REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

INQUIRY INTO REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES

CORRECTED

At Sydney on Tuesday 5 November 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. Sam Farraway
The Hon. John Graham
The Hon. Courtney Houssos

The CHAIR: Welcome to the fourth hearing of the Public Accountability Committee Inquiry into Regulation of Building Standards, Building Quality and Building Disputes. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay my respects and those of the Committee to the Elders past and present of the Eora nation and extend that respect to other Aborigines present. This land always was and always will be Aboriginal land.

Today's hearing will examine the Design and Building Practitioners Bill 2019, which was introduced into the Legislative Assembly on 23 October 2019. Throughout the Committee's inquiry the Government has indicated it would introduce legislation to address many of the problems we have seen in the building regulation in New South Wales. The Committee is due to release its interim report on the inquiry soon and we feel it is important for the report to include examination of that bill. Today's hearing will start with evidence from a number of building industry professionals and unions. We will finish the day by taking evidence from New South Wales Government officials, as well as the NSW Building Commissioner, Mr David Chandler, and Ms Bronwyn Weir in her capacity as advisor to the commissioner.

Before we commence I make some brief comments about the procedures. 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 also remind media representatives they must take responsibility for what they 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. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their 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.

We have a very short time frame for delivering our interim report so there will be no capacity for a witness to take a question on notice at today's hearing. I remind everyone here today that Committee meetings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. To aid the audibility of this hearing I remind Committee members and witnesses to speak into the long microphones. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers.

Finally, I ask everybody, including members of the Committee, to turn their mobile phones to silent for the duration of the hearing. I welcome our first witnesses. Mr Jonathan Russell, Mr Greg Ewing and Mr John Roydhouse. Mr Russell and Mr Ewing have previously been sworn as witnesses and will not be required to swear again, they will continue on their former oath or affirmation.

GREG EWING, General Manager, Sydney Division, Engineers Australia, on former affirmation

JONATHAN RUSSELL, National Manager for Public Affairs, Engineers Australia, on former oath

JOHN ROYDHOUSE, Chief Executive Officer, Institute of Public Work Engineering Australasia NSW, sworn and examined

The CHAIR: Thank you for your attendance today and your assistance with submissions to the inquiry. Do each of you, or certain of you, wish to make a brief opening statement?

Mr RUSSELL: My name is Jonathan Russell. I work for Engineers Australia as the national manager for public affairs, and I am joined by Greg Ewing, the general manager of our Sydney division. As you have heard, but I will state again for the benefit of anyone who might be listening for the first time, Engineers Australia is a professional association. We have been around for 100 years. We represent about 100,000 engineers. Our evidence to you in the past, and again today, is going to be centred on the role of the regulatory reform process to enhance professional standards in the engineering sector, in the building sector and hopefully beyond. In the last set of evidence we have given you our main arguments for why greater regulation of engineering practice is required. Today we are hoping to be able to explore the merits of looking at not just the Design and Building Practitioners Bill 2019 from the Government, but also the non-government bill, the Professional Engineers Registration Bill 2019, which was introduced in recent weeks as well.

The reason for this is the two are very much complimentary. We do not see them as an either/or proposition but definitely the two need to work together. If we have just the Government bill passed there will be a lot of benefits for the building sector, but there will remain two things. One is some loopholes in regulating engineering practice. The second thing is that it could be a missed opportunity to broaden the benefits of what we are doing now to engineering practice in other industries, things like public infrastructure, manufacturing, electricity networks and the like, other things that the community also relies on. With that, I think that is enough as an introductory comment to flag our interest and the scope of what we would like to talk about today.

Mr ROYDHOUSE: The Institute of Public Works Engineering Australasia [IPWEA] NSW Division has considerable interest in the terms of reference of this inquiry. Not only are we interested in what happens in the building construction sector in residential and commercial spaces, but we are also interested in the realm of what happens outside those boundaries in terms of public infrastructure, our roads, our bridges, our footpaths, our sporting fields, our water and sewerage supply, just for example. As soon as you step outside—and the inquiry did start in many ways through the misfortunes of the Opal Tower and Mascot Towers, and buildings like that—those buildings on the footpath one of our IPWEA engineers is responsible for that.

Many of those engineers work in the field of local government, so they are also involved with the development process through the development applications and that planning stage of building construction, which again is an interest for our members and for this inquiry. As Mr Russell has mentioned, there are two pieces of legislation currently before the Parliament and IPWEA also supports that joint approach. We do believe that they are complimentary pieces of legislation and should be looked at and treated accordingly.

The CHAIR: Mr Ewing? Or did Mr Russell address your matters?

Mr EWING: Mr Russell's words will stand for me.

The Hon. JOHN GRAHAM: Thank you for the Engineers Australia submission in particular, I think it really steps through the issues quite well. I take you to some of the observations you have made just to spell out exactly what you are saying. Firstly, the classes of structures to which the bill applies—this is the Government bill we are referring to now. You understand the intention is to begin with Class 2 apartment buildings only. Can you spell out for us what will be missed out if that is the approach that the Government takes?

Mr RUSSELL: Since writing the submission to the inquiry we have had the Government bill introduced to Parliament and the second reading speech. The Government took the advice of not just us but many other stakeholders and used the second reading speech to spell out in a lot of detail how they plan to role out their reforms. At the time of writing the submission we were very concerned that the reform process would only apply to class 2 buildings, which are residential apartments. It does appear, from the Government's second reading speech, that it is committed to broadening that out, over time, to all classes of building. At least, that is how I have taken the message. The Government did not list every single class of structure but I believe the intention of the second reading speech is that it is those. It would, of course, be better if this was spelled out in the bill.

Acts are where laws are made; everything else comes later. Regulations come later. But acknowledging that the Government has been working very fast on this, our advice is to slow down a little bit so that we can get it right in the Act first time. Acknowledging that the community wants to see some evidence of action the Government has been moving pretty quickly. That is why it is committing to do it through regulation. I think it is up to groups like ours and the Parliament to make sure that the commitment given by the Government through the second reading speech is fulfilled. That is the main challenge—making sure that it does not stop with class 2 buildings once the immediate problems come off the headlines, and making sure that it does, over the next year or two, extend to all classes of structure.

The Hon. JOHN GRAHAM: From the Parliament's point of view, given that the previous bill was raced through urgently but is yet to be put in place—that is still the case, isn't it?—

Mr RUSSELL: Yes.

The Hon. JOHN GRAHAM: The Parliament may well share your concerns about making sure there is enough detail in the bill. What consultations have you had with the Government directly over this? What has either this Minister or previous ministers promised will be in this bill?

Mr RUSSELL: I would not characterise it as the Government making any direct promises to Engineers Australia. We have had a lot of conversations with the Minister, his political staff and the Government agency—one on one, as part of small groups and as part of large industry stakeholder roundtables. It is through that process that we have been initially quite concerned—this is referring back to your class 2 question—that it was originally going to just be on class 2, but then through that consultation they have clearly listened to us and acknowledged that there is a need to stage it out to all classes of structure.

The consultation has been, I think, overall, decent consultation in the context of going very quickly. It still stands—as I mentioned just a little bit earlier—that they could work through a lot more detail before introducing a bill to Parliament, but I think the Government did commit to the public to put reforms to Parliament this calendar year. So that is what it is committing to there. It is going to work through the regulations with us and other organisations. The fact that the private member's bill is in, is fairly significant for our interests because our primary concern is recommendation 1 of the Shergold Weir report, about the professional engineering regulation.

The Government bill provides for the regulations to be how the Government figures out how to register engineers, but the private member's bill actually provides the solution right up front. So we could short circuit that delayed process very easily. The private member's bill is based on Queensland and Victorian legislation which already exists, which we are big supporters of. The Government has not made any promises on that—referring back to your original question—but that is our advice to the Parliament.

The Hon. JOHN GRAHAM: So you are calling for both those bills to be dealt with. That would deal with this quickly. If that did not happen, given the delay on the previous bill have you been given any commitments about the timing of when this other scheme might come into place, given that it relies on regulations and that has been the cause of the delay?

Mr RUSSELL: Nothing formally, but informally there is a clear indication from Government that it is intending to get started on the regulation pretty quickly. I imagine that means early 2020, but I have not had a date.

The Hon. JOHN GRAHAM: So that is the start. Have you been given any sense of when this might end?

Mr RUSSELL: Nothing specific to us.

Mr EWING: Just to pick up on what you asked earlier, about where the gaps would be, starting with class 2 I think that one of the encouraging things was that some listening happened around class 2 and residential. You only have to think of modern buildings in cities. They do not just have residential apartment blocks; they do have commercial, they do have leisure. Widening that conversation out, it is not just about where we live; it is about where we learn, where we play and where we work. All of those have to come into it. I think that the challenge we have, as Jonathan rightly put in place there, is that we do not have a timeline for that. So whilst it is not in the bill, then how long that takes to eventuate through the regulations is an unknown length of string at the moment.

The Hon. JOHN GRAHAM: I want to ask a couple of questions about the cost of the scheme. Mr Roydhouse may want to chip in any views on those other things. Your submission really spells out the cost to the Government of setting up this scheme. You make a comparison to Victoria, where it was $5.9 million to set

up this scheme—that is, the registration of all professional engineering services. You make the point that that is less than the cost of seven average Sydney homes. Do you want spell out—

Mr RUSSELL: Yes, sure, I would love to. The cost of the scheme—we are talking about a professional engineers registration scheme. Because I am comparing the cost to what exists in Victoria and Queensland you could probably extrapolate this to be the cost of proceeding with the private member's bill. I think Victoria budgeted $5.9 million to set up the scheme. I did a quick check of the latest average house prices at the time that I wrote that and it equates to less than the cost of seven houses in Sydney.

The CHAIR: It is probably six today.

Mr RUSSELL: Yes, it could be. That gives you a sense of the size of the upfront costs, but the potential benefit is enormous when you think about buildings being evacuated or loss of confidence in the apartment sector. The cost of not doing this is so much greater that it pales in comparison. The other primary cost is the cost to the profession. There is an ongoing cost to Government of maintaining a register, but we believe if you look at the Queensland example, which has been in operation for about 90 years, it is cost neutral, because the agency—the Board of Professional Engineers Queensland, and you could have a similar thing here in New South Wales—is funded through the fees that engineers pay.

The Hon. JOHN GRAHAM: It may even turn a small profit—

Mr RUSSELL: It could.

The Hon. JOHN GRAHAM: —on the figures you have provided to us here. But it is not a cost to Government. That is essentially—

Mr RUSSELL: That is the big picture point. It should not be making money. If it is making surpluses, reinvest that into enforcement and compliance procedures and—

The Hon. JOHN GRAHAM: But your evidence is that the cost of not acting is potentially huge.

Mr RUSSELL: Huge.

Mr EWING: You mentioned the cost to the profession. There is a cost to profession members in that they would have a registration fee that they would pay, but due to mutual recognition there would be one assessment fee. So if they were assessed in Queensland or in Victoria they would not have to be also assessed in New South Wales. What they would have is the registration fee, which is at a relatively low level. So that would be a cost to members of the profession. I think it is important to recognise that. Where there is not an increased cost really is around the requirements for continuing professional development, because for a professional engineer who is already doing the right thing, that will be embedded within their professionalism anyway. They will be doing that—undertaking that continuing professional development—anyway. Organisations like Engineers Australia, Institute of Public Works Engineers Australasia [IPWEA] and others—there are a number of providers so the cost is actually relatively low.

The Hon. JOHN GRAHAM: I might hand to my colleagues, but before I do that I might ask Mr Roydhouse if he has any observations that he wants to chip in on.

Mr ROYDHOUSE: Just to support Jonathan Russell in particular on the registration scheme and cost, I know that the Queensland scheme, when it was introduced, was about $6 million to set it up. It is now self-funding. There was that initial cost to set it up and then the engineers in Queensland, through their registration scheme, fund the ongoing operation of that. I think it is about $600 a year roughly which is the cost to an engineer, so it is not a significant cost to the individual. The second point I want to make, and it comes back to your point on timings, I want to remind this Committee that in the previous Parliament there were five notices of motion for registration of engineers in New South Wales to mirror the Victorian legislation and the Queensland legislation. That was right across the political spectrum, the Liberal Party, The Greens, the Labor Party, the Shooters, Fishers and Farmers Party, so there should be bipartisan support for the registration of engineers.

Mr EWING: The costs that John Roydhouse mentioned comes from our submission in this space. There is a one-off assessment fee in Queensland, which is just under $600. Then the regular registration fee in Queensland sits at $232.74—

The CHAIR: About 60c a day.

Mr EWING: Yes, so it is not a massive cost to our profession.

The CHAIR: When you talk to the Government about this, what is their resistance? Why do they not want to have a register and quality assurance for engineers? What is their argument against it?

Mr RUSSELL: Can I start off by answering that? It is not clear—actually, I do not have a very clear answer on what the resistance is. To some extent it could be that it is next year's issue. They are going to provide some sort of registration scheme through regulations next year.

The CHAIR: The sort of manana response.

Mr RUSSELL: Perhaps. A concern of ours is that, currently in New South Wales the work of engineers is regulated in a couple of different ways and it is a different style each time. It is sort of getting to the point where we are quite worried that each time the Government realises that engineers need to be regulated to some degree, they will create a bespoke system in each place. Currently we have competent fire safety practitioners, which is not just engineers but a range and there is a scheme set up to regulate those. Engineers Australia looked at helping the Government by being a scheme operator, but realised that actually in that instance it would be requiring non-profit organisations like ours to take on the role of the Government, so to be the regulator, and we did not think that was appropriate for a body like ours—enormous risks involved and not our expertise. The second scheme is with certifiers, where there are some certifiers that have an engineering class to their certification registration. There are about 12 classes and for about eight of those you do not even have to have an engineering degree. We have made a submission to government about the draft regulations for the regulation of certifiers.

The CHAIR: That is all under part 6 of the planning Act, under a separate section.

Mr RUSSELL: I think so, yes. It is an example of engineers being regulated in different ways in different places. If you combine the private member's bill with the Government's proposed reforms, we can actually reduce red tape and have one system for regulating engineering practice and get all the benefits.

The CHAIR: I will come back to Mr Ewing. Mr Roydhouse, you had a response from the Government about their resistance to comprehensive regulation and certification for engineers.

Mr ROYDHOUSE: There has been an indication that there is unnecessary red tape and burden. We would suggest otherwise. Some red tape occasionally and regulation is good regulation. The problems we have in not having a registration scheme will become apparent in New South Wales as the rest of the eastern seaboard just about has moved down this path—the ACT Government has legislation before it the moment for registration of engineers, Queensland has had since 2002 in the current form and Victoria introduced it in August of this year.

The CHAIR: New South Wales will become the wild west, completely unregulated and surrounded by jurisdictions that have proper standards.

Mr ROYDHOUSE: It will become apparent and certainly within my membership it has already become apparent that people who do not have the qualifications are seeking to move into New South Wales because they can no longer work in other States.

The CHAIR: Mr Ewing?

Mr EWING: It is interesting because the combination of the two bills would be legislatively efficient. It is difficult to understand why there is the sort of resistance at the moment. Turning the question on its head, why would you not? Part of the issue that we see is that we would not seriously be considering deregulating doctors or nurses—

The CHAIR: Do not give them ideas.

Mr EWING: —or lawyers or other professionals. We would not deregulate that sector, because we understand why we are doing it. The question is: Why would we not register engineers? The bills together are legislatively efficient—it stops all those loopholes, it stops where you have overlaps of two pieces of legislation and then you have confusion or you have underlap, which happens when things fall through gaps. To your point about how New South Wales may shape, if you were to stand at the border between Queensland and New South Wales and walk from one side of the street to the other side of the street, in the north you would have the provisions and the protections under Registered Professional Engineer of Queensland [RPEQ] from the Board of Professional Engineers Queensland, but to the south you would have none of those provisions. It is quite a stark example where that difference would lie.

The CHAIR: If the bill is passed and then some time next year, we do not know when, the regulations are passed in relation to class 2 buildings, that will have no regulation still for all of those civil construction

projects, particularly from a local government perspective—key infrastructure at a local government level being signed off by engineers who have no accreditation. Can you explain what will be missed?

Mr ROYDHOUSE: There is significant potential to miss all aspects of public infrastructure. Local government in particular looks after 90 per cent of the road network in New South Wales. There is no requirement under the Roads Act for engineers to be qualified or registered to manage that road network in New South Wales. To put that in some perspective, the Centre for Road Safety would suggest there are something like 400 fatalities a year in New South Wales and some 12,000 serious injuries which require hospitalisation each year in New South Wales. The cost to the State Government of road trauma in New South Wales is around $7.5 billion annually. I am not suggesting for one minute that lack of registration of engineers is the sole reason why we have those terrible figures and the major problem, but it is a contributing factor to the way have maintained and built our roads that we actually need to have those skills.

The Hon. MARK BUTTIGIEG: Can I ask, Chair, given the restriction that occurred to class 2, what was the downside in being more expensive and more thorough straightaway? Presumably those conversations were had.

Mr RUSSELL: I can sort of answer that. I do not want to speak for the Government, but I can relay what I heard from them. Talking about starting with class 2 and then expanding it out, I think, was a matter in their view of being able to stage it out and manage the implementation. That was the reason that was given to us.

The Hon. MARK BUTTIGIEG: Right.

Mr EWING: Another part to that is the very in-your-face and very public issues around Opal Tower and Mascot Towers. The focus there is on those residential towers and the impact that it has on the owners and the investors in that space. They were very evident, but apart from that there does not seem any justification to not broaden it out. To broaden it out is one of the ones we would think, why would we not do that? Mr Roydhouse gave a very good example. When it does rain, the rain does not stop at a State border and how we actually deal with flood mitigation. The weather does not know the difference and people do not know the difference. It is not as if we get to the border between New South Wales and Queensland and time stops, although there is an hour difference at the moment.

The CHAIR: You think about the public infrastructure that has been built in the last decade—rail, tunnels, road bridges, freeways—there has not been a registration system in place to ensure that the engineers signing off on those projects are adequately qualified or accountable. Is that the case?

Mr RUSSELL: That is right, and New South Wales has something like $300 billion-worth of public infrastructure assets under management as well. Let us not forget the very boring but important aspect of maintenance, and ensuring that you have got the right people on the job can give you confidence that you are going to be able to sweat the assets for their full life.

The CHAIR: But it is particularly troubling when you have this concept of value engineering floating around, where you are relying upon engineers to come up with solutions that are potentially not consistent with the building codes in order to save money on these complex engineering projects.

Mr EWING: That is where ensuring that we have the right people who have the right education, the right experience and the right expertise to make informed and considered decisions is really important. The registration of engineers—I think we have said before—is not a silver bullet, but what it does do is it really acts as a mitigation in that you can ensure that the people who are registered do have that underlying knowledge and understanding and they have the ability to apply their underpinning knowledge and understanding and that they are current and competent.

The Hon. MARK BUTTIGIEG: While you are on that point, has this had an effect on the profession? If you are looking at this industry and there is no demand for a professional qualification, or there is a lack of a demand for a professional qualification, because presumably any Tom, Dick or Harry can do this sort of thing, to put it crudely, has this had an effect on the willingness of candidates to perform this sort of profession?

Mr EWING: What I find interesting is that we are in a situation in Australia where we do not graduate enough engineers of our own. We do not grow enough engineers of our own. When we import engineers into this country—there were engineers brought in by businesses to fill a particular gap that they have, and I perhaps use the rail industry as an example. There are not enough engineers in Australia with experience of the rail industry, whether it is rolling stock or track or signalling. These people who are coming into the country will be highly experienced and highly educated. What we have not got at the moment is a means of ensuring that across the board, whatever kind of engineering it is, that the people who are engaged in that unsupervised work where they

are making decisions have that. We cannot guarantee that that is in place. We have an assumption that businesses will be employing the right people and businesses will want to do that because it is part of their process, but we have no way of actually knowing, I think is the big issue.

The Hon. ROBERT BORSAK: Mr Russell, in fact you all argued very persuasively for a professional register, and there are other professions that have this sort of thing. It is a good way of regulating professional standards, encouraging more people into the profession. Continuing professional development has been in accounting for over 25 years and it is in the legal profession I think even longer than that. It is hard to understand how the Wild West reality goes on for engineering when you consider the amount of concrete that is smeared around the State. How do you tie all that together with some sort of regulation and regulator? It is one thing to have a good register, good professionals, but how do you tie all that together? Who is actually going to put a body in place or the law, if you like? Do you have a view on that?

Mr RUSSELL: Yes. The private member's bill lays out details for a board. If you look at the Queensland model, they call it the Board of Professional Engineers of Queensland. We examined this a little bit earlier. It is very cheap in the scheme of things to set up such a body, and then on an ongoing basis it is self-funding through fees.

The Hon. ROBERT BORSAK: I am talking more from the overall industry governance point of view. You talk very persuasively about having a scheme and the governance of the scheme and the controls around all of that, but do you have a view—maybe I direct this question to you, Mr Roydhouse, what should the Government be doing to try to work with the profession to control the industry and lift standards entirely?

Mr ROYDHOUSE: That certainly is the case in Queensland, the registration board administers the oversight of the registration of engineers. They do have an advisory board which relies on industry associations in particular to provide and update standards and set those standards and ongoing consultation with industry does occur. Compliance-wise, it is pretty straightforward. If you do the wrong thing as an engineer in Queensland, you get booted out, you cannot actually trade as an engineer in Queensland and unfortunately you have to move back to New South Wales for your sins.

Mr EWING: That co-regulatory model where government has the legislative power to actually sanction people, as Mr Russell said, who do not come up to the mark, if they do not step up they have to step out. What the organisations like IPWEA and Professionals Australia, Engineers Australia, amongst others, in the Queensland model is we are the assessment bodies, because that is something that we are good at. We have within Engineers Australia our college disciplines that set the standards for structural engineers, civil engineers, electrical engineers and mechanical engineers, so we are good at that part. Government is good at the administrative, legislative piece that says that if you do not meet these standards then you cannot practice.

The Hon. ROBERT BORSAK: Do you think the Government appointing a building commissioner is adequate?

Mr ROYDHOUSE: No. It is a step in the right direction.

The Hon. ROBERT BORSAK: It must be a very small step in the right direction, is that what you say?

The Hon. COURTNEY HOUSSOS: A shuffle.

The Hon. ROBERT BORSAK: It is a shuffle. Thank you.

Mr RUSSELL: That position does not have the role of regulating professional standards at a broad scale. My understanding is he has been brought in to help the Government formulate a response to the building sector issues that we are seeing. What we are actually proposing is for an agency to be set up to administer a register and take complaints and instigate investigations and disciplinary action, and also by the way, for more than just the building sector. Whilst the Building Commissioner is an important role, and it may inform how professional standards are viewed, I do not think it is the same thing.

The Hon. MARK BUTTIGIEG: Is that not what the private member's bill tries to achieve though?

Mr RUSSELL: Yes, the private member's bill does try to achieve what we at Engineers Australia have been pushing for, for many, many years and been giving the same advice to all parties for a long, long time.

The CHAIR: I will go to the Hon. John Graham next, but we might come back to some issues that you raise about the 2019 bill.

The Hon. JOHN GRAHAM: I want an assessment about how much of the Government's commitment this bill delivers on. The Minister in talking about this area has said, and this is from your submission, that he

wants to introduce a requirement that all building practitioners, including building designers, architects and engineers, be registered to ensure that they have the appropriate skills and insurance and can be held accountable for their actions. That is the Minister's public position. Does this government bill deliver on that commitment?

Mr RUSSELL: We have to read the bill together with the second reading speech to give an answer to that, I think. The bill by itself, on a strict reading of it, no. But it does indicate that a lot of detail will come through regulation. The second reading speech is how the Government has given its commitment to Parliament and the community on how it will do that. I think it is fair to take the two together, the high desirability of having everything in the bill notwithstanding. The bill itself only requires engineers who are working on load-bearing elements, waterproofing, fireproofing and the enclosure of the walls and the ceiling, engineers doing that work to be registered. Our advice to the Government was that leaves out an awful lot of other work, mechanical services, electrical services and so on.

The CHAIR: Geotechnical.

Mr RUSSELL: Geotechnical.

The Hon. JOHN GRAHAM: Just talk us through what misses out. What is not registered there?

Mr RUSSELL: Okay, those four things are in. What is not in, in the bill, is hydraulic, electrical and mechanical services, so that is water supply, a lot of work that Mr Roydhouse's members work on. The second reading speech does specifically address those three things. It says that it will give consideration to broadening the reforms to those. That does not sound like an ironclad commitment but it clearly shows that the Government has heard the advice and realises that it needs to do more to bring in more fields of engineering. There is no mention of geotechnical engineering, for example. Geotechnical engineers essentially ensure that the ground on which a structure is designed to sit is going to be suitable.

The CHAIR: You would almost call that foundational.

Mr RUSSELL: Sure, yes, foundational. It is the bedrock of buildings. That was not specifically mentioned in the second reading speech. I would not think that that is because the second reading speech was intended to be an exhaustive list. But, what it does show is that there are many, many facets to engineering and to try to list everything out all at once just invites loopholes. If we could have the Government's reform process underlaid with the private member's bill, the risk of loopholes starts to become eliminated. Not only that, it is a tool to actually give effect to the promise of regulation. I think there are lots of good intentions, but there is a high risk that there will remain some loopholes. The private member's bill provides a very workable, regulatorily efficient solution.

Mr ROYDHOUSE: To support Mr Russell and trying to highlight individual engineers and technical expertise, one of the challenges is—and you go back to the planning process and lodging a development application before you even start constructing one of these buildings—one of the people who has to assess it is a person called a development engineer working in local government. If you have someone who does not have the same requirements for qualifications and registrations assessing the initial application and trying to read the specifications and technical diagrams, you have got a problem right back at the planning stage before we even do any of the construction.

The CHAIR: They are expressly excluded, if you like, from the bill. There is no suggestion that they would be covered by this bill.

Mr ROYDHOUSE: Exactly.

Mr EWING: I think it is important to bear in mind as well that in the way that the bill is crafted—even within the reading of the second reading—it is still a narrow bill that is confined into that building and construction sector. We would be advocating, as John has mentioned, that is not just about the building; it is everything outside that building too. Our towns and cities are very complex environments.

The Hon. JOHN GRAHAM: Yes. Our roads and bridges—

Mr EWING: It is the interaction of all the infrastructure that actually makes it functional.

The CHAIR: I think the public would have an expectation that the engineers signing off on a major bridge in the middle of our city would have accepted qualifications and professional indemnity insurance and that they would be accredited. But at the moment, none of that applies. I find that just remarkable.

Mr RUSSELL: Your supposition is backed up by our own research. We commissioned a poll, I think in July, across Australia. A total of 91 per cent of respondents in New South Wales agreed that engineers should

be registered. Whether it is a major bridge like the Anzac Bridge or a small wooden bridge in a regional area, neither of them should be collapsing. Both of them should be safe. There should be high quality standards for all citizens.

The Hon. JOHN GRAHAM: While that has been the case for some time, you are really saying that this is becoming more urgent as other States act and as other registration schemes come into play. That now makes what would have been a big surprise to the public an urgent concern.

Mr RUSSELL: Yes. For a long time Queensland was the only jurisdiction. Everyone else just sort of managed their risk differently. But now we have a situation on the east coast of Australia where you have Queensland and Victoria squeezing us in the middle. The Australian Capital Territory [ACT] Government is pretty clear that it is intending to introduce something similar, like a comprehensive scheme, next year as well. The building sector crisis has highlighted that engineering work, amongst other work, is very complex. The spotlight is on the building sector. Our submission in response to the design and practitioners bill included case studies that were not in the building sector. We are not just making this up at all. Members tell us that there is a high need for this across sectors.

The CHAIR: Rather than have two parallel bills, one of the options would be to amend the current bill to attach to that a comprehensive registration scheme for engineers. Would you support that approach?

Mr RUSSELL: Not being a legislative drafter, I do not know what the final effect would be. But our preference is for—

The Hon. JOHN GRAHAM: They are not registered either, by the way.

Mr RUSSELL: Okay. The beauty of the private member's bill is that it will apply these registration standards across the board to all sectors. The Government bill does deliver benefits. It is going to require designs to be certified and structures to be certified as meeting the Building Code of Australia. If you like, when you look at the building sector, the two bills provide a belt-and-braces approach. When you look at engineering practice more broadly, the beauty of having the private member's bill as a separate thing is that it expands those benefits to a broader range of community stakeholders. If you attached it to the Government's bill, I do not know if that would have the effect of narrowing it back down to just the building sector or not.

The CHAIR: It would not. Assuming it did not, having them pass at the same time through the same Act of Parliament, if you kept the same broad coverage, it would be a benefit, would it not?

Mr RUSSELL: Yes. Follow the policy. If the policy outcome is the same, then that would be a great outcome.

The CHAIR: Could I take you to one of the points from your submission, Mr Russell and Mr Ewing? Mr Roydhouse, you could address it as well. The submission states:

> The bill leaves a lot to regulations and it is recommended that it be amended to provide much more detail. Doing so would provide clarity to industry and the public as to what the reforms encompass. The reforms are important, so it is best to make the laws with the full scrutiny of Parliament, as opposed to leaving much of the changes to be defined by regulation.

Is that still your position?

Mr RUSSELL: Of course, it is. It is better that reforms are articulated through bills so that Parliament can debate them. The submission was written before the second reading speech. Our advice to Government all along, cognisant of the fact that it feels a need to go quickly, is to, at the very least, make commitments to Parliament through the second reading speech and the parliamentary debate. It has done that. It is not the best option but it is the second-best. Fundamentally is our position still that the bill should have as much detail as possible? Yes, of course. That is just good practice. Let's start from there.

The CHAIR: Mr Roydhouse?

Mr ROYDHOUSE: Certainly, I would support if we talk about registration of engineers—a standalone legislation. I think it needs to be dealt with with legislation. The reason I suggest that is, again, looking at the eastern seaboard—Queensland with its separate bill, Victoria with its separate bill, the ACT bringing in a separate bill, Western Australia giving indication of a separate bill; some say it is during the course of its parliamentary term—there is then the scope longer term to actually have a uniform piece of legislation right across Australia so we get rid of these cross-State borders. If we lose it in regulation, that just makes New South Wales offside again. If you are going to go down this path, let's get it right and make it consistent to the other jurisdictions.

Mr EWING: Properly aligned legislation through an Act that enables mutual recognition amongst the States will eventually get us to the place that we need to be. The reality of it is that we have a federated system. It is the Commonwealth standard if we have similar provisions in place in each of the States and Territories. We will actually get to where they need to be, which is Australia-wide coverage.

The Hon. MARK BUTTIGIEG: I want to clarify one thing. In terms of this current restriction now which is not covered by the substantive bill but is covered by the private member's bill, the issue being that if a bridge falls now or next month as a result of an unprofessional design, that is a problem that the Government could have solved by expanding that coverage right here right now. It has gone for the emblematic squeaky wheel—let's fix that—but it has not fixed the broader problem, which, we are all told, is there by virtue of unprofessional people doing this work. Correct?

Mr RUSSELL: That is right.

Mr ROYDHOUSE: Touch wood that has not happened yet. We have been very fortunate and we do not want it to happen.

The CHAIR: Yes. But we do not legislate for luck, do we?

Mr ROYDHOUSE: No.

The Hon. SCOTT FARLOW: With respect to the Design and Building Practitioners Bill, apart from the issues you raised in terms of wanting to see more details and elements for registration, do you have any other concerns with the bill or do think the bill is a set step in the right direction?

Mr RUSSELL: I think it is important to say that it is a step in the right direction. We have been working with colleagues from peer associations for several months now and there are other organisations that have more specific concerns. We are focused on the way that recommendation one of Shergold and Weir is addressed—professional standards and engineers. That is our expertise. I think it is probably best if I restrict our comments to that.

The CHAIR: Thank you all three for your ongoing engagement and your ongoing efforts to get some integrity into the system. Thank you.

Mr ROYDHOUSE: Thank you.

Mr EWING: Thank you.

Mr RUSSELL: Thanks very much.

(The witnesses withdrew.)

LINDA SCOTT, President, Local Government NSW, on former affirmation

The CHAIR: Ms Scott, you have already taken an affirmation so you continue to be on it. Thank you for your submission. Did you have any brief opening statements?

Ms SCOTT: I did. Thank you for the opportunity to appear again before the Committee to discuss the Government's Design and Building Practitioners Bill. As the peak body for local governments, Local Government NSW has called on successive State governments to address the deficiencies within the building and certifier regulation schemes in New South Wales. As you would know, we have previously stated our view that New South Wales needs a regulatory framework that ensures the building and certification system delivers well-built, safe and compliant buildings. This means having a system where all parties are responsible and accountable for their actions and that community and public interest is protected. We support the proposals to register building designers and practitioners and require building practitioners to declare their plans and buildings are compliant with the Building Code of Australia. However, without the benefit of the detail, which is to be provided in the regulations, it is difficult for us to fully comment on whether the legislation will achieve what it has set out to.

We would like to highlight four key concerns with the Design and Building Practitioners Bill 2019 as it stands. The first is understanding clearly the role and powers of the Building Commissioner in the legislation because the bill, as it stands, does not mention the Building Commissioner. Secondly, ensuring that the new provisions are not limited to multi-unit residential Class 2 buildings and that, over time, other forms of buildings are captured by this legislation. We think there is still a perception and an expectation from the public that the promised tightening of regulation of building designers and practitioners will apply to all construction, not just selected building forms. For the public trust to be restored, it is necessary for these reforms to continue and ensure that other buildings are captured under this legislation. Thirdly, we support the proposal for declared plans and compliance certificates required under the bill to be stored in a single, central database. However, we are concerned that the bill is silent on the specific location of this database and we would recommend that the information be stored in the New South Wales ePlanning portal.

If passed, this new law will introduce an additional standalone piece of legislation into an already complex system of legal requirements for building and construction. It is reflective, unfortunately, of the piecemeal nature of the reforms to date, and so we would support the direction being taken to widen the responsibilities of those involved in design and construction. It is only one element of the change that is needed. The numerous high-profile reports of defective buildings we have seen in the media since 2018 have reactivated local government's focus on the inadequacies in the current system, and so I would also like to take the opportunity to update you of the resolutions of our most recent annual conference which have bearing on your terms of reference. I am happy to table the motions at the end for the Committee to have a copy.

Firstly, in the absence of any meaningful solutions, our annual conference last month adopted two new policies on private certification. The first proposes a review of the private certification system and consideration of a gradual return of these functions to councils. This reflects a deep dissatisfaction within local government and follows the Government's failure to effectively and strongly regulate private certification. Unless and until the Government agrees to phase out private certification, we still need measures in place to address conflicts of interest with private certification. This is where our second conference resolution fits in. We are calling on the Government to identify how it intends to address unresolved conflict of interest concerns which were highlighted in the 2018 options paper on improving certifier independence.

It is my understanding—and we have met with the new Building Commissioner—that this may be part of his focus. We would welcome the chance to work with Mr Chandler to address our members' concerns finally. In concluding, I reiterate that councils in New South Wales want to see the Government commit to a comprehensive set of reforms with an implementation plan; meaningful, achievable time frames; proper resources and expert industry and local government input. I am very happy to take your questions.

The Hon. JOHN GRAHAM: You have called for comprehensive reforms. I want to test how much this bill delivers. To put the Government case to you, it would say it is doing plenty of work: the Building and Development Certifiers Act in 2018—past then, although it is yet to come into force; then the four-point plan was announced in December 2018; the new Building and Development Certifiers Regulation 2019 has also been issued, along with a Regulatory Impact Statement. We are looking at the bill. A lot of activity has occurred. How far are we, though, from the comprehensive regulation that you are talking about?

Ms SCOTT: We think that the public trust in this system of construction in New South Wales will not fully be restored just with the passing of the bill that we are debating today. It forms part of a complex system of

laws and yet-to-be-introduced regulation. For example, it does not have a set of objects in the bill—something that one would assume is clearly needed to be a simple guide for people about what the bill sets out to achieve. The new legislation, in the form of the Building and Development Certifiers Act, was introduced last year. We are now considering the Design and Building Practitioners Bill. I cannot see a clear reason why they are not forming part of the same bill. There are not links clearly to the Environmental Planning and Assessment Act 1979 and, without similar definitions, for example, between those Acts, one might foresee that it would become very confusing, and so a more comprehensive thought and alignment, particularly between the two bills introduced recently but also the EP&A Act, would be something that we would be advocating for.

The Hon. JOHN GRAHAM: There are quite clear reports that have been referred to comprehensively—the Lambert and the Shergold Weir reports—that do call for comprehensive reform. This bill does not implement those reports, does it?

Ms SCOTT: And so, while we welcome the bill as a further step, it is not the final step in the path that is needed to restore public confidence in the construction and building system in New South Wales.

The Hon. COURTNEY HOUSSOS: The first point you made, which is that the bill, which is supposed to be a comprehensive response, has no mention of the Building Commissioner in it. That is correct, is it not?

Ms SCOTT: Correct.

The Hon. COURTNEY HOUSSOS: There is no actual wording.

The CHAIR: He thought it might have been in there once. I think he was wrong on that.

The Hon. COURTNEY HOUSSOS: He remains an appointee by the Government at its wish. There is no independence to the role. There is no statutory authority and appropriate protections that come from that role. Would you agree with that?

Ms SCOTT: That is our understanding.

The Hon. COURTNEY HOUSSOS: We have talked about a comprehensive response. I am not sure if you are familiar with it, but even Michael Lambert, in his submission to this particular part of our inquiry, said that there needs to be one standalone Act, there needs to be a simple approach, there needs to be a comprehensive approach and it needs to come through one Act with a building commission. Do you agree with that?

Ms SCOTT: That is something that we would support, particularly something that also aligned closely in that standalone Act with the EP&A Act to ensure that the definitions, for example, were consistent.

The Hon. COURTNEY HOUSSOS: In terms of building regulation—and this is going to have a direct effect for local government—there is going to be binder full of different Acts that somehow interact with each other but it is a bit unclear at the end of this process, hopefully.

Ms SCOTT: That is our understanding of how the system would work, if implemented as the Government has committed. In line with our new policy, also, to see councils support this regulation in part being handed back to local governments due to a frustration with the inadequacies of the private certifier system, it means even more of a complex and confusing burden for councils into the future unless that policy of ours is enacted by the Government.

The Hon. COURTNEY HOUSSOS: For councils and consumers?

Ms SCOTT: Yes.

The Hon. COURTNEY HOUSSOS: You mentioned you had your recent conference and there were a few changes. Is it correct that you have taken a new position on private certification?

Ms SCOTT: That is correct.

The Hon. COURTNEY HOUSSOS: Do you want to explain what that means?

Ms SCOTT: Local governments come to our conference each year to determine our policies which then guide our work throughout the year. In my last appearance before this Committee I was asked by members of the Committee whether councils would consider taking back the role of certification. I took that on notice and sought to do more consultation. We did this in the form of a motion to our conference. It was moved by our board on the basis of a series of other motions that were submitted by councils, particularly the Northern Beaches Council that put forward a motion that:

1. Local Government NSW encourages the NSW Government to conduct a review of its policy that allows private accredited certifiers to issue development certificates.

2. This review strongly consider a gradual return of development certificates, construction certificates and complying development certificates to councils, and that the principal certifying authority for developments are gradually returned to council in the relevant local government area.

That was resolved in the affirmative by councils at our conference and thus becomes our policy. This is a change from what we have advocated for in the past where we have not had a clear position on this issue.

The Hon. COURTNEY HOUSSOS: Councils are recognising that there is a need for government to take back this role and that they are probably the best position to do it?

Ms SCOTT: Councils understand the frustrations in the communities and the lack of trust that has arisen because of the lack of regulation of the certification industry. They are reflecting that frustration on behalf of their communities in this policy. Obviously such a transition would be significant. It would take time. Some councils already employ certifiers but many in New South Wales do not. It would take funding; we would hope that that would be forthcoming by the State to allow this transition to take place. There is obviously a whole lot of details for this that would need to be worked out, but ultimately councils are trying to do this for the public good to restore trust back in the certification and building industry in New South Wales.

The Hon. COURTNEY HOUSSOS: I have got two more questions for you. First, I would characterise this as a step in the right direction perhaps but it does not address the key challenge that councils are dealing with everyday, which is the question of historical defects. There is nothing in this bill that will address any existing building as it stands today and give owners any new recourse. Is that your understanding?

Ms SCOTT: It has been quite alarming to hear the commentary in recent times that people should take responsibility solely for the properties that they purchase. This is clearly the wrong approach. Councils do not support this approach. They want to ensure that there are proper protections in place to protect the public from shonky quality buildings. That is why—even though it would come at a cost to local governments, even though it would be incredibly difficult to implement—councils now in New South Wales support returning certification back to local governments.

The Hon. JOHN GRAHAM: They are quite incredible comments. You are basically asking people to play roulette with the biggest investment they will make in their lives.

Ms SCOTT: That is correct and it is incredibly concerning because councils are required by the State to meet housing targets set by the State. That means approving a certain amount of development that comes before us each year. If there is an undermining of the system that allows us to consider development in line with our legal obligations and the State's requirements, that also undermines the public confidence in councils. Sink one part of this system, you sink us all. This is not what we consider to be the right approach. It is a better system where there is clear government regulation that aligns between different Acts, there is clear funding for enforcement and that enforcement steps are taken.

The Hon. COURTNEY HOUSSOS: I just had one final question. Did you have any other motions that dealt with any other issues that we have been dealing with?

Ms SCOTT: We had a few, some of them perhaps slightly outside your terms of reference, but I just mention them for interest. Again, I am happy to table them. We had a motion from the City of Parramatta on cladding calling for the State and Federal Governments to provide more support and funding. And, in the interest of safety, calling on the New South Wales Government to release the details of the high-risk buildings already identified as being at risk at the same time as outlining measures it will take to rectify the combustible cladding problem.

The Hon. COURTNEY HOUSSOS: The position of Local Government NSW is that this list should be made public.

Ms SCOTT: That is correct. In the interest of public safety, councils felt that this list of buildings affected by combustible cladding should be made public.

The CHAIR: And to your council—sitting in your councillor capacity—the City of Sydney has already made public the list of some 300-odd buildings in the City of Sydney. Have you had any response from any of those building owners about the threat of terrorism or arson or damage as a result of those buildings being released?

Ms SCOTT: To the best of my memory, I have not had any such contact from those building owners. I know that council staff are working with all the building owners identified—as they were before the list was made public—to ensure that these kinds of rectifications are made. Councils feel, in the interest of public safety, that this document should be made public in order to ensure that the public knows where the risks are but also that they are rectified in a timely fashion.

The CHAIR: Were you aware until we had the evidence last week from the department that the Government has arbitrarily decided not to include any apartment block less than nine stories in height on their flammable cladding register because they have determined, even if they are covered head to toe in flammable cladding, that they are not high-risk buildings? Were you aware of that until the evidence was given last week?

Ms SCOTT: I personally was not aware of that, no. I have given evidence before though about the confusion between lists and the issues about councils having access to different lists than the State has had and about the need for much closer collaboration to ensure that everybody is on the same page. We know, for example, that we have had some strata unsure about whether they have these kinds of materials in their building and therefore just making a disclosure to avoid a possible penalty in the interest of risk. It is important to get the list correct. It is important to ensure that councils and the State Government have the same information before them.

The CHAIR: Rather remarkably, the Planning department has one list which has thousands of buildings on it but the Department of Fair Trading has a different list with less than 450 buildings on it. Are councils being told about the two separate lists or given any guidance about why a building is on one list but not on another?

Ms SCOTT: I can only speak here as a councillor, not a council staff member. I was not aware of that. Council staff may have been given access to both lists but as I have said before from this Committee, where there are lists, for example in the City of Sydney buildings, I had not seen them in some cases until I read about them in the newspaper. We do not have access to these lists even as the body politic of the governing organisation.

The Hon. ROBERT BORSAK: Do you have a view in relation to whether the 444 buildings, which we are told are sitting under lock and key in the clerk's office that only we can look at, should be made public?

Ms SCOTT: Local governments have resolved at our most recent conference to make these lists public. It is important from a public safety point of view that the public is informed of where these risks are and also that mitigation actions are taken to resolve risk.

The Hon. ROBERT BORSAK: Do you have a view in relation to who should be funding those fixes?

Ms SCOTT: Our understanding is that the building owners—some of whom are local government—would be responsible for that. We have seen a good system in Victoria which we have looked closely at. That has seen some State Government funding made available for that. That seems a good system that has progressed the implementation of some of the reforms and changes to the buildings that had been required.

The Hon. MARK BUTTIGIEG: On the private certification view of council, where it should come back to Council which used to be the practice, are you able to inform the Committee of what the situation is in other jurisdictions with regards to who performs that certifying? Is it councils in other States? Is that the way they do it now?

Ms SCOTT: I would have to take that on notice.

The Hon. MARK BUTTIGIEG: That is okay. In previous evidence on previous hearings we have heard that whilst the private certifier is a critical pinch point in terms of regulating this industry, and taking away the conflict is what you are suggesting by bringing it back to councils, it is only a thin slice of what is required because they are only there for a fraction of the time. Was discussion had at the local government conference over how you would fix up that period leading up to the certification where they only get to see the finished product and not necessarily the steps along the way?

Ms SCOTT: We did have a motion calling on the New South Wales Government to identify how it intends to address unresolved conflict of interest concerns highlighted by the 2018 options paper in the current period and a possible interim period before these roles are handed back to councils and to undertake a review, in consultation with local government, of alternative solutions to address conflict of interest with private certification. We acknowledge, of course, that certification is one step in a multilayered process where reform is needed to restore public confidence. It is a very important step.

The CHAIR: Could I take you through a couple of issues you raise in your submission about the bill? One of those is that there is almost no reference to the existing regime under the Environmental Planning and Assessment Act. One of your concerns is that without any interplay between the two Acts, we could have

construction certificates and complying development certificates being issued on the one hand without any of the checks and balances under the design changes with this new Act, and that is a risk for local government and it is a risk for homeowners. Can you explain it?

Ms SCOTT: We have made a series of recommendations in our submission to the current Act. The first is, as I said, to clarify the statutory provisions provided for the Building Commissioner to include specific objects based on the aims of the reform as outlined in the Building Stronger Foundations Discussion Paper—we feel this is particularly important because it would just give more coherence about the purposes of the Act; wherever possible to ensure, as I have said, the definitions that are used are those in the Environmental Planning and Assessment Act, and that the bill and supporting regulations must provide for the declared plans and compliance certificates required under the draft bill to be lodged and stored in a single central database, which has been a central problem; specifically that clauses 9, 12 and 15 of the draft bill should reference construction certificates and complying development certificates; that regulations must include provisions to prohibit the use of a complying development certificate or a certificate under part 6 of the Environmental Planning and Assessment Act unless one or more compliance declarations or final regulated designs have been provided. So that is the link there that we think is critically important.

The CHAIR: Do you find it remarkable that we do not have that link in the bill? It is almost as though the Minister producing this bill is not even having a conversation with the Minister responsible for the planning Act. We have got this siloed mentality. Is that your reading of it?

Ms SCOTT: We do think it is disappointing, as I said earlier, that this is a separate bill from the bill that was just a few months ago before the Parliament, about certifiers. It just leads to unnecessary complexity and confusion for councils and the public.

The CHAIR: I do not know if you heard the evidence of the Building Commissioner last week, where he said that this bill is all about empowering the Building Commissioner. Given the absence of the bill even referencing the Building Commissioner, do you think there would be benefit in broadening the bill out to actually include not just a building commissioner, but a building commission as well?

Ms SCOTT: I have met with the Building Commissioner. I am grateful for his time to brief us on his view about his role. He indicated to us that he was likely to seek significant resourcing from the Government and that he felt confident that he would receive that. We spoke to him about our concerns about a lack of resourcing and an inability to use appropriate resources to do the enforcement that was needed—clearly, by anyone's measure, a huge task. We look forward to having a constructive working relationship with him. It is, however, disappointing that this bill has no reference to him or his powers. We would advocate for much greater legislative clarity about that.

The Hon. JOHN GRAHAM: Your submission is quite specific about some of the things that the Government response, for example, to the Shergold Weir report has spelt out that might be the role of the commissioner. The Government's response states:

> The Commissioner will administer all building laws that are or will be in the Minister for Innovation and Better Regulation's portfolio.

It also discussed the role of the Building Commissioner as the consolidated building regulator. You make a number of other references. None of that is in this bill. Is that correct?

Ms SCOTT: We would strongly advocate for those changes to be made to ensure that those powers that are clearly required are reflected in this Act.

The CHAIR: And brought together under one authority, rather than some bits being here and some bits being there and some bits being hidden under the table?

Ms SCOTT: Correct.

The Hon. JOHN GRAHAM: My other question was about the timelines here. This is an area of reform which has been littered with legislation not in force and regulations not enacted. We have already heard evidence today that there has been no communication about when this might come into force from the Government. Have you been told by the Government when these regulations might actually be developed and when this will all come into force—these specific arrangements under this bill?

Ms SCOTT: I personally have not. I can ask our staff and come back to you on that, but I personally do not know the time frame that we have been advised.

The CHAIR: If you could come back during our sittings today with an email to the secretary, that would be useful, because we have not got the opportunity for questions on notice.

Ms SCOTT: Yes.

The Hon. COURTNEY HOUSSOS: I wanted to ask you one question about the penalties for non-compliance in the bill and to see whether you had any reflections upon those. Have any of the enforcement measures been discussed with you? The evidence that we have already received in this inquiry is that Fair Trading NSW has a light touch at best in terms of existing regulation and enforcement of regulation. The question of how this bill would then be enforced—if it is genuinely going to give consumers and councils and the public a sense that these issues are going to be addressed, then clearly enforcement is a key part of that, and oversight.

Ms SCOTT: Correct. We welcome the measures that are designed, obviously, to strengthen accountability across the construction industry. We note that some detailed provisions would be included in the yet-to-be-drafted regulations, and so we welcome the provision for disciplinary action against practitioners. Of course, those provisions are only able to be effective if relevant State agencies are sufficiently resourced to implement them. We have seen poor outcomes that have resulted from inadequate auditing, for example, of private certifiers. My reading of the bill is that these powers will be given to a secretary of a department, not to the Building Commissioner. My understanding from the Building Commissioner was that he would have these powers.

The CHAIR: We should not be guessing about this or having to look at the tea leaves to work out what is happening. It should be in the legislation in black and white, should it not?

Ms SCOTT: It should be much clearer and at least have reference to the commissioner having the powers that we understood he was being given when he was appointed.

The CHAIR: If we rush through this bill in the next few sitting weeks and put it on the statute books, not a single thing will change as a result of that. It does not create any new rights and it does not create any new framework until the regulations are drafted, and we do not have a promise about when those regulations will happen.

Ms SCOTT: It is very important that the regulation details are discussed with local government because obviously we have a very important role here even currently, and possibly even more so in the future. So, for us, the details of the regulation are very important. We would want to work very closely with the Government, were this Act to proceed through the Parliament, to ensure that the details of the regulation were workable and achieve the outcomes we are all trying to achieve.

The CHAIR: Even if you take the second reading speech as some kind of blueprint for the regulations, there is not a single promise in this Act to do anything for the thousands and thousands of defects that are already out there. There is not a dollar; there is not a remedy. There is nothing, is there?

Ms SCOTT: Again, we see the Victorian model as a very good model for supporting the public, when there has been this incredibly difficult situation arise in their property, to ensure that it is rectified. We know the State Government has buildings that need rectification; we assume they are doing that work to do that quickly. Councils also have properties that need this and councils are doing that work. Of course, though, we think that the Victorian model is a good model for the New South Wales Government to look to.

The Hon. MARK BUTTIGIEG: Local government is the closest form of government to people. Is there a sense that the denuding of local government's ability to regulate and ensure these things do not happen on behalf of the public, that has been wound back in favour of, as my colleague the Hon. Courtney Houssos said, a light touch regulatory approach in order to allow the building industry to go berserk, basically? Is the public aware that this has now gone too far and there is an appetite for this to be re-regulated in a way that makes sure that this does not happen again, notwithstanding the fact that we do need to have a viable industry? Would that be a fair assessment of the public's reaction at your interface?

Ms SCOTT: My personal sense is that there is a strong public sentiment for change here. I was part of a forum that was held in my electorate in Erskineville recently. It was midweek, a large number of people showed up to meet in a small council property to hear from speakers, some of whom are on this Committee, about this issue. Many of the people in the room expressed a private experience about difficulties in their own strata building that had not made it into the public domain. You can clearly see that there are communities going through very difficult private battles within their strata communities in high-density communities such as the City of Sydney, trying to resolve these issues, and it is causing a lot of personal heartache. We all have a responsibility to try to ensure that people do not go through that ever again.

The Hon. SCOTT FARLOW: Local Government NSW was involved in the cladding taskforce process. Is that correct?

Ms SCOTT: Correct.

The Hon. SCOTT FARLOW: With respect to the planning register, the original planning register had all identified properties, which then was self-assessed and whittled down to what is now the 442 properties. Is that correct?

Ms SCOTT: Our staff were part of that taskforce. I personally was not part of it.

The Hon. SCOTT FARLOW: That is how we have gone from one list, the Planning NSW list, which has then been whittled down to the Fair Trading list of 442 properties.

Ms SCOTT: That may be correct. I did not participate personally in that taskforce—

The Hon. SCOTT FARLOW: But Local Government NSW was involved in that taskforce.

Ms SCOTT: — so I have no knowledge of that, but Local Government NSW was a member of that taskforce. Nevertheless, in our advocacy we have consistently called for the provisions of this bill to go further, for example than just apartments. We have consistently called for now the public release of lists that cover this. We have been very clear about the fact that in order to restore public confidence the details of these provisions in the bill and public information about these documents needs to go beyond just one class of building.

The Hon. SCOTT FARLOW: In terms of that register now at 442 properties, that has everything down to three storeys on that register. Is that correct from your perspective and understanding?

Ms SCOTT: I do not know that.

The CHAIR: That is not what the department said last week. Thank you very much for your assistance again to the Committee. You promised to perhaps get back to us on one thing. Could I ask you if you can to get back before close of business today.

(The witness withdrew.)

(Short adjournment)

KATHLYN LOSEBY, President, NSW Chapter, Australian Institute of Architects, on former oath

KATHRYN HURFORD, National Policy Manager, Australian Institute of Architects, on former affirmation

The CHAIR: Welcome back to the Public Accountability Committee Inquiry into Regulation of Building Standards, Building Quality and Building Disputes. The next two witnesses are from the Australian Institute of Architects, Ms Kathryn Hurford and Ms Kathlyn Loseby. Both have previously given evidence before this inquiry and therefore are on their former oath or affirmation. I invite one or both to give a brief opening statement.

Ms LOSEBY: First of all, thank you for the opportunity to appear again in front of this inquiry. At the last hearing we highlighted that the primary focus of the building reform agenda should be on action that builds consumer confidence and ensures community safety. The institute has been working to marshal support for reform from other industry bodies. We have instigated a group, including builders, engineers, consultants, certifiers, fire protection, and importantly, owners, to lobby government. In regard to this we have engaged with and worked closely with the Government and regulators in New South Wales, including NSW Fair Trading and the Building Commissioner. Collectively we all want the same outcome: a built environment where the consumer can receive a safe and fit-for-purpose building.

Additionally the Australian Institute of Architects aims for a high-quality, sustainable built environment that is more than just safe, but enhances the lives of the people who work, live and play in these environments, befitting of a First World country in the twenty-first century. The introduction of the Design and Building Practitioners Bill 2019 is a first step towards rectifying issues around quality and safety of complex buildings. Despite this, some concerns with the bill remain. There are four major areas of concern to the Institute of Architects. The first is an inequality between obligations for building practitioners and for principal design practitioners. The bill requires principal designers to ensure the design compliance declarations are issued by registered practitioners, yet the building practitioners are required to take reasonable steps to ensure the regulated designs are prepared by a registered practitioner. This places a stricter liability on the principal design practitioner. Given that corresponding penalties apply for non-compliance, it is important that any flexibility granted for one set of practitioners is provided similarly to others.

The second is that contracting out of a proportionate liability is allowed in this bill. The bill does not guarantee there can be no contracting out of proportionate liability through the application of the Civil Liability Act. Contractors and consultants will use the provision to ensure joint and several liability will instead apply. The flow-on effect is that insurance companies may not be able to offer professional indemnity [PI] or if they do there will be limitations. The impact on this is that PI insurance could rise in cost and in the end the consumer loses out. The third is that variations are not assessed holistically and retrospectively. This is so vitally important. All design variations throughout construction should be certified holistically and retrospectively for the entire development, not just solely for that variation alone. The proposed legislation does not adequately deal with this issue.

Fourth, the bill does not cover the range of building practitioners. There is also scope within this bill to strengthen and cover a wider range of building practitioners, including trades, not just the principal contractor. Everyone in the chain should be responsible, and I must say proud, of their work. We would also like to note that architects are already regulated in New South Wales under the Architects Act 2003 and are ready to take on the role of the principal design practitioner as defined in this bill. Architects are particularly well-placed to ensure design quality throughout the construction process and we are ready to assist to bring consumer confidence back to the building and construction sector. The Institute would like to take this opportunity to note that although these issues seem systematic and widespread, there are also many reputable builders working closely with effective design professionals to ensure that their own checks and balances are in place to deliver high-quality construction projects to the market. This does not negate the need for reform. Thank you.

The Hon. COURTNEY HOUSSOS: Thank you for your submission, which was very informative for us as we are trying to find our way through this bill. I want to start off with extrapolating a bit more around the differences between "ensure" and "take reasonable steps to ensure". What does that mean in practice for the architects you represent?

Ms LOSEBY: In both circumstances, both are relying on the declarations by the design practitioners. For the principal design practitioner, they must ensure that everything is correct. Basically that means there are no excuses if anything is misaligned. To be clear, we see the role in the principal design declaration is that the practitioner must do more than just collect the documents. They must actually be aware of what each of those design practitioners are doing, coordinate the work, make sure that it is appropriate and then collect the

declarations on the basis that, if somebody is the structural engineer, their knowledge of structural engineering, because they are qualified, registered and regulated, is something that we have to take and accept—obviously, we can get peer review. As the principal design declarer, we are relying on that knowledge. Similarly, for the building practitioners, they need to sign off their built works based on the documents provided by the design practitioners. But they can take reasonable steps to ensure, on the basis that they are relying on those documents, so if those documents are wrong, they cannot be held responsible if it was declared and certified previously.

Similarly with the principal design declaration, we are still relying on the individual design declaration. If it is a Building Code of Australia [BCA] consultant, if it is a disability and access consultant—so the specialised skills—the principal design practitioner should be across all of that, understand it, be able to pull it all together, coordinate it, make sure that it works, but ultimately cannot be responsible for that specialised knowledge. That is where the "take reasonable steps" makes sense to go in front of the "to ensure".

The CHAIR: Did you raise this issue with the Government?

Ms LOSEBY: Yes.

The CHAIR: What was their response?

Ms LOSEBY: We thought that that it was going to be incorporated.

The Hon. COURTNEY HOUSSOS: I am not sure if you heard the testimony from Engineers Australia this morning.

Ms LOSEBY: Only the end.

The Hon. COURTNEY HOUSSOS: They said that the clear gap in this bill is the need to regulate engineers. The point that you made around the requirements and the responsibilities that fall upon the principal design practitioner is that they really rely on someone out there licensing the other practitioners. Architects are licensed, as you said, under your own Act, but engineers, who are the principal design practitioners we will be relying upon, are not regulated. It creates a grey legal area of responsibility for that principal design practitioner.

Ms LOSEBY: Sorry, I do not agree. I think this bill does define the design practitioners as potentially—and I know it has to come out in the regulations—but that would be the engineers, that would be the BCA consultants, that would be the landscape architects.

The CHAIR: Depending on the regulations.

Ms LOSEBY: Depending on the regulations.

The CHAIR: We have not seen those regulations yet, have we?

Ms LOSEBY: Okay. The bill does not specify those now. The expectation is that the regulation does, and that is the way that this is written. My understanding of what Engineers Australia are suggesting is that they should have an independent Act, just like architects have an independent Act. That is because engineering is more than just construction engineers. We would support the engineers in that. Just like this bill references the Architects Act to sit under it, I would expect the same thing would happen with the engineers Act, although I must say that in the existing Architects Act there are some inconsistencies between the two. That would need to be worked out.

The Hon. COURTNEY HOUSSOS: Can I take you to the final concern that you outlined in your submission, strengthening the bill to cover a wider range of building practitioners? What does it not cover?

Ms LOSEBY: At the moment, the building practitioners declaration is from the principal, basically the builder. Our concern is that unless the whole chain is covered, including the trades—all of the trades should be covered underneath this as well.

The Hon. COURTNEY HOUSSOS: Do you think that a list of those trades should be available, or the people who had undertaken that work should be available, to the ultimate consumer?

Ms LOSEBY: Yes, we do. In the same way that we would be expecting—and certainly advocating when the regulations are being prepared—that the building designers need to list all of the engineers, all of the other consultants that are involved similarly, we think that that should be happening so that there is complete openness and access for the end consumer to track the whole way through who has been involved and what work has been done.

The Hon. COURTNEY HOUSSOS: I will ask one final question, which is around the way that design variations should be certified. Under the existing Act they will be certified in isolation rather than holistically. Can you explain why that will be a problem?

Ms LOSEBY: Okay. If we are talking about class 2 buildings, so apartments specifically, typically most of these are design and construct. That means the design is done up to a certain point and then the documents go out to tender. The builder comes on board and potentially the original design practitioners can change, so you can get a new structural engineer. If I give you a practical example—

The Hon. COURTNEY HOUSSOS: That is not uncommon, is it?

Ms LOSEBY: No, it is not uncommon at all. I can give you an example of a well-known building that has been in the press where a new engineer came on in the second stage. Design and construct is all about trying to minimise cost, minimise time so that the building process can go forward faster and save money. A new engineer comes on board, decides to redesign the concrete beams so that they are no longer a downturn concrete beam, they become an upturn concrete beam. The beam becomes narrower and this affects the load-bearing panels that sit on the top of this. If this is done in isolation, in solo, without the knowledge of the original engineer understanding the whole impact of how this goes through the whole building, without asking the architect to get involved and be involved with the process to question how the new panel sits on top of that, how the services come in behind and affect that, then that one component is considered in isolation.

The concern behind saying let us address this holistically and retrospectively is that yes, it does add extra time. Perhaps it would add an extra day in terms of consultants' time for the architect to coordinate, for the structural engineer to be spoken to and the electrical engineer to be spoken to, so that later on somebody does not cut a hole up through the panel. If one extra day was taken to look at that, there is also the impact of perhaps it being on the critical path of construction. Would one day make a difference? We are saying maybe one day of cost would be added to this. But the impact is that maybe a lot of people would not have been kicked out of their apartments because of cracks that have occurred later on. As a single, solo conversation of let us just change this one beam—let us do this faster without actually considering how the variation affects the whole building—serious repercussions can happen later on. So this is why for variations it is important that they should all be considered holistically and retrospectively.

The Hon. MARK BUTTIGIEG: Can I ask a follow-up question? It is important to clarify why that falls through the gaps. If I am a new engineer coming on and I do that upturn beam instead of the—do I not have a professional responsibility to look at it from a holistic point of view anyway because of who I am and how I have been trained? How does that fall through the cracks at that point?

Ms LOSEBY: Yes, for that component, but what about the panel that sits on top of that? That is somebody else's responsibility. What about the services that go behind that? There was a previous situation where it was a downturn beam — I do not know exactly but I imagine that the panel was probably wider. There was a service group behind it. Hypothetically, the engineer looks at their component but then a separate consultant or perhaps a contractor or subcontractor looks at the panel and how that will be designed or redesigned or refixed. A separate trade will look at "We might change the servicing at the back."

The Hon. MARK BUTTIGIEG: What would fix that to compel that holistic perspective happening? What is the fix?

Ms LOSEBY: That is why we say here it is necessary that any variation must be mandated that it is considered holistically and retrospectively.

The Hon. MARK BUTTIGIEG: There needs to be a specific provision, which is vacant in the current bill.

Ms LOSEBY: Yes.

The CHAIR: Would that involve touching base again with the principal design practitioner? Is that what you would envisage as a minimum?

Ms LOSEBY: Absolutely. That is fundamentally important. What has happened with design and construct is that a lot of the original designers are taken out of the picture and then plugged in only for individual, isolated components without a continuity across the board to be able to wrap it all together and to understand.

The Hon. COURTNEY HOUSSOS: Which is really what this bill is supposed to do.

Ms LOSEBY: Yes.

The CHAIR: That is one of your concerns about variations being signed off without understanding the impact on the balance of the building. I think we understand that concern. Could I take you to your concern about how the bill needs to be strengthened to cover a wider range of building practitioners and your recommendation that the definition of "building practitioners" in the bill should be expanded from principal contractor to cover a wide range of building practitioners, including a broad range of tradespeople?

Ms LOSEBY: That is right.

The CHAIR: Can you expand upon that?

Ms LOSEBY: Yes. We understand that the bill at the moment is the base and that it needs to be developed up in regulations. The building design practitioners will end up being strengthened in the regulations. That will include architects, project managers, all the list of different engineers, the Building Code of Australia [BCA], the disability access consultants et cetera. Similarly, we think that under the building practitioners, it should be clear that they are relying on all of the different trades and that each one of those trades—everybody in the whole chain— needs to be responsible and needs to be able to sign off on their work but ultimately is proud of the work that they do. There is no point strengthening up the requirements at the front end or right near the end, which actually does not go all the way through. Every step along the way needs to be responsible.

The CHAIR: The building aspect of the bill rather than the design works is that you just have basically a principal contractor who signs off on the quality of the work and is required to have some kind of insurance product.

Ms LOSEBY: Yes.

The CHAIR: But none of the actual people doing the work are roped into any kind of regulatory framework with this bill. That is the problem, is it not?

Ms LOSEBY: Not with this bill. Yes, that is right. We just think that it needs to be holistic.

The CHAIR: When the Insurance Council of Australia gave its submissions to the draft bill, it raised the concern that there is not currently an insurance product that would cover that kind of professional indemnity [PI] given to the principal contractor. Do you share those concerns about the Parliament simply saying, "You must get insurance" when there is no insurance product because of the lack of quality underneath?

Ms LOSEBY: I am in my own role aware of limited building practitioners who have PI insurance. It is available but I know it is not available to all. I know that there are insurers considering it. But it needs to be made available.

The CHAIR: Indeed, the Insurance Council says that unless it is able to have significant exclusions from its insurance products, it is very unlikely to ever write an insurance policy for that part of the construction industry. Exclusions are kind of standard practice in professional indemnity, are they not?

Ms LOSEBY: Certainly. I am just in the process now of renewing our PI insurance. We have to be so careful of going through whatever exclusions are. Obviously, I will make sure that we do not have exclusions. But when the insurers find it difficult or they think that there is a risk in the market and they start offering exclusions in order to give PI insurance, I think that is a major concern because you can still be listed as having PI insurance but if you have multiple exclusions in that—that was my point about the proportionate liability that I will probably talk to you about separately.

The CHAIR: An example at the moment would be that there is no professional indemnity market for signing off on flammable cladding—

Ms LOSEBY: Yes.

The CHAIR: —because there are no identifiable standards or quality that can be enforced in the industry, and so insurers are not willing to take the risk of indemnifying private certifiers or others.

Ms LOSEBY: There are standards and there is a new Australian standard. It is very difficult to achieve the level of compliance necessary. What PI insurance has done is the insurers have basically said, "You are not insured to design or use ACP products."

The CHAIR: ACP being?

Ms LOSEBY: Aluminium composite panels, which is where you have the metal on either side and you have the—

The CHAIR: Polystyrene fire starter in the middle.

Ms LOSEBY: —polystyrene, basically, in the centre, which is highly flammable. This is a positive thing because it means that it is not being designed, documented or built. But Australia is actually developing a new standard.

The Hon. MARK BUTTIGIEG: After all this time, all this publicity and all these emblematic incidents, we essentially have a bill that takes a reactive approach rather than a proactive approach because it does not cover the steps along the way that you are saying need to be accountable and regulated. It relies on the principal contractor indemnity approach, which, at the end of the day, is a reactive approach.

Ms LOSEBY: I would say that this bill is a good starting point. What it does is it makes sure that there is a duty of care of all individuals from the design from the start through to the end to the building contractor who has to sign off and take responsibility.

The Hon. MARK BUTTIGIEG: But those bits in the middle, you identified, have not been regulated.

Ms LOSEBY: That is right, and I would expect either that there need to be some updates to this bill or that we need to be involved—which we will anyway—with the regulations and getting a lot more detail at that point.

The CHAIR: Or actually draft a bill that works with the current set of regulations under the Environmental Planning and Assessment Act, which sets out whole classes of voluntary certification for many of the building trades.

Ms LOSEBY: I think that that has not been successful, though.

The CHAIR: That is because it is all voluntary; it has never been made mandatory.

Ms LOSEBY: No.

The CHAIR: And we are still in that same situation with this bill, are we not?

Ms LOSEBY: I think the bill has an opportunity to be developed so that it can be appropriate.

Ms HURFORD: I think the other point is that putting the designers back in and giving them a role where we have potential to have overarching control of the quality of the design and if we can build up this in time where it is holistic and retrospective looking at alterations, and the design team is core and integral to the delivery of quality throughout the process, then that is a big and positive step change. It also sends a really positive message for architects because architects are regulated. They are committed to quality outcomes. Having that role acknowledged in legislation that enables us to be core in future conversations about how it is going to roll out and where we are going to go to from here, from that perspective, we have been really heartened by the level of engagement between the development of the bill and the Institute. We are already in a really good place because we are a regulated profession and we want to proactively work to make sure that everybody is lifted to the same level of competency.

The CHAIR: That is where you hope it will get. You do not see that in the bill yet. The hope is that some of that will be contained in the regulations.

Ms LOSEBY: Yes.

The CHAIR: Going back to proportionate liability, one of the potential benefits of having multiple players with integrity licenced, certified, insured is that we do not have the current system where there is a hunt for the one person with professional indemnity, whether it is a private certifier or an architect. One of the potential benefits for the scheme was that you will have multiple layers of insured, qualified, dependable players. And then if a claim is made the claim can be met on a proportionate basis depending on how much responsibility you had for the problem.

Ms LOSEBY: Yes.

The CHAIR: But that could all be defeated, couldn't it, by contractual provisions that provide for an architect or another designer to basically be liable for the whole project?

Ms LOSEBY: That is right.

The CHAIR: Can you explain that?

Ms LOSEBY: Yes. The New South Wales Civil Liability Act—which, incidentally, is different to the Queensland Civil Liability Act—allows, under one particular clause 3A (2) to contract out. That means that proportionate liability does not occur; it is joint and several. Effectively what this means is that those who have PI insurance and do all the correct things—the risk mitigation, making sure their practices are correct, making sure, for instance if it was the upfront design component, that the design was correct and properly done—if proportionate liability is contracted out of, if everybody else further down the chain went out of business or did not have insurance and there was an issue on site, done by somebody completely different, the only person left standing is the one with the PI insurance and they are responsible to pay for it all. Effectively that sounds as if it is better for the consumer because it means that the consumer is covered in the end—somebody will pay to cover to protect them—but realistically this means that to get PI insurance when you cannot rely on proportional liability, the insurers will either have to put in exclusions or pump the cost of it up so high that it becomes unaffordable. Then you are forcing those members to look for insurance that they cannot afford so they will go for lower value or take out insurance with exclusions. So in the end it actually does not help the end consumer.

The Hon. MARK BUTTIGIEG: Plus it encourages perverse behaviour along the way, because if you are in that chain you will just fob it off knowing that you are not liable.

Ms LOSEBY: That is right. So it does not help the good guys, really.

The Hon. ROBERT BORSAK: But in an insurance pool the good guys always pay for the bad guys. That is how it works. There is another area that you did not mention, and that is that you could ask for a higher deductible.

Ms LOSEBY: Yes, that is true.

The Hon. ROBERT BORSAK: That could also be subject to regulation. If you made the deductible too high obviously you would be carrying a lot more risk yourself, but that is always open. At the end of the day if the Government is not engaged—the Insurance Council of Australia tell us that the Government is not engaged at the moment in having discussions with the market—do you think it will end up with another icare situation, where the Government will end up having to underwrite the whole thing?

Ms LOSEBY: I thought the Government was talking to the insurers. I am aware that the Building Commissioner has been talking to various insurers, including the Insurance Council of Australia. I thought the Department of Trading was, as well.

The Hon. ROBERT BORSAK: We have just had a submission and a letter from the Insurance Council that says that they believe the Government is currently not engaged.

Ms LOSEBY: Okay.

The CHAIR: I think that that was a submission dated 16 October to the Government's consultation process.

Ms LOSEBY: Right.

The CHAIR: They say quite baldly:

> It is acknowledged that insurance is not currently available for the range of practitioners proposed to be registered.

They say it in black and white.

Ms LOSEBY: Is that because they are looking at what the existing condition is? I would have thought that the best thing would be to get everybody around the table and have a discussion. "If we all do all of these steps then will you come back in?" We will not get consumer confidence back unless the insurance industry is at the table.

The CHAIR: They are saying things like—and I will quote from their letter—"We are concerned that elements of the bill may potentially exacerbate rather than address the lack of available insurance highlighted in the Building Confidence report."

The Hon. ROBERT BORSAK: It sounds like amateur hour. That is what it sounds like.

The CHAIR: And it reinforces your concerns about the ongoing impact on the insurance pool.

Ms LOSEBY: Yes. I think that they definitely need to be brought into the conversation.

The CHAIR: Legislating for an insurance product that is not available is a pretty dumb move.

Ms LOSEBY: Yes.

The Hon. MARK BUTTIGIEG: Given the level of professionalism and qualification required by an engineer—who usually does a degree for anywhere between four and six years on highly complex subjects—do you think that they should be covered by the same sorts of Acts and schemes as you people are?

Ms LOSEBY: We have a very rigorous Act, and our recommendation with this bill is that any of the design practitioners must be covered under a similar regime. So we would say exactly the same for the engineers. In fact, Engineers Australia have been with us. They have looked at ours and they have agreed to it all, so they would agree to the same. The question, I think, for them is more whether they should be wrapped up under this bill or should they have a separate, stand-alone Act. We would support them in saying a separate stand-alone Act is worthwhile because then you can pull in other professional engineers that are not just construction—aeronautical et cetera.

The CHAIR: Unfortunately we have run over time and out of time. Ms Loseby and Ms Hurford thank you very much for your assistance, as always.

(The witnesses withdrew.)

BRETT DAINTRY, Director, Daintry Associates, on former oath

The CHAIR: Mr Daintry, do you want to start with an opening statement?

Mr DAINTRY: Yes. I am perplexed, after reading the Act, because we have a Building Professionals Act, we have the Building and Development Certifiers Act, and now we have a Design and Building Practitioners Bill. We seem to have another Act which, in the words of Justice Paul Stein, in his Mahla Pearlman oration, back in 2013, adds to the "mishmash of acts and regulations" that have taken place since 1 July 1998. It has some new nouns that I have not heard before.

The Hon. ROBERT BORSAK: Such as?

Mr DAINTRY: A "compliance certificate" seems to be a "compliance declaration", an "accredited certifier" seems to be a "registered designer practitioner". A "principal certifying authority" will be known as a "principal design practitioner". The Building Professionals Act, the Development Certifiers Act and this bill all seem to cross over and seek the same objectives. And they all do not talk to each other. It is a real mishmash. There is no detail in the bill. We really do not know what we are going to get out of it. What we really need is a building Act. We have a planning Act that deals with strategic planning, where we put stuff. We have a development assessment process under part 4 of that Act that deals with DAs. CDCs can fall in that same basket to some extent.

The CHAIR: Compliant development certificates.

Mr DAINTRY: Yes, sorry. We really just need a building Act. It is great that architects are registered, and because of their registration they have always been held in high esteem. Surveyors are also subject to their own registration Act, and they have always been held in high esteem and well regulated. Engineers should likewise fall under an Act. But maybe it all needs to come under one Act. That is my opening submission.

The Hon. COURTNEY HOUSSOS: In 2015 Michael Lambert said we need a standalone building Act and he has made exactly the same submission to our original inquiry and then subsequently to this inquiry. That would be your view, Mr Daintry, that we need a standalone Act?

Mr DAINTRY: I have been saying that for decades.

The Hon. COURTNEY HOUSSOS: Would you then agree we need a building commission to enforce and regulate that Act?

Mr DAINTRY: Yes, absolutely. The word "offence" appears over and over and over in this Act. There is a lot of new offences. They add to all of the existing offences under numerous acts that have tried to regulate development building and no-one has ever really enforced any of them. I might take you to section 10.6 of the current Environmental Planning and Assessment Act, which is worded in very similar terms to some of the provisions in this new bill. It says, "A person must not provide information in connection with a planning matter"—a planning matter in that Act includes all the building matters under that Act—"that the person knows or ought reasonably know is false and misleading in a material particular". Those words resonated through this bill because there is all these new offences. What is interesting under that provision and all of its predecessors under the environmental planning assessment regulations is I am not aware of anybody ever being prosecuted for breaching those provisions.

The CHAIR: They have never been taken out of the garage, have they?

Mr DAINTRY: No. The biggest problem we have is we have a lot of people in government and an exorbitant amount of resources being put to writing acts and regulations and we actually have no enforcements.

The Hon. JOHN GRAHAM: When you look at the key reports in this area, the Shergold Weir and the Lambert reports, the one thing they have asked for is to not have piecemeal reform but have a comprehensive approach. We are a long way from that now?

Mr DAINTRY: Absolutely.

The Hon. JOHN GRAHAM: That is your submission?

Mr DAINTRY: Absolutely. What has occurred since the advent of private certification is that successive governments of both persuasions have tried to make it work. When Paul Stein—and I like Paul Stein because he is very clear—a former judge of the Land and Environment Court and the Court of Appeal said it is a "mishmash" back in 2013 he was spot on. That is six years ago.

The Hon. JOHN GRAHAM: Now we might be making it worse. Rather than have one building Act, a building commissioner, a building commission, we add another bill on the pile?

Mr DAINTRY: Another bill—

The Hon. JOHN GRAHAM: It is adding to the confusion?

Mr DAINTRY: —and no enforcement.

The CHAIR: But worse still a kind of parallel regime with similar sounding regulatory models but no connection between the existing arrangements. We may have comply and development certificates issued for projects that have never had the design sign-off and we may have construction certificates issued for projects that have never had the design sign-off because we have this silo process being aggravated by this bill?

Mr DAINTRY: There are some logical splits in silos. For instance, the Environmental Planning and Assessment Act was meant to operate that you have town planners writing town plans and telling you what zones you can do stuff in, then you have a development assessment process that holistically looks at whether the environmental impacts of what is proposed are acceptable and the general height, shape, bulk, external configuration type issues, and then you silo off into the next stage, which is the building detail. There are logical silos along the way but probably the biggest mistake that was ever made was taking building and putting it in the Environmental Planning and Assessment Act in the first place. It did not belong there along with planning. It is worthy of its own Act and it should be taken away from the earlier stages of development and then put into its own Act.

I do have a lot of sympathy for what the architects say because I believe that if an architect is engaged—and the architects will never come out and say this because they do not want to be seen as biased towards themselves—to design a building they should be on that project from the development application stage to the day the occupation certificate is issued on the building. That architect. We have all seen it. The Ralan example at Burwood has to be the stand out. I quoted that last time. High-end, highly competent architects are used to procure development consents for sites and then the developer engages an architectural firm to dumb it down, make it cheap, cut all the costs out of it and cut every corner known to man to increase their profit. The only element of the whole system that I see that should carry through from the day the development consent is issued until the day the building is occupied is the architect. The rest of the team under the architect might well change, there might be structural changes to a building. What we do lack is consistency across that range.

The CHAIR: And that is separate to the role of a clerk of works?

Mr DAINTRY: Yes.

The CHAIR: The architect is there to ensure the design has integrity all the way through?

Mr DAINTRY: Yes.

The CHAIR: Whereas the clerk of works is there to ensure the construct has integrity all the way through.

Mr DAINTRY: Correct.

The Hon. JOHN GRAHAM: You have talked about the importance of enforcement in Victoria and in Queensland. That really happens through the building commission. There is no reference to a building commission in this bill or any sign of it from the Government. Until that is in place in a similar way to what is in Victoria or Queensland, how effective is this regulation going to be?

Mr DAINTRY: Not very effective at all. The only reason that building enforcement worked under the old Local Government Act was because in a physical sense the council had the monopoly and oversight of sites on a daily basis. I might break it down to the simplest level. If you take it back prior to private certification—and I will give a practical example, Westfield at Miranda Fair when it was under major renovations and alterations— the council had three building surveyors on that project. They were responsible for the building approvals for that project. They were then responsible for the inspection of each concrete pour. They were oversighting that development.

Had there been a breach of the development consent or the building approval on that project or something not in accordance with the approvals there was that direct oversight by an independent arbiter. What occurred with private certification is initially there were no critical stage inspection requirements at all, so in many cases buildings were built without any inspections. Then we got critical stage inspections. But again it is not truly independent oversight of a building site. If this bill gets through there will be lots more paper. There will be a lot

more certificates. How they will be kept is unclear and what form they will be is also unclear. There will be a lot more paper. What is truly absent is independent oversight and enforcement.

The Hon. MARK BUTTIGIEG: Again, a reactive approach whereby if something goes wrong the bit of paper might be there to allow someone to point the finger, but it is too late because the defect is there and it could be a serious defect that results in a collapse, for example? Unless you have proactive people physically going out and checking each stage you are not going to solve the problem?

Mr DAINTRY: Correct. It was a double whammy because the clerk of works went, the owner's representative on site oversighting building went, we lost independent oversight by independent council building surveyors and at the same time you did not have home warranty insurance on these buildings because we were introducing critical stage inspections which were actually less than what was there prior to 1 July 98.

The CHAIR: The projects themselves became vastly more complicated with a whole lot of novel and new design elements. It is not just a double whammy, it is like a quadruple whammy?

Mr DAINTRY: I could speak for a day about performance based alternative solutions over the building code of Australia. They were absolutely necessary to come in because the deemed as satisfied provisions of the prescriptive provisions in the old ordinance 70 were too inflexible. But what occurred when the BCA initially took effect in New South Wales in 1990—

The CHAIR: The Building Code of Australia.

Mr DAINTRY: Sorry, acronyms again. When the Building Code of Australia took effect in the early nineties, if you wanted to do an alternative solution, it was available to you but you had to get the concurrence of the local council and then you had to get a tick off from a committee at the Department of Local Government. So there was oversight when the BCA first commenced of alternative solutions. That did not follow through on 1 July 1998. What occurred on that date was you just needed a level one with the concurrence of another level one to sign off on an alternative solution for fire safety matters. Other minor alternative solutions did not even require concurrence. There is a whole level of discussion that needs to be had around how do you ensure that alternative solutions are only accepted, and I say that that requires direct government oversight. I see a role of the building commission would be to provide concurrence to performance-based alternative solutions, especially in relation to fire safety matters.

The CHAIR: If you were to graft a building commission on to this Act, obviously the building commission would be responsible for the administration of this Act. What other legislative responsibilities would the Building Commissioner need so that he had that single regulator?

Mr DAINTRY: Everything in part 6 of the Environmental Planning and Assessment Act [EP&A] that relates to building; everything in part 4A of the EP&A Act that relates to building certification—there is still some residual crossover into section 68 activity approvals under the Local Government Act where certain things require activity approvals, and that mainly relates to country New South Wales—everything in the Building Professionals Act, which I presume was to be repealed, or might have been repealed by the Building and Development Certifiers Act, and this bill, which adds to the mishmash.

The CHAIR: I suppose you have some other ones, like the Swimming Pools Act maybe?

Mr DAINTRY: Yes, Swimming Pools Act. Look, I would have to sit down and think more about the full ambit of different Acts and regulations that cross over and affect building, but there are numerous.

The CHAIR: But this conversation highlights just how siloed the approach is and how it creates yet another Act with yet another parallel set of regimes.

Mr DAINTRY: And a whole heap of more new nouns that we all have to learn that seek to achieve the same thing as previous Acts. I might add that if you go back to section 10.6 of the Environmental Planning and Assessment Act and you look at that provision relating to all these new offences, these new offences are actually less onerous than what the EP&A Act requires. Because the wording it uses is "that the person knows to be false or misleading in a material particular". The EP&A Act actually says "or ought reasonably to know". It was a funny little amendment. Those words, "ought reasonably to know", actually found their way into the last amendment of the Act and nobody knows really where they came from. But I concur with the architects, there needs to be a level playing field that everybody in the system needs to be equally accountable, and everybody needs to be registered.

I prefer the word "accredited", because registered to me means you put your name down and you get a ticket. Everybody needs to be appropriately qualified, they need to have relevant skills and relevant practical experience. They are words that are missing as well, because it is not about practical experience. I can have

experience issuing thousands of building approvals for a house and I might be highly competent at approving a house and that is relevant practical experience for the purposes of a house. But it is not relevant practical experience for the purposes of building a multistorey building. Equally as such, a lot of people do not think about it the other way around, but people who have relevant practical experience in building multistorey buildings are not necessarily competent in building houses.

The Hon. JOHN GRAHAM: The last bill that went through the Parliament, the Building and Development Certifiers Act, went through at the end of last year, and we were told it was urgent at the time. It is not in place and will not be in force until next year. Have you been given any information from the Government about the time line when these provisions will come into effect, when the regulations would be finished?

The CHAIR: You mean for this bill?

The Hon. JOHN GRAHAM: For this bill.

Mr DAINTRY: The design and building, or the previous Act?

The Hon. JOHN GRAHAM: This bill that we are currently discussing.

The CHAIR: The Design and Building Practitioners Bill 2019.

Mr DAINTRY: I have not inquired as to that, but I did inquire with Mr Marcus Rowe from the planning department about the regulations under the EP&A Act, and they relate to the building manual and other issues. There has been no indication of when those regulations will be made. Again, this adds to the mishmash because there are all these Acts and regulations. The regulations are yet to follow under numerous Acts that have already gone through. That is why I started off by saying I am a bit perplexed, because here we have another bill that seems to duplicate everything else and we still do not know what is going on with what has already been enacted.

The Hon. JOHN GRAHAM: What other things are unfinished from your point of view?

Mr DAINTRY: Regulations under the EP&A Act relating to the building manual and how the building manual would form part of the process is—

The CHAIR: But the idea that would be developed by a different Minister with a different bureaucracy from the Minister that is handling the building and design Act, if you were a stranger looking at this you would wonder how we got into this mess, would you not?

Mr DAINTRY: I just believe this whole thing is a kneejerk reaction to the Opal Tower, the Mascot Towers and other matters and it does not seem to me that there has been a cohesive approach to any of it.

The CHAIR: It is an announceable dressed up as policy.

Mr DAINTRY: Yes. I think there is an expectation, clearly there is an expectation from the public that the Government will do something about this mess. In my opinion this bill does not fix the mess, it just adds another layer of complexity to the mess.

The Hon. MARK BUTTIGIEG: Just to summarise, the position is that you scrap all this mishmash, hotchpotch approach with the several Acts and all the regulations, you have an overarching, thorough approach via one building Act.

Mr DAINTRY: Yes.

The Hon. MARK BUTTIGIEG: And you enforce it with government regulation and people proactively going out and inspecting. That fixes the problem, but we are nowhere near that, are we?

Mr DAINTRY: No, we are not. This in my opinion is another Act that is put in place to prop up a fundamentally flawed and failed system.

The Hon. JOHN GRAHAM: You are really saying to us because of the confusion it might actually make it worse. Are you going that far?

Mr DAINTRY: Oh yes. I hear the architects and they agree that you need to register everybody, but it needs to be under one Act. There is no use having the certifiers over here under this Act, and the architects over here with the Architects Act, and then the surveyors under the Surveying Act, and potentially a new engineers Act. There needs to be a single, cohesive approach to building in New South Wales. Whether one is signing off on the final design of a construction certificate, saying it complies with the Building Code of Australia, that sign off could currently be a compliance certificate under the Environmental Planning and Assessment Act. If you are signing off on the structural components of the building, that could be a compliance certificate under the current

EP&A Act. If you are signing off on the wet area, that could be another type of compliance certificate under the current legislation. What these registered design practitioners, this bill does, is seek to duplicate something that really is already there and just needs to be used.

The CHAIR: Mr Daintry, we have unfortunately run out of time. Thank you again for your assistance. I do not think you took any questions on notice. I do not think you were allowed to because we do not have time. Thank you.

Mr DAINTRY: Thank you. Good luck.

The Hon. COURTNEY HOUSSOS: We need it, thank you.

(The witness withdrew.)

DARREN GREENFIELD, State Secretary, Construction Forestry Maritime Mining and Energy Union, affirmed and examined

RITA MALLIA, President, Construct Forestry Maritime Mining and Energy Union, sworn and examined

The CHAIR: Do either or both of you wish to make a brief opening statement?

Mr GREENFIELD: I would like to say thanks for the opportunity and I will pass it over to Ms Mallia.

Ms MALLIA: And then we will take questions. Firstly, it is belief of the construction, forestry maritime mining and energy union the issues that have been exposed in respect of building quality are really the tip of the iceberg and there is a crisis in New South Wales. We have made submissions in response to the Building Stronger Foundation discussion paper and in respect of the bill before you. Whilst we are supportive of regulation and registration, I agree with the previous witness, accreditation is what we should be talking about. The bill does not go far enough. One of the issues we have raised in both our submissions is the lack of independence of the myriad of professions certifying the plans, the processes, through to the works to ensure that work is carried out and complies with relevant regulations or building deeds.

Having people registered, having registered certifiers and other professionals will not address what is basically corruption from our point of view. The certifiers are paid by the developers and the builders and in order not to risk their future engagement are prone to give developers and builders the certificates they need. That is obvious given the extent of the problem that is now emerging. Whilst certification remains privatised this problem will continue. Even under schemes such as the Strata Building Bond and Inspections Scheme, whereby developers are required to guarantee up to 2 per cent of the building contract work for defects, it is the developer in the prime seat. Strata committees might theoretically have some say in who these inspectors are that are being appointed but at the end of the day if they need defective work addressed there is a lot of power in the hands of the developers and the builders.

The bill itself does not address the need for better enforcement. In our original submission we supported the establishment of a building regulator with the proper enforcement powers so that a proactive approach to ensuring compliance occurs throughout the building phase by an independent body and regulator and certainly not after the event, as in the case of Mascot Towers many years after the event where you cannot actually shoot home responsibility to the very people who build the thing in the first place. This bill does not address those issues. Throughout the bill there is reference to insurance, the adequacy of which will be determined by regulations. We are sceptical that there will be an insurance scheme that would be possible or put in place or even obtainable. I do not know what insurer would want to insure the sort of risks that we are seeing that would not come without a hefty price.

Insurance seems to be a pretty lazy approach to it. It takes us back to the original point; without some sort of independent certifying and a robust regulatory compliance scheme it is all too late when the building is literally falling down. We commend the CFMMEU's national report, "*The shaky foundations*", into what we have described as a national crisis. It says that in terms of construction over the last 10 years there is at least a $6.2 billion repair bill, from the report that we have commissioned. The issue that Mr Greenfield will speak to is the elephant in the room, the problem of substandard cladding. Our report estimates there are 3,400 residential apartments nationally that contain combustible cladding. That, again, stems from a failure to enforce existing standards, poor project design and outsourcing building approvals.

The initiatives in New South Wales so far fail to shine a light on the true extent of the problem. Obviously owners are not keen on reducing the already reduced value of their assets but at the end of the day to avoid a proper audit and exposure of the extent of the problem is really to make the problem worse. We have not seen an initiative, such as the Victorian government's $600 million package to deal with cladding issue, for example. As is clear from the national office report a national approach will ultimately need to be taken to take proper stock of the issues and the rectification properly made. The other issues highlighted in our report and not addressed in New South Wales so far is the proper consideration of all standards of the building code itself: The adequacy and deterioration in the quality of certification of building products plagued by the lack of independence in a private certification regime.

Lastly, we spoke to this in our submission, the penalties. To the extent we have just heard they are not enforced and they are not commensurate to the damage that is being caused. Those breaking the rules are left to break the rules leaving the consumers and others to pursue matters through courts, which is highly inadequate, or to pursue insurance companies, which does not solve the problem. The Government is clearly on notice of a very

serious issue. I do not know what they are waiting for. We do not want a Grenfell of our own where people are actually killed before proper action is taken.

The CHAIR: Do you want to add anything, Mr Greenfield?

Mr GREENFIELD: I will add that sitting here listening to the last speaker I probably could offer the same sort of things he was saying: The deregulation of New South Wales, the mention of a clerk of works and architects being on the project from start to finish. I will add that in New South Wales the ball has been dropped. There is a lot more to come with the standard of buildings, from what we have seen, over the next few years. The project that was mentioned at Burwood, that builder-developer has a lot more projects that will come up with a lot of defects in them. There is no enforcement of anything here in New South Wales.

I think that unless we do have a building code for New South Wales and a building commission to run and enforce and hold people to account we are wasting our time with what is being put up. Just on the cladding quickly; I notice today the State Government has mentioned about 441 projects and is keeping that quiet from the public. I think that is very alarming. I do not know if the agenda is trying to protect owners that have bought these properties and their value but I would not like to be living in one of those projects with this cladding on it and not know that my building is one of the 440 buildings. To hear that this morning was very alarming as well.

The Hon. JOHN GRAHAM: You were here listening to the previous evidence. The one thing that governments are being asked to do is deliver a comprehensive approach. How far from a comprehensive approach is this bill and the existing regulation?

Mr GREENFIELD: I think we are miles apart. I heard it said here we are just putting another layer in. There is no enforcement. We are making it harder for people to achieve anything. It is hard enough as it is because there is no compliance and there is no enforcement. Adding another layer in without doing a comprehensive plan and adding everything in should not be done. We see it in other States and it seems to work well.

The Hon. JOHN GRAHAM: Turning to that enforcement question, you are seeing some of this on the ground?

Mr GREENFIELD: Yes.

The Hon. JOHN GRAHAM: What should be dealt with on the ground that is not enforced because there is not a commission or a commissioner able to deliver that enforcement?

Mr GREENFIELD: As was said earlier, as far as the design of buildings in years gone by, and you have to go back a few years now, architects were on the project from the start. They designed the project, they are on the project and they look after that project until it is finished. As you have heard, architects are now removed once that building is passed and ready to be built. There is no independence from there on in, nothing at all. There is no enforcement of the actual building products, there is no enforcement across the board at the moment.

The Hon. JOHN GRAHAM: You have made the point, Ms Mallia, for ordinary people it is very little use being told you can go to court and enforce this?

Ms MALLIA: Useless.

The Hon. JOHN GRAHAM: That is out of reach of many people?

Ms MALLIA: Yes.

The Hon. JOHN GRAHAM: That is even harder if you cannot find the company that was involved, if they have disappeared, if they are phoenixing these companies in New South Wales. I am interested in how widespread you think that practice is and how much of a problem it is in the industry at the moment.

Mr GREENFIELD: I will answer it if you like. With developers in New South Wales, they set up companies for a project. It is X company number one for this project. The next project will be X company number two. For builders as well at a certain level, you might get to the top tier where it is a little bit different, which is only a couple of builders I would say, but a majority of builders have a company for that project. Whether it is a development company or a building company, they shut down just before the end of the project.

The Hon. MARK BUTTIGIEG: It is the rule rather than the exception. It is a business model to avoid liability.

Mr GREENFIELD: Yes, it is a common business model in New South Wales.

The Hon. COURTNEY HOUSSOS: I want to go to the national report that you attached to your submission. Thank you very much, because that is really informative for us. The key issue is that the national figure is $6.2 billion, but it shows that the vast majority of combustible cladding, water leaks, fire safety defects and structural defects are in New South Wales. The bulk of this is going to be—

Mr GREENFIELD: New South Wales' problem.

The Hon. COURTNEY HOUSSOS: —New South Wales' problem, that is right. But this bill deals with none of that. This bill is setting a slightly better standard for buildings that will be constructed at some point in the future, but for everyone with a major financial investment, this gives them no recourse. Is that right?

Mr GREENFIELD: Yes.

The CHAIR: Somebody described this bill to me as a Band-Aid on an amputation. Maybe that is a bit harsh, but—

Mr GREENFIELD: I would say a very good description.

Ms MALLIA: It does not get to the fundamental problem with the issues. To add to the complexity part, you also have a situation where for building contracts everything is subcontracted from the developer and the builder to the subcontractors. We already know that in the building industry subcontractors fail every day of the week. They also restructure themselves to avoid liabilities. If you are a home owner trying to work out who put in the faulty stairs or the plumbing that leaks or, God forbid, the cladding that is not going to prevent your building from falling down, you are never going to find those people. They are well and truly gone by the time those defects become apparent to the people who own those buildings. The whole system is designed to prop up bad behaviour.

The Hon. COURTNEY HOUSSOS: And none of that is being rectified by this bill.

Ms MALLIA: No, none of it. If anything, it is worse.

The Hon. COURTNEY HOUSSOS: We heard from some of the other construction unions—the Electrical Trades Union [ETU] and the Plumbers Union—who talked about the total lack of inspections. We heard really compelling evidence from a representative of the Plumbers Union who said he had been on worksites for nearly 20 years and he has never seen an inspector. Is that your experience?

Mr GREENFIELD: Yes, common, very common.

The Hon. COURTNEY HOUSSOS: In effect what you have is unions becoming a pseudo enforcement authority. You guys are actually on the worksites and seeing what is happening, but the system is not necessarily set u for you to be reporting that. Do you have any way of reporting stuff that you see?

Mr GREENFIELD: We do and I write regularly to the regulator.

The Hon. COURTNEY HOUSSOS: Is that Fair Trading?

Mr GREENFIELD: SafeWork about a lot of these things and Fair Trading, but that is the only avenue we have other than enforcing the safety side of it on the jobs.

The Hon. MARK BUTTIGIEG: What is your experience with the response from those jurisdictions?

Mr GREENFIELD: I have to say pretty poor. As far as SafeWork, we very rarely see them on construction sites. I would say, unfortunately a death yes, they will turn up. But outside that, it is very rare to see them on a job.

The CHAIR: Mr Greenfield, a lot of this discussion is abstract, about risk and problems. You and your members are actually on those building sites. What other kinds of things have you seen? What other examples of dangerous or substandard work are you and your members seeing?

Mr GREENFIELD: We are seeing everything from scaffold collapses, as you would have seen this year, and in regards to the buildings, deck collapses, concrete slab collapses, balcony collapses—you name it, from minor things all the way up we see it daily in the industry. Whether that is a four-storey block of units or a major infrastructure job, it is happening regularly out there. It comes back to the same thing; there is no enforcement with anything. As you touched on there, with licensing as well in the industry in New South Wales, it is absolutely ruined, the licensing side of it. You do not have to be licensed. You mentioned the plumbers and the ETU, there are sparkies, electricians, working on construction sites that are not licensed. They are not licensed.

The Hon. MARK BUTTIGIEG: You can have all the licensing regimes and regulations you like—and we have heard this bill does not achieve that by any means—but unless you have the enforcement, it is all for nothing.

Mr GREENFIELD: Waste your time, that is right.

The CHAIR: Which brings us back to the fragmented regulatory system that we have and the need to start a building commission. We have one authority with responsibility for the building trades. You spoke about some of the things you see on the ground, like collapses of balconies, collapses of decks, collapses of scaffolding, and that is not unusual, would you say?

Mr GREENFIELD: Yes, that is not unusual.

The CHAIR: What about the things you do not see if you are a purchaser—the things that are plastered over or are covered by the foundations? What about those kinds of things? Can you give us some idea?

Mr GREENFIELD: That is very common as well, but obviously hidden to the general purchaser of these apartments in New South Wales. They would not pick that there is an issue when walking into purchase a unit. It is okay to say you have to look for cracks and this, but they will not pick that up. A lot of those things can be covered over. It also comes down to building products. A lot of the products being used are substandard. A job might be priced to be built with a certain Gyrock for fire rating, but in the course of the project it gets imported from China by a contractor and does not comply at all. That is common out there.

The Hon. COURTNEY HOUSSOS: When the Building Commissioner, who is supposed to be fixing the building crisis in New South Wales, says buyers need to beware, is that a fair assessment?

Mr GREENFIELD: I would say that is laughable and disrespectful, seriously.

The Hon. MARK BUTTIGIEG: This is obviously a reaction to some emblematic things in the media like Mascot Towers and Opal Tower, but the sorts of things that you are talking about such as balcony collapses would have been going on for 20 or 30 years.

Mr GREENFIELD: I would say probably back to the early 2000s or late 1990s. As the market started to get deregulated and there was no enforcement, it has just got worse as time has gone on.

The Hon. MARK BUTTIGIEG: I can imagine that as major stakeholders with experience on the ground—these are the people actually getting their hands dirty—the unions, including your own, have been feeding this back to government over several years. What has been the response?

Mr GREENFIELD: I would say there has not been response. There have been various reports put together and they seem to sit in the bottom drawer. I do not have the last report in front of me, but I know it has not seen the light of day. It was in regards to putting moneys away for a project and getting funded out of a trust account or whatever to fund the job all the way through.

The Hon. MARK BUTTIGIEG: One of the most pernicious things about this is it becomes a race to the bottom, does it not? If you are trying to compete and you are a quality builder and you are getting undercut by shonky practices that are underwritten by the Government then your response is either to go out of business or to do what the shonky practitioners are doing. Right?

Mr GREENFIELD: Yes, exactly right. That is where we have ended up in New South Wales. The company mentioned earlier that is no longer in business, I go to their projects over on the north side. You walk in stairwells and you come to a point where there is a door four foot high that you cannot go through. You cannot get a car in the driveway because of the size of the driveways. There have been major problems and they are ongoing. They are not going to get fixed unless we get a decent building code in this State and a commission to enforce it.

The Hon. COURTNEY HOUSSOS: Again, the Building Commissioner says not to worry you can go through your insurance and that is the way you should rectify these problems. Is that realistic?

Mr GREENFIELD: No. People have to be accountable. It is not the answer to go through your insurance to get it fixed. People have to be accountable for what they are building out there. We can see it happening in other States and we can see that it happened in New South Wales many years ago. There are ways to do it; the ways and means are known. It is just a matter of putting them in place and being serious about what needs to be there.

The Hon. COURTNEY HOUSSOS: The Victorian Government had quite a different response, particularly on the issue of cladding. They said this requires a government response and requires the Government to put money on the table. What is your view on that?

Mr GREENFIELD: I think that is fantastic. They can see it is a major problem out there for the general public buying these apartments. They are looking at bigger things as well down there. Licensing—they are in a position now, I think it is not too far away from bringing in licensing for trades again—bricklayers, all the different trades—and going back to that level and starting from scratch, because it has got a bit out of control as well. I know in Queensland, from discussions I have had there with the building commission up there, that when companies become insolvent they have to come and reapply to the commission for a licence to go again.

The Hon. JOHN GRAHAM: Without some money, without some central coordination—both those things are happening in Victoria on cladding—it is very difficult to actually get this moving. This has been left with owners or with councils. Is that what you are seeing when it comes to cladding in New South Wales?

Mr GREENFIELD: Yes, definitely, we are. Some of these projects—I know of one down in Chinatown that I think was built probably about seven years ago now. It was compliant at the time; it is not now. Obviously that builder is arguing, "Hang on, it was compliant then. It's not now. I'm not paying for this." That is going to be the battle out there without actually setting something in concrete.

The Hon. JOHN GRAHAM: But at the moment that is being dealt with in a very piecemeal way.

Mr GREENFIELD: Yes, definitely.

The Hon. JOHN GRAHAM: It is difficult to tell what standards should apply or who should apply those standards in New South Wales.

Mr GREENFIELD: And without the enforcement to what standards are these buildings going to be repaired.

The Hon. JOHN GRAHAM: The list you have referred to, nationally—those were the national figures of 3,400.

Mr GREENFIELD: Yes.

The Hon. JOHN GRAHAM: The register that the Government has lodged under privilege has 444 New South Wales buildings on it. Given your bigger figure of one-third of—it is probably more than one-third, given the activity in Sydney. But say it was one-third of your 3,400: It would be more than 1,000—certainly bigger than the 444 that we are talking about on the register.

Mr GREENFIELD: Yes, definitely.

The Hon. JOHN GRAHAM: So you believe there may be a bigger problem than is currently captured on that government register.

Mr GREENFIELD: Yes, I think so. I think it is a fair bigger problem than what we are looking at at the moment. That will come out in the future.

The Hon. MARK BUTTIGIEG: This is never said, but I think it is undeniable this is part of the motive: There is a perspective from Government that "Light-touch regulation fosters development, economic growth, jobs, so let's just let it rip." That has been the philosophy in New South Wales—let's face it—for the last 20 years.

Mr GREENFIELD: Yes.

The Hon. MARK BUTTIGIEG: The beefed-up regulatory regimes in Queensland and Victoria, which you have alluded to—in your experience as the major construction union, has that slowed up employment and growth in those States as a result?

Mr GREENFIELD: Can I say, in Victoria they have more construction work on than they have seen in 25 years. Queensland is a little bit different; it is a different market up there. It is up and down a lot. But definitely in Victoria, no, it has not slowed it down at all. I think it is fine to think that way and think that it beefs up the construction; when we end up at a point we are at now, it absolutely crucifies the construction industry and slows it down and stops it—brings it to a head. That is where we are at now.

The CHAIR: You are critical of the proposed changes to duty of care, which is one of the Government's silver bullet solutions. You are critical because of homeowners—it has not been a viable mechanism because of

the costs of litigation. But you are also critical about the terms of the duty of care changes. Did you want to address that?

Ms MALLIA: Words like "exercise of reasonable care" or "reasonably practical"—we see this in the work health and safety regime. Basically, good lawyers can drive a truck through those duties by applying the more diluted interpretations that come with those words. This should be a strict liability regime: You either have done the wrong thing or you prove you have not. That is how bad the problem is. To me, as a lawyer and seeing those terms used in so many other jurisdictions, they are always used to reduce people's responsibility and give them a defence of some description which they can hang their head on and then avoid accountability. To see that in this bill—it seems to me this is not a very serious attempt to be doing anything much.

The CHAIR: Indeed, the bill has two different standards. There is strict liability for the designers, but there is a very qualified duty of care for the people actually doing the building. I suppose we will have that explained by the Government this afternoon why they chose that.

Ms MALLIA: It makes no sense.

The CHAIR: The other aspect about the duty of care and, indeed, the whole of this bill is none of it is retrospective. None of it deals with the defects or the problems that thousands of homeowners have seen to date. Do you think at least the duty of care provisions should be made retrospective, if nothing else?

Ms MALLIA: We had not turned our mind specifically when we did the submission, given the short time frame. But absolutely, there needs to be some retrospectivity here for those who have caused the drama that we are at now, because otherwise they get away with it. There are many buildings, as Mr Greenfield said, that will come to pass that will not be affected by this new legislation either.

The CHAIR: One of the problems with the bill not commencing when it is passed, because it is all dependent upon regulations, is we are likely to see a rash of contracts and approvals pushed through in the next six to 12 months, desperately keen to avoid any additional controls. What is your view of how that will play out in the industry?

Mr GREENFIELD: That is exactly what will happen. It will just push a major issue and a major problem we have now to an even bigger problem 12 months, two years, three years down the track. It is going to get worse, because they will rush in to beat it and get in early and lock it away.

The Hon. JOHN GRAHAM: So it might even intensify the situations being described?

Mr GREENFIELD: Yes, definitely, and move it down the track a little bit.

The CHAIR: Ms Mallia and Mr Greenfield, thank you very much for your assistance and your evidence today. Good luck out there in the construction industry.

(The witnesses withdrew.)

(Luncheon adjournment)

STEVE MANN, Chief Executive Officer, Urban Development Institute of Australia, on former oath

BARRY MANN, Chair, Urban Development Institute of Australia NSW Building Regulation Industry Advisory Panel and former Chief Executive Officer, UrbanGrowth NSW, sworn and examined

The CHAIR: Welcome to the afternoon session of the inquiry into building standards. We are going to have to come up with some sensible way of differentiating between the two of you. Is it okay to use "Barry" and "Steve"?

Mr STEVE MANN: Useful to tell you that we are not related.

The CHAIR: No, I just do not want to offend you. I am not trying to be overly familiar, but we need the next half-hour to work.

Mr BARRY MANN: That is fine. Thank you.

The CHAIR: I invite both or either of you to give a brief opening statement.

Mr BARRY MANN: I will give an opening statement. Thank you for the opportunity to appear before this inquiry on behalf of the urban development industry. The Urban Development Institute of Australia [UDIA] has asked me to chair a panel of industry participants to provide input into this inquiry. My experience includes 35 years in the construction and property development industry, including as a general manager for apartments and communities in New South Wales for Australia's largest listed residential developer, including doing my own property developments, and most recently as the chief executive of the New South Wales government agency UrbanGrowth NSW. The UDIA NSW Building Regulation Industry Advisory Panel that I chair comprises 15 industry leaders and practitioners, including large listed and private developers as well as smaller boutique developers and also lawyers, strata managers and builders across the supply chain, all of whom have informed our submission.

The hearing is focused on the bill and I will focus my comments on the bill. However, there are a couple of statistics that I would like to bring to the Committee's attention. Firstly, new apartment sales are down 77 per cent since the peak in August 2015, when over 27,000 new apartments were sold. In the past 12 months, only 6,333 have been sold. The second point is that PwC, in a report commissioned by the UDIA, has estimated that just 10 per cent decline in residential supply cost the New South Wales economy $25 billion and 190,000 jobs over a five-year period. It is undeniable that there is a crisis in confidence in the building and construction sector. There is a real risk this crisis in confidence spreads across the New South Wales economy, leading to substantial job losses. The construction sector is the third largest employer in New South Wales and action is required from government to work with industry to resolve this crisis and restore confidence in our built environment.

The UDIA has been at the forefront of the development sector advocacy in this matter, including representing the industry at the recent parliamentary inquiry. Our submission to the Building Stronger Foundations Discussion Paper highlighted the objectives for the reforms should be to ensure buildings are safe for occupation and provide a clear avenue to resolve and manage defects as they occur. We believe the bill is a step in the right direction to restore confidence by bringing about accountability and removing a small minority of rogues from the industry. UDIA does not have any objections with the intent or the broad objectives of the bill.

We would like to raise three key points in our submission. Firstly, accountability must be at the centre of the reforms. UDIA has long identified a lack of accountability as the core issue in the building regulation in New South Wales. This is characterised by lack of accountability for certificates that are relied upon by principal certifying authorities. Responsibility for certification should rest with the expert and this bill must extend to suppliers, subcontractors and specialist installers who are best placed to certify that their work is in accordance with the standards. Secondly, we think the reforms must integrate with existing legislation. UDIA is concerned about the possibility of two regimes for the regulation of buildings—the existing regime through part 6 of the Environmental Planning and Assessment Act and the new bill, which establishes a second regime.

The bill has the same objectives of compliance with the Building Code of Australia but with different regulatory authorities for each regime—local councils for the first and the Department of Customer Service for the second. Thirdly, the regulations must be released for a more informed discussion about the bill. It has been challenging for UDIA to make comments about some of the specifics of the bill because a substantial amount has been left to the regulations, which we understand will be released next year. We believe the draft regulations will help inform debate in the Parliament. Finally, the UDIA NSW submission has detailed our concerns within

specific aspects of the legislation. However, there are elements that need to be worked through. We see the bill as a step in the right direction and we urge the Committee to commend this bill.

The CHAIR: Mr Steve Mann, did you want to add anything to that?

Mr STEVE MANN: No, that's great.

The Hon. JOHN GRAHAM: I think the figures you have just referred to, particularly about the 77 per cent drop in new apartments, really underline the scale of the issue right at this moment. It is a crisis of confidence. Do you feel that this bill is enough of a response, given the crisis of confidence that is out there? Do you think this bill will get us there to people feeling confident that they can step out into the real estate market and buy a new apartment in New South Wales.

Mr BARRY MANN: Like we said, we think the bill needs to extend further to a chain of accountability through to various specialist suppliers and specialist installers of particular items. I think consumers would expect that those organisations are accountable for the work they do. If that bill is expanded to include those and with the developer still being ultimately responsible, we think that goes a long way to resolving confidence.

The Hon. JOHN GRAHAM: I think you have put a powerful case on that. Without those measures it is difficult to address the crisis of confidence, is it not?

Mr BARRY MANN: I think it is stronger and a more compelling argument to consumers when they consider the whole supply chain of the product that we are about to buy has certified or needs to certify that their work has been done in accordance with standards—and to professional standards.

The Hon. COURTNEY HOUSSOS: You draw an important distinction between chain of accountability versus a duty of care. A duty of care is what has been proposed in legislation. Can you explain why a chain of accountability is more important or is a better way forward?

Mr BARRY MANN: We did not have a particular concern with the duty of care proponent. The chain of responsibility—we think that some of the components installed within a building either supplied or components that are installed on site are installed by specialists or supplied by specialists who are in the best position to warrant their work or the item they have supplied complies with the codes. It is probably unreasonable to expect that an overall organisation—be it a certifier, a builder, a designer or a developer—is across the detail of those specialist installations. If there were stronger legislative requirements for those installers, then I think the person who signs that certificate, which the principal certifier relies upon, would probably take more care in providing the certificate if there was stronger legislation that says you need to take more care in providing the certificate.

The Hon. JOHN GRAHAM: I just want to finish off with some brief questioning about how much of the problem this deals with. I accept you are putting the case that this is a step forward but the one thing governments have been asked to do is to drive comprehensive reform. Does this get us there? How far away from comprehensive reform in this area are we?

Mr STEVE MANN: Barry, do you want me to take that one?

Mr BARRY MANN: Sure.

Mr STEVE MANN: I think we would strongly say that it has done the job on the design front—it deals with two sides design front. We think there is a line of sight across all those designers and there are asked to step up and create that certification. We think the weakness lies with just focussing on the head contractor. The head contractor will require its own process of, I guess you would still use the word, certification but it won't be backed up by legislation. So if you look at waterproofing where a huge percentage of the problems come, you will not get a certification. You have got it up here from the head contractor but how is he actually getting it down through the process?

The Hon. JOHN GRAHAM: And we know that's a problem on the ground.

Mr STEVE MANN: Yes.

The Hon. JOHN GRAHAM: You say this is a step forward even though you make the sensible objection that this bill establishes a new regime. It's got the same objective but different regulation, different regulatory authorities—you say, local councils in one and the Department of Customer Service in another. That seems like a real flaw here when we have been asked to provide one building Act; a comprehensive approach. Instead, this is almost the opposite. Is it not?

Mr BARRY MANN: I think that is where the regulations will provide more clarity. Reading the bill, it is broad enough that it does not actually get into the detail of some of those definitions. I think if the regulations address that point and provide that link then it can work.

The CHAIR: We have not seen any of them.

Mr BARRY MANN: Correct.

The CHAIR: Surely that is one of the real problems with legislating to the Government's timetable—we pass a framework bill at best and then hope that the regulations fill the gaps in a credible and coherent way. That is really what Parliament has been asked to do, has it not? To hope that the regulations will be credible and fix all the problems in the bill.

Mr STEVE MANN: I think it is fair to point out that we have made that comment.

The Hon. MARK BUTTIGIEG: Some of the testimony the Committee heard earlier in the day, if I could summarise, was that you can have all the legislation, all the Acts, all the regulation you like in the world but unless there is an enforcement regime that is compelling people to do the right thing, it all counts for naught. Several examples were given, one of which was the electrical industry, for example, where you have got allegedly licensed people doing work but no-one inspecting it. What do you say to that?

Mr BARRY MANN: I think the consumers and the industry expect that the work is done properly and well. A licensed provider, or even a provider who is not licensed but who is providing a product, is providing a product they said they would provide and that it is fit for purpose. So I do not think it is unreasonable that they would rely on it. Whether you have countless inspections to address that is perhaps a level of bureaucracy over the top that is impossible to enforce.

The Hon. MARK BUTTIGIEG: I think the evidence the Committee has heard is suggesting that it is a matter of degree, as you are correctly touching on, but the degree of proactive oversight now is so low, is so threadbare that people are basically not fulfilling those obligations you are suggesting. What we have been hearing is the flavour of the submissions.

Mr BARRY MANN: I guess our point around making the legislation cover suppliers and subcontractors—because it is unreasonable to expect a developer, a builder or a certifier is the expert in absolutely everything. They pay experts to do work in accordance with their training or their licence or their product and they should be able to rely on that expert putting the work in. If the legislation assisted them in relying on it that would be a good thing.

Mr STEVE MANN: If I could add to that: More to the point, you are under a contract with the builder, often an external builder, to build. You can frustrate that process. A fair bit of this comes to the back end, which is where you start to deal with defects. I think defects are part of building a building. Managing that well within the contract with the builder is one of the key challenges for the developer and the rest of that project team.

The Hon. COURTNEY HOUSSOS: That is a nice little segue into the question I want to ask, which is that we received some fairly compelling evidence just before the lunchbreak from the Construction, Forestry, Maritime, Mining and Energy Union [CFMMEU]. One case study they gave us was of a particular building that was built and conformed at the time of the regulations but now does not conform. Is this something common that you come across? How would you deal with that? Is there a process in place at the moment that allows you to do with that?

Mr STEVE MANN: You are talking about the Building Code of Australia? Does it conform with the Building Code of Australia?

The Hon. COURTNEY HOUSSOS: I think it was a reference to cladding. In all honesty, he did not explicitly say that but it does raise the question, as regulation moves forward, of who is left to pay the bill.

Mr BARRY MANN: I think the industry can only deliver what they are allowed to deliver under regulation at the time. They might go above and beyond in certain quality standards that they choose to do because of what they think their customers want and their customers will pay for. But speculating that certain products or certain things that are being done now are not going to be appropriate in five years time, you would probably speculate the wrong thing, right? There are lots of products in the history of the building industry that we probably wish they were not used, but they were. Being able to retrofit them, I do not know how any builder, organisation, developer or subcontractor can be expected to go back and fix that.

The Hon. COURTNEY HOUSSOS: So there is a role for Government in there, is there not?

Mr BARRY MANN: I think so. There are standards in relation to materials. If a material is approved under the Australian standards, then it is appropriate that the suppliers are able to use them and the contractors are able to use those materials. I do not think it is reasonable to expect that individual designers, suppliers or developers do their own special checks to make sure the material that they have purchased complies with the Australian work standard—if it complies with the Australian standard.

The Hon. COURTNEY HOUSSOS: I wish to ask you one question on Australian standards. When you consider the building codes of Australia, do you consider the Australian standards as part of those? If you talk about the building codes of Australia, would you consider that the Australian standards are part of those, or are they really considered to be something separate?

The CHAIR: They are often called up in the National Construction Code.

Mr BARRY MANN: Yes. Australian standards relate to the materials as opposed to the end product and the way the materials are put together. If a material is supplied or an item and if it complies with an Australian standard, it will be referred to within the code.

The Hon. COURTNEY HOUSSOS: Sorry. I mean that if you are talking about building something in accordance with the building codes, would that also include what is covered in the Australian standards, or would they generally be considered to be two separate things?

Mr BARRY MANN: I think they would be considered similar but you have to use—

The Hon. COURTNEY HOUSSOS: But not the same; not used interchangeably.

Mr BARRY MANN: You have to design buildings to a structural design in accordance with an Australian standard of structural design, and the Building Code of Australia would expect you to design the building in accordance with the Australian standards.

The CHAIR: You state in your submission that you are concerned about the possibility of two regimes for the regulation of buildings. There is the existing regime under part 6 of the Environmental Planning and Assessment Act where consents require compliance with the Building Code of Australia, which is enforced by the certification process, and now the bill establishes a new regime. Do you want to expand upon those concerns that you have about whether or not the two schemes will be integrated?

Mr STEVE MANN: It is pretty clear that we have a concern they will not be or that they are coming from two different directions, which creates a problem. They could be more closely integrated but that would need to be dealt with in the bill.

The CHAIR: We had evidence earlier from Mr Daintry that we have a bill that produces a whole set of new nouns that sound very similar to the existing nouns we have, and we are not quite sure if that will be a duplication or if there will be any communication between the two regimes. Do you think it should be spelled out in the bill how it relates to the EPA Act?

Mr STEVE MANN: I think there could be better clarity, absolutely.

The CHAIR: One of the concerns raised with us is that you may have a construction certificate issued under one Act, under the existing legislation, but no-one is clear how that construction certificate relates to a design certificate under the new bill. Has that been explained to you?

Mr STEVE MANN: Yes, and it talks about a final certificate in the new bill as well, which is a confusing process because the construction of a building does happen over time, particularly if you have a design and construct type of contract. Design and construct is to perform based on criteria. Delivery of that design is worked up throughout the process so there are several states of final. We talked about that in our submission is well.

The CHAIR: How does the final certificate relate to an occupation certificate? Do you have two separate regimes?

Mr STEVE MANN: Our concern is that they do not quite line up at the moment. They did improve from the initial bill that was for consultation to what we now have in front of us, but we still think it needs greater clarity.

The CHAIR: Another concern that I think you touched upon earlier in your observations with the Hon. Courtney Houssos is the reliance on a certificate from a principality contractor, if you like, or the single builder. Without the layers of integrity under it for the people actually doing the work it seems to me that it is

repeating the same mistakes that we have with private certifiers who issue a final certificate—but, again, without dependable layers of integrity underneath it certifying the actual building work.

Mr STEVE MANN: Yes.

The CHAIR: Do you think that we are repeating the mistakes of the past?

Mr STEVE MANN: I think we have two problems there. We think intentionally the Government is focusing on the head contractor because that is where the power is in delivering the overall contract for the developer. Our concern is that they did not rely on all these other providers, as Barry Mann just outlined, and they need to provide quality work to get a quality outcome. It will tend to leave more of the problems to the back end of that construction process whereas if there is greater clarity on delivering it right the first time, then you will have a fewer number of defects that you are dealing with at the end.

The CHAIR: And asserting in an Act that that principal contractor has to get insurance is one thing, but the question is whether or not, in the absence of that integrity in how the building work is done, whether or not there will be any insurance product available. Have you made any inquiries about whether or not that kind of risk can actually be ensured?

Mr STEVE MANN: No, we have not, but I think that is a good question—whether it can be. I agree.

The CHAIR: We have seen concerns raised by the Insurance Council of Australia. I will quote from their correspondence to the department of 16 October this year: "It is acknowledged that insurance is not currently available for the range of practitioners proposed to be registered." The council states further: "We are concerned that elements of the bill may potentially exacerbate rather than address the lack of available insurance highlighted in the building confidence report." What are your thoughts on that?

Mr STEVE MANN: We raised some similar thinking so within the panel that Barry Mann's leading there is one piece of work where we are focused on the insurance outcomes among this area of concern and from the bill.

The CHAIR: What, if anything, has been the response from Government when you raised the fact that legislation is great, but who is going to ensure this? What does the Government say?

Mr BARRY MANN: We have not specifically raised that with the Government. We have raised that in our panel but we would seek advice from the Insurance Council of Australia as to how we might respond anyway.

The CHAIR: What have your panel members been saying about this? This must be a concern for them.

Mr BARRY MANN: The concern is: Are we able to be insured? Let us seek some advice, which is logically probably the similar advice that you have just read out.

Mr STEVE MANN: The other thing on the design side is that we are not sure what the principal design role is in terms of that sign-off versus the certifier. We are unsure about how that relates to an extra. We get it in terms of the head contractor but we are not sure about the design side.

The CHAIR: Earlier we had the architects who are concerned about variations in particular. If they have to sign off on the final design but they have not been involved in variations, those variations may in fact compromise the overall design of the project. Have those issues been raised with you?

Mr STEVE MANN: We have certainly talked about them and raised that in some of our concerns. The variation process is still important. You have an idea, you bring in all the team to design that idea, you go to contract and then you are looking to build it and issues come up, be they issues where there is a smarter way and there is an innovative way to deliver it, or be it something that you need to manage something that was not seen up-front. It is a very important part of the process. Ensuring the integrity of those responsibilities through that process, which is what the architects would have raised, is absolutely crucial for the developer. When you think about the developer, you should think about the end unit holder—the person who is buying that apartment—because that is where the risk sits. That process to then the final as-completed drawings is very important.

The CHAIR: There needs to be integrity in the variations. What the architects said is that when those variations are being signed off, somebody needs to have a perspective on how it affects the overall design. That is missing in the bill is what the architects said to us. Do you have a view on that?

Mr STEVE MANN: Maybe that is that role of the principal design piece. Maybe that is where that should focus, if it is not appropriately focused.

Mr BARRY MANN: I think also the comment we made earlier about more reliance on the quality of the work of the suppliers and subcontractors and their certifications because they may be the ones proposing a variation—then the architects should be able to rely on that or should be able to point to that as the issue, if it turned out to be an issue, which takes it slightly more deep than the duty of care.

The CHAIR: But if you are pointing to a certificate from an unregistered, uninsured entity, it is not going to give anyone much comfort at the end of the day.

Mr BARRY MANN: The builder and the developer need to decide how they contract with the supplier. If they want a contract with a supplier who is not insured, then they will have to take it themselves. That is a commercial decision, I think, for the builders and suppliers. If the legislation requires that the warranties or the certifications provided have some force behind them that the builder can rely on, then how the builder decides to rely on that becomes their commercial decision.

The Hon. MARK BUTTIGIEG: It strikes me as though there is a fundamental flaw here because essentially what you are doing is backing the liability along the supply chain to the principal contractor, who then has to find insurance that the market has dried up for because the market can see through that supply chain that there is no accountability along the line. Is it not the case that until you fix those steps along the way, none of this is going to be resolved?

Mr STEVE MANN: I do not think market has dried up for insurance for builders. I think it is more on the certification side of things and some of those practitioners where there were created pressures.

The Hon. MARK BUTTIGIEG: What we heard this morning was that essentially the default business model is that companies will set up an entity solely for the purposes of carriage of that project, knowing full well that if things go south, they can wind it up and avoid liability. It strikes me as though this is a sort of—as my colleague Mr David Shoebridge put it this morning—a bandaid on an amputation, to be frank because until you actually deal with the systemic issues that I have touched on, you are not going to solve this problem, are you?

Mr BARRY MANN: I think you can take it back a step, though. The developers are ultimately responsible to their customer to provide a good product. If they are not providing a good product, then their customer will not buy another one off them.

The Hon. MARK BUTTIGIEG: Which is the position that we are now effectively, with those figures you quoted.

Mr BARRY MANN: Some of them are being built, more to the point. The developers are motivated to provide a good product and to do a good job. In the large extent of the industry, they do; so do the builders who then build, and so do the suppliers who then supply. But there is an element where if it was more clear how that chain of command worked and chain of responsibility worked and there was legislative power behind that, it would give more force to the builders and developers to ensure that they were getting a good job. They want to get a good job and they largely know that they will have to step in and fix something if one of their suppliers and one of their products does not work. They do not set up companies or organisations with the intent of going out of business. They may set them up with the intent of—

The Hon. MARK BUTTIGIEG: Limiting liability.

Mr BARRY MANN: Or also being able to provide finance and ensuring that whoever provide the finance is only limited liability to that particular project. There are a lot of good, commercial reasons why those sorts of companies are set up, rather than them wanting to get out of an obligation.

Mr STEVE MANN: It is a special-purpose vehicle that is widely used across the industry, not just this industry, to drive project-specific development. As Barry said, it is part of the financing process and it is wound up when it has delivered its responsibilities in the normal course of business. Phoenixing is a completely different question. It is illegal and should be cut out of the industry wherever it is.

The CHAIR: Can I ask you about the duty of care provisions? Your position is that that should operate only prospectively. However, we have had a number of submissions to the inquiry concerned about the effect of that case of Brookfield Multiplex in 2014, which said that the duty of care to avoid pure economic loss only flowed through to the initial owners but not to the successors in title. That decision has been used to defeat claims brought by the body corporates for pure economic loss claims. Why should that not be fixed retrospectively and why should owners corporations not be allowed to claim for pure economic loss?

Mr STEVE MANN: I think you might be asking two questions: One is the retrospective question and the other is going to the second owner. Is that right?

The CHAIR: Correct. If a builder hands back to a developer and the developer then hands it on to the owners corporation, that what the Brookfield case says is that the owners corporation cannot make a claim for pure economic loss against the builder because it ended at the developer. Why should that not be remedied? Anyhow, I am happy for you to answer it however you like.

Mr STEVE MANN: I think the retrospective bit you are saying is because now there is a new owner of that particular unit or whatever. Is that right?

The CHAIR: Correct.

Mr STEVE MANN: You cannot legislate retrospectively but you mean for now if it could get to the second owner. I think the problem is that the contract is between a purchaser and a developer. It is not to an owners corporation; it is to that buyer.

The CHAIR: But if we are putting in a statutory duty of care, which would effectively overcome those contractual limitations, why should the Parliament not extend that protection of the statutory duty of care back to when the problem became apparent with the Brookfield Multiplex case?

Mr STEVE MANN: In order to pick up something that might be in place now?

The CHAIR: Correct.

Mr STEVE MANN: It is a pretty legal question in terms of how that would work. Do you have a view, Barry?

Mr BARRY MANN: I think it comes down to legal complexities, which is why we are probably struggling a bit with the answer. We would ask our legal people.

The CHAIR: But it would potentially provide remedies for people who currently have building defects—not a perfect remedy but at least some remedy, would it not?

Mr STEVE MANN: Let the inquiry tackle that one, I think.

The CHAIR: Could I ask you then about your position on proportionate liability? We had the architects in here earlier, arguing for proportionate liability, directly contrary to your position against proportionate liability because they see the need to spread insurance across the pool. Do you see a benefit in spreading the insurance across the pool?

Mr BARRY MANN: I think it is difficult. It depends on what the issue that requires to be insured is. I would have thought that if an engineering issue was the problem and the engineer was found to have done the wrong thing, and if I were the architect, then I would not want any liability for that. I would say, blame the engineer. If I were the builder, I would blame the engineer and expect that to be upheld. I do not know—how you do proportions would be the tricky part. Then if you do get proportions, does everyone end up in a big lawsuit for years and years, figuring out who is liable for what?

Mr STEVE MANN: I think where the bill has to be clear is to make sure that the practitioner who says over the skills and the capability to deliver this is the one who is responsible. What you do not want is a whole bunch arguing as to who is. I think that is the commissioner's focus to make sure that that responsibility gets owed.

The CHAIR: Thank you both for your evidence today. My colleagues have pointed out that we have gone over time and I had not noticed that. We appreciate your input into the inquiry.

(The witnesses withdrew.)

MICHAEL LAMBERT, Author, Independent Review of the Building Professionals Act 2005, on former affirmation

The CHAIR: Thank you for returning. I remind you that you are on your former affirmation. We do not require you to go through that process again. Thank you for your helpful submission. Do you want to give a brief opening statement?

Mr LAMBERT: Just a brief overview. I am happy, then, to discuss any particular issues in more detail. As I noted the last time I appeared, I have been very disappointed in the very fragmented process that has been followed in New South Wales in progressing the building regulation and the lack of an articulated vision of what is being tried to be achieved. It has been done in little slivers that do not necessarily connect. This bill has lots of defects, I have to say, putting aside the fact there is no regulation in place at the present moment. It has got what I regard as about seven major deficiencies. It does slightly improve the situation vis-a-vis the status quo, I should say, but only slightly, not dramatically.

First of all, it exacerbates the overall problem of fragmentation of legislation in this State. Every time there is a building problem, a new bit of legislation gets established. I noted this in my 2015 report. Since then there has been three or four bits of legislation established, all of which do not link to each other. I will come back to the problems with linkages with this particular bill. Secondly, it only partially covers the building practitioners. It does not cover, for example, the full range identified in the Shergold Weir Report. It does not cover subcontractors. It does not cover suppliers. It is a very partial coverage indeed. Thirdly, it appears, to me, to only cover Class 2 buildings—not Classes 3 to 10—and, particularly, it does not cover mixed-use buildings which are often apartment blocks with—

The CHAIR: Shops underneath.

Mr LAMBERT: Shops and a bit of offices et cetera. It is very partial in its approach, and, I think, arbitrary in that degree. It is also based on the fundamental principle of self-certification, which is the current system. That is the current system. My report and the Shergold Weir Report argued that you needed to have, for higher-risk buildings or higher-risk key building elements and structures, independent review of self-certifications. If you have self-certification, then you have independent expert review. It is not for all buildings. A lot of one-storey, two-storey buildings are generally low risk. But for higher-risk buildings or higher-risk key building elements, you do need to have independent certification, and it is not there.

Also, my fifth concern is it has no linkage at all to the role of the building certifier. What is the role of the building certifier? To supervise at a broad level, collect the certificates, but then you have got this new party who is called the principal design practitioner who is collecting certificates too. What linkage does that have to the building certifier? Who appoints the principal design practitioner? What are the skills required? What is the linkage to the building certifier? It is all missing from the legislation.

Sixthly—and this was mentioned just before—it does not address phoenix companies. Sure, corporate entities can be established for financing purposes, for business purposes, but they can also be established for avoiding legal liability purposes, and this legislation does not address that. Having phoenix companies in the wrong hands undermines certification and undermines the duty of care completely. Queensland, in its legislation, has addressed the issue of phoenix companies. The issue should be addressed in some form as well.

Of course, finally, it does not address the current problems with the current buildings that are in defect, obviously, and therefore, by definition, it will not address the issue of confidence in the industry And this bill is so flawed that it will certainly not provide any syndicate hope for the future. Finally, it leaves unaddressed a whole series of problems that are not addressed at all in this legislation but are part of the problem of building regulation in this State.

The CHAIR: Thank you, Mr Lambert. We have a little bit to explore there.

The Hon. COURTNEY HOUSSOS: Mr Lambert, I have been quoting you and your submission all day. Thank you very much for another very informative submission. The particular point you have made about the lack of a comprehensive approach is one that we have certainly been pursuing today. Before we get underway, I note you made reference in your submission to the status of your 2015 report. Are you aware of how many of those recommendations have been implemented thus far? Are you keeping a tally?

Mr LAMBERT: Very few. I had about 150-odd recommendations. The Government responded to about 70 of them, in terms of saying they would do something or partially do something. The only thing they have done

is shifted the building—they changed the Environmental Planning and Assessment Act, consolidated it in one section. My recommendation had been to, effectively, have a new building Act. So they did that. They brought in a regulation on the requirement for fire protection systems—where they are designed or where they are annually reviewed—to require them to be certified by a fire professional. "Professional" is defined as someone who is accredited or someone whom the builder owner thinks is professional. There is no accreditation scheme so, therefore, the definition is anyone who the builder thinks is credible or professional suits the definition. So it undermines the whole point and it ignores the fact that not only is design important but also installation is important. I have seen lots of very well-designed systems that are not properly installed.

The CHAIR: We were told that the obligation to certify the actual as-built element was removed at the last minute of the drafting, without any explanation being given by government. We are still yet to know why that was.

Mr LAMBERT: There has been two years of discussion with the Fire Protection Association Australia, trying to create an accreditation scheme. They were very well advanced three years ago and, yet, there has been no progress since—in terms of the Government progressing the matter—despite them having a very substantial proposal and well thought out design.

The Hon. COURTNEY HOUSSOS: So, Mr Lambert, we can say that this bill does not significantly implement your report.

Mr LAMBERT: No. It has significant gaps in it and I think what is disturbing is that it does not address the Shergold Weir Report which has been endorsed by all Australian governments. It does not correspond to that, in substance, because it does not allow for independent certification in appropriate circumstances, and it also does not cover the full range of building practitioners that are in that report. So it is a very partial approach, which is surprising, given the Government has endorsed that report completely, as all governments have.

The Hon. COURTNEY HOUSSOS: Last week the building commissioner told a different inquiry that his advice is that buyers just need to be aware. Is that appropriate advice for the building commissioner to give?

Mr LAMBERT: No. Fundamentally you have got an enormous disparity in expertise and experience and a major financial commitment required of people who may do this once or twice in their lifetime. You do not have the expertise required. That is why universally you have some form of regulation in the building industry. It cannot be based on the builder being aware. It has got to be based on building standards which are established nationally and a confidence that those building standards are reflected in the building product that people have. The problem has been not so much the building standards but the implementation of those standards at the jurisdictional level. That is the fundamental problem.

The Hon. JOHN GRAHAM: Just on that point, you say in your first submission "Buildings are a high cost, technically complex with highly differentiated design products in a modern market".

Mr LAMBERT: Yes.

The Hon. JOHN GRAHAM: Given what you describe, it is not possible for a buyer to know precisely what they are buying?

Mr LAMBERT: It is very hard even for professionals sometimes to understand it. A building certifier, for example, has that profession to actually certify a building but they are not experts in every key element of a building system. Strictly speaking, they have to rely upon other professionals to certify the actual stages of it so how do you expect a consumer to buy off the plan, or to by buy in situ a building without that expertise?

The Hon. MARK BUTTIGIEG: The offhand implication of that comment was that if I am spending I think the quoted price was $750,000 I should go out a have a look and, sure if there is a major crack down the wall you would think twice about buying it, but it is the case that 99 per cent of these things are behind the walls, are they not, unseen.

Mr LAMBERT: That is right.

The Hon. MARK BUTTIGIEG: Unless you have got the qualifications to be able to interrogate that integrity that you cannot see you are not in a position, and you are never going to be in a position to do that?

Mr LAMBERT: And the building over time will evolve if there is some structural problem. The cracks may not appear immediately but over time under certain conditions, wet conditions et cetera, the building will start to shift. It is a point in time that you buy but not necessarily the building will not stay in situ, in its condition, for that period. That is why I think that the fundamental problem in New South Wales, putting aside the legislation

et cetera, is a lack of a robust regulatory approach. There is not a regulatory structure in place and Fair Trading and its culture, its approach and its lack of skills in this area indicate to me that it is the wrong party. The building commissioner with four staff is not the party to handle it. It needs not necessarily a building commission but it needs a building regulator who has the skills of a Queensland, say, building commission and the resources and the regime of inspections, review, interrogation that occurs in a robust regulatory system. We do not have that.

The Hon. MARK BUTTIGIEG: What do you say to the Government if it were to say "Don't worry about it. We'll fix it all up in the regulations over the next six to 12 months."

Mr LAMBERT: I do not necessarily think—it is not so much regulations or legislation, it is actually the regulatory function itself that is missing in this State.

The Hon. JOHN GRAHAM: Sorry to interrupt, I turn to your point about the crisis of confidence. We were talking extensively about that. We heard evidence that new apartment sales have dropped by 77 per cent so it is a really significant drop. Your point about the crisis is it will not deal with defects so that will not deal with the crisis of confidence. What are the risks for the broader New South Wales economy? Given what you are describing construction really drives the New South Wales economy. Have you got a view about if this is not dealt with what that means for New South Wales?

Mr LAMBERT: The building construction industry is about 10 per cent of gross State product but it has significant employment across the State. Fundamentally there is a lack of confidence at the present moment and that reflects the series of incidents and exposures of defective buildings, therefore, concern about committing themselves to new buildings. It does not necessarily apply to the existing buildings but, then again, that is simply a trade in existing stock. It is essentially focused on new buildings, or recently complete buildings, that is the problem.

I think it is a no brainer that you should have effective regulation in place. When I did my report I commissioned ACIL, a leading economic modeller and consultant, and it analysed the recommendations and the impact it would have. It concluded that implementing those recommendations would result in a $12 billion improvement in gross State product over time because fundamentally there will be greater confidence in the industry, higher level of transactions occurring, more turnover occurring.

The Hon. JOHN GRAHAM: A massive benefit return for that. I am asking about the opposite: if there is no action the committee had heard evidence that this bill will not fix the confidence problem. Did you say that yourself?

Mr LAMBERT: Yes.

The Hon. JOHN GRAHAM: What happens to the economy if this crisis in confidence gets worse?

Mr LAMBERT: I can only speculate on that but I would imagine that you will continue to have a negative impact on demand, certainly for apartment blocks. It will not necessarily impact upon other forms of buildings such as offices and specialist buildings because there is a more experienced buyer involved and a more technically savvy buyer involved. Certainly it would affect residential buildings significantly.

The Hon. COURTNEY HOUSSOS: We often see that people often purchase an apartment as their first home.

Mr LAMBERT: Yes.

The Hon. COURTNEY HOUSSOS: It is actually exacerbated that this might be a person who is entering the market place for the first time so have a lower level of knowledge or understanding and that is exacerbated by the fact that a lot of these defects are hidden behind walls, under paint or whatever it might be within structures. There is no way of working out if it is going to have—

Mr LAMBERT: No, that is why you need a robust regulatory system.

The Hon. COURTNEY HOUSSOS: Absolutely.

Mr LAMBERT: I think it is important to have an accountability chain from the professionals who are doing the work certifying and being accountable and that certification that they produce should be able to be relied upon by the building certifier. They should be interrogated but they should be able to rely up on it. That is not clear in this draft bill. Fundamentally you do need to have also enhanced accountability of the building certifiers. They are audited more recently but they need to be subject to training and to professional standards and they need to be subject to independent review where their work can be examined and assessed. Fundamentally there is a problem of conflict of interest. A lot of them have relationships with builders and developers that seems to override

their duty of care as public officials. I think fundamentally their duty of care as public officials is their primary duty and they must be accountable for that.

The Hon. MARK BUTTIGIEG: To tease that out because this is really an important point, I will use a practical example. If we have a situation where you have plumbers or electricians offering up certificates of compliance to the head contractor, for example, who then signs off on it and says "You have told me you have done your work, it is all good." Over time, five, 10, 15 or 20 years, if there is no-one going out and inspecting these jobs and saying "You didn't put that earth in the right place or you didn't connect that to the mains" or whatever the issue is, will you engender an attitude of "I know I am not going to get inspected, therefore, I'm not going put this up to the standard of quality that is expected of me even though I am signing the certification." That is essentially what we are saying, is it not?

Mr LAMBERT: There has got to be a significant risk that if you certify, and your certification is incorrect, that you will be caught. That does not mean that every building, or every building element has to be subject to independent assessment but they have to understand there will be a process that is risk focused whereby a certification is reviewed by an independent panel and determined whether in fact that certification is valid. It has got to have consequences that will flow from that if certification is shown to be invalid.

The Hon. MARK BUTTIGIEG: And that is absolutely vacant at the moment.

Mr LAMBERT: That is a fundamental flaw in the process at the present moment and is not corrected by the current draft bill.

The CHAIR: Mr Lambert, the Australian Institute of Architects states this, in part: "The bill focuses heavily on designers and design stages but fails to extend that focus to the building professionals doing the building work in the construction stage. While all designers on a project will likely be covered by the bill, not all persons doing building work will be similarly covered. The definition of "building practitioner" in the bill should therefore be expanded from "principal contractor" to cover a wide range of building practitioners and tradespeople." Do you agree with that observation?

Mr LAMBERT: I do. I think it does refer to "building practitioners", but it is not clear what that is encompassing. I think it certainly should be encompassing the list of building practitioners that was set out in the Shergold Weir report as a basic requirement and that is not there at the moment.

The CHAIR: Perhaps it should extend to include people doing some other critical work.

Mr LAMBERT: Yes.

The CHAIR: Work such as geotechnical work, waterproofing work, hydraulics.

Mr LAMBERT: That is right.

The CHAIR: All of those key services and elements of a building.

Mr LAMBERT: Waterproofing is a continual problem in the industry. It is a significant proportion of the complaints and costs involved in rectification yet it is not covered at all. It needs to be covered.

The CHAIR: Do we not run the danger, if this bill becomes law, of repeating the mistakes of the past? If a principal contractor signs off that the building complies with the National Construction Code and complies with the development approval but is doing that based upon certification and documentation provided from a raft of unregistered, unlicensed, uninsured building professionals and tradespeople, it is likely that the certificate from the principal contractor is going to be about as dependable and reliable as the certificates we are currently getting from the private certifier, is it not?

Mr LAMBERT: You do need a system whereby you have the key trades and the key subcontractors, a requirement for registration for professional standards and for insurance and review of their work, but independently from time to time to ensure that they are performing at a professional level. That is missing. In fact, this really does not go much further. It goes a little bit further but it does not go much further than the status quo, quite frankly.

The CHAIR: Then the Insurance Council, in its submissions to the Government on the Government's consultation process, has pointed out that the insurance obligations proposed in the bill may not be able to be met because there is actually no insurance product available to meet that new liability.

Mr LAMBERT: I have to defer to the insurance industry on that but intuitively that seems correct because the insurers run the risk that the people they insure do not perform to a suitable standard and there is no

accountability, necessarily, imposed on those parties. There is a risk that they are running; therefore, there is an issue whether in fact you can actually establish the insurance required to make a registration system work.

The CHAIR: I will read to you part of what the Insurance Council stated in its correspondence dated 16 October this year: "It is acknowledged that insurance is not currently available for the range of practitioners proposed to be registered." The Insurance Council goes on to state: "We are concerned that elements of the bill may potentially exacerbate rather than address the lack of available insurance highlighted in the building confidence report." I would have thought that you would have to have some assurance that there will be an insurance product available before we legislate for it.

Mr LAMBERT: I would have thought so because, fundamentally, you are relying upon the registration process having an insurance process in place that underwrites the standards and performance of the professionals. If you do not have that insurance, what protection does the consumer have?

The CHAIR: This bill ends up being a worthless piece of paper for the consumer.

Mr LAMBERT: Yes. That is right. I think that is a very significant issue. Together with the phoenix companies issue, it undermines the protection that is there, or that is said to be there, for the consumer. But beyond all that, as I said before the key requirement which has not been addressed at any time by the Government to date is having in place a robust regulatory agency that is skilled, resourced and has the legal requirements and powers to ensure compliance and enforcement.

The CHAIR: As opposed to yet another layer and yet another Act—

Mr LAMBERT: Yes.

The CHAIR: —done by a Minister who has a sort of part-time responsibility.

Mr LAMBERT: I will not comment on that.

The CHAIR: We have heard that submission—not in those exact terms—but the fragmented nature is actually exacerbated by this bill rather than improved.

Mr LAMBERT: Yes. I previously have recommended that the Building Commissioner and the Minister appoint a building regulation advisory committee that is composed of key figures in the industry plus key consumer representatives. That sort of mechanism is in place in almost every jurisdiction in this country, other than New South Wales. It provides feedback in real-time to the Minister and to the Building Commissioner on what are the issues, what are the trends, what is developing in the industry, what are the problems that need to be addressed. You cannot just rely upon people sitting in a Macquarie Street office or wherever they sit to basically know what is happening in the industry and what the issues are. That is a very important issue.

The Hon. JOHN GRAHAM: Mr Lambert, you may not wish to use Mr Shoebridge's words but the words you have used I think are pretty shocking—that this "does not go much further than the status quo".

Mr LAMBERT: Yes.

The Hon. JOHN GRAHAM: That is a world away from where we need to be. It is also a world away from the hyperbole we have had from the Government about its repeated reform attempts. There has been plenty of activity but, from what you are saying, very few results.

Mr LAMBERT: Well, certainly. There have been two bits of legislation. There is also the other legislation about building certifiers, which has been drafted but which has not been enacted at this stage. There has been activity around legislation but not around the substance of the problem and that is very disappointing.

The Hon. JOHN GRAHAM: And we are back here again with this bill. That is really what you are telling us.

Mr LAMBERT: Yes.

The CHAIR: We are watching the deckchairs constantly being rearranged.

Mr LAMBERT: It is actually making the legislative structure progressively more and more complex and difficult to navigate whereas it should be simplifying it.

The Hon. JOHN GRAHAM: It is the opposite of what you called for—a single building Act.

Mr LAMBERT: Make it principles-based plain English legislation supported by regulation underneath it, but one omnibus Act I think is what is required.

The Hon. MARK BUTTIGIEG: Earlier you said that Government of all persuasions have endorsed your report and recommendations. From what I have heard it is pretty well established that you are the go-to subject matter expert on this State.

Mr LAMBERT: Oh, I don't know about that.

The Hon. MARK BUTTIGIEG: Well, that is the case. To what degree did the Government consult you in the lead-up to this bill? Let us take a benign view and an optimistic view that the regulations will go further. To what degree has the Government consulted you over those regulations?

Mr LAMBERT: Well, it has not. I did see the Minister and I did see the Premier. They subsequently made available the bill once it was publicly released but there was no consultation about it at all.

The Hon. MARK BUTTIGIEG: So there was no consultation in the drafting whatsoever?

Mr LAMBERT: No.

The CHAIR: Could I ask you how you see this parallel certification process under this Act working with the existing certificates that we got? How does the final design certificate play with, for example, the construction certificate? How does the current occupation certificate regime sit with the new certificates under this regime?

Mr LAMBERT: This is the problem in having legislation that is particular to particular matters. What is not clear here is how these certificates which are generated will link to the construction certificate, which leads to the approval to start building, which links to the occupation certificate, and how they link them to the role of the building certifier, who is required to collect and review certifications during the process. So you have got this piece of legislation and then you have got the environment protection Act division about the building certifier, and they are not connected at this stage. The answer is that there is no clarity about how the process relates between the issue of the certificates on the one hand and the role of the building certifier and the requirements for construction certificates and for occupation certificates on the other. They are not joined together.

The CHAIR: Is a building certifier required to review any of the design certification before issuing certificates?

Mr LAMBERT: At the present moment a certifier is required to ensure that the construction is in accord with the approvals; not necessarily in accord with the building standards but is in accord with the approvals.

The CHAIR: With the construction certificate?

Mr LAMBERT: With the approvals. The problem is that the building certifier is not an expert on all the critical building elements. This potentially could assist the certifier if you had greater confidence that the certificate has been produced by the designers and also building practitioners were being produced of a high quality. But to do that you need to ensure you have the chain of building practitioners involved, that you have the range of buildings involved which you have not. That is the fundamental problem. You need to have an independent check occurring of the high risk buildings and building elements. That is missing as well. Sufficient elements of the solution are missing to undermine the actual objectives set for this legislation.

The CHAIR: I was going to ask you about the duty of care proposals. That is part of the broader Shergold Weir recommendations, that there be adequate duty of care. First of all, as I understand it this duty of care provision will not come into effect until some regulations are drafted down the track. We do not know the full scope of the duty of care, but it also will not be operating retrospectively to cover the problems that many people have identified since the Brookfield Multiplex decision of 2014. Do you think some consideration should be given for retrospective operation and duty of care to fill the gap that has been apparent for last five years?

Mr LAMBERT: I am not a lawyer but duty of care allows a person to take legal action against someone who has in some way not taken that duty of care. Taking legal actions to my mind is usually the last resort of a person. It is very long process and expensive process. It seems to me to be much better to have the accountability upfront and clarity op front about the accountability but also to underpin that for residential consumers with a system whereby there is effectively a warranty in place which is the current scheme but it is a very narrow scheme; it does not cover buildings higher than four storeys, for example. It seems to me that expanding that current scheme would at least provide greater comfort for people with respect to existing buildings and also for new buildings going forward.

The CHAIR: Given the lack of standards and lack of quality and the range of defects, if we do simply expanded that scheme at the moment you would bankrupt the State of New South Wales.

Mr LAMBERT: At the present moment, the premiums for that scheme are about $80 million a year and the costs are about $230 million. That indicates it is not a particularly solvent proposition.

The CHAIR: That is only for buildings up to three storeys of height. We know that the real problems are in those multi-storey buildings.

Mr LAMBERT: It is always curious to me why suddenly the current Government scheme cuts out at three storeys. What is the magic about going from three to four storeys?

The CHAIR: It gets increasingly expensive.

Mr LAMBERT: That is perhaps the answer. Not a reassuring answer.

The Hon. COURTNEY HOUSSOS: I wanted to ask you about your recommendation to establish a building regulation advisory committee which you have already talked about this afternoon. We have heard from the Building Commissioner that he has established some kind of advisory committee, is that reflective of your recommendation or is this a different kind of body?

Mr LAMBERT: I do not know. I am not aware of what he has established. I would have had hoped it would be a fairly transparent process whereby key industry associations as well as consumer representatives are invited to participate and there is a fairly robust process of determining who is suitable to be on that committee. I cannot comment on the process that has been followed. I am not aware that that has been established actually.

The Hon. COURTNEY HOUSSOS: I might have some more questions on that this afternoon. He has talked about establishing it. I am not sure whether there is consumer representatives on there. We will certainly check that out.

Mr LAMBERT: There has been in the past a Building Regulations Advisory committee but that was largely an in-house government committee—

Mr DAVID SHOEBRIDGE: Agency to agency.

Mr LAMBERT: Various agencies. What I am talking about is external parties who are experts in the industry and also who involve consumer advocates in this sector as well who have expertise to provide which provides a very important stream of information to the Minister and to the Building Commissioner.

The CHAIR: We have had two different positions put to us today about the question of proportionate liability in the industry. We had the architects arguing strongly for proportionate liability. I think because from their experience they are often, as one of the few insured regulated parts of the industry, they are often left carrying the can at the moment. We had the UDIA arguing against proportionate liability saying that that might become a feast for lawyers and enormously complex. Do you have a view one way or another about that?

Mr LAMBERT: I really have not put my mind to that. I would be interested to pursue the issue but I could not offer an opinion at this point on that.

The Hon. COURTNEY HOUSSOS: We received evidence earlier today that this bill will make the situation worse not better because it will add to the piecemeal approach, because there is a lack of clarity around the way it will interact with existing provisions particularly around the Planning Act, and it does not address the fundamental issues that are at the core of the crisis in the building industry. Would you agree with that characterisation?

Mr LAMBERT: I am not sure it would make it worse but it is certainly not going to address the underlying problem, that is clear. I had wished the Government, in view of the seriousness of the situation, would have come up with a comprehensive reform proposal with a stepped range of initiatives that would be taken that are coordinated, which they commit to on a definite time frame and which address each of the key problems. They address the problems of the accountability and performance of certifiers. They address the problem of design. They address the problem of certification and of risk and the registration of all the key building professions. That all should be put together; create a new digital-based information system and a building manual. They are all part of a solution. At the same time, upgrade and enhance the building regulation function. It seems to me that you need a vision of the way you are heading and there is no vision. It is just a series of—

The CHAIR: That sounds very old-fashioned, Mr Lambert.

Mr LAMBERT: I know. I am sorry about that.

The CHAIR: Actually having a vision and working out where you want to get to rather than just a series of stumbling legislative responses which is what we have had for the last 20 years.

Mr LAMBERT: If you had had that vision and a commitment to that, I would think it goes some way to giving assurance to the community that there was a commitment and a plan it was proceeding. Simply releasing bits of legislation that are quite technical and narrow in scope does not give anyone assurance.

The CHAIR: This legislation does not even have objects in it. If you want proof positive of the absence of vision, they have not even set out in the legislation the objects of the bill. It is one of the first times I have seen that; a notionally significant piece of legislation not trying to state in its own terms what it is hoping to achieve.

The Hon. JOHN GRAHAM: I will jump in at that point just to say thank you for your submissions and your evidence. We have all found them incredibly helpful, particularly how specific you have been with your submissions. Separate to your original work doing the report, the information you have put in front of us has been very specific, very influential.

Mr LAMBERT: Thank you.

The CHAIR: On behalf of the whole Committee, thank you for your evidence.

Mr LAMBERT: I wish the Committee all the best on this very important task.

(Short adjournment)

(The witness withdrew.)

PHILIP GALL, Chairman, Owners Corporation Network, affirmed and examined

KAREN STILES, Executive Officer, Owners Corporation Network, on former affirmation

The CHAIR: Would either of you like to make a brief opening statement?

Mr GALL: Thank you, Mr Chair. On behalf of the Owners Corporation Network [OCN], I would like to thank the Committee for the opportunity to speak today on this important matter. I have already introduced myself as the Chair, Owners Corporation Network is a not-for-profit organisation. Its membership are apartment owners. We are the consumer voice here today. We were established in 2002. One of our key objectives is to help advance public policy as it impacts on the quality of living. Our legitimate interests are people who have property and the strata communities. The Owners Corporation Network has already made submissions to this inquiry. My colleagues OCN Vice-Chair Jane Hearn and Karen Stiles, who is here today, appeared before the committee on 12 August. I understand that one of the matters of interest today—and it is very clear from the hearing—is about the Design and Building Practitioners Bill 2019, currently before the Parliament. With this in mind, we will offer some suggestions as to how the bill might be made more effective. I have listened with interest today to other people's views on this. Probably we can't fix everything that has come up.

I am not a lawyer but I do understand that it is enabling legislation and it is a bit of a foundation perhaps—not a very solid foundation, it seems—for future regulations and associated ministerial arrangements. These, in turn, are intended to give effect to many of the recommendations of the *Building Confidence* report provided to Ministers in 2018. Without the future regulations and the associated ministerial arrangements, the full operation of the bill does not deliver much for consumers. Furthermore, even with the regulations in place, the time for this to work and to flow through to meaningful changes is many years. The *Building Confidence* report itself talked in terms of a three-year program. Without amendment, the only specific consumer protection mechanism in the bill is contained in the statutory duty of care provisions.

Unfortunately the bill's present form relies on yet-to-be-drafted regulations to define the reach of that vital element of consumer protection. There is also an opportunity right now to close off known loopholes in the statutory warranty protections available to consumers under the Home Building Act. That opportunity was conveyed to government representatives at least as early as July this year, together with some recommended, relatively straightforward fixes. Indeed, the Government appeared supportive at the time but that support has failed to be realised in the bill. More generally, the bill as it stands is not without its faults either. I will not dwell on that as has been done to death today. We have some material where we can suggest some changes that might improve that. Why does it matter? It is sobering to realise that it is more than 10 months since Opal Tower first hit the headlines. It is almost nine months since Minister Kean announced his Government's commitment to implementing the recommendations of the *Building Confidence* report and the statutory duty of care framework.

In that time—maybe it is not this big a number, given the downturn in new apartments—based on historical trends, another 10,000 new apartments would have been completed and occupied in the State. That is 10,000 more consumers exposed to the current regime. Given the track record to date, 70 per cent to 80 per cent of those owners will face the costs and stress of at least some defect rectification in their buildings. We can wait another six months or more or for another 5,000 or more apartment completions. Again, that might be an exaggeration based on what we have heard today. While the scope and the effect of the regulations are determined and the holes in the current bill are addressed, we can fix some of the consumer protection elements right now to take effect immediately or, better still, with a reasonable degree of retrospectivity. I suspect there will be some questions on that point, Mr Chair.

It is important to realise that retrospectivity and effective transition in the implementation of the legislation are intimately tied together and not really separate points. I will come back to the retrospectivity in response to questions, I am sure, but the most important thing is we send a strong signal to people about their behaviour, particularly the most unscrupulous members of the industry, which is so desperately in need of starting to change its culture. I think that is a very powerful reason for thinking about some degree of retrospectivity. There is relevant precedent for that too, in relation to the flammable cladding, which was installed by builders in recent years. In that case, the Government used its regulatory powers to classify flammable cladding as a major defect under the Home Building Act to a degree of retrospectivity.

What can be done now? I have with me a set of relatively straightforward amendments, which I will send through when I am finished here, which, if implemented, would immediately implement the effectiveness of the statutory duty of care and the issues that I mentioned on other consumer protection measures. That would make everything a bit more effective for the thousands of new apartment owners who will be coming in the next few

months. To be clear, we have shared these proposals with some members of the Legislative Assembly already, as well as discussing the key proposals with the Minister's office as recently as yesterday. The feedback remains supportive, so as yet we remain hopeful that the Parliament will act now to better protect new apartment owners and make a real start in restoring confidence. We look forward to the Committee's support in pressing these matters forward. With that I will open up to questions.

The CHAIR: Thanks very much, Mr Gall. I might invite you on behalf of the Committee to enumerate what those amendments are rather than us teasing them out. Before I do that, I might read onto the record one matter. We have just had correspondence provided to us from Local Government NSW, responding to some of the evidence it gave this morning and clarifying the fact that it was not invited to be part of the Cladding Taskforce. We have received that and will publish that in due course.

Mr GALL: I can start with the statutory duty of care.

The CHAIR: Please do.

Mr GALL: The definition of "building" under section 29—we can change what is in the Act now very simply to give it immediate effect. It presently does not do that; it waits on the regulations. That can be done by turning to section 29, the definition for "building" for the purposes of part 3 only—part 3 of the bill is that part that deals with the statutory duty of care—so that it covers all of the building or parts of a building that is residential work within the meaning of the Home Building Act 1989 where the building contains four or more proposed or existing dwellings. We could also retain the existing regulation-making powers to add to what is covered by the section definition of a building. So we could put that in the bill right now, Chairman, and that would give it effect.

The CHAIR: Sorry, that is an amendment to section 29 that you are proposing?

Mr GALL: To amend section 29, yes—the definition of "building" in that section.

The CHAIR: So rather than have it simply prescribed by the regulations—

Mr GALL: Correct; replace it.

The CHAIR: —to actually insert it in the bill?

Mr GALL: That is correct. That gives it effect to all of those things defined under that definition of "building", which is all the building or parts of a building that is residential work within the meaning of the Home Building Act 1989, where the building contains four or more existing dwellings.

The CHAIR: And obviously a commencement provision that required that to commence upon assent, rather than at a later point?

Mr GALL: I will come to that, because it can—yes, there are some transition provisions that we can talk to here as well, which would be very helpful.

The CHAIR: I think I understand that aspect: Rather than wait for the regulations to be drafted, impose a duty of care as soon as the Act is passed. Yes?

Mr GALL: Correct. The next thing we could do very quickly, or straightaway, is a much lengthier set of minor amendments to the Home Building Act which would close loopholes that have emerged through decisions by courts in the application of the warranties that protect consumers. That deals with, again, the succession of title issue: People are able to avoid their warranty provisions by contract. There are some changes to that, and rather than read through those because they are a bit lengthier than the simple change I made, I think we would just put them on the record, Chairman. We have put them in all our submissions. Is that sufficient?

The CHAIR: Does that, in part, address the Brookfield Multiplex case?

Mr GALL: Yes, it does.

The CHAIR: I am comfortable with where we got to on that.

The Hon. MARK BUTTIGIEG: I just picked up on that. This is the ability to avoid warranty.

Mr GALL: Correct.

The Hon. MARK BUTTIGIEG: Can you give us a concrete example of how that would operate, or how that operates in practice now?

Mr GALL: I can read what I have got here, which is our explanation to you as to how that has come about. The loopholes have come about in the existing statutory warranty regime. Developers who are not

landowners currently avoid a section of the Home Building Act statutory warranty obligations to owners corporations and lot owners, as those future owners are not successors in title. That is how they avoid it. The warranties apply—

The CHAIR: So the developer contract with the builder; the builder owes—a statutory warranty benefits the developer, but that statutory warranty does not pass through when the developer sells it on to the owners corporation or hands on the building to the newly registered owners corporation.

The Hon. MARK BUTTIGIEG: I see.

Mr GALL: Yes. The development contract structures routinely take advantage of that loophole. That is what goes on. It was done at Opal Towers. The Olympic Park authority engaged Ecove, who then engaged the builder and carried out the role of a developer despite not being the landowner.

The Hon. MARK BUTTIGIEG: This was all raised with the Government in the lead-up to this bill, right?

Mr GALL: In our response to their first consultation in July we set out all of this, saying, "Here's an opportunity to fix this right now." These loopholes were never intended; they just arose from the way the legislation was interpreted by courts. Everybody thought they were owed and clever people found ways around it.

The CHAIR: We understand closing that loophole. We understand your position on legislating now for a duty of care. What were the other issues you wanted to raise?

Mr GALL: Related to all of that is the lack of transparency—and this has come up a few times today—in this bill about who to hold accountable for different work. Specifically, the bill imposes obligations on regulated design practitioners in relation to regulated designs that they prepare, and also upon head construction contractors. However, the bill does not provide a regime under which an owners corporation for every part of the building has a copy of the final designs and supposedly who built to those designs, knows the persons responsible for the design and knows the subcontractors who carried out the relevant physical work. If you are going to be pursuing these things I have been talking about, you need to have a very clear view of who did what.

The CHAIR: Local Government NSW points out that it is not even clear where the electronic repository will be. They suggest that the current planning e-portal be expanded, but there is no details at all about where this repository will be—

Mr GALL: No.

The CHAIR: —let alone a right for public access.

Mr GALL: Exactly. I might add that it would be problematic for the Building Commissioner as well, if he comes to enforce any of this, if it is not clear who did what in the same way.

The Hon. COURTNEY HOUSSOS: You are assuming that the Building Commissioner's role is to enforce this.

Mr GALL: Yes. As we pointed out, the Building Commissioner is not actually mentioned in the Act.

The Hon. COURTNEY HOUSSOS: That is my point.

Mr GALL: It is the secretary that has all those powers.

The Hon. COURTNEY HOUSSOS: Sorry, I am being a little bit cheeky.

Mr GALL: Yes, I know, and fair enough.

The CHAIR: They do say what the secretary gives, the secretary can take back.

Mr GALL: Correct. But as I understand it, the whole purpose of that enforcement regime is to enforce the things that are specified in the bill. But we have not got the regulations yet, so they cannot enforce anything yet, as far as I understand.

The CHAIR: It is a kind of Donald Rumsfeld situation: There are known unknowns and unknown unknowns. It is about as useful as he was.

Mr GALL: We do have a recommended fix for that transparency, which I am happy to read into the record.

The CHAIR: Please do.

Mr GALL: That is to create a new section or add to the existing sections so that all contractors, including the head contractor and all subcontractors, that do any building work for a building must provide a document confirming the work that they did and requiring that all those documents be lodged with all the building compliance declarations. That is an addition—also require that the documents to be lodged with the building compliance declaration include copies of the final designs and specifications that are not regulated designs, while also identifying the persons responsible for each aspect of those final designs and specifications. You do that as you go: People sign off as you go so that when you get to the end of it, those documents are there and the owners and the Building Commissioner can go in and you have got something to go after. Without that, the duty of care and the loopholes become far less meaningful.

The CHAIR: Mr Gall, you mentioned the precedent for the flammable cladding regulation in terms of retrospectivity—that was in terms of addressing the new Australian standard. You said that there may be elements of that approach to retrospectivity that are relevant to parts of this bill?

Mr GALL: Yes. Can I come to that, Chairman?

The CHAIR: Yes, by all means.

Mr GALL: There is another point that relates to the duty of care, and that is making suppliers and manufacturers accountable to the end consumer. Someone mentioned that as well. Currently the definition that I talked about, which only went to the building side of it—it did not go to the suppliers. Under Australian consumer law, you would expect those suppliers to be accountable and liable under Australian consumer law for supplying a dud product, like flammable cladding. But I am advised that that is not the case because the first person in the chain is the developer, which is not a consumer in the definition of the Act. That breaks the chain so the poor old owners' corporation, or owner at the end of the chain, cannot get access to consumer law. With a simple addition to this bill you could fix that, as well. That, by the way, was something which was raised with the Minister's office yesterday and was, again, positively received. But the bill is already before Parliament, so I am not quite sure—

The Hon. MARK BUTTIGIEG: Let me get this right. The liability under consumer law is not transmitted because the chain is broken when the developer sells it to the—

The CHAIR: It is never created because the developer is not a consumer.

Mr GALL: Consumer law only applies to end consumers, not to businesses, and the developer is a business. So he is the first step in the chain.

The Hon. MARK BUTTIGIEG: But the end product is still being consumed by—

Mr GALL: Exactly. But because the developer is in-between he owns the product first and then he on-sells it. The person he on-sells it to does not have access to the consumer law because the first person to own it was not a consumer.

The Hon. MARK BUTTIGIEG: This gets worse with every passing hour.

Mr GALL: It does, but it is an easy fix. That is another thing we could fix pretty simply right now—simply include in the definition of "construction work" supplying or manufacturing a product that is intended for use in construction work. It is as simple as that. Again, we can give that to you in the bill.

The CHAIR: Where would that definition be defined?

Mr GALL: I would have to tie that down for you. We were working on that about half an hour ago.

The CHAIR: We look forward to the receipt of all of those detailed amendments before 5 p.m.

Mr GALL: Yes, thank you. You will get them; trust me. It has been a pretty tight timetable for everyone concerned. Before we get to the retrospectivity, I mentioned that the relationship with transitional provisions. At the moment the transitional arrangements are pretty messy. That is undermining the effectiveness of the regime. The issue is that, specifically, the effect of the current transitional provisions in the bill is that the obligations for various parties to provide the various declarations required by the bill and the regulations depend on when the party entered into their respective contracts throughout the project. Everybody joins into the project at different times depending on what they are doing. The waterproofer might be half way through, for example.

Under the bill they become covered at that particular point in time. The result is that some parts of the project will be subject to compliance declarations and other parts will not be subject to them. This will cause confusion during and after the project. The declaration requirements of the bill should either apply to all of the

project or none of it—being clear when they apply and when they do not. If you do not get that right you are not quite sure which bits are covered and which bits are not. So there is a proposed amendment here to deal with that. The applicability of the duty of care provisions in relation to a building will turn upon the date of issue of the occupation certificate that authorises the occupation and the use of the whole building as at, or on or after, a defined date, with the duty of care provisions applying retrospectively to the extent needed to achieve that. That is how we lead into the retrospectivity. The applicability of the rest of the bill for a building turn upon whether the date of issue of the first consent to construct the whole of the building was on or after a particular date to be prescribed by the regulations. If you put those two things in it fixes up that problem.

That is the transition. The other question is: what is the justification for the extent of any retrospectivity that you might put in that particular date. This is not an area, as a non lawyer, I am particularly strong on. I have been given a very quick lesson. The real issue is that we are not really talking about something that people did not know about or were not expected to do. You were always expected to owe some kind of duty of care, and you were always expected to implement the statutory warranties. It was actually the courts that introduced a degree of retrospectivity when they made decisions that changed what people were expected to do. All we are trying to do here is say, "Okay, let's go back." A lot of the industry actually expected that they owed a duty of care. They expected that they owed warranties. We are not going back and trying to change expectations. We are simply putting it back where it was.

The CHAIR: Righting the ship.

Mr GALL: Righting the ship—beautifully put. In that regard it is very different. When people talk about retrospectivity and they get all anxious about it, it usually applies to criminal matters and those sorts of things when you are changing the rules. Someone thinks they have done something right and it turns out it was wrong after you have changed the law, and someone is put in jail for it. That is a very different thing. We are really just aligning it here a little bit. You do not go back and change court decisions that were made by judges; you simply make it retrospective to those things that are still not before the courts.

The CHAIR: Those disputes that are still live or yet to crystallise.

Mr GALL: Still live—exactly right. I call it a degree of retrospectivity, but it is really quite justified for a whole lot of reasons in this situation, Chair. You mentioned the case of what the Government did in relation to external cladding. That is basically what we are proposing—that you do something like that. Again, it picks up what they did in the home building regulation in 2014 to address that.

The CHAIR: Mr Gall and Ms Stiles, I am really sorry we have crunched for time this afternoon. I understand that these are things you see as essential consumer protections for unit owners in particular, going forward.

Mr GALL: Correct.

The CHAIR: And, to the extent that you are filling a gap that was established through that court decision, essentially going backwards, as well.

Mr GALL: All those court decisions, yes. Basically we have covered the essence of it. And I think I have said to you briefly in passing that after what I have heard today, if the rest of the Act gets held up because there are a lot of issues to be dealt with, let us just get this consumer package through and do something for people now, because every month that goes past there is 1,000 new consumers that are missing out. I would like to finish on that note if time is of the essence.

The CHAIR: I think that is time, unless the Opposition has anything pressing.

The Hon. COURTNEY HOUSSOS: Thank you very much for your time.

The CHAIR: Nothing from the Government? One of the other reasons we do not want to keep you is that we know that you have to provide that further communication to the secretariat. Thank you again for your assistance. You have been really helpful.

(The witnesses withdrew.)

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

JOHN TANSEY, Executive Director Regulatory Policy, Better Regulation Division, Department of Customer Service, on former affirmation

DAVID CHANDLER, NSW Building Commissioner, on former oath

BRONWYN WEIR, Advisor to NSW Building Commissioner, on former affirmation

The CHAIR: Welcome to each of you. All of you have previously been sworn or taken an affirmation. I remind each of you that you continue to be on the oath or affirmation you swore on the previous occasion you were before the Committee. Given that, we might move straight to an opening statement if one or two of you wish to put some matters on the record to assist us at the beginning.

Ms WEBB: I think we are fine. No opening statement.

The Hon. COURTNEY HOUSSOS: Mr Chandler, have you at any time advocated for part or the whole of Mascot Towers to be demolished?

Mr CHANDLER: No.

The Hon. COURTNEY HOUSSOS: You have never advocated—

Mr CHANDLER: No.

The Hon. COURTNEY HOUSSOS: You have never advocated, verbally or in writing—

Mr CHANDLER: No. I expressed a view that I was unable to determine what the situation for the building was, but I have never said that it should be demolished.

The Hon. COURTNEY HOUSSOS: After your initial inspection of the site you never provided initial advice—

Mr CHANDLER: I am not an engineer so I have never provided advice on Mascot Towers. I have expressed a view as to what I thought the quality of the construction was like and what I thought the performance of the construction work was like, but I have, until just recently, simply been unable to determine what the future for that project is. But that is looking a little different at the moment.

The Hon. COURTNEY HOUSSOS: Did you ever canvass demolishing part or the whole of Mascot Towers as an option?

Mr CHANDLER: No, not at all. I thought about what might be the various scenarios that might play out, but certainly not promoting that the building be demolished.

The Hon. COURTNEY HOUSSOS: I am asking whether you ever canvassed that part or the whole—

Mr CHANDLER: In my head and in conversations with advisers I said I had no idea what the answer would be for this project.

The Hon. COURTNEY HOUSSOS: Your testimony under oath is that you never canvassed or discussed the possibility of Mascot Towers being demolished?

Mr CHANDLER: I am not going to wordsmith with you other than to say, I had no idea at the beginning of the journey here as to what the outcome would be, as to whether the building was a building that could not be restored or a building that may be partly needing to be demolished to open up a way forward for the project. I have discussed with people that I have been seeking views from as to what might be the various scenarios. That is why we went and arranged for independent experts to come in and have a look at it because there was a whole range of opinions being pushed around as to what the state was and what the urgency was of the situations that were presenting on that project. It would have been impossible to determine what the answer was until such time as the experts actually went in and put the overlay of their expertise on the facts.

The Hon. COURTNEY HOUSSOS: I want to be clear, your testimony to this Committee under oath is that you have never canvassed the possibility of Mascot Towers being demolished?

Mr CHANDLER: I am not sure what point you are trying to make, to be honest with you.

The Hon. COURTNEY HOUSSOS: I am trying to get to the bottom of what it is that was discussed; and the information that you are providing to the Committee is in direct contradiction to the information that has been provided to me.

Mr CHANDLER: Well, I do not know how to deal with what you have been told or not told. All I can say is that in conversations I had in the early piece to do with the way forward with that project was that with the situations that presented it was hard to determine what the final outcome would be or not. That is why I recommended that we, in fact, go and obtain expert opinion as to what the engineering circumstances were and what the way forward was.

The Hon. MARK BUTTIGIEG: One of your answers to my colleague was that there were scenarios thought of, was one of those scenarios demolition?

Mr CHANDLER: Clearly, one of the scenarios, if the building failed, may have led to demolition. I have never canvassed that as being the likely outcome but I have certainly talked about, in looking at what might be the sorts of things that could be considered or were being considered around partial repair, partial demolition and rebuild, or total rebuild. That is why I made the case for us to go and get an independent consultant to come in and look at the engineering facts and advise what were the prospects of the building being made fit for rehabilitation.

The Hon. MARK BUTTIGIEG: You have just said that one of the scenarios was possibly demolition, that is the same thing as canvassing demolition, is not it?

Mr CHANDLER: No, it is not. Canvassing is an active step towards an outcome.

The Hon. COURTNEY HOUSSOS: Let me be really clear, Mr Chandler, did you ever talk about demolition of Mascot Towers in the early days after you had been appointed?

Mr CHANDLER: No, I talked about a range of scenarios that I was unaware which would play out and that is why it was appropriate to go and get independent engineering advice. Please do not try and tailor into a sentence that is not going to become what the situation is.

The Hon. COURTNEY HOUSSOS: It is pretty clear the evidence that has been provided to me, which is that you were pursuing demolition as a possibility.

Mr CHANDLER: That is incorrect.

The CHAIR: The question is fairly clear. Was demolition one of the options you were considering—

Mr CHANDLER: No.

The CHAIR: —subject to getting further advice?

Mr CHANDLER: It was never an option. What I was trying to do was to, even at the time, even the people that I first met who were involved with the project were concerned as to the viability of what they were doing. In looking at the scenarios that were on the table there was quite a range of scenarios that may have played out. That is why we moved to engage independent advice to go in and have a look at what were the facts and what were the critical aspects of moving forward. Until that work was done the rest was simply a hypothesis.

The Hon. COURTNEY HOUSSOS: Mr Chandler, I want to ask you this: You have stressed your expertise in the building industry, and that was something you have previously spoken about at this Committee, your long history in the building industry and that skill set that you brought to the role. Based upon that you said there was no urgency to undertake the repairs before summer, which was in direct contradiction to the advice that the strata committee had been provided at that time. At that time the evidence that has been given to me is that you were canvassing demolition as a possibility. We can talk in circles.

Mr CHANDLER: Well, I am going to talk in circles because you are trying to conclude with a situation where you have put the words in my mouth and you are not going to do it.

The Hon. COURTNEY HOUSSOS: I am not putting the words in your mouth, Mr Chandler.

Mr CHANDLER: Please do not do it.

The Hon. COURTNEY HOUSSOS: These were your words provided to me, "demolition of Mascot Towers".

Mr CHANDLER: I really do not know what point you are trying to make. There were a number of scenarios that if any of them were worse than the other may have led to that sort of a outcome. That is exactly

why I made a recommendation to actually quell all the conversations that were going on—and there were a range of almost alarming conversations being driven from a range of camps—to say let us settle this down and go and get a proper independent review of where this project is up to, what is prepared and what may be the critical aspects of moving forward. That is what we have done.

The CHAIR: Have you obtained that review?

Mr CHANDLER: I have a copy of a draft interim report and in the next day or two that will be made available to the owners of Mascot Towers.

The Hon. COURTNEY HOUSSOS: When will you receive the final report?

Mr CHANDLER: The final report will depend on the response by the people who are attending to Mascot Towers in terms of considering some of the issues. There are five recommendations in the interim report, which I am not going to canvass here either. The final report will be subject to a review of how those recommendations were dealt with.

The Hon. COURTNEY HOUSSOS: Do you have a timeframe for the final report?

Mr CHANDLER: No, I do not because it has to do with when those actions are performed and how they are performed.

The Hon. COURTNEY HOUSSOS: Will you release the draft interim report to the public once it has been provided to the owners of Mascot Towers?

Mr CHANDLER: No, it will be provided to the owners of Mascot Towers. It will be provided to Bayside Council and it will provided to the adjoining property, Aland, because all of the people agreed in a meeting in our office that the best way forward in this matter would be for everybody to give all of the information that the experts requested and they were able to give that information up either as privileged or confidential because of the complexities of the matters that may be yet to follow. Our experts have benefited from the information that has been provided with a genuine gesture of finding a way forward. I wish to acknowledge that because it took all the parties—Mascot Towers, Bayside Council and the adjoining Aland property—to make whatever information that was requested by the experts available. They have done that and I wish to acknowledge the fact that they have done that in a honourable way, absolutely consistent with the basis on which I have I asked them to provide it.

The CHAIR: But they will be getting the interim report tomorrow. Is that your position?

Mr CHANDLER: I did not say tomorrow. I said the next couple of days. It is likely to be Thursday.

The CHAIR: Okay. But in any event, it will before the end of this week?

Mr CHANDLER: I expect that it will be before the end of this week. There are some formalities to be undertaken before we hand that over, just to confirm the basis on which the report was done. Then we will provide that to the owners of Mascot Towers.

The CHAIR: Mr Chandler, if we are talking about matters you have said or not said in the last little bit, can I ask you: Have you reflected upon the evidence you gave to another committee just over a week ago that given the level of uncertainty in the industry, we need putative potential purchasers to pay closer attention to the inspection of their properties and a regime of "buyer beware" in New South Wales? Have you reflected upon that evidence over the last week, given the negative reception it has had in the public?

Mr CHANDLER: I am not sure where you listen to your receptions.

The CHAIR: Pretty much anywhere.

Mr CHANDLER: I am sorry but that is not the case with the feedback I have received. But let's be quite clear: We do not expect owners to be expert in all the subject areas related to a property. I was talking in the context of a project that I had visited just the week before at Auburn. That project had a substantial number of settlements and people in the building. I have got quite a number of photos that I took onsite to evidence what I said and say, which is that if you had gone down yourself—not a construction person—and had a look at that site in the context of being asked to settle on a property, I would have been surprised if you did not push back. I certainly would have, as a consumer. I am unsure what the point is that you want to make and have me retrace. But I do not wish to retrace anything. I think consumers—in the face of settling an apartment—ought to go and have a good look at it. They ought to go down to the basement, they ought to have a look at where their car space

is, they ought to have a look at where their storage area is and they ought to walk up through the building to their apartment.

The Hon. MARK BUTTIGIEG: But aside from major structural cracks or something aesthetically obvious, what do you expect the consumer in New South Wales to do to be able to interrogate beyond that superficiality? They are not qualified to do it, surely.

Mr CHANDLER: I was talking about if the project was of the type that was on my mind when I made that comment. I have been told that there are a number of other projects that presented in a similar condition before people were asked to settle, and Ms Webb will talk about the proposed changes to some of that. My point was around if a consumer went and saw this project—and I will post all the photos I took of the project so there in no ambiguity. If you saw a project in that state you would want to push back on it.

The Hon. MARK BUTTIGIEG: Sure. But you can understand how a comment like that from an official in your position—who has just been appointed to supposedly fix all of this up—could be extrapolated to, "What, does he expect us to inspect every building and apartment that we see to the detail a structural engineer would be able to?"

The CHAIR: You have just said that you expect people to go down and do an investigation of the basement and the key structural elements of the building.

Mr CHANDLER: Mr Shoebridge, can you let me respond to that? I will share the photos with you. I do not want to distress the people concerned with this project anymore but I will undertake to provide a link to those photos so you can see them—

The Hon. JOHN GRAHAM: Mr Chandler, do you accept that in many cases a consumer would have no way of detecting the problems, for example, with water proofing? There is just no way.

Mr CHANDLER: I fully accept that, okay? The point I am making is that if the project is visibly incomplete then it would be appropriate to push back. I just think, and I am told—

The CHAIR: In the most egregious cases, where you can turn up and see cracks—

Mr CHANDLER: I am told that there is a number of those cases. In fact, I spoke to the strata manager of that particular project this morning and he said that there has been a number of projects like that in his experience in recent times. He said that now that he has was aware that I am up for helping consumers push back in that circumstance that he would undertake to call me in the future.

The Hon. JOHN GRAHAM: Mr Chandler, the answer to this problem cannot be you turning up to every building site.

Mr CHANDLER: Hold on a second. Let's deal with the numbers. There are 273 or so subject matter staff on team across our capacity to be out in the field.

The Hon. COURTNEY HOUSSOS: Can you give us a breakdown of those 273 staff?

Mr CHANDLER: Sure. I cannot do it now, but I will take the question on notice.

The CHAIR: Unfortunately, we cannot take questions on notice today because we have a short time frame.

Mr CHANDLER: Sorry, I do not have that answer right in front of me.

The CHAIR: That is okay. You were not aware of that.

Mr CHANDLER: I just make the point that the assertion that I cannot insert myself in every circumstance in New South Wales is quite correct. But one of the things we can do is—across our subject matter experts who actually attend to matters in the field—start to be more engaged with the experts themselves and to share lines of sight for projects that are not perhaps being conducted in a way that we would all like them to be. We have plenty of resources that can turn out on a project like the ones I have referred to. If they are not fit and appear visibly incomplete, there should be some push back on settling. In the event that a heavy hand is being thrown around and is saying irrespective of whether the project is visibly complete or not, then I believe that we should be providing some support for that particular purchaser standing up for what I think are their reasonable rights.

The CHAIR: But, Mr Chandler, with regard to the 270 staff you are talking about, none of them are new. They have all been on the public payroll for the past two or three decades and have failed comprehensively

to address the mess that is the construction industry in New South Wales. How can we possibly rely upon the same staff and structure that has failed in the past to fix things in the future?

Mr CHANDLER: We have the expertise to have a very positive impact on the way forward. I am not going to be drawn into a commentary on the past. The bottom line is—

The CHAIR: You cannot deny the past. We are not sitting here in a vacuum. There has been a disaster.

Mr CHANDLER: Mr Shoebridge, we are really getting to a point where you are the Chair here and you are supposed to allow the witnesses to actually answer questions. I do not want to tell you how to run the show, but as a witness I accept the courtesy of—

The CHAIR: I do not want to hear from you if you are denying the past or denying why we are here.

Mr CHANDLER: We have to look forward. There are legacy issues and we are going to have to look at the legacy issues and assist in the best way we can.

The Hon. COURTNEY HOUSSOS: When? When are you going to address the legacy issues?

The Hon. WES FANG: Point of order: Let's let the witness answer the questions please.

The CHAIR: Mr Chandler, have you finished on this point? You say that it is all about going forward. I assume you are talking about the bill. You say that we have got some legacy issues. I think it would be fair to say that the public would think that that would be an understatement of the problem. Do you acknowledge this bill does not address any of the legacy issues?

Mr CHANDLER: The bill is not retrospective. I think that is an appropriate way to move forward. We have to reset the compass here. There is a considerable amount of capability building that is required across the whole industry. For example, under this bill the challenge for designers will be to reassemble their capabilities to conduct complete and integrated design. I can assure you that out in the field—and I am talking across the board—it will be quite an issue to get designers to step up and rethink the fact that they are now going to be held to account for improving the quality of their design production. At the same time at the other end, in terms of buildings and industry capability, builders will need to develop their skills so they are capable to prepare as-built plans for every building, to prepare the manuals for every building and to submit them in a satisfactory form upon the completion of those building. That is going to require quite a degree of industry capability building. It is not going to happen overnight.

The CHAIR: Do I understand that you accept the proposition that there is nothing in this bill that is going to provide a single bit of relief to the thousands and thousands of property owners dealing with substandard buildings that have already been built? There is not an iota of relief in this bill?

Mr CHANDLER: We have already said that the bill is not going to be retrospective.

The CHAIR: So when are you going to deal with that? We are told that even making the regulations for this bill going forward is going to be a project for some time next year. When are you going to get around to helping the people who need help now?

Mr CHANDLER: The buildings that are currently in the system and buildings that are going to be complete or commenced before this Bill I can tell you, we are out right now reinforcing to people that these buildings need to be built much better, the certifiers need to be stepping up and performing a lot better and being very clear about the fact that we will be calling out more frequently and more visibly those players that are not stepping up and playing the game properly. The new bill resets the compass. It resets the public expectations, the way that buildings can be made going forward. It will reset the framework that banks should be starting to have a look at in the way that they loan into projects and the way that the pay for work for drawdowns by developers. It resets all of that. That is the industrywide response that is needed. It is not just going to simply happen in the next three to six months.

The Hon. MARK BUTTIGIEG: That was not the question. The question was specific. What you have just said is debatable given the evidence we have heard today, but leaving that aside the question was specific: What is going to be done for all the people who are left out in the cold right here, right now?

The Hon. COURTNEY HOUSSOS: There was a report today that said there is $6.2 billion worth of repairs.

Mr CHANDLER: And is that evidence-based and is it properly costed? Is their real evidence for that or is it just a hypothesis?

The Hon. COURTNEY HOUSSOS: It was commissioned by Equity Economics.

Mr CHANDLER: Sorry?

The Hon. COURTNEY HOUSSOS: It was commissioned by Equity Economics. It was presented as evidence to this Committee.

Mr CHANDLER: I have not seen that report. I will read with interest.

The Hon. JOHN GRAHAM: We are open to other evidence, Mr Chandler. If the Government or if you have other evidence to put in front of the Committee, we are all ears. Otherwise we will rely on evidence that is put in front of us.

Mr CHANDLER: Let us have a look at the evidence.

The Hon. JOHN GRAHAM: I did want to ask about some of the witnesses who have turned up at the Committee and talked about your role. They have talked about the Government's commitments in response to some of the discussion papers talking about—these are quotes from the Government response about the role the Commissioner might play:

> Commissioner will administer all building laws that are or will be in the Minister for Innovation and Better Regulation's portfolio

That the building Commissioner will have the power to audit the documentation to ensure compliance, referring to the role of the building commission as the consolidated building regulator. None of that is in the bill. Why are you not in this bill?

Mr CHANDLER: There is regulation to be developed off the back of this bill. All of the commitments the Government has made will be what is reflected in the remaining work.

The Hon. JOHN GRAHAM: But when we ask, "How is this problem going to get better" the Government's answer is, "Well, we have now got Building Commissioner." You do not appear in this Act at all. Is that of concern?

Mr CHANDLER: I have got a job to do. No-one is shirking from the fact that there is a big job to do, but it is a very multifaceted task to turn around the capability and the accountability of this industry. We will do that over the next year or two—

The Hon. JOHN GRAHAM: In your view—

The Hon. SCOTT FARLOW: I think Ms Webb wants to contribute to this.

Ms WEBB: I just wanted to add to one quick clarification. Just in relation to all of the building legislation that we currently and in the future administer, nearly all of it gives powers immediately to a secretary and they are delegated to all the Fair Trading officers and SafeWork officers as needed, including delegation to Mr Chandler. As we speak, any piece of building legislation that is within the Minister's portfolio, Mr Chandler has powers under the regulation.

The Hon. JOHN GRAHAM: Is the subject of a formal delegation, you are saying?

Ms WEBB: A new delegation has been done to Mr Chandler since he joined us.

The Hon. JOHN GRAHAM: Is there any current delegation in place to Mr Chandler in relation to those things?

Ms WEBB: Absolutely.

The Hon. COURTNEY HOUSSOS: How many Acts are you currently responsible for, Mr Chandler?

Ms WEBB: In total Fair Trading has about 80 Acts—

The Hon. COURTNEY HOUSSOS: No, I am asking Mr Chandler: How many Acts are you currently responsible for?

Mr CHANDLER: I would have to just draw the specific detail.

Ms WEBB: The Home Building Act, the Work Health and Safety Act, the Building Professionals Act. We could—

The Hon. COURTNEY HOUSSOS: Ms Webb, with respect, it is a question to Mr Chandler. How many Acts are you responsible for?

The CHAIR: We have a Government panel here. We can allow members of the Government who may have that sort of detailed information to step up and help assist in the answers. If Ms Webb thinks she can assist, we will allow Ms Webb to assist.

Ms WEBB: Those three that I mentioned would be the main ones at the moment. I could double-check that but I understand I cannot take things on notice.

The CHAIR: If you could provide to the secretariat the current delegations. There will be instruments of delegation if we could have them, Ms Webb.

Ms WEBB: I think there is a plumbing one as well.

The CHAIR: Mr Chandler, if you could provide the instruments of delegation that would be the clearest way of doing it.

Mr CHANDLER: We will do that. That is much clearer. That is a very sensible conclusion.

The Hon. JOHN GRAHAM: Mr Chandler, the question I was keen to ask you is: You will be playing those roles that have been set out in the Government's response? Your view is that you are in charge of those roles. The Government response says they are coming to you. Are you in charge of those roles?

Mr CHANDLER: My responsibility is to oversee the performance of those roles. There are people that have got the line management function of those roles. We are now sitting down in the face of the new legislation and looking at how can we embrace the full legislation as it is coming forward and at the same time see if there is other ways that we can allocate our capabilities to be more impactive. Right across the board, we will be looking at every attribute of how the operation is run. I will be administering and overseeing that.

The Hon. JOHN GRAHAM: But you are administering these things not the secretary of the department?

Mr CHANDLER: In conjunction with the secretary.

The Hon. JOHN GRAHAM: I am asking: Is that the case?

Mr CHANDLER: You will get a copy of the delegations and that will give you some vision.

The Hon. JOHN GRAHAM: Let me ask specifically, the Government has previously indicated declared plans will be launched in a digital format with the Building Commissioner, is that going to be the case?

Ms WEBB: The wording with the Building Commissioner implies that with the Government, in a way in which the building Commissioner will have good access to those plans. The technical lodgement of them might not be through David's computer but through a system—

The Hon. JOHN GRAHAM: I am asking who is in charge of these things. Is the secretary—

Ms WEBB: Mr Chandler and other people in the department are working on the lodgement plan at the moment—

Mr CHANDLER: At the moment.

Ms WEBB: And then information technology [IT] teams are building the lodgement arrangement.

The CHAIR: That is going to be a whole set of new architecture separate to the ePlanning portal?

Mr CHANDLER: Not at all.

Ms WEBB: No, it is joined to the ePlanning system. We are working very closely with the ePlanning teams.

The CHAIR: Where do we find that detail? Because Local Government NSW who obviously have an intricate role in the ePlanning portfolio have no idea what your plans are.

Mr CHANDLER: I am quite surprised at that Mr Shoebridge because I met with the local government association last week and explained what all of our intentions were — it probably would be useful to record the fact of the positive response to that meeting with the invitation for me to come back and speak to a broader group. I am a bit surprised that there is that claim of, "We do not know" because the intention is to lodge the declared plans in the ePlanning portal and not build a new piece of architecture from ground up.

The CHAIR: And who is going to be responsible for paying for the e-portal going forward? Are you going to require councils to pay for that? Is the State Government going to pay for it because it is an expensive piece of architecture.

Ms WEBB: My understanding is it will be the State Government's responsibility to pay for it.

The CHAIR: Your understanding?

Ms WEBB: I believe absolutely that to be the case. I have not ever heard anyone mention that local councils would pay for it and I know some submissions are being made as we speak for budget for the project from the State Government.

The CHAIR: I suggest you chat to the Minister for finance who has indicated a potentially different position to local government but perhaps that is a silo issue.

Ms WEBB: We can follow that through.

The Hon. COURTNEY HOUSSOS: As part of your conversations about how this bill would be administered, have you made any submissions for further resourcing that will be required?

Mr CHANDLER: Yes.

The Hon. COURTNEY HOUSSOS: So you are anticipating that you will need more inspectors? More than the 273 stuff you currently have?

Mr CHANDLER: Not at this stage.

The CHAIR: Have all your submissions been accepted for additional financing?

Mr CHANDLER: Matters are currently being considered by the appropriate parts of Government and it is inappropriate for me to comment on those until we have received the answers to that.

The Hon. COURTNEY HOUSSOS: Let me ask you this, Mr Chandler. Do you anticipate that in administering this Act which we have just been told you will be responsible for, you would need to hire more staff, new inspectors and to establish a new regulatory regime?

Mr CHANDLER: There will be some additional staff required to deal with the additional work that will come as a result of overseeing, for example, the lodgement of declared plans and eventually, the lodgement of declared as-built drawings—of course there will be required to be some resources for that. What we are looking at is, first of all, what is the likely risk exposure in terms of where will the workload come from? And then, how would that workload be responded to? In particular, starting to make sure that the way we design that response does not embed a large additional layer of bureaucracy. So we will look at what we think might be the normalised level of demand and how, then, we might outsource a higher level of demand that may occur during the implementation period—over the first three years, say—where, when the—

The Hon. JOHN GRAHAM: Is it true, Mr Chandler, that your first budget bid was knocked back by Treasury? Is that an accurate characterisation?

Mr CHANDLER: That is the first I have heard of it.

The Hon. JOHN GRAHAM: Right. Thank you.

The Hon. COURTNEY HOUSSOS: Mr Chandler, can you explain what you mean by "outsourced during the initial stages"?

Mr CHANDLER: It would make sense that if we formed a view as to what we would like to see the normalised levels of audits, the normalised level of complaint as-built drawings, for example, what might be a normalised level—as a percentage of, say, the 1,740-odd strata plans lodged each year, what might be a normalised level of inspection and dealing with those. We are looking at that. I am of the view that in the initial implementation period, there will be potentially more complaint about the work than there will be when it becomes mature. So I am anticipating that the best way to do that would be to have a panel of potential reviewers that might, for example—say there was a complaint with the quality of the as-built drawings that were lodged. The best way to do that would be to have a couple of experts who would be able to go back and look at the declared plans in the planning portal and say, "Were there issues with these plans?" and then subsequently, in regard to that, "What are the issues that exist as a result of the declared as-built drawings?"

Those pieces of work would then come back to me and we would look at how to handle them. In the normal carriage of business in the office of fair trading, there is a very high level of mediated resolution of these

issues: 60 per cent, at least. So what I would imagine will be applicable in this circumstance will be that when we identify an issue where someone who has made as-built plans and they are not up to scratch, if we find them to be the case, then we will sit down and say to the parties, "These plans need some further work and tidied up. I would like you to tidy them up and I would like you to resubmit them."

The Hon. COURTNEY HOUSSOS: So your role now, in addition to going out and inspecting buildings and driving government policy, will also be to mediate disputes?

Mr CHANDLER: Look, Ms Webb runs a very large department. She does not involve herself in the mediations. We have got great people out in the field. I have only just received a letter yesterday from a customer; I actually attended one of the mediations to see how they are conducted. It is no wonder that those mediations, in over 60 per cent of the occasions, end with a good outcome, because we have got really competent people that go out and have the empathy with the consumer and also have the technical capability to deal with the contractor or any other party involved to get stuff done.

The Hon. COURTNEY HOUSSOS: Mr Chandler, you just said that you would be mediating; if you saw these things were happening, then you would then sit down with the parties.

Mr CHANDLER: I will be looking at what is coming back and working out what is the best resourcing and management process for those, just as it exists in the office of fair trading.

The CHAIR: Mr Chandler, we had hundreds of responses to a survey and we have had the better part of 200 submissions to this inquiry. Not a single submission has spoken highly of the process in Fair Trading NSW. Not one has endorsed the current regime.

Ms WEBB: Would you like us to send some of the feedback we have received to you?

The CHAIR: Not one of them has endorsed the current regime and not one of them points to what is happening in Fair Trading NSW now as the solution going forward. So it is a bit distressing to hear you pointing to that machinery as the principal way of resolving things going forward, because it is not supported—

Mr CHANDLER: Well, Mr Shoebridge—

The CHAIR: —by a single submission we have had.

Mr CHANDLER: Sorry, I will let you finish the question. May I comment? Is that appropriate now?

The CHAIR: Yes.

Mr CHANDLER: My background has been one of being able to go in and look at situations that perhaps could work better and to make those changes to make them work better. That is the approach that we will take here. I expect that within not a long time you will start to see a completely different responsiveness, but that is only simply because we are looking to utilise our resources in a more dynamic way than perhaps may have been in the past. We will also make our team more properly emboldened by the fact that they have got a commissioner who will get out in the field and be seen at the front line. I intend to run this transformation process by being very visible at the front line, because we have got some great people out there and I just want them to feel very comfortable and confident that they are supported at the highest level of the organisation.

The Hon. MARK BUTTIGIEG: How are you going to achieve this if you are telling us here, Mr Chandler, that you are going to require extra resource for what is essentially an oversight mechanism of as-built plans? That is going to spike, and then we have heard a litany of evidence today that suggests that you need a proactive approach of people actually going out and physically inspecting works. How are you going to achieve that with what seems to be no extra request or honour of resource on the ground?

Mr CHANDLER: I believe that we can achieve an increased impact by the resources that we have and you will be able to observe that.

The Hon. COURTNEY HOUSSOS: With respect, Mr Chandler, the previous person who undertook this role, who gave a comprehensive report into the building industry in New South Wales, was Mr Lambert, who in 2015 said Fair Trading NSW was not equipped to do it. In 2019—earlier this year—in the submission to this inquiry, he said Fair Trading NSW is not equipped to do it. In a subsequent submission and then this afternoon in testimony, he said Fair Trading NSW is not equipped to do it. It is in direct contradiction of what you are saying, Mr Chandler: This department is not fit for purpose and we need a new department, we need a new approach and it needs to be happening to give consumers and homebuyers in New South Wales some level of confidence in the industry. That is the only way to arrest the crisis in this industry. Do you think Mr Lambert is that wrong?

Mr CHANDLER: I am not going to be trading views with Mr Lambert. There are some things that Mr Lambert has put forward that I will give a fair bit of consideration to as we go forward. But I do not believe that he is calling for a building commission. I think what he is looking to do is to see how we can make the crosspieces of what we have got to govern work better. That is what we will be focusing on.

The Hon. MARK BUTTIGIEG: What he said to us earlier was that this bill is singularly incapable of addressing the systemic and structural problems. My understanding is that the Government endorses his report. There seems to be a massive contradiction here.

The CHAIR: He described it as little more than the status quo.

Mr CHANDLER: He is entitled to his opinion, but he is not the Building Commissioner. I am.

The CHAIR: Perhaps we might go into a little bit more detail on the bill at this point.

The Hon. JOHN GRAHAM: I have got some questions for Ms Webb on the bill.

The CHAIR: That is where I am going. We have had a series of submissions critiquing the absence in the bill of regulating construction work as it is being done. I will read one passage from the Australian Institute of Architects' submission. It states:

> The Bill focuses heavily on designers and design stages but fails to extend that focus to the building professionals doing the building work and the construction stage. While all designers in a project will likely be covered by the Bill not all persons doing building work will be similarly covered. The definition of building practitioner in the Bill should therefore be expanded from "principal contractor" to cover a wide range of building practitioners and tradespeople.

Mr Lambert identified that the list of tradespeople and building practitioners in the Shergold Weir report are not covered or, at best, are covered partially. What is your response to that, Ms Webb?

Ms WEBB: I will get Mr Tansey to talk in detail. But, in general, building professionals, people doing building and building contractors are currently regulated under the Home Building Act. It is my understanding that the intention of this current bill was not to replicate all of those provisions over again, but to add to the number of parties who are now going to be subject to some form of regulation.

The CHAIR: You are saying that we can rely upon the status quo under the Home Building Act to make that all work?

Ms WEBB: Yes. I absolutely admit that Fair Trading NSW can always do better, but we at the moment regulate under the Home Building Act. We put people in jail; we take their licenses off them; we do all the mediations Mr Chandler mentioned. So I think just a blanket statement that it is an unregulated area is unfair. I admit that we could always do better and we will always be trying to do better and we will be using Mr Chandler to improve how we do things, but to say that building is not regulated and the building contractor sector is not regulated at the moment, I do not believe to be an accurate statement.

The CHAIR: What they are saying is that this bill should be expanded to cover a wide range of building practitioners and tradespeople that are not currently covered, and you are saying there is a parallel regime under the Home Building Act.

Ms WEBB: No, I am saying they are covered to a greater extent in the other regime because they are subject to a very rigorous licensing regime. It is not just accreditation.

The CHAIR: I think we have been here before, Mr Tansey, so we can revisit this if you like.

Mr TANSEY: Ms Webb is exactly right. Yes, you are right; I think in this forum, before, and I think possibly in estimates as well, we have responded to questions about the categories of building contractors that are licensed. I should have the number committed to memory. It is about 37. So it is absolutely the case that the vast majority of people who are doing the work of building—whether they are a builder, plumber, electrician or painter—are already occupationally licensed in order to be able to do that work under the Home Building Act.

The new ground here is that a whole range of people providing designs and plans and performance solutions who are not regulated will be under an obligation to be registered for the first time and will have explicit statutory obligations for the first time. I acknowledge, having been involved in lots of the consultation with stakeholders through the development of this bill, that it has been an interest. It is obviously been something where we have all been working through the issues and making that clear. But it is absolutely the case that the people doing the work are already licensed, and in vastly greater number than, without this bill, relates to people doing designs and plans.

The CHAIR: So we have an industry that has had a 77 per cent collapse in construction of new apartments. We have a statewide loss of confidence, and the solution you put forward to us, in terms of regulating the quality of building work is the status quo. I find that astounding, Mr Tansey, and it is not supported by any submission we have had.

Mr TANSEY: I was responding to your question about the status of licensing. I am not providing a commentary about the robustness of the industry. I am—

The Hon. JOHN GRAHAM: Ms Webb, we started the day with some quite good evidence from the engineers—it has been referred to elsewhere—talking about a possibility, as the Design and Building Practitioners Bill comes through. They were making the observation that it works quite well with the Private Member's Bill that has also been lodged in the Parliament. In fact, their evidence was that it would allow this to be implemented. It might speed up the implementation. Do you want to give the Committee or the Parliament any advice about any barriers to pursuing that line of activity—that is, passing both those bills and not just setting up a framework, but getting on with implementing it?

Ms WEBB: I think it is very difficult for us, as Government officials, to comment on bills that are currently before the House in that context.

The Hon. JOHN GRAHAM: You are advising a parliamentary committee on this bill about the impact of this bill. I do not think it is unreasonable to ask you to give some advice to the parliamentary committee who might make a recommendation in relation to a path forward. Is there any barrier to proceeding with both those bills together? That is the view that, it has been put to us, would be sensible. Are you giving us any caution?

Ms WEBB: I cannot give you an answer on that. I just cannot say yes or no, sorry.

The Hon. JOHN GRAHAM: Are you aware of any modelling that has been done by the Government about the economic loss—that is, across the economy—as a result of the current crisis in the building industry?

Ms WEBB: No, I do not think I am aware of specific modelling to that effect.

The Hon. JOHN GRAHAM: Has Treasury modelled any of the risks to stamp duty, to your knowledge?

Ms WEBB: Not to my knowledge, but obviously Treasury is another portfolio.

The Hon. JOHN GRAHAM: Yes. I will be happy to chase it up. Obviously the impact of this does not happen right across the State; it happens with specific classes of buildings and in specific suburbs particularly in Sydney. There are some very specific, very significant economic impacts in some of those suburbs. Are you saying that you do not believe there is any economic modelling of the impact in those suburbs by the Government?

Ms WEBB: I am saying that the department has not done that sort of economic modelling. I am not aware of whether it has been done. That is not to say that it has not been done, because Treasury may well have, or other agencies may well have.

The Hon. JOHN GRAHAM: Thank you. One of the other specific options for either this bill or action shortly is to deal with the phoenixing issue. One of the views that has been put to us is that Queensland does have a regime that deals with that. Can you give us any information about that? Can you answer to the Committee—why not pick up the Queensland approach? That is the view that has been recommended to us. Is there any reason why we should not recommend that to the Parliament?

Ms WEBB: I cannot give any specific answer on that. I do not know if Mr Tansey is—

Mr TANSEY: No. The work that we have been asked to do in developing policy was within the ambit of this bill. It did not include dealing with phoenixing.

Ms WEBB: I am aware, because I used to work at ASIC a long time ago, that there is a lot of work being done at both Commonwealth and State levels on the issue of phoenixing more generally. I am not aware of anything specific in Queensland in the building industry. We could look into that.

The CHAIR: One of the key points in this bill is that you are requiring both designers and principal contractors to have insurance. Is that right?

Ms WEBB: Yes.

The CHAIR: You put that forward as one of the benefits of this bill—that that insurance will be available in the event that there are building defects and the like.

Ms WEBB: Yes.

The CHAIR: It is presented as one of the major benefits of the bill. Is that right?

Ms WEBB: I think that is the understanding—that it is beneficial for consumers to have access to that.

The CHAIR: The Insurance Council of Australia, in its advice on 16 October this year about the bill said, "It is acknowledged that insurance is not currently available for the range of practitioners proposed to be registered." It went further and said, "We are concerned that elements of the bill may potentially exacerbate rather than address the lack of available insurance highlighted in the Building Confidence report." Given that the insurance industry is saying that it does not have products, and the bill is likely to make things worse, how can we have any confidence that this aspect of the bill will actually be able to be implemented?

Mr TANSEY: I think that that submission, at the top of it, says words to the effect that the industry broadly supports the direction of the bill.

The CHAIR: It does not.

Mr TANSEY: We know there will need to be ongoing consultation with the insurance industry—

The CHAIR: It does not say that, Mr Tansey.

Mr TANSEY: — of cover under this Bill. We have had numerous discussions with representatives from the insurance industry in a range of forums about a whole bunch of building issues. What they have said to us is that there remains an appetite for insurance in the building sector. Obviously the Committee is aware of the particular contraction related to building certifiers at the moment. It has been put to us that that reflects a concern that certifiers could be considered to be disproportionately targeted and on risk in the building sector.

The feedback we have had, including in national forums, has been strong support for reforms in the Building Confidence report, and for these reforms as a plank of that broader reform. So we feel like we are clearly working in the right direction—certainly in direct discussions with the insurance industry. That is the sense we have been given. I am aware of that submission.

The CHAIR: Mr Tansey, the Insurance Council, at its highest, says that its members support the objectives of the bill. That is being polite from them, because there are actually no objectives contained in the bill, but the insurance industry is telling you that there are no products available and that the bill may in fact exacerbate the problems in the insurance industry. Why should Parliament be passing a bill that could exacerbate the problems in the insurance industry?

Ms WEBB: As Mr Tansey said, in conversations with us, their concern has been that the risk is not spread amongst all the building and design professionals, that the certifiers are carrying some of the extra risk at the moment, and that they are disproportionately represented in claims. We have heard from the insurance industry that the fact that there will now be more parties who are required to have insurance in the whole chain of building professionals would actually help lay off some of the risk.

The CHAIR: When it comes to building, your proposal is that the principal contractor, effectively, be the only one indemnified, which is why we go back to this problem of the lack of quality assurance in what is being built. This bill does nothing to improve the quality assurance from those people actually doing the building work, does it? That is why the insurers are saying, "Hang on. This may well be uninsurable." That is a problem, isn't it?

Ms WEBB: We can only respond, based on our discussions with the insurance industry. That is what we have just been attempting to do.

Mr DAVID SHOEBRIDGE: If you have anything in writing from the insurance industry that contradicts what they have put in writing as recently as 16 October, please provide it—anything at all in writing.

Ms WEBB: Okay.

Mr CHANDLER: Are we reading from the same letter?

Mr DAVID SHOEBRIDGE: 16 October 2019.

Ms WEBB: I just wondered whether we were.

The Hon. COURTNEY HOUSSOS: Mr Chandler, your testimony to this Committee has been that the insurers are biting at the bullet—

Mr DAVID SHOEBRIDGE: Lining up.

The Hon. COURTNEY HOUSSOS: Lining up to come back to the industry, and, yet, now we are being told that there is no way they are going to participate under this bill that you have drafted.

Mr CHANDLER: You can select pieces of conversation as you choose.

The Hon. COURTNEY HOUSSOS: That is your testimony.

The CHAIR: We are just reading from the letter.

The Hon. COURTNEY HOUSSOS: I am reading from your testimony to this Committee and the letter that has been provided to this Committee.

Mr CHANDLER: The insurers are very keen to come back into the parts of the market that they have been walking away from but they want a new playing field to give them the confidence to come back into that market.

The Hon. COURTNEY HOUSSOS: This bill does not provide them with that.

Mr CHANDLER: There is a number of things that need to be done to create that confidence. Part of that will be rehabilitating the capabilities or investing in the capabilities of the industry that have really been left neglected for a long time. So part of the work we are doing, we will also be looking at how we work with the education platforms to deliver the skill sets and in the priorities that are needed for us to rebuild those capabilities.

The Hon. COURTNEY HOUSSOS: That is fine, Mr Chandler. Talking about how we are going to train the builders of the future is great but that is not dealing with the legacy issues, which is the crisis that is gripping New South Wales. On day three of the job your testimony to this Committee was that insurers are lining up to come back in. You have gone away for a couple of months and drafted this bill as the first key part of the response and now we are being told by insurers they do not want any part of it.

Mr CHANDLER: My understanding—you are just using words that—

The CHAIR: Mr Chandler, I will read another—

The Hon. SCOTT FARLOW: Point of order: Let Mr Chandler read—

Mr CHANDLER: Why don't I read from the letter that you have in front of you?

The CHAIR: I will read another passage from the letter.

Mr CHANDLER: Well, very selectively. Why don't you let me?

The CHAIR: It is only two pages. Then you can address anything you think I have missed. On the second page, they are talking—

Mr CHANDLER: Why don't we read the lot? Will you please read the letter from the top to the bottom?

The CHAIR: Mr Chandler, the second page of the letter states, "For example, section 11 of the bill requires registered design practitioners to be adequately insured." Then it quotes section 11 and states, "Professional indemnity policies typically contain exclusions relating to non-conforming products and practices and certain other high-risk exposures. To the extent that the reference in section 11 to any liability precludes an insurer from offering policies that contain these inclusions, insurers will not be able to participate in the market. The Insurance Council would welcome clarity in the drafting that this is not the intent of the legislation." It is saying there that they will not be able to participate in the market, so please give us some clarity.

Mr CHANDLER: The letter goes on to state, "Looking forward, we recognise that parts of the reform will be prescribed and finalised by the supporting regulation, once developed." That is the work that we will do in sitting down and dealing with issues that have been presented like that.

Mr DAVID SHOEBRIDGE: So what exclusions are you going to put in? And how are you going to limit the protection for homeowners?

Mr CHANDLER: Let's do the body of work. We are listening to this sort of feedback. We are taking it very seriously.

The Hon. COURTNEY HOUSSOS: And very slowly.

The CHAIR: But more fundamentally, Mr Chandler, you have put in a bill requiring compulsory insurance but you do not know what the market is, you do not know what the appetite in insurance is and you do

not know what exclusions you are going to need in order to make that work. Talk about putting the cart before the horse!

Mr CHANDLER: It is not the cart before the horse because the bill basically settles a future conduct of the industry that we intend to get to.

The Hon. MARK BUTTIGIEG: But the market is looking through this and telling you that it is uninsurable to the extent necessary to solve the problem because, one, all the liability is concentrated on the principle contractor, so until you replicate that through the chain of responsibilities—all the trades all the way through—the market is saying there is going to be no insurance market for it until you do that, and you are saying, "Take us on trust. We will fix it up in the regulations."

Mr CHANDLER: I am not saying, "take us on trust." What we will do is we will work through this with the players that are involved. I do not think we should have the issues that people are sending as signals through you to us and us to them. We have to sit down, first of all, with the major associations and agree what is a sensible way of cleaning up the standard forms of construction contract, starting with the lump-sum building contract. Because once you clean up the terms of the standard form of contract, then you actually have a clearer line of sight to where the risks are being allocated.

At the moment these contracts are being distorted in many ways to deal with circumstances that the new legislation will avoid. For example, when a designer is preparing documentation for a lump-sum building contract—a build-only contract—they will be required to do the full set of documentation for the purposes of construction. What that will mean is that builders will be able to price a scope of work, knowing that the full scope of work and the design has been completed. What is happening at the moment is because that clarity of responsibility has been absent before this legislation came along, lawyers—sorry to mention lawyers again, Mr Shoebridge—have looked at the risks associated with the documentation that is normal these days—and it is incomplete documentation—and started to patch onto a lump-sum building contract additional requirements that the contractor should anticipate and price in their tender.

I have a copy of a recent tender document where the tender document said the design is 80 per cent complete and by the time we get to tender award we get it to 95 per cent complete. For now, could five builders give us an indicative price of what this current set will cost? We will select two builders and we will negotiate with the rest. Now, with the 5 per cent of design that is still on the table, it becomes a guess as to what it is. Is it 5 per cent missing in the number of drawings?

The Hon. JOHN GRAHAM: Mr Chandler, I am hesitant interrupt but I do want to come back to the bill. I have some questions for Ms Webb. I just alert you but if you want to make any—

The CHAIR: Mr Chandler, by all means finish the response. It is a slightly abstruse response but please complete it.

Mr CHANDLER: Thank you. There are some lengthy questions and it is appropriate to give some—

The Hon. JOHN GRAHAM: I am inviting you to finish.

Mr CHANDLER: Thank you very much. What we will be able to do is set up a situation that the industry welcomes. Even last week at a master builders in Newcastle, I had a call to say that the members are very enthusiastic about the fact that they now have a line of sight to getting completed, declared documentation to tender on. What has happened is, in the shadow of documentation that has not been properly prepared, we end up with people who are prepared to slimeball their prices, put in lower estimates of what the unknown bit is, and the people who are smarter and who have more integrity put a higher price on the unknown bit. They miss out on the contract—

The Hon. JOHN GRAHAM: Sorry, Mr Chandler. I need to ask Ms Webb a question, so I will move on. I apologise for interrupting you.

Mr CHANDLER: Okay.

The Hon. JOHN GRAHAM: Ms Webb, one of the views that has been put to the Committee is the Lambert Report recommended a single building Act. Instead, we have a complex set of regulations and laws that overlap, schemes that interact but it is not entirely clear how. Maybe that will be sorted out by regulation, maybe not. I will ask you about one of the bills going through the Parliament at the moment, and that is the Better Regulation Legislation Amendment Bill 2019. I want to understand how it interacts with all the issues we have been talking about today.

The overview of the bill states two things. First, it amends the Building and Development Certifiers Act 2018 and goes on to spell out how. We passed that Act urgently. It is not yet in force but this bill is changing it. It is amending an Act that has not even been put into place yet. Put that aside for the moment. Secondly, it amends the Building Professionals Act 2005 to authorise the Building Professionals Board to do certain things. One of the views that has been put to me is that we were abolishing that Building Professionals Board and that Act itself was being superseded. Now we are amending it. What is the case?

The CHAIR: How long does it have to live?

Mr TANSEY: The Building Professionals Act is in place and is in force and is the current law of New South Wales that regulates the conduct of certifiers. You are right; it will be amended or effectively repealed by the Building and Development Certifiers Act.

The Hon. JOHN GRAHAM: It goes, but we are amending it with this other bill?

Mr TANSEY: Yes, because we can improve it as we move along and amendments are intended to improve the current bill that is in place.

The Hon. JOHN GRAHAM: And the Building Professionals Board, can you confirm that was proposed to be scrapped?

Mr TANSEY: And will be by the Building and Development Certifiers Act.

The Hon. JOHN GRAHAM: So we are amending it as it is scrapped?

The CHAIR: Is that because you expect it to be in place for a significant period of time because you still have not got the regulations sorted out to put in place?

Mr TANSEY: No.

The Hon. JOHN GRAHAM: What is the timing?

Ms WEBB: The proposed commencement date for the new bill is 1 July 2020. The miscellaneous amendment bill you are talking about does amend the current legislation. It was on the advice of Parliamentary Counsel that we needed a quick fix to make sure that the current bill operated properly.

The Hon. JOHN GRAHAM: Can you see why members of the public might be confused with these overlapping bills and regulations?

Ms WEBB: Yes, the whole of those miscellaneous amendments are by their nature very minor amendments just bootstrapping various parts of various pieces of Fair Trading legislation. I do not think most members of the public are even aware of that bill. We have made it quite clear in our consultation on the regulation that will sit under the new bill that these are the new arrangements and they will start on 1 July.

The Hon. JOHN GRAHAM: But you are confirming that the Building Professionals Board is going?

Ms WEBB: That is correct.

The Hon. JOHN GRAHAM: It will be gone by 1 July and you support that Mr Chandler?

Mr CHANDLER: I do.

The CHAIR: The regulations to underpin that October 2018 Act will be of much smaller compass than the regulations required to underpin this Act; that would be fair to say would not it?

Ms WEBB: Those regulations have been out for public consultation during October.

The CHAIR: That is a significantly smaller task, those regulations for that bill, than the regulations that will be required to get the current bill in place?

Mr TANSEY: I am not comparing size, number of clauses or paragraphs, chair.

The CHAIR: The complexity is significantly different?

Mr TANSEY: I do not know that it necessarily is.

The CHAIR: I will suggest it is. You can deny it or refuse to answer it.

Ms WEBB: The other regulation is quite lengthy, so we just do not know.

The CHAIR: If it took 20 months from the passage of the bill to the implementation of that bill because of the delay in getting those regulations sorted what possible hope is there for getting the regulations under this bill delivered in anything like a reasonable time?

Mr TANSEY: I do not accept the premise of the question that they are exactly the same and the production line is the same.

Ms WEBB: And the priorities of the Government are the same.

Mr TANSEY: A number of times there have been questions about the development of the regulation under the certifiers Act and I have heard the inquiry's frustration with that previously and we have provided advice. What I am saying is that the current resourcing, commitment and effort behind developing the regulations under the new bill are targeting having that in place during next year.

The Hon. COURTNEY HOUSSOS: Ms Webb, you said the priorities of the Government are different, do you think this is more of a priority?

Ms WEBB: As Mr Tansey was alluding to, and we acknowledge, the certifiers bill and Act and the regulations thereunder were not done as speedily as they could because we had a large number of policy developments at the time. It was unfortunately not given the priority it should have been. This bill is absolutely the priority.

The Hon. COURTNEY HOUSSOS: Your testimony to us is; we took a little bit too long but forgive us because it was not a priority but this time it is really a priority?

Ms WEBB: All I can say is I know the size of the policy team and the number of bills and pieces of legislation and regulation that they were dealing with this time last year and, unfortunately, I cannot say anything but something had to give and it was unfortunately the certifiers bill took longer than it should have. But we have made every effort and we will absolutely be making every effort to give this one priority over everything else we are doing.

The Hon. COURTNEY HOUSSOS: Did you ask for any more resources? Did you ask for any more people? Did you say this is being delayed? Did you raise this with a Minister?

Ms WEBB: Yes, of course, that is what you do all the time as a senior executive in the Government. You have always got pressing resources.

The Hon. MARK BUTTIGIEG: What is the timeline for these regulations, two, three, four months, six months, 12 months?

Mr TANSEY: No, we will be trying to prioritise them for the middle of next year.

The Hon. JOHN GRAHAM: Which will come into place first? This is the first we have heard that the old regulations will be delivered 20 months after the legislation was passed on 1 July 2020. You are saying the new Act will come into place and the regulations for that will be ready in the middle of the year?

Mr TANSEY: Are we talking about the certifiers or the designers and practitioners bill?

The Hon. JOHN GRAHAM: The certifiers will be in place, we have just been told for the first time, on 1 July 2020.

Mr TANSEY: With respect, I think we have told the estimates committee that a number of times.

The Hon. COURTNEY HOUSSOS: On notice.

The Hon. SCOTT FARLOW: But still telling the committee.

Mr TANSEY: We are now saying that every effort will be made to develop the regulations under the new bill presuming the Parliament passes it so it is in place through next year as well.

The Hon. JOHN GRAHAM: Which will be in place first is my question? Will this new Act have its regulations in place before the old certifiers act?

Mr TANSEY: It is not a race to the finish line.

The CHAIR: It sure is not a race.

The Hon. JOHN GRAHAM: I accept that.

Mr TANSEY: In theory we might be in a better position to start the certifiers regulations sooner because they are almost done. They are drafted and have been subject to consultation. It is a matter of finalising the feedback and then setting a period for reasonable transition. Every effort is being made to give both of them all the focus, get them finalised in consultation with stakeholders and commence them as soon as reasonable.

The Hon. SCOTT FARLOW: Ms Weir, you have come quite a long way today to be here for very few questions so far. We have heard a lot about the Shergold Weir report. Are you supportive that this legislation is introducing your recommendations and bringing them into law?

Ms WEIR: I can tell you that this bill touches on partly or fully implementation of 8 of the recommendations in the *Building Confidence* report. Of these eight, three are satisfied in full by this bill and five in part. So, moving towards a full satisfaction of those recommendations. In terms of the eight recommendations that it addresses they are the ones that were foreshadowed in the discussion paper that was put out earlier and the statements from the Government earlier this year about what they would do. They have certainly kept to that commitment in terms of which of the recommendations they would address and they have moved forward with that.

The CHAIR: This bill will implement three of the 24 recommendations in full?

Ms WEIR: In saying that, chair, for example, recommendation six was about the range of powers available to regulators of the building sector. It was not the case that they only exist in this bill but this bill has added additional powers which were in the list in recommendation six. If I take that one as an example I would consider that once this bill is passed that the powers we suggested that all regulators should have will be in place in New South Wales.

The Hon. SCOTT FARLOW: Ms Weir, will you have a further role in advising on the regulations and the development of the regulations?

Ms WEIR: I believe so, yes.

The Hon. SCOTT FARLOW: Do you think that will go further in terms of satisfying some of the recommendations within your report?

Ms WEIR: Not necessarily. As you know, there are a number of elements of this bill that require regulation in order to work and give it more meat on the bones, if you like. I think it will not address new requirements. For example, there is an anticipation here of electronic documents in repositories that are available to the regulator and to owners. That is recommendations 12 and 20. As has been pointed out, the detail of that is not yet known. Certainly the regulations will be more developed in terms of these two recommendations and the extent to which or the scope of documents that might be lodged, which would inform these recommendations. I am not anticipating that there will be additional recommendations picked up in the regulations but certainly it will be a natural development of the detail through the regulations.

The CHAIR: Some time next year, depending on when the regulations are produced?

Ms WEIR: Yes.

The CHAIR: The Government will have fully implemented three of the 24 recommendations?

Ms WEIR: Yes.

The CHAIR: Given the deadline for the implementation of all 24 recommendations is February 2021, there is no chance at all that that deadline will be met, is there Ms Weir?

Ms WEIR: I cannot anticipate the Government.

The CHAIR: Unless there is some heroic effort in the last six months of next year that is not going to be met, is it?

Mr CHANDLER: I might make a comment there.

The CHAIR: By all means.

Mr CHANDLER: The Government has indicated its response to the Shergold Weir report in the Building Strong Foundations discussion paper. This is what this legislation and the regulations will deliver on. That is the New South Wales Government's response and that is what is being implemented. To the extent that we can add to that work and achieve as much as we possibly can in that context, Ms Weir is assisting with me in advising the drafting team on areas where they can be prompted or assisted with the development of that language.

But to be clear, the New South Wales Government has set out its position in response to the Shergold Weir Report in the Building Stronger Foundations document. That is what is being implemented.

The CHAIR: Mr Chandler, do you disagree with Ms Weir's evidence that this bill, once implemented in the regulations, will be implementing a grand total of 12.5 per cent of the Shergold Weir recommendations, which is three out of 24 of the recommendations.

The Hon. SCOTT FARLOW: That was not Ms Weir's evidence.

Mr CHANDLER: I am not going to—

The CHAIR: Do you disagree with Ms Weir's evidence?

The Hon. SCOTT FARLOW: That was not Ms Weir's evidence.

The CHAIR: I am happy for Ms Weir to clarify that that is not her evidence if that is her position.

Ms WEIR: There are a number of recommendations that are not addressed in this bill which were either in place at the time our report was issued or have been addressed through, for example, the Building and Development Certifiers Bill 2018. There are some that have progressed through that. It is not the case that there are only three. There are a number that are addressed in part, either because they were already met or because they were met through the Building and Development Certifiers Bill. I would not say that at the end of this bill only 12 per cent of our recommendations would have been picked up.

The CHAIR: I said 12.5 per cent.

Mr TANSEY: I will add that there were some recommendations in the report—keeping in mind that it was a national report that applied across the board—that were already in place at the time the report was made and continue today. At the time the report was made New South Wales already had a code of conduct for building surveyors. It continues to have that, and it will be enhanced under that legislation. There was already a commitment for building manuals in legislation. That is already there. A number of the recommendations were already in place specifically in New South Wales. The other thing I would highlight is that in the last few weeks the national implementation group that the Building Ministers Forum (BMF) set up under the auspices of the Australian Building Codes Board [ABCB] has also released the national framework for implementation, recognising that a lot of these reforms can be best progressed nationally and consistently.

All of the jurisdictions have committed to efforts through that national group to also develop some of those reforms consistently and nationally. There is a body of work articulated on the ABCB website that goes to the dictionary of terminology and the recommendation around information about adopting the International Fire Engineering Guidelines. It is certainly not the case that only through this bill will we be implementing the reforms. There are existing reforms in place already. There is also a concerted national effort to pick up some of the ground.

The Hon. COURTNEY HOUSSOS: But fundamentally the Shergold Weir report—and I am quoting Mr Lambert here—recommended, "that each jurisdiction required genuine, independent third-party review for specified components of design and certain types of buildings." This bill only provides for self-certification, which Mr Lambert categorised as a "modest improvement." It might be three recommendations, but there is a fundamental premise of this bill that is not implementing Shergold Weir.

Ms WEIR: I think you are referring to recommendation 17. Am I right?

The Hon. COURTNEY HOUSSOS: I will take your word over mine.

Ms WEIR: It is recommendation 17.

The CHAIR: You would probably know, Ms Weir.

Mr CHANDLER: As we are constantly reminded.

Ms WEIR: Recommendation 17 is not addressed in this bill.

The Hon. COURTNEY HOUSSOS: I am going to move to a slightly different question. Mr Chandler, do you have responsibility for the Gas and Electricity (Consumer Safety) Act?

Mr CHANDLER: Yes.

The Hon. COURTNEY HOUSSOS: Are you responsible for collating the Certificates of Compliance for electrical works [CCEWs].

Mr CHANDLER: I have a role as an inspector in that space. All those functions report up through the organisation.

Ms WEBB: We have a specific team that does that.

The Hon. COURTNEY HOUSSOS: We have very limited time so I am going to do this quickly. A fundamental part of the proposed bill is the collection and collation of certificates to provide consumers with certainty that work has been undertaken by licenced professionals.

Mr CHANDLER: Correct.

The Hon. COURTNEY HOUSSOS: That is a fundamental premise of the bill.

Mr CHANDLER: At the end of each project a builder will declare the fact that the work has been performed in accordance with the declared designs and the Building Code of Australia.

The Hon. COURTNEY HOUSSOS: There are more than 40,000 licenced electricians—this is the evidence that we have received in this inquiry—but in the last 12 months you have received only 8,000 certificates registering those CCEWs.

Ms WEBB: At the estimates hearing last Monday we took the question about the apparent dichotomy between the 40,000 and 8,000 on notice. We undertook to the Committee that we would come back in our responses to questions on notice to explain what the 40,000 figure was and to double check the CCEW returns. We are in the process of doing that and we will be returning that answer.

The Hon. COURTNEY HOUSSOS: My question is directed to Mr Chandler as the person who is going to be responsible for collecting these certificates and ensuring that they are being lodged. In his second reading speech the Minister said, "The registration procedure for this bill reflects other longstanding licencing and registration schemes which Fair Trading is well equipped with administering." Mr Chandler, I put it to you that the current system is not working. You are trying to establish a new system in an organisation that is not doing its job already. You are the person that is responsible.

Ms WEBB: I do not think we can honestly accept the premise of the 40,000 and 8,000 as being the right numbers. We really do want to understand what that number was.

The CHAIR: Sorry, we are about to run out of time. We accept that you will give the detail to the other Committee on notice.

The Hon. JOHN GRAHAM: I am just going to touch on one issue and then hand over to the Chair. The Committee is about to turn to the issue of flammable cladding in its next hearing. Mr Chandler, the first time you turned up here—and, to be fair to you, you were only days into the job—you indicated that you were going to make a recommendation to the Government within the fortnight. I asked you whether that would involve money on the table and you indicated that there would be variations as to what you might put forward but it was certainly part of your thinking. I was left in no doubt. Where is this up to? Why do we not have a Victorian-style scheme with money on the table and some coordination for flammable cladding?

Mr CHANDLER: First of all, I am not going to try to draw a comparison with what is happening in Victoria because New South Wales is New South Wales. I have put a recommendation in and that is currently being worked through. It is now for the Government to decide which way it wants to go. When it is ready to tell you I am sure it will.

The Hon. JOHN GRAHAM: You accept how urgent this is for the people with flammable cladding on their dwellings or people living, working or visiting in these buildings on the register?

Mr CHANDLER: It would be really good to get the process moving forward.

The CHAIR: When did you put your proposal to Government, Mr Chandler?

Mr CHANDLER: I have nothing to add to what I previously answered. I submitted my proposal in the time frames that you previously sought.

The CHAIR: That gives us some indication.

The Hon. SCOTT FARLOW: I want to clarify an issue around flammable cladding, because we have heard a bit of commentary today about the flammable cladding issue. Mr Tansey, you are probably best placed to answer this question. With respect to the planning register and the fair trading register, what process has there

been to whittle down the difference and disparity between the numbers on the planning register and the Fair Trading register?

Mr TANSEY: The cladding taskforce, which is an intergovernmental group, has the database of affected buildings. That database was developed and has been assessed over time from a whole range of sources. Just one of those sources was the cladding register. We have been working with particular focus since the Grenfell Tower tragedy to identify all the affected buildings. As a particular effort the Environmental Planning and Assessment Regulation was amended to require people to register buildings. The short story there is that approximately 2,000 buildings were registered on that register. Of all of those 2,000 premises a very significant number were already known to the taskforce. They were duplicate registrations.

The great majority of registrations on that register, while made in good faith, were erroneous. Approximately 50 per cent were for buildings that had normal cladding. People were trying to be diligent in registering to avoid doubt. Of those 2,000 registrations, we got down to approximately 180 buildings that truly had cladding that was of any concern. All those figures have been included in the task force work. When we report over time, the gross number of affected buildings, which as the papers have reported today is currently at 444, that includes those from the cladding register that really did have cladding and for which there was any assessment that suggested that buildings were potentially higher-risk and needed further assessment.

The Hon. SCOTT FARLOW: Those 444, do they go down to buildings that are above three storeys, is that correct?

Mr TANSEY: Yes, they include buildings of all and any height. Part of the assessment obviously takes account of how high the building is and, given the nature of the risk we are concerned with with cladding—vertical spread of fire—the higher the building the higher the concern or risk of vertical cladding. But the 444 include buildings from one storey up.

The CHAIR: I think you indicated in budget estimates that there were no residential buildings from three storeys or below in previous evidence, is that right?

Ms WEBB: I think it was Mr Dunphy and I in Mr Tansey's absence, on his leave. We were going to clarify that in our responses to questions on notice. We had thought that that might be the case, but in fact Mr Tansey has confirmed to us that there is buildings from one storey up.

The Hon. SAM FARRAWAY: I wanted just to go back to local government and their connection as a major stakeholder as part of this process. We had Councillor Linda Scott, president of Local Government NSW here today. She had a fair bit to say and took a matter on notice. She has come back to us. You were cut off around a meeting with Local Government NSW, cut off from your comments earlier that you met with them. The president of that association did not mention that and in some of her feedback she says there has been no specific dialogue, only that she gets basically understanding from statements from the New South Wales Fair Trading work site that further work to develop and consult on regulation in 2020. I just wanted to know what was the discussions and meeting with local government last week? And was Linda Scott there? Part of that and updated on some of those discussions?

Mr CHANDLER: I met with Local Government NSW. I actually do not have a record of the attendees of that meeting.

The Hon. SAM FARRAWAY: I suppose the general gist of what was your update because they are a huge stakeholder. I found it interesting that Ms Scott had nothing to say about it.

Mr CHANDLER: The message that came through at that meeting was simply, and I met on 28 October, that the main issue was that there was a move to support the return of certifiers to council. That was the main issue. That was a conclusion that was the result of a vote of members as to what they thought was appropriate. I spent some time explaining to the folk I met with the issues around the practicalities and the unlikely nature of being able to return to that situation or the desirability even of returning to that nature. The meeting concluded on a very satisfactory understanding of that response. I would need to go back to my emails but I have since received a note saying that there was a very positive reception to the comments I made and would I be prepared to meet with a wider group to explain the answers that I outlined at that meeting which were very satisfactorily received. I am just a bit surprised. I met at 11 a.m. with the Local Government NSW folk. I am a bit surprised that there is a disconnect because I have notes of that meeting I just do not have them here.

The Hon. SAM FARRAWAY: No, that is fine.

Mr CHANDLER: I have got no doubt in my mind as to the fact that that was a very positive meeting. My takeaway message from that meeting was that there was a desire amongst local governments to return to council certification. I do not really want to put words in the mouths of the folk that were there, but the reason why I was asked to speak to a wider group was to perhaps explain that to a broader group with a view to perhaps getting some reconsideration of a prior position.

The CHAIR: We have run out of time. There are a variety of additional matters that had been raised in the submissions with us about the drafting of the bill and the issues with the bill that unfortunately we have not had the chance to fully explore. Ms Houssos has one last question so I will throw to her before we finish.

The Hon. COURTNEY HOUSSOS: I just want to come back to the issue we were dealing with the beginning around the demolition of Mascot Towers. I want to ask you: Did you say in your opinion one of the Mascot Towers will have to be demolished—

Mr CHANDLER: No.

The Hon. COURTNEY HOUSSOS: And that you had no confidence in the rectification methodology?

Mr CHANDLER: No.

The CHAIR: Mr Chandler, Ms Weir, Ms Webb and Mr Tansey, thank you for your assistance today. This may feel a little testy on occasions but we do wish you well in dealing with the enormous challenges in front of you given the state of the construction industry in New South Wales. Thank you again for your assistance.

Mr CHANDLER: Thank you for that. I also want to make the point that while we have had some testy moments, the general view is that the industry needs to have the light shone on it that this Committee is shining on it. That is a very welcome experience even though we take a few bullets from time to time. It is the collective light you are shining on this that is keeping it at the forefront of the industry and will make my job a lot easier because when I explain to people that I have to front up here and account to you, it actually helps them get the message in their head.

The CHAIR: Thank you, Mr Chandler. We will have a collective commitment to peace and nonviolence over the next six to 12 months. That concludes today's hearing.

(The witnesses withdrew.)

The Committee adjourned at 17:06.