

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

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

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Monday 24 February 2020

The Committee met at 13:30

PRESENT

Mr David Shoebridge (Chair)

The Hon. John Graham

The Hon. Courtney Houssos

The Hon. Trevor Khan

The Hon. Matthew Mason-Cox

The Hon. Natalie Ward

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The CHAIR: Welcome to the final hearing of the Public Accountability Committee inquiry into the regulation of building standards, building quality and building disputes. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would like to pay my respects and those of the Committee to the Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginal peoples present. This afternoon we will hear from building and construction industry professionals, Mr Peter Goudie and the representatives from Dincel Construction System. We will finish by taking evidence from the New South Wales Government officials, including the Commissioner for NSW Fair Trading and the NSW Building Commissioner.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. The 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 that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing.

I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence as such comments may not be protected by parliamentary privilege if another person decided to take action for defamation. The *Guidelines for the Broadcast of Proceedings* are available from the secretariat. All witnesses have a right to procedural fairness in this Committee according to the procedural fairness resolution adopted by the House in 2018. There may be certain questions that a witness could only answer if they had more time or with certain documents to hand. In that case witnesses are entitled to take the question on notice and in which case we would seek an answer within 14 days.

I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry 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, may I remind both Committee members and witnesses to speak into the microphone. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, could everyone, including Committee members, turn off their mobile phones or turn them to silent for the duration of the hearing.

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PETER GOUDIE, Consulting Engineer, affirmed and examined

The CHAIR: I welcome our first witness, Mr Peter Goudie, a consultant engineer. Would you like to provide a brief opening statement?

Mr GOUDIE: Yes, I will just run through my background and then raise a couple of items. As I said, I am a mechanical engineer, I am a chartered professional engineer, I am a registered professional engineer, I am on the National Engineering Register and the APEC Engineer Register, which is Asia Pacific Economic Co-operation Engineering. I am a Fellow of the Institution of Engineers and I am vice president of the New South Wales division of Professionals Australia, but I am not representing them today. I am representing myself. I operate a business as a consultant, primarily in consumer claims, but not actually around building. My background is primarily in writing standards, compliance and enforcement.

However, in my building background I managed a National Association of Testing Authorities [NATA] testing laboratory looking at cement and mortar samples. I have managed a team of tradespersons undertaking bridge and tunnel maintenance for the Roads and Traffic Authority. I worked on the Sydney Harbour Bridge with a team of tradespersons and I have also worked with the Sydney Harbour Foreshore Authority, which is really just a large real estate business, because it owns all of the property around Darling Harbour and through to White Bay. I was helping starting a compliance and enforcement section and was involved with occupation and construction certificates and their conditions. I am also a Judge on the Engineering Excellence Awards, assessing projects such as Barangaroo, Wynyard Walk and Green Square Library.

My interest in providing information today was that the early media discussion was all around about certifiers not doing their job, but because I am involved with compliance and enforcement I find more that the trades provide poor work, they are not particularly interested in what they do and in compliance. It is also around poor quality materials that are brought in, non-compliant items. Some of that I blame on the Australia-Chinese free trade agreement and other free trade agreements. I have brought along some examples. This is something I could not get through security the other day, so I decided I would take lots of photos. I was asked to bring 10 copies, which I already have. Some of these are straight out of my submission, but I will pass the 10 copies around. I would like to spend about 10 minutes just running through very quickly what they all mean. I numbered them all.

The CHAIR: Did you get anything through security today?

Mr GOUDIE: Yes, I got this lot. But anything that was pointy I could not get through security.

The CHAIR: It was probably to protect the Committee as much as anything else.

Mr GOUDIE: Yes, they might have thought I was going to do some building work here or something.

The CHAIR: We have those, so take us through.

Mr GOUDIE: The first two are about the poor quality from the tradespeople. They are doing the work well before the certifiers come along. These pictures were in my submission, but this is just an example around where I live. Now, here you have the roof rafters being—

The Hon. TREVOR KHAN: Could I just ask that you identify the photos, for instance, by number and describe what is on them? Just so it is on the transcript.

The CHAIR: I think that is what he is doing.

The Hon. TREVOR KHAN: That is not what he is doing.

Mr GOUDIE: Sorry, sure. Number one is just an example of something close to where I live. This went up in various stages, but they put a timber frame in and then later on the bricklayers came through and they have bricked all the timber through the walls. There is no flashing in there. Above those line of rafters there should be either lead flashing or zinc flashing or something as a water barrier. So the middle photo in there shows what they did afterwards. They have just put this line of steel around to fill in the gap. Now, a certifier would come along and see that afterwards. They would not be seeing the top picture. Finally, the bottom photo is the one I took. The wood that everyone uses nowadays, it is all these plantation products. It just acts like a blotter and it absorbs all the water. That is what is going to happen on this building. When it rains the water is going to go through the bricks and straight onto the wood. But the tradespeople, every one of them should have come along and said, "Look, this is not right." But nobody did. It has just continued.

The CHAIR: Should that have been picked up by a critical stage inspection?

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Mr GOUDIE: It should have, yes, but I do not know who is doing that. Now, the second one is another one that is just down the road from where I live as well. Here we have the steel reinforcing being laid while they are pumping the concrete. That is another stage where they should check the steelwork before the concrete.

The CHAIR: Before the pour.

Mr GOUDIE: That's right. They are doing the two at the same time. Then, if you look at the bottom picture—I have whited these out just to not show who it is—the person holding the big elephant trunk that is pushing out the concrete there, he ends up jumping on top of the steel to push it down into the concrete. I mean, it is just atrocious work. Now, photo number three, the item on the left is what I could not get through security.

The CHAIR: I can see why.

Mr GOUDIE: I put a can of beer there just to show you the size of it. Now, if you go over the page—this is actually something that happened to me at photograph four—that item that I could not get through is meant to cut copper water pipe. It just has a roller in it, you roll it around and then the compression goes through. The pointy end is what should be opening up the copper pipe. It also extrudes the copper down and in and reduces the bore. Now, you can see the difference on the top one and the bottom one. I was with this one, this is somebody I actually hired. I am down on my hands and knees, we are under the house and I said, "Look, here's this." He is holding this in his hand and I said, "Aren't you going to ream out the pipe?" He was an older gentleman, he was a bit younger than me, but he said, "I've never done that." I said, "No, you've got to do that."

If you do a calculation on that, that top pipe that is un-reamed is about 19.5 per cent less in cross-sectional area, which means the flow rate is reduced. Of course, what is worse, who was next to him? His apprentice. As I said in my submission, apprentices do not learn bad workmanship when they are studying; they get that from the people in the trades. Number five and then I am going to get onto some of the poor quality items that are brought in. This photograph here shows a 'link', it is an electrical connector. All of the holes that you put in there, you would put wires through it and then you would clamp them in. I know this one is a Chinese one because I asked the person where he bought them from, or where he imported them from. Now, if you have a look, it is a nice lump of brass and what looks like brass screws that are screwed into it. The photo that is on the bottom is of a magnet. So the screws are actually steel and they are being plated to look like brass. Now, there are standards about corrosion resistance for many building items, but also for electrical.

If this thing is put, say, down at Bondi Beach, those steel screws are just going to corrode. Nobody seems to be checking this. If we go over the page, again, to number 6, you will see these two screws. These are the screws that go into that link—not the exact screws, but the type of screws that go into that link. The top one is made by an Australian manufacturer and the bottom one is an imported one. You will notice on the top screw that it has got a radius on it, like a ball, and the bottom one is flat. If you go and have a look at the cable I have got there, when you screw in the flat-ended screw it actually cuts into the wire, whereas the round end does not. That round end used to be in the Australian standards. I do not know what has happened because I did my studies back in the seventies looking at the standards.

But the idea of having a round screw is that when it compresses the wires, the actual cross-sectional area remains the same. It might change the shape but the actual cross-sectional area remains the same. When you have got a flathead screw, it cuts into it so you reduce the cross-sectional area and you end up with a hotspot in your cables. Of course, there is a business of people going around with thermal guns just pointing them at things and seeing the temperature. But if you have a large building, a lot of these things are hidden. If we are talking about the Opal Towers and the Mascot Towers, you have got that. Here is another: Item number 7. That is a fuse block. I want to explain some of the issues I had of trying to get things done properly. If you look at the bottom, on the bottom left, you see there is a screw sticking out with a cable in it.

The CHAIR: Yes, screwed at 45 degrees.

Mr GOUDIE: Yes, that is right. When you fit a cover on that, you cannot fit the top half of the fuse in. I went to the company. I had a look and I said, "This is a design fault or problem, so this is done on the drawing board." Somebody on the drawing board has just put the wrong length in. But I could not get anything out of the company. They just denied it—the old story of "We've been in business for 30 years and nobody ever brings this up and we make perfect equipment." I could not get anywhere with them. I had a look at the annual report and looked up the chairman of the board's name, and he managed to have his number in the local telephone book. I rang him up at home and I asked him. I said, "I can't get anywhere with your company." He was furious at me ringing him up at home. I explained to him. I said, "Just hold one piece in your left hand and the other piece in your right hand. You can't fit them together when you put the cables in." In the end they did fix that up, but an ordinary tradesperson or electrician is not going to go to the trouble of doing that.

The CHAIR: So that is how it came out of the factory?

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Mr GOUDIE: No, not with the wire in it. When you put the cable in, the screw sticks out. As supplied, they screw them in with no cable in. So the draughtsperson has forgotten that you put wiring in the—

The CHAIR: So it was flush?

Mr GOUDIE: And that sticks the screw out, yes. So what does a tradesman do? They get a hacksaw, they cut the screw off and you go back to that other drawing I had where it cuts the cable. Here is item number 8. These items here are wall boxes where you brick them into your wall and you put your power points or your light switches in. The top one is an Australian one and the bottom one is an imported one. You will see on the top photo that there is a cover, or two bits of metal on either side. The screws are meant to slide up and down in a little track, and that is so if the bricklayer is just a bit off-angle you can slide them up and down and get them so they are level.

The CHAIR: You put the base in and then you can adjust the cover?

Mr GOUDIE: Yes, that is right. On the imported one—I have got a red ring around it—it is a slightly different shape. But when you go down to the bottom picture and the Australian one is on the left and the one on the right—you can see that sliding part is open. So what happens when the bricklayer bricks it in? He fills it up with mortar and you cannot slide the thing around. You have actually got to cut it out. I go back to these people and they keep saying, "We've been in the business for 30 years and no-one ever rings us up," and the rest. Item number 9: Here is just a big lump of steel. This is some of the steel that I used with a beer can in the middle. It is 200 millimetres by 100 millimetres and it is a bit rusty. I did paint it but I do not think I brought it along today. If you get a piece of imported steel and you cut it in half—because they come in between six metres and 12 metres—you cannot weld them together. The ends do not line up because they are so far out in their dimensional or twist tolerance. On an Australian piece of steel, that should have two millimetres out of tolerance over 12 metres, so you can cut it down. But on the imported stuff, you cannot do it. When I have used it I ended up just using it for architectural, meaning it would only support its own weight. I would not even use it for anything structural.

Number 10: These are some bolts. These are what are called purlin bolts. You might have seen some of those buildings where they have these C form sections or Z forms, and then they cover them all up with corrugated iron or something similar. These actually bolt the purlins or the lengths of steel together. In the bottom photo, you will see that the nuts and the bolt have a flange stamped into it and the top one just is a bolt with two washers. This particular company actually sells both, and they are still both available. But if you use the top bolt with the washers, which are cheaper, which I got caught with—but if you get the manufacturer's specification and you tighten it up with a torque wrench, the washers pull into the holes and they cannot meet the clamping force that the manufacturer claims. I ended up ringing these people up and I went out to their laboratory and I demonstrated to them that this style, which is used everywhere, does not meet the standards or their own standard. All that resulted was they gave me the bottom ones, which are more expensive—they gave me 500 for free. But they still keep selling them. So even when you demonstrate this in their faces, they still do nothing about it.

The CHAIR: The construction code does not specify one or the other? It just specifies that performance?

Mr GOUDIE: Yes. This was actually the requirements of the purlin manufacturers, saying that you have to tighten the bolts up to get enough friction to hold the two pieces together. But once you start pulling them in, the clamping force changes. Over the page, number 11: This is another thing I wanted to bring along. Here is a piece of cable. This is a good complying piece of cable, the sort of thing you see everywhere. There was an issue with Infinity cables and there was—

The CHAIR: I remember there was a product recall of endless million linear metres.

Mr GOUDIE: That is right. A certifier or any ordinary person—because I think it was Titanium Dioxide that was left out of the components used in the plastic that they used for the insulation and so over time with heat they crack, so you could crack and break off the insulation inside the outer cable and it could cause a fire. I photocopied an Australia-wide recall notice from the Australian Government, the ACCC and others. If you look at item 12, Shine Lawyers got involved and they were saying it could be up to \$80 million. But the people who got caught were the persons who sold it, so Masters, Bunnings and all the other stores had to pay for somebody else's non-compliance. With these, if you have these well-meaning entrepreneurs who go on a trip to China or somewhere else, they see a product there and if it is half price then they bring it in. That is what happened with Infinity cables.

I was a bit sneaky on it, because when it happened—it came in about 10 o'clock in the morning—I sent that company an email with a few questions in it and, by two or three in the afternoon, the website had gone and everything disappeared. It is not really Masters or anyone else's fault, but they got caught. But my answers to some of these is that Fair Trading or Federal legislation should state, where somebody claims compliance with the standard, the standard test results should be available freely to anyone who asks for it. Then a few more people

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would come along and say, "Look, this doesn't meet the standard" or ask a few hard questions. If they claim that it meets a standard or it has to meet a standard, it should be available for an ordinary person to be able to see.

The CHAIR: What is the cost of meeting most Australia Standards?

Mr GOUDIE: One would hope they meet international standards. They should already have that test information available anyway. In the fair trade agreement with China, it says that you should try to meet the standards. But it does not say that they should have to and it is a bit wishy-washy. When you start reading the fair trade agreement, it indicates that the Federal Government should be having a lot of discussions with all of the countries we have agreements with to make sure that we have the standards. Some person in Canberra should be fully involved with all of these other countries trying to discuss this, but I wonder if there really is.

For the last one, item 13, we have a few plumbing items. I think some of our own standards have degraded. If you have a look at the piece of bent pipe that I heated up and put together, this has what is called hard solder, silver solder. That particular solder has a melting point of about 450 degrees C. Now we are using, down the bottom where you see the other item, we seem to be relying on rubber O rings. You put the copper pipe in, you clamp that—and there are other products where you push them in with your hands—and this has a working temperature of 90 degrees. We used to require these higher temperature solders for gas connections and that, because if there is a fire they do not melt. But now we are relying on rubber O rings and it is permissible to use them on gas as well.

The CHAIR: On gas?

Mr GOUDIE: Yes. I was looking at some of the advertising literature and they have another one that is yellow.

The CHAIR: Are these screwed together as modular things?

Mr GOUDIE: They can be pushed in and that is it with a one-way barb, or they are crimped in, so they crimp them. The item on the left has what is called a nylon olive, where you can clamp the two halves together and squash them up. The rules used to say that that is only to be used where it is in a position where you can inspect it—in other words, you have to be outside—whereas with these other items, as far as I know, they are used anywhere. If you have an Opal Tower with thousands of these relying on rubber and they come with a 20-year guarantee, it is my personal opinion that it is not good enough and it is not long enough. This is where I want to get onto insurance, which is the third item in my submission. The panacea that I see that the Government is proposing is to have insurance for everybody and that is going to fix up all the problems. Well, it is not, particularly in the short term—six or seven years. The other problem you have, if you have an older person who is going to start in later years, the most qualified, most experienced person, you have to consider the run-off insurance. I do not see that in any of the discussion that has come out.

If you are keen to start at 55 and retire at 65, you have to make 17 years' insurance to have this run-off. What happens with insurance, you have one claim and insurers do not like to re-insure you. You may have people who cannot get insurance as well. In the newspapers, the certifiers are talking about \$200,000 premiums. If you then have to pick up \$1.4 million for those seven years and there might be other increases along the way, the best people are going to walk away. They are not going to get into the business. My suggestion is that there should be a government-controlled insurance system, where they levy fees and do something so that money comes in. That is the only way that a home owner is really going to have any security and that the thing is going to work. I think it should be for about 20 years, because all of these products—particularly with the cable, you only have to wait for a couple of hot days because you do not know when that problem is going to happen.

The CHAIR: I am going to throw it open to questions. If it is any help, you have made me more anxious about the building industry in New South Wales with your presentation.

The Hon. JOHN GRAHAM: I refer to your submission on the interaction between the building code and the Australian standards. One bit of evidence we have had is that some of those standards are not really enforceable and the building code; they are just a guide. The one we were told about in particular was the tiling standard. Can you give us any background on that? What is the extent of the Australian standards that are enforceable or are not enforceable?

Mr GOUDIE: To be enforceable they have to be caught up in regulation anyway, that is the first thing. In my submission—I digress a little—nobody can sign off that construction meets the BCA because the BCA is a cascading level of standards.

The Hon. JOHN GRAHAM: I am asking about that in your submission.

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Mr GOUDIE: In the bill, I think someone actually paid attention to what I had written, because, from what I saw, it says something about "to the best of their ability". That is a bit different. My background is writing enforcement standards, sometimes starting with the Australian standard, but not in building.

The Hon. JOHN GRAHAM: You are saying that these are cascading standards. The wider view that has been put to us is that some of the standards do not cascade.

The CHAIR: The tiling code is not picked up by the—

The Hon. JOHN GRAHAM: The tiling one, for example, works as a guide. It is used for a guide, but it is not really enforceable. Do you have any background you would like to give us?

Mr GOUDIE: I do not have a background in tiling, but if it is not in a regulation then it is not enforceable.

The Hon. JOHN GRAHAM: Do you have a sense of how many of those standards are or are not?

Mr GOUDIE: No, I do not. There could be thousands, honestly.

The CHAIR: What about, for example, the copper piping that you referred to in terms of gas fitting or hot water. Is that picked up in the National Construction Code, or does it sit separately as an Australian standard?

Mr GOUDIE: I do not know. The construction code is not my expertise.

The CHAIR: A number of witnesses have said to us that high-level certification is one thing, but you actually need to hold people doing construction work to account. It seems to me the flavour of what you are saying to us, particularly as you took us through those photos, is that people on the ground doing the construction work are relatively unaccountable.

Mr GOUDIE: That is right. I think in my submission I said that there should be a register for anybody who turns up on site and their details should be taken. They are the ones who were doing the work and they should be responsible, unless they are overseen by someone all the time, someone who is there.

The CHAIR: Does that happen on good sites? Are there good parts of the industry that basically keep a register and check who is coming on and off?

Mr GOUDIE: Not the register that I talk—they probably would have a register at companies because they have their skill hire, "send us over 10 people", or something, and you rely on the person at that skill hire company to provide you with appropriate persons. But look, my experience is that there are a lot of non-English speaking people around the place and I wonder how they can even meet the OH&S standards.

The CHAIR: I ask about insurance. There is the Design and Building Practitioners Bill which requires designers and builders to have indemnity insurance. How does that work with the tail insurance? Do you understand? Are you familiar with the provisions?

Mr GOUDIE: No, I am not.

The CHAIR: Are you saying that, regardless of whether or not you have insurance at the time you do work, it is also important to have a policy that covers claims afterwards?

Mr GOUDIE: Yes. That is what my idea of a government scheme is.

The CHAIR: Would it matter if it were a claims made policy, some policies cover claims at the time claims are made, other policies cover liability for work you did in a particular calendar year. Does that make a difference?

The Hon. TREVOR KHAN: Does that not fix the problem?

The CHAIR: If it is the latter.

The Hon. TREVOR KHAN: If a policy covers you for when you did the work, then you do not need to have, whether you call it a tail or run off insurance.

Mr GOUDIE: But if it is ending in 10 years' time, your first example does not work because the fault was made 10 years ago, because the insurance has finished, you have finished paying it, have you not? Unless you are saying that the insurance is always—

The CHAIR: If you insure for the work you did in calendar year 2018, then the claim is made in 2028 in respect of the work you did in 2018, the policy would still cover. Some insurance schemes—

The Hon. TREVOR KHAN: As long as the insurer is still in existence, essentially.

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The CHAIR: We had a discussion about HIH.

Mr GOUDIE: I do not think the insurers would be very happy about that.

The CHAIR: That would be one way of structuring it, would it not? If you are going to have a compulsory indemnity insurance, it would cover the work you did in a year, not on a claims made basis.

Mr GOUDIE: If you did that they probably would not insure anyone. They would go and look for some other business.

The CHAIR: I am not a proponent of the bill. I am not suggesting there is an insurance market out there to meet any of this. But that would be the kind of policy you would need if you are going to make sense of it, correct?

Mr GOUDIE: Yes. But I do not think anyone would do that.

The CHAIR: Whether there is a market is a totally different proposition.

The Hon. TREVOR KHAN: Although a fairly important one.

The CHAIR: You are pushing against an open door. Thank you for your evidence. As disturbing as it is, it is important that we get a sense of the scope of the problems in the industry and I think you have really assisted us with that.

Mr GOUDIE: As I said, the problem starts earlier. Right in the beginning is where the problem starts.

(The witness withdrew.)

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BURAK DINCEL, Chairman, Dincel Construction System, affirmed and examined

BERKAY DINCEL, Director, Dincel Construction System, affirmed and examined

MARIA BARRETO-TILMAN, Group Marketing Manager, Dincel Construction System, affirmed and examined

The CHAIR: Thank you for the submission that you provided to us. It was an extremely thorough and helpful submission. Now is the opportunity if you would like to make a brief opening statement. Before we do that, Mr Burak Dincel and Mr Berkay Dincel, do you mind if we refer to you as Burak and Berkay, because it is otherwise hard to distinguish the two Mr Dincels?

Mr BURAK DINCEL: Yes.

Mr BERKAY DINCEL: Yes.

The CHAIR: A brief opening statement.

Mr BURAK DINCEL: Mr Chairman, and members of this Committee, thank you for giving us the opportunity to address you today. I am a structural and civil engineer and a licensed builder, with 42 years of experience. I am also an inventor and the owner of a permanent formwork system for the construction industry. The manufacturing plant is located here in Sydney. I have two colleagues here with me. Between the three of us we hold a combined 70 years of experience in engineering, construction practices, building code regulations and standards testings. I have previously experienced dealing with non-compliance matters in the building industry, specifically all acoustic issues going back to 2001. I have also attempted to raise my concern as a practicing engineer about non-compliance systems since 2000. One of my letters was published in August 2014 at the non-compliance building forum in Brisbane organised by the Australian Industry Group where the Queensland building commissioner was in attendance.

I made many attempts in writing to the Australian Building Code Board, Fair Trading and the Australian Competition and Consumer Commission [ACCC] with no success. At the time Mr John Tansey, who was the assistant building commissioner for New South Wales, communicated to me during our telephone conversation that Australia did not have a building product law. Consumer product laws do not cover building products, hence Fair Trading and the ACCC were powerless. The Australian Building Code Board advised me in writing that they were authorised to write the building code but they had no power to police it. I have also read some of the transcriptions from this hearing and found many refer to cladding issues, particularly around the topic of combustibility, in other words flame spread. Except for the fire brigade we are however not seeing parties raising concerns around dangerous debris in the event of a fire. This topic is especially getting overlooked for composite products which are claiming compliance to the deemed to satisfy provisions of the National Construction Code.

In Australia the only prescriptive test on this topic of compliance is AS1530.1. It is called a deemed to satisfy test provision, which is a small-scale test intended only for homogenous material introduced in Europe about the middle of the last century. At that time the construction industry did not have a composite system. Composite materials cannot use this test replicating how the composite product gets used in real life. This is not mandated in the National Construction Code, which begs the question why there is no debris requirements for deemed to satisfy product statements in the National Construction Code clause C1.9 (e).

We have also viewed the proposed amendments to the New Zealand Building Code on the topic of external walls and claddings. We see that their code is also proposing the allowance of the use of the BR 135 criteria to the BS 8414 test, which England uses at the moment. We see that they are proposing to provide multiple options to comply with the prescriptive requirements of their code, which would, no doubt, give a confidence to the insurance industry. I think this bill could be one of the solutions we can bring into the system following the New Zealand example and what they are proposing to do. We have put in two submissions for this inquiry's consideration around the misalignment between the National Construction Code regulations and the use of products that do not comply with said regulations. We are here to answer any questions you may have regarding the issues raised in our submissions. Thank you.

The CHAIR: Thank you very much for that opening and the submission, which, as I said, was extremely helpful. Before I throw it to the balance of the Committee, can I ask you about the changes to the New Zealand construction code dealing with flammable cladding? Perhaps you could unpack that a little bit for the Committee. I know that I am not familiar with how clause C1.9 (e) or the like would be amended. What is the effect of the New Zealand changes and how would they benefit New South Wales?

Mr BURAK DINCEL: I will hand over to Berkay for that question.

CORRECTED

Mr BERKAY DINCEL: In accordance with the National Construction Code, the clause C1.9 deemed-to-satisfy requirement is to have external walls or claddings that are non-combustible. The only deemed-to-satisfy or otherwise prescriptive test that we use in Australia is a test called AS 1530.1. That is a test of a 50-millimetre thick specimen. If you have 50-millimetre thick concrete, glass, plastic or steel—or, in other words, 50 millimetres of the same material—you can do that test. However, if you have a composite product that has two or more materials within the 50-millimetre thick specimen, you cannot do that test. The issue here is that in Australia we do allow the use of a large-scale facade fire test and criteria carried out to AS 5113. However, in Australia this is still not a deemed-to-satisfy test. It is still recognised as a performance solution.

This issue we are seeing is that because of the insurance crisis we are finding that a lot of certifiers and fire engineers—if you have a building product that does not strictly comply with those deemed-to-satisfy prescriptive requirements—are saying, "Sorry, my insurance doesn't cover this; I can't help you." Products that rely on performance solutions are at a huge disadvantage in the current state of the market. When we have a look at New Zealand, last week they proposed some amendments to their building code and in addition to the same requirements we have in Australia they are also allowing you to do a large-scale facade fire test and also carry out a classification criteria to what is called BR 135, which is the same classification criteria also used in England. What we are saying is that by New Zealand promoting and adopting multiple prescriptive solutions to the market, they are giving insurers more confidence if they are seeing a product that complies with the prescriptive requirements.

The CHAIR: Does it also make products safer if you can prove that they pass the prescriptive test? Does it make the product safer?

Mr BERKAY DINCEL: Yes. For example in the BR 135 case, there is no known fire event where there was an out-of-control fire where the building used a product which passed the BR 135 or would have passed the BR 135. That is a well-known classification criteria that has demonstrated that it is safe and fit for purpose.

The CHAIR: Australian standards for flammable cladding is not one of my speciality subjects. We had some previous evidence about the AS 5113. Is that where there is a board or partial wall built with the flammable cladding and then a large fire is constructed underneath so you can see whether or not it catches and ignites up the wall? Is that the AS 5113?

Mr BERKAY DINCEL: Yes. If you just allow us maybe 15 or 20 seconds, I would like to show you a very short video on the exact question you posed. That will show everyone in the Committee what this AS 5113 test looks like.

The CHAIR: While you are doing that, the next question I will ask is whether or not there should be a requirement that the laboratories doing this are National Association of Testing Authorities [NATA]-accredited. We had some evidence that was concerning about non-accredited laboratories doing this testing.

Mr BURAK DINCEL: Absolutely, that would be necessary. Only NATA-registered laboratories should be doing that. That brings up the question of how to treat the imported products that are not being tested in NATA-registered laboratories. Importance should be given to Australian-manufactured products so that authorities like yourself can check the manufacturing and what they are doing.

Mr BERKAY DINCEL: I will show you the video. As you can see, there is a large opening at the base of the wall.

The Hon. MATTHEW MASON-COX: It looks like a pretty vigorous test.

The Hon. TREVOR KHAN: It horrified me.

The Hon. MATTHEW MASON-COX: It looks like my barbeque at home.

Mr BURAK DINCEL: This test represents a nine-metre high wall.

The CHAIR: And there are thermometers testing the temperature to see if it got to the critical temperature. Is that right?

Mr BURAK DINCEL: That is right.

Mr BERKAY DINCEL: What I wanted to explain with that test is that within clause C1.9 (e) there are materials that are provided a concession so they may contain small amounts of combustible material, because they are widely used materials and they have been deemed to provide a certain level of fire safety in terms of fire spread and they are given a concession. Examples of that are fibre cement sheets, plaster board and so on. In that test—I am not sure if you were able to take it in from the video—the sheets exploded and some very large sheets exploded. In that case that was a fibre cement sheet that was tested. The fibre cement sheets in that example were

CORRECTED

screw-fixed to the base of the testing frame. There are permanent formwork products in the market place that consist of fibre cement sheets that are glued to the rest of the wall system. There is sufficient evidence, including test reports, that shows that what happens in a fire event is that the glue that is holding the fibre cement sheets softens and melts in the fire event and the sheets delaminate and fall off the face of the wall. There are products like that that are getting supplied in the Australian market as we speak. These falling or delaminating sheets—if this product is used on the facade of a building—can fall on firefighters or members of the public and, obviously, hurt or possibly kill them. If used internally those sheets can fall off and block exits, not allowing people to escape the building.

The Hon. TREVOR KHAN: Would that outcome be picked up in the laboratory test?

Mr BERKAY DINCEL: Yes, absolutely, but herein lies the issue. The issue is if you have a composite wall system where each component that makes up that wall system complies with the prescriptive requirements, the National Construction Code is not currently requiring companies to carry out this large-scale test. So what we are saying is whether that composite wall system complies with the prescriptive requirements or not, all composite products should be tested in this large-scale facade fire test or another large-scale test to demonstrate if they are fit for purpose.

The CHAIR: So the glue may pass one test as being satisfactory for a construction adhesive, and the cladding may pass another test for the flammability, but what is not being tested is the combination?

Mr BERKAY DINCEL: Exactly.

The Hon. TREVOR KHAN: I asked would it be picked up. I suppose the answer is it would not.

Mr BURAK DINCEL: In our submission here, these product manufacturers, they have different types of tests which is clearly showing the delaminations happening. We gave you two pieces of evidence there—exhibit A and exhibit B. They are all testing to certifications, showing these delaminations happening. You need to look at it this way: There is no glue on the planet that can resist a 1,000-degree fire. There is nothing available that resists more than 80 degrees Celsius. That is the glue.

The Hon. JOHN GRAHAM: What proportion of cladding is subject to these large-scale tests at the moment?

Mr BURAK DINCEL: You mean the magnitude of the products used in the market?

The Hon. JOHN GRAHAM: I mean how much is subject to the large-scale tests at the moment?

Mr BURAK DINCEL: Nothing.

Mr BERKAY DINCEL: What happens is: If that product or that composite wall system is deemed to comply with the deemed-to-satisfy provisions—

The Hon. JOHN GRAHAM: Yes, it is through.

Mr BERKAY DINCEL: Exactly. They just fly under the radar and they can supply their product.

The Hon. JOHN GRAHAM: And then how widespread is it being used across the market? Obviously, widely.

Mr BURAK DINCEL: That is right.

Mr BERKAY DINCEL: That is right. In fact, Maria can explain. We have raised this issue with the CodeMarking of the certifiers and also with the Joint Accreditation System of Australia and New Zealand [JAS-ANZ] as well. Please listen to her.

Ms BARRETO-TILMAN: With regard to the glue, in their CodeMark certificate and in their testing they make no reference to the glue. They call it a sealant to get around the requirement of doing the full systems test because in order to leverage C1.9 (e) you have got to demonstrate that every single layer in your composite system is non-combustible. Everyone knows that a glue is going to be combustible because, as Burak mentioned, there are no glues currently in the market that are going to be able to sustain a 1,000-degree fire. So they call it a sealant. Obviously, by definition, a sealant is there to plug gaps; a glue is there to adhere something onto the rest of the system. So there is already a no-no there with regards to trying to force a pass with regard to this system. We have gone and raised this with JAS-ANZ who is the body that provides accreditation to the certification body that actually issues the CodeMark certificate for this company for this specific product. The answer that we received from JAS-ANZ was that there was no breach—

The CHAIR: No breach?

CORRECTED

Ms BARRETO-TILMAN: No breach of the scheme rules.

Mr BURAK DINCEL: In fact, no explanation.

Ms BARRETO-TILMAN: So we got nowhere.

The CHAIR: Who gave that advice that there was no breach?

Ms BARRETO-TILMAN: The representative from JAS-ANZ.

The CHAIR: Who is the—

Mr BURAK DINCEL: Who is the party who basically supervises the CodeMark certification.

The CHAIR: I understand.

The Hon. COURTNEY HOUSSOS: I would like to explore the issue of who is policing. Mr Dincel, you outlined the lack of policing of Australian standards.

Mr BURAK DINCEL: Yes.

The Hon. COURTNEY HOUSSOS: Obviously, you were being very diligent. You have seen this, you have challenged it.

Mr BURAK DINCEL: Yes.

The Hon. COURTNEY HOUSSOS: What happens if someone like yourselves is not diligent? What happens if no-one is challenging it? Is there anyone else out there policing it?

Mr BURAK DINCEL: Believe me, I have been asking these questions since the year 2001. As an engineer, I came across this problem. It was seven years prior to the establishment of the system that I am manufacturing at the moment. So it should not to be seen as a conflict of interest. That was seven years before, I have been asking the question. There is no responsible body at the moment. If you do not have a building product law, you cannot hold anybody responsible. Excuse the expression, but the buck stops at the building certifier. They are the last line. It depends on their diligence and their aptitude. Understanding these people, they are not really up at that level of expertise. They cannot even understand or comprehend the underlying issues.

The Hon. COURTNEY HOUSSOS: You were speaking at a conference in Brisbane. Is it different in other States, or is this just in New South Wales?

Mr BURAK DINCEL: It is everywhere, all around Australia.

Ms BARRETO-TILMAN: To give you insight into how we have gone about trying to raise the issues that we were discussing around the glue and the non-compliance, we have had to go and submit non-compliant building product complaints to the Queensland Building and Construction Commission, Western Australia. So, it has got to be done individually because each State has got their own building commission and their own processes around how to deal with this.

The Hon. COURTNEY HOUSSOS: Where do you lodge the complaint in New South Wales?

Ms BARRETO-TILMAN: In New South Wales it would be with the NSW Building Commissioner's office.

The Hon. COURTNEY HOUSSOS: Okay. Have you lodged a complaint yet with the NSW Building Commissioner about this particular issue?

Ms BARRETO-TILMAN: Not yet, no.

Mr BURAK DINCEL: We have done it with the JAS-ANZ, so that is the next stage.

The CHAIR: Should there be an express provision in 1.9 about adhesives? Should there be an express reference to adhesives—non-combustible adhesives or non-combustible fixation systems, however you want to describe it?

Mr BURAK DINCEL: There is a clause. It says "less than 1 millimetre thickness of material". It is called "exempt". But the issue here that we are dealing with: We are not judging whether the fibre cement sheet is non-combustible or not—it is the debris issue, the delamination issue. That is what the National Construction Code is not calling all these materials nominated in C1.9 (e) against the debris requirement.

The CHAIR: Mr Khan, I think we had some evidence, if you remember, of that building in the United Kingdom that caught on fire towards the end of last year. You could see the burning debris falling down right where the emergency workers were.

CORRECTED

Mr BURAK DINCEL: That is correct, yes.

The Hon. TREVOR KHAN: So it is not really a question about whether the adhesive is combustible or not. It is, essentially, that it fails.

Mr BURAK DINCEL: Exactly.

The CHAIR: And that is picked up by a reference to the system having to perform so as not to have falling debris in a fire situation. That is the performance criteria that is missing.

Mr BERKAY DINCEL: That is right.

The Hon. COURTNEY HOUSSOS: Is that not picked up by a fire engineering certification? In theory, if the system was operating well, wouldn't a fire engineering certification—or is it just the general certifier that should be picking this up?

Mr BERKAY DINCEL: I have actually spoken to this topic with many fire engineers and I can state that three very experienced fire engineers—directors within their companies—have the same concerns that we have. They are aware of all of this, but the issue is: What we are finding before this type of decision-making goes to the fire engineer, certifiers are essentially ticking and flicking. So, their certifier is accepting this product without understanding the underlying problems. It does not even get to the project fire engineer involved in that project. That is what we are finding.

The CHAIR: They are certifying the cladding product, without understanding the system that is in place to have it stuck to the building. Is that right?

Mr BURAK DINCEL: Yes, so what we are saying is: We can go through this and share this type of information with certifiers but because they are not fully appreciating the dangers involved, they are pretty much passing it and saying, "Oh it's okay, this product has a concession within the National Construction Code". But this product, it does not have a concession. That singular material, which is fibre cement, has a concession. The composite product, as a composite system, does not have a concession.

The CHAIR: I think the penny has dropped for all Committee members on this issue. For me, I think you are pushing against an open door, having identified the problem, and I think we are fairly clear about what your prescription is, which seems very sensible, about debris on the Australian standard. Do you want to move on to any other aspect that is covered in your submission?

Mr BURAK DINCEL: Yes. In our submission—look, I have been doing engineering in the construction industry for the last 42 years, and, also, being the innovator of our new building products, I am very much deeply involved in how the industry works and what is required to make a system work. The issue the construction industry is experiencing is not only the cladding issue. Unless we did have the Lacrosse or Grenfell—the fire started, the happening—we could not have discovered that. Now, I will make one quick comment in relation to your questions. The cladding system has got a metal facing. The National Construction Code gives a concession if you have metal. What happened in the fires was because these were aluminium, the temperature exceeds 650 degrees then aluminium melts and then the foam inside, it basically started the flame issue. We have issued CodeMark certificates in this country because it has got the metal facing on it. This is about the fire issue. I would like to warn you about another issue. One type of issue coming. This will be much, much bigger than this issue with the cladding.

The CHAIR: We have enough issues already.

The Hon. JOHN GRAHAM: I did want to ask about your submission because you put that in your submission.

Mr BURAK DINCEL: And we also give an example of why it is there. If you could allow me to very quickly—

The CHAIR: You go, Mr Dincel. I think we need to hear this.

Mr BURAK DINCEL: The systems available rely on the waterproofing membranes. AS 3600 has commentary—AS 3600 2014 it is called. In that commentary it says if you are relying on the waterproofing, the membrane, rather than having concrete cover, you are outside of the scope of the AS 3600. Yet there are a number of CodeMarking certificates calling the system totally reliant on the membrane system AS 3600 compliant. In our submission here we give you an example. What this system here is showing, if you have a look at the pages here on the submissions, fibre cement is glued onto the metal channels and then you put the fibre cement sheets you emboss, you pour concrete in it. In concrete science, when you put this sort of barrier, concrete cracks at that point which is not avoidable. Then what happens? Then the concrete cracks.

CORRECTED

If you have matching concrete to concrete surface which has small enough crack, what they call autogenous healing, the concrete self-healing process happens, closes the gap. This is how we used to design, in the old days, water-retaining structures. In this case here, you have a metal to concrete surface so that autogenous healing cannot happen, which is confirmed by all their reports. I am not making this comment, it is confirmed by all the people. You have a permanent gap against the metal stud which is basically repeating it every 100 feet¹ or more centres. That permanent gap, unless it is protected by membrane outside, the contaminant will come through the gap. It will start the concrete cancer. Again, we have been basically explaining this since year 2000, no-one seems to understand or taking seriously this issue. At the back of the page of my submission we put our own photo. This is not happening in the coastal area, this is a photo from Canberra.

The CHAIR: That is that degree of concrete cancer and erosion?

Mr BURAK DINCEL: Absolutely. If this is happening in Canberra, imagine what could happen in coastal areas. You are not seeing this because it is hidden behind the fibre cement sheets.

The CHAIR: And is it true that this process where the fibre cement sheets are basically the formwork—

Mr BURAK DINCEL: That process exactly.

The CHAIR: Is that now standard practice in wet areas? In residential flat buildings and the like?

Mr BURAK DINCEL: In fact, this is used as a structural element; you build columns and walls. That is so much more dangerous if you are using non-loadbearing walls, you can get rid of it. It does not matter. But we are building 18-storey to 20-storey buildings with this product.

The CHAIR: That is effectively part of the structure and the formwork at the same time? Is it designed so as you do not have to put the formwork up and have the labour of putting formwork up and pulling it down?

Ms BARRETO-TILMAN: Yes.

Mr BURAK DINCEL: Correct. This is a permanent formwork system. You are pouring concrete in it and you are using it for structural purposes, to cater for 20-storey buildings.

The CHAIR: I think the material you have and are referring to is a supplementary submission, is that right?

Mr BURAK DINCEL: This is this submission we have provided to you. We made two submissions. The first submission was four pages. It was introductory.

The CHAIR: Which I have.

Mr BURAK DINCEL: But the second submission, following your request, we had been asked to give further information. That is a 12 page document. It is all explained in this document.

The CHAIR: I might ask you to table that with us so we may double-check that our records comply between the two, is that okay?

Mr BURAK DINCEL: Certainly.

Ms BARRETO-TILMAN: The second submission was put in about a week and a bit ago.

The CHAIR: I have not got that detail through. We will accept it now if you table it now. We will make sure it is distributed to the Committee members.

Mr BURAK DINCEL: If I may continue on that subject: I do not know if you have ever shown or witnessed how they pour concrete in the besser blocks? A besser block is a hollow material. What we do is we pour concrete inside to put steel in it—

The CHAIR: Poke the steel down and pour the concrete in afterwards.

Mr BURAK DINCEL: The way we pour concrete into this product, we wet the Besser block generously first, then we put a very high slump which means they are flowable, they are a viscous material. The reason we do that is we do not have any voids, because any voids means concrete cancer. This product is marketing themselves—fibre cement sheets, set the joints, paint the wall. Everything will be okay unless you have a big deviation on the face of the wall, obviously what they are saying will not be relevant. As a result of that, they are

¹ In correspondence to the Committee received on 20 March 2020, Mr Burak Dincel, Chairman, Dincel Construction System, clarified the following: *The word "feet" should be "millimetres"*.

CORRECTED

pouring very low slump and no vibrator is used, which guarantees it to have air holes in it. If you are using, with the better blocks, a 220 millimetre slump with this type of material, still pour this material, you have to use at least a 200 millimetre slump with the vibrators. But if you do that, it is only glued—it will pop out, it will pull out. It is really now there is a supervision issue there.

The CHAIR: Are these two separate products?

Mr BURAK DINCEL: The same product.

The CHAIR: Some being used for wet areas, some being used for columns, some being used for walls?

Mr BURAK DINCEL: Exactly, that is right.

The CHAIR: If I understand your evidence, it should not be permissible because it is going to inevitably mean you have substandard columns and rapid onset of concrete cancer, is that effectively it?

Mr BURAK DINCEL: That is what the photos are showing, yes.

The CHAIR: And it is being marketed as compliant with the construction code?

Mr BURAK DINCEL: Absolutely. They even got a CodeMark certification without considering any of these issues.

The CHAIR: Who issues that CodeMark certification and should we be looking to that regulator for failing to do its job?

Ms BARRETO-TILMAN: We have raised this issue with Joint Accreditation System of Australia and New Zealand. That is responsible for giving accreditation to the companies, that issue.

The Hon. TREVOR KHAN: Issue? That issue the CodeMarks?

Ms BARRETO-TILMAN: Yes the CodeMark certificates. The feedback that we received from them was that there was no breach to the scheme.

The CHAIR: It is the joint standards authority, is it not?

Ms BARRETO-TILMAN: Yes.

The CHAIR: They oversee the Australian New Zealand standards?

Ms BARRETO-TILMAN: No. They provide accreditation to companies who essentially act as auditors of the certification paperwork and then those companies issue the CodeMark certificates.

The CHAIR: When you raise it with them, they do not give you a substantive reply even though you have raised these significant issues.

Mr BURAK DINCEL: That is right—exactly.

Ms BARRETO-TILMAN: Yes. Part of the process involves first we have to demonstrate that we have tried to address this with the manufacturer directly, which we did. Then if that does not go anywhere we have to show proof that we have tried to address it with the issuer of the CodeMark certificate, which we did. And then if that does not go anywhere then we have to table it with JAS-ANZ.

The CHAIR: And that did not go anywhere either.

Ms BARRETO-TILMAN: Yes. And so now we are at the stage where we have to put in complaints with the building commission boards for each of the sites.

The CHAIR: Did you raise this at any time with Fair Trading in New South Wales?

Mr BURAK DINCEL: Not building product law—they are not interested. Yes, I did in 2014.

The CHAIR: And they did not progress it; they said it was not their business?

Mr BURAK DINCEL: Fair Trading and the Australian Competition and Consumer Commission [ACCC] said they are only dealing with the consumer product law. Building product—the definition is you have to have a value of \$40,000. Any construction work is more than \$40,000 so it does not fall into the consumer product.

The Hon. TREVOR KHAN: I am just looking at this mechanism for making a complaint. It requires you to go through a number of hoops before JAS-ANZ become directly engaged. What is the payoff for your company in going through this round of complaints? Wouldn't you just not use the product or system or wouldn't most in the industry just not use the product or system and say it is inadequate or insufficient?

CORRECTED

Ms BARRETO-TILMAN: For us this is about trying to manage the perception on permanent formwork systems. Us not doing anything about this means that if something does go wrong, because the product is a structural product, supposed to be providing fire barriers, if something goes wrong it is going to go spectacularly wrong. And so there is going to be blowback for everyone in the permanent formwork system.

The Hon. TREVOR KHAN: Yes, but that could be in 10, 20, 30 or 40 years, could it not?

The CHAIR: Or tomorrow.

Ms BARRETO-TILMAN: If you take into account the issue of waterproofing, waterproofing membranes are supposed to last anything between 10 years to 12 years, average lifetime. After that you are supposed to maintain it. So if waterproofing membranes being used with these systems are being installed in an area where there is no access for it after the product has been installed, after 10 or 12 years you are never going to maintain that. There is no strata law that calls for the waterproofing membrane to be maintained.

The Hon. TREVOR KHAN: Well, I accept that. But I suppose if it is let's say 10 years for your waterproofing to fail and then, it having failed, for then water to penetrate the area and then for it to become obvious, that may not be in 12 months after your membrane fails. It may only become evident some years after.

Mr BURAK DINCEL: Depending on the environmental conditions. The photos are showing it is already happening. In answer to your question, we run permanent formwork manufacturing facility and we have invested over \$50 million into this business. We are employing in excess of 200 people. We have the interest. Everybody should do the right thing. That is where the interest is coming from. Because committees such as yours, without really understanding what is happening in the industry—this is why we are here to give you this information. So you could be treating us wrongly as well, even though we have done everything written under National Construction Code 2019—every single detail we are complying with.

The Hon. TREVOR KHAN: I am not being critical but can I just ask this: Is the problem for you in terms of raising the problem with these other systems/products that because you have a vested interest they discount your concerns? Is that the bottom line?

Ms BARRETO-TILMAN: That is correct—yes.

Mr BERKAY DINCEL: That is right. Exactly.

The CHAIR: They say you are a competitor.

Mr BERKAY DINCEL: Absolutely.

The CHAIR: But if not you then who else is going to try to enforce the standards?

Ms BARRETO-TILMAN: Just to clarify what Mr Burak Dincel mentioned at the beginning, he actually started raising all of these issues six years before he actually put out a permanent formwork system into the market.

The Hon. TREVOR KHAN: Please do not take in any way that I am being critical.

Ms BARRETO-TILMAN: No, I understand.

Mr BURAK DINCEL: We understand. That is a common question we come across. People allude to the conflict of interest.

The Hon. TREVOR KHAN: I was not raising it because of a conflict of interest. I was trying to work out why you would possibly bother because I presume in the industry there is a lot of bad product out there and a lot of bad systems and most people in the industry would just say, "Well, I'm just going to avoid doing that. I'll do it my own way," and certainly not be going to regulators.

Mr BURAK DINCEL: Trevor, first things first, I am a registered structural engineer and I used to run one of the biggest engineering firms on the west side of the harbour bridge prior to the year 2000. I am bound with an ethical attitude. I came across this product in the year 2000 in an 18-storey unit of buildings and I saw what was happening. Six years prior, if you go to my consulting engineering company called Dincel and Associates—if you go to Google, type "Dincel and Associates product assessment"—I have made this information public since the year 2000. I have threatened a number of times. I say to them, "This is not my personal opinion. This is my evidence. This is what is happening. If you have a problem with me, take me to court. I am doing my due diligence as an engineer."

The CHAIR: Burak, I am pretty certain I can say on behalf of the whole Committee nobody is criticising you for having an interest.

CORRECTED

The Hon. TREVOR KHAN: Quite the reverse.

The CHAIR: But unless somebody has an interest it seems to be there is nobody else there enforcing the standards. Surely that is the problem, is it not?

Mr BERKAY DINCEL: Yes.

Mr BURAK DINCEL: That is correct. Exactly. Somebody has to say something.

The CHAIR: You make a different form of permanent formwork which no doubt you would say is compliant—I accept that. But if we are in a construction industry where the bulk of the products are provided by overseas manufacturers then who is going to be doing what you are doing?

Mr BURAK DINCEL: It will only take an engineer to raise these questions.

The CHAIR: And then they will have to do it out of some sort of personal mission statement.

Mr BURAK DINCEL: Yes.

The CHAIR: Which is not the way you would enforce standards.

Mr BURAK DINCEL: Yes, unfortunately.

The Hon. NATALIE WARD: You have helpfully referred to JAS-ANZ, the Joint Accreditation System of Australia and New Zealand, so thank you for that.

Mr BURAK DINCEL: That is correct, yes.

The CHAIR: Thank you very much for the clarity of your evidence and for the detail in which you have provided it today. It has been very informative and adds to this continuing concern we have about the industry. Thank you very much.

Mr BURAK DINCEL: If we can assist you with anything further by supplying additional information, that will be our pleasure. Thank you very much.

The CHAIR: Thanks very much.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

DAVID CHANDLER, OAM, NSW Building Commissioner, on former oath

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

The CHAIR: Welcome to the afternoon session of the inquiry into the regulation of building standards, building quality and building disputes. I remind all three of you that you are still on your former oath or affirmation. I invite any one of the three of you, if you wish, to give a brief opening statement.

Ms WEBB: No, we did not have one.

The Hon. COURTNEY HOUSSOS: Mr Chandler, we held a hearing on Wednesday 11 December to deal with the issue of flammable cladding. You were not able to attend. Where were you on the day? Why were you not able to attend?

Mr CHANDLER: I think I was in the Central Coast that day.

The Hon. COURTNEY HOUSSOS: When was that? Was it planned?

Mr CHANDLER: Several weeks beforehand.

The Hon. COURTNEY HOUSSOS: You are the person who is primarily responsible for the Government's response to flammable cladding. Is that correct?

Mr CHANDLER: Not at this stage, no.

The CHAIR: Who is, Mr Chandler?

Mr CHANDLER: Mr Tansey has been handling the questions regarding the scope of flammable cladding, so I felt Mr Tansey would have been the right person to answer those questions. I think he was comfortable answering them.

Mr TANSEY: Yes.

The Hon. JOHN GRAHAM: Mr Chandler, we saw you very early on. You politely came to see this Committee right at the start, which we really appreciated. At the time you said you would have your plans on the desk of the Minister to deal with flammable cladding within the fortnight, and that happened. You have confirmed that happened.

Mr CHANDLER: Yes.

The Hon. JOHN GRAHAM: You have set out a plan. We have not heard any more about it. Where is it?

Mr CHANDLER: The plan is currently before Cabinet, so I am unable to comment on it. That is where it is up to.

The Hon. JOHN GRAHAM: You handed in your homework on the timeline you said you did, and Cabinet has been sitting on it all this time?

The Hon. TREVOR KHAN: You cannot say that.

The Hon. JOHN GRAHAM: That is now a matter of public record.

The CHAIR: The Hon. John Graham has given you a characterisation. Do you want to adopt that characterisation or respond in some other way?

Mr CHANDLER: Not really. I have no comment to make on that characterisation.

The CHAIR: Mr Tansey, in the absence of Mr Chandler's plan being accepted and perhaps him being tasked with carriage of the issue, I assume it lies with you. What has happened in the interim since we last saw you that would give us any comfort that the issue of flammable cladding has been addressed by the State Government?

Mr TANSEY: We are continuing to pursue the elements of the Government's 10-point plan on cladding, which they announced back in July 2017. The core task remains identifying affected buildings; working with building owners and residents of those buildings to make them aware of the identification of the building; having

CORRECTED

those buildings operationally inspected by Fire and Rescue; making sure that the relevant consent authorities, which is either, broadly speaking, local councils or the Department of Planning, Industry and Environment, are formally referred those buildings so they can use their planning powers to have them inspected and investigated, assessed and, if needed, rectified. We have been doing that.

I think when we last met in December, we had then more recently set up the cladding support unit from August of last year to try and increase and improve our case management with individual councils of those referrals and individual buildings. We have had very significant progress of that effort since December, allowing for the summer season. That continues to be the major focus: Getting those identified buildings that have been identified, particularly those that have been identified as at most potential risk, and having them thoroughly assessed and moving through the pipeline to getting them ordered or remediated if they need to be.

The Hon. JOHN GRAHAM: We will come to that. As was indicated to the Committee, that has now been publicly reported and, on the face, is less overwhelming—certainly to my view—then you are suggesting. Where is the Government plan to deal with this, though? There clearly is a discussion going on about additional steps. Everything you have outlined is what the plan was last year when we raised this. When is the Government going to act? Where are the additional steps that have clearly been contemplated, but no action has taken place?

Mr TANSEY: I can talk to you on the 10-point plan that the Government has announced and which the task force is specifically tasked with.

The Hon. JOHN GRAHAM: That is old news. You would agree with that?

Mr TANSEY: But similar to Mr Chandler—

The Hon. JOHN GRAHAM: Where are your new—

Mr TANSEY: —I am not going to speculate on government policy.

The Hon. TREVOR KHAN: Point of order: We have got an hour and a half. Mr Tansey is entitled to answer a question without the Hon. John Graham running over the top of him. I know where this is going. The simple answer to the Hon. John Graham is "with Cabinet". Whilst Mr Tansey is here to assist, he should be allowed to answer questions.

The CHAIR: I take your point of order, which is that you would like the witness to be allowed to finish answering questions. I ask the Hon. John Graham to take that on board.

The Hon. JOHN GRAHAM: There are 462 buildings under review, assessment or remediation. In only 94 of those has any remediation started or even been ordered by the consent authority. What is your assessment at the moment of the time frame to complete this?

Mr TANSEY: Can I seek clarification? The time frame to complete—

The Hon. JOHN GRAHAM: To complete all these buildings. What sort of time frame are we looking at?

The CHAIR: Why not start with getting all the identified high-risk buildings safe? What is the time frame for that?

Mr TANSEY: I kind of take it as much the same question. Our objective is to have all the buildings assessed and either determine that they are safe but then cleared, they were identified but do not need rectification, or to have them properly assessed and ordered to be rectified and then building works undertaken to make each building safe. That is not a straightforward question. There is no magic time. That could be a substantial period of time.

The Hon. JOHN GRAHAM: I understand. That is why I am asking.

Mr TANSEY: For more complex buildings with more storeys and more lots in them, you could easily be talking 12 to 18 months from the time they are identified that then they are subject of orders, because orders, in some cases, will constitute the development approval to do the work as well. To get them through to full remediation will not happen overnight.

The Hon. JOHN GRAHAM: How long will it take? Are you saying in 12 to 18 months it might be possible all these buildings will be remediated? I would be surprised if that is your answer, but is it?

Mr TANSEY: To say that in 12 months it might be possible, I would agree with. It might be. But I think the inference of your question is it might take longer, and I would agree that it might take longer.

CORRECTED

The CHAIR: We were in Newcastle on Thursday and there had been some 45 buildings identified as having flammable cladding in Newcastle—10 of them high-risk, I think. The council had not written a letter to them, issued an order or visited any of the buildings. In their defence, one of the reasons they relied upon was the failure of the New South Wales Government to tell them even the basis upon which buildings had been included as high-risk. They did not even know the criteria under which buildings had been included as high-risk. That meant that they were starting from a standing start in working out how to respond. Was Newcastle city council wrong? Has the New South Wales Government informed councils why it is and on what criteria buildings were identified as high-risk?

Mr TANSEY: Yes, we have. We have stated that in evidence here before about the essential criteria following inspections by Fire and Rescue NSW and when they determine that the configuration, the amount and the location of the cladding on a building gives them concern it might increase the fire risk—either for the spread of fire or firefighting evacuation—that is when we put it on the potential high-risk list. That has been communicated in all of our correspondence as well, I believe, out to councils. It has been communicated to councils through our Cladding Support Unit and through the town hall meetings or roundtables we have had with councils. I can seek to double-check that it is on the website, but I believe it is there. We have made the grounds of that assessment clear since I would say December 2017 when the first formal referrals were made to councils.

The Hon. NATALIE WARD: Mr Tansey, you might want to take this on notice, but has Newcastle council contacted you to follow up on specifics?

Mr TANSEY: I will have to take it on notice. Dealing with those, case managing them and working with each of the councils that have high-risk buildings in their area is the Cladding Support Unit's day-to-day tasks. I am happy to check and see what engagement we have had specifically with Newcastle.

The CHAIR: We may will put this transcript to Newcastle City Council as well to get its response.

The Hon. TREVOR KHAN: If that be the case, if we are going to end up in a tit-for-tat exercise, then Mr Tansey should have the opportunity of checking his records for any correspondence to Newcastle. I really don't think it will be productive in terms of a he said, she said, in terms of what the overall is. If you are proposing that this transcript go with an invitation to Newcastle, then Mr Tansey and these other witnesses have to have the opportunity first—

The CHAIR: You are pushing against an open door, Mr Khan. I thought Mr Tansey said he was checking in any event. That was my understanding.

The Hon. TREVOR KHAN: No, he was checking for a specific thing. I am inviting a much larger exercise.

The Hon. NATALIE WARD: I think the point is to assist this Committee rather than just going back and forth on who did or did not do anything. We might get to the bottom of what it is that the council needs and we might assist them to get what it is that they need so we can progress this.

The Hon. JOHN GRAHAM: Can I ask one of those policy questions? The policy issue here, Mr Chandler was raised by Newcastle, but it has been raised by councils—we did not have the opportunity to put this to you last year, which is why I want to ask you now. They feel that, unlike in Victoria, where there is an expert panel making these assessments of fire and cladding risk, in New South Wales it is left to the councils. That assessment is happening in a variety of ways with a variety of people, with some guidance—not enough guidance, they say. Rather than centralise it, as it is in Victoria, provide the same guidance to home owners wherever you live in New South Wales, regardless of how skilled or competent your council is, isn't that a better way to deal with this assessment process rather than the patchwork of assessments we are getting here? Are you comfortable with the patchwork assessment system we have rather than the centralised Victorian assessment with a small panel of experts driving it?

Mr CHANDLER: I would like to be able to share with you where we are up to but I am told that it is Cabinet in confidence at the moment and I cannot speak to it. I apologise, I really do. I just cannot help you with this answer at the moment.

The Hon. JOHN GRAHAM: I do not want to press you on what the Government will do. I was surprised my colleague did not raise that point of order.

The Hon. TREVOR KHAN: I was going to but I thought Mr Chandler was more than capable of doing it.

CORRECTED

The Hon. JOHN GRAHAM: Indeed, but I think the Committee is entitled to ask you, in your opinion—are you driving a lot of this issue now for the Government—are you comfortable with that patchwork assessment? You are talking to these councils. Are they telling you the same thing they are telling us?

The Hon. TREVOR KHAN: Point of order: The point of order is twofold. You asked whether he is comfortable and then asked in the same question—

The Hon. JOHN GRAHAM: I am happy for those to be separate.

The Hon. TREVOR KHAN: Just hold on—you then asked in the same question what he is being told. If he answered simply yes, you do not know what he has answered yes to.

The CHAIR: I get your point of order. Mr Graham has already indicated he is going to break it in two.

The Hon. TREVOR KHAN: My second point is this: the witness has already indicated he is not going to essentially show his hand with regards to what advice he may have given the Minister and/or to Cabinet. However you play it, he is entitled to rely upon the position that he is not obliged to disclose what he has said.

The CHAIR: The witness is entitled to take that point if he chooses. Mr Graham.

The Hon. JOHN GRAHAM: I might just ask if you are comfortable with that, firstly, then I will come back to whether these councils have raised this with you.

Mr CHANDLER: You would like me to agree with a view that it is a patchwork approach. Mr Tansey has not been leading a patchwork approach. He has been leading quite a coordinated approach from my observation. As to what my preference is going forward from this minute, I would like to be able to share with you and I am sorry that it is frustrating that I cannot. The bottom line is it is a matter that is with Cabinet.

The Hon. JOHN GRAHAM: Have councils put the view to you that they have put to us. They have put into this Committee in open session. You must have heard it?

Mr CHANDLER: I have read what councils have said, but I have also observed the work that has been done to coordinate scoping of the issue. I believe Mr Tansey's team has done a good job on that. As far as moving forward, that is a matter that is with the Cabinet.

The Hon. JOHN GRAHAM: Let me put it to you this way finally, which is that this Committee will make recommendations about exactly that question. I think we are entitled to ask you this: Is there any reason as the Building Commissioner why you would advise us against recommending the Victorian system, where there are experts at the table centralising this system? Is there any reason we shouldn't recommend that? It seems far more rational.

Mr CHANDLER: I chide people on my website for trying to verbal me.

The Hon. JOHN GRAHAM: I have found you very hard to verbal. I just fire away and tell us what you think.

Mr CHANDLER: Why don't you say, "I have nothing else to add to the answer that I have given you so far?"

The Hon. NATALIE WARD: Is one possibility that progressing the assessment of and going about the remediation—rather than wasting time setting up yet another body and the infrastructure that goes with that—is one potential answer that you are just getting on with the job and not wasting time setting up another body, as with Victoria?

The Hon. COURTNEY HOUSSOS: I think there are other members who are trying to verbal you.

Mr CHANDLER: It is a circular issue, isn't it?

The CHAIR: It is.

The Hon. NATALIE WARD: Do you get on with the job?

The CHAIR: The question has been put, Mr Chandler.

Mr CHANDLER: The matter is with Cabinet and I am sure that when you see the answer I hope that you will be confident that there is a way to pick up the good work that Mr Tansey has done and take it forward.

The CHAIR: Can I ask you a question about the objective performance? The evidence we had from Newcastle, I think it was 10 high-risk buildings, it may have been 11, none of them had been visited, none of them had had correspondence to them, none of them had had an order issued and some of them were high-rise residential buildings all on the flammable cladding register. Is that good enough?

CORRECTED

Mr CHANDLER: Can I speak to that, Mr Tansey?

Mr TANSEY: Yes, sure.

Mr CHANDLER: I do not believe that those buildings are out there undiscovered and under addressed. My informal advice from Fire and Rescue NSW is that all of these projects have been assessed. I am aware there are photographs of all of these projects that exist, because those photographs of all of these projects have helped inform some of the work that I have done. I understand that the local brigades in each of those locations are actually fully briefed on which are the riskier and which are the less risky. I do not believe that anybody is out there in a situation where nobody knows where cladding is or what the issues are.

The CHAIR: But if none of them have been visited, there has not even been a letter to council, let alone an order issued, we are more than 2½ years post Grenfell. Is that good enough?

Mr CHANDLER: Every project has been visited.

Mr TANSEY: What I would happily do, if I may, is take that on notice. I would be happy to give you specific details back of our own records of engagement with Newcastle. I have already said we would contest the number of transactions, but my understanding is that their progress against identification of high-risk buildings is better than that. Obviously it was not webcast on Thursday so we could not look in, as we have tried to do with some of the other hearings. I did skim read the transcripts this morning. My observation in that is that there may in fact have been—underlying some of the question around numbers—some level of confusion about the origins of different numbers between the Department of Planning, Industry and Environment [DPIE] cladding register and referrals from Fire and Rescue NSW and council's own.

I think we have covered some of the territory in previous hearings of this group and acknowledged that people have taken some time to come to understanding the source of all numbers. My observation was that perhaps that was part of the confusion on the part of Newcastle different numbers. I would be happy to take it on notice and give you advice back on at the task force's record of clearance of numbers, which, as I said, I think is actually better than you might have got the sense of from the testimony last week.

The Hon. COURTNEY HOUSSOS: Mr Chandler, I wanted to come back to the question because you just jumped in to answer for Mr Tansey. You are heading up the response for flammable cladding, or is it Mr Tansey?

Mr CHANDLER: There is a recommendation before Cabinet. That will come out and the Government will decide who is going to head up that response.

The CHAIR: Currently, Mr Tansey—

Mr CHANDLER: Mr Tansey is involved in scoping the project.

The Hon. COURTNEY HOUSSOS: Let us come back to the question of Wednesday 11 December. You were on the Central Coast. I saw you flicking through your phone before. Were you checking out where you were and what you were doing?

Mr CHANDLER: No, not at all. I was just checking something else in anticipation.

The Hon. COURTNEY HOUSSOS: Are you able to tell us where you were and what you were doing?

The Hon. TREVOR KHAN: How is that possibly relevant?

The Hon. NATALIE WARD: To anything.

The Hon. TREVOR KHAN: These witnesses are here, Chair—

The Hon. COURTNEY HOUSSOS: Are you taking a point of order?

The Hon. TREVOR KHAN: I am. These witnesses are here voluntarily. The witnesses have previously been here voluntarily. They have been cooperative. If what we are going to do is turn this into some cross-examination as to where a potential witness was on a particular day, we are wasting time.

The CHAIR: I hear your point of order. Whether or not it is the best use of time is a different matter to whether or not it is relevant. It is clearly relevant.

The Hon. TREVOR KHAN: To what?

The CHAIR: It is relevant to the course of this inquiry. Whether it is the best use of our time is a different matter. If you have asked me to rule on relevancy, I think it is relevant.

The Hon. COURTNEY HOUSSOS: Mr Chandler?

CORRECTED

Mr CHANDLER: I have got the date confused. As far as I am concerned here—you were saying 11 November, are you?

The Hon. COURTNEY HOUSSOS: December.

Mr CHANDLER: December, I am sorry.

The Hon. NATALIE WARD: Mr Chandler might want to take it on notice.

Mr CHANDLER: No, I have it here in front of me—no worries at all. I was on the Central Coast. I had a briefing with the entire of the SafeWork and building inspectorate at Gosford. I then travelled to the first site visit in Mann Street, followed by a second site visit to Terrigal. I had a meeting with Wyong council at Wyong chambers that day.

The CHAIR: From memory, that is consistent with what you told us at the time: that you had an appointment at the Central Coast with work health safety. That is consistent.

The Hon. COURTNEY HOUSSOS: For the benefit perhaps of my fellow Committee members, the reason I am asking this is that this is a serious inquiry and we are asking the Government questions on a range of issues. That particular hearing was on flammable cladding and now we will move on to other questions, which are equally important, about the Government's response to the issues in the building industry.

The Hon. TREVOR KHAN: And he is here.

The Hon. COURTNEY HOUSSOS: Mr Chandler, you have made public comments saying that it is going to take until 2025 to fix the crisis in the building industry. Is that correct?

Mr CHANDLER: I have said it will take some years. I have used a headline of 2025 to rebuild public confidence in this industry, which will not happen overnight. But I can assure you that the resurrection of public confidence in this industry will start as soon as my powers are clear and we can start up to stand up the things that are needed to rebuild confidence in the industry in this State. The impact of that will be much quicker but it will take a few years for the public to believe that.

The Hon. COURTNEY HOUSSOS: It will be 2025, 10 years after the Lambert report that we will see building confidence in our building industry in New South Wales.

Mr CHANDLER: I do not really feel as though I have a benchmark to what Mr Lambert did or did not do. I started a job in August last year. I think we just passed through 180 days of that.

The Hon. COURTNEY HOUSSOS: One hundred and ninety five, at my count.

Mr CHANDLER: Take some holidays out or something, eh?

The Hon. COURTNEY HOUSSOS: We will get to the question of holidays in a moment.

Mr CHANDLER: Give us a break. You cannot just tell the public today it is wrong and tomorrow it is right. You have got to actually build confidence and you have got to demonstrate that.

The CHAIR: Are we going off flammable claddings, Courtney?

The Hon. COURTNEY HOUSSOS: Yes.

Mr CHANDLER: I thought we were off flammable claddings.

The CHAIR: You finish this and we might move back to flammable claddings.

The Hon. COURTNEY HOUSSOS: Mr Chandler, you raised the question of holidays. Is it correct that you will not be appearing at budget estimates hearings because you will be on annual leave?

Mr CHANDLER: Yes, that is correct.

The Hon. COURTNEY HOUSSOS: When was that annual leave booked?

Mr CHANDLER: Probably November, December last year.

The Hon. COURTNEY HOUSSOS: Have you reconsidered taking that annual leave, given the importance of this issue?

Mr CHANDLER: No, I have not at all. No, I am not going to, no.

The Hon. COURTNEY HOUSSOS: Where are you going, Mr Chandler?

Mr CHANDLER: I am going to the Gold Coast with my wife. Do you want any further private details?

CORRECTED

The Hon. COURTNEY HOUSSOS: Mr Chandler, I think it goes to how important this issue is for the public, the level of scrutiny from the upper House of New South Wales and the reason we are entitled to ask you questions.

The Hon. TREVOR KHAN: And he is here, so ask him something substantive rather than just attacking him. Ask him something substantive.

The CHAIR: Trevor, if you want to take a point of order on relevance, take it through me.

The Hon. TREVOR KHAN: I will. I take a point of relevance. This is just outrageous.

The CHAIR: I say again. On this, I think we are straying potentially beyond the relevance. Ms Houssos, you are asking about this witness's attendance at another Committee hearing and not at a hearing of this Committee, so I will take the relevance point on this. I do not think you can ask this witness about his attendance at an unrelated Committee hearing.

The Hon. COURTNEY HOUSSOS: Mr Chandler, let me ask you about your previous testimony to this Committee, which was that New South Wales does not require a building commission. If it is going to take until 2025 to re-instil confidence in New South Wales, is it not time for there to be a building commission to give you the support and the statutory power that you require to do your job?

Mr CHANDLER: I am just wondering what the answer that might satisfy you is, but, I mean, I have briefed you—

The Hon. COURTNEY HOUSSOS: It is not about satisfying me, Mr Chandler.

The CHAIR: You might let him finish, Courtney.

Mr CHANDLER: It would be really nice if you did that; you talk over me a fair bit. I wish you would stop doing that because I do not have to tolerate it. Do you understand?

The CHAIR: Mr Chandler, I have asked Ms Houssos to let you finish your answer. Rather than the two of you bouncing back and forth, just finish your answer.

Mr CHANDLER: Chairman, this has become form with this particular inquirer. I just think it is totally hostile and unfair that I come here with good intent to give answers and all I get is this barrage of abuse that attacks me personally.

The CHAIR: Mr Chandler, I note your concerns.

Mr CHANDLER: Thank you.

The CHAIR: You have members of the Government who are in a position to take points of order on your behalf if they are concerned.

The Hon. TREVOR KHAN: No, I will not take it on his—

The CHAIR: The process is, if you can, to endeavour to answer the question and address the question rather than the personalities who sit around the table.

The Hon. TREVOR KHAN: Chair, I will not take the point as a member of the Government. I will take it as now the oldest serving member who is at least here of the Legislative Council, and also one who was on the privileges committee, who passed the report, which was then adopted by the House that included a provision that witnesses be treated with courtesy and respect.

The CHAIR: Indeed. Before we move on any further, could I ask members of the Committee and witnesses, if we can focus on the issues rather than the personalities I think we will get a lot further and we will address the issues that I think we need to address, which I think all of us agree on—the major problems with the building standards in New South Wales? I will go back to you, Ms Houssos, to put the question again to Mr Chandler.

The Hon. COURTNEY HOUSSOS: Mr Chandler, your testimony to this Committee previously was that you do not require a building commission. One hundred and ninety five days on, you have said that it is now going to take 10 years to re-instil public confidence in the building industry. Will you revisit that? Will you now admit that you need a building commission?

Mr CHANDLER: No, I will not, and I want to be very plain about this. First of all, it is not 10 years on. I have been on the job now since 10 August. Second of all, you may have read in the media—and I do not want to verbal anybody—but you might find that Mr Lambert believes that my approach, the plan that has been

CORRECTED

put up and approved by Cabinet, is, in fact, very sound. In fact, Mr Lambert has agreed to join one of my working groups because he is confident in my plan.

The Hon. JOHN GRAHAM: Mr Chandler, the question that that raises for me is what powers do you need, because you have said really that the rubber hits the road when you have got those powers. What powers do you need to do the job? I think we are very interested in you having those.

Mr CHANDLER: Mr Graham, for example, you had previous witnesses in here from Dincel. I referred this matter of my concerns regarding these prefabricated formwork materials to the Australian Building and Construction Commission [ABCC] back in November. I met with one of the officials from there and said, "I would like you to have a look at this." Now, I have not had any answer back that satisfies me about that at all. As far as I am concerned, in New South Wales I am not satisfied. The moment I have some powers, I can now go into sites that have been built and open them up. I fully intend to go and drill holes through some of this formwork material that we had discussed in the previous testimony to you because I am not satisfied with it.

The Hon. JOHN GRAHAM: Giving yourself the power to inspect in a much more direct way?

Mr CHANDLER: Call in documents, finish buildings that are built, I cannot do that.

The CHAIR: What is the mechanism that you are going to rely upon to get those powers, Mr Chandler, because not contained in the bill that is before the Parliament. What is the mechanism?

The Hon. JOHN GRAHAM: Chair, I might just finish where I was going first, if that is all right. What about the power to have some penalty or inflict some cause on a building that is not compliant? What are your powers now? What do you need to do the job?

Mr CHANDLER: The best intervention that I can have at this stage is to start exposing these issues and then taking the industry on about them. There is a wide range of issues that I intend to address. I do not really feel like rolling them all out this afternoon, because it is a long list but product labelling, improper products, lack of design. It is my intention that we will take the boots on the ground, which you are aware of, the 30 boots on the ground that will be made available once the legislation passes, and start a full frontal across the construction sites of New South Wales. I do not need a building commission to do that; I need boots on the ground.

The Hon. JOHN GRAHAM: But you do need these powers in addition. In your view, are they powers that the agency already has and need to be transferred to you, or are they additional to the powers that government has in New South Wales?

Mr CHANDLER: They are additional to the powers, because the powers that we have at the moment are to inspect and to respond to complaints. I want to actually take a more forward and activist position where I have reasonable concerns to explore those reasonable concerns. More importantly, I want to go onto completed buildings. At the moment, I do not have the power to call in the documents. I have been around and it is quite clear that people are not going to give up documents voluntarily. I am going to have the power to call those documents in, I am going to have to have the power to stop work, I am going to have to have the power to dig up work. The sooner I get that, the sooner we can start to get the message out there that the game has changed.

The CHAIR: To follow on from that, the power to call in documents is not contained in the bill that is before the Parliament. Where are you going to get that power from?

Mr CHANDLER: I have the power to call in relevant designs and drawings related to the building in the new bill.

The CHAIR: What about the power to issue stop work orders?

Mr CHANDLER: I have the power to stop work where work is being performed that is not satisfactory.

The CHAIR: Where do you say that power comes from?

Mr CHANDLER: I will bring you back a summary of that. I did not bring the bill with me.

The CHAIR: The call in document power would only apply once the bill was in force, and of course those regulations will not be in place for well over 12 months.

Mr CHANDLER: As you have been advised, the Government's intention is to bring forward legislation regarding giving powers to me earlier. You are aware of that. I heard the Minister advise you and other crossbenchers on this, so that I have those powers. I am anticipating that I will have all the powers I need, irrespective of where the regulations relating to the bill are, available to me by the middle of this year. I am hoping that is possible.

CORRECTED

The CHAIR: Whatever has been discussed in briefings is not on the public record, so I need to get it from you. We can expect a bill from the Government that will articulate the additional powers that are required.

Mr CHANDLER: Correct.

The CHAIR: Has the Government identified its time frame for when they hope—

The Hon. TREVOR KHAN: You are asking questions when you know the answers.

The CHAIR: No, I actually do not know what the time frame is. But yes, sometimes it happens.

Mr CHANDLER: Chair, as soon as possible. I understand the drafting for that is currently underway. I understand people even worked over the weekend on it. I do not know the full detail of that. I believe that it is absolutely essential that my powers are brought on as soon as possible.

The CHAIR: Mr Chandler, I do not think there is a person around this table who does not think you should have full statutory powers to confront the building industry. The question is: How are they best provided? To date, we have largely been told that there is adequate capacity for them to be—

The Hon. TREVOR KHAN: What you have been told and what we have been told might be different.

The CHAIR: We have been told in this committee hearing that there is adequate capacity to deliver those powers by delegation from the secretary. That is at best some of the puzzle, but not all of the puzzle. Is that right?

Mr CHANDLER: Correct.

The Hon. TREVOR KHAN: When did this briefing occur?

Mr CHANDLER: Let me put on the record that the Minister has advised that there is intent to bring forward additional powers for me. Some will mirror the powers in the bill and some will be additional powers. As you are aware, one of those additional powers relates to the intervention of occupancy certificates. That package of powers should come forward within the next few weeks. Exactly what the final detail of that is, I cannot advise the Committee right here, right now. But let me assure you that I went back to the Government at the end of last year and said, "I acknowledge the fact that it will take some time for the bill and regulations to stand up. We need to get into business quickly." The intention is that we have those powers and they are available. I am counting on having them by mid-year.

The CHAIR: Ms Webb, you being the mandarin in charge of this process, what can you tell the Committee is a realistic time frame for Parliament to see that legislation?

Ms WEBB: It is Mr Tansey's team who were working on the weekend, so he may actually want to speak to it.

Mr TANSEY: I will confirm that we hope to have legislation come forward in the current session to present to Parliament.

The Hon. JOHN GRAHAM: Will that require regulation to come into effect, as some of the previous bills have? I have to say it has been very, very slow.

Mr TANSEY: No.

The Hon. JOHN GRAHAM: When that bill goes through, will the Building Commissioner have the powers to do the job and start the process, bearing in mind that you are telling us this will start the process of rebuilding?

Mr TANSEY: Yes, I believe he will.

The Hon. TREVOR KHAN: Ms Webb has been nodding her head throughout this.

Ms WEBB: In this case, this new bill is not reliant on regulations.

Mr TANSEY: Because of the heads of power and offence provisions.

The CHAIR: Once the Governor gives it the stamp, it will be in force.

Mr TANSEY: Yes, exactly, the Governor and the Parliament will decide.

The Hon. NATALIE WARD: Mr Chandler, I for one think you should have a good break, come back refreshed, get boots on the ground and get on with the job. It sounds like Mr Tansey needs a break if he worked on the weekend.

CORRECTED

The CHAIR: He has not said that he worked on the weekend.

The Hon. NATALIE WARD: I take you to flammable cladding.

Mr CHANDLER: I work on weekends and one of the things, after 46 years of marriage, you do in the contract is that you honour the pre-agreed breaks in your life.

The Hon. NATALIE WARD: Thank you, can you speak to my husband about that, please. I take you to flammable cladding and the 10-point plan. I am pleased to see that of the 10, six have been completed. Could you update the Committee on the progress on the outstanding items, getting to less of the administrative and more of the action that is taking place?

Mr TANSEY: I think you are drawing on our original submission.

The Hon. NATALIE WARD: I think the submission talks about the completed projects and I thought it might be helpful for us to hear about the ongoing items. The identification is obviously ongoing and we have heard about that. The communications is ongoing, but we would like an update on that and whether there is anything substantive that the Committee should be aware of, or road blocks, or if it is ongoing, that is fine too.

Mr TANSEY: We will continue to seek to identify buildings, although at the moment we think we have reached a point of stasis where all of the buildings have been identified. It has been some little time since any new buildings have been identified.

The Hon. NATALIE WARD: You might say that it is almost complete.

Mr TANSEY: Almost completed. Communication is ongoing. The most recent efforts on that would have been at the end of last calendar here when we did a further communication to tenants. Using the data available through the Rental Bond Board, we did mail-outs to every premises and every tenancy in every premises. I recollect that about 50,000 letters went out to capture every resident and tenancy of every one of the potentially high-risk buildings.

The Hon. NATALIE WARD: Taking on board the questions around councils, is there a communication plan for councils?

Mr TANSEY: As part of the cladding support unit there is literally daily and weekly contact with councils. Councils contact us proactively and we also reach out to councils if there is any lack of progress in their numbers. Updating literally happens with two or three officers every week.

The Hon. NATALIE WARD: Presumably including Newcastle council.

Mr TANSEY: I am sure including Newcastle, but I will double-check the number of interactions there. We have also had a number of—I keep referring to them as roundtable meetings with councils. There will be another one of those this week, because we keep trying to create that direct engagement with councils. That is an important part of the communication strategy. It is iterative and we know that the interested parties in the affected buildings might change over time, so we make sure that there is a bit of a cycle of continuing to push out that information. Action number four, Fire and Rescue NSW visiting all identified buildings, they have done that. More than 4,000 buildings over the time of the task force.

The Hon. NATALIE WARD: So you can say it is almost complete?

Mr TANSEY: Correct, to the extent that it has petered off, the number of buildings newly identified.

The Hon. NATALIE WARD: Again, you may wish to take this on notice, but it is probably not the case that no buildings in Newcastle have been visited. It is more likely the case that they have?

Mr TANSEY: It is absolutely the case that any of the buildings that have been identified through the task force have been inspected by Fire and Rescue NSW.

The CHAIR: My proposition was for council, which was the relevant authority for all but the Crown buildings. What I put to you was not that the buildings had not been visited by any State agency, it was the council that has the job to see it through has not visited, has not issued an order, has not issued a letter. It was their unambiguous evidence—

Mr TANSEY: I have taken on notice that I would happily provide to the Committee our own task force records of what those interactions have been for the high-risk buildings.

The Hon. NATALIE WARD: And my question was Fire and Rescue NSW, which is point number four.

The CHAIR: On flammable cladding—

CORRECTED

The Hon. NATALIE WARD: Can we finish up on number six before we move to that one?

Mr TANSEY: The reform to building certifiers was part of the plan and will now come to fruition in the next couple of weeks when the regulation will be finalised and, subject to the Governor's approval, will be gazetted for commencement in the middle of the year. Number seven in the plan was completed. In fact, the other items, which were establishing the task force, instructing government agencies on inspecting their own buildings and following up with councils on a specific correspondence that goes back to 2016 have all been completed.

The CHAIR: We had some very disturbing evidence on the issue of flammable cladding from Dincel earlier. Their evidence was to the effect that there is any significant gap in the National Construction Code and they referenced C1.9 (e). The construction code talks about the cladding product being nonflammable or non-combustible but the concern raised with us was there is a significant practice in the industry where the cladding product itself may be a nonflammable product, maybe fibre cement. However, if adhered to the wall by an adhesive—and no adhesive in the construction industry that is available can withstand a temperature greater than 80 per cent before it loses its had adhesion. Therefore, the external cladding products fixed in those situations becomes a hazard in a fire as it drops from the wall and heads towards the ground with potentially lethal impact. Has that issue been raised with you, Mr Chandler, in your discussions with industry?

Mr CHANDLER: Yes it has. I am aware that some of the cladding has been affixed with adhesive tape. I am startled to find that that is the case and I agree with you that it puts first responders and everybody else in an unacceptable situation. I am a bit surprised that it was an issue that was raised by Dincel but I can imagine that they have adhesive tape at Dincel?

The CHAIR: I think they just saw it as a genuine public safety issue.

Mr CHANDLER: They are just pointing it out.

The CHAIR: Their concern is that the relevant construction code does not reference the risk of falling debris on external cladding. Of course, we have previously seen images of burning cladding falling. This Committee has previously seen images of that. Do you accept their proposition that in part this should be addressed by a change in the National Construction Code? That the risk of cladding becoming lethal or dangerous debris needs to be addressed in the construction code?

Mr CHANDLER: Chairman, if that risk exists I agree that it should be resolved. I want to be very clear that I am a bit frustrated by some of the Federal responses to some of these issues. I am very inclined that as soon as I have my powers that in fact I will make decisions regarding New South Wales if we have to because I am not happy about some of these things. I am not happy about the slowness of responses. Dincel is a product that I have some issues with—it is not Dincel. It is prefabricated plastic formwork I have concern about as a generic issue. While one brand may want to differentiate itself from the other, I am unsatisfied with the potential for that differentiation. I put it to you this way: We are seeing a lot of products coming into New South Wales that have CodeMark stamps on them that says that this is an authentic product. What the supplier then says is: Job done—back of truck, off it goes. What these vendors do not do is then follow the product into the project, oversee the proper installation of the product and certify it at that point. That is the conversation I will be having with Dincel and others tomorrow—as I will be with people like James Hardie—in respect of the material you may have seen in Newcastle last week.

The CHAIR: Ms Webb, the evidence I personally found distressing is this is yet another issue being raised with us. It is a potentially major public health and safety issue about cladding. I found that distressing and it seemed to have an impact on the balance of the Committee.

The Hon. TREVOR KHAN: Yes.

The CHAIR: Does Fair Trading have a system in place where it issues a product alert? It alerts the industry where it says: Just so you know, you cannot adhere cladding with an adhesive because of the risk of it becoming debris. What will happen next? Will you issue that work safety warning?

Ms WEBB: Under the Australian Consumer Law we do have product safety provisions, which we work with the ACCC on. I think we would do something jointly and nationally if we were going to do it. The other issue we have is sometimes these products are not consumer products because they are sold to industry. I might get Mr Tansey, who is across the building code aspect of this issue, to talk to that.

The CHAIR: Before we do that, that evidence we got was unambiguous, that consumer laws will not protect them because of the size of the contracts and the like. If you are going to rely upon this consumer law and the Australian Competition and Consumer Commission, you are going to go down a track which will not help.

CORRECTED

Ms WEBB: No, that is what I was just explaining. The other option we have is the Building Products (Safety) Act and the intersection of that with the Australian building code. I was going to ask Mr Tansey to talk to that.

Mr TANSEY: The issue that Dincel raised is known as the debris test and it goes to the typical Australian Standards test. We are aware of the concerns over falling debris. In fact it was that reason why we implemented the prohibition on cladding in New South Wales, colloquially referred to as the ban. It specifically required that products proposed to be used after the date of that ban would have to prove the non-combustibility of the product. Otherwise, if it could not prove that it was inherently non-combustible, it would have to be subject to the higher test, which is the Australian Standard 5113, which includes creating a full rig of the wall, a full replica of the wall—

The CHAIR: We have seen that.

Mr TANSEY: It includes the testing to see what is the debris that falls. If the product cannot meet the debris test, it cannot be used. I would say, consistent with what you might have heard from Dincel, the view is that there may be very few products that can meet that debris test.

The CHAIR: Let us be clear: Their concern was that the sheeting gets tested using AS 5113 and the sheeting may be nonflammable. What is not being tested is the system—the sheeting and the adhesive together. I have to say, Mr Tansey, your answer does not satisfy me that that is being done because the exact problem that that identified will not be picked up by the proposition you are putting.

Mr TANSEY: Chair, again, I would be very happy to take on notice what they may have told you in their specific terms and give you a response on notice in specific terms about what they have said and what we know.

The CHAIR: To be entirely clear: It was not about the flammability of the adhesive. It was the fact that it ceased to function as an adhesive once it got to 80 degrees Celsius and that it falls.

The Hon. JOHN GRAHAM: It passes your test but it does not pass the question.

The Hon. TREVOR KHAN: It is not his test.

The Hon. JOHN GRAHAM: It passes the test Mr Tansey set out.

The CHAIR: If you are going to take it on notice, one of their other suggestions was that the criteria in Building Regulation 135, which is one of the United Kingdom standards that has been applied, should be called up as a matter of urgency. But I go back to you again, Ms Webb. I do not think that simply waiting for a process to grind through with the ACCC, which will not take as anywhere, will make us safer.

Ms WEBB: No, I understand that.

The CHAIR: What can you do in the interim to alert the industry to the problem?

Ms WEBB: As Mr Tansey says, we can have a look at the detail of the complaint and then consider whether there is something we can do under the Building Products (Safety) Act, as in another ban. We would have to go through the process that is in that Act of giving the parties who manufacture the product the right to have some input into it, but that is a possibility as well.

The CHAIR: It is not one product. The adhesive may satisfy one test for being construction adhesive. The formal cladding may satisfy another test. The system is the problem.

Ms WEBB: I think you are saying the adhesive might be okay in some circumstances, yes, but the way our Building Products (Safety) Act works, we can talk to not only just the product but also the way in which a product is used.

Mr TANSEY: Yes, it is not constrained to a proprietary brand—

Ms WEBB: To a product.

Mr TANSEY: —or a name of a product. It can go to a class of products.

The Hon. JOHN GRAHAM: If we are done on that, I will turn to some questions for Mr Chandler. You have set out some views, here and elsewhere, about building confidence in the system in the long term. I welcome those. You have spelt out some of the powers you would like to have. I thank you for those. That is about getting the system working in the long term. That is about building good buildings in Sydney and New South Wales down the track. I am interested in your view about what we can do to assist the people who are currently living in recently built buildings that are subject to all the flaws we have been informed about or who will be

CORRECTED

living in buildings that will be built in the time between now and when you get your powers or when you have got distance along the way. In your view what are we going to do to deal with the real live defects that we know are out there? You know they are out there. We have been subject to some quite dramatic evidence. What do we need to do to help those homeowners?

Mr CHANDLER: If we take the buildings that are in the system now that could be completed prior to when the effect of declared designs and declared as-builds come into play, one of the powers that I am seeking is to, in fact, conduct occupancy certificate audits on projects where I believe, or I can tap into data that tells me, that the players on those projects might be more risky than others. That will be part of the material that will come before you. The intention is to identify about 10 per cent of all of the projects that are going through the system from about 1 July onwards and call those occupancy certificates in for a process of independent audit for the last six months of making the occupancy certificate. We are currently finalising a certifiers practice guide, which is some work that was started but not finished, but it will be finished by 1 July. For those projects that we think may have a risk as a result of the players' circumstances, history, we will bring them to a meeting and show them the practice guide and we would say, "This is what we expect your project to look like. This is the quality of occupancy certificate that we expect to see before you make an occupancy certificate." We will have 30 people in the field, 10 groups of three, overseeing these projects.

The Hon. JOHN GRAHAM: You will have additional powers at this point.

Mr CHANDLER: I will have additional powers to exercise to support these people in the field.

The Hon. JOHN GRAHAM: And you will be risk-auditing.

Mr CHANDLER: What I will be looking to do is to see that the certifier is in a position to pursue the quality of occupancy certificate that I have seen as missing in these projects that are causing the greatest grief.

The Hon. JOHN GRAHAM: Accepting that for the moment, if I live somewhere where my occupancy certificate has been issued before 1 July—

Mr CHANDLER: Can I come back to that one and just finish this because I think it is important.

The Hon. JOHN GRAHAM: Yes, go ahead.

Mr CHANDLER: Because it is an issue. My intention is that if we identify occupancy certificates that are not of the standard that we believe should be achieved, the powers will seek for me to be able to stop the issuance of that occupancy certificate. There will be a right for the developer to appeal my decision. I can assure you that projects I select for the first exhibits will not leave much to the imagination, and the developer will either have my decision overturned in a process or not. Assuming that my decision stands, then the developer will be simply have to satisfy the achievement of a satisfactory occupancy certificate before purchasers can be made to settle on their apartments.

That is something that is going to be very powerful and immediate. I can tell you it has got effect going through this industry at the moment. It is not going to change until I have got those powers. As for the legacy projects that you are talking about, legacy projects fall into, perhaps, two groups—ones that are quite old buildings—buildings that have been around nine, 10, 11, 12 years and they have suddenly arrived at a situation of serious problems. We spoke about Bellevue Apartments, for example, in Newcastle. I think this project was finished in 2010.

The CHAIR: It won an industry award in 2011.

Mr CHANDLER: It won an Urban Development Institute of Australia award, so I have actually told people it is not necessary to show me how many awards they have won to actually self-gratify.

The CHAIR: It fell apart in 2012.

Mr CHANDLER: About 2012, it started to fall apart. The problem with that building is that—I got to see that building at the end of last year. The original builder on that job went broke. The subsequent builder went broke. The developer then went broke and then somebody was brought in to finish about the last \$220,000 worth of work. Since then the building has continued to not stand up well. I shared with you my photos on that. I am quite happy for those to be public photos.

The CHAIR: I shared them with Newcastle City Council on Thursday.

Mr CHANDLER: And I mentioned that project when I met with Newcastle Council when I was there before Christmas.

CORRECTED

The Hon. JOHN GRAHAM: It is a good example but we have had a building boom since then. A lot buildings have gone up before you get your powers on 1 July.

Mr CHANDLER: I was just going to use this as an exhibit, as opposed to, necessarily, a distraction.

The Hon. JOHN GRAHAM: What happens for those?

Mr CHANDLER: This is an example of one of the areas we have got to deal with. These people have been advised by lawyers; not by people with technical knowledge. They have been advised by lawyers.

The Hon. TREVOR KHAN: Cruel, cruel.

The Hon. NATALIE WARD: Ease up, ease up. There are four of us here.

The Hon. JOHN GRAHAM: I suggest the lawyers pipe down.

The CHAIR: If you want to take objection, I will listen to it.

The Hon. JOHN GRAHAM: Apologies, Mr Chandler. I think you should continue.

The CHAIR: You have agitated all the lawyers. Mr Chandler. Please go on.

Mr CHANDLER: Sorry. The lawyers advised these owners to actually sue the last builder and they lost in the Supreme Court at the end of last year, and they got costs awarded against them of about \$550,000. And they had already run up about \$380,000 worth of their own costs. These people are in a dreadful situation. They have got no money, they cannot sell their building and they have had lawyers advise them to take them down the hole they are in. There are two or three buildings like that. I will not call them all out now but there are exhibits like that. So, there are buildings that are older than 10 years, there are buildings that have been around for a while that have got themselves in a hole because of the legal advice that they have had to this point, and then there are a number of other buildings.

An example of that would be 25 Scenic Drive, Avoca, where the developer on that project managed to get an Interim Occupancy Certificate, managed to leave the building in pretty ordinary shape, managed to make himself insolvent and managed to transfer a number of properties that were unsold to a related party. Now I have been asked to see if I can help with that building. I was approached by one of the owners—not a formal member of the committee. I now have a number of situations where people are approaching me and they are not part of a committee. I have got about two or three of those where the parties are just simply frustrated with their own committee in dealing with the process.

The Hon. JOHN GRAHAM: Which is part of this dynamic.

Mr CHANDLER: Ultimately I was contacted by the Avoca project's strata manager and we agreed there was nothing much I could do at this stage because the action that seemed to be best available to the owners was to, in fact, go to the receiver-manager of the developer and overturn the transfer of the valuable property back to the owners' corporation, which would leave the owners with enough money to fix that building. So, again, that, to me, is the only sensible way forward for that particular project. There is a range of other buildings. For example, 93 Auburn Road is a building that got an occupancy certificate last year. It got a strata plan approved in November 2018, it got an interim occupancy certificate [OC] in the middle of last year—June or July—and I got called out to that building by Fire and Rescue on 23 October.

That was the peak watermark in terms of my real concerns about some of the things that are out there. Fortunately, the bill, as I understand it, is still there to attend to the issues that are present. I have not met with the builder on this occasion because the way forward there was that, in fact, Fire and Rescue issued a report to Cumberland City Council and Cumberland City Council issued orders. I met with Cumberland City Council just before Christmas and they were satisfied that, in fact, those orders were being complied with. For some of those compliance orders the time frame goes out to March. I am monitoring that project at this stage. Then there is a bunch of other projects where people have not outed the project.

The Hon. JOHN GRAHAM: Yes, exactly. We know that there will be other projects out there. I guess you are risk auditing the projects from after 1 July?

Mr CHANDLER: That have not got an OC.

The Hon. JOHN GRAHAM: Correct. What process are you going to go through, working backwards, particularly for those that might have been built recently but are within the two- or six-year time frame where people might have options? What sort of process have we got to go back, look at those issues and get to homeowners before they have no options in the way that you have described?

CORRECTED

The CHAIR: Because many of them have said to us that they feel deeply unsupported and alone and are taking on a monster by themselves.

Mr CHANDLER: That is not entirely the full picture, Mr Chairman. I only met with the Strata Community Association [SCA] this morning. They are saying that many owners simply do not want to out their buildings because it would make their building difficult to transact.

The Hon. TREVOR KHAN: We have seen that in some of our evidence.

The CHAIR: We have.

Mr CHANDLER: My view is that I am afraid that if you have a building that needs attention you need to out it. That is a unreasonable thing to carry without telling a subsequent owner that you are aware of something that exists in your building. That is something that we need to deal with when we look at the Strata Schemes Management Act this year when we review that.

The Hon. JOHN GRAHAM: Does that not make it doubly urgent to go back and audit those buildings prior to 1 July? Should we not look at the damage that has already been done, particularly in that two- and six-year window where there might be options?

Mr CHANDLER: Mr Graham, we have about 1,700 strata plans a year registered in New South Wales. It is simply not feasible to go back and audit those buildings.

The Hon. JOHN GRAHAM: Not with the resources you have got.

Mr CHANDLER: You can think of a number—it does not matter what number it is—but I personally do not think that is feasible. It would be far simpler—

The Hon. JOHN GRAHAM: Not on some risk basis.

The Hon. TREVOR KHAN: John, let him answer.

Mr CHANDLER: It would be far simpler for the strata managers. When I spoke to the SCA this morning they were going to start preparing a list so that I could get a line of sight to some of these projects that are yet to out themselves. I will work with the strata communities to where we can go on this. I do not have an answer right now because I do not have a line of sight to do it.

Mr DAVID SHOEBRIDGE: All of us would agree that in a perfect world a unit owner who is aware of undocumented concerns about building quality and building defects would insist upon that all being on the public record and communicated to a future purchaser. All of us agree that that is how we would like the world to operate. But we know that that is not how it is operating and you can understand the financial pressure and levers that mean that is not how it operates. Are you suggesting that the solution is perhaps some kind of further compulsory disclosure requirements? What are you suggesting in that space, Mr Chandler?

Mr CHANDLER: Mr Chairman, one of the things I guess I need to be conscience of is that my opinion is actually not government policy. From time to time I might express an opinion as to a way forward. As an opinion, if you want one, which can stay on the public record, I think it would be desirable to get to a point where we have a duty holder for the strata management world. Subject to legislation, we would have a duty holder for the design of buildings and the declaration of designs; a duty holder for the declaration of the as-built drawings, as constructed in the manuals; and then, going beyond that, a duty holder for the custody of what I call very complex privately owned infrastructure in multiple partly hands.

At the moment we are making more complex buildings and my observation of those buildings is that, in fact, the people who are providing the supports, starting with the lawyers, are not up to addressing the issues. The first thing they want to do is get before the courts and start running up the bill. My view is that on every one of those cases where there is a lawyer in the play, when I ask them, "What does the end game look like here", very few have an answer. I think we need to start to think about how we work our way through that sort of question.

The CHAIR: That may be an answer going forward, but it still does not address Mr Graham's concern. You are quite right about the scale of the problem. There have been 1,700 new strata registered for the last five or six years. If you go back a decade that is well over 10,000.

Mr CHANDLER: Let me give Mr Graham the final part of that answer because I would like to complete it. I have given it a lot of thought. I think it probably needs some sort of sunset date that basically says that subject to us finding someone responsible in the strata community, we might have to put a sunset and say by a certain date everybody has got to come out. We have got to start to get to a point where we see a cone of proof that says what we are dealing with. I have been meeting lengthily with the strata advocates and people who do research and commentate on defects and I am still yet to be satisfied that anyone has got a line of sight to the difference between

CORRECTED

defects and material defects. Material defects, in my view, are things that go to the structure, the envelop of the building, all of the waterproofing—basements, podiums, planter boxes, bathrooms and everything to do with the water proofing—and all of the fire installations, passive and active.

In my view they are things that are systemic through a building that are actually material. I am less worried about whether someone scratched every benchtop through the whole building. I am interested in the material things. One of the pieces of work I am working up with at the moment with Professor Randolph at the University of New South Wales is in fact a piece of research that asks, "How do we actually identify where the material defects are?" I am expecting to receive a proposal from him in the next week or two. We have now had a couple of drafting exercises to ask how we might do this. But the intention is to go back and have a look at the strata plans that have already been registered to see if we can find a line of sight to what we might find are material defects. Irrespective of whether people come out or not, we are still going to go looking for it.

The Hon. JOHN GRAHAM: How far back will you go looking?

Mr CHANDLER: I would have thought six years might be sufficient.

The Hon. COURTNEY HOUSSOS: Do you need additional powers to do that?

Mr CHANDLER: No. We are going review the strata legislation. I think it is far better to do it in a package of work where everything sits in the right place. I think we have got enough to do right now. If we start to change the compass setting of this industry and make sure that there is a meaningful change, we have time to think about how we might deal with this when we start to look at the strata legislation. I know that the deputy secretary and Mr Tansey have already engaged or are speaking to Bronwyn Weir to actually go and talk to a number of the strata communities to get their views on how we might go about doing this.

The Hon. JOHN GRAHAM: Mr Chandler, my issue is that that is a rational response if you are trying to fix the system—to concentrate on the long term. But the clock is ticking for individual homeowners and their ability to, within the two years or six years, have options to fix this without being absolutely on the hook themselves.

Mr CHANDLER: Those people are going to have to look at what their rights are and in the event that they do not have rights some of them are going to have to step up and pay for this work. I am sorry, but there is not a glove that is going to land around them and write a cheque to rectify this. The option that people have when they declare what I call material defects—as opposed to defects—is that they will elect as to which path they are going to go down to seek to get recovery. In the event that there is nobody there to recover from—and in many of these cases there is no-one there to recover from—they are going to have to stump and get that work done.

The CHAIR: This brings us to one of the fundamental issues that has been raised by a series of homeowners and I think it is a very fair point. They say to us: My problems were created by decades of deregulation by the State Government. It stepped away from its responsibilities to make sure my future purchased home would be safe, so why does the Government not come forward with a compensation package? Why should I be strung out alone—

The Hon. TREVOR KHAN: David, how can these witnesses possibly respond to that proposition?

Mr CHANDLER: I am certainly not responding to it.

The CHAIR: Mr Chandler, your proposition was that homeowners just have to cough up. What I am saying to you is that many of them reject the proposition.

The Hon. TREVOR KHAN: David, this is not the time for speech-making. These witnesses can assist in a variety of ways, but—

The CHAIR: I am testing your answer, Mr Chandler. You realise the anger in the community that kind of proposition puts—that there will just have to find themselves. Do you realise the anger in the community?

The Hon. JOHN GRAHAM: Is that not a green light to phoenixing? That is my concern when I hear that.

The CHAIR: I will put them one at a time. I realise—

Mr CHANDLER: Can I come back to your question because I do not want that question to go?

The CHAIR: Do you realise the anger in the community when they hear that? It is just that they will have to cough up.

The Hon. NATALIE WARD: Can we have one at a time?

CORRECTED

The Hon. TREVOR KHAN: David, for heaven's sake, let him answer.

Mr CHANDLER: There is no appetite and we cannot undo 20 years of whatever regulatory situation that has got us to where we are right now. We cannot undo that. So we just going to have to deal with what we have. There are some owners bodies that are going to have to pay to get their building brought up to a standard for material items. Now, as far as opening a gate for phoenixing, the attack that my powers will bring will be one that is aimed specifically at phoenixing. I would like to actually have, I do not know, a measurable account as to say to you that if we could drive the incidence of phoenixing in this State out by at least 30 per cent in the next two years, that would be a worthy achievement because first of all it would draw a line in the sand to people who think they can use this as a business model. More importantly, it will have a significant benefit to the State in terms of the damage and the trail of costs that these people leave behind them. But more importantly, the fewer phoenixes and the more we chase off the reservation, than the faster we are going to get people back in to buying apartments because many, many apartment developers are very, very good.

The Hon. JOHN GRAHAM: I support all of those views you have just put and I support the first option you put, seeking to recover where that is possible, but is it not pretty rough for many of these homeowners if they got a situation prior to when you have these powers and they have to stump up and get the work done themselves in all those cases where the businesses have disappeared?

Mr CHANDLER: I do not have a better answer for you than that, I am sorry.

The Hon. JOHN GRAHAM: But do you accept that it is not a very good answer if you are a homeowner.

Mr CHANDLER: I do not have a better answer for you. I am not going to agree it is not a very good answer.

The Hon. MATTHEW MASON-COX: I acknowledge what you just said, Mr Chandler, but I want to take you to looking to the future and perhaps looking at the insurance regime that might apply with buildings in the future, looking at perhaps a long 10-year proposal upfront rather than the last-resort insurance we have at the moment and how that might look, and how the credit rating or the rating system that you are proposing will work in context with that, particularly identifying some of these people who should be out of the industry who were indulging in those sort of phoenixing practices and, if you like, raising the standards of the industry as a whole?

Mr CHANDLER: Thank you for the question. For the record, because we have had informal conversations, I will just revisit the fact that some work has been done on a rating system, which is looking at how do we take the aggregate risk of a group of players—which may include the developer, the builder and the certifier—to give us a line of sight to—let us say there are 20 per cent of the players who pose more risk than all the others. That is not to say that they are phoenixes. It is got to say that they are immature or lesser substantive organisations and it also includes those that are minded to actually phoenix. If we spend the next couple of years specifically addressing the risky end of the market, then the next piece of work we are doing is saying how do we actually end up with a more trustworthy way of assembling all of the certificates that go to making up the final certificate because at the moment it is a pretty organic process. It is almost "tick the box, get that piece of paper, put it in that folder." But we are currently working with Data61 on a project at the moment and that might look at the opportunity to use blockchain to give you a single source of truth, that you actually put all of those certificates into a single folder—

The Hon. MATTHEW MASON-COX: All electronic?

Mr CHANDLER: All electronic. The validation is then immutable and the only risk that you have is to then look at each of the people who have put certificates into the system to say what is the relative trustworthiness of each of those players. I have spent the morning—actually, this morning—talking to the first of the working groups to stand that particular piece of work up. If in two or three years from now we have a situation where we can identify who are the most risky players—and we will—and then we can start to identify who are producing the most trustworthy buildings, then there is an appetite in the insurance industry to explore bringing in a first-resort, 10-year policy. Last week I had two or three meetings with insurers who indicated to me that the market would have an appetite for something like that if you actually sorted out the risk.

Now what they do not want is a legislative solution where everybody has to have it. What they want is a situation that says if you have got a methodology for identifying who the most risky and who the best are, then why do we not start designing a product that is available for the better players, what I call the vanilla product? So the vanilla product will be a 10-year warranty available as a first resort to purchasers of a new building to cover the structure, the envelope, the waterproofing, the fire rating systems, and potentially the acoustics, which is another issue that is popping up. If that was the vanilla policy, speaking to homeowners corporations and strata managers, that would take a huge amount of angst out of the marketplace.

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As of end of last week, with the conversations I had, I think we are headed in the right direction and I believe that the Insurance Council Australia feel as though there is a very viable approach. First of all, get the risky players identified, deal with the risky players. Do not come up with an expectation that anything is going to cover everybody or legislated. Let the market provide it so that the first movers can get it. Make sure that is achievable and practical for them. Then the market will sort it out after that because if you want to sell off-the-plan apartments and you do not have that sort of offering, then I am afraid people will start to walk past you. That is the outcome we want.

The CHAIR: I wish we could of a lot of time testing whether or not the market will solve this or not; we have nine minutes left. I will go to Ms Houssos.

The Hon. COURTNEY HOUSSOS: I wanted to come back to the question of these 30 boots on the ground that you referred to in your earlier testimony. You said there were 10 groups of three. I have previously asked you about the inspection regime in New South Wales through Fair Trading. Will this be in addition to those inspectors?

Mr CHANDLER: Yes, it will be. Minister has advised that, yes.

The Hon. COURTNEY HOUSSOS: Where and what kind of qualifications will those inspectors have? Will they have a specific area or will they be general building inspectors?

Mr CHANDLER: We are anticipating that I might get my powers. And in the event that I do, we are currently starting to work up what would the occupancy certificate audits look like.

The Hon. COURTNEY HOUSSOS: So the 30 new people are to enforce the occupancy certificates.

Mr CHANDLER: That is the first piece. The second piece that we will get boots on the ground to do will be to support then standing up the declared design drawings. Then there will be a subsequent boots-on-the-ground—the Minister has already outlined the numbers so I am not going to recant those—to stand up the as-built drawings. But let us stay with the occupancy—30 people, boots on the ground. My view is that we need subject matter experts and I think that what we will end up looking for there is the experienced designers, builders and certifiers to actually make up each of those audit groups—people that you would not pull the wool over their eyes easily because they have been around the block. I am convinced that there is a market out there of people who are just busting to participate in that because everybody wants to be part of turning this industry around.

The Hon. COURTNEY HOUSSOS: Mr Chandler, previously Fair Trading has told us that there are 14 inspectors for gas and electrical, 33 for plumbing and about 20 for building. Would you be taking any of those existing inspectors into your new regime of inspection?

Mr CHANDLER: I am just not trying to give you a cute answer; I am trying to say to you that there will be no—some of those people might actually get cross-transferred for skill transfer but they would be backfilled so it is not a case of robbing Peter to pay Paul. It will be 30 additional people on the ground. We see an opportunity that we might actually start to change experience so that some of our inspectors who have not necessarily always worked at the front end of projects might benefit from exposure there. We see this as an opportunity of actually changing and lifting the skills within the existing organisation, but there will be 30 additional people out there delivering the occupancy audit program.

The Hon. COURTNEY HOUSSOS: Okay, but they might not have specialised training in gas and electrical; they will be designers, builders or certifiers.

Mr CHANDLER: The people will be focused on overseeing the performance of the certifier to deliver a quality occupancy certificate.

The Hon. COURTNEY HOUSSOS: Judging from your previous evidence they will be focused primarily around material defects, is that correct?

Mr CHANDLER: They will be focused on all of the certificates and processes that a certifier ought to be calling up to be satisfied to issue a certificate, including the authenticity of those certificates. What we are seeing out there is that it has just become tick a box—just chuck in any old piece of paper and tick the box.

The Hon. COURTNEY HOUSSOS: We are well aware of that, Mr Chandler.

Mr CHANDLER: We will be tossing out anything that does not pass muster, let me assure you. We will be looking to say to the certifier, "Here is what we are expecting. Show us how you are going to go from A to B in a way that will achieve our expectations because if you are not going to convince us that you are going down there, there are some dark days ahead of you". We do not need to go inspecting gas. We do not need to go

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inspecting electrical. We need to make sure that the authenticity of the certificates that are being collected to form part of the occupancy certificate are presented by people who have the ability to offer those certificates up as opposed to some of the shams that we have seen where people have just simply written a letter on a piece of letterhead and that has been accepted in a few cases by a couple of the more shoddy certifiers.

The CHAIR: Will you be able to go behind any of that certification? It may look shiny. It may look like a proper certification.

The Hon. TREVOR KHAN: That is precisely what he is saying.

The CHAIR: It may not be signed by Bugs Bunny. If you do not have people skilled in testing the plumbing or testing the electrical and seeing what was actually built, that is the question.

Mr CHANDLER: Please take it as read. The first question will be, "Show us all the drawings that you built this project against." Right now, out there, are drawings that are incomplete. People are building projects off incomplete drawings.

The CHAIR: I fully understand the issue about inadequate paperwork.

Mr CHANDLER: I want you to be clear about where we are starting because at the moment what we have got is no starting point for some of these certifiers. Some of the certifiers are actually being put in a horrible position where they are put between someone trying to finish a building and not having enough documents against which to reference the reason for what you want.

The CHAIR: They are being threatened with litigation if they do not complete, as you know—

The Hon. TREVOR KHAN: Let him answer. He is answering your question, let him answer.

The CHAIR: I know he is. They are in a terrible situation—

Mr CHANDLER: I am not sitting here looking startled at your question. At times I am just trying to work out what I need to do to convince you that we are going to be all over this.

The CHAIR: I come back to what I said earlier. The documentation may look on the face of it adequate, but if you have not got people who can test whether or not the plumbing has met the relevant standard, whether the electricals have been done to an appropriate standard, how do you get beyond the paperwork? When Ms Houssos was asking about the qualifications—

Mr CHANDLER: If we have got an experienced designer, an experienced builder and an experienced certifier conducting the audits, do you think they came down in the last shower?

The Hon. COURTNEY HOUSSOS: The Chair has actually missed the thrust of my question—

Mr CHANDLER: Do you want to sort that out?

The Hon. COURTNEY HOUSSOS: We have received evidence in this inquiry of unlicensed electricians. We have received evidence of plumbers who have been on the tools for 20 years and have never seen an inspector. This new regime of 30 boots on the ground, which will be a good start, will be around the certification process. My question is: Are you going to overtake the inspection regime for licensing of these practitioners as well?

Mr CHANDLER: We will be looking to make sure that people who are certifying work have got the license to do it. We will have the Government licensing system ready to go, such that when someone is certifying something and they may not have the licence or ability to do it, we can identify and challenge that.

The Hon. COURTNEY HOUSSOS: No. This is about unlicensed work being done.

Mr CHANDLER: I just made the comment to you that this is about the fact that you have certifying being done by people who do not have the capabilities or the power to do so.

The Hon. COURTNEY HOUSSOS: So you do not think there is a need for more inspectors?

Mr CHANDLER: I do not at this stage, no. Let us get this piece done and see how it looks at the end of that.

The Hon. COURTNEY HOUSSOS: You previously committed to me that you would be reviewing the number of plumbing, gas, electrical and building inspectors. Will you then review that at the end of this next process?

Mr CHANDLER: What I would like to do is to come back and brief you on some of the things we are doing to actually get more productivity out of what we are doing. There are areas that I have identified that, in my

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view, are not perfect. We are looking at how we can—we are working on a tool at the moment which is called A Single Touch, such that when any inspector touches a project we get a benefit of all of the inspectors being able to get a bit of an insight into that inspector's particular presence on a site. I would like to brief you on that at a subsequent briefing because I think the first step there is to get an alignment across the resources we have got and see what we can get out of that resource. They are just busting to do it, let me tell you. They are busting to do it.

The Hon. COURTNEY HOUSSOS: In fairness, Mr Chandler, I am asking you questions about alignment of resources and the inspectors that our existing within the department and whether they are going to be part of this new regime or part of a further silo that is operating within Fair Trading.

Mr CHANDLER: You use words like silos, I do not buy that certain language, I am afraid. One of the things that we have got to rectify here is that we start off calling private certifiers "them" and "us". Private certifiers are part of us; they are public officers. The first conversation we have got to have with them is to say, "You people are part of us. Step up and start to do your job." That is what we are going to be doing straightaway. We have got a bunch of inspectors out there. I have spent time with these inspectors in the field. We have got very good subject matter experts; boots on the ground out there doing good work. Could we make the impacts greater? Yes. Could we actually collaborate across what they do better? Yes, and I will be delighted to brief you on that at a future hearing.

The CHAIR: It is now 4.30 p.m.

The Hon. COURTNEY HOUSSOS: Can I ask one final question because I allowed him to finish his answer?

The Hon. TREVOR KHAN: That is outrageous. The witness is entitled to answer and his evidence has been relevant.

The CHAIR: Mr Khan and Ms Houssos, can we finish this hearing in a question and answer process rather than invective process?

The Hon. COURTNEY HOUSSOS: You said that you are looking at a collaborative approach. My question is—not that I am undermining the work of the existing inspectors, I am saying you need more, Mr Chandler. You have got 14 for gas and electrical—

The Hon. TREVOR KHAN: That is in a question so far. It is a statement.

The CHAIR: Let the question be finished.

The Hon. COURTNEY HOUSSOS: You have 14 specialised gas and electrical inspectors. You told us in previous testimony that you have had 1,700 new strata schemes in the last 12 months. How can they possibly inspect all of those sites?

Mr CHANDLER: Ms Houssos, why don't you allow me to inject myself into the organisation, improve its business systems, improve its capabilities and come back and report to you? How about we do that sometime in the future?

The CHAIR: I do not think we are going to advance much beyond that. The Building Confidence report of Shergold and Weir was finalised in February 2018. It had 24 recommendations in it. We are now two years on. How many of those recommendations have been fully implemented in New South Wales? How many of them have not been started? And, for the balance, when can we expect them to be completed? I accept that is probably best taken on notice, but if you want to tell me the highlighted ones that have been completed, let me know.

Ms WEBB: Sure. I think we may have answered it on notice before but we will update. I think some of them are contained within the building and design bill that is coming through.

The CHAIR: I think we have heard previously that was 15 per cent.

Ms WEBB: That is probably right. Some are ones that are being dealt with nationally through the Building Ministers Forum and the ABCB, some have happened and some are the certifiers legislation. There is a range of ways in which they are being implemented. We will give you an update on where we are up to.

The CHAIR: You will give us a detailed health check on notice.

Ms WEBB: Absolutely. We will update the one we gave you before..

The Hon. MATTHEW MASON-COX: This might be subject to some confidences so what you can put on notice would be useful, could you give some more information to the Committee on block chain and where you are heading with that, particularly using electronic means. The everyone that touches—

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Mr CHANDLER: The one-touch pad.

The Hon. MATTHEW MASON-COX: The one-touch pad.

Mr CHANDLER: That is what I offered to provide a briefing on.

The Hon. MATTHEW MASON-COX: That would be excellent to understand that in more detail.

Mr CHANDLER: I am very keen to do that.

The Hon. MATTHEW MASON-COX: Also the rating system because obviously that complements that and the insurance arrangements moving forward. What is the best practice suite and opportunities you see in the front—

Mr CHANDLER: What the headland objectives are.

The Hon. MATTHEW MASON-COX: And the detail that might flow from the conversations you might have had.

The CHAIR: I point out that was three questions.

The Hon. TREVOR KHAN: We have a system for questions on notice to be put in writing.

The CHAIR: Sometimes it is quicker to simply do it now. Ms Houssos has two questions on notice and we will take those.

The Hon. COURTNEY HOUSSOS: On the ratings agency, when you are expecting to go out to tender and if that has been finalised yet?

Mr CHANDLER: Not at this stage. We have the resources to start risk profiling from within. I am briefing the second of the ratings agencies this week, I am not sure the day. I am making sure that all of the major ratings agencies understand the fact that we have simply created a market for a ratings tool. Everybody is now aware of what we will be looking for. We will go to tender. The goal would be sometime around the middle of the year, but you cannot move until we have got my powers. We would go to tender for someone to provide the interim services for ratings from the private sector. It will be all very visible and it will be very clear that we have got a probity auditor already on board to make sure that these sorts of conversations are being managed in the appropriate way.

The CHAIR: All right. Mr Tansey, Ms Webb, Mr Chandler, thank you again for your evidence today. That concludes today's hearings.

Ms WEBB: Was there a date for the questions on notice?

The CHAIR: Fourteen days. The Committee secretariat will be in contact with you.

(The witnesses withdrew.)

The Committee adjourned at 16:35.