



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND
TOURISM**

(Reference: [Inquiry into building quality in the ACT](#))

Members:

MR J HANSON (Chair)
MS S ORR (Deputy Chair)
MR M PETTERSSON

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 1 MAY 2019

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Secretary to the committee:
Mr H Finlay (Ph: 620 50129)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

DAVID, MR RAYMOND 48
GRANT, MR JOHN 57
SEANIGER, MS LINDA 71
SOWDEN, MR JUSTIN 66
TOFFOLON, MS GLENDA 42

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Amended 20 May 2013

The committee met at 10.01 am.

TOFFOLON, MS GLENDA

THE CHAIR: Thanks for attending. If you want to kick off with the problems and the solutions, that would be great. We can all go home!

Ms Toffolon: Thank you so much for this opportunity. I really do appreciate it. Having gone through this experience and realised at the end of the day that it did not have to be this way, I just want to raise a few things that I see contribute to the problems and then offer some solutions.

First of all, going through this experience, you start off with your architect or someone to draw your house or whatever it may be. You then go to the DA and then your builder and then your certifier. All along I found that there were some hiccups. Basically there is a lot of pressure on people to be across all these issues, become an expert very quickly, to know how to handle it and then move on. There are all these layers of stress, really, because you want to get it right. You have got a lot of money and time invested in this. Also, you are either renting a place or really have no place to live, so you want to get on with it as much as you can.

You trust your architect. You ask them to provide the names of some good builders. They are in the industry; you assume they do. They give you one. You do your checks, as many checks as you can. You find nothing untoward. You sign the contract and off you go.

But what I found was that there is still an imbalance of power between the builder and the owner. You have got a contract, but if you have got someone that is not prepared to do the right thing, you can lead a horse to water but you cannot make it drink. And it is like that. You have got the specifications, you have got the contract, so let us get on with it—not a problem. It is when that does not happen. The house is not falling down around me but there are all sorts of other things which then add to the pressure, not only physically and mentally but also financially. As I said, it does not have to be this way.

The problem is that once you have got someone like this, once you have got a builder like this, it is no use; you cannot negotiate; you cannot discuss; you cannot talk. If I ever raised something, it was never their fault. For instance, there was this drain in the bathroom which was not supposed to be there. It was not in the plans; it was not in the specifications. “You’ll have to speak to whoever put your bathroom plan in.” “What bathroom plan?”

Then they try to blame the architect. I got in touch with the architect, who said it had nothing to do with them. Did I get to the bottom of it? No. But I got this extra drain. Of course, the builder is not going to do anything about it because: “Oh, too bad. That was the plan that was put in; we have to go with it.” There were all these sorts of things always coming up. It was never their fault.

Just recently I also pointed out that one of the door frames has a five-millimetre gap,

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which is quite big when you are looking down at it. I pointed that out and he said, “No, I cut that out; it’s perfect.” I said, “But there is this great big gap there.” “If you think that is bad you should see what they’re building in whatever new suburb.” He is not going to do anything. He is not going to fix it. What can I do? Realistically, what can I do, apart from hiring someone else to fix it? It is these sorts of things that all end up really building up.

When we got to the end of the build, there were a few things that had not been done, and they wanted the final payment. The bank sent around some inspectors and said that, no, they were not going to release the funds because there were a few things outstanding. This was put to the builder; it was pointed out. He refused to do anything about it. This is it.

There were other instances where I held back a payment a little because the things had not been done. It was basically: “If you don’t pay, we are going to hold up the next thing,” which was the driveway, which was really big. “And if we cancel that now, we don’t know when we can get back”. It is more time, more money, nowhere to live, and a bank loan which was supposed to be paid off months and months ago and is still ongoing.

It was a dual occupancy. There was someone that wanted to buy and move into the other place, a widow. She was recently widowed, wanting to get on with her life. She was really keen to move in. That went down the toilet because it dragged on for so long. Her family then decided to find somewhere else. I have recently learned that she did buy in another suburb. She is not happy. They are now looking at maybe a nursing home. This did not need to happen. You are affecting people’s lives by not doing it, because of what you do not want to do.

I went down all the avenues that are laid out. If you have got a dispute you do this, you do that, you do everything. Get lawyers. Waste of time, waste of money, I found. You are better off just ruling a line and dealing with it yourself, because you are not going to get anywhere. It is these builders that just keep getting away with this. It does involve substantial amounts of money as well.

For instance, at one time there was a leak found in the garage. It has wrecked quite a bit of plasterwork. It is still there. It still has not been finished, and there was another bit of plastering that needed redoing. I think if we had inspectors to come and inspect two, maybe three times, and one of them at the very end, they would pick up things like this: “This is not done, that needs to be done and that is not in line. You have got two weeks to fix it, otherwise you are going to start losing points off your licence.”

The builder has to feel the blowtorch. It is no use talking. It is no use threatening. It is no use sending them to school. The builder that I used has been around the block several times. He knows exactly what he can do, what he can get away with and what he should and should not do.

MS ORR: How did you identify the builder that you used? How did you select the builder?

Ms Toffolon: The architect suggested him. I had seen years ago some renovation

work that he had done, which looked really good. I had spoken to him. All seemed fine. I checked, googled, went on the Access Canberra website, to make sure he was not there as one of the builders identified as causing problems. Everything seemed clear.

I have since learned from some of the tradies that, yes, he did have a good reputation years ago when he was on a building site. He changed the way he worked recently. He wanted to get, I think, a fairly big company going or a medium sized company. He was fairly hands off, and he had this new team which really was not easy to work with, to say the least, and really could not care.

I did learn that there was another house built in a nearby suburb. That man went through practically the same experience as I did. There was about a year delay. On and on it went. There were various issues that will be costly or fairly costly. With some of the work that we saw being done by some of the tradies, we would look at it and we were both of the opinion that if we had hired these tradies separately we would not be paying. We were not terribly pleased. This was a fairly upper end builder, rather than down the bottom. It was not cheap by any means.

There was another build near me, in the same suburb, and my understanding, from the information I got from someone who is in the business and who knew, was that that build was either subcontracted out or they had hired another builder, someone with some sort of building qualification to do that. That turned out just fine. It was done on time, and the person in that house seems to think that this particular builder did it rather than the actual builder who did it, the subbie.

MS ORR: So it is a bit of a lottery, then?

Ms Toffolon: It really is.

THE CHAIR: Even if you had some sort of system, a website or the ability to get up-to-date information, it would depend on who has actually done the build, whether it was that particular builder or one of his—

Ms Toffolon: But this is it. And that is not going to be out there. They are not going to advertise that. When you start the process and you are getting your development application approved in the system, that is noted in the ACTPLA system. That was why I suggested that basically we just make it fairly simple but be able to track the private building dwellings. You have got your DA application. Yes, it is approved. Who is the builder, when is it supposed to be finished and what is the contractual end day? Was it finished on that day? If not, why not? Were there disputes? And has the builder come back?

The contract also states that if any faults show up within a certain amount of time they have got to come back and fix those. You have just got to have those ticked off. You get a very good picture of what is going on with that builder. If you see them—that he did this house, this house and this house and there were always delays, there were not variations for those delays and there was a dispute or disagreement, then you are thinking, “I’m not too sure about that builder.”

MS ORR: You were saying that the builder had subcontractors there to oversee your particular build. What sort of supervision did the builder have on your site?

Ms Toffolon: I have got no idea. It varied. It started off with someone, one of his employees—I do not know what his qualification was—but there was not very much going on. The neighbours kept mentioning to me the deafening silence coming out from the build. There was one of his employees. As I said, I do not know what his qualification was. Then he employed someone else, a woman who had some sort of interior design expertise; I do not know. She was put in charge. She was put in charge of mine and the other man who had problems as well that I know of. Nothing much, by the looks of it.

THE CHAIR: Can I go to the issue you raised about an inspector. How do you see that as being different from a certifier?

Ms Toffolon: The certifiers, at the moment, are privatised. The certifier never contacted me, and if I contacted him it was like, “Well, what are you phoning me for?” There were various things that I raised with the certifier, and it was like, “Well, no, I didn’t check that.”

MS ORR: That is very interesting, given that the certifier is meant to work for the owner. Can I clarify: was the certifier appointed by you or by the—

Ms Toffolon: By the builder. The builder asked me if I had a certifier. I said, “No, I’ve got to look for one.” And he said, “Look, great. We’ll go with so-and-so because we have worked with him. He’s a good certifier.”

THE CHAIR: So you sensed that the certifier was on the side of the builder rather than your side?

Ms Toffolon: As I said, he never contacted me, even when the builder may have contacted him initially, to say, “I’ll be your certifier.” Nothing.

THE CHAIR: So, regardless of whether they are private or work for the government, you want a certifier to be on your side, to be the person who is your advocate, to say, “No, that’s not done, that’s not done and that’s not right,” so that when they sign off that it is good to go they have your interests at heart rather than the builder’s. But that is not the way it played out for you—it was someone working for the builder rather than for you?

Ms Toffolon: Absolutely. As I said, I phoned him several times. One time I was concerned about something and I said, “Did you inspect that? How do we know it’s been done?” He said, “I don’t know. It’s got nothing to do with me.” I said, “Well, how do you know it’s done?” He said, “The builder ticks off on it and he gives me the paperwork.” I was thinking, “What?”

MS ORR: Was it your expectation that the certifier did more inspections than perhaps the current system requires?

Ms Toffolon: I have no idea how many he did and how many he did not do and what

he did and what he did not do. He never got back to you on anything.

MS ORR: In an ideal world, what do you see as being the role of the certifier?

Ms Toffolon: Someone that keeps a track on the build so that it meets the specifications and also the contract. The building of a house has to meet certain standards and meet all these specifications—that it has this insulation or whatever it might be to meet the outcome. They really need to be across that and be able to insist that things are rectified before progress payments are made. It is all very well to say that you can hold back and not hand over progress payments until the work is done, but the builder is just going to turn around and say, “If you don’t pay up, I won’t be doing this, that or the other.” More delays, more money and more stress.

MS ORR: After your experience, do you have confidence in the building and construction industry?

Ms Toffolon: No.

MS ORR: What would give you trust in the industry?

Ms Toffolon: I think some change of rules. I really want to see the builders that do not do the right thing dealt with. We are talking about super major things, but not so super major. Those builders that do not do certain things do it that way because of money. They do not want to spend the money or the time or whatever, and they know they can get away with it. Yes, it is a contract and there are lawyers. Really? Tens of thousands of dollars there. You still cannot get the builder to do it, so why bother? You could have spent that money just getting someone else to sort it. Builders have to be held accountable, and they are not. I have spoken to the HIA.

MS ORR: I was going to ask about that, because you said in your submission that you were making a complaint to the HIA.

Ms Toffolon: I have not formally done that. I have spoken to them in the past, and it is basically always, “Oh, well, look, really, there’s nothing we can do.” I said, “Excuse me? It’s a contract.” “Yeah, nothing we can do.” I said, “No. Hang on. You have a code of ethics that a builder has to abide by.” “Oh, well, yes. But, look, we really can’t do anything, you know.” I said, “Well, you can throw them out of the association.” I was told by someone that had been looking into this issue another time that the HIA really need the members because that builds them up as some sort of authority. So they will take anyone, and they do very few checks on people applying for their membership.

MS ORR: The HIA have stated in their submission that they do not agree with the statement, “The buyer is always at a disadvantage.” As a result of your experience, do you have a view on that statement?

Ms Toffolon: Well, they probably would not. But to a degree the buyer or the owner is at a disadvantage. As I said, if you have a builder who does not get on and do what he is supposed to do, to a standard he is supposed to be doing it at and in the time frame he is supposed to be doing it in, there is very little you can do. Theoretically

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you can say you can do this, that and the other, but the builder—not only in this case but in lots of other cases I know about—will just drag things on or will not turn up afterwards to fix things.

MS ORR: You have identified issues you believe exist with the certification process, but do you think the certification process is the only problem with the building industry?

Ms Toffolon: No. It is that, along with builders not being held accountable, really. With something that seemed minor, this sort of pushed everything along. When I wanted to sell, I had a buyer. I no longer have a buyer. Also, the market changed, so I had problems selling it. It goes on and on, and I have still this great big loan which I was not supposed to have and I have to keep meeting the repayments. The builder is fine; nothing has happened to him.

THE CHAIR: We have run out of time.

MS ORR: I have a few follow-up questions. Is it possible to forward those to you to provide an answer to?

Ms Toffolon: Absolutely.

THE CHAIR: The committee secretary will send you a copy of the transcript for you to check. It will also be on the website. Thanks very much for attending.

DAVID, MR RAYMOND

THE CHAIR: Thank you for attending and for the submission you provided. Before we start, I raise a couple of housekeeping things. Could you read the privilege statement, the pink piece of paper? That tells you what your rights are in terms of the privilege that attaches to this committee. These proceedings will be webstreamed, reticulated throughout the building and also transcribed by Hansard.

Mr David: Yes.

THE CHAIR: If you are happy with that statement, do you have an opening statement? The committee will then ask questions.

Mr David: My wife, Catherine, and I signed a contract with our builder to build our house in September 2015, for completion by October 2016. We got control of our house in March 2018. It had been sitting idle since June 2017 while we waited for our builder to fix a list of issues we provided after our 8 June 2017 inspection.

Before we could move in, we had to buy and have installed a water heater. We had to have the floating bamboo floor on the bottom floor lifted and reinstalled, as it had been incorrectly installed. It had not been glued down, resulting in up to 20-millimetre gaps between the boards. And we had to have the whole house re-keyed as the builder could not provide us with a key to access the house. Our only access was initially through the garage roller door and into the house. We moved in at the end of May 2018.

THE CHAIR: Mr David, if you are going to read the whole statement, we are probably going to run out of time.

MS ORR: Because it was provided, we have read the statement.

THE CHAIR: Yes. Can you summarise the key issues so that we do not run out of time? We will then have time to ask a couple of questions. Is that possible?

Mr David: That is possible, as long as the statement is in *Hansard*.

MS ORR: We can take the statement and table it.

THE CHAIR: Yes, it will be.

Mr David: Okay. In summary, throughout our building we were not informed of any formal inspections or certification steps, or that they were even required. We met our certifier once, and others at our insistence, on site. That, to me, summarises the whole issue, the problem we have with our house, let alone the building industry in Canberra. The certification process, which I think is supposed to provide approval for steps going forward, does not actually happen; at least, it did not with our house.

This results in not only a compilation of issues and problems; it also compounds, because one problem leads to the next, which makes the problem twice as bad. An

example of that is the plumbing in the bathrooms. The toilets that we were supposed to have were supposed to be rear-fabbed, which meant that the plumbing had to come up to a certain height so that the cistern could be installed. The plumbing goes into the cistern directly. Because the plumber that was used was old, he used the old codes that he was aware of and he actually he plumbed it from underneath.

The toilets that were ordered had to be returned and new ones reordered to accommodate the new plumbing. To undo all of that, you have to undo all the tiling and all the plastering in order to get pipes up to get the toilets right. That is one of the issues that is still outstanding because I cannot afford to fix it at the moment. That is just a summary of the sorts of issues that we have. I am sure the plumbing that we have in our house no longer meets certification codes for plumbing because they are outdated. There are a whole heap of those sorts of issues.

MS ORR: Mr David, just to clarify, in respect of the plumbing example, have you had someone come in to verify whether it meets codes or does not meet codes?

Mr David: We had a building inspector before we moved in. I submitted the 90-page report to this committee. Some of that I think highlights the fact that the plumbing codes may not be up to standard.

THE CHAIR: The issue of certification is one that seems to come up in the evidence that we have heard. How did you get in contact with your certifier?

Mr David: Through the builder.

THE CHAIR: Did you have a sense that your certifier was really working on behalf of the builder, as opposed to working on your behalf?

Mr David: He came recommended by the builder; so, with that in mind, I think they were actually working together.

MS ORR: The certifier is meant to be independent and work for the owner, which in this case would have been you. Did you ever get the feeling that the certifier was working for you?

Mr David: No, not at any time throughout the whole building process. The reason for that, the reason I say it, is that not once did he ever contact us—at all.

MS ORR: But you said that at one stage you tried to contact him.

Mr David: We actually tried to contact him and the builder ended up getting a hold of him in order for him to meet us at the building site.

MS ORR: When you did contact him, what was the response you got from the certifier?

Mr David: I got no response from the certifier. The builder handled it all. That is the whole process and that is my understanding of it.

MR PETTERSSON: The certifier came recommended from the builder. How did you choose the builder?

Mr David: Through a display home. We spent nearly 18 months researching throughout Canberra, looking at sites, looking at display homes, even thinking about buying a renovation place. It came to the point where the cost of renovating a house to our requirements was almost the same as to build. So we decided to build from the ground. We looked at hundreds of display homes and display villages—all the way from Googong right down to Mirrabai Drive in—what is the suburb?

MR PETTERSSON: Moncrieff?

Mr David: Near Casey.

MS ORR: Yes, Moncrieff.

Mr David: Yes, Moncrieff. So we looked at all of those, including the ones like Denman Prospect and all those blocks of land. We came upon a home display in Wright that met our requirements—the actual display home. We only modified that plan, tweaked it a little bit to our requirements.

THE CHAIR: If you had had a certifier that you knew, trusted and that was communicating with you regularly, and that had been there to say at various stages, “This needs to be done, this needs to be done and this needs to be done before those funds are released,” do you think that that would have worked for you?

Mr David: I am not too sure whether that would have worked for us at all. We tried to be hands on throughout the whole building process, as much as the builder would let us. My understanding is that there are phases in the build and that certain phases require certification before the process continues. At no time were we aware that the certifiers did their job at those phases.

THE CHAIR: I suppose that is the point I am asking. If that had happened, do you see that that would possibly have led to a more satisfactory outcome?

Mr David: Absolutely.

THE CHAIR: Whereby what had gone wrong would have been stopped at that stage, rectified before you either went to the next stage or released funds.

Mr David: Yes, absolutely. I think that is a fundamental flaw in the current system as it stands, in that the builder and the certifier have a free hand to do what they want, rather than meet the requirement of approving one step completed, inspecting it, making sure that it actually meets the code and then going on from there.

THE CHAIR: That is why the legislation is written.

Mr David: Yes, that is not how it happens; I am sorry.

THE CHAIR: Yes, that is what is meant to happen. But what you are saying is that

the way that it is designed just does not happen.

Mr David: No. I do not believe so. My certifier, when I met him on site, said to me that that was the first time he had been on the site.

MS ORR: And your expectation was that he would have been there previous to that.

Mr David: Yes, and we already had the slab; we already had the frame. We had the plumbing, and the wiring was being done and the certifier had not been on site. We did not talk about the house. We talked about the retaining wall, of all things.

MS ORR: Yes, my understanding is that the slab pouring should be the first inspection for you.

Mr David: I would have thought the rebar would have been inspected before that.

MS ORR: Certifiers have come through very strongly within your testimony today, and in your submission, as a problem. Do you feel the certification process is the only thing that is wrong with the building industry?

Mr David: The culture within the whole building industry in the ACT is wrong. Every person I have talked to who has built a house, a brand-new house, has had negative experiences. We have talked to three other Mayfair Homes customers and they are in the same boat as we are.

MS ORR: I appreciate that this is anecdotal, but have you spoken to anyone who is not with Mayfair Homes?

Mr David: Yes.

MS ORR: Have they suggested similar experiences?

Mr David: We have spoken to two customers; I cannot remember—

THE CHAIR: We might leave individual names out of it because we are going after the systemic issues.

MS ORR: I note that the builder you went with is a member of the HIA and MBA. Have you sought any recourse through those organisations?

Mr David: Yes. We approached HIA on two occasions to table our complaints. Their advice to us was, “We can’t manage the complaint unless the builder is prepared to participate.” That was the end of that.

MS ORR: It did not go any further?

Mr David: Well, he is not going to participate. We tried and they could not get him to the table.

MS ORR: From what you have said, it sounds like you put in quite a lot of work to

identify a builder and you were very thorough in your process. Did being a member of the HIA or the MBA influence your decision on that builder?

Mr David: Absolutely—the fact that the house that we based our design on won HIA awards based on quality.

MS ORR: So is it fair to say that before your experience you would have had trust in the HIA?

Mr David: There was no other reason not to.

MS ORR: Where does that leave you now, based on your experience?

Mr David: We have a house that is still questionable as to whether it meets the codes. We do not know how much it is going to cost to get it to code or even if we are required to. We do not know how we would get that money back from the builder. It is not us that did not meet the code; it is the builder and the certifier. So how do we get our money back to fix the house?

MR PETTERSSON: You say you signed a 2008 version of the Master Builders Association contract that had back doors in it. Can you expand on what those back doors were?

Mr David: I will give you an example. Variation sheets, time sheets, based on weather. There is a clear stipulation that they are to give us 10 days or five days notice of time variation, based on weather, event by event. On the final handing over of the keys—which we did not get—they gave us a variation notice of 106 days of inclement weather. That is one and half years worth.

MS ORR: So that was after the event?

Mr David: Yes, after the event. As a result, it negated our liquidated damages path because he said that 106 days takes us to June 2017, which is when he said the building was fit for purpose. My contention is that we did not contract him to build a house fit for purpose; we contracted him to build a house based on the contract.

MS ORR: This is an interesting point, because there is a difference in a lot of instances between the contractual obligations and the minimum requirements of the building code. Have you had any trouble navigating between those two in trying to get your issues rectified?

Mr David: No. I have a good understanding now, having had to educate myself in this whole process. I understand the basic requirement to meet code. But what do I do if they do not even meet that? That is my problem.

MR PETTERSSON: Did you have that contract legally reviewed before you signed it?

Mr David: Yes.

MR PETTERSSON: Broadly, what did that legal review say?

Mr David: There were no issues with it, and that is the other thing.

MS ORR: Were you offered an alternative to the HIA contract?

Mr David: No, because that is the only one that Mayfair Homes use. I do not know whether they have upgraded because—guess what—it costs them money to get a new format or template.

THE CHAIR: Have you looked at insurance? I assume there was building insurance.

Mr David: There was.

THE CHAIR: Have you applied for the rectification of the issues under that insurance policy?

Mr David: No.

THE CHAIR: Is there any reason why not?

Mr David: Because that is the next step; we have not got there yet. We still have complaints through Access Canberra. We have not gone through ACAT because we go over that amount.

THE CHAIR: You have the complaints to Access Canberra. Have they dealt with you well? Did you get any satisfaction from them?

Mr David: We submitted the three separate complaints. The final one was after we submitted the building inspector's report as part of our complaint. That was in April last year. We have not heard any outcome on the three complaints.

THE CHAIR: From Access Canberra?

Mr David: No. No outcome.

MS ORR: You have said that you are not going to take action through ACAT because you go over the threshold.

Mr David: The threshold is \$25,000.

MS ORR: You have not been able to get anything through the industry bodies because they said they cannot make the builder participate.

Mr David: Unless the builder is prepared to.

MS ORR: I take it you have made representations to the builder and got nowhere. Can you run through the steps you went through to lodge these complaints, just so that I can get an idea of all the avenues that you have tried and what the outcomes have been?

Mr David: We went to HIA to talk about two different issues, the builder next door as well as ours. Neither builder was prepared to come. The issue with the builder next door was that he moved earth—

MS ORR: We read that in your submission.

Mr David: which was the compounding problem with the retaining wall. We had no joy with HIA, although we tried twice. I then sought legal advice and we had a lawyer on board. And then we followed it from there. We submitted to the builder, at various times, the various legal issues and contractual breaches that we thought were worth while, because there were quite a few. He ignored them. Even with legal representation he ignored them.

Pretty much we got to a point where the house sat, because we did a final inspection in June, we gave him a list before we could do final payment, because I knew he was not going to come back to fix them in three months time. We actually withheld the final payment until he did that. So he just sat until March.

We went through the complaint process and we went through arbitration to a point. At the end we were told that arbitration was going to cost us \$15,000, around about. Then my question to our lawyers was: “What does that get us?” They advised us that we would be getting a legally binding decision. I said, “But then I have to take that to court, in order for that legal binding decision to be ratified. How much is that?” Then you start to look at \$50,000, \$60,000, \$70,000.

I instructed our lawyer to approach the builder, offer him \$15,000 for the keys rather than pay arbitration and get us a further bill for whatever. That is where we ended up. I paid him \$15,000, he gave us the remote to the garage door and then we signed a—

MS ORR: Just to repeat, you were in dispute with the builder over whether he had met his contractual obligation?

Mr David: Yes.

MS ORR: And the outcome that you came to was a negotiation of \$15,000 to him for the work done, in order for him to hand over the keys?

Mr David: Yes, and settle the house. That is when I say we got control of the house, because we did not get keys.

MS ORR: You got a remote entry to the garage?

Mr David: Yes.

THE CHAIR: And Access Canberra have acknowledged your complaint?

Mr David: Yes. Apparently they are processing it.

MS ORR: You went to the HIA and you sought legal action. You then accessed the

house, and after that you got a report done?

Mr David: Yes. As soon as we got control of the house, the first thing we did was get a building inspector in. Before we could do anything, I wanted to make sure that everything in regard to the house, as we received it, was recorded. That is exactly what we did.

MS ORR: That report, I appreciate, you have provided to us.

Mr David: That is exactly what you have got.

MS ORR: Just for the record, on that report, were the issues contractual or were they structural?

Mr David: We were beyond contractual issues. We were more about code.

MS ORR: So the report went to the code?

Mr David: Yes.

MS ORR: And then, after you received that report and you had access to the house, what was your next step in seeking rectification or, I guess, remedy for rectification?

Mr David: It was the complaints through Access Canberra. And that was it.

MS ORR: Sorry, can you remind me again when you made the initial complaint to Access Canberra?

Mr David: We had three complaints. One was about the next-door neighbour building their block up and then restricting our solar access. I think there were two complaints in regard to that. The retaining wall was the other one. Then we submitted the report that you have as the final complaint about the quality.

MS ORR: Were those three complaints made at the same time?

Mr David: No.

MS ORR: When were the three complaints made?

Mr David: The first one was probably around about a year before, April.

MS ORR: That was the retaining wall issue that had come up a lot earlier?

Mr David: Yes, April 16-17.

MS ORR: Sorry, just for the record, what was the response that you received from Access Canberra for each of the complaints?

Mr David: I have not received any response on any of the complaints.

MS ORR: Have you received an acknowledgement of receiving the complaints?

Mr David: Yes.

MS ORR: But you have not been followed up by any specific—

THE CHAIR: Nearly 12 months—

Mr David: Yes.

MS ORR: Obviously, from your experience, you have used a lot of avenues and all of them have not worked, whether it be legal, government or industry. What does a good remediation process look like, in your opinion?

Mr David: A lot of communication in the very beginning, which I had to maintain with our builder throughout. I think it is all about the communication piece. It is about getting an agreement every so often to work the problem through without necessarily involving lawyers. That is the only avenue that is left to us. And we are beyond that. As I said in my statement, we do not have the finances or the will to follow it legally.

The only reason that we put in a submission to this committee was to make sure that the builder stops creating problems for Access Canberra in the way he has dealt with us. We want to prevent him having to put other people in a position, in the way he has put us, and he is doing that still. He is still in business.

THE CHAIR: On that note, thank you very much for appearing today and thank you very much for your submission and all the other information that you have provided to the inquiry. You will be sent a copy of the draft transcript of this hearing to check that it has no technical or transcription errors in it. Again, thank you very much for the information you have provided. Hopefully, out of this we will be able to come up with some recommendations to improve the system for people who are building their homes. Thanks very much.

Mr David: Thank you.

GRANT, MR JOHN

THE CHAIR: Before we start, I refer you to the pink privilege statement in front of you. Can you have a quick look at that to make sure you understand its contents? I also advise you that these hearings are being broadcast and will be transcribed by Hansard.

Mr Grant: Yes, I understand all that.

THE CHAIR: Would you like to make an opening statement? We have your submission.

Mr Grant: You received my opening statement as well?

THE CHAIR: Yes, we have.

Mr Grant: I will keep it short.

THE CHAIR: Keep it short and then we will go to questions.

Mr Grant: Thanks for letting me appear today. You should know that I am not an inveterate submission writer. I am here because this is an important issue and because our experience is that Third World practices operate in both the construction sector and in the way government enforces building regulation in the ACT.

Just so that you know, we have some basic problems in our building. We have severe cracking in concrete slabs, the columns which hold up the building and the water detention tank. Based on expert advice, 45 props were installed under the building to ensure its structural integrity. More recently, three further props were installed because a balcony appeared to be coming away from the building, potentially bringing a bedroom with it.

Tiling and waterproofing on balconies has failed and water is entering the car park from both the podium, which is above the car park, and the water detention tank, which causes significant difficulties for owners when the water is coming through and has the potential to cause concrete cancer in the future. I really cannot overstate the impacts of these problems on owners.

We identified the defects as early as 2012 and tried to work honestly and collaboratively with the builder. From my perspective, the builder offered nothing but denials and obfuscation and made a huge profit through the sale of our apartments in what is a dodgy building.

The *Canberra Times* reported in December 2018 that Morris Construction Corporation's legal representative, Ben Aulich, said in a statement that the firm was working with the owners corporation in a collaborative manner to resolve the purported issues with the building. If that was not an outright lie then the builder's lawyers must be out of touch with reality. If they are working in such a way, why have the defects not been removed and why is court action necessary?

We have engaged experts to advise us on the actual nature of the problems and how to fix them, because the building code does not tell you how to fix them. Those reports have been made available to Access Canberra, the builder and his contractors. The builder and the ACT government have failed in their responsibilities to the owners in this process of construction and in post-construction because they have not taken action to fix the appalling defects.

The Construction Occupation Registrar is the second building certifier. It issues the certificate of occupancy and use. We believe that the regulator failed to reasonably assure itself of the compliance of the building with the COU. We think this was a rubber stamp process. The owners submitted a complaint to Access Canberra seeking a rectification order on 17 August 2016. No action has been taken to rectify the building.

On at least two occasions, Access Canberra has advised the owners corporation that an intent to issue a rectification order has been issued and nothing has happened. Legal action has been our only option, and to date we have spent nearly \$250,000 on expert reports and approaching \$400,000 on legal fees and there is no end in sight.

This lack of action by the ACT government in responding to the problems and the many reviews that have taken place have merely emboldened the shoddy builders, developers and tradespersons in the ACT. Purchasers are entitled to have a reasonable expectation that the regulatory framework will deliver buildings that meet legislation, regulations and building quality standards. This has proved ill-founded in our case and in many others. Prompt action should have been taken to rectify our problems.

In relation to the owners, we are simply looking for the building that we were promised and one which is structurally safe. The defects exist because those responsible for its construction and for ensuring compliance with the ACT government's regulatory framework failed to deliver to the standards expected by the ACT community.

The regulator cannot be a friend of industry. It must be prepared to enforce the laws and regulations, particularly where there is systemic non-compliance. Ministers and public servants continue to support developers and builders with a history of constructing shoddy buildings. They want the new projects; they have photo opportunities. These actions simply condone the disregard of ACT government building construction laws and regulations.

Our developer continues to win new development opportunities, when for only a fraction of the cost of those opportunities he could have fixed our building. But our defects remain unremedied. This committee has an important role to play. From my experience, I would not even think about buying a new building in Canberra at this time.

THE CHAIR: Thank you for your very powerful opening statement and for your detailed submission as well. One of the issues that you talked about in your submission is the inadequacy of regulation and the enforcement of regulation. You have made a point that, in your view, it is a problem with not the laws and the

regulation but the enforcement of them, that the regulator is not doing their job and the ACT government have essentially allowed people who, in your view, are dodgy builders to get away with it because they have not enforced the laws that are there.

Mr Grant: Yes.

THE CHAIR: So it is more a factor of making sure that the current laws are complied with. That is not to say that there are not changes that could be made—

Mr Grant: Yes.

THE CHAIR: but that just changing the laws without enforcing them is the problem as you see it.

Mr Grant: That is correct. The laws are publicly available; the regulations are publicly available. People will look at them sometimes to see whether they have covered what they are proposing to do. A lack of enforcement by the regulator, the lack of acting as a regulator rather than as a friend of the industry, is actually failing the ACT.

THE CHAIR: Change perhaps needs to happen across the industry, and much needs to happen within the government as well to see that it has a more substantive role here in making sure that laws are complied with. There is no point in having laws if no-one is going to check that they are being complied with.

Mr Grant: That is precisely it. Look, I do not think there is a need for the ACT government to go back to where it was pre-1996, inspecting every building and things like that. I think the framework and the legislation are actually workable. What I do not think is workable is the lack of enforcement.

THE CHAIR: One thing that you have gone to in your submission on where there might be a change is greater accountability for certifiers—

Mr Grant: Yes.

THE CHAIR: that there does not seem to be a professional body as such and that they are not held accountable or responsible.

Mr Grant: Yes.

THE CHAIR: Do you see that as something that needs to be improved?

Mr Grant: Absolutely. My expectation of certifiers at the time that private certification was introduced was that they would be in the same vein as an engineer, an accountant or a lawyer and that they would have responsibility and skin in the game when they went and checked that the regulations were being followed. That has proven not to be the case.

In fact, there are too many stories that you hear from too many people about the certifier perhaps just driving past the building and saying, “Yes, I have been there.”

Quite clearly, the problems in our building could have been identified early by the builder, the engineer, basic construction workers and certainly the certifier and fixed at the time, at a much cheaper cost than it is going to cost us to fix it. Certifiers need to be held accountable and at present they are not.

MS ORR: Mr Grant, a number of people have raised the issue of certifiers, as probably you heard when you were listening to the previous witness. There has been a point put forward in a lot of submissions that certifiers should be public—no longer private. Do you have a view on that suggestion?

Mr Grant: I was actually the head of the building codes board when private certification was introduced. I still think there is a role for private certification. I think the model is incorrect. There are a couple of things that I would do. One is that I would not have the builders appointing the certifier. I think the regulator should appoint the certifier for the builder.

The second thing is that I think the certifier has to have better than a low-level certificate. It needs to be a person who has experience in the trades and the building industry and who knows what to look for and someone who preferably has tertiary qualifications. Tertiary qualifications do not mean you know things, but experience plus those means that you should have a good framework.

No, I do not think you need to go back to a public certifying process, but I do think it needs to be better managed and needs to be better regulated, both by itself and by the regulator.

MS ORR: Another idea that has been put forward is that certifiers, while being private, are appointed by government. In effect, there is a randomisation.

Mr Grant: Yes. That is what I was just suggesting to you.

MS ORR: Okay.

Mr Grant: Can I add one other thing?

MS ORR: Yes, of course.

Mr Grant: I think there is a difference between apartment buildings—ours has 120 apartments—

MS ORR: Actually, I think this is about to go to my next question.

Mr Grant: and houses. I think that for apartment buildings there is no-one who protects the interests of the future purchasers.

MS ORR: Do you say this because when apartment buildings are built the developer is the owner and appoints the certifier, not the people who purchase the apartments?

Mr Grant: That is it. And the engineers. I think there should be some form of engineering oversight, because apartment buildings are not simple buildings.

MS ORR: No, they are quite complex.

Mr Grant: There should be an engineering oversight.

THE CHAIR: Could that be the certifier? If you are going to be certifying a multi-unit apartment, that process has to have an engineering element to it?

Mr Grant: I think they would have to be an engineer and I think they would have to be appointed by the government and paid for by the builder.

THE CHAIR: The engineering side of it needs to be part of the certification process?

Mr Grant: Yes.

MS ORR: Would that position hold true for other specialisations, such as electricity and plumbing, where you have those hired by professionals?

Mr Grant: I do not know what Actew is now called but you already have Actew checking the buildings for the switches and things like that. I do not see as many issues with plumbing. Waterproofing is a key issue in Canberra and, in fact, across Australia. In Canberra the building code should be adjusted to require not the paint-on waterproofing but the lay-down waterproofing in winter.

MS ORR: The membrane?

Mr Grant: Yes. I think it is primarily about the structure of the building. Our building is unsafe. We have 45 props holding it up just to ensure that a minor change in weather or a minor shudder does not lead to it becoming dangerous.

MR PETTERSSON: One of your recommendations is a 10-year liability limitation for fixing building defects. Why have you suggested 10 years?

Mr Grant: Because it takes a long time for problems in buildings to show. Our building was completed in around about 2011 and cracks were identified in the basement and the level zero car parks in 2012. I was not on the committee in those days, but they tried to talk to the builder about it and they said, “No, this is cosmetic.” We brought in an engineer, who started to look at what was happening with the columns. The cracking was as a result of the way the columns were put in—it appears that way anyway—and that has led to the building being undermined. I think you need to have at least six years and, for a building worth tens of millions of dollars, a 10-year warranty is not a bad idea. Victoria runs a 10-year warranty.

MS ORR: You note in your submission that developers are not accredited. In your opinion, how would the accreditation of developers affect the quality of the construction of buildings?

Mr Grant: If you had a developer or developers who consistently were found to build shoddy buildings—and you found that out through the complaints to Access Canberra—then perhaps their accreditation, if there were accreditation, would need to

be reviewed and they should be put on notice. There should be additional supervisory costs imposed on them when they are building the buildings.

MS ORR: To make sure that we have the same understanding of “developer”, do you mean the person doing the actual development or the head contractor for the building?

Mr Grant: My view is that the developer is responsible because the owners are buying a turnkey solution. The developer selects the builder—sometimes the builder is the developer—and then they select all of the other contractors and subcontractors. I hold the developer and the builder at much the same level because they are responsible for providing the turnkey solution.

MS ORR: Do you think fixing the certifying issue is the sole way to fix the industry?

Mr Grant: No. Access Canberra has to be fixed. It has to become a feared regulator. That does not mean it has to be overzealous, but shoddy builders need to know that if they do shoddy building they are going to be under the gun. There are other things that should be changed as well, such as setting up single structures for each building. That is quite inappropriate. But in terms of the building regulation framework, that is what I would suggest.

MS ORR: It has been put to me, through this process and in other committees, that there are bad builders out there but their actions should not penalise the good builders. You are saying we should be going out harder on builders. How do we fit it all together so that good builders are not penalised but bad builders are?

Mr Grant: Good builders will not have the complaints that bad builders do. There is clearly a level of different complaints. People complain about a whole range of things for the house but much more with an apartment building. The level of the problem and whether the problem is systemic is an issue.

You are already regulating builders and requiring them to go through courses nowadays. Presumably, if bad reports keep coming in and complaints are made, then whether or not they have accreditation will be reviewed. It is more important when you are building major structures. The funny thing is that across from us is a hotel which does not seem to have any problems because it had its own engineer overlooking the building. Prospective owners do not have their own engineer.

MS ORR: Do you feel that having higher scrutiny of particularly complex builds such as multi-unit developments would be beneficial to seeing quality improve in Canberra?

Mr Grant: Yes, absolutely.

MS ORR: Do you think having a certifier come at defined certification points—I believe there are currently six points—is enough on complex builds?

Mr Grant: I suspect not. I cannot tell you when they should be, but I doubt that six on a more than four-storey, multi-apartment block is sufficient.

MS ORR: You state in your submission that the ACT government can be a leader in the reform of the construction industry. In your opinion, what other measures are needed?

Mr Grant: One has already been done—the warranty—so that has been dealt with. In terms of being a leader, a report by Peter Shergold has quite a few good ideas in it for moving it forward. I think the accreditation of certifiers and developers and major builders is critical. I think we need better training in the ACT. A lot of people have looked at our building—engineers and builders and concrete people and others—and the feedback I get is that we do not have a particularly strong trade ethic in the ACT and that a lot of the tradespeople cut corners rather than do the job properly. So I think having a look at our training is essential.

In addition, I think ramping up the power of the regulator or making the regulator use its powers will lead Australia as well. This is a growing epidemic in Australia and we do not want to be a Third World construction country.

MS ORR: Do you see the issues that we are facing happening in other jurisdictions, as someone who has got a bit of history in the industry?

Mr Grant: I do, and having spoken to a few people around the states, absolutely. I think last but not least is ensuring that the planning of the building is done properly and that its implementation is done properly. We know that the plans for our building were deficient, we know they had elements in there that were never going to work and yet they were approved. Then, when it was built, they did not follow the plans. You say, “What on earth is happening here?” Improving that planning process is also very important, hitting it before the problems can occur.

MS ORR: You state in your submission that industry bodies such as the MBA and the HIA should work with regulators to call out bad construction. Several submissions from individuals and other submitters have noted the difficulties they have had with these organisations, some going so far as to say that it is essentially useless, that they work for the industry, not for the individual. Given the lack of trust in these organisations and the role they have in representing the interests of builders who are their members, do you think they can easily reconcile arguable, conflicting interests?

Mr Grant: No, because they have conflicts of interests as well. They survive because of the members’ contributions. What can happen is that the problems can be addressed by ensuring that they actually undertake proper processes when they are giving great design awards or quality building awards or whatever. If they are really doing that then there needs to be an oversight, an understanding of all the criteria that they have assessed and confirmation that they are following the criteria.

MS ORR: From your own experience with your building, which you have alluded to quite a few times, how were the issues in your building identified?

Mr Grant: We saw cracks. We talked to the developer.

MS ORR: “We” being the owners?

Mr Grant: Being the then executive committee of the owners corporation. The simple ones began with cracking concrete and water coming down and going onto cars and stripping their paint, and water coming out of the water detention tank and getting into storage cages.

MS ORR: So this is all in the basement?

Mr Grant: Yes. On owners' balconies, and I gave you a couple of pictures of balconies, tiles were coming up. Water was not flowing into the drain. From above, stalactites were coming down, as water was coming from the balcony above, through the concrete, and creating stalactites.

MS ORR: Very noticeable issues, yes.

Mr Grant: Having seen that and having had no satisfaction at all from the response of the developer—

MS ORR: In the first instance you approached the developer with issues?

Mr Grant: Absolutely, and we kept approaching the developer for years.

MS ORR: What was your experience when you did approach the developer?

Mr Grant: Refusal to accept that there was any problem and, sadly, no wish to take any action—threatening at times. At one stage we thought we had reached agreement for a temporary fix by putting a filler in the cracks in the concrete to stop water going down. The developer then sent through a deed, which they wanted us to sign, which would relieve them of all duty for any further problems in the building. We said, "We can't do that." They said, "We're not going to fill in the cracks." They are bullies.

MS ORR: And this was for a temporary solution? It was not even for a permanent solution?

Mr Grant: A temporary solution, that is right, because we did not know the extent of the problem.

THE CHAIR: I get the sense we could go on a lot longer.

Mr Grant: Yes.

THE CHAIR: It has been very useful, very informative. I really appreciate your submission, which comes with a number of suggestions as well. Sadly, we have reached the time limit. Thanks for appearing. You will be sent a copy of the proof transcript to check for accuracy. If we have any follow-up questions we will be in touch. We wish you all the very best with your building. It sounds pretty good.

Mr Grant: Thanks very much.

MS ORR: I do have some follow-up questions. Is it fine to send those through?

PROOF

Mr Grant: Feel free, yes. I am happy to give you an answer. Thank you very much.

THE CHAIR: Thanks a lot.

SOWDEN, MR JUSTIN

THE CHAIR: Thank you for appearing today and thank you for your submission. You are our penultimate witness. Before we start, I ask you to look at the pink piece of paper, the privilege statement. Can you review its contents? It highlights essentially what your rights are in terms of providing evidence.

Mr Sowden: Yes.

THE CHAIR: The hearings today are being broadcast and they will be transcribed by Hansard as well. We have only 20 minutes. Can you make an opening statement to tell us why you are here, what the issues are and any suggestions you have on how things could be improved? Then we will ask you a few questions.

Mr Sowden: Certainly. I did not prepare an opening statement. As a first home owner I bought a unit off the plan and had defect issues, which took a couple of years to be resolved, and in some cases were not resolved. I had to pay for it out of my own pocket. But mine were very small issues. I just thought that this was a good opportunity to present my experiences in the hope of formulating policy in a way that might be able to resolve problems for future purchasers.

THE CHAIR: What were the specific issues? What were you able to fix? Did the builder fix those or did you guys individually fix them?

Mr Sowden: I suppose it was quality issues with paintwork, which were never resolved, glue being left on the floor tiles, issues with the fan in the bathroom. I paid an electrician to come and fix that myself instead of trying to get the builder to take responsibility because—

MS ORR: Why did you choose to pay for it yourself? There is a 90-day warranty period on most builds, where you should be able to report these issues and have them responded to?

Mr Sowden: Yes, and it was reported. The seller said, “Deal with the builder.” The builder said, “Here is the electrician; call the electrician.” For two years I tried to get the electrician to come back and take responsibility for it. In the end I gave up out of frustration.

MS ORR: Did you ever go back to the builder and say that the electrician was not being responsive?

Mr Sowden: Yes, absolutely. Then he would call the electrician and say, “I have spoken to the electrician; give them a call.” I would call, leave a message, because they would rarely pick up or I could not get through. Again, I would be chasing the electrician for months. I would go back to the builder and say, “I cannot get on to anyone.”

MS ORR: Did the builder ever offer an alternative when it became quite clear that the electrician was not—

Mr Sowden: No, he just kept telling me, “The electrician is a good bloke. I have spoken to him and he will deal with it.” Again, it is that situation, as I mentioned, that it seems like when everyone has been paid no-one has to take responsibility for coming back to fix anything.

MR PETTERSSON: When you chose this development to buy into, did you do any research on the builder?

Mr Sowden: No, because it was marketed through a very large real estate company, one that I thought was reputable. I suppose that as a first home owner I did not understand the ins and outs of how these things worked; I thought the real estate company as the seller would take more responsibility and more involvement in fixing the warranty issues. But, again, it just seemed to be, “Speak to the builder. Here is the builder’s number. Lodge all your warranty defects. They will deal with it.” The builder said, “No, it is the electrician’s problem. Here is the electrician’s number. They will deal with it.”

THE CHAIR: Have you got any outstanding issues?

Mr Sowden: I have now converted it into an investment property; so I am no longer living there—

THE CHAIR: Right.

MR PETTERSSON: It is someone else’s problem.

Mr Sowden: Mostly everything was dealt with before I left, yes.

MS ORR: Obviously you have had some issues within your unit. But I took it from your submission that it is part of a multi-unit development.

Mr Sowden: Yes.

MS ORR: Are you aware if the body corporate has undertaken any assessment of the building to see if there are any defects?

Mr Sowden: Yes. My understanding is that there are still defects with concrete in the underground car park and some other building issues. I understand that the issue is that the builder went into insolvency a couple of years after the construction. So they have to pay to get an assessment done out of the body corporate sinking fund or whatever the fund is. Again, that will be a case of the body corporate having to pay to get those issues rectified. My understanding is that there are still issues with water ingress into the underground car park, especially during heavy rains.

THE CHAIR: Are you aware of any insurance on the building? Has that been discussed, the ability to claim on insurance?

Mr Sowden: No, not that I am aware of.

MS ORR: In your experience, could the process of identifying and rectifying defects be improved?

Mr Sowden: I believe so, yes.

MS ORR: Are there any suggestions you could make as to what an improved system would look like?

Mr Sowden: To me, if I take the parallels with Australian consumer law, even though the retailer does not make the product, you have rights against the retailer as the seller. I do not see any reason why a similar scheme cannot be introduced for building purchases. I am only discussing here off the plan purchases for large developments where you have a seller who has engaged a builder and the builder has engaged contractors.

It seems to me that the seller needs to take more responsibility for the building quality. They should be the point of contact to deal with the builders. In my case, it was a very large real estate company. I imagine that there would be future work for builders. So it is in their interest for those parties to have good relationships and to ensure that they have better quality product next time, otherwise the builder might not get any future work from that company. Then the company might have more skin in the game in terms of not wanting to deal with all of these buyers coming back and complaining about these issues.

THE CHAIR: It sounds like if it was an electrical problem the builder then said the electrician will fix it, but they did not. Given that there was a warranty period, did you make any complaint to Access Canberra or anybody else that essentially the electrician or the builder were not complying with their statutory requirements?

Mr Sowden: When I searched other people who had had building issues it did not seem that there was any point in complaining to Access Canberra, frankly.

THE CHAIR: Can you extrapolate on that?

Mr Sowden: There was lots of internet commentary about Access Canberra might give them a slap on the wrist but that it did not seem to have any regulatory power to force them to come back and fix things. In my case the electrician was based at Queanbeyan so I think there was also a territorial issue in terms of—

THE CHAIR: Whether they actually had any jurisdiction?

Mr Sowden: Yes, that is right. I read on the internet about frustrations with other quality issues.

THE CHAIR: So based on that you chose not to approach Access Canberra?

Mr Sowden: Yes. I thought that my issues are particularly minor compared to other defect issues I read about with buildings around Canberra so I thought—

THE CHAIR: It was easier to fix it yourself?

Mr Sowden: Yes, that is right.

THE CHAIR: What are your broad out-of-pockets do you reckon?

Mr Sowden: It was a few hundred dollars in electrician fees plus all the time and phone calls and emails trying to get someone back.

MS ORR: Did you have any advice whether the electrical issue was a building defect or whether it was an issue under the contract?

Mr Sowden: No, because I just could not get anyone back to look at it in the first place.

MS ORR: Because it is that fine line between what is a building code issue and what falls outside that. What was the issue with the electricity?

Mr Sowden: It was the extraction fan in the bathroom; it just was not sucking any air. So the problem was getting someone back to see if a hole had been punched in the tube that goes outside or if it was a fan issue.

MS ORR: When you got an electrician in to fix it, what did they do to remedy the issue?

Mr Sowden: They got up in the roof and had a look through as best as they could to see if there were any holes in the tubing. They could not see anything. That is not to say that there was not anything because it goes from the outside wall, past the bedroom, through the roof and into the bathroom. In the end they could not see any issue so my alternative was to get it replaced or get a more powerful fan installed.

MS ORR: You support calls that have been in other submissions for certifiers to be wholly or partially government employees. Why do you consider this to be important?

Mr Sowden: I think it is important to have independence of the building inspectors. One of the submissions noted that inspectors who are builders or who are employed by builders rather than the government might have a conflict of interest in terms of getting future work or being beholden to friends or relatives when signing off on things. I think it is important to have public servants filling that role.

MS ORR: I note that you purchased off the plan, so the certifiers would have been employed by the developer as they were the owner of the property at the time of construction. Do you feel that your interests were best represented by a certifier employed by the developer?

Mr Sowden: No, I do not think so.

MS ORR: I want to go back to when you said the seller has skin in the game. I want to clarify: are you using “real estate agent” and “developer” interchangeably?

Mr Sowden: Yes. In my experience the development company that was the seller was

the arm of a large real estate company. So I am just extending that to any development company.

MS ORR: So it is developers you are talking about and less so real estate agents.

Mr Sowden: Yes, that is right, and development companies selling off the plan who are not the builders but who engage builders.

MS ORR: Why do you see it as important for developers to have skin in the game, to use your words?

Mr Sowden: Just from my experience where they basically said, “Well, we didn’t build the building so it’s not our responsibility. Talk to the builder.”

MS ORR: So it is too easy for them to pass the buck?

Mr Sowden: Yes, that was my experience.

MS ORR: What should be done so developers have skin in the game?

Mr Sowden: I am not sure of the exact policy options you could use. I would probably come back to the parallel I used with the consumer law where if you have a defective product you can take it back to the retailer for repair, replacement or refund. There does not seem to be any analogous situation with buildings. It would be like taking a defective piece of chocolate back to the store and the store saying, “No, we didn’t make that. Go back and complain to the chocolate company.” I do not think anyone would accept the fact that if they took a product back to Woolworths or Coles and complained that it was defective that that response would be good enough. I do not know why we accept that with residential buildings.

THE CHAIR: Thank you for your submission. You will be sent a copy of the draft transcript to check that it is accurate. If there are any follow-up questions from committee members we will forward those to you as well. Thank you for coming today.

SEANIGER, MS LINDA

THE CHAIR: Thank you very much for appearing and thank you very much for your submission. As I have said, and you have probably heard it because you have been in the gallery, can you confirm that you are aware of the pink privilege statement that is there?

Ms Seaniger: Yes.

THE CHAIR: These proceedings are being transcribed by Hansard and are being broadcast. Would you like to open with a bit of an opening statement? A bit of a sense of what your experience was would be useful for us and maybe any suggestions you have got of how things could be improved.

Ms Seaniger: I have not prepared an opening statement but I would like the opportunity to present my experience, mainly because I have over the years renovated numerous properties, not necessarily a total new build.

The additional expense to me, I outlined in here, on the new one was about \$20,000. It was probably a lot higher than that. I could sit down and pull out exactly what those costs were. To a certain extent, I do not want to know. I wanted to move on because this was a very stressful experience and to keep track of it that way would just be highlighting the issue even more.

When I was doing my new build I had a girlfriend who was having remedial work done to her unit, which is on the Belconnen lake foreshores. It was an ongoing problem. Her unit was built seven years earlier. Through the body corporate, the builder did come back, sort of somewhat willingly, to do all those things. She had experienced a water seal problem and them coming to do repairs without it being successful and blah, blah, blah. The end result was that this last time appears to have solved the problem. They gave her some remuneration for the carpet but not so that it would match carpet throughout the rest of the property.

I had another girlfriend having renovations done: kitchen, bathroom, blah, blah, blah. She had issues there dealing with contractors. It is the quality of the finish, it is the design of the product and things like that where they should have better knowledge and experience. It just was not evident.

I also had another girlfriend doing major changes to her house, extending subfloor areas, which are always problems, and extending the house and issues with neighbours next door and design and siting and all that sort of thing.

I realise I told you some of my problems and I do not feel that I have any structural issues. I am always a little concerned because the builder got the site cut wrong on my property because he did not hire a surveyor in the first instance. In my land contract and my build contract it said that they would employ a surveyor before going ahead.

I actually was asked to sign my contracts before construction drawings were given to me, because they said that it takes two months to get approval and we need to move

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forward and blah, blah, blah. In my communication with the builder, because of my experience in the industry, I really tried to tie down as many contentious issues as possible. I think in the end the builder was getting a bit sick and tired of me. They would have preferred a sit down, shut up and let us get on with it and I can pull anything over your eyes-type of attitude. I also think I did not get as much out of the builder because I was a female negotiating it, not a guy.

Anyway, they did not hire a surveyor and when I went out to see my particular block after the site cut was done I noticed the site cut went all the way down to the front door. I am on a corner block. I bought that block so that I could get as much sun on my northern access as possible and I did not want to sit in a hole and I wanted my outside living area on my northern side to be as wide as possible. If I had known my site cut was like that I would not have bought that particular site.

They blamed LDA's contours being all wrong, blah, blah, blah, blah and I was not terribly aware at that stage that the two houses to my right were built by Core, and the one behind. If the contours were wrong, they should have had some prior knowledge of this and, for their own wellbeing, contractual wellbeing, employed the surveyor to actually do it.

What happened then was that I just said, "I can't live with this. If I had known it was going to end up like this, I would not have purchased this site." And I thought we could stall here, stay here for the next three years and I would not achieve my objective, which is to build a house I want to live in and retire in, in the next 15 years at least.

It was suggested that they could raise it back up, that they could import fill et cetera to do that. "We are only talking about 300 centimetres, blah, blah, blah," and all this sort of thing. I said, "At whose cost?" And they said, "It is your cost." I thought, "I don't really see how it is since you did not really follow the contract, and I would not have purchased this site if I had known." But I thought at the very beginning, "If this is the only problem I have, I can wear this." But if it were a young person who did not have much finance, they probably could not afford it.

It was \$9,000. They asked for it to be paid in cash. I was concerned about that. When I paid the money over, I insisted on a receipt. They only gave me a receipt for \$7,000. I do not know if the contractor who was actually doing the work had a bad experience with Core and was not prepared to do the work unless he got cash money and did not want to wait for it or whatever, but again I just wanted to move forward, actually try to achieve what I was actually trying to do. But it was one of many little problems.

MS ORR: When did it become evident that the surveyor had not been employed by the builder?

Ms Seaniger: They just kept on saying it was the LDA and, "It is your responsibility," but in the contract it clearly said that it might not have necessarily been covered in the costs. But they could have said, "You have to employ him," but as far as I read it they should have employed the surveyor, in both the land contract and the building contract.

There were different things where they always claimed things were ambiguous and that the deciding factor would be the latest copy of the plan. If they amended copies of the plans it is surprising what did not get transferred. A lot of things I would pick up and insist on and they would go, “We’re not going back to have that. You changed it.” They would fight and argue about that. Sorry, ask me your question again?

MS ORR: When did it become evident that the surveyor had not been employed?

Ms Seaniger: When they had not, I employed my own and paid that cost—it was about \$650 or something like that—and basically they came out and said, “It’s very hard to determine what the then contours would have been, because the site cut is so large.” By the way, as I said, they built the house next door. The people next door had only moved in about two weeks before they did my site cut. I had signed my contracts two months earlier than that. Did they contact me to say, “What sort of fence do you want? Where do you want the retaining wall, on that side or whatever?” No. It was not part of the discussion.

They just put up their paling fence, cheap and cheerful, whatever. And my next door neighbour did a retaining wall on their site, but none on my site. I would have then had to face the fact that the retaining wall would have gone straight up against a brick fence and we could have had a common one, which would have been less expense for both of us, or bring it out so at least I could plant some vegetation so that I would not be looking at a wall. And this is my narrow side. It is only 1.5 metres. I just grow herbs down this house side.

The problem with that is that when they put in the water tank and the air-conditioning system it reduced my access to my backyard. It was so narrow that I could not even put my foot sideways. I could sneak down there like that but if you were a large person, just forget it. Forget wheeling a clothes thingo out to the clothesline or putting a wheelbarrow in your backyard. I can do that because I put heaps of gates in around this side but I have to literally walk all the way around my house to actually do that.

My garbage bins live out the front. I had to demolish part of the brick wall to actually be able to store my garbage bins out there and I have modified that twice since I have been there.

MS ORR: Was it in the original plans to have access to the backyard through the area that you said is now blocked?

Ms Seaniger: Yes. You would look at the plan and assume the retaining wall would have been done with some sort of negotiation.

THE CHAIR: In your submission you say your certifier was no help.

Ms Seaniger: That is correct.

THE CHAIR: Who engaged the certifier, you or the builder?

Ms Seaniger: No, they did. I communicated with him at least ten times, especially towards the end with the issues. “What are we going to do with the water tank?” “I

can't do them." And my builder's saying, "Tough. We've been supplied it." I said, "But I can't access my backyard." So they put in a smaller water tank that does not comply with the area—I have got 3,000 instead of 4,000—but at least I can walk past it with a bit more ease. As I said, I still cannot move anything past there like a wheelbarrow or anything.

THE CHAIR: Your sense was your certifier was —

Ms Seaniger: On their side, most definitely. When it came to issues where I had about 50 defects et cetera he said, "Well, it's fit for use. They'll fix those up in the warranty period," which they never, ever did. My builder was barring access to my property for me to even look at things. I have an email at home that basically says, "You pay us your final payment, sign the paperwork for practical completion before you get access to the property to see." This is the type of thing that happened.

It was always their way. I would fight and argue. Some things would eventually get fixed, like the water leak I had out the front for about four months. I paid the water rates on so much wasted water. I had to make my solar people, Solahart, come out—they did not charge me—to do some work to prove they were not at fault. The builder is there going, "Well, what do you want us to do?" I said, "Well, either way you're going to have to punch a hole in the wall to find out what the real problem is." As soon as they did that they could see it was the air-conditioning. But I just had to argue about everything.

THE CHAIR: It sounds like there is a multitude of issues. If you had had a certifier that you felt was working for you as opposed to the builder do you think that would have made any difference?

Ms Seaniger: Yes. I realise in my submission I talked about my problems and not about suggestions, so can I just go to the suggestions?

THE CHAIR: Yes.

Ms Seaniger: Develop a standard ACT building contract for minor residential and small commercial construction. This would be like the tenancy agreements we have in the ACT and the Law Society of Australia standard land contracts. The government is moving to standard templates for contracts. I think the ACT could do something like that.

Before I purchased off my builder I looked at the HIA contract. I looked at another builder with an HIA contract. I looked at the Master Builders Association contract. I did not particularly like things. I spoke to my solicitor. It was when interest rates were down at about 4½ percent but they wanted some ridiculous figure. I cannot remember how much they wanted originally, but we negotiated somewhere down to closer to what the commercial rates of borrowing were. Things like that would give a better outcome.

The government updates their templates for procurement and stuff like that. If necessary you could deal through legislation if any amendments need to be made. I think that would cover the situation a lot better.

MR PETTERSSON: Can you expand on that further? Are there any other reasons you think a standard government contract would be beneficial as opposed to these building industry contracts?

Ms Seaniger: Another example: they gave me a notice of dispute or whatever. I did not pay a progress payment. I come from a valuation background many years ago. The definition of the different stages is different for the HIA and the MBA. It is open to interpretation. There was one in my contract that was extremely vague. So it would be good to have a clause that really defines what a particular stage is. For example, lock up: all doors and windows must be fitted; they all should be capable of being locked; the fitted ceiling must be in; whatever. That would certainly help with defining that.

A reason they called for this progress payment early is that the two directors of the company I was dealing with had a falling out. I think they were calling for the progress payment early so they could pay out the other guy and all that sort of thing. At this stage I was concerned about where I stood legally: does the entity still exist and all that sort of thing. They put their approval in writing. Do I know if that was correct or not? No. It would not have even had time to be registered or whatever.

My home was the last residential one they built. They still build heaps of high-rise, multi-density buildings, and I would be concerned about that. The standard of quality on my build is an example; there was little to no supervision. Half the time there was not a supervisor that you could talk to about any concerns or even get access to the property.

That is another reason why a standard contract would be very good. It defines more clearly the responsibility and obligations of both parties without that bit towards the builder that MBA and HIA contracts have.

MR PETTERSSON: You had some other recommendations before I cut you off.

Ms Seaniger: The practice with commercial building contracts where 10 per cent of the contract value is withheld until defect items are addressed. As the client owns the land they should not be deprived of access to the home if you have reached practical completion. There is no incentive to do any remedial work within 90 days. They have been paid in full. Care factor—zip.

If, for example, you were offered a template, a standard ACT contract, and a developer or a builder gives you his own, that would highlight immediately that you should be concerned. If he is not willing to follow a more standard procedure then I would not go with them quite frankly.

The certifier should be appointed from a list supplied by ACTPLA. ACTPLA should provide mediation services so they become aware of problem builders and developers. There should be some name and shame. I think we could do it in a way that does not tar them so significantly that they do not want to keep on practising in the ACT but so that they will smarten up their act.

Perhaps an ACT government survey could be provided to all home owners and buyers where they provide feedback on their building or buying experience. The stats you might derive from this sort of survey might be the percentage of defects on completion resolved within 90 days and issues that arose after five, seven, 10 days. All that information on that particular builder/developer should be publicly available.

Sometimes they are one and the same and sometimes they are different but the same. Sometimes they have the same directors but change the name because they phoenix; they supposedly go bust and pop up the next week. I think that that should be clearly defined and if it is the same people—not necessarily the same entity—the ACT government should be concerned. It should be on the basis of if they want to; I understand that. But I for one would have looked at those statistics and gone, “Gee, that’s pretty average. I don’t think I’ll go with them”.

MS ORR: On remediation and on remedy and arbitration, you said in your statement just then that you think that the ACT government—but it is ACTPLA specifically—should act as a mediator. You also note in your submission that you sought remedy through the MBA as your builder was a member. What was your experience of going through the MBA?

Ms Seaniger: It was a waste of time. We know that they are in the business to look after their own and their wealth or elite status is derived by how many members they might have et cetera. So they are really not interested in solving problems whatsoever.

I have got a time line that I have prepared for all these things about my issues and stuff, the people that I approached and the dates and what sorts of suggestions, options, that I tried to put to my builder to rectify certain things. But nothing happened. In the end I just accepted my property.

The example I put in my submission of the laundry cabinet falling off the wall, that could have killed somebody. That could have killed a small child. This is not just a one-off incident. They actually installed a cupboard that weighs 30 kilos, which the provider of the unit said was capable of carrying another 30 kilos—this is 60 kilos—that does not have feet, hangs off a wall and they put it into the tiles and gyprock and did not find a stud in any of the four locations.

I have got full tiling on that side of my bathroom. I have tried to remediate this problem, to get it rehung. By the way, they said that they would not do anything about it. What got damaged, luckily it just fell down and went clunk against the wall. It jammed in against the doorframe of the sliding door so much that it was wedged there. It took my son and another weightlifter, basically, to lift it up off from being jammed.

I replaced the door on it. I replaced the door and it was about \$350. Then I had to get someone to rehang it. I had someone come out, moved everything from the bedroom, behind wall units—big job and all that sort of thing. We spent three-quarters of an hour trying to find a stud to refix the wall, cover the existing holes. In the end we gave up. We just could not find anywhere without leaving holes and replacing tiles and stuff like that.

It sat on my bathroom floor for a year before I had someone else come in and he said

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“Why don’t you go through from the laundry? There should be a corner stud there that we can affix that to. We should get enough support from that.” He said, “I’ve got one-off type bolts that will hold that.” I had to buy special bolts. Because I had taken photographs during construction, I was able to find the stud. But if I had not taken those, I would not have had that.

At different times my builder would deny me access to the site; he just did not want me to come through. There were gaps. I would point them out. They just were not interested in fixing anything. In the walls, batts were 0.2 instead of 2.5. They did not like the fact that I had pointed that out to them. They would not change it. They said there was sarking in there. That is my experience.

There were a few other things on my suggestion list. Yes, something like that in the way of naming and shaming or providing statistics. On my issues when I first had them with the survey and stuff, it would have been good to go to some sort of mediation, Access Canberra, and for them to say, “You haven’t complied contractually. What are you two going to do to fix this problem?” If that had been my only concern, that would have been fine.

It was continually little, underlying problems all the way through the build. I think you need to wield a stick. You also need to play a greater role in urban planning. The ACT government seems to be changing things on the run, and not for the better.

I live in Coombes. Quite often there are sites going up for sale. They say they are going to be for townhouses, have a density of 40 dwellings, and we end up with applications for 212 apartments. Nobody looks at this holistically. A lot of streets around our area are not wide enough for the amount of traffic, and that is not just traffic going in and out of the area. There are all these people who park their cars on the street and quite often you cannot even drive through, access a street, because there are cars parked on both sides of the road. And that can be illegal. But nothing happens about it. We do not have any basic facilities. We do not have a supermarket, we do not have basic shops.

My example with my neighbour next door and the fact that I could not have an eave down that side because they got the levels wrong, it was only 30 centimetres around the back but around the front it was over half a metre. It was about 600. I took photographs of that. I hope that I do not have any problems, greater problems, with settlement and things like that.

My slab pour was pretty pathetic. Different parts of it around the edges you could still see the polystyrene and everything. I do not know that a certifier came out to have a look at that but I thought it was pretty crappy.

Around my doorframes there were great holes you could put nearly two fingers in. I have replaced the doors, as I said, in the laundry and the garage. Not only are my doorframes slightly like that but sitting in the cavity, the wall cavity, they are like that. I have replaced all the doors for the second time. This is the third attempt, by the way. There was somebody else employed to do the doors. They were there for 7½ hours, bugged up the door and gave up. But the other guy who came out has replaced them, but I still have water entering my house on that side. I have just paid for all new

joinery in the laundry and I do not want that to get water damage because of water coming in, but the water is still coming in. But it does not help because it was not done properly. That was identified to the certifier and he would say, “It’s fit for purpose, fit for purpose.” It is not. The water is coming in, quite substantially.

I could have had an eave there but I would affect the sunlight for my next door neighbour. But they have a high-set skillion roof with highlight windows in. They would have got enough sun. If they had approached me or signed off on it, I might have got it through and had an eave and I might not have some of the problems that I have now. It is just that everybody goes, “That’s it. You have to comply.” But nobody looks at the consequences of designing. There are heaps of homes being built at the moment that do not even have opening windows. It is a great reliance on heating and cooling. In Coombes it was only compulsory for me to have a hot-water service. I have two solar systems on the roof of my house. I could have gone without the solar hot-water but it was not an option. I had to comply with that. It is stupid things.

THE CHAIR: Thanks very much. There is a lot there to go through and we appreciate your submission and also your evidence today. Very best of luck trying to remediate doors and all the rest of it.

Ms Seaniger: I have given up. I just paid to fix everything. As I said, I do not believe that I have any structural levels outstanding, but do I have to live with some really bad mistakes on their part? Yes. Access to my backyard, my retaining walls! Hopefully I do not have any problems with my slab. I have disabled parents. Always access was going to be an issue. I now have a few single steps in throughout my home that makes it difficult when they come and visit to move around with ease and grace.

In that respect my contracts that I signed and the plans for my build are not what I received and it has been a compromise always on my part and not the builder’s. To me, there should be an area of the government that you could actually go to. At every stage, people said litigate. I am sorry, litigation takes \$50,000, \$80,000. To fix my problems we are talking about \$20,000, \$30,000. But if they do that to every single person?

THE CHAIR: There is a cumulative effect. Thanks very much for attending today. You will be sent a copy of the draft transcript. There may be some follow-up questions from the committee. If there are, we will forward them on. But thanks very much for attending.

Ms Seaniger: Is there any time frame in which the review is likely to deliver some outcomes or changes?

THE CHAIR: We have got quite a few people to hear from yet. We have gone through the stages of hearing from individuals and then we are going to hear from the peak bodies and all the various groups—the industry groups and the union—and then we will be hearing from the ACT government. Our intention is that by the end of this year we would hope to have something, but we want to get it right. There have been a lot of looks at this over the years. What we want to do is make sure that we get this right, rather than necessarily rush to get something out. But there are a lot of consistent themes coming through.

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Ms Seaniger: As Mr Grant said, where players are repeat offenders there is no recourse on them and they get such publicity that one would believe that they are doing the right thing. That is far from being accurate. Having some sort of independent survey done by home owners et cetera that actually looks at those things and how willing they are to remedy situations would help enormously about their selection of properties.

THE CHAIR: Thanks very much.

The committee adjourned at 11.58 am.