

PORTFOLIO COMMITTEE NO. 6 - TRANSPORT AND CUSTOMER SERVICE

Wednesday, 27 October 2021

Examination of proposed expenditure for the portfolio area

BETTER REGULATION AND INNOVATION

CORRECTED

The Committee met at 2.00 p.m.

MEMBERS

Ms Abigail Boyd (Chair)

The Hon. Mark Banasiak (Deputy Chair)

The Hon. Wes Fang

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Courtney Houssos

The Hon. Shayne Mallard

The Hon. Daniel Mookhey

The Hon. Mark Pearson

Mr David Shoebridge

PRESENT

Mr Kevin Anderson, *Minister for Better Regulation and Innovation*

* Please note:

[inaudible] is used when audio words cannot be deciphered

[audio malfunction] is used when words are lost due to a technical malfunction

[disorder] is used when members or witnesses speak over one another

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000**

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The CHAIR: Welcome to the public hearing for the inquiry into budget estimates 2021-2022. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would like to pay my respects to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. I welcome Minister Kevin Anderson and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolio of Better Regulation and Innovation.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's proceedings are being broadcast live from Parliament's website, and a transcript will be placed on the Committee's website once it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. All witnesses in budget estimates have a right to procedural fairness according to the procedural fairness resolution passed by the House in 2018. There may be some questions that a witness can only answer if they have more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff.

Minister, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Referring to the audibility of the hearing, we have witnesses in person and via videoconference so I ask Committee members to clearly identify who their questions are directed to, and I ask everyone appearing remotely to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. All witnesses will be sworn prior to giving evidence. Minister Anderson, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. I would also like to remind the following witnesses that you do not need to be sworn as you have been sworn at an earlier budget estimates hearing before this Committee: Ms Emma Hogan and Ms Rose Webb.

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EMMA HOGAN, Secretary, Department of Customer Service, on former affirmation

ROSE WEBB, Deputy Secretary, Better Regulation Division, Department of Customer Service, before the Committee via videoconference, on former affirmation

DAVID CHANDLER, NSW Building Commissioner, Department of Customer Service, sworn and examined

JOHN TANSEY, Executive Director, Policy and Strategy, Better Regulation Division, Department of Customer Service, before the Committee via videoconference, affirmed and examined

ANTHONY WILLIAMS, Executive Director, Compliance and Dispute Resolution, Department of Customer Service, before the Committee via videoconference, affirmed and examined

TERRY O'BRIEN, Director, Office of Racing, Better Regulation Division, Department of Customer Service, before the Committee via videoconference, affirmed and examined

VALERIE GRISWOLD, Executive Director, Investigations & Enforcement, Better Regulation Division, Department of Customer Service, before the Committee via videoconference, affirmed and examined

MEAGAN McCOOL, Director, Construction Services Group Metropolitan, SafeWork NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: We will start with questions from the Opposition.

The Hon. COURTNEY HOUSSOS: Good afternoon, Minister, Mr Chandler and Ms Hogan. Thanks for your time. Minister, under the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, the secretary can issue prohibition orders, including the withholding of the occupation certificate [OC]. That is correct, is it not?

Mr KEVIN ANDERSON: Good afternoon. That is correct, Ms Houssos.

The Hon. COURTNEY HOUSSOS: Nine prohibition orders have been issued. Is that correct?

Mr KEVIN ANDERSON: I will just check on those numbers for you, Ms Houssos. I will ask Mr Commissioner if he has those numbers handy.

Mr CHANDLER: In prohibition orders, there were eight prohibition orders issued as at 20 October, and one more has been issued since.

The Hon. COURTNEY HOUSSOS: What was the date of that last one that was issued?

Mr CHANDLER: I do not have that date in front of me, but I will provide it to you. I think it was in the last week.

The Hon. COURTNEY HOUSSOS: What are the grounds for issuing a prohibition order revoking an occupation certificate, Minister?

Mr KEVIN ANDERSON: I will ask Mr Chandler to do that, but I will make just a comment in relation to that. It is pretty much around the defects of a particular building, if that building is not meeting the Building Code of Australia, that an audit would have been undertaken and the Building Commissioner would be satisfied that there needs to be work done to rectify those concerns, and subsequently an occupation certificate order would not be issued. But certainly I ask Mr Commissioner to elaborate if required.

Mr CHANDLER: Ms Houssos, the OC orders follow the path of the Design and Building Practitioners Act 2020 where the key building elements are the focus of the common property. They look at the structure, the waterproofing, the building enclosure, the fire systems and the key building services. When the auditors go onto projects, we have got the skill sets across all of those disciplines, and they go and have a look at those particular elements of the building. Of course, they would have called in a considerable number of documents before they start those audits so they go in really informed about the building and they look for the things that they actually have identified.

When we have done an occupation certificate audit, what we do then is there is a report provided to the developer saying, "These are the things that were found," and they have an opportunity to come back and either agree or disagree. In the event we decide that they are going to issue either a building works rectification order or a prohibition order, they are sent draft documents and, again, they have the opportunity to challenge those before they are issued. The process would be then, in the event that we get through all of that, we issue a prohibition order.

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The Hon. COURTNEY HOUSSOS: Like we said, there have been nine that have been issued.

Mr CHANDLER: Mm-hm.

The Hon. COURTNEY HOUSSOS: So we can say that it is fairly serious defects with the essential parts of the functioning of the building. Would you agree with that?

Mr CHANDLER: Yes, all of the building elements are coded when we do the audits, using a red, green, amber symbology, which I am happy to show you at some time. Anything that has got the reds up, we are not going to go past that without putting a flag up.

The Hon. COURTNEY HOUSSOS: I understand. Thanks, Mr Chandler. Minister, according to the Environmental Planning and Assessment Act 1979, an occupation certificate is required in order to live in a property. That is correct, is it not?

Mr KEVIN ANDERSON: That is correct.

The Hon. COURTNEY HOUSSOS: But there are still many people living in these buildings that are subject to these prohibition orders, are there not?

Mr KEVIN ANDERSON: I would like you to clarify that please in relation to what you actually mean? Could you rephrase your question? I am not quite understanding that, Ms Houssos.

The Hon. COURTNEY HOUSSOS: There are nine prohibition orders that are in place at the moment, and there are a number of people living in those buildings, are there not?

Mr KEVIN ANDERSON: If an occupation certificate has not been issued, then people should not be living in that building.

The Hon. COURTNEY HOUSSOS: Perhaps you should allow Mr Chandler to answer.

Mr CHANDLER: There is one prohibition order issued on a building that is occupied. I am sorry, I think there are two. That would be prohibiting the issuance of a final occupation certificate on those buildings. As you are aware, there were buildings that were before the residential apartment buildings Act came in where in fact it was possible to issue an interim occupation certificate, and we are still cleaning up those as we go. But there are two buildings that have an interim occupation certificate, and we have prohibition orders on the issuance of the final occupation certificate order. So there are two buildings, I believe, that are in that category.

The Hon. JOHN GRAHAM: Which are those two?

Mr CHANDLER: I believe they are the Auburn building—the Merhis building at Auburn—and also the Toplace building, Atmosphere, at Castle Hill.

The Hon. COURTNEY HOUSSOS: Atmosphere and what did you call the Aya Eliza building?

Mr CHANDLER: Is that the one in Auburn Road?

The Hon. JOHN GRAHAM: It is 93 Auburn Road, Auburn.

Mr CHANDLER: Yes, it is the original one.

The Hon. COURTNEY HOUSSOS: Do you have a total on the number of people that are living in those properties?

Mr CHANDLER: Again, off the top of my head, I think both of them have got about 200 apartments in each, so potentially 400 apartments, maybe a bit more.

The Hon. COURTNEY HOUSSOS: Should new residents be moving into these properties, Minister, if they are subject to a prohibition order?

Mr KEVIN ANDERSON: I will take the advice of the Building Commissioner on that, Ms Houssos, in relation to the status of that prohibition and the reason for the prohibition being put on the building.

The Hon. COURTNEY HOUSSOS: Minister, before we come to Mr Chandler—I will have some more questions for him in a moment—I am interested in your perspective. These are pretty notorious apartments that are the subject of prohibition orders and which have not been issued occupation certificates—that is, they have some pretty serious problems with building defects in them. Do you think new residents should be allowed to move into these buildings?

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Mr KEVIN ANDERSON: There are residents, as we have just heard from the commissioner, that interim occupation certificates have been issued and there is some work to be done. If that situation was to change, then we would be advised by the commissioner to take action.

The Hon. COURTNEY HOUSSOS: Sorry, there is "some work to be done"? It is not just "some work to be done", Minister. These are pretty serious defects with the buildings that have caused the most serious exercise of the commissioner's powers under the residential apartment buildings Act. Do you think it is appropriate for new residents to be moving into these buildings?

Mr KEVIN ANDERSON: I will take the advice of the Building Commissioner on that, but the interim occupation certificate has been issued pending a final—

The Hon. COURTNEY HOUSSOS: Yes, I am familiar with the process, Minister.

Mr KEVIN ANDERSON: Those rectification orders—

The Hon. COURTNEY HOUSSOS: I am asking for whether you think it is appropriate for new residents to move into deeply defective buildings that are here in Sydney.

Mr KEVIN ANDERSON: I will take the advice of the Building Commissioner in relation to the status of that building and the work that is being done to rectify those defects.

The Hon. COURTNEY HOUSSOS: You are the Minister who is responsible. Do you not have a view? Would you move into these buildings, Minister?

Mr KEVIN ANDERSON: I will take the advice of the Building Commissioner. That is his job, Ms Houssos, and I will endeavour, as always, to take his advice. That is why he is the expert in the field, and my job is to make sure that we do look after consumers. They are looked after. There is an interim occupation certificate and, should that situation change, then the Building Commissioner will advise me.

The Hon. COURTNEY HOUSSOS: How can you say you look after consumers when these interim occupation certificates are not worth the piece of paper that they are written on?

Mr KEVIN ANDERSON: That is why the—

The Hon. COURTNEY HOUSSOS: One of these buildings has been characterised by Mr Chandler as the worst building he has ever seen. I am asking you, Minister, for your opinion about whether you think new residents should be moving into these buildings.

Mr KEVIN ANDERSON: I will take the advice of the Building Commissioner on that, Ms Houssos, because he is the one who is monitoring the remediation of those defects. If he believes that further action needs to be taken, then it will be taken.

The Hon. COURTNEY HOUSSOS: At Auburn—

The Hon. SCOTT FARLOW: Point of order: I think Mr Chandler wanted to add to that.

Mr CHANDLER: I just wanted to clarify that both of those buildings are habitable, and I have cleared those buildings with Fire and Rescue NSW to make sure they have no objection to the safety of the people in those buildings. We had another building just recently where there was a question about the structural stability. I take advice from other agency leads on that but I can tell you that at 93 Auburn Road I have a communication in writing from Fire and Rescue NSW to say they do not take exception to the continued occupation of the building. Now it is not desirable for people to be buying into buildings that have got those defects, so they are to be navigated still. The real estate agents who are involved in those buildings have been firmly placed on notice by Fair Trading that they should be making it clear to prospective purchasers that the building has the defects identified in the orders.

The Hon. COURTNEY HOUSSOS: We will come to that in just a moment. Let me just go back to when you said, "It is not desirable to be buying into these buildings". I agree with you, Mr Chandler. These are buildings that require huge amounts of work. Minister, what are you doing to make sure that buyers are aware of the serious defects in these buildings?

Mr KEVIN ANDERSON: They are aware, Ms Houssos, and that is the reason why we have brought in the Design and Building Practitioners Act and the residential apartment buildings Act, and given the Building Commissioner the powers to do what he needs to do to be able to ensure that people are living in safe buildings. If there is a concern, the Building Commissioner will act.

The Hon. COURTNEY HOUSSOS: Mr Chandler, you talked about the Atmosphere building and the Aya Eliza building. The Atmosphere building has three towers. Are there currently prohibition orders on all three?

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Mr CHANDLER: Yes.

The Hon. COURTNEY HOUSSOS: And at the Aya Eliza building there are two: There is 93 Auburn Road and then there is one on Harrow Road as well—

Mr CHANDLER: It changed its address for convenience but we did sort that out with the real estate agent.

The Hon. COURTNEY HOUSSOS: Excellent. A bit of google mapping shows, yes.

Mr CHANDLER: They are joined at the hip, as you would describe it.

The Hon. COURTNEY HOUSSOS: That is exactly right. But both of those buildings only have interim occupation certificates.

Mr CHANDLER: Yes, that was a part of history where buildings were able to get these interim occupation certificates and there are very many of them out there. Some of them are going to be a little bit challenging to close out because some of those certifiers, for example, like Vic Lilli, are no longer able to issue a final certificate. So people are having to go back to the council to get them to issue the final certificate because, at the end of the day, with no certifier, councils become that certifier.

The Hon. COURTNEY HOUSSOS: Mr Chandler, how many interim occupation certificates are there in force in New South Wales?

Mr CHANDLER: I do not have that number. I can look it up. I do not have that number but I would say there would be many, Ms Houssos—really, many.

The Hon. JOHN GRAHAM: When you say "many", can you give us—accepting that you will take it on notice—some sort of ballpark?

Mr CHANDLER: If I had to pick a number I would say it would be in the order of 100, but it might be more, it might be less.

The Hon. COURTNEY HOUSSOS: Mr Chandler, it is not really in your remit, though, it is in the broader Fair Trading remit, for this information to be communicated with buyers. Is that correct?

Mr CHANDLER: Where we have issued orders, we issue a notice to the developer to make sure that they have advised the real estate agent that in fact they should be making the presence of the orders known. In some instances where we have seen the agents continue to represent the product, we call the agents directly and put them on notice that they should be making prospective purchasers aware of those notices.

The Hon. COURTNEY HOUSSOS: Is that what you do, Mr Chandler?

Mr CHANDLER: No, I do not. Fair Trading does that.

The Hon. COURTNEY HOUSSOS: Who in Fair Trading does that?

Mr CHANDLER: That would be done out of the director of building and property services in Fair Trading.

The Hon. COURTNEY HOUSSOS: Who in the faces on Webex should I be directing those questions to?

Mr CHANDLER: Ms Webb would probably be the best person to answer that because the line management flows to her.

The Hon. COURTNEY HOUSSOS: Thank you very much. Minister, I am going to give you two documents. I have copies here for the Chair and the Minister. There are currently two properties that are for sale in the Atmosphere building—and I am providing you examples of their advertisements—which do not disclose that they are subject to prohibition orders. There is nothing that shows any mention of prohibition orders and I can let you know that I spoke to the real estate agent this morning and he made no disclosure of the prohibition orders. Minister, what efforts are you going to make sure that first homebuyers—or homebuyers in general—are being informed of these prohibition orders?

Mr KEVIN ANDERSON: Ms Houssos, under the Property and Stock Agents Act, vendors and agents have an obligation to disclose material facts relating to the property, including if it is on the asbestos register, has combustible cladding, or has a prohibition or building works rectification order in force. So I would be happy to take this particular situation on notice and have it investigated.

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The Hon. COURTNEY HOUSSOS: Minister, this is only the latest example. A series of apartments was raised with you four months ago—properties that were for sale that were not disclosing this important information. What steps did you take then to ensure that homebuyers were informed?

Mr KEVIN ANDERSON: I will take that on notice, but in relation to the issue that you just brought forward, certainly there is an obligation under the Property and Stock Agents Act for vendors and agents to disclose material facts, so I will have that looked at.

The Hon. COURTNEY HOUSSOS: It is all very well for you to point them to their requirements, Minister, but I am interested to know what action you are taking. Because it is all very well to issue a prohibition order but if it is not being communicated to apartment owners and it is not being communicated in the advertisements or by the real estate agents—what action are you taking as the Minister?

The Hon. WES FANG: Point of order: I respect the Hon. Courtney Houssos' line of questioning; however, this question she has posed has been asked now twice and taken on notice twice by the Minister. Again, she can continue to ask it but it has already been taken on notice twice.

The CHAIR: Thank you. It is completely up to the member as to whether they want to ask a question more than once. It is not badgering at this point. Ms Houssos can continue.

Mr KEVIN ANDERSON: Madam Chair, I am happy through the secretary to the Fair Trading Commissioner to look at what action has been taken.

The Hon. COURTNEY HOUSSOS: Ms Webb?

Ms WEBB: I do not have any information to hand on that particular matter. We will try to see what we can find by the end of the hearing or otherwise take it on notice, as the Minister mentioned.

The Hon. COURTNEY HOUSSOS: Let me draw your attention to another building—another sale that has been listed. Again, as Mr Chandler has said, they have helpfully changed from the 93 Auburn address to 18 Harrow Road, but it is the same flawed building in Auburn. It is the same building that Mr Chandler characterised as the worst building that he has ever seen in all of New South Wales.

Mr CHANDLER: At that date.

Mr KEVIN ANDERSON: Can we not say "at that date"?

The Hon. COURTNEY HOUSSOS: I might press you on that further, Mr Chandler. Minister, what is happening? I am passing you three further examples. We now have two properties in the Atmosphere building, another property in the Aya Eliza building, a second property in the Aya Eliza building that is up for lease and we have another property in the Asquith building, which has also been well publicised, that is being specifically marketed to first homebuyers. None of those advertisements actually disclose that there are serious defects on the properties. In fact, as I said to you, I spoke to the real estate agents this morning and it was not disclosed. What are you doing about it, Minister?

Mr KEVIN ANDERSON: They will be investigated, Ms Houssos, because clearly under the Property and Stock Agents Act they should be disclosing on the bill of sale if there is a prohibition order on that. But I will go back through the secretary and through the Fair Trading commissioner, Madam Secretary, in relation to that.

Ms HOGAN: Ms Webb?

The Hon. COURTNEY HOUSSOS: Ms Webb, how many investigations have been launched?

Ms WEBB: Into breaches of that provision of the Property and Stock Agents Act? I would have to take that on notice.

The Hon. COURTNEY HOUSSOS: Minister, this is not the first time that it has been brought to your attention. This is the front page of *The Sydney Morning Herald* four months ago. What has changed since then?

Mr KEVIN ANDERSON: As part of the Property and Stock Agents Act, Ms Houssos, they are required to do that. We will take that on notice in terms of those properties you have just brought to our attention. Certainly we will go back through and make sure that if they have done the wrong thing then they will be in breach and they will face penalties. So we will take action against those if they have breached the Property and Stock Agents Act.

The Hon. COURTNEY HOUSSOS: Yes, but this is not about individual agents, Minister. Clearly there are prohibition orders that are out there. There are prohibition orders that you are saying are supposed to be cleaning up the industry and they are not being communicated with homebuyers. What are you doing as the

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Minister to actually make sure that homebuyers know about these prohibition orders and know about the serious defects?

Mr KEVIN ANDERSON: We are doing everything we can in informing agents of their obligations.

The Hon. COURTNEY HOUSSOS: Okay, what is "everything we can"?

Mr KEVIN ANDERSON: There are education programs, there are campaigns, it has been talked about through the building commission and it is online and lots of social media outlets. These are areas that you have highlighted here, Ms Houssos, that we will take on notice and we will look at if they have breached the Property and Stock Agents Act under the vendors and agents sections. We will certainly take them on notice and look at that.

The Hon. COURTNEY HOUSSOS: Minister, you are saying that there are a couple of social media posts and there is an education program from Mr Chandler. What are you doing as the Minister to make sure that first homebuyers are aware of it? How many investigators have you got on the case? How many investigations have you launched? What are you doing to make sure—there are two buildings that have people living in them, and a quick search of realestate.com unveiled these. How is it that Fair Trading waits to come to budget estimates to be alerted to these?

Mr KEVIN ANDERSON: That is why, Ms Houssos, we have got to stay ahead of the game. We have got to keep pushing.

The Hon. COURTNEY HOUSSOS: You cannot seriously be saying you are staying ahead of the game.

The Hon. WES FANG: Point of order: The Minister was attempting to provide a detailed answer to the question of the Hon. Courtney Houssos and she has continued to interject on the Minister. I would ask you to call her to order and allow the Minister to continue his very detailed responses.

The CHAIR: Thank you. Ms Houssos, your time has run out anyway. We do seem to be having some technical difficulties with the witnesses on Webex.

Ms HOGAN: They can see each other but they cannot see us.

The CHAIR: Okay, I understand. We are going to fix that up. I was going to begin by asking questions but I think maybe some of the witnesses online were required for that line of questioning. Mr Shoebridge, are you wanting to ask questions of people in the room?

Mr DAVID SHOEBRIDGE: Yes.

The CHAIR: Then please go ahead.

Mr DAVID SHOEBRIDGE: Thank you for your attendance, Minister and Commissioner. Following on from the questions that Ms Houssos was putting, what are the arrangements in place to actually notify real estate agents? Because that has been a repeated problem. There are the three incidents Ms Houssos has raised with you but it is not limited to them. It is a repeated problem. What are the arrangements in place to notify real estate agents of their obligations?

Mr KEVIN ANDERSON: Certainly through checking of contracts their solicitors should be doing that when they look through the contracts in terms of are there any prohibition orders on those bills of sale and the awareness campaign that we have put out through the real estate reforms under the Property and Stock Agents Act. They should know, but if people are doing the wrong thing, Mr Shoebridge, they will be held to account.

Mr DAVID SHOEBRIDGE: Minister, yes of course the real estate agents should be disclosing that in the advertising but they are not. But the question is how are the real estate agents finding out about the prohibition orders? What are the arrangements in place in your department to make sure the information is going out to the real estate agents? Because if they do not know, they cannot advise.

Mr KEVIN ANDERSON: Owners' corporations would be told. So they would then have that information at hand, and this is where real estate agents need to be doing the right thing.

Mr DAVID SHOEBRIDGE: So owners' corporations need to tell real estate agents?

Mr KEVIN ANDERSON: There needs to be that network.

Mr DAVID SHOEBRIDGE: Minister, owners' corporations are not in a discussion between the property owner and the real estate agent. They are not in that discussion. So we can rule out owners' corporations as being a way of doing it. You are saying the owners' corporation should, as soon as a property is for sale,

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proactively contact all the real estate agents. That is your solution, is it, Minister? Or Mr Chandler might shed some light on it.

Mr CHANDLER: When a solicitor acts for a purchaser, they call in a range of documents. So, for example, they would look at the minutes of the meetings and the records of meetings of the owners' corporation. So those documents should be available first of all in that setting. They should also be able to look at the Fair Trading website and identify those buildings that have orders on them.

Mr DAVID SHOEBRIDGE: But you see, Commissioner, you are at a very different point. The point is that the real estate agents, when they are advertising properties for sale, have an obligation to notify that there is a prohibition order in place. They are not doing that. Now, the real estate agent is not going to be contacting a prospective purchaser's solicitor before they put an ad out. They are not going to be contacting the owners' corporation before they put the ad out. The real estate agent needs to know from the department of Fair Trading or from the Building Commissioner or from some other part in the department that a prohibition order has been put in place.

Mr KEVIN ANDERSON: It is on the Fair Trading website, so their searches should reveal that, and the solicitor's purchaser should then do those searches and it would be uncovered as part of due process. If there are those real estate agents that are not doing the right thing, they do need to be held to account, Mr Shoebridge, and we will do that.

Mr DAVID SHOEBRIDGE: So every real estate agent should be trawling through the department of Fair Trading's website to identify all prohibition notices, which I have got to tell you is a hell of a challenge, and cross-referencing that against each property before they put the ad up? That is your position, is it, Minister? They are the arrangements you have in place?

Mr KEVIN ANDERSON: It is part of that process where real estate agents have to have due diligence in that process if they are doing their job and then obviously the purchaser's solicitor as well. So there needs to be a confluence of investigations and processes that will ultimately—if you are purchasing a property you would want to know what the situation is in relation to that property.

Mr DAVID SHOEBRIDGE: The problem I have with your answers, Minister, is that first of all it was the owners' corporations that should be doing it, then it was the purchaser's solicitor that should be doing it, then it is the real estate agents that should be going out and trawling the Fair Trading website. What is your department doing—and maybe Ms Webb can tell us—to actively proactively send a notification out to the real estate industry in a comprehensive way so that real estate agents know when prohibition orders have been made?

Mr KEVIN ANDERSON: I will ask the secretary.

Ms HOGAN: My understanding—and I will get Ms Webb to elaborate—is that agents at the Fair Trading team do reach out to agents in the area if they know that there is a prohibition order in place and especially if they see them selling something that has a PHO on it. Ms Webb might be able to elaborate now she is back online.

Ms WEBB: No, I concur with that. As the Minister said, we are also doing a lot of education activity more generically so that real estate agents understand their obligations and, when vendors are preparing properties for sale, that they should be making information about that available, but also our proactive campaigns in local areas. We will certainly investigate any complaints to us about this issue.

Mr DAVID SHOEBRIDGE: That sounds to me, Minister, that it is ad hoc, inadequate and the evidence would suggest it is not working. Do you have an answer to that?

Mr KEVIN ANDERSON: Mr Shoebridge, I do have an answer to that. That is why we are putting on a Property Services Commissioner to look at the areas that do need to be worked on and those areas that do need to be fixed. The Property Services Commissioner is a very important role that will have a role to play in looking at some of those gaps, working between the industry and the regulator to try to make sure that those lines of communications are clear. The Property Services Commissioner's role will also be to look at how do we fix those problems that you are highlighting there. Agents should be doing the right thing within themselves in terms of making sure that they look after—

Mr DAVID SHOEBRIDGE: Minister, I look forward to the Property Services Commissioner legislation coming in a fortnight's time when Parliament returns. I think implicit in that is an acknowledgement that there is not enough in place now and you are going to do something else.

Mr KEVIN ANDERSON: We are, Mr Shoebridge, thank you.

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Mr DAVID SHOEBRIDGE: Minister, I have given you a document, but I might ask you to share it with Mr Chandler. This is the *Project Remediate Industry Briefing* on the cladding product safety panel of 1 September 2021. You would be familiar with this?

Mr KEVIN ANDERSON: Mr Chandler?

Mr CHANDLER: This is the same presentation we essentially presented to your committee on 6 July.

Mr DAVID SHOEBRIDGE: Yes. But I do not know if this has changed slightly. It looks very familiar.

Mr CHANDLER: No, it has not. So what you heard on 6 July, it is here.

Mr DAVID SHOEBRIDGE: Can I say, Commissioner, the criticisms I have of what is happening or not happening is not criticism of what you have done. There is a hell of a lot to do and I acknowledge that. This document basically shows the requirements in place for cladding to satisfy the requirements of Project Remediate. Would that be a fair summary of what this document does?

Mr CHANDLER: Yes, it does.

Mr DAVID SHOEBRIDGE: What it makes clear is that Project Remediate requirements go well beyond the building code requirements for safe cladding.

Mr CHANDLER: They go beyond the Building Code of Australia to adopt what we would call best practice. I think you acknowledged that at the time.

Mr DAVID SHOEBRIDGE: Yes, and I continue to acknowledge it.

Mr CHANDLER: Thank you.

Mr DAVID SHOEBRIDGE: There may be some issues on the edges, but yes.

Mr CHANDLER: I know there is no question, so that is good. Yes?

Mr DAVID SHOEBRIDGE: If I could take you to the fourth page, which has got "Design Fire Safety Part 1", do you see that?

Mr CHANDLER: Yes.

Mr DAVID SHOEBRIDGE: This talks about the AS 5113 test that has been done for cladding, which is where you basically have a wall of cladding, you put a big fat furnace at the bottom of it, you set fire to the furnace at the bottom and you test how the cladding and the system that has been used to apply it responds to the fire. That would be a fair summary of the AS 5113 test?

Mr CHANDLER: Well, that is why we brought Mr Harry Lupman along to explain it technically to you, because, as you know, I am not an engineer and I am not a fire engineer.

Mr DAVID SHOEBRIDGE: No, but your work-person-like understanding accords with mine? That is basically what happens: You put a big furnace on the bottom, you set fire to it and you see what happens?

Mr CHANDLER: Well, that is not entirely the methodology we would take for testing cladding, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Well, anyhow, it is the Australian Standard 5113, which is the large wall test.

Mr CHANDLER: Sure.

Mr DAVID SHOEBRIDGE: You can see it in practice there: a large furnace burning, and you can see the fire spreading up. You can see that?

Mr CHANDLER: It is impressive, yes.

Mr DAVID SHOEBRIDGE: If you go to the next page, one of the requirements for Project Remediate is that there be cavity barriers put in place to prevent the fire spreading vertically, basically.

Mr CHANDLER: And horizontally.

Mr DAVID SHOEBRIDGE: That is necessary because quite often when cladding is put on a building, there is a gap between the cladding and the exterior wall of the building and it creates a kind of chimney effect, which draws the fire up. To prevent that, the cavity barriers are put in place to prevent the chimney operating.

CORRECTED

Mr CHANDLER: And, in particular, where the source of the fire is actually in the apartment itself and not the cladding.

Mr DAVID SHOEBRIDGE: Correct. It could be coming out through a window or it could be—

Mr CHANDLER: It could be a fridge on fire that has lit up the lounge room suite.

Mr DAVID SHOEBRIDGE: Yes, or a barbecue. But, importantly, as that sheet shows, those cavity barriers are not required by the "deemed to satisfy" provisions in the Building Code of Australia.

Mr CHANDLER: Correct.

Mr DAVID SHOEBRIDGE: So if we go to the next panel, you can see there a facade fire test using the 5113 standard with fibre cement panelling. There are no cavity barriers, but it would still be compliant with the Building Code of Australia?

Mr CHANDLER: Yes.

Mr DAVID SHOEBRIDGE: What you can see there is the chimney effect operating in full force. You can see the fire having been at the bottom and then escaping out the top, blowing out the top. Can you see that?

The CHAIR: Get to it. Ask the question at the end of this.

The Hon. SHAYNE MALLARD: Give him the Labor Party's time.

Mr DAVID SHOEBRIDGE: Well, I might just take you to the next slide, which is a test of solid aluminium. One of the tests is solid aluminium with the cavity barriers—that is the one on the left. One of the tests is solid aluminium without the cavity barriers—that is the one on the right. Do you see that? It has to be verbal, sorry, for Hansard. You do see that?

Mr CHANDLER: Sorry, yes, I can see that. Thank you.

Mr DAVID SHOEBRIDGE: The one on the left is what would happen under Project Remediate. There are about 200 buildings going through the Project Remediate process. Is that correct?

Mr CHANDLER: There will be fire barriers on Project Remediate, so you will not have that picture you see on the left.

Mr DAVID SHOEBRIDGE: Yes. So if you are on a building that is lucky enough to be in Project Remediate, the fire is going to have minimal spread because of the cavities?

Mr CHANDLER: You understand the diagram. Thank you.

Mr DAVID SHOEBRIDGE: But if you are in the thousands of other buildings, including ones that are currently being constructed at the moment around New South Wales with aluminium cladding on them, your situation is described by the image on the right, is it not?

Mr CHANDLER: I am not going to go with those images. These are often images provided by manufacturers trying to disrepute their competitors' products.

Mr DAVID SHOEBRIDGE: Commissioner, this is an image provide by Alan Harriman, the Cladding Products Safety Panel member, provided to the Public Accountability Committee and provided to the industry by your office and the Minister's office. That is what that image is, is it not?

Mr CHANDLER: Well, I am going to talk to Project Remediate. If it is outside that then I cannot help you.

Mr DAVID SHOEBRIDGE: Commissioner, you know that the image on the right, which is an entire wall of cladding that has been burnt to a cinder, with fire spreading across the entire wall, represents what can happen on pretty much any building that has got aluminium cladding on it without the cavity barriers?

Mr CHANDLER: That is not in Project Remediate.

Mr DAVID SHOEBRIDGE: That is not in Project Remediate?

Mr CHANDLER: Correct.

Mr DAVID SHOEBRIDGE: Minister, there are thousands of buildings across the State being built at the moment with exactly this kind of cladding on them and no cavity barriers. How are you allowing that to happen? You can see what happens here; the entire wall goes up in flames. Why are you not doing something about it?

CORRECTED

Mr KEVIN ANDERSON: We are attacking it through, firstly, the class 2 high-rise residential under Project Remediate, Mr Shoebridge. Those buildings that are in as part of Project Remediate will be remediated.

Mr DAVID SHOEBRIDGE: Minister, there are thousands and thousands of buildings with this kind of aluminium cladding on them. You have got all the evidence that shows it is a major fire hazard and you are doing nothing?

Mr KEVIN ANDERSON: There are many buildings that have already been remediated, Mr Shoebridge, and those in Project Remediate, as you saw yesterday, that work has started on the triaging of those high-rise—they are the ones, the high-risk ones, that we need to focus on immediately and that is the work that is being done now.

The Hon. JOHN GRAHAM: I think you are being called to order, David.

The CHAIR: Sorry, I thought you were maybe going to be a little shorter than that.

The Hon. WES FANG: Is he ever?

The CHAIR: We may have time to come back.

Mr DAVID SHOEBRIDGE: You may not think it is a big issue. I do, actually.

The Hon. WES FANG: I did not say that. Please stop putting words in people's mouths, David.

The CHAIR: Order! Minister, if I could just ask you some questions about Greyhound Racing NSW [GRNSW] and specifically the Greyhounds As Pets [GAP] program. I understand that, under its operating licence, Greyhound Racing NSW is required to progressively improve the total number of dogs that it is rehoming each year and that it needs to report on that rehoming target in its annual report. In the annual report, it talks about "GAP-assisted rehoming" but not greyhounds directly rehomed. How is GAP-assisted rehoming defined?

Mr KEVIN ANDERSON: Before I ask the racing director to elaborate on that, "GAP-assisted" is where they will take a greyhound and triage it, if you will, in terms of its suitability for being rehomed—whether that dog needs to spend some time at a rehoming facility under the control of Greyhound Racing NSW to ensure that the racing behavioural traits are negated and it becomes more user-friendly as a pet. Or there may be some other incidences where the dog may not be suitable immediately as a pet straight up. So there are different avenues to try to look at rehoming. But I would like to ask the Director of Racing—through you, Madam Chair—Mr O'Brien.

The CHAIR: Thank you. Just before you do, Mr O'Brien, could you specifically tell me how "GAP-assisted" is defined and how that differs from the number of dogs actually rehomed through GAP?

Mr O'BRIEN: My understanding is, in addition to the GAP program that GRNSW runs, it also provides assistance to other independent rehoming organisations—so financial assistance and, as the Minister talked about, the triage assessment as well.

The CHAIR: Could you then define what they mean when they say "GAP-assisted"?

Mr O'BRIEN: It is the rehoming organisations—greyhounds rehomed through the organisations that GRNSW supports, in addition to the GAP program.

The CHAIR: Okay. Let me understand this. They are taking credit not only for the dogs that are rehomed through GAP directly but also for any that are rehomed through organisations that they have given some money to. Is that what you are saying?

Mr O'BRIEN: So they both rehome dogs directly through GAP and then they also provide financial assistance to other rehoming organisations to help them rehome dogs.

The CHAIR: So when GRNSW's strategic plan states that it aims to rehome 1,000 greyhounds per year within the next three years through GAP, but then the Greyhound Welfare and Integrity Commission [GWIC] annual report only shows 246 dogs being rehomed through GAP, are you saying that the GAP-assisted number is higher than 246 dogs?

Mr O'BRIEN: Yes, that is right. That is my understanding.

The CHAIR: So how much is the GAP-assisted rehoming?

Mr O'BRIEN: For 2019-20, and this is from GRNSW, they rehomed 497 dogs through GAP or through GAP-assisted programs.

The CHAIR: Four hundred and ninety seven. That is some way below the 1,000 that it is aiming to rehome. Is that not right, Minister?

CORRECTED

Mr KEVIN ANDERSON: It is below that target, Chair. But I think you have to have a target, otherwise you do not have a goal to aim for. So I think that the work being done by Greyhound Racing NSW is quite significant with rehoming and, as you rightly point out, Chair, the various options that greyhounds are able to enjoy in their retirement.

The CHAIR: How many dogs did GAP euthanise in the last financial year?

Mr KEVIN ANDERSON: I will ask Mr O'Brien. Do you have those numbers, please?

Mr O'BRIEN: I do not have that figure to hand, but I can probably take that on notice.

The CHAIR: You do not know how many? So we know how many dogs they rehomed—which was way below what they should have—but you do not know how many dogs they killed?

Mr O'BRIEN: Not specifically through GAP. The commission reports quarterly on retirement and end-of-life outcomes for greyhounds in New South Wales. I am happy to provide those figures, but I do not have specific ones for GAP.

The CHAIR: The licence also requires Greyhound Racing NSW to make available to GWIC on request the verified outcomes of a reasonable representative sample of rehomed greyhounds. Has that ever been undertaken, do we know?

Mr KEVIN ANDERSON: Mr O'Brien?

Mr O'BRIEN: I would need to take that on notice and ask the commission the details of what has been provided by GRNSW.

The CHAIR: Thank you. In relation to the number of dogs that have been euthanised by GAP, if you could let us know not just for the last financial year but also in the previous three years, that would be very useful.

Mr KEVIN ANDERSON: Sorry, Chair, are you saying euthanised by GAP or just euthanised generally?

The CHAIR: Both of those figures would be useful, but I am particularly interested in the numbers that are being euthanised by GAP. Minister, are you aware of the recent disciplinary findings against three different greyhound industry participants for pin-firing?

Mr KEVIN ANDERSON: I do not have that information in front of me, Chair. But if you would like to elaborate on those three individuals then, certainly, we can take those on notice for you.

The CHAIR: Pin-firing, for anyone who does not know, is illegal under the Prevention of Cruelty to Animals [POCTA] Act. It involves sticking a red-hot needle into a tendon or ligament to cause tissue damage and then scar tissue to supposedly tighten the joint for racing, presumably to make the dog race quicker. There were three warnings, as reported in *The Greyhound Recorder*—perhaps I could give them to you separately, rather than naming those individuals here. But I could name them if you would like me to. The practice has been prohibited for 24 years. Clearly, the horrendous cruelty that had this industry banned in 2016 is still present in some parts of this industry, is it not?

Mr KEVIN ANDERSON: I have not seen those and do not have the details, Chair, but that is appalling, if that is the case. I certainly have zero tolerance to animal cruelty, regardless of the animal. When it comes to greyhounds, we have done a significant amount of work in the welfare and integrity of the greyhound racing industry. Participants do the right thing. They are embracing the new reforms. They are embracing the new rules and regulations and they are embracing the way that the industry should go forward. There is no room in the industry for the people you are mentioning.

The CHAIR: In October 2020 you stated that then new Code of Practice had the highest welfare standards in the country and you have said that New South Wales can "take the lead". Do you consider a 44 per cent increase in deaths on tracks taking the lead?

Mr KEVIN ANDERSON: Chair, I do not believe those numbers are correct. I am happy to take them on notice. But the numbers that I have significantly point toward a downward trend when it comes to those numbers over the last couple of years. That is on the back of the track safety standards. That is on the back of the welfare and integrity that Greyhound Racing NSW and the whole industry and participants are embracing. These people love their dogs. They love their greyhounds, Chair, and they would not want to see them injured. So anybody who does go down that path, they should be banned. They should face the full force of the law and should not be allowed to participate in the industry.

CORRECTED

The CHAIR: Are you aware that from January to March 2021—the first quarter of this year—GWIC reported, "The catastrophic injury rate this quarter is the highest reported since Q1 2019"? Catastrophic injury is that which results in sudden death or requires euthanasia. What are we doing wrong that this is still occurring on our tracks?

Mr KEVIN ANDERSON: In 2019-20, and when you look at other jurisdictions, Greyhound Racing NSW reported 69 racing fatalities compared to 52 injuries in New South Wales. That is trending downward. That is as a result of the welfare and integrity and the track safety standards that are being put in place now, given the work that is being done right across New South Wales. We are seeing some of that work now with the straight track at Richmond, which is a much safer option. We are seeing tracks being upgraded where the corners are being fixed to adjust the camber. You need to understand, Chair, as you do—

The CHAIR: I do.

Mr KEVIN ANDERSON: —that these animals are the Formula Ones of the—

The CHAIR: Well, we may disagree on that. Sorry, because time is limited, can I just point out to you that New South Wales has had the highest number of deaths for 2020-21 so far, up until 26 October 2021. New South Wales has had 54 greyhounds die this year already. The next highest is Victoria with 37. How do you marry that up with the idea that we have the highest welfare standards in Australia?

Mr KEVIN ANDERSON: I do not have the veracity of those numbers, Chair. But I am happy to take your numbers and put them against mine and we will try to see if we can find the right answer. But I firmly believe, just lastly, that the track safety standards that Greyhound Racing NSW is implementing, whether it be through Grafton all the way to Broken Hill and all places in between, significant work is being done, like the whole of life electronic tracking that we announced not so long ago.

The CHAIR: Which we may talk about, because it does not actually do the trick. But we will come back to that.

Mr KEVIN ANDERSON: Thank you, Chair.

The CHAIR: Over to the Opposition.

The Hon. JOHN GRAHAM: Thank you, Chair. Minister, I might return to where we were when my colleague was putting to you those five properties—all examples of places where buyers, including first home buyers, might not have been made aware of the condition of those properties. I just want to be clear, firstly, what you have agreed you will do. You variously indicated you would have it investigated, or you would have it looked at, or you would take it on notice. Just to be clear, we do not want you coming back in 21 days just saying, "Look, I'm providing an answer on notice." Who will investigate this? What will they do, given the evidence that has been put in front of you by my colleague?

Mr KEVIN ANDERSON: Thanks, Mr Graham. If people are in breach of the Property and Stock Agents Act in relation to notification then they will be investigated. I will ask the Fair Trading Commissioner what can be done. But I agree with you, Mr Graham. If they are doing the wrong thing, then agents do need to be held to account.

The Hon. JOHN GRAHAM: What I want to know is, what have you committed to today? You have said you "will have it investigated", not "if they are doing the wrong thing we will investigate". You will have the evidence that has been put in front of you investigated. Is that what you have committed to today?

Mr KEVIN ANDERSON: Mr Graham, I will check the veracity of what you are saying. I do not doubt that, but I will just do my own homework, thank you. Then, if they are doing the wrong thing, they will certainly be investigated by Fair Trading.

The Hon. JOHN GRAHAM: Will Fair Trading look at the evidence that has been put in front of you today and investigate it and who will do that?

Mr KEVIN ANDERSON: We will certainly look at the evidence that you have put in front of us today, Mr Graham, and if there is a breach of the Property and Stock Agents Act then action will be taken.

The Hon. JOHN GRAHAM: Yes, but you are not committing to a formal investigation today?

The Hon. WES FANG: Point of order, Chair.

The Hon. JOHN GRAHAM: Look, the Minister is answering—

The CHAIR: I will hear the point of order.

CORRECTED

The Hon. JOHN GRAHAM: The Minister is actually answering this.

The Hon. WES FANG: Well, no, but you have asked—

The CHAIR: Order! I will hear the point of order.

The Hon. WES FANG: Yet again, it is becoming—

The CHAIR: Is it the same point of order?

The Hon. WES FANG: No. It is becoming a bit of a trend that Opposition members ask a question, the Minister takes it on notice or provides an answer and Opposition members then say, "You are not answering the question" and ask the same question again. It has occurred three times now. I ask you to draw members' attention to the fact that there is a procedural fairness resolution and that this continual badgering and putting words in the Minister's mouth is not acceptable.

The CHAIR: I do not need any more contributions on the point of order. I do not believe we have got to the badgering stage. By all means, Minister, tell me if you are feeling badgered.

Mr KEVIN ANDERSON: I am not feeling badgered, thank you, Chair. But thank you, Mr Fang.

The Hon. JOHN GRAHAM: I just want to be clear what you are committing to, Minister. So you are saying that you will pass this on but you are not commencing a formal investigation.

Mr KEVIN ANDERSON: I will take on board the information that you have provided to me, Mr Graham. If there is a breach of the Property and Stock Agents Act, they will be investigated.

The Hon. JOHN GRAHAM: That is what you will do. Now I want to ask: What have you done? Here are some new examples, but this has been referred to in the media very publicly in relation to other cases. Some of these were four months ago. What did you do? Were those investigated? What action did you take at that point? Separate to what you will do, what have you actually done when these have been public?

Mr KEVIN ANDERSON: I will ask the Fair Trading commissioner to respond to that if I can, Mr Graham.

Ms WEBB: I have asked my team for some information just to see if we are already looking at these matters, and if I can get that before the session finishes I will certainly let you know. I do not have any information to hand about specific investigations but, as the Minister previously mentioned, we have been alerting real estate agents to the fact that they would be in breach of the Act if they continue not to inform purchasers, and we will continue to do that.

The Hon. JOHN GRAHAM: Ms Webb, if you can come back in the session with some information, that would be good. These were in the paper very publicly. Minister, to your knowledge, there has been no investigation commenced that you have requested. You made no request when these were public.

Mr KEVIN ANDERSON: I will get that information to you, Mr Graham. But, again, this is why the property services commissioner's role will be so important—

The Hon. JOHN GRAHAM: You would remember if you had requested it though, would you not?

Mr KEVIN ANDERSON: We will make sure that if there is an investigation underway we will come back to you on that, but the property services commissioner's role is part of that process to make sure that real estate agents continue to do the right thing.

The Hon. COURTNEY HOUSSOS: Ms Webb, how are you notifying real estate agents?

Ms WEBB: I think the Minister previously mentioned several ways, so directly to real estate agents who are in the local vicinity. We are also educating, we have regular electronic direct mails, we have our property services advisory committee, we have regular webinars to real estate agents. So we are using a complete variety of means to inform them and educate them.

The Hon. COURTNEY HOUSSOS: Minister, let me put this direct quote to you from the Real Estate Institute of New South Wales Chief Executive Officer, Tim McKibbin, who says Fair Trading has provided no education that he is aware of in relation to this issue in terms of prohibition orders. "They have put something on their website and they have a document they update on an ad hoc basis, but there is," and this is a direct quote, "very little knowledge of this issue in the market".

Mr KEVIN ANDERSON: As you heard from the Fair Trading commissioner, Ms Houssos, we are out there. There will be some that perhaps miss some of that marketing and that educational opportunity.

CORRECTED

The Hon. COURTNEY HOUSSOS: No, Minister, you are actually misleading the Committee now when you say that there are some who have missed. This is the peak body for real estate agents saying that there is very little knowledge about this issue in the market. This was first raised four months ago with you, and you cannot point except to a couple of emails that may or may not have been sent out.

Mr KEVIN ANDERSON: Ms Houssos, as we said, we will take that on board, and the Fair Trading commissioner is looking at what investigations in relation to those issues you have brought forward. In relation to the Real Estate Institute of New South Wales, we have regular communication with them. They are yet to raise that with me in relation to what you are talking about, but we will continue to work with the real estate institute as well as the many other organisations right across New South Wales. Again, this is why a property services commissioner is about to be appointed—we are very close to announcing who that person will be—to look at what we need to do to fill the gap, Ms Houssos, that you are talking about right now. Just like we did with the Building Commissioner, that is what the property services commissioner will do: to look at are there gaps in terms of that education, are there gaps in terms of that campaign process to inform real estate agents? That is the work we are doing right now.

The Hon. COURTNEY HOUSSOS: You do not need to engage someone else. The peak body for real estate agents is telling you there is a problem. It was raised four months ago on the front page of a major metropolitan newspaper, and it appears that your Government's response to protect apartment owners from buying into deeply defective buildings is to say, "We'll send a couple of emails to real estate agents." Minister, do you know how many apartments have been sold in these buildings over the past four months?

Mr KEVIN ANDERSON: I do not have those numbers, Ms Houssos, but we can take it on notice and come back to you.

The Hon. COURTNEY HOUSSOS: Are you tracking those numbers?

Mr KEVIN ANDERSON: I do not have that information, Ms Houssos, but I will take it on notice and come back to you on that.

The Hon. JOHN GRAHAM: You should have it though, shouldn't you? Is that not the sort of information you should have at your fingertips, Minister?

Mr KEVIN ANDERSON: I can ask the Fair Trading commissioner if she has those numbers at her fingertips.

Ms WEBB: The numbers of apartments sold, I don't have. I have now got some information about letters having been written to estate agents in relation to the Residential Apartment Buildings (Compliance and Enforcement Powers) [RAB] Act orders. It was done by requesting details of all agents that were selling property in the developments from the developer, and then we wrote letters to all of those advising them of the requirements. We continue to write that information out, specifically to those agents. But we can find some details of how many properties have in fact been sold since the orders were made and provide that on notice.

The Hon. COURTNEY HOUSSOS: Minister, why is the obligation to disclose the information on the agent and not on the vendor?

Mr KEVIN ANDERSON: It is. It is on the vendor as well, Ms Houssos. There is a raft of opportunities, as we just heard from the Fair Trading Commissioner, in relation to—those agents who have identified in and around that area will have been notified as well as owners corporations and the like to do the best catch-all, if you like, to inform consumers of the situation if there is a—

The Hon. COURTNEY HOUSSOS: I do not think we can characterise this as a catch-all, Minister. Why isn't the obligation on the contract for sale along with other disclosures?

Mr KEVIN ANDERSON: It is, Ms Houssos.

The Hon. COURTNEY HOUSSOS: Are you certain of that, Minister?

Mr KEVIN ANDERSON: Yes, I am.

The Hon. COURTNEY HOUSSOS: Can you point to the part of the Act where it puts the obligation on the contract for sale?

Mr KEVIN ANDERSON: I will find that part of the Act if you like, but also the Building Commissioner, we have had this discussion, and I would like the Building Commissioner to reiterate. Please, Mr Commissioner?

CORRECTED

Mr CHANDLER: There is an obligation on vendors that if there are known defects in the properties for sale they disclose those properties for sale. I can go and find the exact wording of the legislation for you. I do not have it at my fingertips. But vendors are required to disclose if they have known defects in their properties that are for sale. My first port of call on the questions you have raised is that I will have a look at the contracts for sale to see what is in the contracts for sale. So before I jump in, I am just going to have a look at a couple of the contracts for sale as a starter.

The Hon. COURTNEY HOUSSOS: Mr Chandler, you mentioned earlier that you were talking to someone about this yesterday.

Mr CHANDLER: Yes, I was involved in another project yesterday where there was an agreement developed between the developer and the owners corporation to settle a litigation. It is not a matter that I was specifically called into, but I went and had a look by way of interest. I wanted to make sure that the owners corporation understood that they should note that agreement that they had just reached with a developer, and that they should acknowledge that agreement on the next minutes of the executive committee and make that available to all of the owners so there is no way of avoiding it in the event of an incoming purchaser. Their solicitor should be able to do a due diligence. What they do is they call in all the body corporate documents. I just wanted to emphasise to that particular committee that in fact make sure that you record this agreement that you are entering into on the executive committee minutes and make sure that is available to every owner.

The Hon. COURTNEY HOUSSOS: Minister, you might need to take this on notice. Can you see whether the agents in those five examples were notified?

Mr KEVIN ANDERSON: I will take that on notice, Ms Houssos, and I think the Fair Trading commissioner is also trying to look at expanding on that last answer.

The Hon. COURTNEY HOUSSOS: Minister, I might move on to a different topic. I am just having trouble finding my notes. Actually, Mr Chandler, you said you are going to come back to us on the interim occupation certificates in force. Are you able to then provide us with a number as to how many of those have been audited by your office?

Mr CHANDLER: Yes, we could, and let's not put any other version on it: We are focusing on pre-occupation certificate audits, using our risk rating tools to do that. That has now got a very high landing success where 80 per cent of the buildings that we think ought to be or are likely to be presenting serious defects—80 per cent of the buildings that we are going in for pre-occupation certificate audits are in fact turning out to be representative of the risks that we thought might be there. In terms of buildings that have already got occupation certificates, at this stage we have been responding to, first of all, the ones that do become known to us. As you are aware with our recent survey of owners' corporations only 15 per cent of owners' corporations advised Fair Trading that they have serious defects. That is another area that we have got to do more work on because that really is an ordinary number that only 15 per cent have advised Fair Trading. Our line of sight to that is not that great.

But now that we have the e-planning platform up and we can actually have a look back through all of those buildings and call in, we are focused on the certifiers that have actually had the highest presence in that space. So we are selecting a few at the moment based on that and we are just about to start an initiative to go back and look specifically at buildings where we think there were high-risk certifiers because that is likely to be the place where the ordinary interim occupation certificates were issued. It is a work in progress. I am not going to say we are there yet because every six months has opened up another area of discovery for us. But, enabled by the digital capability that we have now got, it is unbelievable. I am blown away every day by just the power that we have.

The Hon. COURTNEY HOUSSOS: Mr Chandler I understand that the certifiers is one part of the risk element. We have also seen a pattern of behaviour from some developers here. Have you now audited all of the Toplace and Merhis developments?

Mr CHANDLER: No, we have not. We have a series of investigations underway at the moment and it is inappropriate for me to name those investigations. I hope you would believe that the frequent flyers in this space are getting lots of attention so I would expect that they would be reporting they are getting a lot of attention. Unfortunately I cannot name the projects but we are going back through their legacy projects and we will be taking those into the area of building works rectification orders and then subsequently looking at the use of enforceable undertakings. It looks as though it is going to become a far more effective way of resolving some of these legacy projects than just leaving them to the owners to go through the courts.

CORRECTED

The Hon. COURTNEY HOUSSOS: Can I move on to the question of the issue at Imperial Towers, that is also known as the Hassall Street development? A prohibition order was issued on 5 July for that project which is located at 9 Hassall Street. Is that correct?

Mr CHANDLER: Yes.

The Hon. COURTNEY HOUSSOS: The prohibition order was then revoked?

Mr CHANDLER: Yes.

The Hon. COURTNEY HOUSSOS: Who revoked that order?

Mr CHANDLER: The Director of Property and Building at Fair Trading. Let me be quite clear: I was aware of that decision because it was part of a conversation with the developer to say, "Is it an unintended consequence that you have included in the order to ban the registration of the strata plan?" That was not the intent of the order so that was an incorrect inclusion in the order. So we simply rectified the order because the intent of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act [RAB Act] is to, in fact, interfere with the issuance of an occupation certificate order, not to get into the transaction between the developer and its purchasers.

The Hon. COURTNEY HOUSSOS: You would be aware that by allowing the strata scheme to be registered that then did not allow the owners to exert their consumer protections under the sunset clause; that they are now essentially locked into purchasing this deeply defective building?

Mr CHANDLER: It depends when the building ultimately achieves an occupation certificate. As I said to you, we are not focusing on interfering with the transaction between the developer and the purchaser, other than where we believe the occupation certificate should be delayed for substantial reasons, then we will delay the occupation certificate issue which is the transaction point where the purchaser moves from being a depositor to an owner. That has always been the intent of the RAB Act. It has never been any other intent.

The Hon. COURTNEY HOUSSOS: I understand that that is your perspective as the Building Commissioner. Minister, what are you doing to protect those homebuyers, a large number of whom are first-homebuyers, who are now being forced to purchase, against their wishes, into this deeply defective building?

Mr KEVIN ANDERSON: Ms Houssos, firstly, we are in the business of fixing buildings, not contracts. Mr Chandler has highlighted the error made.

The Hon. COURTNEY HOUSSOS: Sorry, so your characterisation—

The Hon. SCOTT FARLOW: Point of order: The Minister has only just started his remarks. He should be allowed to finish his answer.

The Hon. COURTNEY HOUSSOS: Yes, I wanted clarification on what he just said though.

The Hon. WES FANG: You can have that after he has provided his first section of answers.

The Hon. COURTNEY HOUSSOS: Is it your evidence that you are not interested in the contracts for sale?

Mr KEVIN ANDERSON: What we are interested in, and what we do and are in the business of doing, is fixing buildings, not interfering with contracts as the Building Commissioner has clearly stated.

The Hon. COURTNEY HOUSSOS: No, Minister, I accept that that is his view as the Building Commissioner but you are the Minister for consumer protection. A large number of first home and apartment buyers have purchased into a deeply defective building and because of the flick of a pen by a bureaucrat in your department they are now being forced into this against their will. They had lawyers who were offered by the developer. Do you think that that is a fair process?

Mr KEVIN ANDERSON: Ms Houssos, what happened in July when the prohibition order on the registration of the strata was issued did not interfere with the timing of the sunset clause of 30 November for when the strata registration was to be stood up. So in July there was an unintended opportunity granted at that point in time. This error was quickly identified and it was fixed.

The Hon. MARK BANASIAK: Mr Chandler, I will pick up on the prohibition order issue. One of the first prohibition orders you placed, amongst others, was for 319 Liverpool Road, Strathfield South. Is that correct?

Mr CHANDLER: That was a stop-work order, was it not?

The Hon. MARK BANASIAK: It was reported in the *Sydney Morning Herald* as a prohibition order but I will leave it up to you to describe what it was because you issued it.

CORRECTED

Mr CHANDLER: My recollection is that that was a stop-work order. With all of your good grace, we found that, in fact, there was a technical challenge to that stop-work order so I lifted that order and, very kindly, you all consented to amend the regulation and now we are in a position to reissue that order. All of you should take a bow on that one.

The Hon. MARK BANASIAK: From memory when was it lifted? Was it around 18 May which is what is in my notes?

Mr CHANDLER: Possibly, I cannot recall the date. It is not the Blacktown project, is it? It is Strathfield, is it not?

The Hon. MARK BANASIAK: Strathfield South.

Mr CHANDLER: We have lifted that stop-work order. We did that in conjunction with conversations with Burwood council because it is not possible for both of us to have orders on projects at the same time. So the council said if we lifted the order it would step in and issue an order to stop work. Of course, its process of issuing a stop-work order is not as streamlined as ours where we issue and then the developer has to challenge our order. Councils have to go to the court and get the permission to issue the order. The reality is that that project has not recommenced construction so we are keeping a very close eye on it because that project actually then lost its certifier. The PCA resigned. The only choice that was available to the developer was finally, after giving the council such a hard time, to go cap in hand and get the council to become the certifier. So council did not have the resources and it has gone out to tender. I understand just recently it has appointed a certifier to help it be the certifier. A lot of work has to be done before that project recommences.

The Hon. MARK BANASIAK: Are you in a place to recommend certifiers to these people if they lose their certifier or there is an issue with the certifier they are using? Are you in a position where you have the power to recommend a particular certifier?

Mr CHANDLER: A regulator does not do that. A regulator says, "You have got a problem" but it is not going to tell you how to fix it. Constantly, for example, in wet areas and bathrooms, we discover a bathroom that is simply noncompliant and has to be pulled up. The first thing is the developer turns around and says, "What do you want me to do to fix it?" We say, "Go and get a proper design done and get it declared under the Design and Building Practitioners Act and then do the job properly." But we do not ever say "that certifier" or "that design solution". That is not what the regulator does.

The Hon. MARK BANASIAK: As a regulator do you have the option to reject a private certifier's findings or report and then request for them to go and get another one?

Mr CHANDLER: Typically, what we would do is, if we had a residual concern as we did, for example, at the Skyview project, I felt that, as I am not an engineer, I was not in a position to form a view on the independent nature and quality of the report done on the repairs so I went and commissioned an independent report. So where Fair Trading sees that there needs to be another party—as there is, for example, at 93 Auburn Road where we are still dealing with the building works rectification order there—is that we are not satisfied with the developer's engineer or the developer's independent engineering advice. So we have just commenced going back into that project to get an opinion to advise the director of property and building. Unfortunately, COVID has really quite extended that.

The Hon. MARK BANASIAK: Sure. I might just go back to you, Minister, about the property services commissioner you have mentioned in questions from the Opposition. My understanding is it was advertised earlier this year and the applications closed on 5 July. Is that correct?

Mr KEVIN ANDERSON: That is correct.

The Hon. MARK BANASIAK: As yet an appointment has not been made, or you said an appointment is imminent?

Mr KEVIN ANDERSON: Yes, Mr Banasiak, an appointment is imminent. We are down to the last couple of interviews and have some fantastic candidates and we are just working through the last of the work that needs to be done before we are in a position to make an announcement.

The Hon. MARK BANASIAK: My understanding is that quite a few people were offered the job but they turned it down. How many people were offered the job and then subsequently turned it down?

Mr KEVIN ANDERSON: It was not a case of offering the job. You go through different stages of interview process and, through circumstances known to them—whether they be personal or whatever the case may be—they chose not to proceed. So we would then go back to an interview process and continue down that path.

CORRECTED

The Hon. MARK BANASIAK: It is my understanding that some of the reasons why people chose not to proceed was that they essentially saw the role as ornamental and not necessarily a robust commissioner, like we have now with the Building Commissioner, and that was the reason why they opted to—

The Hon. WES FANG: Can you cite those?

The Hon. MARK BANASIAK: —not take up the offer or proceed further in the application process. What is your comment to that?

Mr KEVIN ANDERSON: No, I reject that comment. As we have heard, some of the concerns where we have got work to do between the regulator and the real estate industry to make sure that, you know, we are working together as one, it is a very important role, and this role is something that we have been working towards. Certainly, it will have plenty of clout attached to it, Mr Banasiak. It is certainly not ornamental.

The Hon. MARK BANASIAK: Okay. So what powers will be property services commissioner actually have?

Mr KEVIN ANDERSON: So the property services commissioner will report directly to me and to the secretary—

The Hon. MARK BANASIAK: That is not a power. What powers will they have?

Mr KEVIN ANDERSON: So, Mr Banasiak, the property services commissioner will report directly to me and through to the secretary. What they will be able to do will be, first and foremost, look at the role of the regulator, look at the real estate industry, which is a significant economic contributor right across New South Wales, to basically look at some of those issues that we have talked about here today—just like the model that was built on the Building Commissioner where the Building Commissioner came in, set up a small team and then looked at that problem. We will be doing the same model with the property services commissioner. This is a very important role, Mr Banasiak. We are taking this very seriously.

The Hon. MARK BANASIAK: Yes, but that is not a power. Looking at something is not really a power. So once they have finished looking at it, what specific powers or enforcement actions will they be able to take, like the Building Commissioner has now: He can issue prohibition orders, stop work orders, and a whole range of things. What specific powers, regulatory powers, will the commissioner have, other than looking at things?

Mr DAVID SHOEBRIDGE: X-ray vision.

The Hon. MARK BANASIAK: Perhaps X-ray vision.

Mr KEVIN ANDERSON: Well, they might have X-ray vision. That would be good.

The Hon. MARK BANASIAK: Yeah.

Mr KEVIN ANDERSON: What that person will be doing in the first instance—let us get their feet under the desk and then we will look at what is required. And, just like the commissioner, they will be given the resources to do that role. So they will report directly to me. They will sit as a commissioner. They will have the powers that will be required to do the work they need to do. That will evolve as time goes on.

The Hon. MARK BANASIAK: Will it be legislated?

Mr KEVIN ANDERSON: It does not need to be legislated, Mr Banasiak. Again, this is a role that we take very seriously. We will let the commissioner look at what needs to be done, the resources, the work, the plan and we will appropriately resource.

The Hon. MARK BANASIAK: Okay. What will be your remuneration for this commissioner?

Ms HOGAN: I have to take the number on notice, but it is a deputy secretary level role.

The Hon. MARK BANASIAK: And part of their role will be to—

The Hon. WES FANG: I think you might have another applicant over here.

The Hon. MARK BANASIAK: No, no.

Mr DAVID SHOEBRIDGE: Are you sick of your job, Wes?

The Hon. WES FANG: Me? No, no.

The CHAIR: Order!

CORRECTED

The Hon. MARK BANASIAK: Will part of the role be to work with the expert panel or act as an intermediary between you and the expert panel?

Mr KEVIN ANDERSON: That person will sit on the Property Services Expert Panel where there are approximately 15 or 16 organisations across the real estate property sector in New South Wales who currently sit on that panel, chaired by Chris Duggan. The property services commissioner will sit on that panel and will work with them.

The Hon. MARK BANASIAK: Okay. I note in your second reading response to my property services bill when it came to the lower House you said that you were working to try to get the Real Estate Institute of New South Wales back on that expert panel. What exactly are you doing to instil confidence in them to return?

Mr KEVIN ANDERSON: Well, we are continuing to offer the olive branch. The Real Estate Institute of New South Wales is a key player in that sector. A key advocacy role is played by the Real Estate Institute of New South Wales along with a myriad of other organisations. The Real Estate Institute of New South Wales chose to withdraw from the Property Services Expert Panel. We sincerely hope, and we will continue to offer the olive branch, that they will return to the table.

The Hon. MARK BANASIAK: I think that is my time so I will have to come back to it. Mr Shoebridge?

The CHAIR: I am just going to hop in very quickly and then go to back to Mr Shoebridge.

The Hon. MARK BANASIAK: Sorry.

The CHAIR: Minister, I wanted to ask you about the National Construction Code's minimal accessibility standards. Why is New South Wales not joining the ACT, Victoria, Queensland, Tasmania and the Northern Territory in signing on to the 2022 National Construction Code minimum accessibility standards?

Mr KEVIN ANDERSON: Thank you, Chair, for your question. In relation to the minimum accessibility codes, it was discussed at the last building Ministers forum. New South Wales has chosen not to go down that path purely because of the economic benefits in the first instance under COVID, where building and construction is needed to drive the economic reform of New South Wales so the State can get back on its feet again. So any further cost burden placed upon those operations were seen as disadvantageous. In relation to making sure that those people who need accessibility options have them, it is already there through Landcom and also through our social housing where all of the social housing options are being done.

The CHAIR: Do you accept that, given we have the ACT opting in to these standards along with Victoria and Queensland, it creates needless complications for the construction industry across borders?

Mr KEVIN ANDERSON: No, I do not think it does. Quite often you will see different States do different things in relation to the way that they run their building and construction sector. What we have done is we have suggested a balanced proposal that involved developing a set of technical standards for both gold and silver accessibility that could be adopted by industry and social housing providers over time and applied in a targeted way through Housing and the planning policies.

The CHAIR: Thank you. In a letter to the Council on the Ageing, you stated that you "fully acknowledged the benefits that accessibility housing can provide to the community", and you then go on to say that "up to 30 per cent of people may need accessible housing at some point in their life". Why then is New South Wales requiring only 20 per cent of new apartments and 20 per cent of medium and high-density dwellings developed by only one specific developer to meet accessible housing standards? With 30 per cent needing accessible housing and you are putting in place requirements for 20 per cent to be accessible, where are the other 10 per cent expected to live?

Mr KEVIN ANDERSON: In regard to those numbers, Chair, Landcom will do 20 per cent of all houses and apartments and social housing will do 100 per cent of that. What we are doing is providing guidance in relation to those standards to those developers, should they take it up, and those guiding principles will be the benchmark going forward in the interim.

The CHAIR: Do you know what the minimum standards are?

Mr KEVIN ANDERSON: In regard to the silver standards?

The CHAIR: Just off the top of your head.

Mr KEVIN ANDERSON: The silver standards?

The CHAIR: No. The standards that they have gone with in the National Construction Code.

CORRECTED

Mr KEVIN ANDERSON: What we are looking at are the technical standards for both gold and silver accessibility and it looks at basically bathrooms; it looks at staircases; it looks at access, carparks, lift wells and those sorts of things.

The CHAIR: They are pretty simple though, are they not? It is things like at least one access to the building. If someone comes to visit you who is in a wheelchair or cannot go up steps, they can get into your building. One access point to your building is all that is required under these standards. Having reinforced shower walls, not so you have to put a railing in right now, but so that one could be put in in the future by somebody. It is very minimum. Given the humongous benefits that would give for accessibility for people not just living in houses but also visiting people in other houses, is it not worth that tiny 1 per cent—or whatever it is— increase in cost on the construction industry?

Mr KEVIN ANDERSON: New South Wales is doing a significant amount about accessibility. Again I go back to Landcom—20 per cent of all houses and apartments developed. Plus there are those standards and those guidelines for both gold and silver accessibility. Should someone look at buying off the plan, then they can have those discussions to say, "This is what I am requiring." The options are there. That is where New South Wales has landed.

The CHAIR: This Government is fond of saying that New South Wales is the best State in Australia.

The Hon. WES FANG: Hear, hear!

The Hon. SHAYNE MALLARD: Hear, hear! Very fond of it.

The CHAIR: See? It is like you have trained them. Why do you want to make it harder for people to age here than in other States and Territories?

Mr KEVIN ANDERSON: We are certainly making it as easy as we possibly can for them. Again, through Landcom, 20 per cent of all houses—

The CHAIR: That is one developer and you have said this a few times now. The minimum accessibility standards were hard fought for because what is currently being done is not enough. Accessibility should be the norm, not the exception. Why will New South Wales not join in with the other States and Territories?

Mr KEVIN ANDERSON: The proposal that building Ministers were asked to adopt would have required every new home or apartment to be constructed to these higher, more expensive standards. As I said earlier, adding significant costs to all purchasers, regardless of their accessibility needs. That is the challenge that we are facing.

The CHAIR: Our economy in New South Wales is so precarious compared to the other States and Territories that we could not impose a 1 per cent increase on construction companies? Yet we are quite happy for people without the ability to enter 70 per cent of houses—or whatever the figure is—to basically put up with that?

Mr KEVIN ANDERSON: At this stage it is the balanced approach that New South Wales has taken to stimulate the economy. New South Wales is doing that now when it looks at all housing.

The CHAIR: It makes me worry about how precarious our economy is.

Mr DAVID SHOEBRIDGE: Minister, do you know how much the additional cost would have been for a housing unit to meet the minimum standards?

Mr KEVIN ANDERSON: I can take that on notice, Mr Shoebridge. I have those numbers but not in front of me at the moment.

Mr DAVID SHOEBRIDGE: It was less than \$3,000. That is what the discussion paper said, less than \$3,000, so that people could age in grace in their home. If they had a disability they could stay in their home. Less than \$3,000 for each new housing and you have squibbed it and said no. How do you look people with a disability in the face, aging residents in the face and say, "For \$3,000 a housing unit we have decided not to make housing accessible?" How do you do that?

Mr KEVIN ANDERSON: I point to the aging component that you are talking about, Mr Shoebridge. The retirement village sector is one of the finest in New South Wales.

Mr DAVID SHOEBRIDGE: People want to live in their home, not be forced into an aged care unit. They want to be able to age in grace in their home and you are not letting them do that.

The Hon. WES FANG: Point of order: The Minister had barely started his answer when Mr David Shoebridge rudely and deliberately interjected.

CORRECTED

The CHAIR: Your points of order are becoming a little like commentary themselves, but I remind Mr Shoebridge not to speak over the Minister and vice versa.

The Hon. WES FANG: Thank you, Chair. Point noted.

Mr DAVID SHOEBRIDGE: Minister, you were not answering the question by talking about aged care homes. I was asking about people's ordinary residential homes. They want to age in their homes. They want to age in place.

The Hon. WES FANG: Where is the question?

Mr DAVID SHOEBRIDGE: Because you have not had New South Wales sign on to these standards, they will not be able to, will they?

Mr KEVIN ANDERSON: We are talking about new builds here, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Correct.

Mr KEVIN ANDERSON: The New South Wales Government is already in that space in relation to providing accessibility levels through Housing and also through Landcom. There is significant work being done.

Mr DAVID SHOEBRIDGE: Victoria is providing that for 100 per cent of new builds. We are providing it for 20 per cent of builds from Landcom. You are not pretending that is dealing with the issue about having disabled access housing. Twenty per cent of Landcom places in New South Wales, 100 per cent of all new builds in Victoria. Why are we so behind the game?

Mr KEVIN ANDERSON: That is also a question for Planning in relation to how they set that up.

Mr DAVID SHOEBRIDGE: Somebody else's problem.

Mr KEVIN ANDERSON: If you have a chance to talk to the planning Minister that might be a question for him, but also in building and construction, that is where we are. We want to ensure we drive our silver level. We want to ensure we provide that guidance. We want to ensure that opportunities are there.

Mr DAVID SHOEBRIDGE: Basically you are putting profits to the property sector ahead of the needs of aging and disabled people.

The Hon. WES FANG: What is the question?

Mr DAVID SHOEBRIDGE: That is the analysis you have done, is it not, Minister?

Mr KEVIN ANDERSON: The New South Wales Government is doing significant work in relation to providing accessible housing for those that need it.

Mr DAVID SHOEBRIDGE: Minister, do you have the document that I was showing you earlier?

Mr KEVIN ANDERSON: The cladding document, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: Correct, yes.

The CHAIR: We are now required to have our COVID-safe break.

(Short adjournment)

The CHAIR: We will start again with questions from the Opposition.

The Hon. DANIEL MOOKHEY: Thank you Chair. Greetings to you Minister, always a pleasure to see you.

Mr KEVIN ANDERSON: Greetings to you. Likewise, nice to see you.

The Hon. DANIEL MOOKHEY: Minister, I am interested in your response to the McDougall review recommendations about SafeWork NSW. What is your response to the McDougall review recommendations about SafeWork NSW?

Mr KEVIN ANDERSON: Can you elaborate further, Mr Mookhey, and I would be happy to dig in to whatever you would like to in that regard.

The Hon. DANIEL MOOKHEY: Sure. You read the McDougall review I take it?

Mr KEVIN ANDERSON: No, I have not read the McDougall review, Mr Mookhey, but please give me some information in relation to the areas you would like to discuss.

CORRECTED

The Hon. DANIEL MOOKHEY: Do you know why the McDougall review was commissioned?

Mr KEVIN ANDERSON: Yes, I do.

The Hon. DANIEL MOOKHEY: Was it commissioned to undertake a statutory review, amongst other functions, into the State Insurance and Care Governance Act?

Mr KEVIN ANDERSON: But that is not part of my portfolio, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Sure. Are you aware that that also made certain inquiries into SafeWork NSW?

Mr KEVIN ANDERSON: I am aware of that, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I think last time you and I were talking about this, Minister, you made the point that there was no specific submission that was put by your department or by you at least in respect of your duties as far as it relates to SafeWork NSW.

Mr KEVIN ANDERSON: I will ask the secretary in relation to that, Mr Mookhey.

Ms HOGAN: I think you might be referring to a recommendation that McDougall made about perhaps SafeWork—

The Hon. DANIEL MOOKHEY: We will get to that, but I am actually asking about whether or not the department at any point put a submission in to the McDougall review about any aspect of it, as it relates to SafeWork NSW.

Ms HOGAN: Not as it relates to SafeWork NSW, I do not believe, unless Ms Webb has an alternative response.

The Hon. DANIEL MOOKHEY: Which to be fair, was your evidence at the last estimates hearing that we had face to face as well. So there was not any change in the position.

Ms HOGAN: Then I would hope that would be right, yes.

The Hon. DANIEL MOOKHEY: To be fair, I asked you in February and the review wrapped up in April, so I presume in that six-week period you did not. Minister, you are aware that McDougall made a recommendation about SafeWork NSW?

Mr KEVIN ANDERSON: Specifically which one, Mr Mookhey?

The Hon. DANIEL MOOKHEY: That is my question. Are you aware that they made one?

Mr KEVIN ANDERSON: I will check with the secretary in relation to that.

Ms HOGAN: I cannot remember it word for word, but it implied—the suggestion was that SafeWork could also undertake a review.

The Hon. DANIEL MOOKHEY: I am happy to read you the recommendation; maybe that will get to the heart of the matter.

Ms HOGAN: Okay, sure.

The Hon. DANIEL MOOKHEY: I was wondering whether you were aware of it. Minister, Justice McDougall said:

The responsible minister for SafeWork NSW should conduct or commission a public review of that agency's performance of its regulatory and educational functions under the Work Health and Safety Act 2011 and that the report on that review be made publicly available once it is completed.

That is recommendation 49 of the McDougall review. Are you going to act on his recommendation to commission a public review of SafeWork NSW's performance?

Mr KEVIN ANDERSON: Mr Mookhey, the note that I have here is it is recommended that the legislator consider amending that particular Act, as well as relevant legislation to clarify the objective of iCare, SIRA and SafeWork. The Government will introduce legislation to implement his recommendation in relation to SafeWork.

The Hon. DANIEL MOOKHEY: That is not what I asked. I am taking you directly to recommendation 49. I am reading it to you word for word:

CORRECTED

The responsible minister for SafeWork NSW should conduct or commission a public review of that agency's performance of its regulatory and educational functions under the Work Health and Safety Act 2011 and that the report on that review be made publicly available once it is completed.

For the people following at home, the relevant part of the report is at section 35.5.2. It is a simple question. The Government has said that it has completed its response to the McDougall Review. It announced a response in August this year, but the one aspect that is not clear as to what the Government is doing is whether it is going to undertake this public investigation into SafeWork NSW, or review the performance of SafeWork NSW. You are the responsible Minister for SafeWork NSW, correct?

Mr KEVIN ANDERSON: That is correct.

The Hon. DANIEL MOOKHEY: As the responsible Minister, are you going to be undertaking this review?

Mr KEVIN ANDERSON: I think, from recollection, the response was that we noted the report and the recommendations.

The Hon. DANIEL MOOKHEY: That is the report. I am talking about the recommendation.

Mr KEVIN ANDERSON: I will ask the secretary.

Ms HOGAN: I cannot recall what the Government's response was. It was either noted or that we accepted it, but we have not yet commenced a review.

The Hon. DANIEL MOOKHEY: It is a simple question to the Government. I accept your answer. It is a government policy decision. Are you going to do the review or not?

Mr KEVIN ANDERSON: I will ask the secretary in relation to where we are up to with that?

Ms HOGAN: We have not commenced conducting a review, no.

The Hon. DANIEL MOOKHEY: Are you ruling out a review?

Ms HOGAN: Over to you.

Mr KEVIN ANDERSON: We noted the response Mr Mookhey, so I think we will leave it at that.

The Hon. DANIEL MOOKHEY: You might wish to leave it at that, Minister. My question is straightforward.

Mr KEVIN ANDERSON: What I will say is that SafeWork continues to strongly perform its role under the Work health and safety roadmap 2022—

The Hon. DANIEL MOOKHEY: No, Minister, you cannot just say that.

Mr KEVIN ANDERSON: —and the achievements against that roadmap.

The Hon. DANIEL MOOKHEY: With respect, I appreciate the point you are making, Minister, but it really is a simple question. Are you ruling out a review? I understand that you have noted the review. At this point no-one can tell me whether the Government is going to do the review, but as the Minister responsible are you ruling it out? Is it a no, this review is not going to happen? Can you at least tell us that?

Mr KEVIN ANDERSON: I am not ruling it out—

The Hon. DANIEL MOOKHEY: Thank you.

Mr KEVIN ANDERSON: —but certainly it was noted.

Mr DAVID SHOEBRIDGE: We have noted that. We have noted your answer.

Mr KEVIN ANDERSON: Thank you very much, Mr Shoebidge.

The Hon. DANIEL MOOKHEY: Let us move on, Minister. Let us talk about silicosis. The National Dust Disease Taskforce has recently completed a report, has it not?

Mr KEVIN ANDERSON: I will just get those notes just to be sure because I do not want to mislead you, Mr Mookhey, in relation to silicosis.

The Hon. DANIEL MOOKHEY: I am glad that you do not wish to mislead, and I do not want to be misled, so that is a happy coincidence of interest, but you are at least aware that the Dust Disease Taskforce has completed its report; yes?

Mr KEVIN ANDERSON: Correct.

CORRECTED

The Hon. DANIEL MOOKHEY: Have you read their report?

Mr KEVIN ANDERSON: I have read parts of their report in relation to what we need to talk about as of 30 September 2021, the visits and the manufactured stone.

The Hon. DANIEL MOOKHEY: Are you aware that they recommended that if there is no improvement in regulatory compliance and evidence does not show that the preventative measures are keeping workers safe, that there should be a total ban on engineered stone from July 2024?

Mr KEVIN ANDERSON: Mr Mookhey, in relation to banning engineered stone, that is not something we would do.

The Hon. DANIEL MOOKHEY: I think you have just answered my next question, but my first question was: Are you aware that they made that recommendation? My second question was going to be: Do you think that there has been a sufficient improvement in regulatory compliance and evidence which means that a ban should not be considered? Are we to imply, therefore, that you think that the enforcement measures both in New South Wales and, I guess for that matter, nationally have improved to the point where you do not support a ban?

Mr KEVIN ANDERSON: I can update you on the New South Wales position, Mr Mookhey, certainly. As at 30 September there were 318 visits to 144 manufactured stone sites, 189 silica-related improvement notices, seven prohibition notices, two on-the-spot fines, and 24 businesses that could not be confirmed as meeting the workplace exposure standard of 0.05. So in relation to the improvement of the silica industry and what we are doing to drive down, I think we are on the right track and we will do everything we can.

The Hon. DANIEL MOOKHEY: So therefore you are not supporting or you do not think that the evidence supports a total ban on engineered stone from July 2024?

Mr KEVIN ANDERSON: No, I do not.

The Hon. DANIEL MOOKHEY: Moving on, do you recall us previously discussing silica exposure dust limits before?

Mr KEVIN ANDERSON: Yes.

The Hon. DANIEL MOOKHEY: Do you remember at the time that the Government moved from 0.01 to 0.05?

Mr KEVIN ANDERSON: Yes.

The Hon. DANIEL MOOKHEY: Do you remember at the time that you said that the Government would consider moving to 0.02 after further evidence?

Mr KEVIN ANDERSON: Yes.

The Hon. DANIEL MOOKHEY: Where are we up to?

Mr KEVIN ANDERSON: We are not there yet.

The Hon. DANIEL MOOKHEY: Clearly. What I mean is, in terms of the investigation of the further evidence that you flagged where are we up to in that? What steps have you taken to investigate whether or not that 0.02 limit is something that can be adopted?

Mr KEVIN ANDERSON: Through you, Secretary, we will ask Ms McCool, but I will say that at 0.02 it is very difficult, Mr Mookhey, as you would appreciate, to be able to monitor something at that level, and many businesses that are doing the right thing by putting those dust measurement instruments in place are doing the right thing, but to get to 0.02 it is very, very difficult. But we will confirm that through Ms McCool.

The Hon. DANIEL MOOKHEY: Before we do though, to be fair to you, that is what she said last time and you also said that you would be investigating whether or not there have been sufficient changes to allow the Government to consider that. I am not asking you whether or not 0.02 is feasible right now—because you say it is not, I say potentially it is—my point is where are you up to in terms of the additional steps of investigation that you flagged in your press release when you announced this policy? If Ms McCool could help with that that would be helpful.

Mr KEVIN ANDERSON: Yes, that would be great, thank you.

Ms McCOOL: It is obviously a national exposure standard. SafeWork Australia is undertaking further investigations as to whether 0.02 is achievable within the industries. In the meantime, obviously it has been accepted that they will introduce the same prohibition on uncontrolled dry cutting of manufactured stone. That would be using the national legislation, so that is an uplift on New South Wales. Equally, the National Code of

CORRECTED

Practice for manufactured stone will also look to be available by the end of the year; it is just waiting on all work health and safety Ministers to sign up for that.

The Hon. DANIEL MOOKHEY: Thank you, Ms McCool, that is very helpful. In the March 2021 estimates I think we were asking about numbers of grants, stone rebates that had been issued. I think the information that was provided to us at the time said that 82 out of 255 known manufactured benchtop sites received a manufactured stone rebate or assistance of any type. Have we got any update on that number, to either you, Minister, or Ms McCool?

Mr KEVIN ANDERSON: I will get that through Ms McCool.

Ms McCOOL: Yes. We did have 4 per cent of businesses taking that additional rebate. We are still tracking at the \$500 rebate, which is always available. Throughout 2020 and 2021 we have had an additional \$49,500 accepted since that previous rebate. So it continues to—

The Hon. DANIEL MOOKHEY: How many businesses or sites?

Ms McCOOL: There have been 99 silica-related rebates under the \$500—

The Hon. DANIEL MOOKHEY: So there have been an additional 17 in that period?

Ms McCOOL: [Inaudible].

The Hon. DANIEL MOOKHEY: Moving on, Minister, you announced in June this year that we are hiring 40 more SafeWork inspectors. Do you recall that?

Mr KEVIN ANDERSON: Yes.

The Hon. DANIEL MOOKHEY: This is \$6.4 million worth of funding.

Mr KEVIN ANDERSON: Yes.

The Hon. DANIEL MOOKHEY: Are you recovering that funding from employers through premiums?

Mr KEVIN ANDERSON: In terms of how that money is recovered I would ask the secretary to elaborate on that please.

Ms HOGAN: That is not my understanding, but I will check with Ms Webb.

Ms WEBB: Can I just have the question again?

The Hon. DANIEL MOOKHEY: The question is: the additional \$6.4 million worth of funding to hire 40 new inspectors, is that being recovered via premiums?

Ms WEBB: The SafeWork inspectorate is funded from the levy on the Workers Compensation Operational Fund. That is the way in which the whole of SafeWork's operations are funded. So yes, if we increase the inspectors it will come from that fund.

The Hon. DANIEL MOOKHEY: Okay. We are accepting, Minister, therefore that the premiums are going up. Is that correct? And the levy as well?

Ms WEBB: I am not sure that there needs to be an increase in premiums. I think it is just money from the fund.

The Hon. DANIEL MOOKHEY: Okay, fine. It is coming from that fund; do you accept that? My next question is: have you received advice as to whether or not that is going to put upwards pressure on premiums or downward pressure on premiums?

Mr KEVIN ANDERSON: I have not received that advice, Mr Mookhey.

The Hon. DANIEL MOOKHEY: It is still helpful that you are hiring 40 new inspectors. When do you expect these inspectors to be in place?

Mr KEVIN ANDERSON: That recruitment process is underway at the moment and they are coming on board as they graduate. So those positions will be filled as they graduate.

The Hon. DANIEL MOOKHEY: But when?

Mr KEVIN ANDERSON: I will get Madam Secretary to—

Ms HOGAN: I think we have already commenced recruitment for those particular roles but I am not sure where we are up to with it. Ms Webb?

CORRECTED

Ms WEBB: We have commenced recruitment and identified a number of really good candidates. They will start their training courses quite soon. We have to do them in batches; so people will come on over the coming months as we get the training sorted out for them and they can be ready and available to start work.

The Hon. DANIEL MOOKHEY: That is helpful but it still does not answer my question. When will all 40 be in place?

Mr KEVIN ANDERSON: How long does the training take, Ms Webb?

Ms WEBB: Mr Williams is probably best placed to answer exactly that. I think the plan is to have some of them, depending on their experience, start some work either while they are still doing their training; others might need to finish their training first. So it will be quite—

The Hon. DANIEL MOOKHEY: On notice, can you tell us when you expect the last of the 40 inspectors to be out?

Ms HOGAN: Are you looking for completion?

Mr KEVIN ANDERSON: Completion, yes.

The Hon. DANIEL MOOKHEY: That would be really helpful.

Ms HOGAN: Okay, we can do that.

The Hon. DANIEL MOOKHEY: Are they going to be put into the SafeWork inspectorate or are they also going to be included in the sort of general secretariat that has been formed by Better Regulation? Are they going into your general division as per your restructure or are they being dedicated purely to SafeWork-style inspections?

Ms HOGAN: My understanding is they would be dedicated to SafeWork inspections, with the exception that all of our inspectors, regardless of division at the moment, are making a contribution to COVID-safe inspections.

The Hon. DANIEL MOOKHEY: Which brings us to my next line of questioning.

The Hon. WES FANG: The prescience is amazing.

The Hon. DANIEL MOOKHEY: In terms of what advice and guidance is SafeWork giving to employers currently, and workers, about their rights in respect to COVID exposures at their workplace?

Ms HOGAN: It would be best for Ms Webb to answer that.

Ms WEBB: We have been working very closely with both SafeWork Australia and SafeWork NSW and they have a range of information available on their websites. We have also been contributing to the information on nsw.gov.au, contributing to stakeholder roundtables with industry and employers and the internet is providing education as well.

The Hon. DANIEL MOOKHEY: I appreciate that. What is the threshold before SafeWork NSW would trigger regulatory or enforcement action against a workplace? What are the tests you are using to decide? What is the standard that an employer and every other person conducting a business or undertaking [PCBU] has to be held to before they will hear from you? Is there a regulation? Is there a guidance? What is enforceable here?

Ms WEBB: The enforceable part is what is in the regulations and the legislation, and then the guidance provides an addition on top of that.

The Hon. DANIEL MOOKHEY: All forms of PCBUs, which covers employers, workers and others, are really interested in how they are meant to acquit their general duty to provide a safe workplace as we reopen. Minister, what can you tell the employers, workers and other PCBUs of New South Wales as to how they should be going about acquitting their obligations under their general duty?

Mr KEVIN ANDERSON: On the website, Mr Mookhey, there is significant education and significant guidance about setting up a COVID-safe workplace in relation to compliance, QR codes, face masks and separation. It is a changing and dynamic environment, so there are education opportunities and plans online to assist them to operate safely.

The Hon. DANIEL MOOKHEY: What guidance are you giving health and safety representatives [HSRs] about when it is appropriate for them to use their powers to stop work in the event that there is a COVID outbreak at their workplace? That is to you, Minister.

Mr KEVIN ANDERSON: I will ask Madam Secretary in relation to that, from a HSR perspective.

CORRECTED

Ms HOGAN: Ms Webb would be best to respond.

Mr KEVIN ANDERSON: Thank you.

The Hon. DANIEL MOOKHEY: On that, then, Ms Webb, is there any specific guidance that is available to HSRs or any specific training that is available to HSRs as to how they can go about exercising their rights?

Ms WEBB: I might check with Mr Williams. Otherwise, we will take that on notice, Mr Mookhey.

Mr WILLIAMS: Thank you. Certainly HSRs, as they deal with any risk in the workplace, have powers to take actions. They can certainly raise their concerns with their employer and certainly if they have—

The Hon. DANIEL MOOKHEY: I know that. I am asking what the guidance is.

Mr WILLIAMS: I guess the guidance is covered by the general powers that HSRs have, regardless of the type of risk.

The Hon. DANIEL MOOKHEY: So there is no specific guidance?

Mr WILLIAMS: No. It is covered by general risk requirements and obligations.

The Hon. JOHN GRAHAM: Minister, I might move to another issue. Fourteen people were fined last financial year for carrying on a business without a real estate licence. When officials from your department provided quite a detailed answer to my question last estimates about whether Daryl Maguire was conducting a real estate business without a licence, your office censored that answer. Why did you censor that answer by your officials as it was provided to the Parliament?

Mr KEVIN ANDERSON: Thanks very much, Mr Graham. Regarding that question on notice, Fair Trading possessed insufficient information to provide definitive advice. Therefore, a number of hypothetical scenarios were not included in the answer provided, so as to guarantee the accuracy of the response.

The Hon. JOHN GRAHAM: Minister, you are giving me now some of the information that you censored in the answer. Why cover this up?

Mr KEVIN ANDERSON: Mr Graham, again, regarding that question on notice, Fair Trading possessed insufficient information.

The Hon. JOHN GRAHAM: Fair Trading decided not to investigate in this matter. They did so based on the transcript of that hearing. Did they consider, in making that decision, the extensive transcript of the ICAC, which dealt with these matters?

Mr KEVIN ANDERSON: Mr Graham, the matter is currently before the ICAC. As such, it would be inappropriate for me to comment at this time.

The Hon. JOHN GRAHAM: Well, it would not be inappropriate to investigate, would it, just because the ICAC is also looking at it? It would make it more appropriate to investigate, wouldn't it?

Mr KEVIN ANDERSON: Mr Graham, again, regarding that particular issue, it would be inappropriate for me to comment at this particular time. I have given you my response in relation to the information that Fair Trading said that they were insufficient in possessing.

The Hon. JOHN GRAHAM: Yes, but because the ICAC is investigating serious issues—serious potential criminality—that doesn't mean you hang up your boots, Minister. You have obligations. I am asking you about the potential Fair Trading investigation here. Did Fair Trading officials, in deciding not to investigate, examine the evidence that was publicly available on the transcript from the ICAC?

Mr KEVIN ANDERSON: Mr Graham, again I give you that information that I have. They possessed insufficient information in relation to the definitive advice and, therefore, a number of hypotheticals were put in place. That is why they were not included in the answer provided, so as to guarantee the accuracy of that response.

The Hon. JOHN GRAHAM: Minister, there was ample evidence available on the ICAC transcript. It included this text message where Mr Maguire texted the former Premier:

Good News. One of my contacts sold a motel for 5.8 million. I have put her in contact, so I should make five K.

I want to know: Was this evidence considered when Fair Trading decided not to investigate?

Mr KEVIN ANDERSON: Again, Mr Graham, I understand your line of questioning and I repeat that Fair Trading possessed insufficient information to provide definitive advice at that time.

CORRECTED

The Hon. JOHN GRAHAM: When you say that, can you give us any assurance that they looked at the ICAC transcript, they looked at that evidence? You are declining to do that?

Mr KEVIN ANDERSON: Mr Graham, it would be inappropriate for me to comment as the matter is still under investigation by ICAC.

The Hon. MARK BANASIAK: Just picking up where we left off, Minister, about the olive branch, is it not true that the Real Estate Institute has indicated to you that they need to be filled with confidence that the Property Services Expert Panel will be something more than the Real Estate Reference Group, which they have described as a tick-and-flick exercise?

Mr KEVIN ANDERSON: Thank you, Mr Banasiak, for your question. The Real Estate Reference Group was in the latter stages of my term when I came in. It was not operating then as it should, and they were in the process of disbanding when I took up this portfolio. As a result, I value the real estate property sector and what they do to the economy of New South Wales; in fact, what they do, when you stay focused on the real estate agent's role, is create the great Australian dream.

The Hon. MARK BANASIAK: Okay, but my question is—

Mr DAVID SHOEBRIDGE: You can't say that.

Mr KEVIN ANDERSON: You can say that.

The Hon. MARK BANASIAK: Has your office specifically been told by the Real Estate Institute that they need to be filled with confidence that this new panel that you have set up is going to be more than what the Real Estate Reference Group was?

Mr KEVIN ANDERSON: I can tell you that under a previous regime of the Real Estate Reference Group—it is quite different to the Property Services Expert Panel that we have put up now, with chair Chris Duggan, in relation to providing advice. That is why the property services commissioner will sit in on that panel and look to address some of those issues that the Hon. Courtney Houssos and the Hon. John Graham addressed earlier.

The Hon. MARK BANASIAK: Okay. Picking up on that, and through you, Minister, can I just direct questions to Ms Webb? In previous budget estimates, in line with questioning from the Hon. John Graham around continuing professional development being able to be completed within three-and-a-half minutes, Ms Webb stated something to the effect of, "We have certainly found nothing that suggests that you could do it in that sort of time frame." However, Ms Webb, were you not sent an email on 28 July 2020 from the Real Estate Institute, which included a link to a YouTube video showing a registered training authority or organisation actually performing this training within three-and-a-half minutes?

Ms WEBB: I think my previous evidence was that we needed evidence that the training could be done. We certainly looked at that YouTube video, but that, we would believe, was not conclusive of what the allegation was there.

The Hon. MARK BANASIAK: What further investigation did you do beyond looking at that video? Given that video showed that it could be done, what investigation did you do to ascertain whether it extended beyond that registered training organisation?

Ms WEBB: I think I was just trying to say that we did not accept that the video showed that it could be done. I will have to take it on notice and ask the investigation team exactly what other steps they took and let you know.

The Hon. MARK BANASIAK: Okay, thank you. Minister, you just spoke about working with the industry, but can I draw you to a number of your media releases in relation to property services? You can't find one that doesn't use inflammatory language designed to essentially denigrate the industry. I will read a couple:

... government continues crackdown on real estate sector ...

Kevin Anderson said dodgy agents can be fined ...

... we will continue to conduct these blitzes until the industry pulls its socks up.

How is that conducive to a positive relationship with the industry, Minister?

Mr KEVIN ANDERSON: What we are doing, Mr Banasiak, is making sure that, regardless of the industry, those who are doing the wrong thing do need to be held to account. Fair Trading has taken action against 12 real estate agents for misappropriating \$6 million from agency trust funds. Those people who have done the wrong thing need to be held to account.

CORRECTED

The Hon. MARK BANASIAK: Can I just pick up on that trust fund issue? Was it not the fact that Fair Trading actually removed the need to report, which caused that issue? If we look in the article in *The Sydney Morning Herald*, which I believe you are referencing, none of those 20 people that were named in that article actually took any of that money. All they did was fail to actually lodge a trust fund report. My question to you is: Have they not had their reputation unfairly tarnished to somehow score points? They did not actually steal that money to spend on booze and alcohol, like the article insinuates. They just failed to lodge a trust fund audit, which Fair Trading had previously removed the necessity to do.

Mr KEVIN ANDERSON: Mr Banasiak, I am not referring to that article you are referring to. I am referring to the facts, as reported by Fair Trading, that has taken action against those 12 real estate agents responsible for misappropriating \$6 million of funds from mums and dads who have put their faith in those agents, who are doing the wrong thing. Subsequently, Fair Trading took action against those agents.

The Hon. MARK BANASIAK: Through you, Minister to Ms Webb or Ms Griswold who is mentioned in this article, what level of responsibility does the department take, given that it was the department's decision to remove the necessity to actually lodge these trust fund reports and then, after we have all these issues arising, put the requirement back in, causing confusion among the industry? What level of responsibility is the department taking in causing this mess?

Ms WEBB: Mr Banasiak, I think there might be a misapprehension here. There was a change in the legislation that said that the audited reports did not have to be lodged. So it was the New South Wales Parliament that made that decision, not Fair Trading, and it was the New South Wales Parliament that reversed it later and required them to be lodged.

The Hon. MARK BANASIAK: Well, I will direct it back to you, Minister. What level of responsibility are you taking, since it was your Government that flipped and flopped on this issue?

The Hon. WES FANG: Point of order: That question was clearly containing argument. Madam Chair, I ask you to rule that question out of order.

The Hon. MARK BANASIAK: To the point of order: There is no argument. It was your Government that chopped and changed in the trust fund decisions.

The CHAIR: There is no point of order.

The Hon. WES FANG: To the point of order: Chair, to use the term "flipped and flopped"—

The Hon. MARK BANASIAK: Well, "changed their mind". Does that satisfy you?

The Hon. WES FANG: No. I ask the Hon. Mark Banasiak to be a bit more measured in his language.

The CHAIR: There is no particular ruling against or rules against the use of the words "flip-flopping". I think we are okay at this moment but I will keep an eye on it. Thank you.

The Hon. MARK BANASIAK: What level of responsibility would you take, Minister, for the chopping and changing of the trust fund audit requirements, given that—

Mr DAVID SHOEBRIDGE: Why are you flip-flopping in your language?

The Hon. MARK BANASIAK: I am sorry, flip-flopping, chopping and changing. You decide, Minister. What level of responsibility will you take?

Mr KEVIN ANDERSON: We certainly will make no apology for holding agents or anyone when they come to ripping off consumers, so in relation to the issue you are talking about, Fair Trading took action against 12 of those real estate agents—\$6 million worth of mums and dads money, the great Australian dream. Ultimately, that is what you have got to stay focused on. If you rip that away, it turns into a nightmare and then that is unacceptable. That is why Fair Trading takes the action it does.

The Hon. MARK BANASIAK: So you are not answering the question. Great. I will pass on to Mr David Shoebridge.

The Hon. WES FANG: Point of order—

The CHAIR: No, it is back to me, actually.

The Hon. WES FANG: Madam Chair, again, the commentary from—

The Hon. COURTNEY HOUSSOS: Come on, Wes. You are just wasting time.

The Hon. WES FANG: No. It is not acceptable. It is just not acceptable.

CORRECTED

The CHAIR: Okay. I understand. Thank you. Before I pass over to the Hon. Mark Pearson, who has a bit of time in this round, I just wanted to ask about greyhound racing that we were talking about earlier. Minister, you referred to the fact that straight tracks are of course far safer than are the traditional curved tracks. I think we have spoken previously about our concerns about how delayed we are in rolling out straight tracks across the board. You will be aware that the new track being proposed in Tweed will have both an oval and a straight track. How is that consistent with the goal of reducing accidents and deaths on greyhound tracks?

Mr KEVIN ANDERSON: Well, in relation to having the facilities where there is an oval track, a round track and a straight track it provides the option for participants to use the straight track or to use a round track. A round track, when created under the track welfare standards, is safe.

The CHAIR: Is it as safe as a straight track?

Mr KEVIN ANDERSON: They are equal when it comes to being the correct welfare standard on a round track and a safe track obviously provides a much safer option.

The CHAIR: Mmm.

Mr KEVIN ANDERSON: But, when a round track has the correct welfare standards and track strategy applied to it, the round track is also safe.

The CHAIR: So, in terms of kind of a hierarchy of safety, we have at the top, straight track; then we have an oval track that is of the best possible standard that it can be, so presumably to do with the positioning of the lure et cetera; and then below that we have kind of some of the old tracks, which have existing problems. So, you are saying that an oval track that complies with the welfare standards is safer than ones that do not, but let us be clear that straight tracks are the safest.

Mr KEVIN ANDERSON: Just back to the point you made, Madam Chair, about the position of the lure. What do you mean by that?

The CHAIR: For example, when the dogs are going around the bend a lot of the problem, as I understand it, comes from the positioning of the lure being on the bend as opposed to being across the track and that there are different ways that you can do that.

Mr KEVIN ANDERSON: Look, I would need some clarity on that matter, Madam Chair.

The CHAIR: Okay. I do not think it is relevant to the question though.

Mr KEVIN ANDERSON: No, it is. But on the corners, when you are talking about the safety of tracks, the corner—imagine if you are driving around a corner in a car, if the road is leaning out, you tend to drift out. If the road cambers in, you stay on that corner. It is exactly the same, the welfare component for a greyhound. So that is where we are going with that.

The CHAIR: But are you saying that the straight track is not safer.

Mr KEVIN ANDERSON: The straight track is safer, Madam Chair. That is right.

The CHAIR: Fine. That is the point. Okay.

Mr KEVIN ANDERSON: But what I am saying is that the safety of a round track is greatly enhanced when it has that welfare track strategy applied to it.

The CHAIR: Sure. The safety of the track for a greyhound is greatly improved when there are no greyhounds on it, but if we are talking about—

Mr KEVIN ANDERSON: It is matter of opinion, Madam Chair.

The CHAIR: Sure.

Mr DAVID SHOEBRIDGE: No. That is unambiguous.

The Hon. MARK PEARSON: It is probably a fact.

The CHAIR: No. It is actually just a fact. Okay. So, we have established now, without a doubt, that the straight track is the safest possible track design. Why are we still allowing an oval track to be built in Tweed?

Mr KEVIN ANDERSON: Because an oval track is perfectly acceptable with the welfare track standards that are applied. It is perfectly appropriate and safe for a greyhound to race around a safe track, a safe round track.

CORRECTED

The CHAIR: Despite it being not as safe as being on a straight track, as in more dogs die and more dogs have catastrophic injuries on oval tracks than on straight tracks. Correct?

Mr KEVIN ANDERSON: But quite often, Madam Chair, the track might not be the concern in relation to a death or injury.

The CHAIR: Sure.

Mr KEVIN ANDERSON: That is why the Greyhound Welfare Integrity Commission—

The CHAIR: But we just established that a straight track is safer.

The Hon. WES FANG: Point of order: Chair, I am sorry to have to take a point of order on you. However, the Minister was answering the question when you have just interjected.

The CHAIR: Okay. Thank you. I will remind myself—

The Hon. WES FANG: I would appreciate that.

The CHAIR: —to allow the Minister to respond in a directly relevant way.

The Hon. WES FANG: We all fail, as I do in my job, too.

The CHAIR: And I will remind myself that I can direct questions as appropriate as a member of this Committee.

The Hon. WES FANG: We all fail at times.

The CHAIR: There is no point of order. So, we have established that a straight track is the safest track and you are saying here today that it is perfectly acceptable and appropriate to use a track that is less safe for greyhounds. Correct?

Mr KEVIN ANDERSON: No. That is that what I am saying. What I am saying is that when a round track has the appropriate track safety standards applied to it, it is perfectly safe.

The CHAIR: Is it as safe as safe as a straight track?

Mr KEVIN ANDERSON: A safe track?

The CHAIR: I feel like we just had this question.

Mr KEVIN ANDERSON: We did have this question. We are going around in circles?

The Hon. SCOTT FARLOW: Around in circles, yes.

Mr KEVIN ANDERSON: Perhaps we should go straight, Madam Chair.

The CHAIR: I think we should go on a straight track—

Mr KEVIN ANDERSON: I think you should go on a straight track.

The CHAIR: —regardless of the circumstances.

The Hon. WES FANG: Fewer buses fall out of the sky than planes so we should ban planes.

Mr KEVIN ANDERSON: There are options available, and the technology in the development of tracks is still being worked on.

The CHAIR: There is no excuse to have a round track now that we know that straight tracks are the safest.

Mr KEVIN ANDERSON: That is your opinion, Madam Chair, but round tracks are perfectly safe.

The CHAIR: But not as safe as a straight track.

Mr KEVIN ANDERSON: They are safe.

The CHAIR: Okay. I am will hand over to the Hon. Mark Pearson. Help us if you can.

The Hon. MARK PEARSON: Thank you, Minister. Just following on from that, so what you are saying is that you accept more catastrophic injuries and deaths in dogs running on a round track as opposed to that not happening on a straight track. Is that what you are actually saying?

Mr KEVIN ANDERSON: My aim, as is Greyhound Racing NSW and the Greyhound Welfare Integrity Commission, is to have zero injuries and to have zero deaths, so every effort is being made to have track welfare

CORRECTED

standards and those safety standards upgraded. That is why we have invested a significant amount, like the \$30 million in the greyhound capital grants to upgrade those tracks to ensure that they are safe.

The Hon. MARK PEARSON: Okay. Let us move on to whipping horses. I would like to take you on this journey because it is going to be a very serious journey into the future for you. Professor Paul McGreevy, who is a professor of animal behaviour and animal science, published a landmark scientific study last year comparing the nerve endings in horses to human skin. It confirmed that a horse can feel the same level of pain from whipping as can a human; it is a given. He stated that:

Repeated strikes of the whip on horses that are fatigued as they end a race are likely to be distressing and cause suffering—
two terms used in the Prevention of Cruelty to Animals Act—

A horse's loss of agency as it undergoes this kind of repeated treatment is thought to lead to learned helplessness.

This is the sport of kings. Minister, why does the Government not acknowledge the peer-reviewed scientific evidence that whips do cause pain, suffering and distress to racehorses and ask the New South Wales RSPCA to investigate as to whether the practice of whipping horses is in fact a breach of the Prevention of Cruelty to Animals Act, even if they whip it the right number of times according to the code? In the Act, it says it is an offence to beat an animal unnecessarily and unjustifiably or to inflict pain. The question would be: Is whipping a horse to run faster really necessary and justifiable? You would no doubt be aware that in Tasmania, the People for the Ethical Treatment of Animals is running a test case against Tasracing on this very issue.

The Hon. WES FANG: Why would you be aware of that?

The Hon. MARK PEARSON: The question is would you and your department look at this matter very seriously as to whether whipping should no longer be permitted?

Mr KEVIN ANDERSON: Firstly, Mr Pearson, thank you for your comments. In relation to POCTA, that is not my remit. You will need to address that to the agriculture Minister in relation to the prevention of cruelty to animals. I am the racing Minister.

The Hon. MARK PEARSON: I will clarify that for you. I knew this was going to be a bit of a difficulty. What you oversee in rules and regulations and codes of conduct allows whipping. It signs off on, "Yes, jockey, you whip or you might get fined if you do not." Therefore, the activity under your watch could be authorising a breach of the Prevention of Cruelty to Animals Act.

Mr KEVIN ANDERSON: That is not quite right. In relation to the issue of welfare and integrity in racing, it is of the highest level. Racing NSW has very strict codes of conduct and has very strict rules and regulation. The codes of racing are to ensure that animal welfare is first and foremost, and that continues to be. Anybody who mistreats an animal is held to account.

The Hon. MARK PEARSON: I put to you, Minister, that the expert evidence now is that the regulation or the code that permits or directs a jockey to whip a horse is causing an offence under the Prevention of Cruelty to Animals Act. You can have as many regulations and codes of conduct as you like, but ultimately they are subservient to criminal law. Cruelty to animals is a criminal act. I am taking you on this journey because we have a case starting in Tasmania and Victoria has flagged to the national body that it wants to ban whipping. Racing NSW has said that it would not even follow if the national body banned whipping—like Sweden, Norway, Denmark, Britain is heading that way and so are parts of the United States of America. This is where we are moving. If Racing NSW is saying that it will not even follow that directive even if it is a national statement—

The Hon. WES FANG: I am not even sure where the question is here.

The Hon. SCOTT FARLOW: Lovely conversation.

The CHAIR: It is inoffensive.

The Hon. MARK PEARSON: Would Racing NSW compel them to understand that continuing to whip horses is potentially an act of cruelty?

Mr KEVIN ANDERSON: Again, that comes under the Prevention of Cruelty to Animals Act. That would be a question in relation to the agriculture Minister. Racing NSW has very strong codes. Their conduct is held in very high regard. Anybody who breaches those, in particular the use of a whip, is penalised severely. Welfare continues to be the number one priority when it comes to Racing NSW.

The Hon. WES FANG: That question is going to need its own volume in *Hansard*.

The Hon. MARK PEARSON: I move on to breeding now—

CORRECTED

Mr DAVID SHOEBRIDGE: Point of order: The Hon. Wes Fang continues to take the moral high ground with interjections, but he is now deliberately trying to put the Hon. Mark Pearson off his game.

The CHAIR: Yes, I have heard enough. If we could stop the interjections, that would be very useful.

The Hon. WES FANG: I was talking to the Hon. Scott Farlow. I was whispering.

The Hon. MARK PEARSON: It would never be successful anyhow. Thank you, Chair.

The CHAIR: The Hon. Mark Pearson will continue.

The Hon. MARK PEARSON: The greatest reputational risk to the horse racing industry besides racetrack deaths, wastage and slaughter is that, according to the RSPCA, around 13,000 thoroughbred foals are born every year in Australia. These figures are calculated based on the Racing Australia handbook. Two thousand of these foals will never be registered, and only 2,500 will eventually go to breeding, which means 8,500 adult thoroughbred horses will exit the thoroughbred racing industry every year. Of course, we know what happens then. Do you agree that more needs to be done to reduce the breeding numbers and for there to be a mandatory national identification and traceability system for racehorses, so that we know the fate of all horses—a bit like the greyhound whole-of-life tracking? Would you support that?

Mr KEVIN ANDERSON: There are discussions being held, Mr Pearson, at a national level on traceability. Those discussions are ongoing. I can tell you that Racing NSW takes very seriously the welfare of a retired racehorse, just like they do with greyhounds in the rehoming to ensure that their retirement is comfortable. Racing NSW has a very strong program of rehoming so that horses that are retired, that no longer go to the equestrian or equine industry in relation to performance horses, are looked after in their retirement.

The Hon. COURTNEY HOUSSOS: Minister, have you met with the Imperial Towers apartment buyers?

Mr KEVIN ANDERSON: Personally, no. Not to my knowledge.

The Hon. COURTNEY HOUSSOS: I assume that you would know if you had met with them. Have you met with any of the apartment owners from Vicinity?

Mr KEVIN ANDERSON: No.

The Hon. COURTNEY HOUSSOS: Have you met with any apartment owners from defective buildings?

Mr KEVIN ANDERSON: Yes, I have met with them from time to time.

The Hon. COURTNEY HOUSSOS: How many would you say you have met with over the last six months?

Mr KEVIN ANDERSON: I would have to check my diary. My diary is disclosed, so it is there for everybody to see. I would have to go back through. I meet with many people, Ms Houssos, so I would have to go back through and be specific about it for you.

The Hon. COURTNEY HOUSSOS: Could you name just one group of apartment buyers from defective buildings that you have met with recently?

Mr KEVIN ANDERSON: We have met with Mascot Towers on a number of occasions. I would have to go through my diaries, which are a public document. You have access to those, if you wish.

The Hon. COURTNEY HOUSSOS: Mr Chandler spoke about the New South Wales report that said that 85 per cent of defects are not reported to Fair Trading. Can you tell us what proportion of those are resolved by Fair Trading rectification orders?

Mr KEVIN ANDERSON: I would ask Mr Chandler to provide those numbers.

The Hon. COURTNEY HOUSSOS: It is on page 30 of the report. The table is a bit unclear.

Mr CHANDLER: I understand the question. I am just trying to put it in context, Ms Houssos. Since the introduction of the Residential Apartment Buildings Act, that dial would not have changed very much at all because we still do not have many owners referring their buildings.

The Hon. COURTNEY HOUSSOS: I understand. I was interested in the actual number of Fair Trading rectification orders. I have got a copy of the table here, if it is helpful.

Mr CHANDLER: I have got the document in front of me.

CORRECTED

The Hon. COURTNEY HOUSSOS: It is on page 30. At the top, it says, "4.3.1 Defect resolution method." It says, "Resolved by Fair Trading Rectification Order." My reading of that is that it is 1 or 2 per cent.

Mr CHANDLER: But that does not, at this stage, pick up orders issued under the Residential Apartment Buildings (Compliance and Enforcement Powers) Act.

The Hon. COURTNEY HOUSSOS: But it is 1 to 2 per cent. Would you agree on that?

Mr CHANDLER: Yes, that is probably what it is.

The Hon. COURTNEY HOUSSOS: Do you have a figure on those resolved by Supreme Court order?

Mr CHANDLER: You can see that on a scale on the table.

The Hon. COURTNEY HOUSSOS: If we say that the bottom one is 1 per cent, then that is perhaps 3 per cent.

Mr CHANDLER: It could be, yes.

The Hon. COURTNEY HOUSSOS: And then we have got the tribunal order, which is perhaps 4 per cent.

Mr CHANDLER: Yes.

The Hon. COURTNEY HOUSSOS: Mr Chandler, do you believe that you have enough resources to do your role?

Mr CHANDLER: Yes, totally. These are resolutions in places that are not in the domain of Fair Trading. There are enough resources. The challenge that we have got is to actually get owners corporations to refer serious defects to Fair Trading in the first place. As you know, only 15 per cent of people who do have serious defects refer them to Fair Trading. We have got to ramp up our intervention. We are certainly going to be doing that in the next six months because we can see from this data that we have got to lift this indicator. It is not good enough.

The Hon. COURTNEY HOUSSOS: But you feel that you have enough powers and resources to do your role?

Mr CHANDLER: Totally, yes. Absolutely.

The Hon. COURTNEY HOUSSOS: You couldn't use more inspectors?

Mr CHANDLER: No, not at this stage, based on the workload that we have currently got. That is something that we monitor. If we were struggling with that, we would ask for some more. At this stage, we are fine.

The Hon. COURTNEY HOUSSOS: No more additional auditors to help—

Mr CHANDLER: Could I just say it once so it is clear: The answer is no, I do not need any more resources—sorry, Fair Trading do not need any resources beyond what they have currently got to do this work.

The Hon. COURTNEY HOUSSOS: Okay. Thanks very much, Mr Chandler. Minister, what are you doing about the fact that 85 per cent of serious defects are not reported to Fair Trading?

Mr KEVIN ANDERSON: As the commissioner just said, Ms Houssos, there has to be better work done in that space to alert people to come forward so that they can get those problems fixed.

The Hon. COURTNEY HOUSSOS: Minister, let us move on to another issue. Yesterday you announced, finally, the removal of some cladding under Project Remediate.

Mr DAVID SHOEBRIDGE: They put it back on though at the end of the press conference.

The Hon. SHAYNE MALLARD: No, we didn't.

The Hon. COURTNEY HOUSSOS: I acknowledge that interjection. Minister, you said that you might expand Project Remediate. What would that expansion include?

Mr KEVIN ANDERSON: What I was referring to, Ms Houssos, was the work that has already been done by owners corporations in remediating their building. We could certainly have a look at what we could do in terms of financial support for those buildings.

The Hon. COURTNEY HOUSSOS: Okay. So will you allow applications to reopen?

CORRECTED

Mr KEVIN ANDERSON: No, I am not talking about the criteria, Ms Houssos. The Cladding Taskforce has that criteria set, so those buildings—and the program I think is the best in the nation; it has certainly attracted a lot of keen interest from owners corporations to be part of Project Remediate. We will not expand the criteria but what we will do is—I am open to having a look at supporting those buildings that have already been remediated.

The Hon. COURTNEY HOUSSOS: You said that it is the best in the nation. I am not sure that that is how anyone else would characterise this particular scheme. Can you explain why you think it is the best in the nation?

Mr DAVID SHOEBRIDGE: It is boutique.

Mr KEVIN ANDERSON: I can and, Ms Houssos, we could be here all night if I was to read out from those who have praised this particular project in relation to the way we are doing it. The time taken to methodically get it right, I think, is something—

The Hon. COURTNEY HOUSSOS: No-one is disputing you have taken your time to roll it out, Minister.

The Hon. WES FANG: Point of order—

Mr KEVIN ANDERSON: I am happy. Let it ride. I am happy, and thank you.

The Hon. WES FANG: He is a very capable Minister and did not actually smack it down.

Mr DAVID SHOEBRIDGE: He does not need you, Wes.

The CHAIR: Thank you. Continue.

Mr KEVIN ANDERSON: But certainly we have taken the time to properly design it. I can give you those industries that have said that this is the right way to go about removing combustible cladding from buildings in New South Wales.

The Hon. COURTNEY HOUSSOS: Yes, well, perhaps the low subscription rate might be a little bit of an indication that it is not going to achieve what it is setting out to do. Minister, how many unsuccessful applicants were there?

Mr KEVIN ANDERSON: Where we are at at the moment is that there were 274 high-risk residential buildings eligible for Project Remediate. They will go through that criteria assessment by the Cladding Taskforce and ultimately they will then be triaged, like we started yesterday, to remove that cladding. At present, there are 155 buildings that have opted in to Project Remediate. There are 290 registrations for Project Remediate; that number is up on where we were originally because, again, people are now seeing the value of the quality, the compliance, the fact that the building will be returned as an insurable building and ultimately will attract a decennial liability insurance on new buildings in New South Wales. So this is a program—

The Hon. COURTNEY HOUSSOS: Minister, first, let us just go through those figures. There are 155 buildings that have opted in, with 290 registrations. Can you just explain what is the difference there?

Mr KEVIN ANDERSON: The eligible buildings, as assessed by the Cladding Taskforce, is 274, but there were a number of other owners corporations that were announcing the value of Project Remediate, the fact that this will be expertly done. They do not have the capacity quite often or the capability to be able to do this work themselves, so they have put their hand up and contacted the Cladding Taskforce and said, "Can we opt in?"

The Hon. COURTNEY HOUSSOS: So, Minister, what you are saying is that there are 290, we could categorise those as expressions of interest—registrations.

Mr KEVIN ANDERSON: Registrations.

The Hon. COURTNEY HOUSSOS: And did all of those 290 complete application forms?

Mr KEVIN ANDERSON: No. Two hundred and seventy-four were eligible but the taskforce reviewed 89 of those and the numbers were that actually five of those buildings were not high-risk class 2; there were 18 that did not have any cladding on them at all—

The Hon. COURTNEY HOUSSOS: Sorry, when you say they reviewed them, they reviewed the 274 or they reviewed the 290 registrations?

Mr KEVIN ANDERSON: The 290.

CORRECTED

The Hon. COURTNEY HOUSSOS: Okay, they reviewed the 290 registrations. So those registrations completed an application form, is that correct?

Mr KEVIN ANDERSON: They would have contacted through the Cladding Taskforce to register their interest.

The Hon. COURTNEY HOUSSOS: Okay, but I am asking a very specific question. Did they register their interest or did they complete an application form? The application form is pretty lengthy.

Mr KEVIN ANDERSON: Mr Chandler?

Mr CHANDLER: They would have registered their interest online and that would have then commenced—

Mr KEVIN ANDERSON: Triggered.

Mr CHANDLER: That would have triggered then a review of those applications. So 290 people have put their hand up. Of that, 155 have been accepted into the program, 46 of those were not eligible, and there are currently 89 being looked at by the Cladding Taskforce to see if they in fact should be considered as admissible.

The Hon. COURTNEY HOUSSOS: So 89 are still being reviewed.

Mr CHANDLER: Yes, by the Cladding Taskforce.

The Hon. COURTNEY HOUSSOS: We have got 274 buildings that are eligible.

Mr KEVIN ANDERSON: Correct.

The Hon. COURTNEY HOUSSOS: You received 290 registrations.

Mr KEVIN ANDERSON: Correct.

The Hon. COURTNEY HOUSSOS: Of those, 155 buildings have been accepted, 89 are still being reviewed.

Mr KEVIN ANDERSON: Correct.

The Hon. COURTNEY HOUSSOS: And there are five buildings that were not eligible and 18 without cladding, is that correct?

Mr KEVIN ANDERSON: Yes, and also, in addition to that, Ms Houssos, 23 were cleared by the consent authority.

The Hon. COURTNEY HOUSSOS: And you are not reopening applications, is that correct?

Mr KEVIN ANDERSON: Certainly, if there are buildings that—again, because Project Remediate has been widely received, there are those who now are believing that this is the way forward so they are contacting the Cladding Taskforce to get advice as to whether their building is eligible. We started with 4,000 buildings and worked our way down to where we are today, thanks to Fire and Rescue and the Cladding Taskforce—

The Hon. COURTNEY HOUSSOS: Minister, I have been here through the estimates, we have been on this journey together, I do not need to recap. I am just asking you are you going to reopen applications?

Mr KEVIN ANDERSON: We certainly will not be looking to deny if someone wants to contact the Cladding Taskforce and believe that they are high-risk class 2 residential, if they need to be included. But again, most of those have already been audited and tracked through the Cladding Taskforce and the consent authorities with the councils, who would have them on their books.

The Hon. COURTNEY HOUSSOS: So, Minister, will there be capacity to add additional buildings to the program? Yes or no?

Mr KEVIN ANDERSON: If it turns out to be a class 2 high-risk residential, then certainly the Cladding Taskforce would take that into consideration.

The Hon. COURTNEY HOUSSOS: Okay, that is not actually answering the question.

The Hon. WES FANG: The commentary is not required.

The CHAIR: Nor is yours, Mr Fang.

The Hon. COURTNEY HOUSSOS: Minister, when will the program be completed?

Mr KEVIN ANDERSON: It will be completed on time in 2023.

CORRECTED

The Hon. COURTNEY HOUSSOS: And what happens if the projects run over time?

Mr KEVIN ANDERSON: It will be completed on time in 2023. That is why Project Remediate now is being held up as the golden ticket to remove flammable cladding off high-rise residential buildings—the gold standard.

The Hon. COURTNEY HOUSSOS: Okay. Minister, my time is running very short and I need to ask you a couple of other questions. Minister, we have seen many travel plans forced to be cancelled during COVID. A new report from CHOICE was released yesterday showing that a quarter—only one in four Australians feel confident booking flights, accommodation or other travel services in the next 12 months. Will you now commit to providing improved legal protections for travellers?

Mr KEVIN ANDERSON: Very shortly the consumer affairs Ministers' meeting will be held, where we will be looking at a raft of options to again see if something can be done to strengthen consumer protection when it comes to travel and accommodation. COVID has thrown plenty of curveballs and for those who have certainly missed out, our heart goes out to them. We will be taking a number of options and having a look at them with the consumer affairs Ministers' meeting coming up shortly.

The Hon. COURTNEY HOUSSOS: Okay, and I am sure that they appreciate that your heart goes out to them, but they are looking for a concrete response. CHOICE has now released two separate reports on this issue. Have you read either of those reports?

Mr KEVIN ANDERSON: Yes, I have, Ms Houssos.

The Hon. COURTNEY HOUSSOS: Have you considered their recommendations?

Mr KEVIN ANDERSON: We will be considering lots of different options. In relation to providing protection for consumers, one of the areas that we are looking at is contracts, terms and conditions, and that includes something along the lines of a "Look Before You Book" education campaign.

The Hon. SCOTT FARLOW: That has a good ring to it.

Mr KEVIN ANDERSON: It is a very good campaign, thank you, Look Before You Book. I am breaking it right here today.

The Hon. WES FANG: Fantastic.

Mr KEVIN ANDERSON: We have got the exclusive.

Mr DAVID SHOEBRIDGE: Is there a logo?

Mr KEVIN ANDERSON: We are taking it very seriously, Ms Houssos. Consumers are at the forefront of what we are trying to do.

The Hon. COURTNEY HOUSSOS: Let me be really clear, Minister. Travellers have lost thousands of dollars and they have lost so much time chasing this money; they are not looking for more promotional campaigns about "looking before they book"; they are looking for improved legal protections that will guarantee them refunds, that will ensure that they do not have to either sacrifice their hard-earned cash or their legal protection. They are looking for you to take action. Will you take action, or will you continue to just tell Fair Trading to encourage people to act fairly?

Mr KEVIN ANDERSON: Part of what you are talking about there, Ms Houssos, is national law and that is why Ministers are meeting to look at what can be done at a national level. Certainly from the State's perspective I will be taking several options forward and we will be having those discussions to better protect consumers, if we can.

The Hon. COURTNEY HOUSSOS: But New South Wales did lead the way on gift certificates and at the moment you have more protections with your gift certificate from Westfield than you do when you spend \$1,000 on holiday accommodation.

Mr KEVIN ANDERSON: COVID again has thrown a curve ball and what we are looking at is that "Look Before You Book" campaign, Ms Houssos, which will encourage people to try to look at those contracts, right at the bottom where there is really tiny print, and it is late and you go, "Oh, I can't be bothered reading that contract"—we are going to encourage them to bring that to the forefront to better educate consumers as well.

The Hon. COURTNEY HOUSSOS: After 18 months you have a social media campaign. I am sure that travellers will be really excited by that.

The Hon. WES FANG: I am sure it is more than a social media campaign.

CORRECTED

The Hon. JOHN GRAHAM: Commissioner, you have taken us through the nine prohibition orders that have been issued, and I thought from the evidence about the audits that you are turning up to places now that do have the risks.

Mr CHANDLER: The ones that are putting their hands up, yes.

The Hon. JOHN GRAHAM: Yes, your model to predict the risk is getting better and better.

Mr CHANDLER: Yes.

The Hon. JOHN GRAHAM: The thing I am struggling to get my head around is just who exactly is doing this. A lot of the media discussion is about individual buildings. The Parliament does not have a very good grasp of the structure of the industry, but you do, given the work you are doing and the look you have had around the industry. What classes of developers or what groups are the problem here? Who is the problem here when you look across the industry?

Mr CHANDLER: What we have done in the last 18 months is that we have really joined up all of the prior data silos that existed across Fair Trading and we now have what we call a single view of building. Inside the Better Regulation Division [BRD] is the investigations unit, so we have actually joined up the investigations unit into this work plan as well. The investigations unit inside BRD holds one of the largest data assets of intelligence in the country, so they look at, first of all, the character of the player—

The Hon. JOHN GRAHAM: I will just stop you there because I do not want to know how you do it; I want to know your view about who is the problem. Which developers are the problem, which class of developers, or in the industry structure who is causing these problems, in your view?

Mr CHANDLER: The strongest indicators that actually lead you to the developers that cause the greatest strain is SafeWork. The big indicator is the number of safety breaches that have occurred by the builder during the course of construction. That is by far the loudest bell.

The Hon. JOHN GRAHAM: That is the red flag.

Mr CHANDLER: That is the loudest of the bells.

The Hon. JOHN GRAHAM: Yes.

Mr CHANDLER: The second of the bells is whether it is one of the riskier certifiers that is in our domain. Generally, those two things land you right on top of the most risky developers. There are a range of risky developers out there that are not the ones you would imagine they are. The one in Kiama the other week, for example, we got to that by simply joining up the SafeWork data and the certifier data. So do not just imagine that the top five to eight developers are simply the issue here; it is 20 per cent of developers.

The Hon. JOHN GRAHAM: Yes, and how would you describe those most risky developers? You are describing how you find them, but when the Parliament is looking at the industry, it is very opaque.

Mr CHANDLER: It is.

The Hon. JOHN GRAHAM: Part of the issue here is that there are individual companies around a lot of these buildings, so it is impossible to tell who is who.

Mr CHANDLER: Sure.

The Hon. JOHN GRAHAM: Who are these risky developers, now you have had a good look around in Sydney?

Mr CHANDLER: They are typically people who do not have a known brand or business, so we are looking for people that typically have an address at an accountant or lawyer's office, so they are not people that actually have—

Mr DAVID SHOEBRIDGE: Or an accountant's office.

Mr CHANDLER: More often a lawyer's office—sorry, I withdraw that; that was a flippant remark. It is an accountant or lawyer's office, an address of convenience, so we look at that. The power that we are also now looking at is source of finance. For example, we can now join up our data assets to look at the land registry service and see who is the registered financier on title because anyone who is loaning money to a project would ideally make sure their interests are secured on title, so we see that, and where we do not see a legitimate source of funds there is another pointer there. All I can say is that there are very many pointers coming together at the moment that target these people. The flipside of that is that we want to distinguish between who are the trusted players and who are the less trusted.

CORRECTED

The Hon. JOHN GRAHAM: Yes, which makes a lot of sense.

Mr CHANDLER: So the work that we have been doing—

The Hon. JOHN GRAHAM: I accept that. Looking at some of the people you have already put these prohibition orders on, one building up until recently sounded like it might have been the worst building, the one at 93 Auburn Road, Auburn. It is, I think, a Goldenia development. You said it was a Merhis development. If there is a problem with the worst building, are you then seeing other problems with those same groups?

Mr CHANDLER: Yes, those same groups are presenting buildings with similar issues. Right now we would have probably 15 buildings under investigation by some of the repeat players, but the journey does take some time because one of the things that you discover very quickly in this role is that in fact some of these players are prepared to spend more money on litigation than they are on building it right in the first place.

The Hon. JOHN GRAHAM: Yes.

Mr CHANDLER: It staggers me that the money that they are prepared to spend on lawyers, in fact had they just applied to doing the job right, they would have got a nice job out of it. I expect that over the next three to six months you are going to see quite a lot of orders being issued to these repeat players, but it does take some process.

The Hon. JOHN GRAHAM: You are seeing repeat offenders, though?

Mr CHANDLER: Yes, we are. With one of them, for example, there are five buildings, but we are getting them before occupation certificates [OCs] now.

The Hon. JOHN GRAHAM: Who is that player, for example? Are you in a position to tell us that today?

Mr CHANDLER: No, I do not think so. I think what we ought to do is let due process wander out here because the media would immediately assume that it is someone that they can think of. It is not.

The Hon. JOHN GRAHAM: I accept that; it is whatever you are comfortable saying today.

Mr CHANDLER: Yes. It is not the person they would think of, okay?

The Hon. JOHN GRAHAM: You are clearly looking at one of the Toplace properties, and they have a range across Sydney. Are you comfortable saying anything about that?

Mr CHANDLER: No, I am not, because one of the things that I am doing in working with these people is that some of these developers look at themselves and say, "Well, I am way back in terms of history, but I want to be in this place in the future", so I cannot close the door on people who are prepared to move to a different playing game. I am working with a number of developers and if they say to me that they are going to go back and fix their legacy projects, until they stop doing that, I am going to take them at their word. One of the players that you may have mentioned is continuing to turn up and say, "Each time you spring me with a bad building, I will go back and fix it." Now until that does not work—

The Hon. JOHN GRAHAM: Yes, you are going to give them the benefit of the doubt.

Mr CHANDLER: But there is a range of other players out there. There are some constructors out there that are habitual players in terms of shutting down their businesses and we have another three or four of them at the moment that we are working on.

The Hon. JOHN GRAHAM: I have to ask you this: Earlier you said that 93 Auburn Road, Auburn was the worst building you had seen at that date.

Mr CHANDLER: No, I said maybe it is not.

The Hon. JOHN GRAHAM: Have you seen anything since that has had you more concerned?

Mr CHANDLER: Again, the good thing about it is the ones that we may have seen that could have challenged that reputation, we have got them before an OC audit, so when you see them, they will be very much better.

The Hon. COURTNEY HOUSSOS: I come back to the question of prohibition orders. How many have been withdrawn, Minister?

Mr KEVIN ANDERSON: I would have to ask the Building Commissioner about those operational matters, Ms Houssos.

The Hon. COURTNEY HOUSSOS: Back to you, Mr Chandler.

CORRECTED

Mr CHANDLER: I do not have all the numbers these days welded in my head. I need to do a weekly—so there have been six prohibition orders withdrawn.

The Hon. COURTNEY HOUSSOS: How many have been challenged in the Land and Environment Court?

Mr CHANDLER: There is one prohibition order being challenged in the Land and Environment Court. There are two building works rectification orders that are for challenge. One of those we took through the Land and Environment Court and I am pleased to say that we won it. We have got one currently in the Land and Environment Court, but one that took us to the Land and Environment Court and we won that, and we also had costs awarded in our favour.

Mr DAVID SHOEBRIDGE: Minister, the round before last I gave you a document.

Mr KEVIN ANDERSON: Yes.

Mr DAVID SHOEBRIDGE: Have you got it in front of you?

Mr KEVIN ANDERSON: Yes, I do.

Mr DAVID SHOEBRIDGE: I thought we would start on it. Can I ask you to look again to that page which has the two walls, one with aluminium cladding with cavity barriers, which is consistent with Project Remediate. Do you see that?

Mr KEVIN ANDERSON: Yes.

Mr DAVID SHOEBRIDGE: The one on the right is without cavity barriers, which is consistent with the Building Code of Australia. Do you see that?

Mr KEVIN ANDERSON: Yes.

Mr DAVID SHOEBRIDGE: Minister, have you seen this before?

Mr KEVIN ANDERSON: This is part of a briefing that the Building Commissioner put up, but it is a myriad of many briefings that we have had on behalf of the Building Commissioner. But please go on, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I just asked you if you had seen it before.

Mr KEVIN ANDERSON: It would have been in a briefing, that I think in July the crossbench would have been given.

Mr DAVID SHOEBRIDGE: Minister, have you seen it before?

Mr KEVIN ANDERSON: Yes.

Mr DAVID SHOEBRIDGE: That was easy. When you saw this and you realised that fire could spread like that on aluminium-clad buildings which have been built consistent with the Building Code of Australia [BCA], what did you think?

Mr KEVIN ANDERSON: Just one second, Mr Shoebridge. Mr Chandler is offering some advice in relation to that particular—

Mr DAVID SHOEBRIDGE: I am going to come to Mr Chandler next. He cannot tell you what you thought.

Mr KEVIN ANDERSON: No, he was not telling me what I thought; he was giving me product classification.

Mr DAVID SHOEBRIDGE: I will come back to that, because there is another image that Mr Chandler can help with.

Mr KEVIN ANDERSON: Sure.

Mr DAVID SHOEBRIDGE: Do you remember what the question was?

Mr KEVIN ANDERSON: Yes, I do. Buildings that have been remediated already in New South Wales would have complied with the Building Code of Australia and they would have had declared designs if they were done after 1 July. They would have been captured under the Design and Building Practitioners [DBP] Act. Is that where you are going in relation to whether they are complying with the BCA?

CORRECTED

Mr DAVID SHOEBRIDGE: Minister, I was asking you what you thought when you saw that buildings constructed under the Building Code of Australia with aluminium cladding can have the entire wall burn like this. I was asking what you thought when you saw that? It may have been nothing, but I just want to know what you thought.

Mr KEVIN ANDERSON: I understand that. Not just in relation to that particular image, Mr Shoebridge, any image where a building has fire or is engulfed in flames, whether it be a class 1, all the way through to a class 10, is quite distressing.

Mr DAVID SHOEBRIDGE: So what did you do?

Mr KEVIN ANDERSON: In relation to?

Mr DAVID SHOEBRIDGE: The fact that buildings can be built right now and are being built right now with this form of aluminium cladding on their walls which can see the entire wall catch fire and burn like this. What are you doing about it? You say it is distressing; what are you doing about it?

Mr KEVIN ANDERSON: If they were built after 1 July they would have had to have complied with the Building Code of Australia in relation to getting those buildings rectified, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: What you see there is compliant with the Building Code of Australia; it is deemed to satisfy provisions under the Building Code of Australia. There is a prior slide in this set that says that. What you are seeing there is compliant with the Building Code of Australia.

Mr KEVIN ANDERSON: Mr Shoebridge, any building that would have been remediated under the Building Code of Australia would have had to have been signed off by the consent authority. If they—

Mr DAVID SHOEBRIDGE: That is complying with the Building Code of Australia.

Mr KEVIN ANDERSON: Yes but if they are, as part of the Building Code of Australia, then they are deemed to be appropriately rectified.

Mr DAVID SHOEBRIDGE: But Minister, they are putting this on, like this, and it is a major fire hazard, and it is compliant with the Building Code of Australia. Saying that it is compliant with the Building Code of Australia does not remove the hazard. Do you understand? The whole wall caught on fire.

Mr KEVIN ANDERSON: But if it was not compliant, Mr Shoebridge, then it would not have been able to be passed by the consent authority.

Mr DAVID SHOEBRIDGE: I will start again. What you see there is a wall that was built compliant with the Building Code of Australia. Even though it was compliant with the Building Code of Australia, when a fire was put to it at the bottom, the whole thing burnt, just like Grenfell Tower burnt. The whole thing burnt and it was compliant with the Building Code of Australia. Do you understand that?

Mr KEVIN ANDERSON: Mr Shoebridge, if it was compliant with the Building Code of Australia, it would have been signed off by the consent authority—

Mr DAVID SHOEBRIDGE: Correct.

Mr KEVIN ANDERSON: —and if it was not compliant, it would not have passed.

Mr DAVID SHOEBRIDGE: That is right. It gets signed off by the consent authority. It is compliant with the Building Code of Australia but the whole thing catches on fire and it is a major fire hazard. What you do not seem to understand is that this is happening all the time on thousands of buildings across New South Wales. It is a major safety hazard and you are not doing anything about it because you do not seem to understand the issue, Minister.

Mr KEVIN ANDERSON: I do and what I am gleaning from you, Mr Shoebridge, is that you appear to be unhappy with the Building Code of Australia and the materials that are being used to make those buildings compliant.

Mr DAVID SHOEBRIDGE: Dead right.

Mr KEVIN ANDERSON: That is your view.

Mr DAVID SHOEBRIDGE: And why aren't you?

Mr KEVIN ANDERSON: That is your view.

Mr DAVID SHOEBRIDGE: That is my view because you provided the evidence in a briefing which showed the entire wall catches on fire.

CORRECTED

Mr KEVIN ANDERSON: So under Project Remediate we are setting a very high standard in relation to the remediation of unsafe buildings that have cladding in them.

Mr DAVID SHOEBRIDGE: Good, that is great—tick. That is for 200 buildings. Meanwhile, every other building that has been built with cladding across New South Wales is able to put this stuff on—the cheapest, most common remedy for cladding. It is happening everywhere, it is a major fire hazard and you cannot see the issue, Minister.

Mr KEVIN ANDERSON: But it is compliant with the Building Code of Australia—

Mr DAVID SHOEBRIDGE: Yes, that is the—

Mr KEVIN ANDERSON: —and signed off by the consent authority. Mr Shoebridge, if you have got an issue in relation to that particular product, I am very happy for you to bring it forward and put it into the Cladding Product Safety Panel.

Mr DAVID SHOEBRIDGE: No Minister, I do not have the issue. Your own tests show the issue. If you test it under AS-5113 you see the issue. The slide that you gave to my office shows the issue and you are not doing anything about it.

Mr KEVIN ANDERSON: In relation to the Building Code of Australia, Mr Shoebridge—the Building Commissioner might like to elaborate on that product—but it does comply and—

Mr DAVID SHOEBRIDGE: I know it complies; that is the problem.

Mr KEVIN ANDERSON: —the consent authority would not have signed off on it if it did not comply.

Mr DAVID SHOEBRIDGE: Minister, there is a major safety hazard out there and what is frustrating me most about this conversation is that you do not seem to understand that just because it is compliant with the Building Code of Australia—and all the flammable cladding that was put on by Grenfell was compliant with the Building Code of Australia—does not mean it is safe. You are not doing anything to fix the code? Why not? Is it because you do not understand the issue?

Mr KEVIN ANDERSON: Can I just take you back to where you said "Grenfell". Did they comply with the Building Code of Australia?

Mr DAVID SHOEBRIDGE: Correct, it was all compliant with the Building Code of Australia. All that cladding that was whacked on was compliant with the Building Code of Australia. We had Ministers saying, "It is all fine; don't you worry about it, it is all compliant."

Mr KEVIN ANDERSON: Is that right?

Mr CHANDLER: I do not think we are in a position to say it was compliant with the Building Code of Australia. It was compliant with whatever codes in the United Kingdom.

Mr KEVIN ANDERSON: At that time.

Mr DAVID SHOEBRIDGE: All the flammable cladding that was put on consistent with the flammable cladding that was put on Grenfell, all of that was compliant with the Building Code of Australia here.

Mr CHANDLER: I think that is a big stretch; I am sorry.

Mr KEVIN ANDERSON: I cannot comment on that, Mr Shoebridge, but what I can say is that those buildings that have already been rectified with cladding under the Building Code of Australia were signed off by the consent authority and deemed compliant.

Mr DAVID SHOEBRIDGE: Minister, I think the transcript will have to stand for itself. I am going to ask you this: Are you going to make efforts to change the Building Code of Australia to make properties safe and to prevent entire walls going up like this?

Mr KEVIN ANDERSON: The Cladding Product Safety Panel does very good work in relation to the products available for cladding. It will continue that work. It is onto the second tranche now, Mr Shoebridge. It will continue to ascertain the criteria required to make them safe with the Building Code of Australia.

Mr DAVID SHOEBRIDGE: I will tender that document. Building Commissioner, do you have power over boarding houses, because a lot of multistorey buildings at the moment are going through approval processes under the Environmental Planning and Assessment Act as boarding houses to get planning benefits. Obviously there will be significant building issues in relation to them. Do you have power over boarding houses?

CORRECTED

Mr CHANDLER: Again, this is for the Minister to announce, but there would be an extension at some date in the future of the buildings that were beyond class 2. At the moment, those powers apply to class 2 buildings, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: So is that a no; you do not have power over boarding houses?

Mr CHANDLER: The answer is no, I do not. But where boarding houses are part of an integrated development involving a class 2 building, yes, I do.

Mr DAVID SHOEBRIDGE: But if it is a boarding house by itself—

Mr CHANDLER: If it is on its own, no.

Mr DAVID SHOEBRIDGE: Minister, do you not think it is appropriate the Building Commissioner has power over boarding houses, given they have got many of the same issues as class 2 residential buildings?

Mr KEVIN ANDERSON: At this point in time our focus is on those class 2 buildings—those high-rise residential. We will certainly be looking at, further down the track, in terms of what that needs and should happen. At this point in time, it is class 2 high-rise residential. We have got plenty of work in front of us, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I am now forced to ask you, Commissioner, do you think you should have the power over boarding houses, given many of the same issues arise for boarding houses as for class 2 residential?

Mr CHANDLER: I think in the next tranche of buildings, it will be desirable to have boarding houses. The legislation was very clear and says, "Let's get this class 2 stood up; let's resolve all of the unintended consequences and then look to move the edges out." It would be desirable. The answer is yes.

Mr DAVID SHOEBRIDGE: It is very hard to drive dodgy certifiers out of the industry. Do you know that Vic Lilli is still a member of the Association of Accredited Certifiers [AAC] and is still being promoted as a certifier? What does it take?

Mr CHANDLER: I can say that Mr Lilli is not a principal certifying authority [PCA] working on any class 2 building. I do not think that there is a developer that would be game to even engage him for that. He is pretty well iced in terms of that space. The fact that AAC still entertain him as a member is something that we will take up with professional associations. In fact, I am swinging my interest across to the Australian Institute of Building Surveyors [AIBS] because I believe that AAC has yet to demonstrate its bona fides in terms of representing a professional body.

Mr DAVID SHOEBRIDGE: It is harder to get off the list than get on the list with AAS, isn't it?

Mr CHANDLER: It looks like a bit of a club that you could join at the door.

The CHAIR: I turn now to the Subsidence Advisory NSW in relation to mining subsidence, which I flagged in an earlier session. Let me know who to direct these questions to. I have got a number of questions about—sorry?

Mr KEVIN ANDERSON: Fire away.

Ms HOGAN: Sorry, I was just saying go to Ms Webb initially.

The CHAIR: Sure. I will start with Ms Webb. By all means, Minister, if you want to cut in, please do. Ms Webb, who is the chief executive of Subsidence Advisory NSW?

Ms WEBB: That is Mr Joe D'Ermilio.

The CHAIR: How were they appointed?

Ms WEBB: I think he was appointed laterally for that position when we had the reorganisation of the Better Regulation division.

The CHAIR: But he is effectively a public servant, yes? He is within the department employees, not a separate—

Ms HOGAN: That is right.

Ms WEBB: He is a departmental employee, yes.

The CHAIR: How long is he appointed for? Is he appointed just as an employee or is he appointed for a period of time?

Ms WEBB: It is a permanent appointment.

CORRECTED

The CHAIR: What is the minimum amount that is required in the mine subsidence fund?

Ms WEBB: I would have to take that level of detail on notice.

The CHAIR: And also whether the minimum amount required in the fund has increased or decreased over time.

Ms WEBB: It depends what time frame. I will take it on notice, but it might just be helpful because there was quite a substantial change to the fund in 2017-2018. Would you like it since that date?

The CHAIR: Since the date that it changed. That would be useful. Since Subsidence Advisory NSW took over from the NSW Mine Subsidence Board, the total leviable contribution has decreased by what looks to be just over \$750,000. Can you explain why that is?

Ms WEBB: Again, I will elaborate on notice. Very briefly, my understanding was that when the law changed, the requirements for the amount we needed in the fund changed as well. Therefore, the levy could be decreased.

The CHAIR: The levy has been decreased just recently in a new regulation. Would you be aware of that?

Ms WEBB: Yes, that is right. It is reviewed regularly.

The CHAIR: It would be useful to know why that was and on what basis that gets reviewed, because it does not seem clear from the regulation or the enabling Act either. Are you able to tell me how many times the chief executive has made payments from the fund to reimburse Tahmoor Coal for compensation payments for mine subsidence?

Ms WEBB: I do not think I have got that exact number here. I would have to take that on notice.

The CHAIR: Are you able to also tell me how many properties have been purchased as a result of subsidence claims?

Ms WEBB: Overall?

The CHAIR: Overall or by year. If you are taking it on notice, it would be useful.

Ms WEBB: I think we will take it on notice, if we can do it by year.

The CHAIR: If you could tell me how many have been acquired through a compulsory acquisition process and how many of those properties have been sold, that would be useful. I take it you will have to take that on notice.

Ms WEBB: Yes, I would.

The CHAIR: Importantly, how many properties have been sold at a profit?

Ms WEBB: Yes, we can definitely add that in.

The CHAIR: Minister, are you aware that the coal mine subsidence fund makes a profit not just from investments that it makes using money from the fund in various places but also through basically flipping properties? The chief executive will purchase a property that is impacted by subsidence, fix it up and then sell it for a profit. Are you aware of that happening?

Mr KEVIN ANDERSON: No, I am unaware of that happening.

The CHAIR: Perhaps I could ask you to have a look at that. As I understand it, although the profit gets booked to the total amount of the fund, so do the losses from the investments. The end impact of that is that the coal mining companies who are required to pay into that fund are then required to pay less because of that property flipping. I think you can probably understand where I am going with this, but perhaps I will leave it there for today and ask you to have a look at it. Perhaps we could have a chat at some point separately. I will separately put in some detailed questions as supplementary questions.

As my time is a bit limited, I will move back to some of the other issues. Thank you for that, Ms Webb. In relation to the minimum track standards for greyhound racing, I understand that Greyhound Racing NSW undertook a statewide safety audit of all of the greyhound racing tracks against the New South Wales greyhound track minimum standards. In February of this year you advised via questions on notice that you expect all of the tracks to be compliant by 2023. Are you able to tell me which tracks are not yet compliant?

Mr KEVIN ANDERSON: I do not have those tracks at hand, but I can certainly get them to you. What I can say is that there are a significant number of tracks that have been slated for upgrade to cater for the capital

CORRECTED

grants program of \$30 million. In addition to that, as part of the operating licence of Greyhound Racing NSW, there will be an extra \$5 million over the next five years for infrastructure of grounds around as well. Participants will be able to at least have upgraded modern facilities, such as kennels and things like that, to look after not only the welfare of animals but it is important that people also have good facilities—so significant investment in those tracks as well as the infrastructure around the tracks to provide a better experience for participants, as well as the welfare and integrity of the greyhounds.

The CHAIR: Can you tell me when the results of that audit are to be released publicly?

Mr KEVIN ANDERSON: I will come back to you on that.

The CHAIR: If you could give us, on notice, an update of the progress of all track upgrades that have been funded through the Greyhound Racing Capital Grants Programs, that would be great. If the tracks are not compliant prior to 2023, what are the consequences for those tracks?

Mr KEVIN ANDERSON: It is my expectation that they will be. There are sufficient funds in the capital grants program to be able to undertake that. There is that track strategy that has been released by Greyhound Racing NSW. It is my expectation that will be done in that time frame.

The CHAIR: Thank you. Moving to whips in horse racing, and I know that my colleague Mr Pearson asked about this as well, The Everest event earlier this month had 12 jockeys breaching whip usage rules, which was half of the jockeys that competed in The Everest race. Only one of the 12 jockeys was fined for breaching the rules. I understand that those rules are industry rules rather than regulations of your Government but, given that the rules are pretty lax and the industry does not seem to be able or willing to enforce them, do you think it is time that we brought some regulations around whipping in New South Wales legislation?

Mr KEVIN ANDERSON: On the issue you are talking about, the code is very strict in relation to the rules of racing set by Racing NSW. It takes the welfare of thoroughbreds very seriously. You have just highlighted the fact that several jockeys were mentioned in relation to what they were doing on the day of The Everest. It is held in very high regard and a very dim view is placed upon those who do the wrong thing. Racing NSW is the one that sets the rules. It sets a very high standard and are managing any breach at all.

The CHAIR: Why then is a breach by a jockey not followed up on with any kind of penalty or consequence?

Mr KEVIN ANDERSON: That is a matter for Racing NSW. But in regard to the code of conduct and the rules of racing set by Racing NSW, I ask Mr O'Brien if he would like to elaborate any further.

Mr O'BRIEN: We do not have information in front of us about the circumstances of those particular jockeys that you mentioned and the nature of the breaches. It is the responsibility of Racing NSW stewards to determine the extent of the breach and what penalties apply.

The CHAIR: Sorry, so what is the explanation then for jockeys clearly breaching the whipping rules not being held accountable for that and facing no consequence? Does that not concern you, Minister?

Mr KEVIN ANDERSON: They would have been investigated by Racing NSW, which is the authority in setting those codes of conducts and those rules. It would have determined the appropriate penalty or the appropriate course of action to be taken.

The CHAIR: Would you agree that the appropriate penalty for whipping a horse in excess of that which you are permitted to do is appropriate? So it is okay to have no consequence for that?

Mr KEVIN ANDERSON: Racing NSW would have assessed the level of breach and, appropriately, either put a penalty in place or they will get banned for a couple of races or they will get a fine or whatever the case may be. Racing NSW would have determined the level of penalty based on that individual circumstance.

The CHAIR: But in 11 of the 12 cases where there was whipping in excess of the rules, which we have video footage for, there were no consequences for the jockeys. What message does that send to jockeys for future races?

Mr KEVIN ANDERSON: Racing NSW takes its role of welfare and particularly enforcing its code of conduct and rules of racing very seriously. It would have assessed each individual incident and determined the course of action. It is a matter for Racing NSW.

The CHAIR: You can understand though, can you not, how confusing it is for someone like me who is not a racing participant, to understand how you can have a rule that you are not allowed to whip a horse more than a certain amount of times and to then see a horse be whipped over and over, well in excess of what is permitted.

CORRECTED

In what circumstances would a jockey be able to wriggle out of that as though they did not do it? We just all saw them do it.

Mr KEVIN ANDERSON: Again, each individual circumstance is investigated by Racing NSW and they are the authority in ensuring that no codes are breached. If they are then the penalties will apply.

The CHAIR: I am asking you from your knowledge of this situation, it is a bit strange, is it not, that they did not get any consequence for that breach?

Mr KEVIN ANDERSON: I did not see the individual circumstances that you are talking about, Ms Boyd so it is difficult for me to comment.

The CHAIR: If they in fact breached the code by whipping a horse more than they were permitted to, would you expect them to face a consequence for that?

Mr KEVIN ANDERSON: Racing NSW would assess each one on its merit and ultimately it would afford the appropriate penalty if someone does breach the code. We have seen that quite significantly. Some of those—

The CHAIR: And if there was not; if there was no penalty for a breach of the code?

Mr KEVIN ANDERSON: Racing NSW is the one that hands out those penalties.

The CHAIR: What would you expect to happen, Minister?

Mr KEVIN ANDERSON: Chair, it is a matter for Racing NSW. It does do quite high level work in relation to welfare, integrity and enforcing the code.

The CHAIR: With respect, it is a matter for you though, because you do have the power to introduce legislation that would ideally prohibit whipping altogether but let us say, to replicate the rules that currently the industry has in place, you could then enforce that under regulation. You do have that power, so it is a matter for you to determine whether or not you think that is acceptable.

Mr KEVIN ANDERSON: The current rules of racing and the codes of conduct I believe are appropriate as handed down by Racing NSW.

The CHAIR: And the enforcement?

Mr KEVIN ANDERSON: As handed down by Racing NSW. It hands out some pretty hefty fines, Chair.

The CHAIR: Unfortunately, we are out of time and I appear to be going nowhere.

The Hon. SCOTT FARLOW: One of those straight tracks.

The CHAIR: It was a very straight track. Do Government members have any questions that they want to ask to bring us home?

The Hon. SCOTT FARLOW: I will hand over to the Hon. Wes Fang.

The Hon. WES FANG: Chair, as much as I would like to, I feel that the Minister has accurately covered all aspects of his portfolio today. There is no need for us to ask additional questions.

The CHAIR: Thank you, Mr Fang, it has indeed been a long day. I am sure we are grateful to be allowed out 15 minutes earlier. Thank you very much, Minister.

Mr KEVIN ANDERSON: Thank you, Chair.

The CHAIR: And thank you to all the Government officials for coming today. I do understand the time it takes to prepare and attend. We are very grateful. To the extent there were questions taken on notice, and there will be supplementary questions, the Committee secretariat will be in touch with you. I thank the Committee secretariat for their assistance today; it has been very busy. I thank Committee members for being relatively well-behaved.

Mr KEVIN ANDERSON: Thank you for your time, Chair, and the Committee.

Ms HOGAN: Thank you.

(The witnesses withdrew.)

The Committee proceeded to deliberate.