REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

FURTHER INQUIRY INTO THE REGULATION OF BUILDING STANDARDS

UNCORRECTED

Macquarie Room, Sydney on Monday, 11 October 2021

The Committee met at 9:45 am

PRESENT

Mr David Shoebridge (Chair)

The Hon. Robert Borsak (Deputy Chair)
The Hon. Anthony D'Adam
The Hon. Wes Fang
The Hon. Scott Farlow
The Hon. Courtney Houssos
The Hon. Trevor Khan
The Hon. Peter Poulos

* Please note:

[inaudible] is used when audio words cannot be deciphered
[audio malfunction] is used when words are lost due to a technical malfunction
[disorder] is used when members or witnesses speak over one another

UNCORRECTED

The CHAIR: Welcome to this virtual hearing for the further inquiry into the regulation of building standards in New South Wales. Before I commence I would like to pay my respects to the Gadigal people, who are the traditional owners of the land upon which the Parliament sits. That respect is extended to all Aboriginal persons present and all of those who are taking part through the broadcast of these proceedings. Today's hearing is to be held as a totally virtual hearing. This enables the work of the Committee to continue during the COVID-19 pandemic without compromising the health and safety of witnesses, staff and members of Parliament. I would ask for everyone's patience if we have any technical difficulties throughout the hearing. If participants lose their internet connection, they are reminded to rejoin the hearing through the link that has been provided to them through the secretariat.

Today we will be hearing from some critical witnesses. We commence with two property owners, who will tell us from the frontline what it is like to be dealing with an industry that has such lax regulation in New South Wales and what that means for individual property owners and individual households. We will hear from Local Government NSW, Randwick Council and the City of Sydney council, hearing from a local government perspective about the difficulties in dealing with building standards and building remediation in New South Wales. We will hear from Engineers Australia, the Insurance Council of Australia and Consult Australia, who are critical stakeholders. They will deal not only with the concerns about the lack of professional indemnity insurance but also other matters requiring the attention of Parliament for the proper regulation of buildings. Finally, we will hear from the Australian Institute of Building Surveyors and the Association of Australian Certifiers.

Before we commence I would like to make some brief comments about the procedures for today’s hearing. Today's hearing is being broadcast live on the Parliament's webcast and will be placed on the Committee's website when it becomes available. In accordance with broadcasting guidelines, media representatives are reminded to take responsibility about what they publish about the Committee's proceedings. I remind people that parliamentary privilege, whilst it applies to matters during the Committee, does not apply to matters that are said or reported outside of the Committee. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I remind all witnesses and members to stick to the issues rather than the personalities. All witnesses have a right to procedural fairness. It is a matter that this Committee takes seriously after adopting a resolution of the House in 2018. There may be some questions that a witness could answer only if they had more time to reflect or if they had access to additional documents, in which case witnesses are entitled to take a question on notice and provide a written answer within 21 days.

I will make a few notes on virtual hearing etiquette. I remind Committee members to clearly identify whom questions are addressed to. I remind people, particularly witnesses, that when they are making a contribution to restate their name when they begin to answer a question so Hansard can distinguish between the different witnesses. Could I remind people to put their microphones on mute when they are not contributing and to take them off mute immediately before they contribute. Members and witnesses are requested to avoid speaking over each other, which makes it extremely difficult for Hansard given the nature of these proceedings. Could I ask people to speak clearly and directly into the microphone to assist both the broadcast and Hansard.

PATRICK WANG, Individual, sworn and examined

OLIVER BURGESS, Individual, affirmed and examined

The CHAIR: I now welcome our first two witnesses, Mr Oliver Burgess and Mr Patrick Wang. Thank you both very much for attending today. The procedure before the Committee is that you are both now welcome to give a short opening statement to explain why you are here and what the key issues are that you want to get across to the Committee. We will then move to questioning for the balance of the hour that we have set aside. We will use the same order in which you were sworn in. Mr Wang, did you want to give a brief opening?

Mr WANG: Yes, I do. Good morning and thank you for this opportunity to speak. My name is Patrick Wang and I am the buyer of an off-the-plan apartment in Parramatta called Imperial Towers. This building has been issued with a prohibition order after audits revealed serious structural, fire resistance and waterproofing defects in November 2020. I believe I am one of many Australians who are now suffering, cornered into a position where we cannot settle on our home but cannot leave the contract. We do not know when this will end.

In June 2021 a prohibition order was issued by the Building Commissioner to the developer. This had a condition preventing the strata plan and occupation certificate from being registered until defects were fixed. In July this prohibition order was amended by Fair Trading NSW. The strata plan was allowed to be registered. Please note the defects were not fixed. With this consequent approval of the strata plan before the sunset date, we buyers of Imperial Towers were locked into the contract. What was at first our right to rescind our contract if the building was not complete by the sunset date had now become a trap. May I add that the occupation certificate has still not been approved. I do not believe private certifiers should be allowed to issue the occupation certificate for Imperial Towers. There is public knowledge of the misconducts and malpractices by certain private certifiers and I believe it would be wrong if they are allowed to certify Imperial Towers.

Is it fair that I now have to purchase a home with major defects that should be privately certified by those not known for their morality? I would like to see policies for buyers that ensure their protection when defects and faults occur in the building that may cause immediate evacuation, as we have been seeing on the news. These costs should not be shouldered onto the buyer, especially if there have been major serious defects found in the stages prior to completion. I want to see developers take liabilities of defects of these buildings in conjunction to there being protections for purchasers if these developers go bankrupt. I would like to see the sunset date redefined. If the sunset date is able to be altered in favour of the vendor, then on behalf of purchasers there must be fairness and clarity. I would like to see regulations into sales contracts where there is even grounds for both the vendor and the purchaser. It is unfair, especially in our case, where the vendor has complete power in the sales contract. Thank you to the Committee's continued efforts into the inquiry of building standards. I hope present buyers and future buyers will be able to benefit from these efforts to ensure a safer and better regulated New South Wales.

The CHAIR: Thanks, Mr Wang. Thanks for setting out a complex story so clearly. We really do appreciate it.

Mr BURGESS: My name is Oliver Burgess. I am also a purchaser of a unit in the Imperial Towers. Much the same as Patrick has said—he already set out the situation that we face. I would just like to point out a few issues that I also see. The main issue I see is the sunset date. There is a clause in the contract that puts a time limit on the contract's validity. This usually has the effect of, if the vendor has not completed by that date, then both the vendor and purchaser have the right to walk away and get their money back. However, in this case, it has been completely voided. The vendor has found a loophole, basically, so we cannot end our contract. There is no date to when anything might be complete. We are just in a limbo right now. I think there definitely needs to be changes to laws which set out exactly what the sunset date actually means. It is a fundamental right in a contract that when you pay a deposit, you should have a time limit when things should be complete. However, we do not have that. I think in Queensland it is actually legislated what the sunset date means. What people normally would consider the sunset date is when they can hand over the keys. That might be something to look into.

My dealing with the Building Commissioner, I think it should be really congratulated—his work and his office's work to help fix up defects, although I think there is definitely a lot of room to improve. We were not notified of the prohibition order even though it affects us considerably. We are the actual people who will be moving here and living here but there was no notification given to us. The order was revoked and changed but there are no reasons given why this happened. In fact, I had to submit a Government Information (Public Access) Act [GIPAA] request to actually get the official reasoning for why the order was revoked. There are no reasons why the strata plan was originally not allowed to be registered and then later on that was removed. It was very unclear exactly why these decisions were made, and they affected us greatly because our entire contract depends on these things.

I think purchasers definitely need to be notified. For example, when I called up Fair Trading to attempt to understand what is actually going on, they gave me an email address. But the email address was actually just the vendor's email address. They said, "You should talk to the vendor. They can let you know what Fair Trading is doing." I would prefer if I talked to Fair Trading because we are dealing with this type of situation where we cannot exactly trust the vendor to be honest.

I would just like to reiterate what the actual defects actually are in this place. It is quite serious. There are no drainage facilities between the facade and wall, waterproofing membrane on the cladding prevented any drainage, the actual building itself is not properly connected to the ground piers, the grout is not applied, there is no corrosion protection on the connection between the piers and the actual building itself, lightweight plasterboard walls, bulkheads and ceilings are not compliant with the fire tests. They used non-compliant fire sealants throughout the building and the actual floor system is not installed in a compliant way. The report clearly states that this can cause the destruction of the building. I am very happy that the Building Commissioner has found these defects, but I think the situation where they actually adjusted the order has really unfairly damaged the actual purchasers. Even with this order, if it is fixed—the actual inspections were in November and December last year. There was a lot of construction happening before that. I cannot exactly be confident that there are not more issues. I would consider the nature of these issues negligent on the part of the builder. They are serious problems.

I am now locked into the purchase and there is no guarantee when I can get possession. Some others in our situation have been trying to get loans. They cannot get a loan from the big four banks because there is public knowledge of the defects. That is the purchasers' situation. As for the vendor, after the order has been changed, now they do not have a time limit to complete the building; they can take their time. All the purchasers are locked into a highly inflated price because of course now if they were to attempt to sell it, it would be a lot less. To my knowledge, the vendor, for their actions, has not needed to pay any fines, and their reputational damage will be limited because the holding company can create a new company and no-one will ever know about it. I do not think the situation is fair. The purchasers are taking all of the damage. The vendor really has not faced any consequences.

The CHAIR: Thank you, Mr Burgess. I think we will explore that in questions. Mr Wang, you signed your contract five years ago now. Is that right?

Mr WANG: That is correct.

The CHAIR: And you still obviously do not have an apartment.

Mr WANG: No. Very far from it, I believe, very far.

The CHAIR: Mr Burgess, how long ago did you sign your contract?

Mr BURGESS: It was mid-2016—sorry, 2017.

The CHAIR: So over four years ago.

Mr BURGESS: Yes.

The CHAIR: The initial prohibition order that was issued by the Building Commissioner prohibited the registration of either a strata plan or the delivery of an occupation certificate. Was that the original prohibition order?

Mr BURGESS: Yes.

Mr WANG: That is correct.

The CHAIR: A matter of weeks after that you found out there had been an amended prohibition order issued by a senior officer at Fair Trading which removed the prohibition on the registering of the strata plan. Is that right?

Mr WANG: That is correct.

Mr BURGESS: Yes.

The CHAIR: Do I understand that both of your contracts had the sunset date tied to the registering of a strata plan in some way? Is that right?

Mr BURGESS: Yes, that is correct.

The CHAIR: So if a strata plan had been registered within that sunset period, then you were caught in your contract and you could not get your deposit back. Is that right?

Mr WANG: That is right.

Mr BURGESS: Yes.

The CHAIR: Indeed, that is what has happened to both of you because the strata plan has now been registered and you are now caught in this contract—it has been four years for you, Mr Burgess, and five years for you, Mr Wang—on a building which has innumerable defects. Is that the situation?

Mr WANG: That is right. Because of the defects, obviously, we are now caught in this contract. Of course, if the building was built properly and there were no problems, the strata plan, if that was registered, that is obviously part of our contract and we would be okay with that. But because the product is not ready and it is not fit for sale, we feel this has been unfair for us.

Mr BURGESS: The strata plan was registered but I did not even know what a strata plan was until a month ago. It does not have any relevance to the actual, physical—the strata plan sets out where the walls are but it does not give me an apartment. So I have a strata plan, great, but there is no apartment to show for it.

The CHAIR: You cannot live in a strata plan.

Mr BURGESS: I am afraid not.

The CHAIR: When that amended prohibition order was being crafted, did Fair Trading reach out in any way or communicate with any of the purchasers? Obviously you are all going to be deeply affected by the change in the prohibition order. Did they tell you about it? When did you first hear about it?

Mr BURGESS: I first heard about it very late, actually. I just thought that the original order was continuing. A few days before the sunset date I actually looked it up again and I realised there were a few newspaper articles. That is when I found out. There was no communication between Fair Trading and the purchasers.

Mr WANG: I personally was not contacted. I found out because we had a group of buyers in an online chat group. There were particular buyers who have been active and proactive in chasing up the affairs. They told us and I found out through those means.

The CHAIR: I assume you then reached out to Fair Trading and said, "What on earth is going on here?"

Mr WANG: Yes.

The CHAIR: What happened?

Mr WANG: After my first email to Fair Trading, I think after three weeks or so, they called back explaining the situation. It was very general. I cannot remember the entire sentences or words used, but pretty much it was just to reiterate the process that happened, saying that the process is between me and the builder and that Fair Trading is just a mitigator between these affairs. They do not act on our behalf in these regards.

Mr BURGESS: Yes, a similar situation. I called them up and I asked them why it was changed and why online it does not say anything, that it just has the new order. There is no mention that there was a previous order and no mention that anything was revoked. They basically said the contract is between myself and the builder and Fair Trading's job is just to liaise with the builder. They basically said, "Sorry, there is nothing we can tell you publicly."

The Hon. COURTNEY HOUSSOS: Thank you, Mr Wang and Mr Burgess [audio malfunction] the challenges that you are facing, in particular, Mr Burgess, that long list of defects that [audio malfunction].

The CHAIR: Courtney, you are coming through very quietly.

The Hon. COURTNEY HOUSSOS: Is that better now?

The CHAIR: Yes, significantly better.

The Hon. COURTNEY HOUSSOS: I will start again. Thanks very much, Mr Wang and Mr Burgess, for your testimony today, especially Mr Burgess where you have outlined exactly what is wrong with the building. You went to pretty extraordinary lengths to try to get some more information around the prohibition orders by lodging a GIPAA application to find out why. Can you just outline what that GIPAA application actually showed to you?

Mr BURGESS: Yes. I lodged a GIPAA request to Parramatta Council to try to find out why they were able to register the strata plan. The original conditions of consent required the vendor to obtain an occupation certificate before the strata plan. If that was to happen, then the sunset date would have operated as intended. After the sunset date, they can hand over the keys. So I was trying to find out why that happened. I got a lot of documents.

I got a letter from the development application [DA] assessment officer and she basically sent an email to Fair Trading confirming that the order had been changed. She is quoting Mr Frank Sartor. She says:

> The developer's planner, Mr Frank Sartor, has mentioned that the Building Commissioner has agreed to vary his prohibition order to allow the subdivision process to proceed. The order will simply apply to the occupancy certificate and will be lifted when the commissioner is satisfied that the works have been completed. This is expected to occur in the next month or so.

That was what she heard. I suppose that is from the developer's planner, who is the previous planning Minister from 15 years ago. I also obtained from that GIPAA request the actual order revoking the first prohibition order.

The Hon. COURTNEY HOUSSOS: Both you and Mr Wang are obviously potential buyers, or you have signed on. You have come together in a collective arrangement, but that has not been facilitated by Fair Trading or by the vendor. Out of desperation, you guys have come together. Is that correct?

Mr BURGESS: Yes. I think that is fair to say.

Mr WANG: That is correct.

The Hon. COURTNEY HOUSSOS: As the Chair covered, you both signed contracts four and five years ago. This is your major financial investment that you have made in terms of what you are purchasing. Is that correct?

Mr WANG: Correct.

Mr BURGESS: Yes. It is an apartment. It is a big deal. It is a lot of money.

The Hon. COURTNEY HOUSSOS: Mr Wang, thank you for your submission. We have now received that. You have outlined that you no longer want to purchase in this building. Is that correct?

Mr WANG: No, definitely not. Especially with how the proceedings have followed through. There is no trust from myself to the developer and their actions. It shows that they definitely do not have our best interests at heart.

The Hon. COURTNEY HOUSSOS: Mr Burgess, are you in the same situation where you no longer want to purchase the unit but you are being forced to because this clause has been enacted?

Mr BURGESS: Definitely. If I was able to rescind, I would definitely rescind. There are so many defects. There is absolutely no trust. The vendor's actions have really shown contempt for the people of New South Wales. There are so many issues, it is insulting. They tried to just hand us off a dangerous building. That building is going to sit there for the next 50 years. Who knows what is going to happen? All the people who live there in the future are at risk. I would definitely not want to live there.

The Hon. COURTNEY HOUSSOS: As you said, Mr Burgess, there is a very personal financial risk here. Mr Wang, you actually outlined in your submission that your loan was not approved by one of the four banks because of these defects. Can you just explain how that happened for us?

Mr WANG: Yes. My broker, on her submission of my home loan to one of the banks—it came through where, because of the defects, the valuation of the property was changed and the loan was not able to be approved.

The Hon. COURTNEY HOUSSOS: So you had to source alternative financing? Is that right? You had to find another home loan?

Mr WANG: Because of when the home loan was submitted and the date until the sunset was emerging, there was not enough time to go and find a new bank and submit a new home loan.

The Hon. COURTNEY HOUSSOS: That is pretty extraordinary. Thank you very much for your time.

The Hon. TREVOR KHAN: Could I just start by saying to both of you how concerned I am by your story and that you are trapped in this situation. Anything that I ask you from this point on, rest assured I am very sympathetic to your position. Can I just go back a little bit earlier. I will start with Mr Wang, but I will then throw to you, Mr Burgess, as well. When you originally considered purchasing a unit in this development, do I take it that you visited a site where there was a display unit or the like that you were able to inspect?

Mr WANG: Yes. My memory fails me a little bit because it was some time ago, but we did go—

The Hon. TREVOR KHAN: Five years ago.

Mr WANG: —to a place where we [inaudible], the different meetings and we could see different outlines of the place. But I really cannot remember if we could see the whole room and the whole design.

The Hon. TREVOR KHAN: Mr Burgess, how did you go about it?

Mr BURGESS: I do not remember there being a display home or display unit. It was basically just a lot of information and brochures and photographs. It seemed like a pretty good place.

The Hon. TREVOR KHAN: Again, I am not being critical, but my question is this: Did you retain a solicitor or conveyancer for the purposes of getting advice on what you were signing up to? I say this from the point of view of being an old solicitor, so that defines how I look at this. Did you get some independent advice as to what you were actually putting your moniker on?

Mr WANG: I did not have an independent source. The lawyer or the solicitor we used was recommended by the developer.

The Hon. TREVOR KHAN: I thought that might be the case.

Mr WANG: No, I did not find an independent—maybe I could say I was naive at the time and I believed that everything was fine. But that was the process.

The Hon. TREVOR KHAN: I am genuinely not being critical.

Mr WANG: I know. I understand.

The Hon. TREVOR KHAN: Mr Burgess, how did you go?

Mr BURGESS: Yes, a similar situation. The lawyer was either recommended by the real estate agent or the vendor—one of them. We looked at the contract and they gave the A-okay and we went from there. I think we might have the same solicitor actually. We were speaking last night.

The Hon. TREVOR KHAN: I suspect you did. One of the things that interests me in these circumstances—again, I have to say we are going back 20 years since I did any conveyancing. Normally the contracts provide, or they used to provide, a completion date on their front cover. You would then have a whole pile of special conditions inside that developers would insert that would give them the ability to settle on unknown future dates on your purchase. Is that what we are confronted with here; essentially, the contract that you signed under the advice of a solicitor, who may have been associated with the developer, gave the developer carte blanche as to when they had to complete this building by?

Mr WANG: I cannot say for sure if that is the case. All I can really come from is that I only knew of the sunset date clause, which was initially I think in 2020. It has been pushed back to its maximum date of 365 days. But in terms of the finer details, I am really not too sure.

Mr BURGESS: Obviously in 2017 it did not mean much to me, I suppose. That is probably my own fault. But, yes, the completion date [disorder].

The Hon. TREVOR KHAN: Again, I am not being critical.

Mr BURGESS: No, that is alright. The completion date in the contract is the later of the two of the notice of registration of the strata plan and the notice of the issue of the occupancy certificate. So notice is the important key word because they have registered the strata plan. The vendor's solicitor sent everybody an email saying, "We have registered the strata plan, but just note that this is not a notice. We are just letting you know." But it is not a notice so that does not trigger any completion date on their part, they claimed.

The Hon. TREVOR KHAN: Before I move on, and I do not really care if it is one or both of you, but would one of you be able to provide us with a copy of your contract?

Mr WANG: Sure.

Mr BURGESS: Yes, no problem.

The Hon. TREVOR KHAN: It would be of interest to see what you got signed up to. I suspect that the problem that you have faced with your unit is a recurring issue in people who are buying off the plan. Your contract may well be helpful in informing us as to what we should be looking at and what the Committee should be recommending. Mr Burgess, could I ask you about the GIPAA application that you undertook. How many pages is it? If it is not too many, maybe you could give us either the whole of it or the relevant parts.

Mr BURGESS: Yes, it is quite a lot. Most of the actual contents are fairly innocuous, like development requests. But, yes, I would be happy to send them all to the Committee.

The Hon. TREVOR KHAN: Again, I can tell you are reasonably skilled at this. Can I invite you to cull what you do not think is helpful and send us the salient documents? Is that possible?

Mr BURGESS: That is certainly possible.

The Hon. TREVOR KHAN: I do not want to hog the limelight. My final question is this: Have you had any correspondence from Fair Trading regarding your circumstances?

Mr WANG: Yes. They contacted me after I sent an email reaching out. We had a phone discussion about what was happening. But apart from that call back, no, there has not been.

The Hon. TREVOR KHAN: Nothing in writing?

Mr WANG: In writing, there was an email confirming our conversation that we had et cetera. But apart from that specific conversation, there has not been anything else.

The Hon. TREVOR KHAN: Mr Burgess, how about you?

Mr BURGESS: No, I have not received any correspondence from Fair Trading.

The Hon. TREVOR KHAN: Thank you. Mr Wang, would you be able to provide us with a copy of that very helpful email that you received from Fair Trading?

Mr WANG: I can.

The Hon. TREVOR KHAN: Thank you. I will acquiesce at this stage.

The CHAIR: Mr Khan is obviously missing those days of trawling through contracts in his office in Tamworth.

The Hon. TREVOR KHAN: That is why I went back to doing prescribed content of alcohol pleas; it was far easier.

The CHAIR: Are there any other members of the Committee who have questions?

The Hon. ANTHONY D'ADAM: Thank you, Mr Burgess and Mr Wang, for your evidence. It is an extraordinary story. I want to get some clarity about a couple of details. The first thing is an exchange has not occurred. There has not been settlement, has there?

Mr WANG: No.

The Hon. ANTHONY D'ADAM: No. So technically you are not actually the owners of the properties yet. Is that right?

Mr WANG: That is correct.

The Hon. ANTHONY D'ADAM: Fair Trading would not necessarily know the extent of who actually owns properties in the building. Is that right?

Mr BURGESS: I think, possibly. But also, they definitely would know because I think one of the reasons that the prohibition order was revised is because—I mean, it is evident that the developer or the Building Commissioner or Fair Trading, if they did not get the strata plan there was going to be a lot of people rescinding. There must have been at least that knowledge, that there a lot of contracts are at risk.

The Hon. ANTHONY D'ADAM: In the documentation that you acquired through your GIPAA application, Fair Trading did not offer any specific explanation for the decision? Was there a formal reasoning or rationale provided in terms of the decision to register the strata plan?

Mr BURGESS: Do you mean to change the order or for them to—

The Hon. ANTHONY D'ADAM: Yes. To actually register the plan.

Mr BURGESS: No, I did not see anything. I sent a GIPAA request to Parramatta Council. Perhaps Fair Trading would have more information. I still do not know that. Although, there was a letter I have seen that basically outlined the reasons for that and it is mostly to do with the fact that the new laws are not necessarily to protect purchasers, they are really to just improve the overall quality of buildings and the perception of quality.

The Hon. ANTHONY D'ADAM: Can you clarify for me, you lodged the GIPAA request with Parramatta Council. In terms of the arrangement, the development condition was that they could not lodge the strata plan until they had an occupation certificate and Parramatta Council is the one that changed that condition. Is that your understanding of the process? It is Parramatta Council that made the decision to say, "No, we are not going to insist on the occupation certificate before the strata plan can be registered"?

Mr BURGESS: Yes, that is correct. That was one of the conditions of consent. They needed to get the occupation certificate before the strata plan could be registered—sorry, not the strata plan. It is actually before the strata certificate, which is another prerequisite for the strata plan, can be obtained. I think on 1 July the original

prohibition order was issued. Then on 6 July they lodged a request to Parramatta Council to change their consent requirements to allow them to obtain the strata certificate. Then about a month later that was allowed. That was the email that I was talking about earlier, just requesting that if they actually allow this it is not going to interfere with Fair Trading's prohibition order.

The Hon. ANTHONY D'ADAM: What was the rationale that was provided by Parramatta Council?

Mr BURGESS: There was a court case a few years ago. I cannot remember what council it was, but they took a developer to court to basically allow them to get the strata plan before the occupation certificate. That went all the way, I think, to the Supreme Court. In the end, they allowed it. Basically Parramatta Council used that and said, "There has been a court case. It is best precedent for this, so that is fine. We will allow you to do that." I looked at that court case and the actual reason is a very different situation. It actually was reasonable that they might be able to get the strata plan before the occupation certificate. This case was totally different, but that was the reasoning they used.

The Hon. ANTHONY D'ADAM: Are the representations made by the vendor included in the documentation that was provided in your GIPAA request?

Mr BURGESS: No. I could not find anything about the reasoning for their request.

The CHAIR: Mr Wang, over the last five years what has this meant for you personally in terms of your plans for your financial or personal future?

Mr WANG: At the moment I guess it means uncertainty—uncertainty in where my future really lies because all we can really do is wait until the developer issues the occupation certificate and we have to move in. That is how I feel [inaudible] that we can do. What I am worried about is watching the news and seeing different things that are arising—buildings are fixed, the contracts are signed, the people move in and then the problems come back. These are the things that I am worried about. Of course if they fix the building and everything is okay, we are obliged to move in. But it is the problems that might arise afterwards that really affect my thoughts.

The CHAIR: It is you and your family; this was going to be your family's home. Was that the plan, Mr Wang?

Mr WANG: It was for myself and also for my father. We both bought apartments in this place, so we have two.

The CHAIR: So your family has been hit by this doubly?

Mr WANG: That is correct, yes.

The CHAIR: Mr Burgess, how has it impacted upon you these last four years? Apart from your rapid understanding of construction and finance law, how has it impacted upon you?

Mr BURGESS: It is pretty sad, really. We were hoping to have a place. Now if we move in, this is just going to hang over us, I think. The defects might be fixed but I cannot be sure. It is always just going to be—it does not matter what we do in the future, the building has issues.

The CHAIR: It feels like moving in with a ticking time bomb somewhere in this apartment block. Would that be a fair summary?

Mr BURGESS: Yes, I think so. We just do not know. I think also the knowledge that the developer has tried to use whatever means possible to force us to settle this place and they do not seem to have any real care for the actual health and safety of the people they are selling it to.

The CHAIR: Can I ask you about when you approached Fair Trading? Were both of you told it is not their business to help you out as purchasers and if you had a problem with the contract to go back and talk to the developer? Is that a fair summary of what your engagement with Fair Trading was, Mr Wang?

Mr BURGESS: In some lights, not entirely. Like I did not have those exact words, but that is how I felt. I had a courtesy call explaining the situation but to seek further matters I have to find a lawyer and to contact the developer personally.

The CHAIR: Mr Burgess?

Mr BURGESS: Sorry, what was your question again?

The CHAIR: In terms of when you reached out to Fair Trading, initially for an explanation about why they changed the prohibition order and had you trapped in the contract, what did you get from Fair Trading?

Mr BURGESS: Not much because in the newspaper articles I read they basically said that Fair Trading was looking over some contracts for purchasers. So I called them up and asked if they could have a look at my contract, see if there are any issues. But they basically said, "No, actually we can't do that. That's a legal issue", and they gave me an email address, but it was just the email of the vendor. So I do not really want to talk to the vendor about the vendor's problems. So that was not very useful, I think.

The CHAIR: Did you reach out to the Building Commissioner, who would have issued the initial prohibition order, the one that actually protected you? Did you get any response or have you had any contact with the Building Commissioner?

Mr WANG: I have not emailed or contacted the Building Commissioner.

The CHAIR: Mr Burgess?

Mr BURGESS: I was trying to but I could not find any contact details. Mr David Chandler does not have an email. I suppose it is all under the Department of Customer Service. Perhaps I need to contact them.

The CHAIR: For full disclosure here, I and I think Ms Houssos have both been contacted by a number of building owners in this. I know I have communicated and had correspondence with the Building Commissioner, and with the assistance of the Committee I will table that correspondence as soon as I can get it to you. In the end, the Building Commissioner said it was really ultimately a matter for Fair Trading, having amended it. Ms Houssos?

The Hon. COURTNEY HOUSSOS: Thanks very much, Chair. Mr Wang and Mr Burgess, in some other buildings that we have seen that have faced similar problems to your own, what the Building Commissioner has done or the New South Wales Government has done is stepped in and got a fund that is going to be there to fix future defects. Would that address your concerns? Would that be enough to get you to happily move into a building, or is there just nothing that can be done—you simply want to start afresh with a new building and go forward with your life? Mr Wang, perhaps you first.

Mr WANG: No, definitely if there are things in place to protect us, to support us, I am more than happy to continue with that building and move in, definitely. It is not an attack or a vendetta against the developer; it is more of the product, it is more of the safety concerns. If that encompasses this whole thing, if they fix everything, if we receive their assurances and securities, definitely, personally I think that is fine.

The Hon. COURTNEY HOUSSOS: Mr Wang, have you had any correspondence from your bank or anyone else who has asked you for that kind of surety that the defects will be fixed?

Mr WANG: Sorry, I do not entirely understand. Could you repeat that please?

The Hon. COURTNEY HOUSSOS: I just wanted to see if the bank or your financial institution has asked for any kind of surety that the defects will actually be fixed or whether they have not asked about that at all.

Mr WANG: No, because it was more of they had contacted my mortgage broker. So once that kind of deal went sour, that was the end of that application from my side.

The Hon. COURTNEY HOUSSOS: Yes, I understand. Thanks, Mr Wang. Mr Burgess, is there anything that can be done to address the defects or do you just want to kind of move on with a new apartment, if that was possible?

Mr BURGESS: Yes, definitely I would prefer to move on to a new apartment if it is possible, but that does not seem that likely at this stage, unfortunately. It seems like a lot of the situations before this have occurred after everybody has already moved in, they are already living there. Assurances and that would definitely help a lot. I suppose in my situation—I have not moved in yet, have not actually settled—I have to do everything to avoid that, I suppose, because I do not really want to live there. So I suppose we are in a situation we have not actually fully completed the contract. Definitely afterwards, if we have already moved in for a few years, yes, that would definitely be awesome, having assurances. I think maybe that is happening, this type of thing. The developer needs to be [inaudible].

The CHAIR: Mr Burgess and Mr Wang, do I understand the Building Commissioner is in the process of negotiating some kind of financial security for you along the lines of a bank guarantee or similar so that there will be some money set aside to meet at least some of the future defects? Is that the process that is being undertaken?

Mr BURGESS: I am not aware of that, anything official, I think that was mentioned in a newspaper article, but I have not heard anything.

The CHAIR: Mr Wang?

Mr WANG: Yes, the same with me; I am not too sure.

The CHAIR: You have seen some media reporting that suggested this but nothing in writing, nothing officially having come to either of you. Is that the state of play?

Mr WANG: Yes.

Mr BURGESS: Yes.

The CHAIR: Sorry, Ms Houssos, does that impact you?

The Hon. COURTNEY HOUSSOS: That answers my question. Sorry, just to be clear, they have not communicated that? This potential negotiation for a fund has not been communicated with the owners, that you are aware of?

Mr BURGESS: No, it has not been. I have not personally had any contact with the developer or the Building Commissioner. It seems like all the negotiations are happening with the developer.

The Hon. COURTNEY HOUSSOS: Thanks very much, Mr Chair.

The CHAIR: Do any other members of the Committee have any further questions? Mr Wang and Mr Burgess, that does not indicate that the Committee is not deeply interested and concerned. It is just that you have told your story very clearly and plainly, and you have our collective well wishes. Your evidence will be very important to us as we formulate recommendations about what needs to be done. I personally cannot believe we have laws in New South Wales that allow these contracts to just go on and on and on and leave you with so much uncertainty in your lives. I am sure it is a matter that all of us will consider closely.

That concludes the first witness panel. We will have a short recess and we will resume at 10.50 a.m. when we will be hearing from Local Government NSW as well as representatives from Randwick and Sydney councils. I would encourage all members to place their device on mute and to turn off the video and we will recommence the public hearing at 10.50 a.m.

(The witnesses withdrew.)

(Short adjournment)

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

ROMAN WERESZCZYNSKI, Manager, Health, Building and Regulatory Services, Randwick City Council, sworn and examined

ANDREW THOMAS, Executive Manager, Planning and Development, City of Sydney Council, affirmed and examined

The CHAIR: Welcome back to the next panel of the Public Accountability Committee's hearing into the building regulation—some might say the lack of it—in New South Wales. We have three witnesses from the local government sector who have intimate knowledge of the issues from a local government perspective. Thank you very much for your attendance and your submissions. The opportunity, if you wish to avail yourselves of it, is to give a brief opening statement, and I might go in the same order in which you were sworn in. Councillor Scott?

Ms SCOTT: Thank you, and thank you in particular to the Committee for the opportunity to appear today. I take the opportunity to acknowledge that I am at home and to pay my respects to the Gadigal people of the Eora nation. Local Government NSW has long advocated for stronger regulation of building and construction for many, many years. Our position on the need for safe and quality building has been well documented. As an example, in the last 10 years we have made our concerns known in no less than 17 submissions, including two submissions to this Committee's initial inquiry in 2019.

I would like to state for the record that Local Government NSW and our council members have strongly welcomed the building regulation reforms and greater attention on these issues, and particularly under the direction of the NSW Building Commissioner, David Chandler. Secondly, while we acknowledge that the initial focus has been on tighter regulation for residential apartments or class 2 buildings, our firm view is that the reforms must continue and broaden to capture other building types into the future. A long-held dissatisfaction with the probity concerns of the private certification system and the perceived conflicts of interest remain within the sector. Indeed, only last week I continued to have residents in my own area, the City of Sydney, contacting me with concerns about purchasing in a new building in the city because of these very issues. These concerns extend to all building types, not just residential apartment buildings, and more needs to be done to address these very significant concerns.

Many councils also think that regulations around asbestos management by certifiers could be strengthened to ensure safe and legal disposal. Local Government NSW therefore asks the Committee to support our calls for a commitment from the New South Wales Government to an ongoing program that will continue the work begun by the Building Commissioner and his team and assure we have a strong and permanent building regulator. Councils are extremely disappointed that the Government is asking us to carry out an ever-expanding list of compliance work, while at the same time removing the capacity for us to help fund the cost of these activities. Ensuring that our planning and building laws are not violated and appropriate sanctions are made against those who do the wrong thing, who breach the law, are of course a crucial part of rebuilding public confidence in the strength and safety of all our buildings in New South Wales. Local governments have a key role to play here.

The New South Wales Government's recently enacted regulation changes prevent councils from recouping some of the cost of our compliance activities. We are baffled by this regulator change, which came at the same time as the Government introduced its own levy on developers to support the State's compliance activities. We therefore respectfully ask the Committee to support our calls for a compliance levy to be introduced to support our expanding our compliance responsibilities.

On combustible cladding, we acknowledge the Government's Project Remediate program, but resourcing this work is a challenge for councils, and I also note it is a significant challenge for the many stratas faced with this unexpected and surprise cost. We ask the Committee to support our calls for the New South Wales Government to commit additional funds to support the significant cost on residents and councils. We know in other jurisdictions, such as Victoria, this has been extremely successful.

Finally, in closing, I would like to reiterate that Local Government NSW remains opposed to the widespread expansion of the statewide complying development pathway. We ask the Committee to recommend that the Government ceases these expansive changes to pathways and limits exempt and complying development to low-risk or low-impact development. We know this carries a significant risk of problematic development occurring, not just for a range of reasons about overdevelopment and poor-quality development but particularly from a compliance perspective. Thank you.

The CHAIR: Thanks so much, Councillor. That has a lot to unpack there. Mr Wereszczynzski?

Mr WERESZCZYNSKI: Mr Chair, Deputy Chair, Committee members, thank you for the opportunity to appear before this hearing. Firstly, I would like to acknowledge the work that has been undertaken by the Building Commissioner and his team in addressing substandard building work in class 2 developments, and also the work through Project Remediate. However, councils have been left to deal with most of the buildings with noncompliant cladding in the absence of any clear and consistent criteria and without any assistance or funding. Noncompliant high-rise buildings also only represent a small percentage of buildings on the New South Wales cladding register and, again, councils have been left to deal with these buildings as they consider or may be necessary to do so. Overall, the level of support given to local government to deal with this issue has been insufficient and councils should be given funding to deal with all of the buildings on the cladding register.

In relation to building certification, there have been many changes in the past two decades which have provided for incremental improvements. They have significantly added to the level of complexity. The building certification process is entangled with the equally, if not more, complex New South Wales planning system, an example of which is the complying development pathway. The extent, type and scale of development which can now be carried out as complying development is substantial and excessive and in most cases is approved by the same entity, which, in most cases again, is a private certifier. Complying development should be restricted or limited to lower impact development which does not impact unreasonably on local areas and are the ones that should be subject to a full planning assessment against local planning controls.

Councils are also required to intervene in non-complying development in which a private certifier is the appointed principal certifier. Unfortunately, certifiers are very slow to respond to resident complaints and they appear in many cases to be reluctant to issue any written directions to remedy other breaches. Unfortunately, this often results in the resident complaints being directed to council in the first instance and council officers are required to investigate and resolve these matters, which sort of defeats the purpose of the provisions and responsibilities of the certifier. If councils are required to intervene in privately certified development, it should be on a full cost recovery basis. Whilst the legislation provides provisions for cost of compliance notices, the provisions are so complex that they are unworkable.

Councils also are becoming increasingly involved in the remedy of noncompliant building work through what is known as the "building information certificate" process. However, these fees are prescribed and do not cover the actual costs associated with these services. Councils are likely to see an increase in these types of applications to remedy noncompliant building work as a result of a recent court case in *Ku-ring-gai Council v Buyozo Pty Ltd*. [Inaudible] and workable cost recovery mechanisms are required for council to recoup the significant costs associated with compliance investigations and then remedy of non-complying development. Ratepayers should not have to foot the bill to correct the indiscretions or incompetence of builders, developers or other parties. Thank you.

The CHAIR: Thanks so much, Mr Wereszczynski. Mr Thomas?

Mr THOMAS: Just to briefly point to a couple of key points in the City of Sydney's submission that go to the costs. There is some detail in our submission about the additional resources that the City has dedicated to addressing this cladding issue and also the legal costs associated with one appeal that we are currently fighting with a proponent. I might just leave it at that. Many of the points made by my colleagues have already been addressed in my submission, so I would perhaps default to you, Chair, to questions.

The CHAIR: Thanks, Mr Thomas, and, given the time, I think a very sensible way forward, and we have read your submission. I might just ask one or two questions and then I will hand over to Ms Houssos. Could I ask first of all, the Government has recently issued a fresh regulation which restricts the ability of councils to recover compliance costs from developers. Do any of you want to speak to that? Councillor Scott?

Ms SCOTT: Thank you, Mr Shoebridge. As you can imagine, this is a very significant concern for all local governments. I note that today we are represented mostly by people from metropolitan councils, but, of course, this is a very significant issue also for regional and remote councils, particularly given the budget pressures that they face. We understand and respect that the New South Wales Government relies on local governments to carry out an ever-expanding list of compliance work, and that has been rightly pointed out. Communities often also understand that councils will do this work and come to us to raise concerns and seek advice before investing in property. But this removal by regulation of council's ability to collect revenue to cover the costs of this work has, of course, removed our capacity to fund these activities.

Council compliance officers undertake the important task of educating communities, ensuring developers meet their environmental and building standard obligations, and protecting health and safety. The regulatory changes will mean that councils have to forgo jobs—frontline jobs. It will threaten council's ability to be able to fulfil our compliance responsibility by reducing the number of local government staff who are going to be cracking down on dodgy building work. And to rub salt in the wound, it is of course the case that the State Government

has introduced a compliance levy of its own to allow it to fund regulatory work, but it is of a different nature. Let us be clear, this is not one level of government taking responsibility; it is one level of government taking a levy to do their own compliance work that is materially different from the work of councils but not allowing councils to also collect this levy. This is a significant threat to the ability of New South Wales residents to have confidence in their buildings.

The CHAIR: Does the City of Sydney and then Randwick have any contribution on this?

Mr THOMAS: I do not have anything to add, Chair, to Councillor Scott's statement.

The CHAIR: Do you support the position of Councillor Scott?

Mr THOMAS: Yes, absolutely.

The CHAIR: Could I ask you about flammable cladding in particular? Maybe I will go to either Randwick or the City of Sydney to talk about what it means practically? You have a building with flammable cladding; it is not part of Project Remediate—or it does not want to be part of Project Remediate. What is council's role? What is happening on the ground?

Mr THOMAS: Perhaps if I open, Chair. We have at the City a team of three to four building surveyors who have the responsibility for investigating a large list, if you like, of buildings that have been identified with flammable cladding. They are identified or come to us in a number of ways—through Fire and Rescue NSW or through buildings nominating themselves or through our own investigations perhaps. We might get a development application, for example, to replace the cladding. We then work through those buildings and prioritise those and direct our resources towards resolving them and we make a technical assessment of perhaps the actual nature of the cladding—for example, how much polyethylene [PE] is in that cladding material, what is the extent of the cladding on the building—and often we direct the building owners to fund the work to investigate the actual nature of the cladding materials, actually what is it made up of. Then we would work with the building owner to either remove the cladding or put in a rectification kind of strategy to address the risk posed by the cladding that is on the building.

The CHAIR: Thanks, Mr Thomas. Mr Wereszczynski?

Mr WERESZCZYNSKI: Likewise, I guess it is a similar process at Randwick. Fortunately, we do not have anywhere near as many buildings as Mr Thomas does at the City of Sydney, but the same principle. Whilst council only has around about 74 buildings on the cladding register and, fortunately, only nine or so that were classed as high risk, we have been going through them in a similar process, working with the owners of those buildings or the managers of those buildings to come up with an agreeable upgrading strategy. In many cases that will result in replacement over a period of a number of years in most cases or the replacement of the cladding. In some cases the extent of cladding may not be that significant and it may be able to be dealt with or assessed through a performance solution report prepared by safety engineers. So it depends on the extent of the cladding and the percentage of combustibility of that cladding. In relation to the buildings on the cladding register, we are progressively going though those on a risk basis and we are requiring those buildings to be upgraded if we deem the risk to be unacceptable. Following the same principles, we try to work with the owners of the buildings and their advisers. In some cases we follow with the issue of fire safety notices and orders, although that is not, I guess, the preferred approach, but that is a tool that we use if we have to.

The CHAIR: Thanks, Mr Wereszczynski. Did you say there are 74 properties that are on your list in Randwick?

Mr WERESZCZYNSKI: Correct.

The CHAIR: How many in the City of Sydney, Mr Thomas?

Mr THOMAS: It is 509 at the moment.

The CHAIR: Of those 509, how many are in the Project Remediate pathway?

Mr THOMAS: To date, we have 18. We estimate that about 72 would be eligible for Project Remediate.

The CHAIR: But overwhelmingly they have been not in the Project Remediate bucket?

Mr THOMAS: That is correct.

The CHAIR: What about at Randwick?

Mr WERESZCZYNSKI: Out of the nine high-risk buildings in Randwick—fortunately they are not class 2 buildings—we only have one that we are looking at Project Remediate for. Most of the buildings in

Randwick are of a different building classification, a number of which are hospital-related buildings or university-type buildings.

The CHAIR: To be clear, Project Remediate only applies to class 2 buildings, which are multistorey apartment blocks. Is that correct?

Mr WERESZCZYNSKI: Correct.

The CHAIR: What are the standards you look to then? You have, say, a hospital or you have a retail complex. What are the standards you are looking to when you are working with those owners to replace the cladding? Are there are a clear set of standards that you can refer to that were given to you by the State Government? Mr Thomas?

Mr THOMAS: In short, no, there is not. Essentially it is a risk assessment carried out by our very experienced and very competent building surveying staff. However, they are required to make an assessment on an individual building-by-building case.

The CHAIR: That sounds hugely resource intensive, Mr Thomas.

Mr THOMAS: It is, and it is not just for councils. This requires the building owners to carry out quite technical and extensive investigations of their buildings and it is a costly and time-consuming process for the building owners.

The CHAIR: I might go to you, Mr Wereszczynski, to give us the response from a Randwick level about how it is working in practice and then I might ask Councillor Scott to give a statewide perspective, if possible. Mr Wereszczynski?

Mr WERESZCZYNSKI: As mentioned by Mr Thomas, the actual criteria—I guess there is no specific criteria to be met; it is not quite that simple. It is a risk assessment carried out on an individual basis and it does involve, obviously, a lot of assessment from very experienced officers. In our case, we have got a number of experienced building surveyors at Randwick City Council, fortunately. However, we do have regard to the reports provided by the owners of the building from their fire safety engineers, and we would certainly be looking at those very, very closely. In some cases it may necessitate a peer review, because it is obviously a complex issue and obviously we would want to get it right and come up with an assessment that is appropriately addressing the risk associated with the cladding on a particular building. In some cases it may be of a limited nature and not represent a significant risk, depending on the location and extent of the cladding on a building. But if you have a full building and it is noncompliant cladding with a more than 30 per cent combustible core, then you probably need to seriously look at removal of that cladding.

The CHAIR: Mr Thomas, do you want to add something for clarity, and then we will go to Councillor Scott?

Mr THOMAS: I just might add there is an example in our submission which goes to the standards and the risk assessment by council staff. An existing residential building made up of five different buildings has the flammable cladding with a greater than 30 per cent biomass of polyethylene. It is a banned building product under the national building standards. We issued a notice to remove all of that cladding. The building owners sought advice from a fire engineer, who sought to challenge council's position. They suggested a patchwork approach where you take some panels off, replace them with a considered non-flammable product, but you leave a substantial amount of the banned building product in place. Our risk assessment was we did not accept that fire engineer's position, and our notice was appealed by the building owner in the Land and Environment Court. At that first hearing, if you like, council's position was agreed to, but we have got notice that that decision is being appealed. So it makes no sense that we have a national building standard that says you cannot use these products in buildings anymore but we have still got industry advising building owners that some of this banned product can stay in place. So we have costs and time that have been borne by building owners to sort of perpetuate this situation. The key issue is that flammable, banned building product is still existing on those five buildings today.

The CHAIR: I will be frank, it sounds like a godawful mess still—more than four years after Grenfell. Councillor Scott, what is it like across the rest of the State?

Ms SCOTT: I think it is true to say that the examples that have been given here are not isolated examples; they are extremely representative of the experience of councils across the State. Obviously, because of the higher number of dwellings in metropolitan councils there is a higher incidence, and you can see extremely high numbers—over 500 here in the City of Sydney. But it is the case that Local Government NSW is hearing examples from Wollongong, Port Stephens, Sutherland, right across the State in many different areas, of these kinds of examples. I might just highlight, because again they are not examples we have discussed today, but in the case of the compliance activities, other councils are starting to have significant revenue losses. For example,

in the City of Ryde, an estimated $1.3 million loss as a result of the compliance levy; $500,000 to Ballina shire; a $700,000 loss to Wollondilly shire; a $300,000 loss to Lismore shire; and a $260,000 loss to Tweed council. All those losses are estimated to arise as a result of this regulatory change, removing councils' ability to levy for this compliance work. And, of course, this is overlaid, as you have heard, with legal costs that councils feel they have a public duty to pursue when you have stratas or other differing opinions that come in that allow building owners to retain what are unsafe building materials in their buildings. This is a public fight that needs to be had, but unfortunately it is extremely expensive. But councils feel the need to do it to uphold public safety and protect people.

The CHAIR: Ms Houssos.

The Hon. COURTNEY HOUSSOS: Thanks very much, Mr Chair. Thank you to all of our panellists for your time and for your informative submissions. Can I start with you, Councillor Scott? We compare this approach in New South Wales piecemeal by piecemeal, council by council, with the Victorian approach, which essentially set a standard and then put a significant amount of money—$600 million—towards removing some of the cladding from residential apartment buildings and government buildings. They are well down the track of removing it, and in New South Wales we have a system where it sounds as though councils are fighting it out with building owners to see whether they even need to remove it. What is your take on this situation? What would have been the best approach?

Ms SCOTT: There is no doubt that the Victorian approach that had serious standards and allowed funding to be allocated to support building owners to undertake remediation has led to better outcomes. It is very clear when you look to the Victorian example that their approach has been far more successful than the approach taken here in New South Wales. That is not to say, of course, that the work of the NSW Building Commissioner has been unsuccessful. It has been a great step forward; it has been something that we really celebrate and, in particular, we call out and congratulate David Chandler for his work in that role. But the fact is that it is a commission that is not resourced enough. It is not able to take steps forward on buildings that are not class 2 buildings, and that is, as you heard from the councils today, in many cases the vast majority of the buildings that continue to have problematic or illegal materials within them. And it is very, very difficult for stratas in New South Wales, without the ability to access some funding to assist with the remediation, to undertake that remediation. Hence, so many of them, unfortunately, are seeking to take legal steps to challenge the decisions that are needed to remediate their buildings to a level of public safety.

The Hon. COURTNEY HOUSSOS: Mr Thomas, can I go to you? Your submission and your testimony this morning—and thank you very much for it—said that only 18 of the 290 buildings being investigated by council or, in fact, 18 out of the 590 are actually applying for Project Remediate and only 72 are eligible. Have you had any feedback as to why such a small number have applied for Project Remediate?

The CHAIR: Ms Houssos, you are coming through quite scratchy again. Could you come closer to the microphone and quickly repeat the question.

Mr THOMAS: I think I have got the gist of it, Chair. Why do we think the take-up has been quite low? I am only speculating here but it is really the assistance provided probably is not enough. It is a loan-based system; it is limited. We say in our submission that funding should be available for building owners to investigate this. My understanding is that the funding is not available; it is only for rectification. So if they are able to get funding to carry out the investigations and get a better understanding of their position, then we might have more take-up.

The Hon. COURTNEY HOUSSOS: That is really helpful. I will come back to you in a moment. Mr Wereszczynski, have you done any analysis of your buildings that are on the cladding register—sorry, you said that only one is eligible for Project Remediate. Is that correct?

Mr WERESZCZYNSKI: That is correct, yes.

The Hon. COURTNEY HOUSSOS: One out of 74 on the cladding register.

Mr WERESZCZYNSKI: Yes.

The Hon. COURTNEY HOUSSOS: Mr Wereszczynski, do you have any analysis of the progress of that remediation of those buildings that were identified on the cladding register?

Mr WERESZCZYNSKI: One of my officers' notes next to me here—we have carried out 37 investigations to date out of 74 buildings; we have issued 18 notices and 21 fire orders. We are progressing through the list on a risk basis, addressing the buildings which are obviously of a greater risk and include residential-type buildings prior to commercial buildings.

The Hon. COURTNEY HOUSSOS: Do you have any feedback on the actual progress of remediation? Do you know how many flats are being remediated yet?

Mr WERESZCZYNSKI: Not at this point, no. Some buildings have undertaken some work, but it is likely in some cases to take one to two years quite easily. We have had in some cases time frames provided which extend the works over a two-year period. So it is not a quick fix.

The Hon. COURTNEY HOUSSOS: Absolutely. Do you mind taking on notice and just seeing if you have any further information about the actual progress of the remediation?

Mr WERESZCZYNSKI: Sure.

The Hon. COURTNEY HOUSSOS: Thanks very much. Mr Thomas, can I come back to you? Obviously City of Sydney has the bulk of these buildings, or it seems to have the bulk of these buildings, and yet a very small number are registered for Project Remediate. You have gone a step further and done some analysis about which ones would be eligible. Mr Wereszczynski outlined that one of those reasons would be they are a different class of building. Is that the only reason why they are not eligible for Project Remediate, under your analysis?

Mr THOMAS: I would have to get back to you on the detail, but essentially that council estimate would be based on the criteria of Project Remediate. So our estimate is that the rest of them do not meet that criteria.

The Hon. COURTNEY HOUSSOS: Yes, which goes to show that the project that is designed to remove cladding from buildings in New South Wales is not actually effectively removing them. Mr Thomas, I just had one more question for you. In terms of the standards—and you mentioned that you were being forced to litigate in council, and that was a very useful case study—is there just the one case that you are aware of or are there other multiple cases that you have had to pursue?

Mr THOMAS: I am only aware of one that has gone to court where our notice has been challenged.

The Hon. COURTNEY HOUSSOS: But having clearer standards and some direct guidance from the State Government would have assisted you with that process, would it?

Mr THOMAS: Correct.

The Hon. COURTNEY HOUSSOS: Excellent. That is all I have for now. I will pass to my colleagues. I might have some more questions for you later. Thank you.

The CHAIR: Mr D'Adam.

The Hon. ANTHONY D'ADAM: Thanks, Chair. I have a question for Mr Wereszczynski. In your submission you talk about the compliance cost notices being unworkable. I wonder whether you might be able to explain in some more detail about the limitations of that mechanism in terms of recovering compliance costs for councils. Why is that not an option?

Mr WERESZCZYNSKI: Sure, thank you. My understanding of those provisions is that basically you would need to or council would need to document every minute that it spends on a particular case, along the lines of a lawyer, I think, to be honest—no disrespect to our lawyer colleagues or compliance officers. There would normally be multiple officers working on any case. The investigating officer would liaise with the coordinator, the coordinator would liaise with the manager himself. We would be involved in the case intermittently over a period of time; it may last for one week, it may last for one year. The amount of work involved from an administrative point of view would far outweigh the costs, which are limited to—I am going from memory here—I think $1,000 or so is the amount that one can recover. I am not 100 per cent sure of that; I would have to check that on notice. But the costs of administering the process far outweigh the costs that you can recover through the complaints notice process.

The Hon. ANTHONY D'ADAM: I see. What could potentially be done to improve that system? Obviously there is a clear issue around imposing a levy on all developments whether they are complying or non-complying. In that circumstance, people who are doing the right thing and who are totally compliant are bearing a burden that actually should be borne by those who are noncompliant. What kind of measures might be able to be put in place to try and improve where the burdens of compliance activity is borne?

Mr WERESZCZYNSKI: In my view, obviously the levy is, I guess, the simplest approach for councils to manage because it is set and fixed and a percentage and it is attributed to the development application. If that is not a suitable process, then the compliance cost notice process would have to be as simple as you could possibly get it. Obviously it still needs to be undertaken in an accountable way, but it would need to be simple. It could be a fixed amount along the lines of the Protection of the Environment Operations Act where there is a fixed cost

associated with the issue of a notice. Having said that, council does not issue notices and orders in respect of every compliance issue. We resolve matters in many cases without having to issue a notice or an order, and in reality the vast majority of compliance matters are resolved before we issue the order. Hopefully it is not necessary to issue an order if the matter has been resolved before that. Basing the fee purely on the issue of the order is not going to happen in [inaudible] 80 per cent of cases.

The CHAIR: Does another Committee member have questions at this stage?

The Hon. TREVOR KHAN: No, I am after [disorder].

Mr DAVID SHOEBRIDGE: [Disorder] I understand, Mr Khan. If a project is in Project Remediate, it provides, I think, a one-off $10,000 payment to councils to assist with the regulatory burden of managing the removal and replacement of the cladding. Is that a reasonable assessment of what the actual costs to council are in these projects? I will go to you first, Mr Thomas, because you put it in your submission, and then I will invite Councillor Scott and Mr Wereszczynski.

Mr THOMAS: Sorry, Chair, was that directed at me or at Mr Wereszczynski?

The CHAIR: It was. Is $10,000 at all a reasonable calculation for the costs and time that council have in managing a project?

Mr THOMAS: It is welcomed. It is a contribution, but it would not go towards the full costs of administering these matters, particularly if it goes to court. I have put some figures in our submission about our wages bill and our court costs for one example.

The CHAIR: Councillor Scott?

Ms SCOTT: Like Mr Thomas, of course we welcome any contribution from the State, but it is of course manifestly inadequate. I have cited some of the examples: for Ryde council an estimated $1 million loss; for Wollondilly an estimated $700,000 loss; for Lismore, $300,000; for Tweed $260,000. These are significant losses and of course at any time these are challenging for councils to sustain. But in the context of the COVID losses that local governments have experienced, it makes the ability for councils to continue funding these regulatory activities untenable. We know that our ability to have freedom over the rates that we charge and the ability of local governments to have freedom over the context of how we maintain our budget settings is highly regulated here in New South Wales, unlike any other State in Australia, and so it is just an impossible cost for us to bear.

This is a risk to public safety. Councils cannot sustain these regulatory activities we are required by law to undertake to maintain public safety without further funding. We need to be very clear and transparent about this because we see a future whereby councils will not be able to fund the regulation of checking that a building is safe and as a result we will have a fire that risks lives, we will have asbestos in a building or that is dumped illegally but we are unable to prevent it from happening or safely clean up and we are unable to prevent a building that is at risk of collapsing. These are significant outcomes that can lead to significant injury or death and we need to be very transparent about the challenges that we face in meeting the enormous number of buildings with these risks in them and funding the regulatory program that is required to ensure that they are safe.

The CHAIR: Mr Wereszczynski?

Mr WERESZCZYNSKI: I think the provision of a $10,000 funding for councils is obviously a good start. I have not costed what I would estimate the amount of time would be to assess [inaudible] building and to monitor it throughout the upgrading work and then to issue whatever certificates were required at the end. I would think that $10,000 was a bit low personally; perhaps double that would be more realistic. But also, that is only addressing the buildings which are on Project Remediate and not all high-risk buildings and certainly not all buildings on the cladding register. It would be good to see some funding for the assessment and upgrade of all of the buildings on the cladding register.

The CHAIR: In your case, Mr Wereszczynski, you will get one $10,000 payment and yet you have got 74 projects to manage and it is embarrassingly insufficient. That would be a fair summary, wouldn't it?

Mr WERESZCZYNSKI: Extremely.

The CHAIR: Mr Thomas, how many staff did you say have been brought on at the City of Sydney just to handle this issue of flammable cladding?

Mr THOMAS: We have a team of four new positions. I must say we are finding it difficult to maintain those four staff. We recently lost a staff member to Fair Trading who moved over into the Project Remediate team. But we do attract skilled and experienced staff who like the challenge of these very complex buildings, but it is challenging.

The CHAIR: That poaching sounds almost like its adding insult to injury, but it is probably not the topic of today's hearing. You give a costing in your submission just for the wages of a senior building surveyor being in the order of $378,000 plus all of the other costs you would have. Is that a good starting point for the kind of costing?

Mr THOMAS: Yes, absolutely. They are gross annual wage costs, that figure that is quoted there. The administration, management and legal costs are costs already borne by the City. However, some of those would be [audio malfunction] towards this challenge.

The CHAIR: Would it be fair to say that the most urgent thing that is needed at the moment is a set of clear, transparent standards that have the approval of the State Government, that are going to limit your liability but also give a safe and prompt pathway forward? Is that the most urgent thing or is something else more urgent than that, Councillor Scott?

Ms SCOTT: Yes, that is the most urgent and important thing. Can we just add that, again, even with the $10,000, which is of course welcome, we understand that is an offer made by the Building Commissioner David Chandler. It is very welcome, but it is not guaranteed to continue. We are not clear how it will be funded into the future, and so even then councils do not have confidence that that will be a thing that the Government will continue to approve or fund. What is of course needed is the ability of councils—like the State Government now has the power to do—to charge compliance levies. Without this formal guarantee that councils have an ability to do that, the regulation of our buildings and the ability for councils to feel confident that we are able to do the work to keep communities safe in our buildings in New South Wales is under threat.

The CHAIR: Ms Houssos?

The Hon. COURTNEY HOUSSOS: I have just a few questions. Mr Thomas, how many buildings did you say are actually classified as high-risk? I am not sure if I got that figure from you.

Mr THOMAS: That is a question I will need to get back to you on.

The Hon. COURTNEY HOUSSOS: Okay, sure.

Mr THOMAS: I will take that on notice. It varies because we might assess a building as high-risk, we investigate it, we decide that it is not and then it comes off our high-risk list.

The Hon. COURTNEY HOUSSOS: I understand.

The Hon. TREVOR KHAN: Sorry, could I just ask, in a sense, a follow-up question?

The Hon. COURTNEY HOUSSOS: Of course.

The Hon. TREVOR KHAN: If you are going to come back to us with that, are you able to differentiate, in terms of those high-risk buildings, between high-risk residential and high-risk commercial? Because I think otherwise we are mixing up two different issues, are we not?

Mr THOMAS: Understood. One example of a high-risk building—it is a real-life example—we have a commercial office building with a podium and in that podium we have a childcare centre. From our first analysis, it would not be a high risk, but we have to look at what the approved uses are. Given that there is a childcare centre in the building, that immediately moves towards our high-risk list, if you like. But, yes, I can give you a breakdown of our cladding program to date, what we have considered high-risk, how many notices we have issued, how many have been satisfied and how many have been moved away from a high-risk classification.

The Hon. TREVOR KHAN: I am not downgrading the problem, but it just seems to me that levels of government support being provided to residential buildings creates different issues than whether the Government should or should not support commercial entities from bearing the costs of rectification and the matters associated with that. Would you agree with that? They are two different issues as to where the Government should step in.

Mr THOMAS: Generally, yes, and I think this point has not been made. We are often in this triangle, if you like, of stakeholders in these matters. We have these builder-developers in one point of the triangle, the strata or the owner, and then council as the regulatory body. Often we are serving notices on the developer, and it depends on how long ago et cetera, and the developer, if you like, might also be in litigation with the owners because the owners are seeking compensation for a flammable cladding on the building. So the developers are challenging our assessment because they do not want to have to pay to rectify the building. That brings out the uniqueness and the challenges, I think, of a residential building versus a commercial building.

The CHAIR: Mr Thomas, has the flammable cladding been removed from the building with the childcare centre in it yet? Has that been fixed?

Mr THOMAS: I would have to get back to you on that, Chair.

The CHAIR: Ms Houssos.

The Hon. COURTNEY HOUSSOS: I have one final question. Can you tell us when you started issuing notices, Mr Thomas and Mr Wereszczynski? When did council first start informing buildings and building owners that they would need to begin the rectification process?

Mr THOMAS: The detail on that I will have to get back to you on. I just know our program has been in existence for three years. Whether we served a notice first up within that three-year time period, I will have to give you notice on.

The Hon. COURTNEY HOUSSOS: Roughly, though, you started working on this three years ago.

Mr THOMAS: Yes.

The Hon. COURTNEY HOUSSOS: We can assume that within the first couple of months you would have started telling buildings that they needed to be replacing this dangerous flammable cladding. Mr Wereszczynski already told us this can take up to two years. There is actually a whole bunch of building owners out there who, because of the slow rollout of Project Remediate, may have actually just done it themselves, incurred this cost of millions and millions and millions of dollars and actually missed the boat entirely. Is that accurate?

Mr THOMAS: It would be accurate to say that some of these buildings have remediated or gone through, removed the cladding and replaced it with something else—absolutely. We have got some projects that have gone through that process.

The Hon. COURTNEY HOUSSOS: Mr Wereszczynski, do you know roughly when Randwick started issuing notices?

Mr WERESZCZYNSKI: We started our approach shortly after we were provided with the list of high-risk buildings from the New South Wales Government. That came in—going from memory—over a period of time, but it would have been approximately commencing around about three years ago or thereabouts. I would need to check specifically. We started by writing to the owners of the high-risk buildings to more or less encourage them to have the matters investigated, to engage specialist fire safety engineers and to come up with fire safety strategies in preference to issuing notices and orders. But we have issued a number of notices and orders as we progressed through the list on the cladding register. That is pretty much in the last two to three years it would be.

The Hon. COURTNEY HOUSSOS: Sorry, I have one final question for Councillor Scott off the back of that. Do you have any reflections on the pace of the rollout and the pace of the support from the New South Wales Government and what that has meant for local government in New South Wales?

Ms SCOTT: It is not hard to envisage the scenes of some very stressful strata committee meetings, with stratas across the State grappling with how they are going to face the cost. Of course, just acknowledging that, I think, is really important as part of this debate. It is of course also extremely difficult for councils, as you have heard. But again these examples from the City of Sydney and Randwick are representative of the struggles that councils are facing across the State to grapple with the understandable lack of funding and stresses of strata committees but also the requirement on councils to protect the public safety. [audio malfunction] and therefore to press ahead where needed with orders to ensure that buildings are meeting the legal and other safety standards.

I think the critical thing, and if there is one thing this Committee can do, is a reform to encourage the State Government to remove this regulation that disallows councils from being able to charge to recover some of the costs associated with compliance activities. This is a critical rate-limiting step that will threaten the safety of our buildings going forward. But more generally to your question, the pace of reform is too slow. We have seen that in direct contrast in Victoria. The funding made available and the clarity of standards has meant that there is a significant difference in that State's ability to ensure the safety of their public buildings. This is a good model and we urge the State Government here to listen to these concerns and to adopt a model that is closer to the Victorian model, and we hope that this will enable the State to move forward with the pace that is required to protect public safety.

The CHAIR: I might put this question to both City of Sydney and Randwick. The insurance industry, Engineers Australia and Consult Australia have said that the absence of professional indemnity insurance is a real barrier towards getting buildings remediated with flammable cladding and that in fact that is one of the reasons why it is very hard to get a fire engineering expert or a cladding expert to even write the report about how to do remediation. What are you hearing in your dealings with building owners and the industry, Mr Thomas?

Mr THOMAS: Anecdotally, I would concur. It is increasingly difficult and we at council are seeing more owners looking for certification through councils rather than through the private sector because of their inability to get professional indemnity insurance.

The CHAIR: Mr Wereszczynski?

Mr WERESZCZYNSKI: Likewise. I have not heard much recently. But similar to what Mr Thomas was saying, many certifiers may not have the insurance cover to deal with that, so they are quite comfortable to just let council deal with their notices and orders and I guess that way council share the burden around a bit as far as liability goes.

The CHAIR: Does that mean that councils are taking on an increasing liability risk here? You said earlier there were not clear standards established by the State Government. If you are making orders and recommendations in the absence of those standards, is that transferring a risk onto ratepayers, Mr Thomas?

Mr THOMAS: Just to follow this through, if there is a notice to remove the cladding, then a building certifier could potentially be involved when the solution, if you like, in response to that notice goes through the process. They either do that through a development application or in response to a notice. The council's role would be to sign off, if you like, on that work; and I guess the challenge here is that in the absence of those standards we are taking a very risk-averse approach. And if it is on there, it should not be and it has got to come off. It is a fairly direct decision-making process.

The CHAIR: I think I understand. Mr Wereszczynski, you are nodding. It is a similar approach in Randwick, is that right?

Mr WERESZCZYNSKI: Yes, I would agree that any time that council issues a notice or order or are signing off on something it obviously wears some degree of liability. Yes, we are quite risk averse when it comes to cladding and we are probably a little bit fussy when it comes to building certification work too, which is obviously why many proponents decide to go to colleagues in the private sector.

The CHAIR: Yes. That is a very euphemistic end, Mr Wereszczynski. Time has beaten us unfortunately. On behalf of the Committee, thank you all for your evidence today. From my perspective, all of your residents are fortunate to have you doing your work, looking after public safety. We are grateful for the work you do and your assistance.

(The witnesses withdrew.)

(Short adjournment)

JANE MacMASTER, Chief Engineer, Engineers Australia, affirmed and examined

BAOYING TONG, Senior Manager, Building Reform and Projects, Engineers Australia, affirmed and examined

COREY NUGENT, Senior Operations Manager, Insurance Council of Australia, sworn and examined

KRISTY EULENSTEIN, Head of Policy and Government Relations, Consult Australia, affirmed and examined

The CHAIR: Thank you all for your attendance today and both the joint submission and the individual submissions we have received. I might just invite you to make a brief opening statement. For ease, we might adopt the order you were sworn in, if that is convenient to witnesses.

Ms MacMASTER: Thank you. I will start. Jane MacMaster. Good afternoon, everyone. Engineers Australia is the peak body of the engineering profession in Australia. We are a professional association with about 100,000 individual members. Established in 1919, Engineers Australia is a not-for-profit organisation constituted by royal charter to advance the science and practise of engineering for the benefit of the community. The engineering profession in New South Wales has seen major change in the building and construction industry since 2019, and overall there have been positive changes. The introduction of a statutory registration scheme for engineers is particularly welcomed. However, there are some issues caused by unintended consequences of the new legislation and remaining gaps in implementation of some recommendations from the underlying *Building Confidence* report which are causing some concerns. These have been detailed in our submission and we look forward to answering your questions.

Finally, I should emphasise that continued collaboration amongst the New South Wales Government, practitioners and their professional industry bodies is critical to the ongoing success of the reform. Professional and industry bodies like ours, with the help of their members, have shown great willingness to work together. Engineers Australia has contributed significantly to the development of practical solutions, including a series of practice guides—one for risk-based approaches to manage flammable cladding and another on contracts and professional indemnity [PI] insurance. The latter was jointly developed by Engineers Australia, Consult Australia and the Australian Institute of Architects.

Our organisation is also working very closely with the Department of Customer Service and the Office of the NSW Building Commissioner. We support the department on its implementation of pathway one for engineer registration, providing assessment services on behalf of the department for the more complex applications for registration. Our organisation is an active participant on all the commissioner's pillar working groups. We have commenced a program of regular briefings by Fair Trading NSW to our members to share lessons learned from the occupational certificate audits, and there are other efforts which we are happy to elaborate on. Engineers Australia is committed to working closely with the New South Wales Government to promote the reforms and bring lessons back to the profession so that engineering practice can be improved. Thank you, and we look forward to this discussion today.

The CHAIR: Mr Tong?

Mr TONG: Chair, I do not have any other statement because Ms MacMaster already made one on behalf of Engineers Australia.

The CHAIR: Yes, I thought that might actually be the case. Mr Nugent?

Mr NUGENT: [inaudible]

The CHAIR: Mr Nugent, you are still on mute.

Mr NUGENT: Apologies for that. Thank you. By way of introduction, general insurers provide Australians with 43 million business and household policies each year and pay more than $166 million in claims every working day. Insurance is a key component of the economy, particularly so in the building and construction industry. Insurers are proud of the way that we have supported the growth of our nation and supported the building industry, underwriting different elements of construction and the post-completion use of Australian's homes and buildings. In recovering from the effects of natural disasters and how we emerge from the impacts of the COVID-19 pandemic, insurers support businesses and home owners, providing protection to their assets. Unfortunately, not all sectors of the economy are performing as strongly and the general insurance sector is currently enduring its most challenging circumstances in nearly two decades. Insurer profitability over the past 24 months, ending March 2021, was down 64 per cent on the preceding two years. According to the Australian Prudential Regulation Authority [APRA], the entire general insurance sector only made a profit of $19 million in the most recent March quarter.

Professional indemnity insurance has been a difficult market for general insurers over the past three years. In that period, the product reported gross loss ratios of more than 95 per cent. Loss ratios greater than 100 per cent mean that the premium revenue is insufficient to meet just the claims expense. A recent report jointly produced by the New South Wales division of the Strata Community Association and the Office of the NSW Building Commissioner highlighted stark results relative to the performance of the building and construction industry in New South Wales. Of a sample of 1,400 New South Wales buildings all completed within the past six years, 39 per cent reported having serious defects. These findings are not created by any one cohort or segment of the industry; they are a reflection on the whole industry and further highlight the need for change. The cost of rectifying defects in completed buildings is significant and that impact is generally felt most by consumers. Litigation, often the only method of enforcing rights against the various contributors to the occurrence of defects, provides for an extended period of time and likely erosion of the ultimate benefit available to have properties rectified to the base level of performance that should have existed at purchase.

The Construct NSW reform agenda is leading the nation in seeking to redress the issues identified in the *Building Confidence* report and to implement the recommendations in that report. It is important to identify, however, that the agenda is still within its transformative stage. The insurance industry supports the New South Wales Government in finalising the Construct NSW program to achieve the improvements across the industry. While insurers have expressed concern with some elements of the reforms, notably those related to the retrospective nature of insurance requirements under the Design and Building Practitioners Regulation, we are committed to working with Government to seek suitable outcomes for insurers, the building industry and the community. We note the retrospective insurance obligations within the regulations came about by virtue of amendments to those regulations, and the insurance industry has highlighted in submissions to Government that the insurance industry is unable to support those retrospective duty of care requirements now or in the future.

Some commentary relative to professional indemnity insurance is that it is either unavailable or premium increases make it too expensive. In the four years to December 2020, claims expense from professional indemnity insurance increased by 125 per cent, whereas premiums increased in that same period by 63 per cent. Further to this, APRA reported in March 2021 that for the preceding 12 months, general insurers issued over 775,000 individual professional indemnity insurance policies valued at more than $3 billion in premium. These facts highlight that the professional indemnity insurance market in Australia is competitive and that the product is most definitely available. While performance of the product is challenging for general insurers, there is cover available to those wishing to purchase it. Insurance premiums represent the cost of risk, that is, the value of a premium correlates with the expected cost of claims determined by experience. While there will be individual cases highlighting larger premium increases or difficulty in accessing cover, those specific premium policy terms correlate to the risk posed from a portfolio perspective.

With the transformational Construct NSW reforms being implemented, there are examples of insurer appetite changing. The introduction of a new insurance capacity specifically for certifiers, supported by that cohort adopting a professional standards program, has seen a dedicated insurance offering being made available. This exemplifies the benefits being seen as government and industry working together to bring about tangible change in the output from the construction industry. In terms of future premium and policy conditions relative to professional indemnity insurance, those factors will be determined by the performance of the product, a factor directly and inescapably linked to the performance of the industry. Where there is improvement in the performance and a reduction in claims exposures, there is likely to be improvement in the policy terms and premium pressures. Notwithstanding existing premium policy pressures, that is a function of a strong regulatory environment.

Critical to the performance of the insurance market in Australia is a strong regulatory framework administered by APRA. The risk of unregulated insurance options, such as discretionary mutual funds, provides for uncertain security for beneficiaries and the dilution of the regulatory framework that provides a strong financial services sector in Australia which is the envy of many jurisdictions around the world. While establishing the basis of a strong regulatory environment for the future building product produced in New South Wales, the issues impacting the existing stock of buildings is an important consideration. The Residential Apartment Buildings (Compliance and Enforcement Powers) Act is a critical element of the Construct NSW agenda. Facilitating the powers for regulators such as the Office of the NSW Building Commissioner and Fair Trading to inspect and issue notices for rectification of defective building work will provide substantial change in the ability for consumers to efficiently seek redress for poor building design and construction.

The benefits from this are already seen in the cladding remediation program titled Project Remediate. The remediation program of potentially life-threatening combustible cladding systems in New South Wales is important to insurers. The insurance industry is engaged with the Office of the NSW Building Commissioner and the Cladding Product Safety Panel in identifying the causation, options to remediate, and best solutions to ensure an appropriate solution is identified. While there has been a great deal of commentary related to this program,

insurers support a comprehensive program of work being undertaken through government to ensure a complete and appropriate solution to those buildings identified by the Cladding Taskforce.

Finally, the insurance industry understands the intention of Government to consider the introduction of a decennial liability insurance product and we welcome the opportunity to engage with Government in those considerations. Decennial liability insurance is a product offered in over 35 countries and it delivers tangible first-resort benefits to consumers in remediation of defects in buildings when they occur. Importantly, this is a consumer protection insurance product unlike others, which have, through regulation, taken on a much wider cover than they were intended to provide. I am happy to take further questions from the Committee.

The Hon. COURTNEY HOUSSOS: I should note that the Chair is having connection difficulties. In his absence, as the previously Acting Chair, I will jump into the role. Before I pass to Ms Eulenstein, I will just make a disclosure that my husband, George, recently commenced work with the Insurance Council of Australia [ICA]. Ms Eulenstein?

Ms EULENSTEIN: Consult Australia is the industry voice for businesses in design, advisory and engineering, and approximately 97 per cent of those businesses are small businesses. In that capacity, Consult Australia looks to certainty, consistency and also a consideration of commercial pressures when any reform is introduced. We reiterate our commitment to and recognition of the importance of appropriate and proportionate regulation that can deliver the policy outcome the New South Wales Government was seeking, that is, better building, compliance and increased consumer confidence for New South Wales.

However, as the Insurance Council of Australia has just spoken to, the PI market is in a particular state at the moment which makes it particularly difficult for our members. In a recent industry health check pulse survey from April this year, around 90 per cent of our members have experienced significant premium increases to their PI insurance, with around 11 per cent reporting that they have experienced increases of over 100 per cent in the past 12 months. I will point to the ICA there saying that it is a global market and a lot of pressures act to give us that sort of market.

The New South Wales reforms are just one element, and you will see from Consult Australia's submission that we look to de-risking solutions, both in terms of the current regulation but also in the market more generally and the role of the New South Wales Government as a regulator in other spaces and as a client that reaches contracts with our members. If you are available to pose questions, I have many proposed solutions in the submission that go both to the regulation and the Act but also that broader question on civil liability and other arrangements to improve and de-risk that PI market.

The CHAIR: Thank you all for those opening statements. This Committee works disturbingly well in my absence. Thank you, Ms Houssos, for taking over. I understand that the Building Commissioner and Fair Trading are in the process of negotiating with the industry, particularly the insurance industry, to have a viable professional indemnity product. The reports that are coming from Government are that those negotiations are well advanced and that there is a product ready to go, but the situation may or may not be more complicated than that. Mr Nugent, are you able to provide any light on this?

Mr NUGENT: Thanks, Mr Shoebridge. In terms of the PI market, as we indicated in our opening, the position with professional indemnity is that it is under quite a bit of pressure. We acknowledge the position that has come forward in regulations and we do have, as an industry, issues with the retrospective elements of PI insurance that have been put in that position and we are working with Government to address those. The issue with forward-acting professional indemnity insurance is one relative to the portfolio and the performance of that portfolio. As claims experience improves, that will reduce the pressure on premiums and on policy terms.

The CHAIR: What about in the space of flammable cladding? I have read your various submissions. You indicate that there is such pressure in this place that there is normally exclusions from professional indemnity policies. I might go to Consult Australia first and then Engineers Australia.

Ms EULENSTEIN: I will not speak directly to the cladding issue. But back to your question, Chair, about finding an appropriate product for the market, Consult Australia's concern is that the professional indemnity insurance policy that covers one of our members, for example, is a broad policy that covers their professional indemnity no matter what job they work on. It is not a specific product to deal with building works in New South Wales. Therefore, there are lots of other elements to consider and I am sure the Insurance Council of Australia or brokers, for example, could talk to all the different elements that go into that policy.

We do have a concern about a particular product that could address just one segment of our members working in just New South Wales buildings. The pressures that are occurring in the market and occurring with our member businesses are occurring no matter where they work, whether it is on infrastructure, whether it is in buildings, whether they are structural engineers or whether they are fire safety or geotech. The PI market is a

much broader issue than just the New South Wales building reforms and that is why Consult Australia supports those reforms that will improve the confidence of and compliance with building standards, but there are broader issues to consider when thinking about de-risking the market.

The CHAIR: Ms MacMaster?

Ms MacMASTER: I will support those comments by both Ms Eulenstein and Mr Nugent. The issue of professional indemnity insurance is quite complex. It is very important. There are pressures in the market and that is supported by evidence from our members as well. We do see anecdotal evidence of exclusions; not just cladding, but exclusions in procurement and contracts are unfortunately relatively common, so that is a consideration. I would also like to support the comment made by Mr Nugent about the insurance market following the risk profile of the sector. That is one particular area that Engineers Australia was working on to help the engineering profession in its contribution to the building sector more broadly in its risk management practices to help improve the performance of the engineering work within the building sector to reduce the risk profile so that hopefully professional indemnity insurance premiums will follow suit.

The CHAIR: I think we all agree that the short-, medium- and long-term goal is to actually make buildings safer, remove the defects and therefore remove the claims. But it would appear that the opposite has been happening in the past few years according to the numbers you give in your joint submission. Mr Nugent, you say that the claims numbers—the amount paid out in professional indemnity—has grown by almost 125 per cent from some $1.2 billion in 2017 to $2.7 billion in 2020. First of all, is that right? Secondly, how much of that relates to the building industry?

Mr NUGENT: Thanks, Mr Shoebridge. Yes, the numbers are right. They do reflect the claims experience in that space; that is across the PI portfolio. I would have to take on notice the point around the construction industry data and figures and come back to you on that. However, in pointing to those points and I guess in responding to some of those areas, yes, the issue is to fix defects moving forward, as you have highlighted, and to address those factors. If we take a look at the cladding risk, there is a lot of work being done in that space to identify the risk, find solutions and address that moving forward.

As the insurance industry, I guess the best two examples to play in that area would be that in the past 12 months or 18 months, as I indicated in the opening, there is a new PI facility available in Australia right now for certifiers able to access that cover, which includes a cladding proposition—it is not excluded. That gives you an indication that where the relevant professional standards and other mechanisms are in place, those things will support insurance appetite and capacity. But that is only one area. If I look to the cladding detail with Project Remediate, it is our understanding in the collaboration we have had with the Office of the NSW Building Commissioner that professional indemnity insurance will be sourced for that product for the cladding remediation program, which is an important factor to consider in terms of: Is the insurance industry willing to support that product under the right conditions?

The CHAIR: We heard from councils in the previous panel that Project Remediate is almost like a boutique element, given the scale of the problem. I think City of Sydney said they had something like 509 buildings with flammable cladding on it; only 18 of them are in Project Remediate. Randwick Council said they had 74 buildings with flammable cladding; only one was in Project Remediate. So whilst it is good there is something stacked up for Project Remediate in terms of professional indemnity, what about for the great majority of buildings that have flammable cladding that are not in Project Remediate? Is there a policy that is standing up now, Mr Nugent?

Mr NUGENT: No. As I indicated for those certifiers that were involved under that product, it does not provide a cladding exclusion under that policy and it was not Project Remediate central. There is a product through a major international insurer that is now available for that segment, so that would indicate that—taking your short-, medium- and long-term view—yes, that capacity is there where the conditions meet the risk proposition. In terms of the numbers of buildings that are in Project Remediate or not in Project Remediate, again, it is the start of that process. The determination of buildings that were in that were done by an expert panel, including Fire and Rescue NSW and the local government association, so we would defer to those experts as to what buildings fall into that program or do not.

The CHAIR: I do not think Local Government NSW was part of choosing the buildings that go into Project Remediate, but I could be wrong. Ms MacMaster and Mr Tong, are your members able to readily access professional indemnity [PI] insurance to cover the risk of remediating dangerous flammable cladding? What are you hearing?

Ms MacMASTER: Baoying Tong, are you able to comment on that question?

Mr TONG: Yes, for sure. Chair, just on that point, I can, I guess, speak on behalf of our members. It is worth mentioning that when we talk about those engineers who are providing facade engineering services, mostly we are talking about those who are working either for themselves or those who are working for medium-sized companies actually facing the issues around facade. For those who are working for big companies, normally the situation is not that bad. As far as the conversation goes, we understand that our members in the facade space have been having a lot of challenges with, first, getting affordable insurance products and, second, also with getting insurance products with, I guess, a limited number of exclusions in the policies. So that has been the observation since last year. I do know that there are some insurers who are providing insurance policies that are not excluding too much on facade aspects. However, as far as I understand, quite a few of our members actually had issues with getting the right insurance policies and covering their works in the remediation space.

The CHAIR: Does Consult Australia wish to add anything?

Ms EULENSTEIN: No. Just that broader point again, Chair, that our members, you know, especially if they have a business that does diverse work, the PI policy covers all of their work. So whether they can manage any remediation work is one question, but whether their policy will cover their other obligations, including if they were forced to contract out of proportionate liability et cetera and suffer a claim under that arm of the contract, that is a major concern for our members. So, talking to that risk management point that Engineers Australia talked to earlier, from Consult Australia's point of view, one of the biggest risk management tools any business can do when they are a consulting business and in the current PI market is contract management and trying to get fair and reasonable contracts.

The Hon. COURTNEY HOUSSOS: I thank all of you for your time today and thank you very much for your submissions. They were really helpful [audio malfunction] where to go to next with the inquiry. I wanted to just ask—

The CHAIR: Courtney, again, you are coming through very patchily. Maybe start again.

The Hon. COURTNEY HOUSSOS: My apologies. I just wanted to start by saying thank you very much for your submissions. They were really helpful and very informative for some of those key issues that we are confronting in the inquiry. I want to start with the Insurance Council. Part of the purpose of us having another inquiry into building regulation in New South Wales is to investigate the efficacy of those reforms that the Government has introduced. One of those, you have outlined in your submission, is that there is insurance that will not currently be available for the range of practitioners that are proposed to be registered. I think the Chair touched on this earlier. Is there anything that is currently ready to go to register the professionals under the Design and Building Practitioners Act?

Mr NUGENT: In terms of the current market, in terms of our submission, there are a number of areas and the PI issues in that space are quite complex and quite diverse. If I was to look at the Design and Building Practitioners Act and the retrospective elements of what is imposed, the Insurance Council has indicated that the insurance industry does not have a product for that and is unlikely to have a product for that, for the reasons that we set out in our submission. On a proscriptive basis moving forward, insurers—and I will not say all of them; each insurer will take their own position—will set their own risk management profile and acceptance position moving forward on that basis. We have not had great deals of pushback in that area, that there has been significant changes to policy terms and conditions. I am sure there may be one or two that have a different view. But on a proscriptive basis, there is no position that cover is not available because of the Act in that space.

The Hon. COURTNEY HOUSSOS: Mr Nugent, your submission then goes on to say:

> Insurers will not have an appetite to provide cover for the historical stock of buildings where work was undertaken without sufficient oversight.

I think that is probably a fair enough assessment. What this means is that building owners themselves, apartment owners themselves, will be left to pay for this work. There is no way that it will be covered by insurance. Is that accurate?

Mr NUGENT: In isolation it may be a fair view. But as I indicated in my opening, the New South Wales Government is considering right now the position for a future decennial liability product. Again, that will enable consumers to have better and more open access to true consumer protection in that position. I think there is an important distinction to be made there. Professional indemnity insurance has been used as a consumer protection product when it is not that. It is an insurance product designed to protect the legal basis of those professionals and my colleagues here with me now. It is designed to protect those areas. Consumers ought have the ability to have a consumer product, such as a decennial liability, to protect their investment moving forward.

The Hon. COURTNEY HOUSSOS: But decennial insurance will only be available for newly constructed buildings. That is correct, is it not?

Mr NUGENT: It will be. Again, in support of that, what we term as the RAB Act or the Residential Apartment Buildings Act is an important piece of work in that Construct NSW platform. It enables the Building Commissioner and the Office of Fair Trading to look retrospectively on buildings that are completed to go back and make orders for that work—directly to the people that contributed to or caused that position of loss, to go back and have those works rectified. So, again, there is a position there in protection of consumers on that historic stock while we move through the transformation of this new regulatory environment.

The Hon. COURTNEY HOUSSOS: So your evidence is then that decennial insurance will cover those going forward?

Mr NUGENT: Yes.

The Hon. COURTNEY HOUSSOS: And the powers given to the Building Commissioner to pursue defective work in the past will be the thing that protects consumers in historical—

Mr NUGENT: That is right.

The Hon. COURTNEY HOUSSOS: I do not expect that you have tuned in this morning, but we have heard this morning from consumers who are about to move or are hoping to move into a building that has been constructed. Obviously we have seen what has happened at Mascot Towers. That is probably one of the most obvious examples of where there are historical defects that are in place. Ultimately, it is not going to be solved by insurance, is it? Those defects, addressing those concerns, is actually going to be ultimately left up to building owners?

Mr NUGENT: That could be one outcome. In terms of the retrospective elements, the insurance industry is being asked to provide cover to those historic buildings without being able to collect a premium on those things for when they occurred and provide that cover. From that proposition, as we had in our submission, that has not been quantified. The risk is either very difficult to ascertain or not possible to ascertain as to what has occurred over those previous 10 years, and what impact that would have on premium would not be able to be calculated. So it requires a regulated outcome to address those historic issues. It flows on to detail that the insurance industry is extremely interested in a number of things where we work to—future resilience on buildings, for example. It also encompasses that existing stock. So what do we do with the eight million homes around Australia that are built in a way that present that risk? It takes governments and it takes regulation to address those issues.

The Hon. COURTNEY HOUSSOS: Thanks very much, Mr Nugent. Ms Eulenstein, thank you very much as well for your submission. You have got some specific solutions that you propose to help derisk the insurance market and what you say will "remove the unnecessary financial and administrative burdens on the industry". One of them is to remove the insurance obligations from the Act and the regulation. Can you explain how that would actually work?

Ms EULENSTEIN: Yes. As the Insurance Council of Australia has just pointed out, we feel that in the drafting of the regulations insurance was seen as a consumer protection rather than a protection for the business. It is a business tool used by business to deal with any liability that comes across their desk that they are liable for—for any losses they are liable for. That was made clear in the discussion paper—the consultation paper released by the New South Wales Government, where they used those words to describe the insurance obligation as a consumer protection. For that reason, we propose that the requirement in the regulations really is about consumer protection and that there is a better way to ensure consumer protection. As the Insurance Council of Australia has pointed out, there are tools and mechanisms being worked on for that aspect. From our perspective, the real consumer protection is getting the designs right, getting the construction right. That is the ultimate consumer protection.

Having a legislative requirement for insurance does not actually make the buildings better. It does not make the designs better. Once again, because a business's PI insurance or a professional's PI insurance which is held by the business—quite often it the business that buys it for them et cetera—covers all of the work that that business does, the requirement that is in the regulation is very specific and requires the practitioner to say that the insurance they hold will cover them for all liabilities. That is very difficult for an individual practitioner to hold up their hand and affirm or swear to. They often do not see the policy. It is a business policy that is held by the business—there is that element as well. Because most of our work as a consulting engineer is done under contract, there are so many liabilities in the contract so it would be very, very difficult for a practitioner to say "My insurance will definitely cover me for all of the liabilities that might accrue". So there are multiple elements of the insurance requirements in the regulations we have concerns with and because the underlying premise was insurance as a consumer protection, we do not believe that having a regulatory requirement in there is delivering the consumer protection we need, which is stronger, safer buildings.

The Hon. COURTNEY HOUSSOS: You have perfectly encapsulated the problem and the challenges. Thank you very much. Ms MacMaster and Mr Tong, can I move on to you and this question of building manuals, which I find really interesting. I understand that this is an issue that is being looked at by the new round of the National Construction Code [NCC]. Enforcement of the requirements within the Environmental Planning and Assessment [EP&A] Act as it stands, would that actually allow more complete, better quality manuals or will it actually need to be addressed through the National Construction Code?

Mr TONG: I will start with answering this question. The building manual has always been an area that [inaudible] overlooked. So [inaudible] the quality builders, normally they provide a pretty thorough, pretty complete, building manual for the owner to operate [inaudible] their buildings. You can say it is one way to safeguard the quality of buildings over a select time. However, what we see is for projects—in particular for projects in the apartment building space—normally it is a challenge for the building owners or the strata managers to have a complete and, very important, also accurate building manual that reflects the as-built information of the building. In regards to our comment made in the submission, what we mentioned is that in the current Environmental Planning and Assessment Act there is a requirement on the building manual—that is, for the building manual. The building certifiers can only issue an occupation certificate once they see a copy of the building manual. Also, furthermore, the EP&A Act actually also mentions that in the regulation there will be more requirements around the building manual and those will define what a complete building manual is.

However, as far as we understand, in the current Environmental Planning and Assessment Regulation there is no such requirement for what forms a building manual and hence we potentially have a gap around that aspect. Also, coming to back what you mentioned regarding what the Australian Building Codes Board [ABCB] are doing, as part of their response to the Building Confidence [BC] report, they assembled a team called the Building Confidence Report Implementation Team and the team was tasked with providing a recommendation to each of the recommendations highlighted by the BC report. One that came through this year is around the building manuals, where the ABCB BC implementation team actually provided some guidelines around the requirements of building manuals. What we suggest is, when the New South Wales Government is considering providing further requirements on the building manuals in the Environmental Planning and Assessment Regulation, or future revisions, to consider what has been proposed by the ABCB team and, I guess, if we can, to follow a nationally consistent approach on this aspect.

The Hon. COURTNEY HOUSSOS: Thanks very much, Mr Tong.

The Hon. TREVOR KHAN: I will go to Mr Nugent first. You have heard the proposal essentially put that the obligation for insurance be removed from the Act. What impact would that have on the decennial liability insurance [DLI] scheme that you have spoken of?

Mr NUGENT: Thank you, Mr Khan. The DLI scheme is separate of professional indemnity insurance.

The Hon. TREVOR KHAN: Right.

Mr NUGENT: I cannot see that removing PI from the Act is going to stop consultants, engineers and other professionals from buying professional indemnity insurance. It will enable them to buy a product that is fit for purpose for their business. PI insurance is a product, as Consult Australia has just provided details to you, that protects their professional services. DLI insurance is a consumer protection product. It operates in over 35 countries around the world. It is designed to provide protection to the consumer for the quality of the structure of the building, which would appear to be closer to the link in terms of what was trying to be sought through that Act and that regulation.

The Hon. TREVOR KHAN: Right. I think you referred earlier in your answers to the certifiers and the scheme that they have put in place to improve, I take it, the overall quality of certifiers. Is that the case?

Mr NUGENT: I could not talk to why they created that scheme. That was a decision for certifiers. But my understanding is that certifiers and specific—Power and Water's certifiers' association put together a professional standards scheme, signed up to that and identified an insurance market that was prepared to offer a professional indemnity product, which had minimal or no exclusions relative to those touch points that are of concern right now, for that segment. That is targeting small and medium enterprises in that space as well, so quite small businesses in the scope of certifiers. It highlights the point that where those mechanisms are found, there is an insurance response for those professions under those settings where they are correct.

The Hon. TREVOR KHAN: Your answer does seem to suggest that the professional standards, in a sense, were created so that the insurance industry would be interested in providing a degree of cover. That is correct, is it not?

Mr NUGENT: Without doubt, Mr Khan. In terms of the professional standards, there are a few different ways that they work. The professional standards are looked at by the insurance industry and taken to determine the effectiveness of that professional standards scheme, so that where there is better performance as a result of professional standards that will translate to less claims. That will translate then, in turn, to lower premiums because the market becomes more competitive. Alternatively, if you are in a professional standards scheme and that is not working as intended, then that would be a consideration for the professional standards service to look at how that operates. Where there are price pressures in insurance and there is an absence of a professional standards scheme however, it should be something that is considered in whatever form that industry decides to look at it in. But it is something that should be considered to reduce the price pressures because of the claims experience that emanates out of that.

The Hon. TREVOR KHAN: I will just go to Consult Australia. Ms Eulenstein, I am interested in this issue of the removal of the insurance element from the Act. If one were to take up the Act then one would say, for instance, my old profession, solicitors, should not be obliged to have professional indemnity insurance either because it is simply a business expense and let them rip. That is essentially what you are proposing, is it not?

Ms EULENSTEIN: No, I would not say that Consult Australia has ever said, "Let it rip." We are not proposing that any of our members would go out and cancel their policies. Our members retain insurance policies for their businesses. As the Insurance Council of Australia has pointed out, the policies they seek to get is to cover their range of business. What Consult Australia says is that in this Act, in this regulation, the requirement for insurance does not lead to the policy outcome we want, which is to address the issues in building compliance and consumer confidence. Our engineers, for example, will retain their insurance because they must as members of Engineers Australia, for example, if they are on the National Engineering Register [NER].

So we do not see that it will lead to businesses going out and cancelling policies. We simply are saying that it will remove that obligation that hangs over a practitioner's head to affirm that their coverage will cover them in all instances when they do not know what their insurance will actually cover when it comes to a claim, given that we are not just acting under this Act and numerous other Acts but also under contract law. So that is what Consult Australia is saying about the obligation there, rather than the actual upholding of insurance. Our businesses will continue to hold insurance to cover their liabilities, but that obligation is what we are concerned about.

The Hon. TREVOR KHAN: If I take your reasoning to an end, you could say that CTP insurance actually does not ensure compliance with the road rules by the operators of motor vehicles in New South Wales. That would be correct, would it not? It does not have a jot of impact upon whether somebody drives quickly or not, for instance. You would agree?

Ms EULENSTEIN: Indeed.

The Hon. TREVOR KHAN: But CTP does ensure that a not-at-fault person who is injured by a motor vehicle is covered. That would be correct, would it not?

Ms EULENSTEIN: Yes, and CTP is a particular product that is for that purpose. Whereas, as we have said before and everyone on the panel here has discussed, the PI policies that our members have is a much broader policy than that. So it is to cover all sorts of issues including not just defaults in—design errors in New South Wales construction. It is not a specific product for that. That is why we have the concern.

The Hon. TREVOR KHAN: I understand that. But insurance is required in some circumstances not simply to ensure compliance with a standard, whether it be driving on a road or a building standard. It is to ensure that if somebody suffers loss that they actually have somebody to go to to recover that loss. That is the essential nature of a statutory scheme, is it not?

Ms EULENSTEIN: Well, we go with the Insurance Council of Australia's advice there about, you know, it is—the PI policies we are talking about are business tools not consumer protections and if there was a consumer protection aspect in place then that would be the preferred mode there.

The CHAIR: The purpose of professional indemnity insurance is to protect the professional for claims where damages have been caused by negligence by the professional. That is right?

Ms EULENSTEIN: Yes.

The CHAIR: So if a professional's conduct is negligent and building owners then face millions of dollars to rectify the work because of the negligence of the professional, well then surely it is only reasonable that those losses can be recovered against a professional indemnity insurance product. Correct?

Ms EULENSTEIN: We are not saying that claims cannot be made under the policy. We are just saying that having a requirement to have insurance in the Act and regulation, as it is drafted, with the individual practitioner having to say that they definitely will be covered for all liability is a concern for our members. They are concerned about putting up their hand when, for example, they may be a practitioner in a business and they have not seen the policy. It also goes to the fact that the insurance companies themselves are not party to the Act and there is concern, I know, about revealing the commercial agreement between the insurer and a business. We see that in other sectors as well.

The CHAIR: These sound to me like issues of commercial arrangements either in a workplace or between an insurer and an insured. It seems to miss the obvious reason why these reforms were put through, which is, we have seen homeowner after homeowner after homeowner paying tens of thousands—sometimes hundreds of thousands, sometimes more—in rectification work for negligent building work and there is no insurance product against which they can claim. It seems to ignore the whole social rationale for these reforms being put through. Do you have a response to that Ms MacMaster?

Ms MacMASTER: Yes. That is an absolute desired outcome from the whole building reform sector. I am not an insurance expert, so I will decline to comment on the range of insurance products available. But it would seem to me that whether it is written into the Act and the regulations or not needs to be thought through. It needs to work as a system and if the regulations require—going to Ms Eulenstein's point earlier, let us get to the root cause of the problem. We need to be aiming for good quality buildings in the first place. We see that as the fundamental part of the picture. But insurance obviously has an important role to play. Whether or not it sits within the Act, I do not have a firm view. Mr Tong, do you have any comments to add there?

The CHAIR: Well, Mr Tong, in doing that you might address this one observation. One of the benefits in terms of quality of requiring professionals to be insured is that insurers will be looking to the track record of the professional, looking to prior claims, looking to see that they are perhaps part of an industry scheme that ensures quality and those quality aspects, I think, are an important part of the insurance arrangements. You might be able to address that, Mr Tong, in your answer?

Mr TONG: Thanks, Chair and I do agree that good record keeping is actually—I guess, represents good risk management for businesses regardless of what is the size of the business we are talking about. However, back to what Ms Eulenstein said regarding the insurance requirement and also the regulation, from an engineer's perspective, let us say, for me, I have been talking with a lot of members at Engineers Australia and even before the regulation it would be really, I guess, rare for an engineer not holding insurance when they sign a contract for their client. There was only, say, one or two cases probably out of a hundred I talked with. Those one or two are willing to put their asset as a way to insure their clients if any negligence happens.

What is tricky on insurance and also the regulation is actually to determine the adequacy of the insurance. That is the tricky part. Think about this: I am an engineer, as I say, and I have been running my business in the past 10 years in the residential space. For me to understand how much insurance I should hold to be registered and prove that I have adequate coverage of insurance for all the projects that happened in the past 10 years would be almost an impossible task. Also, based on what the Insurance Council of Australia said, insurers in the hard market do not have an appetite to provide an insurance product that eventually will capture all of those retrospective risks from the past. This, again, just makes this task for the engineers to assess the adequacy of the insurance and getting qualified to be registered through the new regulation an impossible task.

The CHAIR: Mr Tong, I—

The Hon. TREVOR KHAN: Sorry, David, can I just ask a follow up question to Mr Nugent, I think. Mr Nugent, you referred to it in your opening remarks. The retrospective element that seems to be a matter of concern here, you are aware that that was an element introduced in the bill as a result of amendments moved by—I am not quite sure if it was by David or not, but either by Labor or the crossbench when the bill was passing through the upper House. I think there was some discussion about the problems that potentially could arise by that retrospective element at the time. That is correct, is it not, Mr Nugent?

Mr NUGENT: That is right, Mr Khan. In terms of where that came about, the retrospective came to pass through amendments that were made to the bill as it was put forward. Going to the points that have been made around that and PI and should it be in the Act or not, I guess we look to the points around what PI does. As I indicated before, professionals are going to purchase PI. We do not have a problem with the regulations setting out that PI is there, it is what is the scope of PI that is required under that legislation? Does it go to a point that brings about more cover than what that professional is actually working on and how does that play?

The second point to that is this DLI proposal. The decennial liability proposal—working backwards, if we are looking at consumer protection through DLI, and at the end of the day the commentary here seems to be

that we are looking to protect consumers, it would be more than likely and highly reasonable and expected that an insurer, in doing any risk assessment, is going to go back and check who is doing the work and require that those builders, developers and other professionals hold the relevant professional indemnity insurance for their work as they are doing it to ensure that, if there is an issue in the future relative to that, the insurer has a right of recovery against another insurer, or a professional, or wherever it might be down the chain, for the causation of that percentage of the risk that that individual or that professional was responsible for.

The CHAIR: The Hon. Anthony D'Adam has been waiting very patiently and I do want to go to him.

The Hon. TREVOR KHAN: Yes, sorry.

The CHAIR: I might come back to this issue and ask you, Mr Nugent, if some of the issue is because of the way the policies are written on a claims-made basis rather than covering the work from the date at which the policies are made, and maybe get some clarification from you there. I will go to Mr D'Adam first, because he has been extremely patient.

The Hon. ANTHONY D'ADAM: Thank you, Chair. That is a nice segue because I was going to ask about this issue, which I think was raised in the Consult Australia submission, around contracting out of proportionate liability and professional services. I wonder perhaps if Ms Eulenstein might be able to elaborate on that issue and explain it a bit further?

Ms EULENSTEIN: The Civil Liability Act in New South Wales allows contracting out of proportionate liability. Of course, proportionate liability allows someone to be held liable for the part of the loss that they caused rather than the whole of the loss. It is obviously very important for designers and consultants who have one element in a project but is not responsible for the whole project, especially if you think about the number of designers that might be involved in a multilevel residential building, for example. When the Civil Liability Act was introduced it was part of a national approach for proportionate liability, and it really came out of an insurance crisis for the PI market. It was to really limit professional services—and I do not know if Mr Nugent is available to talk more about this, but the Insurance Council of Australia would probably give you a nice history of civil liability reform.

The concern for our members is that proportionate liability is great. It allows us to know what loss we will be liable for—we are only liable for the loss that we cause. It makes perfect sense. We can sign up to that. We can manage all of our projects and all our potential liabilities. However, in jurisdictions like New South Wales that allow contracting out, we get a lot of pressure from clients to contract out. Obviously that puts pressure on the business to make sure that they can cover all losses. If something happens they may end up being the only person standing—the only business left standing to cover the losses for the whole building. For the longest time—since I have been at Consult Australia and since this issue came out with contracting out—Consult Australia has been very strong on seeking to get that proportionate liability secured, at least for professional services contracts because that is the reason why it was introduced in the first instance; to really stop any PI market crisis that we saw when these reforms were introduced.

We know that in Queensland, for example, the Civil Liability Act there prohibits the contracting out of proportionate liability and that is a welcome reform. We know that when the civil liability reforms were initially introduced to ensure that proportionate liability, the insurance industry was positive about it. But they are less positive about it now that there are so many jurisdictions that allow contracting out or are silent on contracting out, and we see our consultants forever fighting to get proportionate liability secured in contracts, so it makes it a real difficult environment in which to operate and it makes it very difficult for us to manage our risk. As Engineers Australia said, it is very important for our members to manage their risks. If they cannot secure proportionate liability, managing those risks becomes even harder.

The Hon. ANTHONY D'ADAM: Mr Nugent, do you have something further to comment on that element of this—

Mr NUGENT: I would agree with Kristy, Mr D'Adam. The issue in that space is, as I indicated in our opening, that insurance and premiums are determined on the basis of risk. Where a risk is presented and the scope of that risk is widened either by virtue of proportionate liability or all liabilities being passed on to a professional, whether that professional is specifically or directly responsible for that or accepting it by virtue of contract, that expands the risk. Expanding the risk expands the premium because the premium needs to meet that proposition. I would support where Kristy is at, but understanding where that sits is critical. I guess I will leave the rest for them.

The Hon. ANTHONY D'ADAM: Just to clarify, your submission, Mr Nugent, is that decennial liability insurance is the solution. Who would hold that policy?

Mr NUGENT: I am not sure I am saying that it is the solution. I am certain that it is one that is being investigated and that would be something that government and a number of stakeholders should be a party to, that conversation, to identify how it would work practically and how it should operate in order that there are not unintended consequences such as retrospectivity of PI insurance. In looking at those sorts of elements, we talk to this and say that professional indemnity insurance is not the silver bullet, for example, that many people are putting it out to be. No matter how you regulate it or want to regulate it, it is designed to provide a specific set of cover for specific circumstances to a cohort of professionals within the building industry.

I think it was Kristy before who alluded to that any one engineer or consultant, or whoever it will be, will do a specific set of work on any single class 2 building and there could be dozens of those professionals do separate independent work. Each of those should have their own PI policy. Each of those should be requiring or providing that protection for their work, not for everybody else's. That is where the risk comes in. When that liability is sought to be expanded beyond the remit of the work that was actually done, it will have risk and then premium consequences.

The Hon. ANTHONY D'ADAM: You do not have a set opposition in terms of whether—I mean, were the requirements for PI to be removed from the Act then something would have to be put in its place to remedy the whole series of problems that Mr Shoebridge has alluded to earlier.

Mr NUGENT: Of course.

The Hon. ANTHONY D'ADAM: Is it your submission that DLI would be entrenched in some kind of statutory arrangement?

Mr NUGENT: I am not sure that the Insurance Council is saying remove insurance from the Act entirely. We are saying we need to look at the settings that are relevant to insurance and DLI is an important one in that space. If the end position of the regulators is to find a protection for consumers, that needs to be a consumer protection product not a professional liability coverage that has expanded in scope to be something it was never intended to be.

The Hon. ANTHONY D'ADAM: Ms MacMaster, in your submission you raise the issue about other ways to reduce the risk and you talk about independent third party review and mandatory inspections. Can you perhaps elaborate further on what further measures might be taken in terms of reducing the risk?

Ms MacMASTER: Yes. I will speak in the general and then I will hand to Baoying Tong, who is our building reform agenda expert. But in the general case this is high on our list of priorities, reducing the risk and improving risk management practices of the engineering profession more broadly but specifically in the building and construction sector. We have got a range of initiatives underway, spanning everything from demonstrating competency of engineers through the registration credential and our charter credential, through to providing practice guides and protocols on risk management practices. But to the two initiatives that you mentioned specifically, I will hand to Baoying Tong. Thank you.

Mr TONG: Thanks, Jane. That is a good question. To give a short version of what we said about these two things, first, for the mandatory inspection it should be made clear that in New South Wales when we are talking about mandatory inspection [audio malfunction] also called critical stage inspections. The requirements are mostly set under the Environmental Planning and Assessment Regulation. If you look up the regulation what you will see is, first, it does not require an engineer to provide inspections. Rather, it actually gives the power to the principal certifiers. I think it is a good arrangement when the principal certifiers actually have the right expertise and also the technical knowledge. However, sometimes if, say, the building has really complicated structural designs then maybe an engineer is actually better placed to do that inspection.

The second issue with the current requirement is also to what extent are we inspecting the buildings. To give you an example, if we look at the clause from the regulation, what you will see is—if we are talking about waterproofing, as per the regulation for critical stage inspections for waterproofing, if you are building a house basically you have to inspect all of the waterproofing aspects of the house. Whereas if you are building, say, a 10-level apartment building block, based on the regulation there is no requirement for you to inspect every single aspect of the waterproofing and you can only go for the minimum—which I believe is 30 per cent, based on my memory. But that is why we think trying to provide some more stringent, more robust requirements on the mandatory inspection aspect would similarly help to safeguard the building qualities.

Another proposal we mentioned is around the third party independent review. That is actually a consistent recommendation from all those recommendations from the BC report, from the Mascot Towers report and also from the recent Skyview towers report. That is a constant theme. For the industry, I know that engineers—I am an engineer and I am always very proud of what I am doing. However, engineers are also human beings and

sometimes we do make mistakes. That is why it is important to introduce some level of third party independent reviews to help safeguard the quality of designs.

What is equally important is also, when we have this, it should be truly independent and that means that the original design engineer should have very limited dealings with the proposed third party reviewer. Both are actually recommendations directly from the BC report and, similar to what I said before regarding the building manuals, the ABCB team actually have actually completed the consultation on recommendations in regards to these two aspects from the BC report. I understand that the ABCB team are now taking our advice, inputs, on the consultation papers and eventually they will make them into model guidance for the jurisdictions to consider for implementation.

The Hon. ANTHONY D'ADAM: I might hand back to the Chair.

The CHAIR: Mr Nugent, in terms of the issue about insurance cover for retrospectivity, as I said to you earlier, has part of the problem been that when you issue a professional indemnity policy it is on a claims made basis: so claims made in the year of coverage, even if it covers work that may have been done by the insured, in this case, eight or nine years ago? Is that the issue that has created difficulties with costings?

Mr NUGENT: No, the insurance issue in there, Chair—thank you for the question—the issue with that detail is that the insurance product is built and designed on the basis that it is delivered. It is designed to provide protection for those professionals on a renewal basis, and the premium is calculated on the basis of the experience of that product from a claims perspective, and that is drilled down to the relative segments of that industry. Where regulation is imposed in that position to change the scope of that cover and the delivery of that cover and widen it, that will have premium and policy impacts on the way that product is delivered. Then looking backwards to that, if you are then to say, "We will change the mechanism on the way that the policy is delivered and bring with it a requirement to pick up liability for 10 years prior", that logically will have unintended consequences that bring with it additional liability, which are unpriced.

The CHAIR: One of the ways forward in this regard would potentially be a regulation that says the insurance product that is required, when it comes into effect in the middle of next year, would not require retrospectivity from before the commencement of the Act. In that regard, that might be one way forward. Have you explored with the Government those kinds of options?

Mr NUGENT: We have had a number of different discussions with Government. I know colleagues at the Insurance Council who have had deep conversations with Government around how those things work. The insurance industry is only able to respond to the regulation as the regulation is passed by Parliament. So we are required to respond from a pricing and policy point of view to the parameters that are set. Where those parameters are unable to be priced, then that has a different consequence. What that looks like moving forward, we are most open and we continue to engage with Government around changes in the Construct NSW program and the legislation related to it. As I indicated before, this is a transformative process and we are still well inside that transformation period.

The CHAIR: Mr Nugent, you know one of the reasons the retrospectivity was initially put in the Government's initial bill, I might add—and, yes, it was amended by amendments—was because of a highly controversial High Court decision that overturned what everybody had previously understood to be the law in this regard and therefore defeated claims by future building owners, if you like. So what the legislation did was restore the status quo, and there was a compelling reason for retrospectivity, wasn't there, Mr Nugent?

Mr NUGENT: I take your point, Chair. The position in terms of regulation and how that is regulated is one for the regulators. We certainly engage with the regulators and talk to those issues and advocate from our respective positions, for those on the panel here, as to what those consequences are. Where courts make determinations and there is need for change, that is fine. I think the important point made there in your question, however, is talking to consumer protection, and I will reiterate the point that I made earlier. The professional indemnity insurance is a product designed for professionals to protect the professional liability. If regulators want to see consumer protection, then the regulators need to provide a position of consumer protection, that being a consumer protection product. And that is where we have gone to the position of decennial liability insurance [DLI].

The CHAIR: Mr Nugent, there is a long tradition of professional indemnity insurance being of a scope sufficient to protect the consumers, the customers of professionals. You could look to the legal industry, you could look to the medical industry, where professional indemnity insurance has very clearly been required to be of sufficient strength and sufficient coverage to ensure that patients and clients of professionals are fully protected. Is this a recent and novel interpretation of professional indemnity that is coming from the insurance industry now, given that history?

Mr NUGENT: No, it is not. No, Chair, it is definitely not and, to that point, professional indemnity insurance is a very important class of insurance. It protects a very big cohort of people across our economy and it would continue to be that product, and it has provided significant benefit to a number of stakeholders across the economy when those issues occur. However, in that space, we have seen more recently, and I highlighted the claims results earlier on, that the proposition coming out of that is that from a global point of view Australia is considered a highly litigious environment, and we are seeing much larger claims come about as a result of litigation. There are anecdotal examples, for instance, where people are in courts fighting legal cases of $600,000, $650,000 worth of costs without spending a day in court yet. These things drive to claims experience. These things drive premiums. These things drive that proposition. So what I am saying—and our position is not that there is one simple answer to this; it is a complex issue—is that all stakeholders need to continue on this transformative journey to find what the right settings are to achieve the balance that you are seeking in that question. I think there were a few answers in there.

The CHAIR: I think there was, but we cannot get too philosophical because we have about a minute left. Ms MacMaster, could I ask you whether you have sat down with the Government and spoken about whether or not there are options involving the statutory insurance product that your members are required to have, not having retrospectivity that predates the commencement of the Act? Are you having those kinds of live discussions?

Ms MacMASTER: Again, I will defer to Baoying Tong on the specifics of the conversations we have had with the Government.

Mr TONG: The answer is no, we have not got that much, I guess, opportunity to talk about the retrospectiveness of the insurance with Government. However, we do have conversations with the insurance market regarding the retrospectiveness of the insurance. That being said, for engineers, at the moment there are not that many options on the insurance market. That is why we are not in a position to, I guess, pick and choose, and that is why we need to see what happens with the insurance market first and then decide.

The CHAIR: Thank you all for your time today. Unfortunately, time has beaten us. There may have been one or two questions taken on notice, in which case you have 21 days in which to provide the answers. I thank you all for your assistance today, for your submissions and for your ongoing engagement with these quite tough regulatory issues. The Committee will now have a short recess and will resume at 2.15 p.m.

(The witnesses withdrew.)

(Luncheon adjournment)

CHARLES SLACK-SMITH, Director, Group DLA, and Treasurer, Association of Australian Certifiers, sworn and examined

JEREMY TURNER, Technical and Policy Manager, Australian Institute of Building Surveyors, affirmed and examined

JILL BROOKFIELD, Chief Executive Officer, Association of Australian Certifiers, affirmed and examined

The CHAIR: Welcome to the final session of today's hearing of the Public Accountability Committee's inquiry into the regulation, or lack thereof, of the building industry in New South Wales. This afternoon we have evidence from two of the key certifier groups for New South Wales and Australia: the Australian Institute of Building Surveyors [AIBS] and the Association of Australian Certifiers [AAC]. I thank all three witnesses for taking the time to attend this afternoon and for the assistance they have given the Committee through their submissions. I give you the opportunity now, if you wish to take it, to make a brief opening statement addressing the core issues. Ms Brookfield?

Ms BROOKFIELD: Thank you, Chair, and thanks to the Committee for inviting us to attend today. The Association of Australian Certifiers represents registered certifiers employed in private practice and in local government in New South Wales. Our members work across New South Wales in inner city, the outer suburbs and in regional and remote communities across the entire State. These members work across a variety of different parts of the construction industry, from residential construction to commercial projects and Crown projects. As their industry association, the AAC is committed to improving standards, increasing accountability and putting consumers first. This has seen us advocate for increased accountability in the industry for a long time.

As many of you know, for too long there has been a lack of accountability across the entire industry. We have always advocated that all building practitioners, from the developer to the builder, the designers to the certifiers and all the contractors, must be accountable for the work they do on building sites. Multiple inquiries have supported this simple proposition, but it has taken a very long time to get here. We are finally heading in the right direction through the Government's current building reform process, and this is welcome. However, it will take time for this to wash through the entire industry.

We also think there are three key areas that still need to be addressed: firstly, broadening the reforms beyond high-rise residential projects and increasing the regulatory focus on more practitioners, including subcontractors; secondly, improving communication from government to industry; and, finally, reducing the regulatory complexity for practitioners and the public. We also recognise that driving reform and cultural change is not just a matter for Government. The industry must do its fair share, and that is what our organisation has been focused on: lifting standards, improving the culture and ensuring consumers are put front and centre.

A central pillar of this effort has been the development of a professional standards scheme [PSS]. We are in the final stages of finalising our application, which will be submitted in the coming weeks. The AAC believes that PSS is in the best interests of our members, their clients and the general public. A PSS will enhance and improve the professional practices of AAC members and elevate the standards in the delivery of members' services to their clients. A scheme will also help the AAC expand and enhance our already proven education services for members to ensure they remain informed of best practice and customer care. While we also recognise that this is not a silver bullet in addressing every issue, it is the right move for our industry in improving our professional practices. Thank you.

The CHAIR: Thanks very much, Ms Brookfield. Mr Turner?

Mr TURNER: Firstly, I would like to thank the Committee for the opportunity to appear today and commend ongoing efforts to understand how best to regulate and provide appropriate consumer outcomes, which is the ultimate goal of the terms of reference for this inquiry. The cornerstone of any effective system of regulation, and particularly for the building industry, is to protect and give confidence to the consumer, and it is this interest of the consumer which is the basis for the AIBS submission to this inquiry. There are key aspects of the AIBS submission which are central to this objective of protecting consumers. The AIBS Professional Standards Scheme for Building Surveyors operates across all States and Territories and obliges AIBS to monitor, enforce and improve the professional standards of members under the scheme, thereby reducing risk for consumers of professional services.

The AIBS professional standards scheme upholds professional standards of scheme members, who are building surveyors, and assures that consumers have access to appropriately qualified and skilled building surveying practitioners for representation and advice. The benefit to consumers of this scheme from this assurance is that the professional standards of scheme members meet those required by AIBS, which include formal education and experience requirements for registration by State and Territory governments and the Professional

Standards Council. This ensures that consumers are well served by appropriately qualified, experienced, ethical and responsible building surveyors. The improvement in professionalism brought by participation in a professional standards scheme is also a direct consumer benefit, and indirect benefits arise through reduction in compliance and complaint investigation burdens on regulatory bodies.

We take great pride and satisfaction that the AIBS Professional Standards Scheme for Building Surveyors is the first such scheme to be authorised for a practitioner group that is also required to be registered and especially a practitioner group that has the public's interest as its key objective. While AIBS has made significant gains through the scheme for professional accountability of its members, not just in New South Wales but right across Australia, undertaking a vital and important role for the benefit of consumers nationally, we are just one part of the building regulatory system in New South Wales that overall consumers find ineffective, inefficient and, frankly, downright confusing. Our submission points to a range of macro reforms as well as a range of micro reforms which taken together are aimed at more effectually regulating the sector and also at providing a clearer understanding for consumers about who is responsible, why and how this responsibility is to be upheld. If a broad-ranging approach to reform is to be adopted, we suggest this will produce a quantum improvement in regulation of the building industry in New South Wales.

We have identified a need to collate disparate legislative controls into as near as possible a singular Act, overseen through a dedicated ministerial portfolio. Additionally, supporting consumer protection, we have identified a need: to ensure as many of the various practitioners participating in the industry are required to become registered or licensed so that they can be made accountable for their work through active auditing by a dedicated regulatory authority; for simple and easily accessible dispute resolution pathways, including technical and contractual adjudication services; and for insurance protection for consumers via a universal mandatory requirement for practitioner professional indemnity insurance. We note that other submissions to this inquiry have also supported similar micro reforms, which are likely to provide incremental improvements when taken in isolation and perhaps something approaching a quantum improvement if adopted as a raft of reforms.

I note we are not alone in identifying a need for collation of regulation within a single portfolio and Act. The hard decisions about transfer of ministerial responsibility for regulation of the industry to a single portfolio are likely to yield the greatest benefit, enhancing the opportunity for the myriad micro reforms to be undertaken in a coordinated, timely and planned manner. We are delighted to have the opportunity to contribute to this inquiry and look forward to assisting your understanding of the issues as you may need.

The CHAIR: Mr Slack-Smith, did you want to make a contribution, or has Ms Brookfield covered the field?

Mr SLACK-SMITH: No, Ms Brookfield has covered the field so [inaudible] for me.

The CHAIR: I might ask an initial question. It goes to the AIBS's submission, which is the need for a consolidated building Act and, with that, effectively a building Minister. Given the very large proportion of our economy that is covered by building and construction, it seems remarkable that that big chunk of the economy has responsibility split up between so many disparate parts of government. What do you see as the merits of a consolidated building Act and, with that, a single ministerial responsibility? Mr Turner?

Mr TURNER: I think the most important thing there is a clear responsibility or pathway of accountability within Government or regulation of the industry. One of the things that we identified in our submission is that there is a significant difficulty at the moment in, I guess, assigning responsibility for any particular issue that might arise within the building industry where multiple Ministers can kind of point to multiple portfolios and various shared responsibilities and potentially not take responsibility, where otherwise it might exist. I think it is really important to have that clear accountability within a portfolio so that any, I guess, need for regulatory reform can be, firstly, carried out effectually, but also the identification of a need for reform becomes far simpler where you have a single department that supports the ministerial portfolio that has that responsibility. I think there are some pretty clear examples of where this might have persisted recently within the last two or three years.

We currently have multiple pieces of legislation that require practitioners to register for different purposes for effectively the same work. So under one piece of legislation you would be required to be registered in one criteria, and in order to comply in respect of work on class 2 buildings, there is a new suite of legislation requiring a different set of registration criteria be complied with et cetera. So we are seeing duplication of regulation at the moment in New South Wales, which is, I think, exceedingly difficult for practitioners to wrangle in terms of meeting their compliance obligations. But also I think it creates a real difficulty for anybody who seeks to hold somebody accountable for some work that they have done because you have got to identify the right piece of legislation within which to pursue them and allege an offence and then obviously carry that through the legal

systems. So there is, I think, some substantial benefits in—what did we say?—the condensing of requirements into a single legislative instrument.

The CHAIR: Thanks, Mr Turner. There might be a neat way of distinguishing between the two organisations as we have the "institute" with you, Mr Turner, and then the "association" is Ms Brookfield and Mr Slack-Smith. Does the association have views on this, about the consolidation of the legislation and a single building Act and building Minister?

Mr SLACK-SMITH: Yes, we have also put that in our submission as being something that would, for reasons that Mr Turner has outlined, just create that clarity and reduce that ability for duplication. So, yes, we agree with what the AIBS has been saying on that matter.

The CHAIR: One of the issues that is regularly raised about private certification is the conflict of interest if the client basically chooses the certifier. And we have seen many cases where there is longstanding commercial relationships between a private certifier and a particular developer. That can, as we have seen in a good many instances, end up compromising the independence of the certifier and ultimately compromising the quality of the building. Mr Turner, I might go to you first. Do you have any views about that?

Mr TURNER: Yes, we have heard multiple people say that there have been people compromised in that way. We are yet to see any hard evidence that demonstrates that that is in fact the case. One of the things that is particularly interesting about that is that we have had a code of professional practice in place for a very long time and we have also had an accreditation scheme in place for a long time. Any of our members who are alleged to have compromised themselves in regard to a conflict of interest would contravene the requirements of our accreditation system but also our code of professional conduct.

We have not yet been asked to investigate that sort of complaint. You would imagine that if that was the case we would have seen something. That is nationally, not just New South Wales. We also note that the New South Wales regulator has been actively auditing building surveyors or registered certifiers in New South Wales for many, many years. We are not aware yet of a registered certifier who has in fact been penalised because of a conflict of interest issue. There have certainly been penalties applied where they have failed to act accordingly or contravened other requirements, but we do not believe that there is one related to that. So that, I guess, is the first point.

The second point around this is that even if you do have a longstanding engagement with a client, that does not prevent you from acting professionally. Certainly, members who are participating members of AIBS, and therefore subject to regulation by AIBS through the professional standards scheme, should expect that they would be audited and where there was any impropriety found in relation to an engagement that they would be subject to an adverse audit finding and therefore penalties regarding their ongoing participation in the industry. So there are mechanisms there both within the regulator but now also within the co-regulatory space by AIBS to address conflict of interest. We believe they are adequate. We are happy to hear from anybody who thinks that they are not adequate and therefore that we do have an issue that we need to resolve because clearly we would very much like to make sure that that is resolved if that is in fact in issue.

The CHAIR: Mr Turner, to be quite frank, that seems to utterly ignore the evidence. I could give you the name of one certifier who had 29 findings made against him from 2005 by the Building Practitioners Board. Twenty-nine! It took the twenty-ninth before that particular certifier was removed from the field, and then only temporarily. I could point you to six certifiers—I could name them—who between them had 111 findings against them by the Building Practitioners Board. Some 111 just from 2005, and they continue to practise and sign off building after building after building. These certifiers had close and continuing relationships with one or two developers throughout the course of that. You are telling me that it is fine, that there is nothing to see here. Is that your evidence, Mr Turner?

Mr TURNER: I am certainly not condoning actions of registered certifiers who have been disciplined. I believe that there are certainly examples out there of people who have not practised appropriately, and it is good to see that the regulator is taking an interest and taking steps to deal with those.

The CHAIR: Mr Turner, you must not have heard me. The regulator had this one particular individual 29 times—

The Hon. TREVOR KHAN: [Disorder]. Point of order—

The CHAIR: [Disorder].

The Hon. TREVOR KHAN: The witness is answering your question. You should let him finish—

The CHAIR: Alright. [Disorder].

The Hon. TREVOR KHAN: —before you jump down his throat.

The CHAIR: To be quite frank, I thought he must have misheard. I just want to be clear; I am not saying [disorder].

The Hon. TREVOR KHAN: That is unfair.

The CHAIR: I will allow Mr Turner to complete his answer.

Mr TURNER: Thank you. Certainly I am not aware of the details of the actions that were taken. It may well be that there has been a conflict of interest issue but one that I am not aware of. But what you are saying—29 examples for one particular practitioner where they have been disciplined—does not automatically equal a conflict of interest. It may in fact equal a lack of competence or a different interpretation of legislation or something of that nature. But I certainly would not be prepared to state that that was a conflict of interest issue. I hope that answers your question satisfactorily.

The CHAIR: Mr Turner, if it takes 29 proven breaches from a building certifier before they are removed from the field, that is a sign, isn't it, of regulation failing, particularly in terms of ensuring the quality of certification? If it takes 29 proven breaches before the regulator before somebody is even given a temporary suspension, the regulation is not working, is it, Mr Turner? Or do you say that is not evidence of that and it is fine?

Mr TURNER: I would not reach that conclusion directly from the fact that there have been 29 instances of disciplinary action. Bear in mind that there are a range of disciplinary actions available to the regulator and these can be applied for a variety of different breaches or offences. Some of these are minor kind of matters where it might be that time frames have not been met properly or perhaps incorrect documentation has been lodged or things of this sort of nature which are administrative in nature and not likely to cause, I guess, damage to the reputation of the industry and the profession or indeed to potentially create an unsafe situation. So we do need to take into account what these different findings related to before we can understand exactly whether or not we have got an issue around this regulation process.

But we have been on record in the past of saying that we believe that the regulators, not just in New South Wales but nationally, have been ineffectual at ensuring that practitioners who have not been performing satisfactorily are appropriately dealt with. We are very pleased to see that the position of the Building Commissioner has been created. We have certainly noticed that there has been a shift in the culture within the sector that is constructing and involved in class 2 buildings, the apartment building sector, and we are very encouraged that in fact that culture is moving towards a far greater degree of voluntary compliance than we have seen in the past in that sector. We believe that that model is appropriate, and that is a model where we have an active, motivated and effectual regulator in the space. And it should be available whatever class of building somebody is doing, so that we have a much better chance of ensuring that we get the right consumer outcomes.

The CHAIR: Mr Turner, if we are talking about consumer outcomes, do you agree that if people have been found to be serious repeat offenders, they should not have a role in the industry?

Mr TURNER: Absolutely, yes.

The CHAIR: What about Mr Lyall Dix who was found 15 times, serious breaches, one of them approving an occupation certificate for an apartment building that had no toilet pans, hand basins or bathroom taps. Eventually, after 15 findings over the better part of a decade, he had his licence as a certifier suspended, but now he continues to be the managing director and the principal owner of the corporation that provides exactly the same building certification services. Do you say that is evidence of a system that is working?

Mr TURNER: I think that every system has the capability of improving, and some far more than others. I would not want to make any comment about any personal circumstances of any practitioner. I am not in a position to do that. But certainly if you have an ability, not only within building surveying spheres but also within the construction and development spheres, for directors of companies who are associated with several failures or breaches or disciplinary action and the like to simply reinvent themselves through another company structure or those sorts of things, we most definitely have a significant gap in our ability to regulate the industry effectively, and I—

The CHAIR: [Disorder]. Sorry, Mr Turner, did you finish?

Mr TURNER: AIBS is on record asking and suggesting that we very much need better regulation to prevent that sort of thing from occurring—where you have a known offender who is not doing the right thing simply bobbing up somewhere else to continue in the same vein but under a different structure.

The CHAIR: That is exactly what we have with Mr Lyall Dix. I will read to you from the website of Dix Gardner:

> Dix Gardner Group are well known and regarded as one of Australia's pre-eminent … building certifiers, operating in Australia since 1998.

They continue to have a large market share, they continue to aggressively promote themselves, yet the principal of Dix Gardner has a series of quite shocking repeated findings against him. That is evidence of the industry not being well regulated, isn't it, Mr Turner?

Mr TURNER: It may well be. I don't know the detail of that, and I am not prepared to comment about Dix Gardner or Lyall Dix.

The CHAIR: Ms Brookfield, in light of the examples I have given you—the Dix Gardner example and the other certifier having 29 proven breaches found against him before he was eventually temporarily suspended—do you think that the system is working here?

Ms BROOKFIELD: I think recently it has changed. Not that I want to talk about specific certifiers, but like with Lyall Dix and the others, that was under different legislation. The work of the Building Commissioner is making great inroads into fixing the issues. I think they are the exception to the rule. Most certifiers take their role as a public official very seriously and endeavour to do the right thing, but there are the outliers who will do the wrong thing. But the commissioner is actually dealing with those people now, and we support that.

The CHAIR: But the Building Commissioner does not have any direct regulation of certifiers. That is not part of his statutory role. Are you saying that his shaming power in the media is the answer to regulation in this space?

Ms BROOKFIELD: No, definitely not the shaming of people within the media. The practice standard and other initiatives that are happening that go a long way to help—I think the Government in the past has not been there to support the industry. They have been more of come with a big stick instead of supporting and educating and communicating with the certifiers.

The CHAIR: I am a little confused by the evidence that you are each giving that the Building Commissioner is the answer. I am not aware of any statutory oversight role that the Building Commissioner has of private certifiers or certifiers more broadly. Perhaps you could point me to what the statutory role is that the Building Commissioner has of oversighting certifiers. Mr Turner, I will start with you.

Mr TURNER: I am also in agreement with you there. I do not believe that the Building Commissioner has direct authority over the registration of building certifiers in New South Wales. They do conduct audits into the activities of registered certifiers. But what I was suggesting earlier was that in fact it would be appropriate for a legislative system to be established where we have an Act which is within the responsibility of a single ministerial portfolio, and that Act should ideally create a policy body and then also separately a regulatory body. I would imagine that we have a ready-made regulatory body in the Building Commissioner and the building commission in New South Wales and that this in fact should be applied across all classes of building. But also it should be regulating all practitioners in the building industry, and that would mean building surveyors as well as builders, developers, designers et cetera. At the moment you are quite right: Building surveyors are not effectively regulated by the Building Commissioner. Our suggestion is that perhaps this should be a consideration of the Parliament.

The CHAIR: Ms Brookfield?

Ms BROOKFIELD: It should be the role of Fair Trading to audit and look after the building certifiers. They are charged with this. Every industry has some bad eggs, and unfortunately our bad eggs are out there to be seen. But Fair Trading should be doing more. They should have audited. They have not been auditing for a long time. It has only been recently that audits have started again. So as far as, like I said, education, training, keeping everybody up to date, Fair Trading has, I think, not taken on that role as they should have.

The CHAIR: Alright. Sorry, Mr Turner, did you want to add something?

Mr TURNER: Yes, I wanted to add an observation, if that is okay, which I think is related to this issue that we are discussing. That is that building surveyors who are registered as building certifiers in New South Wales are one player in the whole process of ensuring that a compliant outcome is achieved. If there is a significant and perhaps dedicated focus on whether or not building surveyors are doing the right thing, I fear that we may be missing half or more of the story. Clearly, something does not get built incorrectly simply because a building surveyor does not realise that it has been designed incorrectly and fails to pick that up during the approval or assessment process or indeed during the inspection process post-approval but prior to authorising occupation.

There is somebody who has drawn it that way; there is somebody who has physically ordered the materials and so on and physically put it together that way as well. So it is a team effort.

I think that the regulation of the industry needs to be the focus, rather than whether or not a building surveyor, who in effect is the goalie standing in front of the net, is doing the wrong thing. There is a whole team of people out there who have got to make sure that that ball does not get to the net, and the regulator is probably the last line of defence in this process. If they are not supported by the rest of the system, then clearly there is a very limited opportunity for the regulator to ensure that things work as they should in favour of the consumer. At the end of the day, the reason we need to regulate the industry is because the consumer tends to be at a very unequal bargaining position compared to the industry. So therefore there needs to be somebody there in the corner of the consumer to make sure that they get what they need. That is what we are all aiming for. Obviously there are some out there who, for whatever reason, miss the target, and we need to make sure that we are all alert to that and looking for it.

I note that in Queensland they have adopted the model regulations regarding supply chain of building products and materials. That is yet to happen in New South Wales, and I would certainly be looking for greater responsibility to be imparted on people involved in the supply chain regarding non-conforming building products. That is a significant thing in ensuring that we do not end up with combustible cladding on buildings and the like, or even as we saw with the Perth Children's Hospital, where we had materials inclusive of asbestos used in certain parts of that hospital building, causing some problems there. So if we have that supply chain responsibility and we have a regulator capable of ensuring that that is happening, I think we are going to be in a much better place than where we are.

The CHAIR: Thanks, Mr Turner. I am sure we will come back to some of those issues. Ms Houssos?

The Hon. COURTNEY HOUSSOS: Thank you to both the institute and the association for your really helpful submissions and also for your time this afternoon. I should say I very much agree with the Chair's proposition about the need for a single building Act. The point that you made, Mr Turner, around the duplication of regulation, in your submission you pointed out that there are 16 separate Acts that are governing the industry. That just shows that there is a need to consolidate that. It was certainly a recommendation from our previous inquiry. That is something that perhaps with the addition of more layers of regulation is probably more timely than ever. That is very helpful, thank you.

I wanted to move to a slightly different question, which the association outlined in its submission, specifically around cladding and the need for a Victorian-style response. We heard from councils this morning about the detailed and rigorous process that they are going through, but it is happening council by council—it is not actually happening in an overarching response—and also about the need for significant financial support for building owners going through the process. First of all, I would be interested in both the institute's and the association's views on what we could do better in terms of our response in New South Wales, given that we now have Project Remediate on the books, so to speak. Could you give any feedback specifically about how you and your members are finding building owners are being able to navigate the system? Perhaps we will go to the association first.

Mr SLACK-SMITH: Yes, I can take that one. Thanks for the question, Ms Houssos. Cladding has been identified—it is a global issue that has come through to Australia. It is not just in New South Wales and not just in Australia that this product has been an issue. We have always called for a national approach to cladding, to make it consistent across the country. In New South Wales it has certainly been a little bit slower than in other States, and I think that is due in part to the complexity and also Project Remediate having quite a conservative approach to their response to it. We think it could be moving a bit faster. We are finding that it is not as fast as other States.

The panel we would like to see be able to take more of a risk-based approach to the buildings—as opposed to a one-size-fits-all type of approach, and quite a conservative one at that—to try and speed these things up and deal with these most risky projects initially, and then fly through to the less risky, rather than blanketing all in the same bucket. Like I said, that nationally consistent approach would be advisable as well.

The Hon. COURTNEY HOUSSOS: And the institute?

Mr TURNER: Thank you. Yes, it is a very vexed question, actually. Right from the very beginning of this issue we were advocating for a national approach to a range of aspects of it, and the first is identifying what is a risk that needs to be addressed. Just the mere fact that you have a combustible element on a building does not automatically mean that there is a risk that needs to be dealt with. We certainly see this all day, every day with buildings where non-combustible construction is required; however, the Building Code does have in it a range of materials that, although combustible, are deemed to be acceptable where non-combustible construction is required.

So our non-combustible external walls are already, to a certain degree, allowed to be combustible. If we have the aluminium composite panel product that has a polyethylene core in it, typically at fairly high proportions of the combustible polyethylene core—if that is in a fairly small proportion of the facade of the building and the rest of the materials that are already permitted are scarce, there is a reasonable chance that that building is going to offer a safe environment for the occupants.

What we need to do is understand that risk in a very consistent way, in a very open and transparent way, to give everybody confidence in the processes that are at play to ensure that everybody can invest in buildings and occupy buildings in full comfort. That, sadly, is lacking right across the country. There are few examples of regulators who are effectively identifying risk appropriately. Most are focused around triaging buildings, and that first step involves identifying whether or not the building has a combustible product on its facade somewhere and then stepping through a process from there. We do see some examples where we have competent people who are evaluating the risk of those buildings and providing reports, but unfortunately the insurance industry and public perception are very much dictating how these buildings are dealt with. In almost every instance there is no tolerance for any combustible cladding products on these buildings at all, and that is actually quite an unreasonable position for many, many instances.

The issue that we have, then, is that in Victoria, for example, there is a fund that has been established. But the Victorian Government, at the same time, has also said that they will be taking steps to recover the money that they are required to pay out from that fund, so there is actually no relief for the insurance sector in relation to this risk. Interestingly, Minister Quigley in Western Australia identified helpfully that there was an issue in regard to how the Building Code provisions were set out; there was some ambiguity, in his view. The Building Code was amended to reduce ambiguity. It does seem to me quite reasonable for governments to accept that there has been a degree of ambiguity in the past and that perhaps there is therefore a need for governments to contribute to the cost of reinstating cladding.

I would suggest that it is in everybody's interest, therefore, for the process to be very clear in terms of identifying risks that need to be addressed, but also in terms of the extent that that risk needs to be resolved. Obviously that will minimise the cost to both the consumer and ultimately either the insurance sector or governments for making good any cladding that needs to be fixed.

The Hon. COURTNEY HOUSSOS: I might come back to the association first. I appreciate what you have both said about having a national response, and I think we agree that that is why we have the National Construction Code. The idea is that a lot of these problems are solved best at a national level. In effect, though, we have State governments actually responding. In Victoria they have put a significant amount of money there. They have also provided a clear set of universal standards that need to be applied. Perhaps to the association first, is that an easier way for your members to operate if there is a clear, single standard that everyone is working towards?

Mr SLACK-SMITH: Yes. Look, I think it would. I suppose the detail is where that would come into play in how that one consistent standard was approached. At the moment, that standard is quite a conservative one. An un-sprinklered, high-rise apartment building with barbecues on the balconies is completely different to a hermetically sealed office with sprinklers in it, purely from a risk-based point of view, whereas they are both treated the same way in regards to the cladding ban that is in place from that. There is no risk there. That sort of consistent, risk-based methodology of assessment and triaging that could then lead to some methodology of funding to get this replacement on those risky buildings happening quicker would be appropriate.

I do take Mr Turner's point in regards to that ambiguity, and that is maybe why—I do not know the reasoning behind the Victorian fund, but that could be them taking some ownership of that ambiguity. It has obviously happened nationally and globally; it cannot be just a New South Wales regulatory issue or even a National Construction Code issue. There obviously was ambiguity that was used by manufacturers in testing things to slip these products in for 15 or 20 years around global regulators. To then have it funded by insurers and ultimately by premium payers seems—there has got to be some sharing of the cost in regards to that and getting this stuff off those risky buildings so that we can get that safety back to those buildings that are at most risk.

The Hon. COURTNEY HOUSSOS: Mr Turner, would a universal or single standard of remediation across the State assist your members?

Mr TURNER: Most definitely. The clarity that would come from that would be, I think, extremely helpful. I noticed that in Victoria they have a rapid assessment tool, which is a process of generating a fairly detailed triaging of buildings that have been identified with combustible cladding materials, but they do not have a standard that has been set. That rapid assessment tool does not set a standard; it simply identifies the level of risk, and then somebody needs to go through and do a very detailed analysis of the risks that actually exist, not simply just using the coarse assessment tool that they have produced. Look, I think that rapid triaging process has

a place. But certainly what is missing, I think, is a really sound and nationally agreed set of criteria for identifying the thresholds of exactly when a building is safe and when it is not safe, and therefore when we need to act or do not need to act.

I noticed that the Society of Fire Safety, through Engineers Australia, have produced a guideline for their members to follow, and that has had a bit of circulation but is yet to receive adoption in jurisdictions nationally. I think that there are some opportunities there. There is plenty of work that has been done in this space. I think there is plenty of expertise at the table. What is needed is a coordinated way of bringing those voices together so that we can get an agreed outcome—the sooner the better—because at the moment what we are seeing is very likely a large amount of money being expended that is potentially not needing to be expended. That is hurting consumers right now in New South Wales because there is not any other way to fund it, other than through strata fees and the like.

That is a significant problem. If they are believing that they have a risk to deal with immediately, of course they are going to act. In the absence of any evidence that proves to them that they do not need to act, they completely and utterly have their hands tied behind their back in having to do that.

The Hon. COURTNEY HOUSSOS: Thanks very much. I am mindful of the time so I might hand back to the Chair. Thank you very much.

The CHAIR: Thanks, Ms Houssos. I think Mr D'Adam had some questions.

The Hon. ANTHONY D'ADAM: Thank you, Chair, and thank you to the witnesses for your attendance today. I might start with Mr Turner. In your submission you talk about the professional standards scheme which your association is party to. I suppose I wanted a bit of clarity about exactly what you are proposing in terms of this scheme operating in New South Wales. Could you perhaps elaborate on that a bit further?

Mr TURNER: Effectively, the Professional Standards Council has authorised AIBS' structure and organisation. It is an occupational association, so its members regulate the practice of its members according to the rules set out by the Professional Standards Council within the legislation. That is mirrored nationally, so it is a scheme that operates nationally. Now, what we were saying is that there are some opportunities that arise because building surveyors are also required to be registered in New South Wales as registered certifiers. So, in effect, that registration body in New South Wales is regulating the profession and so is AIBS, as the professional association operating a professional standards scheme.

There becomes an opportunity, therefore, to reduce that duplication and say, "Okay, to the extent that AIBS is identifying people with appropriate credentials et cetera to practice, the regulator does not need to do that." It can simply say, "If you are a practising member of AIBS, you are able to be registered in New South Wales as a registered certifier on the basis of that membership." There would be obviously a discount in the fees for that registration commensurate with the reduced cost of administering the registration scheme for those members. Obviously there would be an appropriate level of auditing, and that is reported back to the Professional Standards Council; we are accountable to the Professional Standards Council for regulating the profession et cetera. So there is, I think, a pretty good advantage there.

The Hon. ANTHONY D'ADAM: Can I just clarify? Under that scheme, it is a condition of AIBS membership. You have to meet the professional standards to become a member and remain a member.

Mr TURNER: Absolutely, yes. There are a range of structures that we have that our members agree to subject themselves to. There is clearly a continuing professional development scheme, and they must meet the requirements of that scheme in order to remain as an accredited member of AIBS. There is also the code of professional conduct, and they must observe all of the requirements of that. They need to have in place a complaint mechanism so that if any consumer is concerned about their conduct or practice they can deal with that readily and effectively.

Certainly AIBS also has a consumer complaint receiving process, so that if any member is not behaving correctly consumers have an avenue to deal with it via our investigation process. Our members must also submit themselves to technical and administrative auditing by AIBS' audit panel through its auditing scheme, and that is a very sophisticated audit. It looks very, very deeply into the practice of the practitioners to ensure that their standards are appropriate and acceptable. In fact, the auditing requirements that we have established are more stringent than any auditing requirements of any regulator in the country. We are very proud of that. Certainly we believe that is a very, very important part of regulating the industry to make sure that there is confidence in the practitioners that we recognise.

The Hon. ANTHONY D'ADAM: Do you have a disciplinary committee that monitors the complaints and takes disciplinary action?

Mr TURNER: Look, there is a process set out within the auditing scheme which describes how members are dealt with if they are found not to be behaving correctly, but certainly also through the complaints mechanisms as well. The AIBS Board is the ultimate decision-maker regarding disciplinary matters and adverse audit findings. Certainly, if we find that a practitioner has practised in a way that potentially jeopardises public safety or the safety of the occupants of the building, there is a mechanism in place for that to be reported very, very quickly as well so that it gets dealt with in respect of the safety aspects of it. But certainly also the outcome for practitioners would be that they would be facing loss of accreditation and, therefore, an inability to continue to practice.

The Hon. ANTHONY D'ADAM: Ms Brookfield, do you have a similar structure for your association? Sorry, Mr Slack-Smith?

Mr SLACK-SMITH: Sorry, I was not going to answer that one. I was going to add to the AIBS' thing. Withdrawal of that auditing and regulatory oversight from government to potentially multiple private organisations and associations may lead to that additional complexity being further enforced. If a consumer wants to make a complaint about a particular professional, they need to work out what profession they are and what association or institute they are accredited with—be it AIBS, another organisation, Engineers Australia or any of that. As a consumer trying to work through that complexity, I would think having that solely within the remit of a single government building ministry or the like would make that a lot simpler from a consumer's point of view in regard to, "This person has done this. Can you assist?" "No problems. We're onto it. Whatever it is, we'll deal with it." I was just going to add to that. In regard to our scheme, I will hand over to Ms Brookfield to talk about our proposed PSS.

The Hon. ANTHONY D'ADAM: Do you operate a similar scheme, Ms Brookfield?

Ms BROOKFIELD: The mechanics—the basics—are the same. Auditing, education, risk management, complaints—all of that sort of thing—would be similar, and that is basic within the professional standards schemes. What will be slightly different is the way we manage our members. We do not have an accreditation scheme that AIBS does so our membership will be slightly different. To be a member of our association, our certified members will have to be part of the scheme. But, as I said, we are still in the final throes of our application, so we are just nutting out of those final—

The Hon. ANTHONY D'ADAM: Oh, I see. So you do not have a scheme operating at the moment?

Ms BROOKFIELD: Not yet, no. We will be hopefully submitting our application within the next couple of weeks.

The Hon. ANTHONY D'ADAM: So how do you currently manage professional standards within your association?

Ms BROOKFIELD: We are an advocacy and membership body. We do not necessarily have complaints. Well, I have never had a complaint against a member from the public. These are dealt with through Fair Trading.

The Hon. ANTHONY D'ADAM: I see. Can I ask, then, was Lyall Dix a member of either of your associations?

Ms BROOKFIELD: Yes.

The Hon. ANTHONY D'ADAM: He was. What about Tom Miskovich? Was he a member of the associations?

Ms BROOKFIELD: I will have to take that on notice. I am not sure.

The Hon. ANTHONY D'ADAM: Brendan Bennett?

Ms BROOKFIELD: Brendan Bennett, yes.

The Hon. ANTHONY D'ADAM: He was a member?

Ms BROOKFIELD: Yes.

The Hon. ANTHONY D'ADAM: Was Mark Cogo a member?

Ms BROOKFIELD: I will have to take that one on notice as well. I am not sure.

The Hon. ANTHONY D'ADAM: I suppose what I am getting at is—I think you refer to people as being bad eggs. I suppose I was trying to establish that obviously certain individuals who clearly have had complaints sustained against them remain members of your association and, by association, bring down the

reputation of certifiers and building surveyors. Has there been any kind of disciplinary action taken against any of those individuals by your associations?

Mr TURNER: We have certainly taken disciplinary action against some of our members. There are a number of members who have in fact had their accreditation rescinded because of actions that we have taken against them. Where it comes to our attention, we most definitely act. Look, I will take on notice the names that you have mentioned also. I do not have a member database at my fingertips, so I could not tell you whether or not they have been or are currently members. I would make the observation, though, by the same token, if somebody is breaking a speed limit in a vehicle it creates an issue for all of us in terms of the reputation of drivers. I am not saying necessarily that it is the same sort of offending and the like, but what I am saying is that you will, from time to time, have somebody who faces a disciplinary action.

As I said earlier, the nature of that disciplinary action is very important in respect of understanding what we are actually dealing with. I think in large part most regulators around the country have taken a lot of actions about fairly minor and trifling types of offences because they are easy. In fact, the really difficult and challenging offending that is occurring in some instances is much, much harder to take action over. You need a lot more evidence. You need a lot more resources. Typically, the defence of those sorts of actions is going to be significantly more strident and, therefore, it is much more costly for a regulator to take it on. This is why it is incredibly important to have an appropriately resourced, well-motivated and accountable regulator on the beat, making sure that this happens. We are certainly doing everything that we can. We are looking to the rest of industry to step up and do what it can. We would certainly encourage government to do what it can as well in this regard.

The Hon. ANTHONY D'ADAM: Surely you would accept that if you are advocating for a co-regulatory system, then you have to have pretty impeccable standards in terms of enforcing the discipline of the profession—

Mr TURNER: Absolutely.

The Hon. ANTHONY D'ADAM: [Disorder]

Mr TURNER: We would have no compunction whatsoever in expelling somebody from our profession and from our membership if they were misbehaving in a way that simply could not be tolerated. That is absolutely a fundamental thing to what we are doing. It is central to making sure that consumers are protected from the profession.

The CHAIR: Mr Turner, have you done that in the past?

Mr TURNER: Absolutely, yes. There are members who have had their membership rescinded and their accreditation rescinded. As a result of that, they have lost their ability to maintain registration and they have been removed from the industry.

The CHAIR: Could you tell us, if you can, on notice, how many times in the last 10 years that has happened—how many members?

Mr TURNER: I can find that out for you, yes.

The CHAIR: Sorry, Anthony. Could I just add one name, to each of you, to ask if they were a member? Was Glenn Fitzgibbon a member of your body, Mr Turner?

Mr TURNER: I would have to take that on notice, I am afraid.

The CHAIR: Ms Brookfield?

Ms BROOKFIELD: He was a member, but not for many years.

The CHAIR: So was it the twenty-ninth breach that saw Mr Fitzgibbon lose his membership with your body, or was it [disorder]?

Ms BROOKFIELD: No, it would be—when he lost his accreditation, he lost his membership.

The CHAIR: You see, it is hard to understand how your organisation could be consistently wanting to have high standards and then have a member who had been found to be in breach—some of them quite serious—29 times by the regulator. Even then, you do not take action until the regulator eventually removes the credentials. I do not understand. Mr Slack-Smith, maybe you can help me?

Mr SLACK-SMITH: Look, I think we have got to consider what the organisation is. Our association is advocacy and education. Removing them as a member, yes, I take your point—from a PR approach of membership, that is appropriate. But if they are not our member, they can still get accredited or registered by Fair Trading so it does not stop their ability to trade. It does not stop their ability to do the work and the like. In

fact, by removing membership they are actually—and I am not advocating what these players have actually done. I am not saying that. What I am saying is removing their access to education on best practice and standards and changes and regulations—which we do a lot of in the industry, almost filling a vacuum by government in educating the industry and certifiers—by a membership being removed, certainly from our association, almost puts them further in the dark in regards to what they should be doing. And it does nothing in regards to their ability to trade, practise or be a certifier in the State and continue signing off buildings. If we cancel their membership they lose education, but they can still keep working based on [disorder].

The Hon. TREVOR KHAN: Could I just ask a follow-up question to that, David?

The CHAIR: This is Anthony's run, so [disorder]—

The Hon. ANTHONY D'ADAM: It's okay. I will yield. I am happy for you guys to—

The Hon. TREVOR KHAN: Mr Slack-Smith, I hear your last answer. But what message does that send to your remaining members if what you in essence do is allow continuing membership by—and I am not talking about any particular person—a rogue? And I use the term advisedly.

Mr SLACK-SMITH: Look, same deal. Like Ms Brookfield was saying, if they lose their accreditation they lose their membership. Ultimately, the regulation, the auditing, the enforcement and the eventual booting out of people is the responsibility of Fair Trading. I take your point in regard to the viewpoint of it and what it looks like. To be honest, we would have to check our records, but a few of those members have no longer become members as a result of things coming out like that. I do not believe it was the twenty-ninth version; it might have been earlier than that. But, same deal—we are not regulators. We are not accrediting or registering people. They lose their accreditation, they lose their membership. Certainly it is something we can take on board in regard to removing a membership, but they lose that access to any form of changing practices and education by not being a member.

The Hon. ANTHONY D'ADAM: Mr Slack-Smith, you are in the process of having a professional standards scheme put in place, so [disorder]—

Mr SLACK-SMITH: I am talking historically. All of these people are historical people, essentially. Obviously once the PSS comes in place that is a whole different situation. I am talking about current articles and current association.

The Hon. TREVOR KHAN: Mr Slack-Smith, your explanation was an explanation not historically but a rationale for keeping rogues on the books—that is, you are giving them an education. Well, I have got to say I suspect you are the first professional association in my 63 years that I have come across that actually does not see the maintenance of a professional standard as a fundamental tenet of its own organisation. You are essentially saying, "Let's go for it."

Mr SLACK-SMITH: No, that is not the point I am making at all. I am not saying that.

The Hon. TREVOR KHAN: Well, I am giving you the opportunity to explain it.

Mr SLACK-SMITH: What I am saying is that, yes, if there is a rogue there—and we are taking that on notice in regard to those particular players and what has happened with their membership—what I am trying to say is, yes, they can be removed. But from an education piece and finding out about what should be done, or responses to audits, or things that have been found in the industry and then educating members on what has happened and what you should not be doing—it is that piece. But I am certainly not—any rogues that are found are certainly not welcome in our association. I do not have the details on removal of membership or the like off the back of that.

The Hon. TREVOR KHAN: I am still in Anthony's time, but let me ask you this. It sort of goes back to what Mr Shoebridge asked you at the very start. What is the position of your association with regard to a certifier that is the applicant on a DA and also is the certifier on the same project? What does your association say with regard to that practice?

Mr SLACK-SMITH: Well, it is illegal. You cannot do that under the legislation.

The Hon. TREVOR KHAN: I am asking you, as far as your association, what has been the position of your association with regard to it?

Mr SLACK-SMITH: That it is against the regulation and it cannot be done.

The Hon. TREVOR KHAN: I am not trying to be cute. I am trying to work out, as an association and as a representative of professional persons apparently, what the independent thought process is that your organisation applies to good practice. If what you constantly say is, "Well, it is purely dependent upon the

regulation", then let me suggest to you that your association is an association of professionals in name only. I am interested in what you stand for beyond accepting a membership fee.

Mr SLACK-SMITH: Definitely not. Advocacy, education and—I don't know the main articles for our thing, but our predominant piece is education of members and advocacy of the professionalism of our membership. We do that—

The Hon. TREVOR KHAN: Mr Turner, have you got a view as to what is professionalism?

Mr SLACK-SMITH: Sorry, I got jumbled there. What was the question?

The Hon. TREVOR KHAN: I am interested in what Mr Turner's view is as to whether his organisation has a view about what the professional ethos of building surveyors is. Have you got a rationale that you can advance?

Mr TURNER: That would be a clear breach of our professional code of conduct regarding avoidance of a perception of a conflict of interest or, indeed, an actual conflict of interest. We would certainly be very concerned if a person who was a member of our organisation was both the applicant and the statutory building surveyor assessing or involved and engaged in a statutory role for the same project. That would certainly be unacceptable and we would definitely take action were we to be aware of that.

The CHAIR: Would you have the same view about a private certifier who worked with the developer on an engineering solution to a matter and signed off on a deemed-to-satisfy solution which they themselves had been a part of conceiving?

Mr TURNER: Look, if you have been involved in the design you should not be involved in a statutory process in relation to that same project. That is unequivocally clear in our professional code of conduct.

The CHAIR: Mr Slack-Smith? It happens all the time; that is why I am asking you. It happens all the time. It is consistent across the industry. What is your position on it?

Mr SLACK-SMITH: If that was to occur, it is against our policies and procedures as well.

The CHAIR: You are not suggesting to me that this is some kind of hypothetical? Mr Turner, Mr Slack-Smith and Ms Brookfield, you all know that this happens all the time. Are you willing to accept that, or do you wish to contest that fact?

Mr TURNER: We would certainly agree that it does happen quite frequently. One of the issues that we have in New South Wales, in particular, is where a member is subject to a complaint in relation to their conduct within our scheme currently. Whilst our accreditation et cetera is not recognised by the registration authority in New South Wales, the member can simply withdraw their membership and that ceases our ability to take action in relation to that person in a very large degree. If they ever wanted to come back and be a member, we would obviously pick up that issue again and we would keep it in our books but certainly it would end our ability to take action against that person. That is not the case in Queensland, ACT and South Australia, where our accreditation scheme is recognised within the registration process.

If we are challenging somebody's accreditation in any of those jurisdictions because of these sorts of issues, then they cannot avoid it by simply withdrawing their membership. They would also need to cancel their accreditation, which means that they would automatically be ineligible to maintain their registration in those jurisdictions. Therefore, they would have to cease practice until such time as they could become accredited, and therefore re-registered, either with us or with somebody else. I think the issue that we have here is that, whilst we are not in the position of being recognised within the registration process, we do have limited powers to take action in regards to these people. We certainly do look at members and the reputation that that membership has in regard to the profession and our organisation going forward. That is a key part of our code of professional conduct. If they wished to continue with their membership, we would certainly be taking action if there was a person who was besmirching the industry in that way.

The CHAIR: Sorry, Mr D'Adam. That rounded out your line of questioning. Did you have something you wanted to put at the end?

The Hon. ANTHONY D'ADAM: No, that is fine. I am done. I will hand over to Ms Houssos, if she has anything.

The CHAIR: I will go to Ms Houssos to finish us off here.

The Hon. COURTNEY HOUSSOS: That is fine. I think we have covered plenty this afternoon. Thanks.

The CHAIR: Alright. Mr Farlow, did you have a question of clarification that I saw at some point?

The Hon. SCOTT FARLOW: I think the moment has passed, Mr Chair, but thank you.

The Hon. TREVOR KHAN: It happens to us all.

The CHAIR: Yes. We are going to commit the parliamentary crime of finishing a minute early, but I think we can give ourselves permission to do that this afternoon. Mr Turner, Mr Slack-Smith and Ms Brookfield, thank you for your assistance this afternoon. I think there were a number of questions taken on notice. If you could provide those answers within 21 days, the secretariat will approach you so that you have real clarity over what the nature of those questions are and assist you in getting those back to us. Again, thank you for your assistance this afternoon. That concludes today's hearing of the Public Accountability Committee's Inquiry into the Building Standards and Regulation in New South Wales. We will be concluding our public feed now.

(The witnesses withdrew.)

The Committee adjourned at 15:30.