler fitters, who are called up in the legislation to perform aspects of wet fire protection work—not all of it, but aspects of it. The problem that I think you have landed on is that there is basically no enforcement of that legislative requirement. We certainly have some views about that, but what you have described is accurate. I go beyond that to say that there are aspects of fire protection that are not just about wet fire protection. For example, fire alarms and detection are essential core elements.

To me, wet fire protection and electrical fire protection are the core elements of fire protection. They are the things that save people's lives. When I talk about wet fire protection, I talk about fire protection water tanks and, without going through the detail of it, pumps, hydrants and sprinklers. Those four components enable an industrial building or a high-rise apartment building to save people's lives. Electrical fire protection—fire alarm and detection—is the other arm of saving people's lives. In New South Wales today, for electrical fire protection,

there is zero requirement for qualifications or licensing or regulation that calls for the right people to do that work, so anyone can walk in off the street.

**The CHAIR:** In the document you handed to us, this is your summary of New South Wales:

3. A licence is required before any plumbing, draining or gasfitting work can be undertaken. Therefore there exists some licensing requirements relating to the installation of hose reels, hydrants and fire sprinkler systems but not for their design and testing.

You also say:

4. Fire alarm systems, EWIS systems, mechanical air handling systems, portable fire extinguishers and passive fire protection measures are all examples where no licence or qualifications is required for the design, installation or testing.

That is the situation, is it?

**Mr SMITH:** As I said, the first part of your comment referred to wet fire protection. I think that that is what I said—that there is limited regulation or licensing around it. It does not go to all aspects, as I described before.

**The Hon. MARK BUTTIGIEG:** But despite the limited bit in the legislation, if I were a builder or developer wanting to cut down on costs there would be nothing to stop me doing it because no-one is watching me. Correct?

**Mr SMITH:** Correct.

**The Hon. MARK BUTTIGIEG:** The only thing I wanted to follow up on—

**The CHAIR:** Before you go off that, is it the practice that there are unlicensed, unregulated people without plumbing qualifications putting in these wet systems?

**Mr SMITH:** Less in tier 1 type buildings. By that I mean hospitals, tunnels and large constructions at the top end of complexity. That tends to be performed by well-known, reputable contractors. Those contractors, because they understand better than most the risk involved, tend to use the right people with the right qualifications because they know they should, not because they fear getting caught. Once you get out of that—I imagine people here would have read the Coroner's report for Bankstown—then that goes to some of the work that happened around design, where it was brought back from being above 28 metres to below 28 metres. In that Coroner's report it does not tease out that the right people with the right qualifications did that work. Michael Barnes, the Coroner, does not make a big issue of who performed the work. He makes a bigger issue about the design side of it, but does not identify that the right people with the right qualifications did that installation.

**The CHAIR:** I am asking you or Ms Campbell, from your experience in the industry. The fact that we tend to have qualified people do it in hospitals is hardly comforting, but outside those tier 1 buildings what is your experience? Do we tend to have unqualified people doing the whole lot?

**Mr SMITH:** We tend to have a mix. That is the sector of the market that tends to attract unqualified people—cowboy contractors—to work there.

**The Hon. MARK BUTTIGIEG:** I have one more follow-up. I was interested in your observation or your commentary around the exit time being cut down by one-sixth due to the level of combustible materials inside these places now.

**Mr SMITH:** Sorry, I said it was about six times less than what it was about 25 years ago.

**The Hon. MARK BUTTIGIEG:** Six times less—one sixth of the exit time. Has any attention been given to the possibility of specifying what can and cannot be used in terms of combustible material in places like that?

**The Hon. TREVOR KHAN:** Combustible materials are things like furnishings, bedding and the like.

**Mr SMITH:** Yes. To my knowledge there is not any regulation of the combustibility of modern furniture construction. The reliance is on managing the risk through the fire protection system, whether it is active or passive, and the impact that that can have on a fire.

**The Hon. MARK BUTTIGIEG:** It is a bit of a worry, because theoretically, if that combustibility kept going up and up, to the point where the fire response—the sprinkler system—was required to react in one minute, there would be a trade-off. It would get to a point where you would say that this is just too little time for people to get out, we have to start looking at this.

**Mr SMITH:** To respond to that I can paint a picture. In Queensland there is regulation that was put in place about two years ago, and a timeline, which goes to mandatory smoke alarms in domestic houses. I am on

the spot here but I think it is from around 2022. The lead-in period was over about five years. So in every house—every new dwelling—there will be a requirement to have more sophisticated smoke alarms installed, notwithstanding that apartments already generally has that as part of the specifications.

I think New Zealand, in the last couple of weeks, has introduced similar legislation, to the point that in the house they specify where the alarm must be placed. I make that point because the alarm has to be in a certain position outside the doorway of each bedroom, for example, because that is seen as the most effective area, where the alarm would have the most impact on the fire. That is the concern that is emerging from the community about their fear of fire protection and the appliances. Generally, the community is starting to accept that as being a necessary part of living with things like modern furniture.

**The Hon. MARK BUTTIGIEG:** In terms of the Australian jurisdictions, are we the worst in terms of fire protection and safety?

**The CHAIR:** You point out Western Australia in your submissions.

**Mr SMITH:** Yes.

**The CHAIR:** Apart from Western Australia?

**Mr SMITH:** As I said, Queensland is the most mature, advanced fire protection regulatory jurisdiction in Australia. Victoria is a little way behind but it is certainly well and truly advanced. New South Wales has been a work in progress for some period of time. If you have read our various submissions you will see that there is a time line that we can go to about when we have been advocating, through formal submissions to Government, the need to improve fire regulation in New South Wales. That goes back beyond 2008.

I go back to what I said at the beginning. I applaud the New South Wales Government for starting the journey, particularly in looking at design and looking at maintenance in the form of the annual fire safety statement, but our view is that starting the journey has been great and picking up on those two issues has been significant and good, but we think that ultimately the regulatory model that has been chosen by the New South Wales Government is not substantive or independent enough to be a long-term asset as public policy for New South Wales.

**The CHAIR:** You would say, from what I can tell from your submission, that going to a Queensland model, with a building commission and a public building commissioner—and regulating the industry through that public body—is the gold standard. Is that right?

**Mr SMITH:** Yes. It is not perfect, but it is significantly more advanced than other states.

**The CHAIR:** And when it comes to fire protection it took an awful tragedy in Queensland, with the Childers backpacker disaster to see Queensland move to that model.

**Mr SMITH:** Correct.

**The CHAIR:** I assume your evidence is that we should do that before we have a disaster in New South Wales.

**Mr SMITH:** It was 15 lives in Childers; 72 lives at Grenfell Tower. It is a hard price to pay to be incentivised to go to the right model. But I say again, Queensland is not perfect. If you said to me, "Tell me what are the things you would improve in Queensland," it would take me two hours to work through them for you.

**The CHAIR:** You can give us that on notice if you like—dot points of Queensland plus whatever is required.

**Mr SMITH:** Okay. I would be more than happy to do that. Just by the way, I am the appointed chair of the ministerial construction council subcommittee to look at fire protection in Queensland.

**The Hon. MATTHEW MASON-COX:** Congratulations.

**Mr SMITH:** Thank you.

**The CHAIR:** Careful what you ask for.

**Mr SMITH:** I do not say it is perfect, but it is a huge defence against unlicensed, unqualified, incompetent people and cowboy contractors—all of the people, the minority, who can have such a devastating effect on building fire safety if let run loose. There is an old saying: great success generates complacency, and when complacency is out in the market place in the building and construction industry then that is when the dogs come out to play. By that I am referring to the cowboys.

**The CHAIR:** Mr Smith, your submission on flammable cladding talks about the audits that have been undertaken by the New South Wales Government. It states:

Despite these audits to identify buildings with flammable cladding there is still not a current agreed upon number of buildings that have been identified as having combustible cladding. It is also worth noting that despite these audits New South Wales Government has also confirmed that determining the type of cladding on buildings and/or its compliance with building codes is not undertaken.

Can you give us some more detail on that?

**Mr SMITH:** So particular ...

**The CHAIR:** Well, your conclusion states:

It is clear that the inspection and identification of buildings with potentially combustible cladding in New South Wales is inconsistent. It is also clear that there is currently no determination of the type of cladding used and whether it complies with building codes.

What needs to be done?

**Mr SMITH:** It is a difficult area—you have probably heard that many times. The combustible cladding problem in Australia—not just in New South Wales—is in many ways a failure of regulation in the first place, not a failure by enabling people to do the wrong thing deliberately. Cladding comes in so many shapes and sizes these days that even the enemy, the ACP cladding—the aluminium composite panel cladding—in certain circumstances is okay but the risk is too high. The point that we are trying to make there is that because the industry—a bit like the modern furniture example, there is so much out there that comprises cladding these days because of the market demand for building aesthetics.

Cladding is not only in such demand but comes from so many sources into Australia that—I am not sure if the committee is aware—there is already a serious project underway about being able to label what we call nonconforming building product, which would go to the problem we are talking about around the identification of what is in and what is out. In the Lacrosse example, the panel itself was a complete copycat panel for all intents and purposes until you opened the panel right up to see what was well and truly inside of it to know that it was a five-dollar replica of a \$15 Australia-produced, fire-resistant panel. That is the sort of research that we need to be doing across all panels coming into and manufactured in Australia.

**The CHAIR:** Is that happening in New South Wales? We are more than two years post-Grenfell fire and four years post-Lacrosse. Has what the New South Wales Government done kept people safe?

**Mr SMITH:** I think it would be unfair to say—I know you are looking at New South Wales—but across Australia the problem remains. New South Wales, like all the other State jurisdictions, has made a start. Queensland has made a significant start. Victoria is coming at it from a different perspective. New South Wales has come at it from a different perspective. Probably a good thing to look at in this particular point in time is for Australia to adopt what I think is the best system so far—the Queensland system of identifying nonconforming cladding or combustible cladding—and having a system in place which requires the owner of the building to go through a three-stage process of alerting the government about its finding of possible nonconforming or combustible cladding and then stepping through that three-part process to then determine whether they have to take urgent action or the action comes further down.

**The CHAIR:** But in New South Wales we are stuck at stage one, aren't we?

**Mr SMITH:** Yes.

**The CHAIR:** That is inadequate, isn't it?

**Mr SMITH:** Queensland is much further advanced. I am not trying to play States, but Queensland is much further advanced in what they have got in place to deal with it.

**The Hon. COURTNEY HOUSSOS:** I have one more question. Just on that, Queensland has got a clear program of how to address the cladding and what the standards are. My understanding is that New South Wales has not even set the standard. Is that correct?

**Mr SMITH:** I think New South Wales is still in the stage of emphasising identification of potential problem buildings. Beyond that, I am not aware of a clear plan of action—

**The Hon. COURTNEY HOUSSOS:** Standard of rectification that they are working towards.

**Mr SMITH:** Yes, plan of action.

**The CHAIR:** We have had Local Government NSW say there is no standard in place. We have had a series of councils provide submissions to the committee saying that there has been no standard established. In fact,

there is nothing on the public record about the New South Wales Government establishing a standard. Given that Victoria has managed to put a panel in place and Queensland has got a standard in place, do you have any explanation as to whether there is anything unique about New South Wales that would lead to this?

**Mr SMITH:** No. I am not sure of what the blocker for New South Wales is. I do not want to table opinion; I would rather stick with the fact. I do not know what the blocker is to New South Wales being a little more advanced.

**The Hon. MARK BUTTIGIEG:** Just that little example you gave of the duplicate cladding—what was the cost differential?

**Mr SMITH:** Don't quote me as being precise figures, but I was trying to use those numbers to demonstrate the attraction, if you like, for somebody to use a replica versus using a—

**The Hon. TREVOR KHAN:** A compliant—

**Mr SMITH:** —real product. I should just say we are focusing on standards but, to be fair, every State in Australia faces a problem with the swapping—using polite terms—of conforming product with nonconforming product on construction sites.

**The Hon. MARK BUTTIGIEG:** But if you extrapolate that little example across the whole industry and the whole supply chain, that is one of the essences of whenever you have a private profit motive—and I accept that there is, otherwise we would not have an economy and we would not have economic growth—but wherever you have that inherent profit motive set up people are always going to do that sort of thing. It is human nature. Unless you have a solid regulatory system that stops that, independently regulated and enforced, this thing is just going to keep going on in perpetuity isn't it?

**Mr SMITH:** I would suggest the answer to that is looking at the Queensland solution, which has in place what we call "chain of supply" legislation. That means that every stakeholder in that chain of supply has a degree of liability if, at the end of the day, the wrong product finishes up on that building—it is not just the builder, it is not just the developer, is not just the certifier, is not just the supplier. You would have seen with Lacrosse in Victoria that the courts found the certifier should be liable for—again, don't quote me—but the majority of the liability cost that was found in that court case. To be fair—and I am not defending the certifier—there are milestones in that supply chain that have the opportunity to prevent the wrong product being on the side of that building. Queensland has addressed that; they have liability in place for each of those milestones is a disincentive for people to do the wrong thing. I would suggest to any jurisdiction in Australia that is a good start to solving the problem, without simply just working at identifying the building that might be a problem but putting in place a solution now that cuts to the chase, while at the same time they can be identifying the buildings.

**The CHAIR:** Mr Smith, to just go back to the October 2017 reforms: Those saw the New South Wales Government requiring a competent fire safety practitioner to endorse the plans and specifications of relevant fire safety systems prior to work commencing. Is that right?

**Mr SMITH:** Yes.

**The CHAIR:** Does it end at the design stage?

**Mr SMITH:** Currently it does. Are you talking to me about design?

**The CHAIR:** I am talking about the October 2017 reforms that require a competent fire safety practitioner. Does that requirement end at the design stage or does it go through to the construction and the monitoring stage?

**Mr SMITH:** In terms of design it is what you say there. It is missing an important piece in that at the completion of the construction of the building, effectively when it is signed off for occupancy, there is no requirement to sign-off the design and any changes in design from that initial sign-off at the time you mentioned. Before the beginning of construction a competent fire safety practitioner under the legislation in New South Wales signs off on that design. A flaw in the system, a weakness in the system is that at the end of the construction there is not the sign-off of the design. Remember what I said earlier about one of the problems with unsafe buildings is that what happens in the construction phase can be different to what the initial design set out. That is part and parcel of commercial building construction.

**The CHAIR:** Even that 2017 reform is woefully inadequate, you might use a different phrase.

**Ms CAMPBELL:** It was in there to start with, they took it out.

**The CHAIR:** When did they take it out?

**Ms CAMPBELL:** Right before gazetting, final hour. All the way through multiple consultations I sat on at numerous industry stakeholder roundtables, it was in there all the way through. In the final hour it was gazetted without it.

**The CHAIR:** Was there ever an explanation given about why that happened in October 2017?

**Mr SMITH:** I am not aware of it.

**The CHAIR:** I assume, Ms Campbell, we do not pick up the tone in the transcript, but from your answer there is a sense of exasperation?

**Ms CAMPBELL:** Yes, we asked. I think there was multiple stakeholders that perhaps put some pressure on.

**The CHAIR:** Would it be fair to say that that is a subpar outcome in terms of ensuring building standards?

**Mr SMITH:** It is not what we supported. The extension beyond design you asked me about at other stages; there is a requirement to involve a competent fire safety practitioner in any alternative design solution that comes into play during the construction of the building. By that I mean there is standards for building fire protection systems in Australia. Then there is the national construction code. Your body language suggests that has probably been raised with the Committee before. That works in that the national construction code basically stipulates the performance outcome that is required. Out of these two parts understanding standards and understanding performance outcomes for the safety that the standard implied is achieved. People can create an alternative solution to the standard but that gives that same standard of safety at the end of it. There is a requirement for a competent fire safety practitioner to get involved in that. As I understand it that part of it has not been implemented yet.

**Ms CAMPBELL:** Not yet, no.

**Mr SMITH:** Then finally, the sign-off of the annual fire safety statement. Can I say, chair, in its current form the annual fire safety statement sign-off, the requirements that go behind that in the New South Wales legislation are nation leading. That is a really positive aspect of the New South Wales fire reform legislation. It is better than Queensland and better than any other State. In fact in other States I advocate for people to go and read the legislation from New South Wales especially around the actions associated with the annual fire safety statement. The problem that we had there is that while a competent fire safety practitioner is required to sign it off, under the current system there is no national qualification framework that underpins that competent fire safety practitioner who signs off that annual fire safety statement.

**The CHAIR:** This comes back to your concern about the industry oversight and the absence of a building commission to oversight?

**Mr SMITH:** Correct.

**The CHAIR:** Thank you for your continuing engagement on the issue and your submissions.

**(The witnesses withdrew.)**

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

**PETER DUNPHY**, Executive Director NSW Fair Trading Specialist Services, Department of Customer Service, on former oath

**JOHN TANSEY**, Executive Director Regulatory Policy, Better Regulation Division, Department of Customer Service, on former oath

**CARMEL DONNELLY**, Chief Executive State Insurance Regulatory Authority, on former oath

**The CHAIR:** Welcome back to each of you. Ordinarily we would not allow a further opening address at this point but if there is any matter that you find necessary to address briefly at the outset now is your opportunity.

**Ms WEBB:** No, chair, we are fine.

**The Hon. JOHN GRAHAM:** I want to turn to some evidence that was given earlier on the question of certification. Mr Tansey, you pointed to appendices, different categories of certification set out there accredited under the law with qualifications. I am summarising your evidence to the Committee. You were asked by the chair: Would they have to have insurance?

**The Hon. TREVOR KHAN:** What page?

**The Hon. JOHN GRAHAM:** We are on pages 8 and 9 of the transcript. You were asked about Mr Lambert's views about this. We then talked to Mr Lambert later in the day and put that evidence to him and he said:

Very few of those categories have people that 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.

We then had other witnesses put to us a similar view. The potential is there but in practice it does not happen. I am interested in your view of that evidence?

**Mr TANSEY:** My recollection of what I said when we appeared previously was I was trying to assist the Committee by highlighting that those performing this certification function—there were various categories of accreditation, which is why I drew the Committee's attention to the appendices—my recollection is that there was a bit of discussion going on that at least in my mind was maybe mixing the concept of who does certification and the licensing and prerequisites of licensing of them as certifiers compared to those who actually perform the work, do the building works. I think in that context I was highlighting, for example, that waterproofers who do the work, rather than certifiers who check the work, that waterproofers were also licensed. You accept the other evidence that has been put to the Committee that, if we are looking to build up some chain of responsibility, in practice, at the moment in New South Wales, few people other than the actual certifiers themselves are acting in this way—that they are operating with a license, with insurance, in the way that is being described?

**Mr TANSEY:** For residential construction under the Home Building Act there is, I think, 47 different categories of licence—a really diverse range of persons doing building work, or parts of it, are licensed. If that is part of what you are going to?

**The Hon. JOHN GRAHAM:** Do you agree with Mr Lambert when he says that very few of those categories have people who are licensed for them and none of them actually provide compliance certificates?

**Mr TANSEY:** I would probably prefer to take that on notice and go back to Mr Lambert's transcript.

**The Hon. JOHN GRAHAM:** I would be extremely happy for you to do that but it really was quite a different set of views that were being put to the Committee. If you could clarify that, that would be helpful.

**The Hon. TREVOR KHAN:** Does that come as a surprise, in terms of what Mr Lambert has said? I have to say, Mr Lambert came across as a genuine, informed and helpful witness. On the face of it, even in my moniker as a backbencher in the Government, I am persuaded by his evidence. I would be a bit concerned if you are not alive to the issues that he is raising.

**Ms WEBB:** I think we might need to take on notice the specific detail to understand exactly what Mr Lambert was saying. We can certainly find out how many people are registered as certifiers in those other classes. I think that is maybe where the question is going to and that might assist in whether Mr Lambert is correct about how many people are certified in those other classes.

**The Hon. JOHN GRAHAM:** That is partly where the question is going, but I am inviting the agency to review the evidence it put, in view of what a clash it appears to be, on the face of it, with Mr Lambert's evidence.

**The CHAIR:** Mr Tansey, your evidence was not ambiguous. You were asked, in the context of that series of certificates that are provided to a Principal Certifying Authority, which pretty much every witness has said are not worth the paper they are written on, about that. The question was, "but most of the people providing the certification have not gone through the formal certification process because they are not obliged to for these very sub-certificates that are being provided". It was put to you absolutely and directly. You said, "Those are other persons who are required to be accredited under the same legislation that accredits the principal certifier."

**Mr TANSEY:** I would still welcome the opportunity to go back and check it because I am going back to my recollection. I think it may have been that the Committee at that stage was debating partly this concept of self-certification—persons who can do work and then provide their own certification or assurance, in the broad terms, that the work is done properly. Frankly, it is a challenge we quite often face when the term "certification" is used very broadly and colloquially and understand that—I take that to mean when people are assuring or vouching for work versus when they are performing the statutory function of certification.

**The CHAIR:** I am not speaking here on behalf of the Committee, but in my opinion—on the material that I have seen, which contests your evidence afterwards—I would say it goes beyond being unhelpful, but was in fact directly misleading. I would ask that when you are responding on notice to this, you take on board the seriousness of it.

**Mr TANSEY:** Yes and that would never be my intention to mislead, Chair.

**The Hon. MARK BUTTIGIEG:** I will put it a bit more diplomatically: It is one thing to have a system in place that requires a series of certifications for all the different grades and inputs into a building; it is quite another to have an enforcement regime which makes sure that happens, isn't it? Where I used to work we had a system called "hazard assessment checks". It was a tick-and-flick exercise to say, "That is a hazard there, that is a danger there. I have done it, off I go." It strikes me that this whole process is based on the same tick-and-flick approach and because there is no enforcement regime, people do not do it properly. Would that be a fair statement?

**Ms WEBB:** Are we talking about enforcement regimes for all types of certifiers or—

**The Hon. MARK BUTTIGIEG:** Yes.

**Ms WEBB:** We certainly have some enforcement activity in relation to certifiers. We have disqualified some and have certainly fined some, but we will need to take on notice whether any of those cases relate to the more specific categories.

**The Hon. JOHN GRAHAM:** Thank you for that answer. I am conscious of the time, so might just skip through a couple of these issues quickly, if that is okay. On the issue of cladding there has been a lot of evidence about the fact that Victoria has acted. It has \$600 million, it has an agency and, we were told today, it has an advisory reference panel overseeing each claim. How far away is a New South Wales response of a similar magnitude?

**Ms WEBB:** I think I would have to say that is for the Government to decide the exact response. There is certainly a lot of work being done on a response but it will be for the Government to decide.

**The Hon. JOHN GRAHAM:** Have you received a recommendation yet from the Building Commissioner? He said he would provide one within two weeks.

**Ms WEBB:** We have had some meetings with him. I do not know if we have landed on specific activities but we are certainly heading towards something, we think.

**The Hon. JOHN GRAHAM:** So it has been discussed?

**Ms WEBB:** It absolutely has.

**The Hon. JOHN GRAHAM:** But you are not aware of a recommendation yet?

**Ms WEBB:** I am not aware that he has made something that you could call a formal recommendation. He has only come up with a lot of possibilities, as have other people in the department who are discussing it.

**The Hon. JOHN GRAHAM:** Thank you. We have been told that the Building Commission in Queensland and one of a similar size in Victoria, have about 400 staff. You gave evidence, collectively, about the number of inspectors in Fair Trading and it is much smaller, perhaps a quarter. What do you say to that evidence we have had about the available resources from the building commissions that are operating in those two other States?

**Ms WEBB:** I think it would be very hard to make an absolute direct comparison because some of the functions, as I understand it, of some of those building commissioners in other States would also coincide with

some of the work that in New South Wales is part of the planning system and the local council system as well. I cannot make an absolute, direct comparison. We are certainly proposing to provide some more figures in response to the questions that we took on notice, so they will be coming shortly.

**The Hon. JOHN GRAHAM:** Okay. I want to put to you some evidence which was put about unlicensed electricians operating in New South Wales. It was about companies, provided by Justin Page, advertising for unlicensed electricians—overseas-qualified electricians—and trade assistance, advertising in breach of the law. There were 19 companies advertising for these workers, including on Government contracts. I do not know if you are aware of that evidence?

**Ms WEBB:** We are aware—this is the evidence from the Electrical Trade Union [ETU]?

**The Hon. JOHN GRAHAM:** Yes. It was very concerning, on the face of it.

**Ms WEBB:** Yes. We certainly have had some contact from the Electrical Trade Union, both in Fair Trading, but also SafeWork about unlicensed electrical activity. We have certainly taken away some licences from some people and we have certainly investigated some issues where there have been allegations of unlicensed work. The specifics of that particular case—it may be best if I take that detail on notice, about the 19.

**The Hon. JOHN GRAHAM:** Is there unlicensed work going on on Government projects at the moment?

**Ms WEBB:** I am not aware on Government projects. I know there is some cause for debate with the ETU about what is required to be licensed and there is some work that I think it considers to be electrical work, which when we examine the legislation, just does not fall within the definition. So there is certainly a live debate—

**The Hon. JOHN GRAHAM:** You have said that you are aware of the evidence and I want to test the evidence with you, because it was very concerning. The ETU was very specific about 19 companies—it ran through a couple of examples. Can you give us any assurance that that is not the case—that there are not overseas electricians operating on big Government projects, for which there is blatant advertising saying, "Come over here and work if you're unlicensed or from overseas."

**Ms WEBB:** I am not aware of that specific allegation. I am definitely happy to take it on notice whether the ETU has brought that specific one to our attention.

**The CHAIR:** It provided us with comprehensive evidence—letters, emails, repeated communications to your department—and it got nothing back to the bulk of them.

**Ms WEBB:** We are happy to provide some copies of correspondence as well as if that would help the Committee?

**The Hon. COURTNEY HOUSSOS:** Are you aware the allegations that it brought before this inquiry?

**Ms WEBB:** I am aware that it made some allegations and I am certainly aware that it has, over time, brought concerns.

**The Hon. COURTNEY HOUSSOS:** What action have you or has Fair Trading taken as a result of that?

**Ms WEBB:** We have followed up on a number of the matters that they have brought to our attention. Certainly, we have taken some action in relation to unlicensed electrical work and we have also disciplined some people who have electrical licences who have allowed that to happen. But it is also true that there is a matter of a grey area where they do not agree with our interpretation of the law and they think we should go further.

**The Hon. COURTNEY HOUSSOS:** As a result of the evidence to this inquiry you follow up?

**Ms WEBB:** I cannot say it is a result of the evidence to this inquiry. We certainly will follow up, but the actions I am talking about have been over the past couple of years.

**The Hon. JOHN GRAHAM:** Of more general enforcement actions—

**Ms WEBB:** Absolutely.

**The Hon. JOHN GRAHAM:** —rather than specific.

**Ms WEBB:** And we certainly do have quite a lot of complaints in the field of electrical licensing.

**The Hon. COURTNEY HOUSSOS:** Can you provide us on notice how many?

**Ms WEBB:** Yes, definitely.

**The Hon. COURTNEY HOUSSOS:** How many complaints you have received, and how many—

**Ms WEBB:** Complaints we have had and how many investigations, how many disciplinary actions, yes we can do that.

**The Hon. COURTNEY HOUSSOS:** And how many prosecutions have resulted from that?

**Ms WEBB:** Yes, absolutely.

**The Hon. COURTNEY HOUSSOS:** And licence cancellations?

**Ms WEBB:** Mr Dunphy might be able to answer.

**Mr DUNPHY:** Further to that, one of the things is following the hearings from these here, we did look to see what records we had in terms of communications and we have not been able to identify all of the communications they may have tabled as evidence. We are very happy to follow up and to explore that evidence to follow up if there are any issues that needed further action. We do take electrical safety very seriously, so in that evidence there are concerning issues. We certainly would follow those up and that would go through to our building inspectorate to investigate, so very happy to do that.

**The Hon. JOHN GRAHAM:** The final issue I wanted to ask about—

**The Hon. MARK BUTTIGIEG:** This is on a related point, that grey area you identified where there is some debate about licenced-unlicensed work, are you able to elaborate on that?

**Ms WEBB:** I am not a technical expert myself. As the Safe Work inspectors explain it to me there is a concern over people moving cabling and things like that about, when does that become electrical work or when is it just—

**The Hon. TREVOR KHAN:** Running cabling?

**Ms WEBB:** Moving cabling, but I am happy to again get someone with more technical expertise maybe.

**Mr DUNPHY:** I guess it comes down to the definition. To be a licenced electrician it includes electrical wiring work and the definition of electrical wiring work means physical work of installing, repairing, altering, removing or adding any electrical installation or supervising that work. So it is quite a broad definition. It can include many things and there probably are some grey areas in terms of what that definition covers.

**The Hon. JOHN GRAHAM:** Thank you. So I might invite a bit more of that on notice. Finally, I want to ask about one of the things the building commissioner put to us, and it was, to be fair to him, at the close of his evidence and I suspect given the chance he may want to expand on it, but it was this statement. He said, "Insurers are lining up to come back into the system." I just did not understand how, in the face of what is going on in New South Wales, that claim could be made. The evidence to the Committee is really clear, that the public is losing confidence, but insurers have lost confidence in where the system is up to, and that is creating a part of this crisis. What are the agencies views about the possibility and the best way to attract insurers back in to the system?

**Ms WEBB:** I might get Mr Tansey to talk, speaking about the possibility. I think we probably agree with the—

**The Hon. JOHN GRAHAM:** Do you agree with that statement, I guess is really the first part of the question?

**Ms WEBB:** I understood Mr Chandler to be talking from his experience more generally in the market before he had joined the Government, because he had been doing some work in that area.

**The CHAIR:** No, at the time he spoke, it was very clear, he said right there and then insurers were lining up to rejoin the industry. Do you agree with that evidence or not? It is a simple question.

**Ms WEBB:** Absolutely, Chair, I agree he was talking about now. I think where he got that information from was prior to him working with us. So, he may have some commercial contact. I am just trying to say I understood he had some commercial contact with insurers in a previous life.

**The Hon. JOHN GRAHAM:** Do you agree with that view though, insurers are lining up to come back in?

**Ms WEBB:** I cannot agree with it. I do not know for sure.

**Mr DUNPHY:** We did do some consultations in terms around the building professionals indemnity insurance and when we did meet with the Insurance Council of Australia one of the things that they did say was that the insurance industry still had an appetite for building insurance in the more general terms. I do not know

whether the commissioner was referring more generally. We know there are pockets where there is not an appetite. They are the issues that we are dealing with at the moment.

**The Hon. TREVOR KHAN:** What, like certifiers? What do you mean by pockets where they are not?

**Ms WEBB:** Certifiers, yes.

**Mr DUNPHY:** In terms of the building certifiers, there is obviously an issue in terms of the appetite for the insurance industry.

**The Hon. TREVOR KHAN:** That is more than a pocket, is it not? That is a pretty significant hole.

**Mr DUNPHY:** I think in terms of the insurance industry though it is talking about building insurance, it is talking about a broad range of different types of insurance.

**The CHAIR:** What about the entirety of the home building warranty scheme? There is not a single insurer who is willing to touch that with a ten-foot barge pole.

**Ms WEBB:** We agree that there is no private insurance there. Ms Donnelly can—

**The CHAIR:** Where is the queue of insurers that the commissioner was talking about?

**Ms DONNELLY:** It is not my understanding that he was talking about that. I cannot speak for him but let me give you some insight. Certainly, as I mentioned in my evidence last time, there are some interested parties in terms of the Home Building Compensation Fund. I think we are still on a trajectory towards having icare charging break-even premiums and there are a number of conditions that need to be met to make that attractive. But I do have some parties who are interested in that scheme, potentially. I have met with the building commissioner a couple of times, as I said I would, as I am informing my advice for the Minister around home warranty insurance. And my understanding is he has had some meetings with the insurance council and more generally insurers understand that there is a need for products to be provided there and that they are interested in seeing what the landscape would be. But, as I said to you, in terms of the Home Building Compensation Fund, there needs to be an environment in which an underwriter can actually properly price the risk and have a sustainable underwriting position.

**The Hon. MARK BUTTIGIEG:** "An environment" meaning?

**Ms DONNELLY:** More predictability about the forecast losses so that they can—

**The Hon. JOHN GRAHAM:** And that environment just does not exist at the moment.

**Ms DONNELLY:** For the Committee I did take on notice a question in which I am reviewing the final response to give you quite a bit of detail about the history over the scheme.

**The CHAIR:** One of the areas where the Government has done something is the October 2017 changes about fire safety regulations. I saw a number of you in the audience when the previous witnesses came forward. They said that they were very surprised that at the last moment a key part of the regulatory framework, which was requiring a competent fire safety practitioner to sign off on the as-built fire safety mechanisms, had been removed from the regulations. Can you explain how that happened?

**Ms WEBB:** I might get Mr Tansey to speak to that. I was not with the Government at that time.

**Mr TANSEY:** You are correct, Chair, I did hear Mr Smith and his colleague make that point. No, I honestly cannot remember exactly why changes were made when the regulation was finalised. It is not our regulation, as it was, it was the environmental planning and assessment regulation, so it was actually developed up by our colleagues in the planning department. Happy to take that on notice, why it changed. I think the question was around, yes, the plans being part of that reform as well.

**Ms WEBB:** The as-built.

**Mr TANSEY:** The as-built plans. Happy to take that on notice because I was not close enough to it.

**The CHAIR:** Why are we having this debate? Surely, if you are going to have reform about making sure that the fire safety elements of a building are up to speed, and as recently as October 2017 the Government moves in this regard, why would you not include a requirement that the as-built fire safety regime be inspected and certified by somebody competent? Why is this debate happening?

**Mr TANSEY:** So Chair, those reforms are part now of the Government's response to the Shergold Weir report, so they would potentially include that reform you are talking about and then go broader.

**The CHAIR:** Do they?

**Mr TANSEY:** Well, exactly what they are looking at requiring is that persons providing a whole range of designs, plans, performance solutions across a building would have to provide plans and declare them to be compliant. And as you recall, we discussed briefly last time, and then also marry that up with having as-built plans and including any variations to those plans also declared as compliant.

**The CHAIR:** Have any of you had the benefit of reading Ms Weir's submission?

**Ms WEBB:** From this morning? Her submission to the inquiry, yes.

**The CHAIR:** Can you explain why about half of, as she identifies—perhaps more—of the recommendations from the Shergold-Weir report have not been picked up by the New South Wales Government to date?

**Mr TANSEY:** I think—

**The CHAIR:** She identifies them in a table at the end. I have a copy of it here, if you would like it.

**Mr TANSEY:** Well, I mean, what I would say is that the Government has published. When we released the *Building Stronger Foundations—Discussion Paper* in June it included at the back our own reckoning of each of the Shergold-Weir in-confidence report reforms and where they are up to in New South Wales, so a good number of them are completed. If there are particular ones you wanted to ask about then I can help.

**The CHAIR:** Recommendations 3, 6, 8, 9, 10 11, 18, 19, 20, 4, 21, 23 and 24, but perhaps you could address that on notice?

**Mr TANSEY:** Yes. Again, happy to do that. In our discussion paper we did set those out. I would say, just as an overview, some of the reforms are being approached nationally as well rather than jurisdiction by jurisdiction, so particularly some of those early ones you enumerated I think are around more nationally consistent licensing and then continuing professional development, and what have you. Some of those reforms will be progressed as part of the national implementation plan rather than State by State. I am happy to take that on notice and provide that summary.

**The Hon. COURTNEY HOUSSOS:** Does Fair Trading have a document that says, "These are the recommendations. This is how we are working through. This is how we will achieve them in the recommended three-year time frame."?

**Mr TANSEY:** Yes. They are in the public document released in June 2019.

**The Hon. COURTNEY HOUSSOS:** I am not asking you if you have a list of them and the progress. I am saying, going forward, do you have a plan of how you will achieve them in her three-year recommendation?

**Ms WEBB:** Yes. Building foundations was the discussion paper, which is going to form part of the legislation that the Government has agreed to. This was the consultation on the legislation so there will be some legislation in October, which is our plan to introduce the rest of the reforms.

**The Hon. JOHN GRAHAM:** We are aware of the discussion paper. I think the concern is just how limited it was in scooping up these recommendations. I think the question is actually about: Is there an implementation document? Will you have these in place within the three years?

**Ms WEBB:** Once the legislation is passed. Okay.

**The Hon. JOHN GRAHAM:** So it will be a comprehensive response? It will not be the cherrypicked couple of things that are in this discussion paper. It will address each of those recommendations. Is that the intention?

**Mr TANSEY:** Yes. Happy to do that. As I said, it is already in the public domain, as are most of the reforms being progress nationally. They are also in the public domain in a national implementation plan, so happy to provide those on notice to show recommendation by recommendation with a level of completeness or progress.

**The CHAIR:** Overwhelmingly, the submissions we have had from within and outside the industry have said that the recommendations, the proposals in the *Building Stronger Foundations* report, are piecemeal and inadequate. If you have been following the submissions and the evidence to this Committee, you could not have but heard that. In particular, they refer to the failure to grapple with the licensing certification and regulation of the people who actually build buildings, rather than design them. Can we be satisfied that the Government will regulate properly the people who actually build the buildings, rather than those who simply design them?

**Ms WEBB:** To the extent that people are not already licensed under the current licensing regime for builders in New South Wales, the proposals that other people—I know we use the word "designer" a little loosely and sometimes people interpret that is just being the architects and designers, but it is also intended to scoop up

anyone else involved in building the building who is not currently licensed. But a large category of people who are building buildings are currently licensed.

**The CHAIR:** Are you now saying that when you said "designers", you meant to say also builders and tradespeople?

**Ms WEBB:** Well, builders and tradespeople are licensed already, so we are we are just trying to—

**The CHAIR:** Well, the people who do the waterproofing, the people who do the fire certification—we can have this argument, Ms Webb, but you must have heard the evidence—all of those people who actually build and install the mechanical ventilation system, the fire safety systems, the waterproofing, the array of those different apparently unregulated parts of the market, are they going to be licensed and certified and regulated following the reforms?

**Ms WEBB:** Sorry, Chair. Some of those people that you have mentioned in that list are already licensed. Some are intended to be licensed under these reforms and if there are some people that are missed out, I am not sure which ones they would be, as I am understanding all of the proposals that the Government has made.

**The Hon. MARK BUTTIGIEG:** What about the ones for whom there is a regime in place to ask for licensing but, according to the evidence we have heard on this Committee, is not being enforced?

**Ms WEBB:** So—

**The Hon. MARK BUTTIGIEG:** So, for example, electrical licensing is one, plumbing is one.

**Ms WEBB:** We took on notice, and I think we have already provided to the Committee, some numbers about how many licences we revoke or refuse each year, how many prosecutions we take for unlicensed work. We are certainly happy to give some more information about what is happening.

**The Hon. COURTNEY HOUSSOS:** The question goes to whether you think that the current regulatory scheme is robust and whether, the people who are licensed currently, that is a robust scheme. Is that your testimony to this Committee?

**Ms WEBB:** Yes. I think the current people who are currently licensed and the current regime for disciplining people who are doing unlicensed work is robust.

**The Hon. COURTNEY HOUSSOS:** This Committee heard from a plumber who has worked in the industry for 20 years who said, "I have never seen an inspector on a building site ever." Plumbing is the one that has the most number of inspectors out of any of the particular industries and he is saying, "I have worked in the industry for 20 years. I have never seen an inspector. I have never been asked for my licence number in any way." Yet your testimony to this Committee is that the current licensing scheme is robust.

**Ms WEBB:** I think we have some numbers about how many plumbing inspections we do each year.

**The Hon. COURTNEY HOUSSOS:** And you provided those last time to us. My question, Ms Webb, Mr Dunphy and Mr Tansey, is: Is the current system robust and working?

**Ms WEBB:** We do risk-based regulation. People who are very compliant may be less likely to see a plumbing inspector than people who we have concerns about because we are either hearing complaints or hearing industry intelligence that we should go and inspect them. So it is very hard for us to take one person's example of not being checked, but we certainly have a lot of plumbing inspectors, as you mentioned, and we certainly do a lot of plumbing inspections based on risk.

**The Hon. COURTNEY HOUSSOS:** No. Let us be clear: I did not say there a lot of plumbing inspectors.

**Ms WEBB:** I am sorry, you just said there were more than others, yes.

**The Hon. COURTNEY HOUSSOS:** Forty-four across the entire State.

**Ms WEBB:** Yes. I agree with that.

**The Hon. MARK BUTTIGIEG:** Ms Webb, can I put something to you?

**Ms WEBB:** Yes.

**The Hon. MARK BUTTIGIEG:** If I were to tell you right here, right now, that if we were to go out to a building site and I was to ask an electrician whether he or she understood the concept of an earthing system and how it works, I would find a very high incidence of them not understanding it, yet they carry a licence, would that surprise you?

**Ms WEBB:** I do not know how I can give an answer to that question.

**The Hon. MATTHEW MASON-COX:** It is rather hypothetical.

**Ms WEBB:** It is a bit hypothetical but—

**The Hon. MARK BUTTIGIEG:** Well, no.

**Ms WEBB:** If there is a particular example, we can take it up.

**The Hon. MARK BUTTIGIEG:** Let me put it in another way. The testimony you just gave articulated a view whereby you thought the current licensing regime was robust enough to ensure that people are in fact qualified in doing licensed work. I put to you a hypothetical that asked you whether or not you would be surprised if that was not the case. Do you have an answer? Would you be surprised, or not? It is a simple question. If the system is robust enough, presumably you would be surprised.

**Ms WEBB:** Yes, I think that is a fair answer, yes.

**The Hon. MATTHEW MASON-COX:** May I ask a couple of questions, Chair?

**The CHAIR:** Yes.

**The Hon. MATTHEW MASON-COX:** Thank you and welcome all. There are some familiar faces. It is good to see you. I just wanted to ask you a couple of questions, Ms Donnelly, about the Home Building Compensation Fund. You mentioned that you need certain conditions to be met before you could insure break-even premiums. Obviously that is to do with pricing and the risk.

**Ms DONNELLY:** Yes.

**The Hon. MATTHEW MASON-COX:** Before I get to that, can I just put some things to you? If you look through the statements from icare, clearly the fund is going further and further into deficit. Would you acknowledge that?

**Ms DONNELLY:** Not necessarily, but I would like to see the statements that you have in front of you.

**The Hon. MATTHEW MASON-COX:** I will take last year's statement.

**Ms DONNELLY:** Yes.

**The Hon. MATTHEW MASON-COX:** In last year's statement, from 2017 to 2018, there was a grant from the Government of \$181,000,372.

**Ms DONNELLY:** Yes.

**The Hon. MATTHEW MASON-COX:** When you add that back to the deficit in 2017, which is \$480,820,000, it grows to \$616,695,000.

**Ms DONNELLY:** Yes.

**The Hon. MATTHEW MASON-COX:** So an increase of \$136 million in 12 months. If you look back over the intervening years, there is a significant increase in that deficit. You can take that on notice and check those figures, if you like.

**Ms DONNELLY:** I am happy to, and I did take a question on notice last time in terms of the most recent year, but, to answer your question, I consider the break-even premium question and the deficit question separately, but they are related obviously. What we have required icare to do on a go-forward basis is introduce pricing that is based on risk and that moves closer to break-even. For example, in the '18/'19 year they have yet to bring the new construction of multi-unit dwellings up to break-even premium. My understanding is the forecast gap in premium collection was—and I mentioned this—in the vicinity of \$43 million, but they are projecting to have reached break-even premium by 2021. It is almost like you are looking at two different books of policies and liabilities so there is a point in time where it is getting closer to being sustainable.

**The Hon. MATTHEW MASON-COX:** If I could just stop you there, this morning we had evidence from Mr Seidler of the Master Builders Association of NSW [MBA] who was saying that there have been huge increases in the multi-storey premiums from their members and the unaffordability was now becoming an issue, but there had been decreases in the premiums for single dwellings and duplexes which reflects the risk I think you are talking about.

**Ms DONNELLY:** It most certainly does, yes.

**The Hon. MATTHEW MASON-COX:** I suppose the question is: We are talking about effectively negative equity growing at about \$100-plus million a year, and this has been going on for years and the pricing and risk issues have been known for years. It is just getting worse. When are we going to fix this problem and how are you going to fix it?

**Ms DONNELLY:** I have agreed to take that on notice and I will give you back my answer looking at it as two categories of policies—the ones from the newer years where there is pricing closer to break-even, and I know you made a comment in there that I will address and I will also address the fact that there are years where there were policies written and the pricing was not adequate to price for the risk, and claims are still coming in from those. So that, I hope, will give you the context that, while it is a longtail scheme and there are still claims coming in from previous years, over the longer term having adequate pricing will mean that it moves towards a sustainable basis.

**The Hon. MATTHEW MASON-COX:** It is always about pricing and risk.

**Ms DONNELLY:** Let me talk to you a little bit about the comments about increases and decreases. We have required icare to have a more granular approach to pricing projects. That means that for some projects they have adjusted downwards and the premium is cheaper because the risk is cheaper—the cost per policy is cheaper—and, in fact, people who were embarking on those less risky projects would have been cross-subsidising if you did not have a risk-based pricing. They would be cross-subsidising people with riskier projects. A new build for a multi-storey dwelling is more risky and the price for that is going to continue to increase. I think it really goes to some of the content that the Committee has been considering about people who are builders fully carrying the risk that they are embarking upon and having all the incentives to manage that risk. Risk-based pricing does aim to do that.

**The Hon. MATTHEW MASON-COX:** It has just been years. I would love to hear your response. I look forward to reading it in full.

**Ms DONNELLY:** I do acknowledge that the scheme has had a long history. This has been the work of the last couple of years to impose a regulatory regime over the premium-setting.

**The Hon. ROBERT BORSAK:** Ms Donnelly, I hear what you are saying in terms of risk assessment and that you are working towards a more, as you say, granular approach to risk assessment and, obviously, pricing, but why would you end up with any different result or appetite for risk than what the commercial market would end up with in this unregulated environment if you are not the lender of last resort?

**Ms DONNELLY:** I might ask you just to clarify your question a little. Is it about why would it be viable for a private underwriter?

**The Hon. ROBERT BORSAK:** No. I am saying why would it be viable for you? Why would you come to a different risk assessment in the current regulatory environment? Because, if I take what you were saying earlier, the longtail on the old stuff is one thing, but you will adopt a more granular approach to risk assessment. You talked about the ones that were good risks and the price would go down but you did not talk about the ones that were bad risks where the price would go up or you may not even cover them.

**Ms DONNELLY:** There is an intention and a plan that icare has in place that we have been reviewing each time they put in a premium filing to bring up, I think, three categories of building projects that are currently not yet priced at break-even premium based on the best estimate of the losses. That is the reason why there would be some builders who are noticing pricing increases.

**The Hon. ROBERT BORSAK:** That is right, but are you in those markets because the commercial market will not accept any risk in those areas?

**Ms DONNELLY:** Certainly, at the moment, it is a mandatory scheme. There are not any other private underwriters and icare is in that market in order to provide that service, so it is a market failure, yes, in that sense.

**The Hon. ROBERT BORSAK:** That is right, so, that being the case, what is your capacity to charge anything other than a non-commercial rate?

**Ms DONNELLY:** I hope I am understanding your question. Our intention is to have icare bring the scheme so that there is a fair price for the risk that is meeting the break-even premium for each category of building. That would enable more of a level playing field for some new entrants.

**The CHAIR:** Isn't the question quite simple? How is it that you keep writing policies, knowing that you are going to run it as a loss and you will have the taxpayer subsidising the building industry?

**The Hon. ROBERT BORSAK:** Or take it from the other side. Aren't you trying to stretch the insurance Glad wrap over an industry that cannot be ensured because it is so deregulated? You really are stretching it too far and, really, perhaps what we should be doing is going to the other end of the scale and saying, "Well, okay, now we need to actually sit," not so much you but the Government, that you should be thinking about regulating the industry so you can start to get your head around some of the risks that are actually there in the reality of the way the industry operates. Insurance is not the panacea. Insurance is meant to be the fallback position.

**Ms DONNELLY:** Sorry if I did not understand your question. I certainly agree there is a full continuum of risk management and that is part of the reason why I mentioned that in formulating my advice I want to be doing it in discussion with the NSW Building Commissioner and other colleagues because it needs to be part of a larger system, if you like. You need insurance where someone has a claim and they are in a terrible situation but you want to prevent that, so I do agree.

**The Hon. ROBERT BORSAK:** Insurance is meant to cover you in the unforeseen circumstances of something happening, not like we are seeing now where it is always happening because of the lack of real, hard regulation in the industry. I cannot see, in certain categories, why you are ever going to have any ability to properly price at a level that is going to turn your scheme into at least a break-even because icare is acting as a lender of last resort. "Lender" is the wrong terminology but you know what I am saying.

**The Hon. MATTHEW MASON-COX:** Insurer of last resort.

**The Hon. ROBERT BORSAK:** Insurer of last resort because there are no markets.

**The Hon. MATTHEW MASON-COX:** That is right.

**The Hon. ROBERT BORSAK:** If that is the case you can actually charge whatever price you like.

**The Hon. MATTHEW MASON-COX:** I suppose the challenge is to transition it so that the private market finds it attractive again. Is that the objective that you have?

**Ms DONNELLY:** That is certainly one objective. The Government introduced legislative reform that removed the ban on private underwriters, so at least we have a scheme now that could invite them.

**The Hon. MATTHEW MASON-COX:** But no one wants to buy— Yes, well, you have got one application.

**Ms DONNELLY:** But a preliminary objective is to bring it into the black—

**The Hon. MATTHEW MASON-COX:** Into the black.

**Ms DONNELLY:** —and to have it pricing at a fair rate for the different types of projects. That is a goal in itself.

**The Hon. MATTHEW MASON-COX:** Perhaps you can take this on notice. I think you alluded to the fact that you are going to provide some information over a course of years as to where it has gone, if you like, in terms of the deficit of the scheme. Then perhaps let us look at forward and what your projection might be in terms of bringing that back to a surplus as part of a plan, if indeed that is where this is going to really take it out of Government hands so that the Government is not continuing to lose hundreds of millions of dollars underwriting the building industry and all the regulatory problems that exist as a result—or perhaps not as a result, but they exist.

**Ms DONNELLY:** I am happy to take that on notice. Obviously, I will want my response to be factual.

**The Hon. MATTHEW MASON-COX:** And we would too.

**Ms DONNELLY:** I am not sure that there are forecasts for when that will happen. I do think that there is a need for more critical thinking about what else might need to happen.

**The Hon. SCOTT FARLOW:** One of the submissions to us from a group called SecureBuild outlined that the average cost of claims in New South Wales was \$88,831, compared to \$43,232 in Victoria, and \$13,342 in Queensland. Would you agree with that assessment?

**Ms DONNELLY:** The latest information I have about New South Wales is that the average payment per claim is in that vicinity—it is \$82,000. I do not have to hand, Victoria and Queensland. What I can say, is that the maximum payment that you are entitled to in New South Wales is higher than the maximum payment in the other States. One of the things I am providing to the Committee, is a comparison in the different jurisdictions of the different entitlements, and what is covered.

**The Hon. SCOTT FARLOW:** So effectively we are comparing apples and apples, rather than apples and oranges, which we might otherwise be doing.

**Ms DONNELLY:** It is a little bit like that, yes.

**The Hon. SCOTT FARLOW:** With respect to the private companies that have come to you with an interest in re-entering the market, have they expressed an interest in entering the market as it currently stands, all with amendments to the way in which certification occurs, or that controls occur within the construction industry and the regulatory regime?

**Ms DONNELLY:** There is some interest as it currently stands.

**The CHAIR:** Ms Webb, I have been considering your evidence about the response to the Shergold Weir Report. As you would know, recommendation one of the Shergold Weir Report is that each jurisdiction requires the registration of the following categories of building practitioners involved in the design, construction and maintenance of buildings. There is quite a long list. Reading from your submission to this enquiry, page 56, the New South Wales Government response to the report acknowledges these issues, takes a holistic approach, but the only reference I see that could address recommendation one is the second of four dot point, which says, introducing a new registration scheme for "building designers". So the Shergold Weir Report talks about requirement for design, construction and maintenance, and the submission that you give to this Committee is limited to building designers. I do not understand how that correlates to the evidence you gave earlier?

**Ms WEBB:** I apologise if it was confusing. In our response to recommendation one of the Shergold Weir Report, we in New South Wales already do licence some categories of people involved in construction and maintenance, and those other issues. So therefore, we have characterised it that our response to the Shergold Weir Report will be to scoop up the rest that we do not already licence. So we use the words "building designers" to explain that is what we are talking about. At the moment those are the main categories not caught in New South Wales already. But to the extent that the Shergold Weir Report is not already in place in New South Wales, the intention is to catch the remainder of its recommendations fully.

**The CHAIR:** We have heard detailed evidence about how New South Wales is so woefully inadequate in terms of registering and licensing, particularly multi-level building works. Each and every element of the construction of a building, including the maintenance. Yet the Government's response is all about a registration scheme for building designers. It is almost as though you do not understand the scale of the problem, Ms Webb?

**Ms WEBB:** I do not think I can say anything more except that the intention is to introduce registration for the people not already licensed and registered.

**The Hon. MARK BUTTIGIEG:** Why not say it explicitly then?

**Ms WEBB:** We have put it in here about what we are doing. The incremental change that we are making with the description on page 56. In our response to Shergold Weir, we talk about this is already done in New South Wales and now the rest of the increment will be done.

**Mr TANSEY:** The specific reforms announced in February, that were the subject of consultation in the Building Stronger Foundations discussion paper, are going to particular themes which the Government recognised in the Lambert Review, that are in Shergold Weir, and also in Dame Judith Hackitt's report after the Grenfell fire in London. These focus on the gap between how buildings are designed and how they are built. I think some of your questioning reflects that you are already alive to those risks. That response is particularly dealing with reforms in New South Wales that will, for the first time, capture and require registration of people providing the designs and marry that up with the people doing the construction, and who rely on those designs, having to also declare that they have built according to those designs.

If the building required variation, we want to ensure that the variations are documented, and if the variations are substantial enough, that they required changes to the approvals or new plans and designs, that those new plans and designs are declared again. That is the clear intention of the Building Stronger Foundations reforms. A number of reforms in the Shergold Weir response are either already in place, or will be the subject of further works. It is also worth drawing out that Building Stronger Foundations does not cover the field in terms of the recommendations of the report. It is targeting specific imperatives in the report.

**The Hon. JOHN GRAHAM:** You are not the first person to make that point.

**The Hon. COURTNEY HOUSSOS:** Mr Tansey, the last time came before the Committee, we asked you specifically when will the Building and Developers Certifiers Bill 2018 be proclaimed. Do you have any new information on that?

**Mr TANSEY:** We agreed to take that on notice and we will be providing answers back to the Committee.

**The Hon. JOHN GRAHAM:** It will not be this year though, that is what your submission already says.

**Mr TANSEY:** The question I took on notice was when would the consultation commence.

**The Hon. MATTHEW MASON-COX:** On regulation.

**The Hon. JOHN GRAHAM:** The Government submission says that legislation will not be this year. That is correct, is it not?

**The CHAIR:** Feel free to take that on notice.

**Mr TANSEY:** I have undertaken to take that on notice.

**The Hon. COURTNEY HOUSSOS:** Have any additional resources, including full-time staff, been redirected to the Building Commissioner?

**Ms WEBB:** Some full-time staff have, the four or five which I think the Building Commissioner mentioned when he gave evidence to the Committee. So we are just building up that secretariat team for him at the moment.

**The Hon. COURTNEY HOUSSOS:** So there are four or five staff?

**Ms WEBB:** Not yet. We are building up that team. They have been quite a number of staff working with him already who are not specifically assigned to him. They work for Mr Dunphy.

**The Hon. COURTNEY HOUSSOS:** How inspectors now report to the Building Commissioner?

**Ms WEBB:** So the way our management is organised is that Mr Dunphy is the line manager of inspectors. We have other directors who are line managers of inspectors but they are all available to assist Mr Chandler with all his operations and they certainly have been.

**The Hon. JOHN GRAHAM:** Having listened to the evidence and reviewed the Government submission, I am conscious we are due to make recommendations, potentially, in an interim report. The recommendations in the Lambert and Shergold reports look pretty compelling. Obviously there is some argument around the edges. What I am not clear on is, is there any obstacle to this Committee recommending that we adopt those, get moving a whole lot quicker than has been the case. I want to be conscious of what the agency view is about any issues that might create. But that is not clear to me having looked at the evidence you have put in front of us. If there is a problem with proceeding down that path, and a whole lot quicker, I do not understand it. I would like to give you, though, the opportunity before we make recommendations along those lines. Is there any problem with doing that?

**The CHAIR:** Within the three-year time frames set out.

**Ms WEBB:** I think in relation to the Lambert report the Government did make a response to that report. Obviously as an agency we are operating within the boundaries of the Government's response to Mr Lambert's report. As you can see we are already working on the response to the Shergold Weir Report. Certainly there is a lot of activity underway in relation to that. I guess it will ultimately be an issue for the Government as to exactly what in relation to both those reports is done.

**The Hon. JOHN GRAHAM:** I am not asking you to step over the line here. As a Committee we are about to make a recommendation, we are looking to you for advice about any issues that these recommendations will create that we should be aware of. Certainly I have been in a position where other agencies have provided advice to caution a Committee. Personally I would take that pretty seriously. We have not really received a clear caution about any of those recommendations, so I can tell you that is where I will be heading, saying, "There is a set of answers on the shelf, let's pick them up and run with them quickly." Is there any reason why we should not recommend that, that you want to caution us about?

**Ms WEBB:** I think the difficulty that I have with answering that in relation to Mr Lambert's report is that he made certain recommendations that dealt with the structure of the Building Commissioner and things like that, which we just cannot talk to. He made certain recommendations that actually fall within the remit of the planning Department.

**The CHAIR:** Why don't we limit it to the Shergold Weir Report, which did not make those structural changes?

**Ms WEBB:** Absolutely. I think, as Mr Tansey has alluded to, the Shergold Weir was a report to the Building Ministers' Forum collectively, and there is certainly a view that Ministers across the jurisdictions have a role in implementing those reforms. I guess the constraint on New South Wales in responding to it, which we are quite fully, is making sure that we work collegiately, because I understand there is quite a desire for harmonised

regulation in this field across States. We just want to make sure that, whatever New South Wales did, did not cause so much disruption to the industry by going out on a limb.

**The Hon. JOHN GRAHAM:** Which is a sensible caution.

**The CHAIR:** Ms Webb, the final question I will ask is that, here at 4.45 p.m. in the afternoon, what is the current budget sitting in whichever department it sits for the Building Commissioner in New South Wales?

**Ms WEBB:** Mr Chandler, as I think he explained to you, is working on his work program and that will inform our submissions to the Government about the budget.

**The CHAIR:** But I am asking a very specific question. What is currently budgeted?

**Ms WEBB:** Currently in any budget that has been published there is nothing specific in relation to that.

**The CHAIR:** Thank you for your evidence. This hearing is now concluded.

**(The witnesses withdrew.)**

**The Committee adjourned at 16:48.**