REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE

REVIEW INTO THE DESIGN AND BUILDING PRACTITIONERS ACT 2020 AND THE RESIDENTIAL APARTMENT BUILDINGS (COMPLIANCE AND ENFORCEMENT POWERS) ACT 2020 AND RELATED DRAFT GOVERNMENT BILLS

UNCORRECTED

At Macquarie Room, Parliament House, Sydney, on Monday 11 August 2025

The Committee met at 9:30.

PRESENT

Ms Abigail Boyd (Chair)

The Hon. Mark Buttigieg
Ms Cate Faehrmann
The Hon. Scott Farlow (Deputy Chair)
The Hon. Peter Primrose

PRESENT VIA VIDEOCONFERENCE

The Hon. Dr Sarah Kaine
The Hon. Mark Latham
The Hon. Sarah Mitchell

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The CHAIR: Welcome to the first hearing of the Committee's review of the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, and related draft Government bills. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today.

My name is Abigail Boyd, and I am Chair of this Committee. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Ms BERNADETTE FOLEY, Group Executive, Professional Standards and Engineering Practice, Engineers Australia, affirmed and examined

Ms LISA KING, Executive Director NSW, Australian Institute of Architects, affirmed and examined

Ms ELIZABETH CARPENTER, NSW Chapter President, Australian Institute of Architects, affirmed and examined

Ms JO-ANN KELLOCK, Chief Executive Officer, Design Institute of Australia, affirmed and examined

Ms MELANIE MACKENZIE, Chair, National Interior Design Working Group, Design Institute of Australia, affirmed and examined

The CHAIR: I welcome our first witnesses. Thank you so much for making time today to give your evidence. Would any of you like to commence by making a short opening statement?

JO-ANN KELLOCK: Thank you, Chair Boyd and Committee members, for this important review and the opportunity to appear before you today. The Design Institute of Australia represents 18,800 interior designers across Australia, with a majority of 8,309 residing in New South Wales. We strongly welcome the repeal of the DBP Act 2020, which fundamentally failed interior designers by completely excluding our profession from the licensing regime. We commend the bill's intention to license interior designers as important progress towards meeting the needs of Australia's housing crisis and ensuring that quality living, working, healing and learning spaces are a priority for future Australian generations.

However, we are deeply concerned that the bill's passage has stalled and that our specific recommendations regarding problematic wording have not been adopted. The current draft excludes interior designers from general building design work, including work relating to non-load-bearing structural issues, and restricts our ability to work within building enclosures and coordinate specialist services relating to building elements—work we have safely performed for decades and are qualified to undertake. While we initially faced exclusion from the consultation process in the development of the DBP Act, we now fear that our recommendations are falling on deaf ears.

Many of our leading interior design practices currently find themselves unable to work on apartment renovations coordinating specialist services for even the simplest of non-load-bearing structural changes within enclosures or when a development application is triggered. This has caused a loss of income and livelihood across the profession, increased costs for the client and pushed the work into the hands of those unqualified to undertake it. IDs are risk mitigators and strong advocates for the end user. In the words of one of our members, we are the gatekeepers for our clients, keeping out poor-quality builders and suppliers.

The restriction of their work now directly contradicts the 24 December publication of the ABS OSCA classification, which returned interior design to skill level 1—that's a degree qualification—explicitly recognising that interior designers detail and document new building work for construction and coordinate their clients, stakeholders, users and specialist consultants. It also puts into jeopardy the 34 four-year degree courses in interior design offered by 20 Australian universities, as well as the 24 vocational providers offering 49 additional courses. Our profession—74 per cent female with a median age of 43—represents significant expertise in adaptive re-use, which is critical to addressing Australia's housing crisis. Professional interior designers hold professional indemnity insurance policies that carry the same wording and costs as for architects. The proposed restrictions would force consumers to engage multiple professionals for integrated projects, increasing costs while reducing design quality and coordination efficiency.

Over the last three years, our organisation has invested substantially in working towards a professional standards scheme and improving our accreditation system, demonstrating our readiness for proper regulatory inclusion. The value our design profession brings to the Australian building stock is in the designs for quality spaces within enclosures, which directly impact the exterior build—in other words, from inside out. In conclusion, we commend the New South Wales Government for having the courage to overhaul its building regime and welcome the progress of the new building bill, with our recommended amendments that align interior design licensing with national frameworks, including education, enabling qualified professionals—and not those seen on populist TV programs—to practise their full scope of competency, including coordination work within building enclosures and as specialist consultants.

ELIZABETH CARPENTER: I speak on behalf of the Australian Institute of Architects. I would like to thank Abigail, as Chair, and the Committee for the opportunity to speak with you today. We commend your ongoing efforts to protect the rights of consumers in New South Wales and to ensure that the building industry consistently delivers high-quality outcomes for the people of this State. Lisa and I have been working together on

this for nearly a year. Lisa has actually been involved for over six years, as she was involved from the inception of the DBP Act. Since the introduction of New South Wales building reform legislation, the institute has collaborated closely with the Department of Fair Trading and now the Building Commission NSW. We have seen these reforms firsthand deliver vast improvement in lifting quality, reducing defects and building better.

However, it has not been seamless. In some areas of the Design and Building Practitioners Act, which we highlighted in our submission to this Committee, there is ongoing work to be done. We continue to work closely with the Building Commission NSW team along with industry to resolve these difficulties and to remain optimistic that this will be achieved. The New South Wales building reforms have sought to protect customers and it is essential that these consumer protections remain in place, despite calls from some within the sector to exempt certain multi-unit residential models. The fact that a build direct development, for example, is not strata titled does not diminish the importance of building quality. Renters, like owners, deserve safe, well-constructed and watertight homes. Also, in most zones, these homes will be sold after 15 years.

While work to refine the existing legislation continues, it has been nearly 12 months since the draft building bill was released. We support the bill's intended objectives to enhance safety, resilience and accountability across the building industry, further improve consumer protection and introduce licensing for the currently unlicensed practitioners. Unfortunately, the preliminary nature of the current documentation limits our ability to support the bill itself at this stage. The absence of draft regulations and insufficient detail in the draft bill make it unclear whether its legislative intent will be achieved. We continue to engage, when given the opportunity, in good faith but remain concerned that without further clarity and transparency, the reforms, and specifically the delay in providing timely and transparent information to industry on the content of the reforms, may inadvertently hinder the industry—an industry that relies on certainty to move forward with confidence.

BERNADETTE FOLEY: On behalf of Engineers Australia, I'd like to thank the Chair and the Committee for the opportunity to present here today. I also look forward to working with the New South Wales Government in relation to the development of these pieces of work. Engineers Australia is the national body for engineering in Australia. We have over 135,000 members across Australia. We are also the Australian signatory to the International Engineering Alliance and the relevance of that is that is the international benchmark upon which Australian engineers practise, both from an accreditation of university programs perspective but also in relation to independent practice, so it sets the competency standards.

Engineers Australia absolutely supports registration of engineers and accountability measures for those within the design process. We're advocating for moving towards nationally consistent registration. At the moment New South Wales is a significant outlier in the registration of engineers. We want New South Wales to have access to the talent pool that it needs to support building and to ensure that the engineers have the necessary qualifications, skills and competencies. At the moment we are finding that there are unintended consequences of the current Act and that would carry over into the future bill as well; that is, in particular, around mobility of engineers working across Australia.

Ultimately, we're looking for confidence for the consumers and that means we have to mitigate the risk presented in New South Wales. By integrating and taking advantage of aspects of different registration schemes into the bill, looking forward so that potentially there is a standalone engineers Act in the same way as there are in other States, we see an opportunity to meet the current needs, but then expand that into other safety-critical engineering services as well.

The CHAIR: Again, welcome and thank you for making the time to be available. We have your submissions. What we've agreed to do today is a relatively free-flowing set of questions.

The Hon. SCOTT FARLOW: Thank you all for being here today, and thank you for your engagement with the Committee and your submissions. I know that, for many of you, it's been two rounds of submissions after we first opened up the inquiry to then having the hearing today and as things have moved along. One of the challenges before us—and one of the challenges that you're expressing—is that things haven't moved along all that much in this time. I'm just interested from all of your perspectives, in terms of discussions you've had on the proposed building bill, how many discussions have you had in the last 12 months with the Government, not just internally?

JO-ANN KELLOCK: As a professional group, with the department, we've had three or four meetings there from December last year until, March was the last—that is, as a group, coming through. Then there's been internal emails and discussions that we've had with the department ongoing during that time.

The Hon. SCOTT FARLOW: Have you got any indication as to when we will actually see a bill before the Parliament?

JO-ANN KELLOCK: No.

Ms CATE FAEHRMANN: You have much more information than we do. I just put that out there.

The Hon. SCOTT FARLOW: Yes, exactly.

JO-ANN KELLOCK: I've been told that it's stalled and awaiting the outcome of this inquiry.

The CHAIR: Sorry. Is that right? You've heard that it's stalled pending the outcome of this inquiry?

JO-ANN KELLOCK: Not in those words. I've heard that it's been stalled because, frankly speaking, there's a lot of fear around the unknown. There seems to have been—towards the end of when we thought it was going to happen, there were others that have come into the discussion wanting to see more development around the regulation, rather than just the legislation, and that it wouldn't progress until that had been undertaken. Whereas we understood that it was going to be a joint co-regulation of developing the regulation as the passage of the bill progressed, which we preferred.

The CHAIR: Just for the record, so that we can put it on *Hansard*: This inquiry was supposed to run two or three years ago and has been stalled because we were waiting for the legislation. But we've waited so long for the legislation, we've now gone ahead with the inquiry.

The Hon. SCOTT FARLOW: Just on that point, from the architects' perspective, you've outlined your lack of confidence in the bill at this stage because you don't have an understanding of what the regulations will say, and there are a lot of challenges in terms of what the legislation may enable and what may then be enabled by the regulations. Could you just outline why, from your perspective, you think it's so important to have an understanding of what those regulations are going to entail?

ELIZABETH CARPENTER: The regulations actually contain the detail, and the detail is actually what is quite important. The bill does provide the framework, but then we do rely on the detail that lies behind that. There's quite a lot of instances that we can give actually give out—that's in all of our documents—but they have to go hand in hand for us to understand the implications of it. It's critical.

LISA KING: I guess the other thing is that in the absence of the regs—we did ask that even a policy statement which outlined the intent of any significant changes would have been helpful. We were given verbal notice that that was going to happen. It hasn't happened yet. We have been told that it is still, potentially, going to happen. The draft bill basically outlines, as Elizabeth said, a very general framework, but when it comes to the parts that we actually need to know—what can architects do; what can building designers do—all of those points that are critically important, all of that will lie in the regulations.

When we met with the Minister as a whole-of-industry meeting, we did ask that. There was sufficient time for those draft regulations to be made and to be presented to us before this went to Parliament. We've had no further information about that, but we understand that that's not going to happen and that the draft bill will be issued. In some ways that will help, in that in the first issue there were whole sectors of the Architects Act missing from the draft bill. We outlined all of those missing pieces in our 52-page submission. We haven't even received an updated draft bill, so we don't know whether those things have been rectified or not. Even if they have been, there is still the matter of the regulations, which is where the critical, important information lies.

The Hon. SCOTT FARLOW: What is the effect if those 52 pages aren't captured in this bill? What will that mean for consumers across New South Wales and for your industry?

LISA KING: I guess it's not the lift and shift that we were told it was. It means that there are significant parts of a 150-year-old piece of legislation that haven't been transferred.

The Hon. SCOTT FARLOW: But what's the impact of those significant parts?

ELIZABETH CARPENTER: It's probably consumer protection, I would say. The Architects Act is actually about consumer protection. It's not about architects. It's actually about protecting—

LISA KING: It's not about protecting architects.

ELIZABETH CARPENTER: No.

LISA KING: It's about protecting consumers.

ELIZABETH CARPENTER: If the detail is not there, there is lack of clarity on registration. There is lack of clarity on, I suppose—what else is there?

LISA KING: It's basically there to ensure that we are held to a high professional standard. It captures the work of the registration board in overseeing the standard that architects must meet to protect consumers. It is critical that—there was obviously a bit of an outcry in our membership over being given no notice that the Act itself was going to be repealed. It's obviously a very longstanding piece of legislation for architects. We're less

concerned about the structure. We do want the contents to be transferred across, because we do believe that those contents are critical. We want to support this work. We want to move forward with the good work that has been done by both the previous Government and this Government in protecting consumers and rebuilding confidence. I don't think there is anyone around this table that doesn't want those things. We just don't know, because we haven't seen anything for nearly a year.

The Hon. SCOTT FARLOW: You're flying blind.

LISA KING: If we had it on our desk it might be okay, right? We just don't know.

The Hon. SCOTT FARLOW: From the interior decorators' perspective as well, you want to know—you've already criticised, in terms of the initial bill, that it locked you out of a whole range of areas where you have competency. You want to be able to understand in what spaces, under the bill, you can practise. Is that correct?

MELANIE MACKENZIE: Can I just correct you on one thing?

The Hon. SCOTT FARLOW: Of course.

MELANIE MACKENZIE: We're talking about interior design here, not decoration.

The Hon. SCOTT FARLOW: I'm sorry. My apologies.

MELANIE MACKENZIE: There is a lot of confusion in the industry. You're one of many who don't really understand what designers do and how that differs from the decorators. What this has caused us—this delay in the building bill being brought to Parliament—is a lot of fear and concern about our industry. We've already had a big blow with the Design and Building Practitioners Act and the loss of income in our profession. There are a lot of very nervous interior designers who have been professionally practising for years and undertaking professional work involving coordination of other professional engineers and specialists. The risk is, if this bill gets passed, and if the regulations omit some of the work that we do, or do not permit us to practise in the same capacity as we are now, then it will decimate our profession.

JO-ANN KELLOCK: We'll be back to decoration.

MELANIE MACKENZIE: Yes.

JO-ANN KELLOCK: On your comments about the previous bill, having read the bill, there is actually, we don't think, anything wrong with it.

MELANIE MACKENZIE: It's not the bill.

JO-ANN KELLOCK: It was the interpretation of how the regulations came about after that which is where we had our problem. We just were excluded from it. In reality now, legislation works with regulation, with definitions and with a whole host of what I call "frameworks" that sit around a sector. Of course whenever you attempt to renew and replace, there are always unintended consequences. This profession was established in—I think the first organisation, the Society of Interior Designers, was here in New South Wales in 1958. The issue I have is that a lot of this change was brought about by people that are experts in the construction industry, and I can't for the life of me think if you're an expert in this sector and you don't understand the work of an 80-year-old profession, then what are you doing sitting on a panel? I have a lot of problems when I hear that people don't understand the work of an interior design professional who has got a four-year degree, an honours degree, and they make a valuable contribution to the interior user of that space, including spaces like this.

In hospitals, in schools—not just residential, but across the board they work collaboratively with the architects and the engineers, and they have a real role to play. Everything they do is through the prism of OH&S. Fire safety, air, adequate lighting—it's all through that prism. They play a role. We're worried because we haven't seen the end result of what's going to be in the regulation, but we're trusting the department to honour the verbal commitments they've given to us that we will be included. But we're nervous because we were left out last time when we were told back in 2020, "There, there, Jo, don't you worry about it. We'll look after you," when in fact that didn't happen. They didn't look after us.

The Hon. MARK BUTTIGIEG: Can I just follow up on that, because I have been listening to the kind of thread which—it's not necessarily a fait accompli that regulations have to be developed after the parent legislation is solidified, but it is sort of usual practice that you develop the parameters and the parent legislation structurally, which then set the tone for regs, which are then subsequently consulted on if they're to be properly meshed into the parent legislation. The fear, or the lack of trust, if I could put it that way, is borne out of the previous iteration from the previous Government's lack of consultation on regs, is it?

LISA KING: No, I would—

The Hon. MARK BUTTIGIEG: I must have misheard. That was your evidence, wasn't it, Ms Kellock, just now?

JO-ANN KELLOCK: Yes. To be fair to the department, they have been very collaborative with us. However, when it came to March of this year, when we submitted all our final round of recommendations and the PowerPoint presentation, and we put notes on it about where we wanted the changes, we haven't heard anything back. When we made subsequent inquiries we were told basically that it has stalled. So that's made us nervous again, because we think, well, okay, we don't know what's going to happen.

The Hon. MARK BUTTIGIEG: Was that a product of, on my understanding, the industry stakeholders requesting more and more information of the Government, so the timeline was elongated?

JO-ANN KELLOCK: I don't know. I can't answer that, actually. I was of the understanding that there was some other objections that came in after the work that we'd done in our professional rounds, and that's what stalled it. Lisa, can you—

LISA KING: No, that's not my understanding at all. Just to mention the first point, with the previous Government, no, that's not my experience of the process. In fact, the engagement was full and extensive and exemplary with all of industry.

JO-ANN KELLOCK: Except us.

The Hon. MARK BUTTIGIEG: Just to clarify for the Committee's benefit, the interjection "except us", "us" meaning?

JO-ANN KELLOCK: The interior design profession.

The Hon. MARK BUTTIGIEG: So that's where the different viewpoints are coming from. I get it, yes.

LISA KING: There was a lot of engagement around the development of the DBP Act itself. There was some difficulty when all of that work, which went on for many months, resulted in—that went ahead, and then when the regs came out there was very little notice and there was almost no engagement on the regs. I think that has been something that was really difficult. It has now taken sort of five years to iron out a lot of the things in the regs that weren't quite right, which would have been resolved through better consultation at that phase.

We've noted in our submissions some of the issues that, five years down the track, we're still tweaking with the Building Commission to get everyone working together. Architects have that unique position where we are in the centre of a lot of the specialists, so we're often pulling together from experts into one set of documentation. We have found that when it comes to the regulations, that's where the rubber hits the road, because that's how we work in a day-to-day practical sense. With the DBP Act, there are still particular issues that we're ironing out. We've been working really solidly with the Building Commission and they've been very helpful in ironing out those things and bringing industry together.

The Hon. MARK BUTTIGIEG: In terms of the structural nature of that parent legislation, would it be fair to say that it's an improvement on the previous Act, in terms of where it's going now? And to follow up, so I'm not wasting time, if the Minister was to give an undertaking of thorough consultation on the regs, would that give you a degree of comfort?

LISA KING: I can't answer the first part of that question yet, because I don't feel we've got enough information. If there was adequate consultation on the regs, that would be fantastic. But I'm concerned that without at least a policy statement which outlines the proposed changes or the extent of change, it's going to be difficult. In other instances, there has been a RIS at the outset and then a long public exhibition period and things like that, which we haven't had here. We absolutely welcome extensive consultation on the regs—that's fantastic. But between now and then, which could be a significant amount of time, industry really needs some direction and some detail because what we don't want—and this is our concern—is that everything stops because we're waiting on what's going to happen. We don't know.

The Hon. MARK BUTTIGIEG: To clarify, the lack of trust, if you like, is born out of the previous process whereby the legislation was adequately consulted on, but then the regs weren't. Whereas in this case—

LISA KING: I don't think there's a lack of trust. I think there's just a lack of information.

The Hon. MARK BUTTIGIEG: But there's concern about whether or not we'll go down the same path as the Government and not consult you on the regs, basically—right?

LISA KING: That's one aspect. The other aspect is that we've been sitting on a draft and then nothing else for almost 12 months—constantly meeting, submitting information and meeting, with nothing coming back

the other way. We just need to know if this is developing. Is it progressing? Where is it going? What does it look like?

ELIZABETH CARPENTER: There are some very simple and clear requests that we have had that we haven't had a response back to, which is a policy statement. Even surety on that would then enable us to move forward with confidence.

Ms CATE FAEHRMANN: Thanks for appearing today. I want to be clear in terms of the different submissions. This is reasonably complicated, because we were supposed to be reviewing two Acts, and now we're reviewing a draft bill that the Committee hasn't seen. We had to get your submissions to that draft bill released to the Committee, because they're also not public, technically. The submission of the Australian Institute of Architects is public. I couldn't find it in the submissions that the Government sent us. Can I check with the engineers? Did you do a submission on the building bill?

BERNADETTE FOLEY: I believe we did.

Ms CATE FAEHRMANN: I don't think that we've been sent that one either, to the secretariat, because I couldn't find it on the list that was sent to us. There are so many different issues here. At the moment, we've been talking about the political process. Firstly, be assured that all of the information that you put into your various submissions will be taken into account. The architects have concerns around the dropping of the entire Architects Act and the licensing process there. The engineers want their own engineers Act. It's important for us to know how many bits of legislation are being dropped and revoked and merged into this building bill. In terms of the principles of the Architects Act, I wondered if you would talk briefly around why that's so important. You've also mentioned licensing and registration, that they shouldn't be conflated. I think there's some issues that the committee needs to understand in terms of that. Ms Foley, if you could jump in with why that's so important to the engineers as well?

ELIZABETH CARPENTER: I think with the Architects Act, the structure isn't a concern, but the content is the concern. There's so much of the Act which hasn't been brought in and it really is that detail about our accountability, the consumer protection et cetera. That hasn't been brought in.

Ms CATE FAEHRMANN: With "it hasn't been brought in", on that aspect, has the Government provided any ongoing feedback—and I think you're suggesting they haven't—around iterations of the draft bill, whether they are incorporating various aspects? I suppose it's a policy statement that you're referring to.

ELIZABETH CARPENTER: Correct.

Ms CATE FAEHRMANN: You've had no update or reassurances since that three-week industry consultation period?

ELIZABETH CARPENTER: No, that's right. Correct. In the original submission, which is from 18 October 2024, we provided a really detailed breakdown of about five pages of—

Ms CATE FAEHRMANN: Just to be clear, this wasn't returned to us either. I searched a couple of times, so that probably needs to be tabled.

ELIZABETH CARPENTER: We have five pages where we did line by line on the Act and we identified where it had been brought in and where it hadn't been brought in. There's some quite fine-grain detail about the importance of registration and how that's managed, also about the accountability of architects and how we are managed—our conduct. I think those five pages quite clearly identify what all of the issues are, why it hasn't been completely lifted and shifted across.

BERNADETTE FOLEY: I was going to reference our preference for an individual Act. I think you said it fairly well in terms of there are multiple submissions. When we put in our submission for this review, we said that we want a single or standalone professional engineer Act. When we put in our submission for the building bill, we acknowledged that it could be an interim measure. One of the challenges that we have is that it is so narrow in focus, whereas engineering is far broader. The challenges that we have are in relation to mobility and consistency with other jurisdictions, from an engineering perspective. If you're an engineer and you're working in New South Wales, you have to navigate a specific Act that's focused on certain classes of building. If you're then going to go work in another jurisdiction, or vice versa, there are challenges to mobility.

From my perspective, it is a function of—ideally, we'd have a standalone act which covers all areas of engineering. As we move there, if engineering is going to be within the building bill, then we do so in a way which allows greater consistency from a national perspective, and the option that you can then pull it out later down the track. Ensuring that those regulations have a number of the aspects which would be within a standalone Act, to enable that mutual recognition, is really important.

Ms CATE FAEHRMANN: This is a broader question. Today we've seen the Government announce their plan for rezoning Burwood. There's talk about 40-storey buildings in Burwood. The Design and Building Practitioners Act and the residential apartments building Act were brought in. We all know the history. Most submissions say that the DBP Act, for example, restored consumer trust and is working well. But they also generally support reform in terms of bringing it all together and reducing some of the regulatory overlap. Are the principles of the DBP Act and the RAB Act carried through, from what you've seen, into the draft bill that you've seen? Are there any concerns that your respective industries hold as to the new draft bill and whether it's going to reduce or weaken standards, or the reasons why these two bills were brought in in the first place? Do you understand where I'm going with that? Is there a concern that the building reform bills—or bill, whatever we're seeing—is being brought in to hasten development or reduce controls? Do we, as a committee, need to be looking out for certain things in that regard? I'll start with the engineers and work backwards.

BERNADETTE FOLEY: Without seeing the full detail—

Ms CATE FAEHRMANN: Yes, that's the frustrating thing we're dealing with.

BERNADETTE FOLEY: Yes. I think that comes to the point that, without seeing all of the detail, it's actually fairly hard to answer. In terms of some of the areas that we know need to be replicated that we're concerned about not being in the next phase, one is in relation to pathways and assessment of competency—what standards are actually assessed against and who's actually undertaking the assessment of those engineers. The other one, though, relates to insurance and duty of care and a transfer of responsibility from businesses to the individual engineers. When you're looking at insurance or you're looking at duty of care, the risk has to be appropriately allocated where the contract actually lies. Duty of care insurance are two aspects, as well as the professional standards which are being met, which, from our perspective, have to be transferred over across. Again, it's difficult to see, with the information that we've got available, whether that is sufficiently covered.

ELIZABETH CARPENTER: We're happy that the DBPA and the RAB Act are actually brought into the building bill. As Lisa mentioned, there are a number of items which we've recommended for improvements to that, which would further streamline the process—say, for example, looking at double registration for architects, saying that is not necessary due to our high level of qualifications and accountability. The concern actually is the clarity between the roles of building designers and architects, limiting building designers to two storeys and under, which is consistent with SEPP 65.

The reason for that is because anything above that becomes highly complex, and, as architects, we are the best positioned to deal with the complexity of basements, the urban fabric, fire and waterproofing, all that sort of stuff. That is actually very much within our purview. There needs to be some definitive clarity on that to enable us to support it. Also, I suppose aligning with that is also looking at the registration—well, it's the licensing of building designers. There is actually already an existing pathway, through architects, of a very robust independent registration. There should be no new pathways but use the existing frameworks through the board of architects. Again, I think in the bill there should be some more clarity about the role of the board of architects and who the board of architects are reporting to. That's a little bit of, again, some clarity that we've actually added into that.

LISA KING: I think it's really important. The conversation is around consumer protection rights. Architects need to have five years at a master's level of education. That doesn't mean you're an architect. You then have to do 3,300 supervised hours of logged work across a number of various areas. That still doesn't mean you're an architect. You then have to go through training and sit for an examination. There is a really rigorous registration process. We want complex buildings that require expertise to be done by people who have the most experience and expertise. I think that's critical. We're not saying that there is no work for building designers—there absolutely is, and there is a whole host of projects that building designers work on—but when we get above that two storeys, we do start talking basements and fire protection and all of those things. It's critical that is captured in this legislation. It's in SEPP 65, but we know SEPPs can come and go and change. I think this is an opportunity to ensure that we're serious about that consumer confidence in the industry.

ELIZABETH CARPENTER: Also, it is important that our registration is independent—the ARB's, Architects Registration Board's. That is very robust and proven.

LISA KING: At the moment, to be an accredited building designer, you just go through their association. The Institute of Architects, for example, can't accredit an architect. It is very much an independent body that operates completely independently, and so we cannot in any way interfere with that process at all. There is a lot of co-regulation mentioned in the draft bill. That needs to be a really robust system, so that we don't have organisations accrediting their own members. We need independent, informed and, really, a licensing framework that is up to the task.

ELIZABETH CARPENTER: I think in our submission from 28 July 2025, which hopefully you have, there is quite a good comparison between, I think, the nursing association and the dental association. They have a similar type of grading of registration. We are thinking the Architects Registration Board can actually introduce some more grading into that so it assists the building designers, for example, but still uses that robust framework which already exists.

JO-ANN KELLOCK: Likewise, the department have been clear to us about third-party accreditation, which we are happy to take on board. The DBP Act, we think the legislation is actually quite good, and we would support bringing it across. Within the sector itself, the profession, we have seen an explosion over the last 15 years or two decades of interior design departments within architectural practices. This reflects the explosion in choice around materiality. Someone said to me—I think it was Mel—two decades ago there were five Caroma bathroom toilets and now there are 150. We also have independent specialist interior design firms out there. I'm thinking of one at the moment who has 14 staff. They all have a Bachelor of Interior Design and have been working in specialist areas. Those are the businesses that we seek to protect.

We also seek to protect the interior designer within an architectural practice that is wanting to advance their career. In a male-dominated sector, the construction industry, the stories that I hear are sometimes gut-wrenching, about them trying to advance their careers onsite and within the practices themselves. That is one of the main reasons why we think when all the professions in the sector are licensed, the reality is, in the marketplace, they are discriminated against. That's a worry to us. When the wheels of government turn, and they turn slowly, and everyone around you is protected and you're not, you're liable to be left out. That's our major concern.

The Hon. MARK LATHAM: Thank you to our witnesses. Jo-Ann and Melanie, from the Design Institute, what is the clear demarcation line between interior design and interior decoration? What is the clear definition you're seeking for regulated design, please?

MELANIE MACKENZIE: As far as the difference between an interior designer and an interior decorator—just to be clear, anyone can call themselves an interior designer or an interior decorator. We have that issue because it's not a regulated industry. However, in the true sense of the word, a professional and tertiary-qualified interior designer will have studied all interior change within an interior space, including changes to physical structure—walls and ceilings—and some enclosure changes. It's the wholesale refurbishment or change to an interior space. That includes building walls and introducing structural elements, in coordination with structural engineers, to do a wholesale change of an interior space.

However, the difference between that and decorating is that decorating is a bit like styling. It's the bits and bobs that go into an interior space. One really simple way of describing it is that if you turned a house upside down, everything that fell to the bottom would be the interior decoration part of it. In an interior design degree you don't learn about fabrics, curtains and that sort of thing. It is really the wholesale change to building fabric that you're studying. It's quite different to interior decoration, which is a specialty in its own right—interior decoration and styling. In fact, a lot of interior design firms will employ decorators as well, as it is its own specialist area.

JO-ANN KELLOCK: If I can add to that, interior designers really look at everything from accessibility to spaces and all the standards that they work with. It's everything from advising on wall coverings to carpets to positioning windows and staircases. It's the liveability of that space. It's very much related to the functionality of the space and how the end user is going to use that space.

MELANIE MACKENZIE: We also consult and integrate the NCC or the Building Code of Australia within our designs, as well as Australian standards. Every finish that we specify within a commercial space needs to have fire rating. It needs to be slip rated. There are a lot of intricacies and specialities that will protect the consumer that we have to take into consideration. We have got WHS issues that we need to know and comply with. There are safety issues. We can't design spaces that can't be easily cleaned and maintained. It's anything to do with an interior space. That includes fire and safe egress out of that space. That's what we learn and what we specialise in.

The Hon. MARK LATHAM: In practical terms, though, given the popular rise of interior design and decoration because of programs like *The Block*, where everyone's got an opinion about everything, how practical is it for government to try to regulate around a professional standard based on tertiary qualifications? I take the example of Bonnie Hindmarsh, who has come to prominence. Her husband, Nathan, is an NRL star and media celebrity now. They've got a very successful business with Erin and Lana called Three Birds Renovations. I assume they haven't got tertiary qualifications, but they have emerged as an enterprise that's very popular. They're obviously very successful and have got a lot of clients. Shouldn't they have the right to do that as a registered business, regardless of professional certification?

MELANIE MACKENZIE: Only if they've got the actual qualifications to do what they are professing to do. There are a whole lot of safety standards. They just don't know what they don't know. This is our concern. This is why the Government needs to step up and it needs to license interior design so that those professionals who actually know and understand all the regulations, Australian standards, the National Construction Code are actually the ones who are licensed to do that work. I'm not saying that we want to exclude anyone, but we just want people to undertake the education they need to actually learn what they don't know and to make sure that they're not offering or posing a risk to consumers, which is the concern at the moment.

JO-ANN KELLOCK: And you're actually talking about an unregulated market. We make the distinction between the current status quo—which is confused and which allows that type of activity to occur. But often what you don't see is who is supporting that activity. They may well be a successful business, but without knowing who they employ within that and who they have engaged to deliver it, it's a big assumption. That is the issue that we face all the time. What appears to look like it's a successful outcome on the surface of it actually doesn't take into consideration that there's someone around them, as in these popular television programs where you see a builder who is organising a group of unprofessionals that can deliver something in six weeks.

What we don't see is what goes on behind the scenes in the way of remedial contributions. I think that's where the interior design profession has suffered and, to a certain extent, has been an active participant in its own problems here—in that we're talking about a profession that started, what, 70 years ago or more and we're still having this conversation now. That is not lost on us either. But what we think is we've got an opportunity here to make a big difference where the Government can get the benefit. We look at their design credentials under the NCC and the application for licensing. It's more about a quality outcome. In other words, can you comply with the code? Can you deliver the standards? Whereas what we will also be bringing to the table is the design aspect, which government regimes don't look at.

I think this is a great opportunity for the Government to benefit from where the value sits, and that's within the design of the interior closures. I've seen departments with long corridors that cover the square meterage but, in fact, the liveable space is terrible. Even the Building Commissioner said to us at one of the ACA forums before I even got my question out, "Jo-Ann, I've been talking to my property developer friends and they said they couldn't sell apartments without their interior designers." And so we've got this toing and froing happening and a lot of movement within the profession because we don't differentiate between those that can come in and enter the profession without a qualification—they do it because they can.

MELANIE MACKENZIE: Can I also say—and this is to the previous question—if the Government does not license interior designers, no interior designer will be able to work in the construction industry, except if they're doing decoration. To the Hon. Mark Latham's question, we're not trying to cut anyone out of actually having the same opportunities. We're just trying to make sure that the profession stays.

JO-ANN KELLOCK: And is preserved and that that work is not undertaken by people that don't have the qualifications and experience to do it. It's a lucrative part of the—

MELANIE MACKENZIE: Construction industry.

JO-ANN KELLOCK: Yes.

MELANIE MACKENZIE: There's no doubt that most of the money is spent on interior spaces. We all know the amount of money that goes into interior design. It's where all the photos are taken. It's the popular part often of the built environment, and we need to regulate the space. Government needs to license interior designers so we can make sure that the profession is practising in a safe and regulated way.

The Hon. MARK LATHAM: Why can't consumers be the judge of what they want and what they're willing to pay for? I would have thought Three Birds is a great success story. They've been entrepreneurial. They've been very good with their promotions. It's a lifestyle product. They use a white palette and Hamptons-type design principles. I don't know of any complaints about them from consumers.

MELANIE MACKENZIE: Until someone slips in the shower on an ill-specified tile or someone gets electrocuted because they've told an electrician to put a power point too close to a water source. You could go on forever. The bathrooms leak because they didn't know how to specify proper waterproofing systems. I'm sorry, but the building industry is complex. We have a lot of risk in that industry, and even in a residential space there is a lot of risk to consumers. If people don't have the qualifications to make decisions on behalf of consumers, then that is a dangerous place. That's a dangerous situation. As government, you should be seen to be taking that risk away from consumers and constituents.

The CHAIR: Unfortunately, our time has expired, so we will stop questioning there. To the extent any questions were taken on notice or if there are supplementary questions from any Committee member, the secretariat will be in touch.

(The witnesses withdrew.)

Mr JOHN COLLIE, Chief Executive Officer, Fire Protection Association Australia, affirmed and examined

Mr MARK WHYBRO, NSW-ACT Manager, Fire Protection Association Australia, affirmed and examined

Mr JOE SMITH, National Fire Industry Association of Australia, affirmed and examined

The CHAIR: I now welcome our next panel of witnesses. Would you like to begin with a short opening statement?

JOHN COLLIE: Chair, Deputy Chair and members, thank you. We support the New South Wales move to consolidate and modernise building legislation, and we commend the improvements in collaboration and consultation over the past year or so during this process, particularly with the New South Wales Building Commission and its Fire Safety Industry Reference Group. It has been tremendous. Our ask is that you use the right regulatory tool for the job. In trades where a licence is missing, introducing one lifts the baseline accountability for builders, electricians, plumbers, waterproofers, and the list goes on. Where the role is specialised, professional, judgement-heavy—designers in fire systems, assessors of fire systems and certifiers of those systems—mandatory accreditation under co-regulation delivers higher assurance, defined scopes, entry assessment, CPD, periodic reassessment, risk-based audits, a code of conduct, complaints and appeals, and reportable sanctions.

We're product agnostic, so we don't mind where the accreditation would live or where it would be delivered. Anybody that meets the government-set rules and the Building Commission's oversight should be eligible. Done well, this reduces duplication, improves competence and accountability, and lowers lifetime costs for owners—fewer defects, safer buildings. We are ready to help. Thank you.

JOE SMITH: Thank you, Chair and Committee members. The National Fire Industry Association of Australia's membership is predominantly and traditionally made up of those contractors at the front line of fire protection, that is to say, the practitioners actually responsible for designing, installing and then maintaining the lifesaving systems in the buildings where the people of New South Wales, live, work and spend their time. Fundamentally, the NFIA strongly supports the Government's building reforms. They are a necessary and overdue response to the systemic failures highlighted throughout the Building Confidence Report, also known as the Shergold Weir report. We commend the establishment of the Building Commission and absolutely endorse the move to a single consolidated building bill.

With regard to the Design and Building Practitioners Act specifically, it's the NFIA's perspective that this is, and has so far proven, a significant step forward for fire system design work in New South Wales. It's our view that anything as vital as the life-critical work of fire protection should fall under a government licence rather than for-profit accreditation, and the DBP has been an important step in this direction. We would be pleased to see this trajectory continue through the new building bill. There's only really one area for improvement in the DBP, as highlighted in our submission—I called it a "teething problem" in that—which is that the design approval process needs to reflect the reality of modern construction. The feedback we're getting from industry is that the current requirement for fully detailed fire system designs before a construction certificate is issued is just too early in the process. It's proving impractical and costly. In practice, what can seem like a minor change to the structure or other building services work coming in after the certificate is issued can render the entire fire system design erroneous, forcing costly and wasteful rework.

Instead, we'd recommend a phased approach, where you approve the design's intent and key components early and then require the final coordinated installation plans to be declared as work commences. This isn't about weakening oversight; it's about strengthening the integrity of the final as-built design. In the build-up to the DBP, it was envisioned it would expand beyond its initial class 2 limitation. As we know, it now includes classes 3 and 9c. It's our fervent hope that the DBP effectively becomes the designer licence within a comprehensive fire protection licensing framework, as part of the building bill, and is expanded to incorporate all buildings from class 2 and up. Public safety is ultimately, and will always ultimately be, the responsibility of the government.

The data from the Building Commission for the RAB Act from strata buildings was undeniable. Fire safety systems are the second most common defect in the State, found in nearly a quarter of those buildings. It's not just a statistic, though; it's people's lives. For years, the NFIA has stated that the single biggest impediment to fixing this is the lack of a comprehensive government licensing framework for fire protection, a system where those designing, certifying, installing and maintaining across all the elements of fire protection systems are trained, qualified and accountable.

In fact, I sat in this very room four years ago calling for the exact same thing. I think most of the Committee has changed, so I hope you'll forgive me for being a broken record on this, but the international precedence is stark. The tragic lesson from the UK's Grenfell Tower fire is that a fragmented system where accountability for

fire safety is diluted is not just flawed but fatal. Fire protections don't work in isolation. Whilst there are different streams, they interact with each other and they impact on each other. Wherever the system is weakest is where the fire will penetrate. That is why it's so important that fire protection systems must be considered in their totality rather than the subsets of independent skills.

Chair, our recommendations are for a design process that reflects best practice and the realities of the built environment, and a comprehensive licensing framework for everyone working in fire protection. They are two sides of the same coin. They ensure that competent, accountable and qualified people that understand the complexity of the fire protection system are working to accurate plans. This delivers not just more homes but safer, better and more durable buildings for the people of New South Wales. In providing these, it allows the public to trust the construction industry.

The CHAIR: Thank you for your time today. We do have your submissions. Questions will be relatively free flowing.

Ms CATE FAEHRMANN: Thanks for coming today and for your submissions, both to this original inquiry—the submissions that were made in July on the DBP Act and the RAB Act—and also your submissions that you provided to the Government around the draft building reform bills. It seems that in some ways we've set up a debate in terms of the witnesses because, Mr Smith, you're saying, with the draft building bill, that you agree with where they go in terms of licensing, whereas, Mr Collie, Fire Protection Association Australia argues very strongly that the accreditation system needs to remain. I'll start with you, Mr Collie. Firstly, just to clarify, were you part of the industry stakeholder group that the Government has liaised with, in terms of the building reform bills, in a formal capacity?

JOHN COLLIE: Initially, no. That formed part of our criticism.

Ms CATE FAEHRMANN: Yes, because the Government didn't provide us with your submission. It provided us with submissions to the draft building bill. I just wanted to check on that. Secondly, could you therefore expand upon the reasons why the accreditation scheme is so important from your organisation's perspective?

JOHN COLLIE: For us, it's about the right tool for the right job and getting the base right. Licensing raises the floor; accreditation raises the bar. We need to recognise that there are different calibres of roles and different levels of complexity within any industry. Our argument is that if you're in a trade-based role, that makes a lot of sense; you should be licensed. If you're not, let's raise the floor and have a baseline of competence. Licensing does a fantastic job of that, and we support it wholeheartedly. Where it falls short is for roles that are different, more specialised and bordering on professional. They have a different standard for delivery, particularly when they're judgement and assessment based, and years of experience are required to be leaned on, particularly in fire protection, to deliver safe outcomes.

Ms CATE FAEHRMANN: Could you give us an example of that—recognising that I don't think many of us have the level of knowledge in this regard? What would be a situation where somebody who was accredited under the Fire Protection Accreditation Scheme would be doing work where licensing wouldn't cut it? Just give us at least one practical example.

JOHN COLLIE: Three examples jump out, and they are in the different tranches of activity of specialised roles within fire protection, particularly around the design of systems. This is a holistic view of how systems work and interact with each other, because we know that fire systems are multifaceted, from the passive elements of the structure of a building through to the wet systems that provide sprinkler activity and other things, as well as dry—so the electrical side, where activation of smoke alarms and exit warning systems occur.

A designer is somebody that needs to make some judgement calls around the use of a building and risk assessments based on how that building will behave in a fire. We don't believe that that is appropriately achieved by a kind of—licensing and accreditation, if you really want to describe them by their definition, a license is, essentially, a permit or permission to do a task. You are trained at the beginning. You receive your pass to do that work, and then you go about doing that for your career. There's a fairly low expectation on ensuring that you are kept current—and we're seeing examples of this in trades across the country—in the latest developments in applying your craft. It's very much A leads to B leads to C, a very linear operation.

But there's more dimensions to what we would describe as specialised roles for accreditation. They'd be in design, ongoing assessment of the safety of buildings and fire systems in buildings, certification of the work that gets done by licensed trades to wrap up the end of the building process—these bookended roles of highly specialised individuals. We're talking less than a thousand of these roles across New South Wales that do such heavy lifting and public safety work in ensuring that well-designed systems get certified and then have an ongoing

assessment to ensure their continued compliance with the requirements. We don't believe that a licensed individual is a high enough standard for that type of important work.

Ms CATE FAEHRMANN: Mr Smith, no doubt there's a lot of scope for licensed fire assessors. That's what you're arguing. Do you also see scope, as Mr Collie has argued, for higher, more qualified accreditors?

JOE SMITH: I think there's a lot of elements here, where, at the crux, we probably agree on what we want to see. I think designing is captured under the Design and Building Practitioners Act and regulations already, so to say that those classes can't be covered under licences would suggest that the DBP isn't actually doing anything. I don't think there's any restriction, from my perspective, on what a licence can require for renewal. I don't think it has to be a set and forget. If you were to ask me if I was supportive of CPD as a requirement, I'd say yes. That wouldn't just go for those professional licences; that would go for trades licences as well. We know that industries change. We know that the built environment is changing. So, of course, people should be up to date in their understanding, their knowledge. I don't understand where that is precluded by a licence. I think, in the building bill proposal, it was, after every second renewal, there'd be a reassessment of competency. I think you could quite easily fit CPD and those requirements into that. You could ensure currency.

Fundamentally, I suppose—and I'm trying to deal with this, I suppose, in the most appropriate and even-handed way—from our perspective, accreditation is always open to difficulties where there's views of perspective, who's running it. Ultimately the responsibility always comes down to the Government anyway. So, from our perspective, it makes much more sense to have a comprehensive fire protection licensing framework where everyone working in fire protection, whether those senior professions or the trades or both, is licensed by the Government, that's managed by the Government, there are CPD requirements set by the Government, where the revenue from that licensing scheme goes back into the Government so that they can then manage that and ensure that work's been done appropriately so that that can then work. But I don't understand why that can't happen under a government licensing scheme. We already see it is happening under the Design and Building Practitioners Act.

So, from our mind, the building bill would be a move towards expanding that to other classes for design. I would absolutely like to see that for assessors and certification as well and recognise the issue that my colleague John said, regarding the number of people doing it in New South Wales. From our perspective, I think that a licensed class and a licensing framework would actually create clearer elements of pathways to entry, increase the numbers. There aren't enough certifiers and there aren't enough designers in New South Wales, but I think the complexity of the current framework has led to that and has only exacerbated that.

Obviously, it is a fairly new industry in terms of regulation, aside from the sprinkler-fitting, water-plumbing trade that's existed for a long time as a licensed class. But, fundamentally, there are too many complex entry pathways to fire protection. In fact, with a licensing framework, I think you'd see an increase in the number of people entering the industry, working in the industry and supporting that, knowing they're going to get a licence at the end of it.

Ms CATE FAEHRMANN: I think that's part of the issue here—striking the balance between trying to get more people into being able to do a particular specialised task in the building and construction industry versus what that level of skill, and accreditation and time and cost, needs to be. I want to get clear what the draft bill is proposing because in the FPA's submission—somewhere; there's a number of documents I've got—you've said that you were initially told that the bill was confidential. Firstly, that's interesting in terms of the—to have a frank and open conversation about what was being proposed, we'll get to that that later. But it also says that the Government "has not indicated how the move to licensing the more than 400,000 people in construction and post-construction services will improve outcomes". To be clear, in terms of the draft bill, what type of licensing are you referring to in terms of those 400,000 people? Do you mean in fire protection?

JOHN COLLIE: In the construction industry.

Ms CATE FAEHRMANN: Yes, but all of them. Is it the one licence you're talking about?

JOHN COLLIE: So for us—

Ms CATE FAEHRMANN: To be clear, we haven't seen the draft bill. The Government would not give us—this Committee—the draft bill. I'm going to say that every time. The Government, despite us requesting it, has not given us the draft bill, so we can't even examine it.

JOHN COLLIE: The core challenge that we're facing is that what we have seen—I think it's the distinction in terms between licensing and accreditation. The way that licensing is described is that it's the permit to do the thing. I think it's fine to say that it could have the added elements—ongoing auditing, CPD requirements, continuous professional development and raising the standard alignment with the movement of industry.

Ms CATE FAEHRMANN: This is licensing in terms of fire protection, is it?

JOHN COLLIE: Yes, I'll frame it as fire protection. The concern that we have with the language in particular is that a licensing scheme "may" have those things. That was specific in the language in the legislation—it says "may". It may have enforcement, it may have ongoing CPD. We're worried that that's the first thing to go because they're the kind of things that add the most burden to governments. They're resource intensive, both the cash—the capital—as well as people. Whereas an accreditation scheme, by definition, "shall" have those things. It does have those things, and they're built into the scheme itself.

Whether it's a pathway issue—fire protection has always suffered from pathway issues because we're not recognised under the ANZSCO code, now the OSCA codes—we are rarely our own occupation. We end up playing second fiddle to the big guns—electricians, plumbers, carpenters and builders and the like—so it is a challenge in terms of the direct pathways. Licensing creates a fairly linear pathway, which is quite good and it's quite well described and well defined for those trades. Accreditation, where there's more than just the nuts and bolts required of delivering on a licence—the connection of wires, the tightening of bolts or otherwise—is more about heavy impetus on judgement-based calls. I think it's right that there are multiple pathways to find yourself accredited in these really important roles.

Ms CATE FAEHRMANN: Just to be fair, the FPA does have serious concerns with where the building reform legislation is going; is that correct—the building bills? Is it because of the rushed nature, or is it because of what you saw in the draft bill that you've been able to provide feedback on? But just your key concerns—is it the process or the content, or a bit of both?

MARK WHYBRO: I would say that it was mainly the process. Certainly, we heard from our previous witnesses before the hearing about the questions over the lack of consultation or the rushed consultation. Thankfully, in the intervening period, the Building Commission has been established as its own agency, and also has set up the Fire Safety Industry Reference Group that gives a voice to those things. Currently, the FSIRG are working on the implementation of AS1851, which is around the routine servicing and maintenance of fire protection systems, and has worked collaboratively to form up a good practice guide that can be used by regulators as well as practitioners, as well as consumers—the building owners. That has taken a turn in the right direction in terms of closer engagement with the people who actually have to fulfil the roles as regulated by legislation.

One differentiation between licensing and accreditation—licensing is often seen as the equipment or the device. Accreditation is more system-based—the holistic approach to safety within a built environment structure. With the adoption of an accreditation scheme, government, to some extent, outsources that risk to the industry association who is best placed that has the technical capability and capacity—that's an important thing, because otherwise government would have to resource that—to monitor and administer. But it's all done under government control. FPAS—Fire Protection Accreditation Scheme—is a 160- or 170-page document that government had a lot to do with in terms of forming it up. It even includes the fee structure. It includes the units of competency. It is a very comprehensive document that then the Government only has to manage as the industry association, and can withdraw that recognition at any point in time as well.

The Hon. SARAH MITCHELL: Thank you to the witnesses for your evidence and also for your submissions. I have a question for you, Mr Smith, in relation to the submission that you made to the Government on the draft bill, which, as Ms Faehrmann said, we did have copies of provided by the Minister's office. I wondered if you could elaborate a bit further on the "inspect and test" element in your submission. You talk about how it's unclear how that will be regulated under the new framework, and that hasn't been addressed so far. I wanted some more information around that, if you can provide it to us.

JOE SMITH: Yes. The building bill is interesting. There was consultation on fire system design more than any other element, because we got a separate paper at the same time, last August, to comment on. I don't think anyone else did, because there were such significant changes. In the lead-up to that, there would have been nine to 10 months of regular meetings with the fire industry, including both associations with the Building Commission policy department, in drafting that and feeding through. And they were very systematic in their approach of "Design, then we'll look at the installation, then we'll look at maintenance," and then that kind of assessor role, as well, which was great. I think there was a lack of understanding of where "inspect and test" work sits and where that overlapped or doesn't overlap, effectively, with that assessor role. It comes back to 1851 more often than not, which is the primary standard for the testing of fire protection systems.

The "inspect and test" didn't seem to have a class within the framework that was proposed. In conversations with the department, that was because they couldn't quite understand where that fitted alongside the current assessment scheme, and the conversations I had with them where they said, "Well, how can the installation and maintenance be at a cert III, but the assessor has pathways that are cert II to get into the assessment scheme?"

It's very much our view that that assessment should be done at a cert IV level at least, perhaps with pathways in from the diploma as well. But in terms of the inspect and test, effectively it just wasn't captured within the paper. There are two ways of dealing with it, where you either have a specific inspect and test class or you have, like Queensland and Victoria, that just captured under install and maintain as part of your main trades licence, which would probably be our preference. But it just wasn't captured or dealt with in the paper at all, which is why we highlighted it.

The Hon. SARAH MITCHELL: Did you just say then that you would prefer the model that's operating in other States? Sorry, just to be clear.

JOE SMITH: I did, yes. Sorry, I threw it in at the end. I probably should have been clearer about it. From our perspective, yes, given the complexity of fire protection systems, given how vital they are and also looking at a longer term view, which anyone that has been in the conversation before will have heard me talk about. We need to look at building a comprehensive licensing framework that actually can work across the States. We know at a Federal level there's talk from productivity around occupational licensing, and I think that's really important. In Victoria and Queensland, you effectively have one install and maintain licence that includes inspect and test. We would like to see a move towards that.

You would have to take the current industry with you. You might need to have some pathways for current industry practitioners either to upskill or to be assessed or, potentially, to have a restricted licence that they could renew—but not as a new entry pathway to the industry, where you should really be looking to put everyone into that install and maintain, which includes inspect and test, so that people are going and getting the right qualification for the right job. When you hit one element of the fire protection system—you're testing one part of the fire protection system—you have to understand the implications further down. As I say, the fire protection system works with a fire going to the weakest link first. You've got to try and make sure you understand that system throughout.

MARK WHYBRO: If I may, the Fire Protection Accreditation Scheme currently includes a classification for inspect and test, although it's not recognised by the New South Wales Government as fire systems design and fire systems assessment.

The Hon. MARK BUTTIGIEG: This is maybe to Mr Smith or to any one of you, if you like. I want to clarify for the Committee the crux of the issue in terms of where we're at and where we want the bill to take us, from your perspective. My understanding is that, under the current regime, you need to be qualified and licensed in order to install fire protection. Correct?

JOE SMITH: Yes.

The Hon. MARK BUTTIGIEG: But the issue is that, in order to inspect the ongoing functionality of those systems, you don't necessarily have to be licensed and accredited. Does that mean we have Joe Blow off the street, technically, ticking boxes to say it's all okay at the moment? Is that how it works?

JOE SMITH: Actually, it's probably a little more complicated than that. That is true of the active wet fire system, but of the active dry there aren't necessarily licence requirements. I speak to companies and they go, "We want to see this come in, but what's going to happen to my current best fire tech, who is actually a pastry chef by training?" The installation and maintenance of a wet fire protection system is licensed but, the inspect and test, anyone could do. In fact, if anyone's interested this afternoon, I'm sure I could find everyone some work if this session finishes early enough for you. But that's where we are with regard to the wet. With the dry, the installation requirement only sits if it comes into a 240-volt system and you have that electrical requirement—then you have to have a licensed electrician who would do it. But a lot of the low voltage and extra low voltage work wouldn't be covered under that, so you'd have anyone doing that.

The Hon. MARK BUTTIGIEG: Sorry, Mr Smith, with the wet, that's the traditional sprinkler system we're used to seeing in car parks and whatever.

JOE SMITH: Yes.

The Hon. MARK BUTTIGIEG: Where would you find a dry one? What would be an example?

JOE SMITH: Under the Queensland licensing system, there is a fire protection technician role. There's an apprenticeship. It's a UEE apprenticeship, certificate in fire protection control. The conversations around the build-up to the building bill were very clear that that was one of the biggest gaps that we have in our industry. In a world where you have a shortage of electricians, having people that can specialise in fire protection and do that work so they can then be trained by fire protection companies brings a lot more people into the industry as well.

The Hon. MARK BUTTIGIEG: Is this bill taking us towards that Queensland model?

JOE SMITH: It brings us a lot closer in line with it, yes. There are lessons we can learn from the Queensland model. But, absolutely, the implementation of a licensing framework, where everyone that comes in contact with a fire protection system is licensed, is a significant step forward and brings us in line with Queensland.

The Hon. MARK BUTTIGIEG: And we are going there with this bill, right?

JOE SMITH: The draft bill as we saw it, and what we saw in August in the paper, was going in that direction, yes.

The Hon. SCOTT FARLOW: I know in your submission you claimed that the Queensland system was flawed and unworkable. I'm interested in your reflections on why that is the case. Again, back to Ms Faehrmann's point, I'm not necessarily trying to put up a debate, but what do you see as the challenges in Queensland?

JOHN COLLIE: One of the first holes is, obviously, the first thing to go is the CPD. Continuing professional development is lacklustre at best in Queensland. I don't think it's the model, going forward. I agree with a number of things that Mr Smith suggested here. Fire protection is a complex system, so I think it requires just the smallest amount of complexity around legislation and regulation to ensure that it is adequately aligned. I also agree that anyone that touches the fire system should be licensed, absolutely. That's the minimum, so that's raising the floor. Let's bring everyone that touches our fire protection system up to a licensed level. What I disagree with is bringing people that are accredited back down to a licensing level. I think there is too much at stake, particularly in those judgement-heavy roles, to move us in that direction.

The Hon. MARK BUTTIGIEG: Sorry, Mr Collie, can you just tease that out for us a bit? Accredited coming down to a licensed—just tease out some of the differentiation between those two classes and why you've got that view.

JOHN COLLIE: Yes. Many licensing roles and licensing schemes around the country don't require all the bells and whistles, the added extras—really, the important stuff that makes it a viable system. A licensing scheme, at its very core and definitionally, is a permit to do tasks. You get some training, you get your permit, you renew it each year and away you go. You can add things in by saying that they may have a CPD program, they may have ongoing audits, they may have a requirement for reassessment, there may be a complaints and enforcement structure, and the list goes on. But, definitionally, they don't have those things, which is why the legislation says "may".

We've seen in other jurisdictions that the first things to go are the important bits because they're the expensive bit. With an accreditation scheme, particularly in a co-regulated scheme like ours, there's no cost to government and no cost to the public because the practitioner pays. You get accredited to a higher standard. Built into the system is all of those bells and whistles. I won't go and repeat them all, but they're embedded in the system. That's why we believe that particularly those vitally important roles of design, certification, assessment and even inspect and test are too important to bring down to a level of licensing. Do you have anything to add?

MR WHYBRO: We've talked about licenced work. What that is, actually, is regulated work. The objective is to have someone who is competent, trained, qualified and recognised, and who has ongoing currency to do that regulated work. That path may be licensing, and is effectively licensing.

The Hon. MARK BUTTIGIEG: When you say "regulated work", do you have a situation where, for example—and I will use an analogy from my electrical background—you have an installation and there are specifications that you have to meet in terms of a fire sprinkler system or a dry system, or whatever it is to meet that standard, but to carry out that standard of work you need to be licensed? Is that what you are saying?

MARK WHYBRO: Yes. A good example at the moment is that we are discussing with Master Electricians Australia about their membership of licensed electricians and how they can be recognised by the accreditation scheme to do emergency and exit lightings. They install them. They test them at the time of installation and turn them on and off; therefore can do repairs as well. The accreditation scheme needs to be a broad church in terms of membership to bring everyone up to that system-level understanding of what their job is.

The Hon. SCOTT FARLOW: Mr Smith, you mentioned the fire protection plans being required before the issuance of a construction certificate. In terms of the new bill, are you seeing any change being made to that requirement?

JOE SMITH: I haven't seen that captured in the new bill, from what I recall.

The Hon. SCOTT FARLOW: From what you were outlining before, part of the challenge is that you need to prepare plans, which, in the real world, are probably not going to be implemented. Then, once you have

actually started constructing, you need to prepare plans again and, effectively, put a variation in. Is that what is happening in the market at the moment?

JOE SMITH: Yes, in a practical sense, that is one of the issues we are finding. For class 2, when it's residential, often the plans don't change as much. But I think with the expansion, if the requirement were to apply throughout all the classes, unless you get full architectural drawings, it's very hard to design a fire system. Suddenly, another trade has come in, a bin has been put in place or something has come into play. Then, at that point, people have to make those plans later on, once that information is available and once we know what's there. There is an element of redesign work that's happening. That is obviously costing money for businesses.

The CHAIR: Thank you so much for appearing and giving us the benefit of your insight. The Committee secretariat will be in touch about any questions taken on notice or any supplementary questions.

(The witnesses withdrew.)

(Short adjournment)

Mr GAVIN MELVIN, Executive Director, Policy, Urban Development Institute of Australia, sworn and examined

Ms HARRIET PLATT-HEPWORTH, Director, Policy and Research, Urban Development Institute of Australia, affirmed and examined

Mr TOM FORREST, Chief Executive Officer, Urban Taskforce Australia, affirmed and examined

Ms KATIE STEVENSON, New South Wales Executive Director, Property Council of Australia, affirmed and examined

Ms CARRIE METCALFE, Deputy Chair, NSW Building Reform Advisory Group, Property Council of Australia, affirmed and examined

The CHAIR: Thank you very much for making yourselves available. I will give you the opportunity to make a short opening statement, if you would like to.

GAVIN MELVIN: Thank you for the opportunity to appear today. Both the Design and Building Practitioners Act and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act were introduced, as you know, to restore consumer confidence in the market at a time when the integrity of the sector was in question. The DBP Act was the centrepiece of that reform, intended to improve design accountability, re-establish duties of care, and better protect consumers. As we outlined in our submission, the key area we would like to see improved with amendments to this bill is to overturn some of the recent judicial decisions which have put in doubt the application of that duty of care—in particular, the ability of developers and builders to join other responsible parties, including registered designers. We say the court case has overturned that capacity. It does undermine the Act's registration scheme, which was an Act to register design and building practitioners and create great obligations on those parties.

We also recommend amendments to reconfirm that the DBP Act and the duty of care are limited to class 2 buildings, as we say was the intent of the legislation when the Parliament passed it in 2020. In terms of the residential apartment building Act, as you know, it provides powers to the Building Commissioner to stop work and prevent issuance of occupation certificates. Sometime later on, Project Intervene was established. This was an attempt and the opportunity for the Building Commission to address serious defects in apartments that had been completed before the commencement of the Design and Building Practitioners Act and the commencement of the RAB Act. Under Project Intervene, the commission used powers under the RAB Act to issue rectification works orders.

While Project Intervene continues to have our support, we do have some concerns with its operation and we note that this is a program that has dealt with what we call legacy buildings, which are buildings completed before the commencement of this Act. In the absence of Project Intervene, there will be no fit for purpose dispute resolution process or process by which the powers of the RAB Act are clearly articulated as to how they'll be used. We note the single building bill does propose a dispute resolution process, which gives us great comfort. However, the details of that process and how those RAB powers will be used are yet to be clearly determined, and it will be left up to the regulations to be detailed, which is why we would like to see those regulations before passage of this bill. Our submission to this inquiry also makes some recommendations as to how that process of dispute resolution could look. I'm happy to make further submissions to the inquiry, if you'd like to know more about that.

Finally, we'd just like to call out some challenges that we've been facing in the insurance market, particularly in relation to latent defects insurance. Both latent defects insurance, which is an insurance product that substitutes for the defect building bond, and decennial liability insurance, which will be a 10-year defect insurance product, were critical elements of this building reform journey. However, we are facing and seeing major issues with exclusions at the moment and at the moment in this State we don't have a provider of LDI who is able to issue policies in New South Wales today to our members. Given the complexity and the challenges in insurance, again, this new bill will be creating future obligations with a move to mandatory insurance. At the moment, it is optional. We would, again, like to see the detail of that insurance—what is required, the preconditions, the type of exclusions, if any. We'd like to see that in the regulations before this bill is passed.

To conclude, we would urge the Committee to consider recommending, among other recommendations you might make, that the regulations for a single building bill are presented at the same time as the bill. We do not think that will disrupt the time frames the Government has indicated to us as to when they would like to commence a staged commencement process, which is the middle of next year. We think there's plenty of time to get those regulations in order and to allow those two things to happen together.

TOM FORREST: I'd like to start by saying I concur with the vast majority of what my colleague, Gavin Melvin, has stated. If we were to turn then to points of difference, that would be in relation to the passage of the building bill. Back when this matter first came up, about 14 or 15 months ago, we were concerned at the time that the industry was given roughly 10 days notice on a new piece of legislation. We were told that we'd been consulted, and yet the bill that was presented to us was vastly different from the bill that had been consulted with us over the prior two years.

We were very concerned at that time for there to be a process of consultation and an opportunity for us to properly scrutinise it because it brings in part of the EP&A Act. It puts that in. It's amalgamating the RAB Act and the Design and Building Practitioners Act into the new building bill. There were changes in process, changes in form. All of those things said to us that we need to do a page turn and ensure that we understand each and every part of it, and 10 days simply wasn't enough. In that context, we called for all of the regulations to also be published prior to the passage of the bill. That was because of a slightly disappointing experience when the RAB Act and the Design and Building Practitioners Act were originally passed and we were left with all of the detail being put through in regulation and assured at that time, "Don't worry, you'll be consulted."

Well, we weren't consulted when it came to the regulations being put through. We were given a fait accompli set of regulations. In the end, the imperative to get something through and to get it tabled and finalised was greater than the need to work through some of the difficulties. Some of those difficulties we're still living with today. However, now we've had a full year to have a look. We've had meetings with the new Building Commissioner, James Sherrard, we've had meetings with the Minister, we've had delegations from the Urban Taskforce, and no doubt my colleagues have also had opportunities to do that. I'm much more comfortable to say let's move forward with the passage of the legislation.

Let's face it, Oppositions, maybe even some in this room, have been calling for regulations to be published prior to the passage of legislation since time began, or at least since the Legislative Council began, and it rarely happens. I think the practical reality is we have a housing supply crisis and getting on with the job of delivering improvements to the productivity of the building regulations has to be seen as an imperative to assisting and resolving that. Now, as my colleague indicated, if it can be done such that you're not holding up the passage of the legislation and you are publishing the regulations, then that would be the ideal situation. Then we could see the full suite of how it's going to work and have an opportunity to participate in that prior to the actual passage of the bill. But there are some specific things that we are advised will be dealt with through the legislation which we think are really important and should not be held up.

One is to correct a High Court case referred to as the Pafburn case. The Pafburn case essentially determined—contrary to the intention of the legislation, the High Court case determined that the builder or developer shall be responsible for all of the accountability for all of what's gone wrong should there be a building failure or a major structural defect and collapse. It could not be apportioned amongst the consulting advisers that might have been responsible for that and ultimately it all goes to the developer. That's caused great concern amongst financiers. Financiers are now stepping back from funding residential apartment buildings. They are shifting their funding away from residential apartment buildings in New South Wales and into the same construction class in other States.

They are shifting away from residential construction building here and into class 1 or alternatively into retail, commercial or industrial construction. It's the opposite to what we need when we have a shortage of builders in this area where we have a shortage of supply. Correcting that and allowing to apportion, as was initially the intention of the legislation—that is something that, I am told, would be dealt with. If that were to happen, that one reason alone is good enough to pass this bill and to deal with the regulations later. The second is to allow some flexibility with the PCAs.

At the moment, even with the most modest amendment that has no significant impact to the external observer, you are required—at the moment, no change. You have to put a DA amendment and that clogs up the planning system. It clogs up councils. Councils aren't happy with it. Members aren't happy with it, and it causes delay. In the context of a housing supply crisis, it is a delay we can do without. That is going to be dealt with, I am told, through this legislation. It is something which we would support.

The third thing is through bringing part 6 of the EP&A Act into the building Act—if passed, the "building Act"—it would deal with the issue that has confronted us where land-leasing arrangements are prohibited only in the Sydney Basin. It's fine in Coffs Harbour, fine on the South Coast, fine in Broken Hill, fine in Dubbo and fine on the North Coast, but not in the Sydney Basin. Why? Because in the early 1990s, there was a concern on some of the urban fringes in the Northern Beaches area that some of these land-leasing areas were being turned into mobile caravan parks. That is not the case with the sort of land lease and manufactured home arrangements that now exist all over New South Wales.

I'm told that the largest area of new housing development in Brisbane is on the outskirts and comes through land lease arrangements. It's an affordable style of housing that is of very high quality. Having it available encourages manufactured housing and offsite manufacture—again, a productivity improvement that could lower the price, ultimately, of delivering houses. Not allowing them in New South Wales, not in Greater Sydney and not allowing them here simply increases the price. That is not something that we would support. That, I am told, would be corrected by the building bill. If those three things were to be corrected, I say get on with it and pass it and then we'll deal with the other things later. If they pass regulations that are offensive, then we'll be back in this place and calling upon you to disallow them.

KATIE STEVENSON: Thank you for the opportunity to appear before the inquiry today. I am joined by Carrie Metcalf, deputy chair of the Property Council's New South Wales Building Regulation Advisory Group. I would like to thank Carrie; the chair, Paul Michael; and other members of the advisory group for their valuable input into this review to date. The Property Council welcomes this review and supports the Government's continued focus on improving building quality and consumer confidence.

Broadly, we support the principles underpinning these Acts, including accountability for design professionals and greater oversight of residential construction. These reforms were necessary, and the work to date, including the establishment of the Building Commission, is commendable. However, after more than four years in operation, some elements of the legislation now require refinement to ensure that the framework remains fit for purpose and does not inadvertently undermine housing supply or industry viability. Our members have raised concerns about the complexity and cost burden of the regulatory framework which is creating uncertainty and driving up the cost of delivery at a time when we need more homes not fewer.

Unintended consequences and the complexity of the existing legislative framework is driving experienced residential development professionals to other States and is further exacerbating the challenges preventing New South Wales from effectively addressing the housing crisis. At the outset, I'd like to particularly highlight two issues. The first is that the duty of care provisions in the DBP Act—which currently apply to all building work, not just class 2 buildings—are creating unintended exposure for parties involved in other construction projects, including infrastructure projects.

We urge the Committee to consider legislative clarification on this point to ensure the legislation is contained to class 2 buildings only. Secondly, the insurance requirements under the Acts are having a chilling effect. Builders and professionals are struggling to secure appropriate cover, and the lack of guidance from the Government is leading to underinsurance or withdrawal from the residential sector altogether. These issues, left unaddressed, risk deterring investment and exacerbating the State's housing crisis. The industry has shown goodwill and commitment in adapting to these reforms. What is needed now is collaboration with government and regulators to fine-tune the framework so that it supports high-quality construction without creating barriers to the homes that New South Wales so desperately needs.

In relation to the ongoing development of the building bill, it is essential that the recommendations of this Committee help shape the bill before it is introduced to Parliament. A comprehensive and transparent consultation process is essential, one that allows for detailed feedback on the full package of reforms, including the bill and associated regulations prior to their formal introduction. We appreciate the Government's decision to extend the consultation period for the draft bill and reaffirm our commitment to working collaboratively with Government and industry stakeholders to ensure that this critical legislation is both robust and workable. We thank the Committee for undertaking this important review and look forward to continuing to work collaboratively to ensure that the legislation delivers on its core objective—restoring public confidence while enabling a strong sustainable residential construction sector that can deliver the quality homes that New South Wales needs.

Ms CATE FAEHRMANN: I've got a very quick question to begin with. Ms Stevenson, you just mentioned in your opening statement the Government's decision to extend the consultation period for the draft bill. In what form has that extension come from the Government? Have they said to you in a formal way that they're extending consultation? Could you expand on that?

KATIE STEVENSON: My colleagues on this table, and many others, sit on a stakeholder reference group that the Government has established. It's led by the Building Commission. We have been advocating collectively and individually to extend the consultation period. There was originally a desire for the bill to come before the Parliament approximately middle of this year, and we've been told in stakeholder reference group meetings, and in response to a letter of an alliance group that we submitted to the Government, that the consultation period has been extended. We're now looking towards the end of the year. That's how the communication has been provided to us.

Ms CATE FAEHRMANN: Can I check with the draft bill: What we've heard so far is the three-week consultation period in terms of being able to provide feedback last year, most of the submissions that we've read

to that were very concerned about that time frame. Is there a different iteration of the bill that is now being considered and being worked upon, or are you going through various iterations or still kind of giving feedback on that initial bill?

KATIE STEVENSON: The feedback has been provided at a high level. We've not seen another draft bill.

Ms CATE FAEHRMANN: By the end of the year, is it your understanding—Mr Forrest, I think you said bring it on, really, now, in terms of the bill.

TOM FORREST: Yes.

Ms CATE FAEHRMANN: Did you want to see the regulations at the same time, which is I think what every other witness is suggesting here?

TOM FORREST: Not necessarily. We're saying that there's a process for dealing with regulations which includes this allowance through this place. Most regulations are indeed drafted and tabled in most circumstances after the legislation has passed, with the legislature and the speeches given in support of that in both the second reading and the subsequent debates helping to inform what might go into those regulations. If anything is offensive in those regulations to the actual legislation or to the commitments given during those debates, then that's a matter that can be taken up in the Legislative Council, and an opportunity to disallow those regulations can happen. We're much more comfortable, having had now more than a year. Originally, as you say, we had 21 days, but actually the time frame that we got was about 10 days. We were quite frankly panicked that we were having a change to the whole structure with 10 days notice.

Yes, it's true we haven't seen an updated version of the bill, and at the very least we need to see that. Clearly we all do. But we have gone through PowerPoint presentations; we've had commitments given. Those issues that I raised—the three matters that I raised, we are told that they will each be addressed to our satisfaction in the legislation. If that is the case—if—then we would be keen to see at least some progress go forward, and then we'll have an opportunity to debate those regulations when they are tabled. If they are offensive to the intention, or surprising, I've been told and given commitments by James Sherrard and Anoulack Chanthivong, the Minister, that they will be fully consultative, that we won't have the experience that we had previously, and there will be no surprises going forward. It's simply a question of time to get that done. I'm prepared to take him at face value and get some of these other important matters corrected now, so I do say bring it on.

Ms CATE FAEHRMANN: I'm wondering about the difference, though, with the Urban Taskforce's submission on 18 October, where recommendation 2 was very clear that the full suite of documentation associated with the Building Approvals Framework be tabled as a public exposure draft, and that a broader selection of industry players and the public be consulted. It also recommends that it shouldn't be rushed. I think you acknowledge that it was an election commitment of the then Opposition, but it shouldn't be rushed. Has much changed in that time?

TOM FORREST: There was effluxion of time. The Building Commissioner has changed. The experience we had previously was we were told we'd be consulted on the regulations. Then, when we were presented with the regulations, we were pretty much told, "These are going to be the regulations, and there's not going to be any change." That experience with the Design and Building Practitioners Act and the RAB Act—they're the regulations I'm talking about—caused us to be a little bit shy of going forward and saying, "Let's go through that experience again." We've had an opportunity to have, through the consultation forum that my colleague Katie Stevenson mentioned, an opportunity regularly to talk with the Building Commission. I feel far more relaxed now that we're not going to experience a repeat of what happened with the Design and Building Practitioners Act and the RAB Act and those regulations.

Frankly, nothing that they're saying is going to go into those regulations causes me to think, "That's something that I'm going to be very concerned about." It's a bringing together of the relevant nine pieces of legislation and consolidating that legislation. We think that that's a sensible thing. It's correcting some of the difficulties that we've experienced even with the RAB Act and the Design and Building Practitioners Act, which Gavin mentioned as well. We would like to see more. We would like to see them go further because there is a problem at the moment with residential apartment buildings—that is, flats—with the confidence in investing in them. We're not going to solve the housing supply crisis unless we get investors, builders and developers all on the same page and building as many as we can. It's just going to get worse, not better.

Ms CATE FAEHRMANN: Mr Melvin, do you have confidence in this Government that everything is going to be hunky-dory with the regulations, even if the legislation is introduced before you even see the regulations?

GAVIN MELVIN: Our position is we'd like to see the regulations. It's about confidence. There is a lot of detail that has been left to the regulation. To Tom's point, there are areas that are being subsumed and absorbed, and you expect the regulations will look principally the same. But there are some areas that we've called out which are new. There are new initiatives and new policy areas like insurance, particularly in respect of the insurance markets and dispute resolution, which is effectively something that was not resolved at the time. But how would those powers under the residential apartment buildings Act be used in an occupied building, as opposed to the work that is being done on buildings as they're being constructed? We'd really liked to work with government on that detail to make sure it works.

We have some differences. We're not sure whether that dispute resolution process, for example, will be mandatory or optional. We would say that it should be a mandatory process, as we said in our submissions—one that both parties go through. We think for both developers and consumers, that brings real benefit. That will often avoid, in our view, unnecessary lengthy and protracted litigation. It's things like that. We would really prefer to see them. As we've said, it's our understanding—we don't know if the Government is yet to finalise its position on the bill—that it intends to start some of these provisions in a staged way from the middle of next year.

That's not the entire thing—not some of the new elements. Things like new practitioners that will be licensed will come later. We think there's time to get those regulations done. There's no need to rush them. I agree with Tom, and we don't disagree that there are certain really significant things in respect of Pafburn that ought to be dealt with quite quickly. The sooner we can do that, the better. But we think these two things can be done. We think that we can walk and chew gum here and get them done together.

Ms CATE FAEHRMANN: Ms Stevenson, I think you mentioned the importance of public consultation. All of this, to date, has happened without public consultation. The Committee has failed to even get the draft bill for its own purposes from the Government. That's how tightly the Government is holding this process. Do you think the public should be brought into this at some point beyond industry stakeholders, that they also get a say in what these reforms are doing and what the legislation does?

KATIE STEVENSON: Absolutely, but I do think it's the right approach to make sure that industry stakeholders are consulted and working with government on the finer points. This is a very complex package of reforms and it's vital, particularly given the housing crisis that we face at the moment, that we get the detail right, which is why we're calling on seeing the regulations prior to the legislation being passed. I think it is important, given the intent of the legislation, to provide consumer protection to mums and dads in particular but also those that live in apartment buildings into the future—that they are consulted upon as part of this process and have the opportunity to provide comments and represent their interests in the process.

The Hon. SCOTT FARLOW: Thank you very much to everyone for attending today and for your submissions to the inquiry. So far it's obviously seen to be a process where things went too quickly. The industry—I think quite rightly—took exception to that and now we're in a position where maybe things have gone on too long. I take your point, Mr Forrest, that you just want to get on with the job, and wait and see whatever might happen with the regulations. In terms of the delay, what have we lost by having the existing arrangements of the Design and Building Practitioners Act, as well as the RAB Act, and not moving towards the new building bill? What has been lost? Mr Forrest, I take your point in terms of potentially some of the changes with land lease communities. What are some of the other things that have been held up, from the perspective of your organisations?

TOM FORREST: The Pafburn case is the High Court case that came down at the end of last year. That took time to absorb, for all of the relevant players. Once it became clear that basically what that said is there will be no apportionment of liability, that 100 per cent of the liability will go to the developer and the developer will have to use their own contract and insurance arrangements with each of their subcontractors and consultants in order to recover any funds back—that was never the intent. In fact the opposite was the case—that each of the relevant parties would have full coverage in insurance for their contribution to the construction of a new building, and if that component went wrong you were properly insured to be able to cover that. Therefore, everyone—the consumer and the developer—could rely on those insurances to reclaim any inappropriate activities or any less than satisfactory activities that had taken place and caused a failure.

By having the Pafburn case, as it's referred to—the High Court case at the end of last year—determine that the developer is responsible, that's caused a freeze of investment. We've got at the moment a situation where the New South Wales Government—with the support I think of the Opposition in most cases—has made a range of changes to the planning laws, the Housing Delivery Authority being just one. The low and mid-rise housing reforms is of mixed popularity, depending on who you talk to, but it's an initiative to promote housing supply and we support those. The problem at the moment is not planning. It's turning those planning approvals into a constructable building: turning it into a completed dwelling that somebody can hand the keys over to. The lack of

finance—and this is kind of a hidden thing—not having confidence, seeing risk that is unquantifiable or unfinanceable adds to the cost of construction of a building. If you do build it, it's got all these additional costs that were borne by the risk. It wasn't intended but the Act, as it currently sits, with the High Court interpretation of it, increases that risk and, therefore, increases the premiums, rather than asking for 8 per cent.

The Hon. MARK BUTTIGIEG: Just to clarify, you're confident that the draft legislation is addressing this?

GAVIN MELVIN: If I might—it does not deal with it. We've been given some assurances that the Government would look at dealing with the part 4 duty. But the draft that we've seen is from 18 months ago, so we haven't seen a draft bill which codifies some verbal undertakings that people had that this is something that's under consideration.

The Hon. MARK BUTTIGIEG: But the Government has told you, "We're aware of the risk of the High Court decision. We're going to address it"; you just haven't seen anything in writing?

TOM FORREST: That's correct. The first draft of the bill was 18 months ago—or 15 months ago, and the Pafburn case hadn't happened then; it only happened at the end of last year. We've been told that one of the things going forward—but we've only been told; you raise a fair point. That's why I said if these things are dealt with, then we say, "Let's get on with it and deal with the regulations." In the meantime, the more of the regulations we can see—or, indeed, a published statement of intent for those regulations so that we can hold the Government accountable for what's in that published statement of intent for those regulations—the happier we'll be; I completely agree with my colleague on that. But I do say at the moment these things are important, and if they are dealt with in the bill and in the way that we've been told they will be, then we should get on with it.

The Hon. SCOTT FARLOW: The Pafburn case, as you quite rightly point out, happened after the exhibition of the draft bill. The Parliament could have already made amendments to rectify some of these things, couldn't it, under the existing legislation without a new bill?

TOM FORREST: Certainly, and they could at any time now through an individual piece of legislation, if you're interested in bringing one before the House.

The Hon. SCOTT FARLOW: I may have to consider it. In saying this, we can't hang all on this bill, can we? It seems like we've been hanging all on this bill for a very long time to actually get through the process of stakeholders, and now we're in a position where we're not seeing action. To Mr Melvin's point, potentially, the Government's looking at an implementation schedule, starting as of next year. With some of these elements, like the Pafburn case, we maybe should be looking at addressing perhaps some of the discrete issues rather than trying to solve everything at once. Is that potentially a course that's open to the Government?

TOM FORREST: It's certainly a course that's open to the Government.

The Hon. SARAH MITCHELL: Thank you, witnesses, for your evidence and your submissions. I had a question directed to Ms Stevenson, but I'm also happy if others want to comment. It goes to, I think, some of the concerns that your organisation raised with government on the draft bill that we were provided as a committee, particularly around the enforcement powers of the Building Commission, and that the draft bill didn't provide the framework around the appointment of the Building Commissioner, their role and their responsibilities. I just wondered if you could talk us through that a little bit more, in terms of your concerns in that space, and what a final bill could do to address any issues, as you said. As I said, I'm happy for others to comment as well.

KATIE STEVENSON: I might open and then pass to Ms Metcalfe in just a moment. Essentially, we are supportive of the establishment of the Building Commission, and we're very supportive of Mr Sherrard. We think he has made great strides thus far in his role. We note that there is a different process that has been established for the appointment of the Building Commissioner, largely based on the appointment of the 24-hour Economy Commissioner. We think that there is some more detail in the legislation that sits around the establishment of the Building Commissioner that speaks to the functions and powers of the commissioner. We think that there is a level of risk when the appointment and the responsibilities and powers of someone with such an important role in the construction sector is not clearly articulated. We're calling for some additional guidance to be provided and believe that that could be done, and should be done, as part of this piece of legislation.

CARRIE METCALFE: To compare the existing legislation with the draft, under the existing legislation the Building Commissioner acts as a secretary's delegate, so the powers sit with the secretary and they are delegated to the office of the Building Commissioner. In the new draft bill, the Building Commissioner has its own rights and powers, but it doesn't seem to be supported by a framework identifying how that person gets appointed, the fetters on their powers, et cetera. The new draft bill seemed very light on as to how the Building Commissioner would function.

The Hon. SARAH MITCHELL: In the final bill, some more clarity around that and it being clear would be a recommendation?

KATIE STEVENSON: That's correct.

GAVIN MELVIN: When the powers were given to the commissioner at the time, I think it was always understood and expected, and there were certainly discussions to the effect, that there would be a statement of regulatory intent or something else that would codify to give the commissioner and industry clarity, particularly on when those powers would be used in a building that had been completed and was already occupied. I think we've said in our submissions, this concept of a dispute resolution process, which is in the single building bill, that is potentially the vehicle or the mechanism that would give that certainty, determine when the powers would be used in a building that's already occupied. That's the opportunity that we see. As I think we've made in our submissions, there's a lack of detail there. Ms Platt-Hepworth might provide some details as to the sorts of elements we think would be important to consider.

HARRIET PLATT-HEPWORTH: I think what we're contemplating is a mandatory mediation process, where both parties come to the table and they disclose their cost estimates. If they were to go to litigation, they exchange expert reports. There might even be a situation where the two experts sit down and work out where they agree, where they disagree. The whole point of this is to try to reach a resolution before we have to go to litigation, because litigation is only adding time and cost for both parties. Actually, it's anti-consumer protection, when this bill was all about protecting the consumers. As Mr Forrest pointed out, any risk that is put on all the additional parties involved in the litigation—in this case, pre the Pafburn case, it's largely the developer and the builder—they're pricing that risk into their contracts and that's ultimately being passed down to the consumer. We really advocate for a mandatory mediation process where a stay on all proceedings, and even beginning any future proceedings, cross-claims, is put into action whilst that mediation takes place.

The CHAIR: Thank you. I will just ask Mr Latham's question on his behalf. He wants to know about the concern that medium-sized builders have that the Building Commissioner involved with detached suburban homes has added substantially to compliance costs for those companies. Do you have any comment on that?

TOM FORREST: The residential apartment buildings Act was originally designed to be focused on class 2 buildings and was a broad parliamentary response to the collapse of both Mascot Towers and Opal Tower prior to the 2019 election. That led to a situation where the Building Commission was established, and you're all familiar with the history. There are elements of the legislation now where, through regulation, those powers have been expanded beyond class 2 buildings, not just the area where it was originally intended. Indeed, when you look at also the Design and Building Practitioners Act, it has an impact on increasing the liability and responsibility for builders of house-and-land package development in suburban Sydney.

There is no doubt that to the extent that you have to comply with increased regulatory compliance, that means paperwork and increased staff time not on the construction site but back in the office complying with that. All of that additional time adds to cost. No-one has ever done a cost-benefit analysis to say, "Is the additional cost to the community worth the benefit that you get?" Anecdotally, we say one of the costs is people are leaving the construction sector because it's just too difficult: the classic "I didn't become a builder to do paperwork." Obviously, that's a bit trite, because you've got to do paperwork to ensure that you comply with all the regulations and you do the right thing, but to the extent that it has now become a burden, I'm hearing it more and more.

A lesser number of suppliers means an increase in cost. They can ask for what they want because there is demand for building construction to go ahead, so the price goes up with fewer people providing it. Yes, it has had an impact but, more importantly, the real area where there's a problem is the extent to which there is not adequate insurance available. In fact, there's a requirement for each of the individual consultants that contribute to a building to have adequate insurance for whatever it is that they do—that is, insurance capable of covering any defect that they may cause. That could be an engineering defect. It could be plumbing, the installation of gas—whatever it might be—glazing or tiling. For anything that causes a significant defect, you're required under the Act to have adequate insurance. That has been deferred every year for the past two and a half years.

In fact, there is no "adequate insurance". Who's responsible? At the moment, the developer and the builder are responsible for the whole kit and caboodle—the whole lot. At the moment, there is no defect liability insurance that covers class 2 residential apartment buildings. There is no back-to-back insurance. RAB Act responsibilities back to back with insurance product doesn't exist. There are latent defects insurance products, but they are not back-to-back insurance products. They have carve outs in them, so they only cover certain elements of the obligation. On DLI, we've been told for nigh on three years in a row, "We're close to getting them into the market." I hope they do. We want nothing more than for there to be a competitive DLI insurance market out there. What's more, we want all of our—

The Hon. MARK BUTTIGIEG: Sorry, what's that acronym again, Mr Forrest?

TOM FORREST: Decennial liability insurance versus latent defects insurance. It's unfortunate. They kind of get mixed up. They both last for 10 years. What you get is decennial LDI, but decennial LDI is not DLI. DLI means back to back with the obligations under the RAB Act. That's what we're missing. We would like to see that come in. We would also like to see adequate insurance products for all of the elements of construction come in, and then the system would work. We're told that one of the reasons why the DLI doesn't come in is the 10-year decennial liability retrospective application and the extent of the obligation. Insurers simply go, "How do I price that? How do I work out how to price insurance for a retrospective liability when I don't know who built it and I don't know who the certifier was? We can't do it." They're just not entering the market. We're four or five years on from when the Act was first passed. Maybe if we'd made it six years rather than 10 for the retrospective liability—I don't know. The point is, at the moment, the obligations under the RAB Act are difficult.

What we're saying is, there could be improvements made but, by the time we get all of the Parliament in both Houses to get their heads around the difficulty that we face, we could be waiting for another two and a half years. I say let's go forward with what we've got now and correct that, provided that they do actually correct what we've said. Let's have as much regulation as we can tabled or with a statement of intent so that we know what it's going to say or, at least, have some statement that we can hold the Government accountable for. In the meantime, we'll hopefully work with the Government, the Opposition and all members of Parliament to try to resolve some of the broader issues associated with DLI and LDI, be it decennial or not decennial.

The Hon. MARK BUTTIGIEG: On that retrospectivity, is that simply a function of properly auditing who was involved in the construction along the way so that you can go back and apportion liability?

TOM FORREST: You've had a situation where, when we're talking about 10 years, there are more bankruptcies in the property, construction and development sector than in any other area of business. More companies go into liquidation—30 per cent of liquidations, yet we're only 10 per cent of the business of the economy. So 10 per cent is delivering 30 per cent. It's fine if you're dealing with a high-profile company with a longstanding reputation, but they're not phoenixing. They're not the ones who have these sorts of claims made against them. The members of Urban Taskforce, touch wood, not one has got into trouble with the Building Commissioner and the sort of difficulties that we're talking about. They're not the problem, but they do have to deal with the costs and the regulatory burden, so it's almost like you're punishing the good guys and in the meantime the bad guys have left and headed somewhere else.

The Hon. MARK BUTTIGIEG: On that point, with the paperwork burden you mentioned—"I didn't come into the building industry to fill out endless reams of paperwork"—how big a thing is that? If it is, how far would a proactive inspection regime go to lessening or ameliorating the need for paperwork but you just have a proactive inspection regime?

GAVIN MELVIN: I'd say the two go hand in hand. Mr Latham's question started with class 1, but we're jumping between the two. But the principal is the insurer. We're seeing this on the LDI policies which are in place, so that's that one that responds to certain defects. The insurer themselves does an assurance regime. The need for the Building Commission or independent government inspection is reduced because that insurer is turning up at critical stages and checking for compliance and getting the appropriate certification from trades and being onsite. When we get to a decennial liability market, which we hope we will, you'll have that same thing happening. The regulator's effort will decrease and the insurers will start to be doing that. There are teams of building inspectors, for want of a better term, that are employed by the insurers at the moment looking at these LDI things.

To get back to Mr Latham's question, the powers that are being used, which were powers effectively at a time for class 2 builds when there were some challenges, are being applied in a class 1 setting now, and of course that Design and Building Practitioners Act was constructed in response to an apartment crisis. The obligations and the concepts in that bill around principal design practitioners—all these things—are very much a class 2 thing. I guess what we'd say in respect to class 1 is it's not the same regulatory settings that you would need, but insurance is absolutely critical here and there isn't an alternative to the Home Building Compensation Fund, which is government run. There are some insurers in the market who I think would like to get into that area and provide an alternative product, which, again, if they were to do that, they would start to go out to that class 1 home and do their own inspections and satisfy themselves before issuing a certificate of insurance. That would be a big step change if we could get to that.

The Hon. SCOTT FARLOW: Mr Forrest, if the Government were to crack on, are you confident that they've got a draft bill ready to go at this stage?

TOM FORREST: I have no idea. I wanted to make one point and just touch on what Mr Melvin said. Class 1 buildings are covered by icare. You have home builder warranty insurance covered by a government

product, and yet there is no such warranty government product covering apartment buildings. The one with the problem isn't the one that doesn't have a government underwrite. It's just an interesting thing to step back and reflect upon. I know that the whole of government and I know that Treasurer Mookhey would freak out about the idea that they become responsible for yet another loss-making, government-funded insurance product. And yet we've put all the extra burdens on and there is no private sector insurance product with a little bit of support from the Government, not necessarily the whole amount but a little bit of support—a little bit like the proposal that was brought in during the budget where a billion dollars was set aside to support the off-the-plan pre-sale purchases and if they went broke.

If you had a fund that was available that underwrote the insurance arrangements for residential apartment buildings, then you might have more chance of bringing in some of those DLI—decennial liability insurance that goes back to back with the RAB Act or the building Act going forward—coming into the market. At the moment, there seems to be no talk of that. I would like to see that, in an ideal world, properly dealt with in this building bill while we're dealing with the RAB Act and the Design and Building Practitioners Act. Pragmatically, Urban Taskforce has decided that, while we would like that, we want to get on and get the bird in the hand, which is get a few of these good things going and have the discussion. But, by all means, if anyone in this room can move the Government towards dealing with some of those bigger questions that are putting real costs and real delay on large-scale development, then that would be very welcome because that is an area where risk, costs and delay are rife.

The CHAIR: That brings us to the end of this session. Thank you very much for your time and for providing us the insight that you have. To the extent questions were taken on notice or there are supplementary questions, the Committee secretariat will be in touch. That concludes our session.

(The witnesses withdrew.)

Mr MARK LIVERSEDGE, General Manager, Australian Elevator Association, sworn and examined

Mr LINDSAY LE COMPTE, Policy Advisory, Australian Elevator Association, sworn and examined

Mr MARK VENDER, Advocacy and Policy Manager, AIRAH, affirmed and examined

Mr BRETT FAIRWEATHER, Mechanical Engineering Consultant, It's Engineered, and AIRAH representative to the Building Codes Committee and various Building Commission NSW working groups, affirmed and examined

Mr RICHARD McENCROE, Consultant, Plumbing Industry Climate Action Centre, affirmed and examined

The CHAIR: Let's get started with our next panel of witnesses. I will start by asking each organisation if they have a short opening statement they'd like to make. I'll start with you, Mr Liversedge.

MARK LIVERSEDGE: Thank you for the opportunity to appear before the Committee today. I am the General Manager of the Australian Elevator Association. Lindsay, who is appearing with me today, provides policy and related advice to the association. The purpose of this statement is to bring the Committee up to date on the status of the impact of the legislation under review. Our initial submission—Committee members will be aware from the submission lodged by the association in July 2024 that the vertical transportation sector supports the underlying philosophy behind the legislation but has concerns with aspects of its implementation that we believe could be resolved.

In our submission, we concluded that the regulation underpinning the Design and Building Practitioners Act requires amendment to ensure that the vertical transportation sector has access to a sufficient number of appropriately qualified and experienced design practitioners to enable it to efficiently and safely integrate vertical transportation products into buildings. As part of that submission, we provided an estimation of the number of accredited vertical transport design practitioners operating within the industry at that time, and then the current status. We have been involved in a working party with the Building Commission and its departmental predecessor for around three years to identify and address key issues that need to be resolved to ensure that the benefits of the legislation are delivered.

Through the working party, we had anticipated that the industry's concerns with the lack of design practitioners would be addressed and that we would have finalised the Regulated Design Guidance Material review for the integration of vertical transport into buildings. Unfortunately, and notwithstanding our significant input, neither of these, or some other related issues, have been resolved. The association now proposes to develop its own industry code of practice and operational guidance material to support the efforts of industry participants to meet their statutory and regulatory obligations.

I'm also now able to advise the Committee that the association's estimate of the number of operational design practitioners has not increased but continues to contract. This is leading to inevitable adverse consequences for vertical transport in building projects covered by the legislation. The reason for this situation is as follows. The academic requirements for accreditation have not been adjusted and continue to be a barrier to entry for those people who have certificate- or diploma-level certifications and many years of operational experience. We are not seeing any substantial increase in the number of entrants in the building and construction industry who are interested in gaining experience that will enable them to become design practitioners in vertical transportation. And we also note that the graduate diploma course in vertical transport, developed through the University of Western Sydney, has now been withdrawn. There's no appropriate packaged professional indemnity insurance for design practitioners, and ongoing costs into retirement.

The proposed future changes to legislation will leave the industry with insufficient design practitioners to cope with the expanded workload. What we would like to see is implementation of the changes to accreditation structures for design practitioners in vertical transportation, as recommended in our July 2024 submission; action to address the concerns of industry with respect to professional indemnity insurance availability and cost; and a fundamentally different approach to ensure the long-term health and safety of the industry and consequential community benefits. This can be achieved through various actions, such as a more effective approach to regulation of the industry that brings industry and government closer together for a co-regulatory partnership. The Australian Elevator Association stands ready to be involved in any further discussions to improve the operation of the legislation which supports the entire industry.

MARK VENDER: Thanks for the opportunity to come here to give evidence. We'd like to acknowledge that this Committee is looking at a very wide range of issues and a lot of detailed points. Thank you for investigating all the different parts of this building and construction industry. I'm here representing AIRAH. We're the Australian Institute of Refrigeration, Air Conditioning and Heating. We represent professionals working in

HVAC, refrigeration and other areas such as mechanical fire safety. Engineers are our core members. We also have technicians and trades in our membership, so we are very interested in the Design and Building Practitioners Act and also the work that's going on for licensing and trades in the building bill. We're very supportive of the intent of the DBP Act to try to strengthen the engineering profession. We see this as an important step. We also support the same kinds of moves in other jurisdictions.

The way we do this is by offering an assessment scheme. AIRAH offers an assessment scheme for engineers working in HVAC refrigeration building services. We are the only engineering body that offers a scheme that's specifically tailored to this group of professionals, which we think is important. It's important that, if we're going to assess professionals, they are assessed by people who understand the area that they're working in. I'm joined here today by Brett Fairweather. As he mentioned, he is a long-time AIRAH member and is very highly regarded. He is a registered professional engineer and design practitioner under the DBP Act for work related to mechanical engineering HVAC. He also represents AIRAH on the Building Codes Committee and is an active volunteer in Standards Australia technical committees. He also runs an engineering consultancy.

During this process we have tried as much as possible to engage with members like Brett to understand how the Act is functioning for them and what some of the issues are. You will have read our submissions to the consultation on the DBP Act and also the draft building bill. Our main points that we'd like to see addressed, and some of the things that we believe could strengthen the Act, include to provide alternative pathways for engineers who got their qualifications before Washington Accord qualifications were the norm. It's a significant cohort of engineers in our sector. We risk losing them at this point. We risk pushing them out of the industry and losing their experience and their ability to form the next generation of engineers, at a time when the profession is experiencing a skills shortage.

Our members have pointed out that there are parts of their work where it's not always clear whether it's professional engineering work or not based on the Act. Refrigeration is one of those areas. Refrigeration systems underpin a lot of our modern life. It's not always clear whether this should be considered to be professional engineering work or not. The added complexity there is that a lot of the refrigeration sector, even more so than the engineering sector—in the HVAC part of the industry, the people working there did come from a trade background sometimes. They would be effectively locked out if their work was to be covered. Some of the other witnesses have also talked about the desire for the DBP Act to be harmonised with legislation in other jurisdictions. That's certainly the wish of AIRAH.

The building classes that are covered by the DBP Act is one of the main things that stands out for us. It's limited to certain classes of buildings, whereas in other jurisdictions it isn't. AIRAH, through our assessment scheme, is an approved accreditation body in Queensland, Victoria, the ACT and Western Australia. We're definitely keen to see those systems harmonised for the good of the industry. For those working across jurisdictions, it would certainly make things easier and more efficient. As I said, I'm very pleased to be here. I'm happy to answer questions today and also any follow-up questions. If you wish to talk to other AIRAH members specifically about their experience, we can also facilitate that.

RICHARD McENCROE: I'm here today representing the Plumbing Industry Climate Action Centre. PICAC is an industry partnership between the leading employer representatives and employee representatives in the plumbing and fire protection industry. It brings together the Master Plumbers, as employers, the National Fire Industry Association—you heard from Mr Smith this morning—as well as the unions, or the employee side of things, so the PPTEU. They came together, going back a decade and a half ago now, 2009, to form this institute, this entity called PICAC. So PICAC commenced. Back then, in 2009, it started with one training facility in Brunswick in Victoria and, since then, has expanded to have five centres in three States, including a facility here in New South Wales, in Glenwood in Western Sydney.

PICAC is about delivering industry training, as opposed to what you might think of as more generalised public TAFE training in trades. PICAC looks to work in collaboration with the TAFE sector and to provide the sort of training that perhaps the TAFE sector is not equipped or set up to deliver. This is training for the industry, delivered by the industry, for particular skills that—you think, "Why did it start in 2009?" That was on the back of the millennium drought and that period of time when there was a realisation, within the industry, that the traditional training models weren't really delivering up to industry the type of skills that industry was looking for. In that context, it was around water reuse, capture, storage, the advances in the technology and systems that were arriving, which were getting ahead of the training. That was where PICAC was conceived from. So it has a focus on training but also utilising that partnership and that collaboration between industry for an advocacy point of view.

You think, "Why is it training centre writing submissions about the Design and Building Practitioners Act?" Because the stakeholders that represent PICAC are very focused on the betterment of the industry overall.

You will have seen PICAC made submissions to a whole range of processes over the last year or so in New South Wales, around this building bill and the various trade-licensing and other elements of that. Essentially, the position that we've come from in all of those is this sort of idea that practitioner competence is key to quality outcomes. Practitioner competence supported by robust Cert III level—proper, accredited training—supported by strong licensing frameworks and overseen by good regulatory models that have licensed scopes that are modern and reflect the current industry is the pathway we see to driving better outcomes for consumers and investors and everybody in the industry. That's where we're coming from. But I'm happy to answer any questions about anything today.

The CHAIR: I note that we've also got your submissions.

The Hon. SCOTT FARLOW: Mr McEncroe, thank you very much for your submission and for your attendance here today. In both your opening statement and what you contained in your submission, you've outlined the interest you have in terms of being able to upskill the profession and ensure integrity standards. You've got your reflections, of course, on how the Design and Building Practitioners Act and the RAB Act have done that. Have you had any consultation at all in terms of the upcoming building bill? And are you confident that that would be able to provide the same integrity standards?

RICHARD McENCROE: Not specifically consultation on the building bill. The industry as represented through PICAC has submitted over the last year or so on a whole range of processes, whether that was the co-regulation papers, the papers distributed on consumer protection, prefabricated building, plumbing work. They are all areas where we see the role of high-quality training as a key input to all of those things. So not specifically on the building bill, but on a range of those other processes, yes.

The Hon. SCOTT FARLOW: In terms of the Design and Building Practitioners Act and the RAB Act, are there any areas where you've seen deficiencies from your members or the people who—

RICHARD McENCROE: Not so much deficiencies, no, Deputy Chair. Industry was supportive of the Act when it first came in and remains supportive. Industry believes the DBP Act introduced some very positive measures. Things like including the registration step for building designs, for example, the introduction of the building system for registered practitioners, we think, are really important parts of the regulatory mix. We also supported the obligations in the Act introduced around requiring these practitioners to declare compliance of their work with the Building Code of Australia. These sort of initiatives we think are really positive and encourage rigour in a situation where—we think that the legislation is sound and appropriate. But, really, the effectiveness of how it's going to be in terms of outcomes, the extent to which some of these life-threatening and financially ruining scenarios that have been discussed here and in other places, needs to be backed up by really robust oversight, inspections and audit systems.

The Hon. MARK BUTTIGIEG: Can I follow you up on that, Mr McEncroe? I see in your introduction you make the point that, structurally, the legislation looks good in terms of fixing some of these issues but unless you have an effective enforcement regime and the current—this is common across the board, right? We've heard it over the last 10 years, that this idea of self-certification tick and flick is just not working. Do you want to elaborate for the Committee a little bit about what needs to happen to shift us to a position where we're actually getting a proactive enforcement regime? That conflict of interest of self-certification—I take it that's the issue, right?

RICHARD McENCROE: I think that's right, Mr Buttigieg. In a situation where the more reliant the system is on practitioner self-certification, the more important the input controls around quality of training and the verification of competency are at the front end. I suppose I think about this in terms of—to get a compliant regulatory model, you've got a series of input controls and a series of output controls. The key input control is competency of practitioners. That obviously depends on currency, which is becoming increasingly challenging as there are so many changes in—I mean, if you think about the two big challenges that governments are facing at the moment in terms of building enough housing for the population and transitioning the energy grid from fossil fuels towards whatever net zero looks like, ultimately they are highly skills-dependent activities, both of them. So the pressure on making sure that the quality of those skills up-front is in place to begin with is a key point. That costs money.

High-quality training doesn't just grow on trees, and industry has been fortunate enough to be supported by governments at State and Federal level, both in New South Wales and in other States, to provide funding support for both the facilities that can enable that but also the ongoing costs of training, which is becoming increasingly challenging as well. State level subsidies are often, we find, not quite at the level and haven't kept pace with the cost of training, so we have a lot of demand stimulus measures in the training space, which everyone's aware of—free TAFE and things like that—which are very good at creating demand. But ultimately it's State funding for the training delivery that needs to keep pace with that. The risk otherwise is that what you

end up doing is creating a lot of queues in TAFE providers. The focus on ensuring that the training at the front end of the compliance picture is high quality is increasingly critical.

The Hon. MARK BUTTIGIEG: To that point, even if the training, the licence regime and the regulatory regime is comprehensive and fully up to speed, you're still going to get a cohort of shonk merchants who will try and game the system if someone's not checking, the classic example being pulling people away from baking bread one day and installing medical gas the next. I use that example for obvious reasons, but you could use it across a range of trades, couldn't you?

RICHARD McENCROE: Yes, and that's entirely true. Whilst it's always hard to find data to support a lot of these things, anecdotally the stakeholders that form the PICAC partnership often report that currently they see instances of people working either outside of their training or outside of their licensing scope—completely outside of their licensing scope, in some instances—with no training. You get that in some trades. If nobody's watching then nobody knows. That's a critical point.

The Hon. MARK BUTTIGIEG: And what jurisdiction would be, at least in Australia, the exemplar for this proactive approach?

RICHARD McENCROE: That's difficult to say. I know probably more about what happens in Victoria than other places. I could talk a little bit about that, but there's been a conscious effort made of late to—they've established a new independent commission similar to what's been proposed in New South Wales, a consolidated building regulator bringing all those elements of building regulation, from design right through to audit and inspection, into one place, to try to develop that level of regulatory expertise.

The Hon. MARK BUTTIGIEG: Are they adequately resourced in terms of proactive inspection?

RICHARD McENCROE: Probably not, I would say. In Victoria, I know that that works on a system of random audits. Notionally, there is some risk based focus to that, but it's not particularly transparent how that works. They talk about audit rates of around 5 per cent of total compliance certificates lodged in plumbing, for example, as being the level at which you can get some things statistically meaningful out of that, so that's what they aim for. But you're still only talking about 5 per cent of all installations, which is a pretty low number, so there is a lot of—yes, the reliance on the certification by the licensed person that their work is to standard and complies with the regulations is critical. The only way to have confidence in that is to have confidence in the training that's underpinning that, primarily.

Ms CATE FAEHRMANN: Thanks for appearing today. I just wanted to go to the consultation process around the building bills. Now, there have been several draft bills, as I understand. I have a submission from the Law Society, for example, that says they've been consulted on a draft building bill, a compliance and enforcement bill and a building insurance bill draft. The stakeholders here today as witnesses—have you been consulted on any of those draft bills by the Government? Maybe the elevators? I think I've seen a draft building bill. Is that correct? You've made submissions on that one?

MARK LIVERSEDGE: Yes.

Ms CATE FAEHRMANN: The other two?

MARK LIVERSEDGE: Not the other two, from my point of view, but we did make some comments back in November on the building bill.

Ms CATE FAEHRMANN: On the building bill? What about the others? Have you just seen the building bill, or not?

MARK VENDER: We've seen the building bill, yes. I guess the question for us is, given that it's sort of confidential or whatever, are we able to talk about it in this space?

Ms CATE FAEHRMANN: Did you sign a confidentiality agreement?

MARK VENDER: We didn't sign a confidentiality agreement.

BRETT FAIRWEATHER: I can't remember. I remember it being discussed as being confidential. I don't remember whether I signed anything.

Ms CATE FAEHRMANN: Right.

BRETT FAIRWEATHER: I don't remember whether there was anything to sign.

Ms CATE FAEHRMANN: I mean, we've got your submissions here on the building bill, so I think we can we can talk about the bill.

The Hon. SCOTT FARLOW: We just can't see the bill.

Ms CATE FAEHRMANN: Mr McEncroe, you saw the building bill, didn't you?

RICHARD McENCROE: Not specifically.

Ms CATE FAEHRMANN: Oh, not the bill—the framework. Some of the different position papers?

RICHARD McENCROE: Yes, all that, but not the bill itself, no.

Ms CATE FAEHRMANN: Okay. To the elevators witnesses, the submission that I have seen in relation to the—let's stick with the new legislation that we're talking about that we should get at some point in the Parliament. The draft bill that you saw, your submission to that raises concerns in relation to the proposed defences to a statutory warranty claim. You say that it could add significant and unnecessary cost to construction projects and also result in unnecessary and costly dispute proceedings. These were concerns in relation to the draft bill you saw, is that correct?

LINDSAY LE COMPTE: That's correct.

Ms CATE FAEHRMANN: Could you expand on that for us, because we haven't seen the draft bill?

LINDSAY LE COMPTE: In relation to those issues, we're looking at it from the perspective that, if you started off with the Home Building Act, there are statutory warranties in that legislation that have been there for a long, long time. That creates a situation where, if there is defective work or work that is not in accordance with the relevant code or standards, then it enables a client to take action against the relevant party builder or subcontractor, for example. When we look at the building bill, we end up in a situation where there are various defences under the Home Building Act in relation to those things, but they're fairly basic. With the building bill, what we're saying there and what we've said to government is that we would like to see some responsibility placed on other parties in relation to their role and responsibility in relation to a project.

From the perspective of the subtrades, as opposed to builders or developers, they're usually the entity which is least best placed to deal with a lot of the issues. But, unfortunately, they end up being drawn into a lot of litigation and other processes which are very expensive for a small business. What we're saying is that there should be a situation where, when products are installed in premises, information is provided by the relevant installers—for example, electricians or plumbers or elevator businesses—and they invariably have attached to them care and maintenance proposals in relation to a lot of those products. In particular, when we're looking at vertical transport, there is a lot of maintenance that is required to maintain and keep those things going. They are big issues, when you're talking about a building that might be 20 or 30 or more storeys, to ensure that the vertical transport works appropriately.

What we were saying was that there should be a statutory defence where the installer has supplied the product in accordance with the building code and the relevant standards, and has provided appropriate care and maintenance information. It should be, then, a defence in the event that the entity—the owners' corporation, let's say—fails in its task to maintain the building. That could be in many different ways. It could be failure to maintain in terms of waterproofing or many other things which could impact on the operation of vertical transport. We're simply saying, if you want to make the parties responsible, then there has got to be both sides that have a responsibility to ensure that they do that. We're saying that, if there is a statutory defence—or a range of appropriate defences—that then places the onus on the owners' corporation to comply, as opposed to coming to a litigation process some years down the track without having looked after the building and then that creates a large argument, and a costly one, for everybody involved.

Ms CATE FAEHRMANN: It sounds like this Committee could look at insurance for a few days. You said in your opening statement, Mr Liversedge, that the vertical transportation sector is experiencing a lack of practitioners. That sounds like it's getting worse. You said that the regulation needs amending so that there's more access to practitioners. Could you expand on what you mean by that? Is that reducing the level of qualification, skills or experience? How do you gain access? Is it training?

MARK LIVERSEDGE: Training is obviously very important. But what we've been saying for quite some time now is that, even from the first time the Design and Building Practitioners Act started, for the vertical transport sector, there had to be a certain grandfathering put in there because we didn't have proper engineers, say, within our industry. We're a trade-based industry, so a lot of the people that we were relying on at that time were people with cert III, cert IV or diploma, and lots of experience. That hasn't changed. All of our manufacturing and design and everything is overseas; it's not done here in Australia. Even though we have some of the biggest companies internationally represented here in Australia, we don't have huge pools of engineering people.

What we've been saying is that what we need is for those pathways that were originally brought in to be reinstated so that we can get some more people through to actually become design practitioners, so that we can support the industry in its entirety. Because up until, say, recent times all the design practitioners that there were for vertical transport were under a lot of pressure, because there just weren't enough of us. At the moment the industry is—let's just say it's not as busy as it has been in New South Wales. Therefore, they're able to cope at the moment. But if the industry was to get back in, or other parts of new legislation come in which actually expand on what we're doing at the moment, we're going to struggle with the number of practitioners within the industry to support the building industry.

Ms CATE FAEHRMANN: That's the DBP Act that you're referring to. Does the draft building bill that you've seen go any way to resolving it or improving the situation, or does it not really include anything that you've seen?

LINDSAY LE COMPTE: It doesn't solve the problem at all. Further to Mark's comments, if we project forward in terms of time frame, even if the building bill were introduced this year, based on what we know—and I expect what you've heard so far—it's likely to take 12 months to work its way through the parliamentary and other processes. That does not then give us any indication about what the regulations are going to look like, and what we're dealing with in our submission relates to the regulations. Of course, that's the way very large pieces of legislation are drafted today. The principles are put in the bill, but the real issues are in the regulations. That's when we and other parts of industry always have difficulty, because it's not a one-size-fits-all approach.

It's probably going to take another couple of years to resolve it. If we're talking about maybe three years away before all the regulations are finalised, the vertical transport sector is going to be in real difficulty, because it isn't increasing in the number of design practitioners. The ones that are there are saying to us they're having difficulty getting insurance, so they don't want to be involved in these types of things. They're worried about whether or not the individuals are going to be maintained in employment, and what happens to their insurance and other liability issues post-employment, and we're not getting any engineers coming on who are interested in vertical transport. That's the reason why we want to go back to where the original regulation was, which allows an appropriate process for assessment of people who have the operational skills to take on some of the work.

Importantly, though, if I can just add there, as part of that process, we're talking about different types of products here. We're not necessarily talking about a person with a certificate-level qualification involved as being a design practitioner for a 40- or 50-storey apartment building, but there are lots of products that are put into buildings like that—stair lifts and various other short-form types of vertical transport that many people can install who are working in the industry at the moment. So that's the concern we have. The other part of that is that if there aren't sufficient people then the cost of getting somebody who is a design practitioner to work on your project is going to be much more expensive, because they will be in a situation where they can only do a certain number of projects, and the costs will be accordingly.

The CHAIR: If there are no further questions, that brings us to the end of this session. Thank you very much for coming along and sharing your insights. To the extent that there were questions taken on notice or there are supplementary questions, the Committee secretariat will be in touch.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr BRAD ARMITAGE, NSW Executive Director, Housing Industry Association, affirmed and examined

Mr MICHAEL SAID, Assistant Director, Housing Industry Association, affirmed and examined

Mr DOMINIC DODWELL, Director, Owners Corporation Network of Australia, affirmed and examined

Mr DAVID GLOVER, Managing Director, Owners Corporation Network of Australia, affirmed and examined

The CHAIR: We welcome our next panel of witnesses. Would either organisation like to start with a short opening statement?

DAVID GLOVER: I have a short opening statement that we have lovingly prepared. Good afternoon, Madam Chair and members of the Committee. OCN is the Owners Corporation Network of Australia. For over 20 years we have worked to inform, support and advocate for strata property owners, which is about one million people in New South Wales. They are the homeowners most effected by the Design and Building Practitioners Act 2020, so it's operation is very important to us. First, OCN absolutely supports the intent of the Act. We are certain that, over time, it will help ensure that everyone can confidently buy and live in strata. However, in meeting its requirements for remedial work, compliance with the Act is often imposing significant, sometimes crippling costs on strata owners. There is also considerable confusion and misunderstanding about its operation among strata owners and committees, as well as the strata professionals who advise them. We appreciate the opportunity to highlight these challenges and suggest some ways to address them.

The first is to distinguish new buildings from existing buildings. For new buildings, the value of the Act is not questioned, but we've seen challenges when it's applied to existing buildings that were built to a different set of standards. This is an area we believe needs review. The second is permit retention of original design standards where performance is demonstrated. Designs are being specified to meet current NCC standards, rather than those that have prevailed when buildings were constructed and that have proven satisfactory over time. The third is reduce uncertainty for practitioners. We have heard that many registered practitioners and their insurers are extremely risk-averse, and this has led to them erring on the cautious side to avoid litigation and has sometimes expanded projects beyond their original scope. To address this, we suggest allowing practitioners to clearly limit the scope or to provide a performance solution, and developing a library of accepted reference solutions that practitioners can draw on.

The fourth is to allow a loss-limit approach. In conjunction with performance solutions, it would be helpful to allow practitioners to propose options that may not meet current standards but are safe and practicable where the tangible detriment to the building or occupants would be negligible. The fifth is expand the range of registered design practitioners for waterproofing, in particular, which is a key problem in strata buildings and there just aren't enough registered practitioners to meet the demand. This could be relieved by allowing a broader range of suitably qualified people. The sixth is to increase the exemption cost limit. Currently, works under $5,000 are exempt under the Act. We ask that consideration be made to assessing the validity of that threshold. The seventh, finally, is to educate and support strata committees and managers. Strata committees are usually made up of volunteers without specialist knowledge and they have to navigate a complex web of consultants and practitioners. Clear, independent information and training, provided either by government or approved providers, would help them make those decisions. The Government might want to consider a good practice guide for the interpretation and implementation of the Act for typical buildings. OCN thanks the Committee for the opportunity to provide evidence. We are always ready to assist by providing the perspective of strata owners.

BRAD ARMITAGE: I also have an opening statement. Thank you for providing the Housing Industry Association with the opportunity to appear before this Committee today. HIA is Australia's only national industry association representing the interests of the residential building industry. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low-and medium-density housing developments, apartment buildings and the carrying out of renovations on Australia's nine million existing homes.

HIA acknowledges that after some well-documented issues at several apartment towers, interventions were warranted within the multi-unit residential building industry. As outlined in our submission, HIA supported some of the fundamental principles of the Design and Building Practitioners Act However, the complex regulatory framework and its broad application to all class 2 buildings is having a negative impact on the industry. At present, the Act treats all class 2 buildings in the same way. We have two pictures here that won't look good in *Hansard*, but we can submit them later. One is a low-rise manor home and the other is an apartment tower. Both are class 2 buildings and the Act applies to both of them in the same way, despite all of us knowing that they have very different risk profiles, and very different construction methods and materials used. The Act applies in an arbitrary manner to both buildings.

Our members have told us that even for low-rise manor homes, compliance with the Act adds upwards of $20,000 per dwelling. The legislation can even make the simple renovation of an apartment or repair of a leaking balcony much more difficult and much more expensive. Owners are forgoing renovations and repairs due to the administrative costs associated with compliance of the Act. The Act needs to adopt a more nuanced and balanced approach that is more reflective of the risk.

On the building bill, HIA supports the intention but is concerned that the pace of these changes could be extremely disruptive to the industry at a time when we need to build more homes than we have ever built before. There has been a myriad of regulatory reforms within the construction sector in recent years. This level of regulatory churn has a significant impact on businesses. As the draft building bill relies heavily on yet to be exhibited regulations, the extent to which the changes will reduce red tape is not clear. HIA is seeking a pause on any new regulatory changes that will increase the cost of construction.

Instead, there needs to be a clear focus on addressing the issues that are currently impacting productivity and increasing costs. An example of one of those issues is where certain legal practices are seeking to take advantage of the current dispute resolution process. These legal practices approach owners and use scare tactics to facilitate a building inspection report. These reports are prepared by so-called "independent experts" who are not required to be licensed and hold no accountability for the reports they produce. The prepared reports often contain items that are not considered defects or matters previously assessed by the Building Commission NSW as not requiring any further attention.

In some cases, builders have been prepared to fix certain identified defects but then have been prevented from doing so. Owners are instead being promised pots of gold if they pursue legal action. In the meantime, minor defects go unrectified, leading to more significant issues later. What makes this problem worse is that NCAT will generally give more weight to the report of the so-called "independent expert" than it does to the findings of the Building Commission NSW. This practice must change as neither the builder nor the building owners are getting a satisfactory outcome. Reforms that address issues such as these are what the industry needs today. Thank you.

The Hon. MARK LATHAM: Thank you to the witnesses. In particular, I thank—the comments there of the representative of the Housing Industry Association, because one would have thought, in the middle of a housing affordability crisis, which in many ways dominates the State Government's agenda, the core purpose of this building legislation would be to bring down the cost of building to make housing more affordable. We haven't heard a lot about that, whereas I regard it as the core purpose of what we're doing and what the Minister should be doing. I don't think Anoulack Chanthivong has said much about it either. Could the HIA provide, for the benefit of the Committee, a range of recommendations that we should be building into this statute to bring down the cost of building? Because obviously red tape, compliance costs, the role of the Building Commissioner, what you've mentioned about legal practices and dispute resolution—there must be seven or eight big ways in which we can lower the cost of housing and do something about this affordability crisis. Could you respond to that, please?

BRAD ARMITAGE: Certainly. Thank you for your question. As we mentioned in our opening statement, repairing the dispute resolution process as it stands would go a long way to providing developers and builders more certainty, and then also protecting consumers better as well. It is not unusual for our members to tell us that they've had an instance where the Building Commission NSW has come out to inspect a dwelling—and this is all types of dwelling—and the Commission has issued a letter saying that the work is not defective. The owner goes to NCAT anyway and uses independent experts. At the end of the day, it's quite often a case where a business will sometimes choose to pay out an owner as a way to free up their time. This is for work which is not defective. We see that as something that could be prioritised. Rather than trying to boil the ocean and change the entire Home Building Act all in one hit, we could target segments or issues like this that could be resolved better.

Similarly with our issues with the Design and Building Practitioners Act, I actually echo the issues of our colleagues next to me with the renovations of existing apartment buildings. The way the Design and Building Practitioners Act applies to those is prohibitive to them being repaired. That is having impacts on our renovation builders and members who are basically backing away from that work altogether, making it even harder for owners to get things repaired or rectified.

Thirdly, what I would say is the way the Design and Building Practitioners Act is applied to varying buildings of varying risks needs to be assessed. Buildings under three storeys do not have sprinkler systems for a reason. It's because they are lower risk. There are building methods and materials that can mitigate those risks as well. We've supported the introduction of the low-rise pattern book last week. But again, our concern would be—with the manor homes listed in them—that they're still picked up by the Design and Building Practitioners Act. The administrative cost of that could be a prohibitive factor to investing in that dwelling type.

The Hon. MARK LATHAM: A further question: Why did we ever need to change the system? I've lived all my life in urban growth areas and for many decades as a public representative. It always seemed to me that, in

Australia, we were lucky in the construction of detached suburban housing that the existing system worked pretty well. There would be some budget overruns and underruns and some defects that builders would fix. If they didn't fix them, then in a very competitive market home building consumers would work out to go elsewhere. What is the incidence of catastrophic defects that the former Building Commissioner seemed to think warranted his involvement? I've just never seen it myself. Have we got any data on why we need the Building Commissioner involved at all? Where is the evidence of the catastrophic defects that require this extra level of regulation, involvement and cost compliance?

BRAD ARMITAGE: I would certainly echo your sentiments when it comes to detached building work. There is data to show—I don't have it at hand—that the instance of defects is not as alarming or systemic as what the media would have us believe. There have been historical issues when it comes to the plans and reports that experts can produce. That is why the HIA did support the intention behind the Design and Building Practitioners Act in that it requires designs to be compliant. It makes sense that to build a compliant building—it needs to start with a compliant design. That is something that we think has been a positive move in that space. In the class 1 space, we do not see systemic issues that warrant entire rewrites of the Act. Like I said before, we do see there is potential for some targeted intervention in certain areas.

The Hon. MARK BUTTIGIEG: Can I just ask you a quick follow-up. It was interesting, what you just said. Am I to believe that under the previous Act, there was no requirement to do a compliant development?

BRAD ARMITAGE: A compliant design.

The Hon. MARK BUTTIGIEG: When the architect was drawing up the design, there was no legal requirement that it comply.

BRAD ARMITAGE: Back before the Design and Building Practitioners Act, it wouldn't be unusual for an architect's design to have a small disclaimer in the bottom corner somewhere which simply said, "Compliance with the National Construction Code is the builder's responsibility." Basically, that clause stood up in court if there was ever a dispute. The builder isn't always the expert at designing the building. You're relying on the architect for that.

The Hon. MARK BUTTIGIEG: This draft bill proposes to fix that?

BRAD ARMITAGE: That is something that has already been fixed in the Design and Building Practitioners Act.

Ms CATE FAEHRMANN: I'll go to the Owners Corporation Network. In your opening statement, you made mention of the issue of waterproofing, which of course is a very big issue, and suggested that the range of people who can deal with it is expanded. Could you explain what you mean by that? Are you saying that there are too few people at the moment qualified? If you could just talk us through that.

DOMINIC DODWELL: I think the main point is that there's just insufficient volume of quality engineers providing those designs. As much as elements of the designs do just relate back to Australian standards in the National Construction Code, other elements rely entirely on manufacturers' products and their tested systems. They have to be applied accordingly and designed accordingly. There's a lot more volume. Going to the general issue in defects, I think a lot of the issues stem from the volume of different tested systems that are now applicable, and how they then intersect with each other. There's an ever-moving market in terms of what's available to fix a particular problem. Who knows about it is part of that issue.

Obviously within the DBP Act the nominated design practitioners for specific elements are prescribed. With the waterproofing side of things, there's a lot industry experts who were the reference point prior to the DBP Act, who are now no longer even qualified to provide a design. There was never a natural process to bring any of those people through. Some of that is probably for the right reasons because, you know, they had a very explicit knowledge. Again, we're talking more from the existing building stock, not from new buildings. New buildings, there's a lot more engineers, builders and architects looking to work in the new construction space. It's a far more niche space working on existing buildings. It has got its own pain points compared to new construction. It's just making sure there's sufficient volume and quality of consultants working in that existing space for those buildings.

Ms CATE FAEHRMANN: Owners' Corporation has been involved in some of the consultation around the new building bills, as has the Housing Industry Association.

DAVID GLOVER: Yes.

DOMINIC DODWELL: Yes.

Ms CATE FAEHRMANN: From the Owners Corporation Network's perspective, does the building bill attempt to address that situation? Or is there not enough detail?

DOMINIC DODWELL: I'm probably not across the explicit detail sufficiently. The one thing I would say about the building bill, from my knowledge and interactions with that particular bill, is that it's trying to enforce better documentation as a predominant outcome from the outset, which is a huge benefit. Baseline information around existing buildings is lacking at the very least. I think to try and enforce that hundred per cent design and real accountability from the outset of what the intentions are, coming through to a building that's handed over to an owner's corporation or otherwise, is really essential.

At the moment you're taking a building that's developed by consultants who are very knowledgeable of the system, and the people who eventually run it as the asset manager of that asset are mums and dads. They're not technically aware of any element of the building and the management of those buildings. So anything we can do to frontend that, and make sure that they are given the best starting point as possible—so a defect-free building is a starting point, but also all the knowledge of how it was put together and how it complied originally, so they don't have to reverse engineer things and have to do additional work down the track to work out quite what happened and why, basically.

Ms CATE FAEHRMANN: In your opening statement you talked about education for the strata committees and managers, that potentially a guide is produced. We've had a reasonable amount of changes through the Parliament in the last 18 months to two years, in terms of strata laws. Apparently there's more coming. Isn't it better dealt with in those laws? Is that what you're referring to?

DAVID GLOVER: This is part of the problem that the strata laws—

Ms CATE FAEHRMANN: In fact it has been a little bit, hasn't it, in terms of education for strata committees?

DAVID GLOVER: Yes, it has. There is mandated strata committee training in the legislation that is happening. We're working with the department of fair trading on that. That doesn't get right into the technicalities of construction and remedial work. That's where there's a bit of an overlap between the strata legislation—I'm speaking from my own experience in the building that I'm on the committee of, that navigating the DBP Act for non-expert owners, however conscientious they are, is pretty challenging. Things may have improved, because this is going back a couple of years for me, but it was very difficult to get a clear understanding of our obligations in terms of the Act.

DOMINIC DODWELL: Can I add to that as well? The design practitioners and building practitioners a few years ago were also struggling with the interpretation. They're still struggling now. If you use the Pafburn case as an example, it's testing the system. The Act is not yet fully determined in terms of interpretation, definition or otherwise. That was what we were made aware of during that particular case. I think there are a lot of people who don't want to become the case study that leads to determining how it should be implemented fully from a legal perspective. When it goes back to providing concessions and performance solutions to waterproofing and otherwise, there's simply a lack of flexibility in the engineers. That's the risk aversion. They don't want to be the ones interpreting from a legal perspective.

And there's the education piece, absolutely. The actual management and Acts around strata definitely don't cover off the construction side of things, and they shouldn't have to. The reference to the good practice guide was a suggestion that came from the fire safety changes with the AS1851 implementation. That has obviously been delayed until next year. I'm on one of the reference groups for that, and we've been putting together that good practice guide for that particular change. It's being done collectively to address it to practitioners, the standards committee, the owners and the regulators as well so that it's a collective thought process.

That's what we're thinking with the DBP Act. It could be similar. The good practice guide could at least guide people in laypeople's terms to understand what their obligations are, because a lot of building owners especially push back on the requirements, thinking that they can just argue their way out of it the same way they would a fire order from council, and it's simply not the case. They need to comply. It's about achieving flexibility in how they comply to alleviate the major costs that they're currently incurring, in some instances. That's not applicable to all because, as David said, the Act itself is definitely necessary. In class 2 buildings for residential apartment buildings, the rate of defects was significant, and it has helped to remove that from the process. Some people talk about it as an overcorrection, but the point is it needed to be overcorrected because it was pretty poor consistently across a lot of developments. Now that it's coming back towards the centre, I think it needs a little bit more time to balance out before any significant changes are done, especially in terms of deregulation. But we're on the right track now, at the very least, when it comes to new construction and reduction of building defects.

Ms CATE FAEHRMANN: Every witness so far has talked about the rushed nature and lack of transparency around the building bills, in terms of the three weeks last year. I note that in the Housing Industry Association's submission, you make a very strong point—in fact, I don't think you support the reform process

generally. You don't want the bills to go through without the regulations at the very least being produced at the same time. In terms of the three bills—the building bill, building insurance, and compliance and enforcement—your submission is reasonably critical of a fair few points in those three bills. Is that a fair summary?

BRAD ARMITAGE: We've been involved in the consultation for quite some time now. I don't have the number off the top of my head, but it does span two governments and a department restructure as well. For us, on the industry side of things, it did feel like we started again. The original commitment was to have draft regulations, which would sit next to the bill as a package, and that has been done a lot in the past with a lot of legislation that we've been involved with. Even if the legislation changes on its way through Parliament, it gives industry something to talk to members of Parliament about, as they're voting on it. We can talk about what the intentions are, and we can understand it. But from our perspective, it does become quite concerning that a piece of legislation that impacts our industry as much as this has, at times, felt like it's being rushed through at different stages—for example, when we're being given a draft bill that no longer has draft regulations and then being told that two or three weeks is enough to process that and comment on it.

Ms CATE FAEHRMANN: Who said that the regulations would be presented with the draft bill? When did you get that commitment? Was that in the prior government?

BRAD ARMITAGE: That was the prior government.

The Hon. MARK BUTTIGIEG: On this waterproofing issue, was it you, Mr Dodwell, who raised it? I've heard this thematically come up on several iterations of these inquiries where waterproofing seems to be a perennial problem. Could you outline what the gap is in the supply side, and why there's a lack of practitioners? What's the issue with waterproofing specifically, why is it so chronic, and the degree to which this proposed bill might address that?

DOMINIC DODWELL: The bill calls for a complete design up front, which is highly recommended from our experience, in that builders should be tendering on complete designs, or at the very least undertaking destructive investigations and informing themselves before works happen so final budgets can be locked in, otherwise the overrun side of things becomes more substantial. In terms of the stock of practitioners and design practitioners, I don't think the bill—it forces individuals to go down a specific path in the future so they only have a choice to become a specific engineer or an architect in order to provide those designs. It doesn't fix the current issue in terms of the availability of individuals.

A lot of engineers spend a lot of their time project managing things. In the commercial sector you would never find that. Typically it's exclusive to remedial and class 2 and those kinds of buildings where there's a crossover. Engineers—there's probably more capacity there if they were to stick to engineering and do the design piece as a primary function. I don't think the Act calls for any particular increase or mechanism by which additional practitioners are grown into this space.

The Hon. MARK BUTTIGIEG: I will get to the crux of the practical problem. If I'm a builder, under the current act was there a lack of requirement for me to make sure that the waterproofing was done to an acceptable standard by a qualified person? Is that the issue?

DOMINIC DODWELL: There are a couple of different elements to it. If you take a building from the 1970s, for example, then waterproofing may never have been prescribed. When you come through to current standards, you're remediating an existing building that's 60 years old and then you're calling for it to have waterproofing applied to all those areas. While that's best practice, in a lot of cases it does trigger significant addition to costs. You're talking about the termination over the hob that sits underneath the sliding doors, so then the door suite goes. The hob gets installed, the whole terrace gets ripped up. The hydraulics may be insufficient so you have to reengineer the whole hydraulic systems. It becomes a major consideration and it may be in a unit that's never had a water ingress issue.

I'm not arguing that we shouldn't be following best practice as far as practicable, but I think there does need to be a little bit of flexibility given to the engineers—not to the lay person but to the technical specialist—to determine where the line in the sand is and where they're willing to take on the risk themselves to say we understand, here's the performance they're willing to specify and this is what we should do in order to scale those scopes back somewhat. The exempt provision is under $5,000— you can't do much for five grand nowadays—and the emergency works provisions are there as well, which have their merits.

There's just the lack of flexibility and I think that comes from both ends: the untested nature of the Act and also the fear within the engineering community not to take on the risk because they don't have to. There's so much work out there, they could spend triple the amount of time in order to get paid double for a job. It may be the right outcome for an owner but it increases their risk and gets them paid less, so why would they do it?

The Hon. MARK BUTTIGIEG: What trade actually does waterproofing? Is it plumbers?

DOMINIC DODWELL: It's under builders. The builders that have waterproofing specialists that do the various types of systems.

The Hon. MARK BUTTIGIEG: Is that a cert qualification at TAFE or something, or how does that work?

DOMINIC DODWELL: I'd have to look into that.

BRAD ARMITAGE: I can speak to that. One of the issues we've had is not a shortage of waterproofers themselves but the waterproofing designers. One of the things that the Design and Building Practitioners Act did was add several categories of designers that never actually existed before. We needed to have a waterproofing designer sign off on the designs of the building, which we never had before. Another one that has only popped up since the Act is facade engineers. A lot of engineers had specialties in facade but it wasn't all that they did, so we're having the same issue with them.

Ms CATE FAEHRMANN: Did you say facade engineers?

BRAD ARMITAGE: Facade engineers, yes. Similarly, when I go to do a renovation, for example, on a class 2 building—an existing one—it has always been a requirement that the builder engaged follows the Australian standards. That is law, and they are to open the standard and pick the correct details to make the work comply. That has always been the case. Now, with the Design and Building Practitioners Act, I have to find a waterproofing designer to sign off on that work before I commence it, but because we've made up this category and there's not a lot of people that do that, they're going to charge what they charge, which is $20,000 per report at a minimum.

The Hon. MARK BUTTIGIEG: Is that likely to engender a take-up of that profession over time?

BRAD ARMITAGE: It hasn't so far, no.

DOMINIC DODWELL: I'm not sure of the actual category—is it architects, are you aware, in terms of the actual nominated design practitioner for waterproofing?

BRAD ARMITAGE: Waterproofing design.

DOMINIC DODWELL: But it sits typically under the architect as the principal design practitioner.

BRAD ARMITAGE: Or engineers.

DOMINIC DODWELL: Yes.

BRAD ARMITAGE: But they have to nominate themself as—

DOMINIC DODWELL: They have to be qualified, accordingly.

BRAD ARMITAGE: Yes, so then they'd have to be insured for that, and their insurance goes up as well because the insurers have never seen this category of specialist before. They increase their rates accordingly because they're not really sure what the risk is.

The Hon. SCOTT FARLOW: That's part of the challenge, isn't it? To Mr Buttigieg's point, with a $20,000 report, you would think that that would engender people to get involved in the industry and to take on these roles, but the challenge is that you then have the insurance that goes with it. If you can't get insured, what's the benefit? I think that's something that a lot of people throughout different sectors of the industry have been complaining about today. Mr Armitage, I am just interested in terms of your submission, one of your criticisms of the current arrangements is the complexity that exists across the Design and Building Practitioners Act and the RAB Act. In terms of your consultation so far with the new building bill, do you think that there will be some moves to make the system less complex?

BRAD ARMITAGE: We have requested certain things be looked at again. Similar to our opening statement, we outlined the way that the Design and Building Practitioners Act applies to a two-storey class 2 building in the same way as a 100-storey class 2 building. We have requested that as part of this package of reforms things like that be looked at, because we would be supportive of moves towards reducing red tape and the cost and complexity for consumers. That piece of work is not something that has been looked at as of yet. There seems to be more work going into rewriting the Home Building Act 1989, as a more specific piece of work.

The Hon. SCOTT FARLOW: You've also outlined in your submission some of the challenges in terms of the intersects with the Environmental Planning and Assessment Act as well. There's a chunk of that which was,

we understand it, proposed to move across to a new building bill. Do you think that addresses any of the concerns you may have had with the intersection between what would be three Acts, so to speak?

BRAD ARMITAGE: Our issue with that is that it's complex, so you don't want to rush it. It's very critical, because we can't get approval to build a building without that section of the EP&A Act, which is going to move over. One of the issues that we raised is also around terminology change. In the new building bill there was going to be new terms for all of the certificates and approvals that builders need to get, and that was being pitched to industry as a minor-in-nature issue. But what that fails to recognise is that every one of us in industry, whether you're an owner and you're trying to understand the changes or what people are talking to you, or you're a builder and you've got a website, or you're a council and you've got a website, or you're a certified engineer—everyone's documentation, processes and websites all need to change for this name change as well as a whole education process. When we, as industry, are already worried about making sure we get the wording right so that we don't slow down getting building certificates or complying development certificates or construction certificates, rewriting the names of everything is not a minor-in-nature thing to do because we all need education. That's where our concern gets triggered even more.

The Hon. SCOTT FARLOW: To the Owners Corporation Network, I note you made reference to the Pafburn decision as well. We heard some discussions previously that the Government were going to address the Pafburn decision as part of any new building bill. Has any of that been communicated to you, and what would be your thoughts about any changes that were made as a result of that decision of the court?

DOMINIC DODWELL: I wouldn't have enough legal understanding. It was an interesting case. We went to a seminar, both myself and David, and the understanding was there. We had barristers from both sides talking to the points, and it was an interesting outcome, in the way that it went down. Obviously, it's still subject to further appeal as well, so we'll wait and see what happens next. If there is intervention to provide guidance, we would welcome it, because I think that's a large part of the issue—that there is insufficient understanding of how it is supposed to be applied and it has intended to be applied in the long term.

Ms CATE FAEHRMANN: I thought I'd ask about insurance issues, which, of course, has come up with everybody as well, to our HIA witnesses. You have examples of the increase in cost as a result of the DBP Act, the significant increase in insurance premiums or new limitations on coverage for professional services like designers, architects and engineers. Would you care to expand on that and anything more generally in terms of the rising costs of insurance as a result of these?

BRAD ARMITAGE: As I mentioned before, we had a lot of new categories of designers that were required to be used as part of the process, when before, an architect engineer would be enough. Now that each of those roles has been specified to the degree that they are, that does make insurers a little more risk averse about what they are covering. Because, similar to the Pafburn case, all of this stuff is ongoing and it hasn't worked its way out in the courts about who is liable for what, the insurers are taking a very conservative view of this thing and therefore are charging quite high premiums for the work that the designers are signing off on. You've got a very small pool to be able to generate premiums from and an unquantifiable risk as of yet, and so that's having a perverse outcome on cost.

Ms CATE FAEHRMANN: Can you give us an example in terms of all the new categories of designers and the insurance companies themselves, why they would be a little bit more risk averse?

BRAD ARMITAGE: The example I used before was the facade engineer. In the past, it was just standard practice that an engineering firm would, within their own right, have specialists in the varying fields of engineering. They have a code of conduct to not be advertising to be able to do work that they are not qualified in. But now the Design and Building Practitioners Act specifically calls out a facade engineer, when that hasn't historically been required before. Not only the engineering firms but also the insurers start to reassess around what that means and what someone signing off on that certificate could actually be liable for as an individual or as a business. As I mentioned before, there's a very limited number of people that actually do that work specifically. The way that's played out on the ground, some of my members that are in the boutique apartment space have told me that their consultant fees, which they allow for in their feasibility calculations, have gone from 6 to 8 per cent up to 16 to 18 per cent. That's the cost of consultants. Within that consulting fee is their insurance costs.

Ms CATE FAEHRMANN: Even if the building bill goes through and fixes some of this, in your view, can you see the costs of the consultants and others going down as a result or do you think we've just locked it in at this point in terms of people lowering their fees? Is it too late? Has the horse bolted?

BRAD ARMITAGE: No, I think there is scope to rectify some of this because the Design and Building Practitioners Act gives powers to the regulations to exclude or make amendments to the practitioners that are required. The example would be the one my colleagues raised for renovations. It would make sense to not exclude

them altogether, but perhaps a licensed builder would be appropriate to come up with the design for rectifying a balcony, which they do on any house. Similarly to the buildings that we displayed earlier, if the building is under three storeys, it has significantly lower risk. There could be certain exemptions made there to open up the pool of available people and specialists that can design those buildings. That would have a genuine impact on the feasibility of those projects.

Ms CATE FAEHRMANN: In terms of the building bills that you've seen, I would have thought that's part of what the Government would be trying to do with the new legislation: dealing with some of these perhaps unintended consequences. I think a lot of people are seeing the overcorrection as a result of—I'm not saying that; it's a hypothesis. Let me be clear.

The Hon. SCOTT FARLOW: I thought this was going to be a new leaf.

Ms CATE FAEHRMANN: Are they doing that? Wouldn't that be what the Government is saying they're trying to do?

BRAD ARMITAGE: To date, those things that we just discussed have not been included in any of the intention statements or drafts that we've seen.

The CHAIR: That brings us to the end of our hearing today. Thank you very much for appearing. To the extent that there were questions taken on notice or supplementary questions from the Committee, the Committee secretariat will be in touch.

(The witnesses withdrew.)

The Committee adjourned at 14:45.