



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, 8 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.

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Privilege statement

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Amended 20 May 2013

The committee met at 10.25 am.

KANE, MR BRAD

THE CHAIR: Thank you for appearing before the committee today. Can you look at what is called the privilege statement before you? It is that pink piece of paper. It sets out your rights with regard to privilege. Can you read that? Also, these proceedings are being transcribed by Hansard. They are also being broadcast both on the internet and reticulated throughout the building.

Mr Kane: No worries.

THE CHAIR: We have your opening statement here but I invite you to make an opening statement if you wish to do so, and then we will ask you some questions.

Mr Kane: The opening statement pretty much summarises what my submission was. I am a very happy person living in Canberra. It is a great city. Thankfully for myself, I have had good experiences with the building process, but I am also a taxpayer and a citizen of the community and I do not like hearing when certain people have bad experiences. So when I saw that this committee was available, I thought I would write a submission.

I think my submission covers it but there are a couple of key points that I would get across. Then other people who have had their bad experiences with builders and whatnot can go into it in more detail. I would say that the key things are expertise, compliance process and checks, and a safety net.

In respect of expertise, we should expect that our builders and certifiers are appropriately qualified and are experts in their field. If you are a really good quality builder, this process should be something just to verify that you are doing everything right. But as we know, any market and human nature are different. Matters happen and no market will ever have a perfect system.

Therefore, the second point I make is that there should be a compliance process and checks and balances around that. I know that with the renovation process we did last year, the builder said that there was a particular certifier he knew that was very easy and who got heaps of work. So there is an inherent conflict there that if you are going to be a strict certifier, you are not going to get as much work in a marketplace in which the builder appoints the certifier.

To me, now that we have private certifiers, we either move to a system where there are public servant certifiers rather than the private or, if you are going to keep a system with private certifiers, there have to be checks and balances and audits to make sure that they are following the process.

There are examples where they are not. How can a building of the size and scale of the National Portrait Gallery have to have remediation and the amount of money spent on it that is going to happen? There is something not getting checked at some process, whether it is checking that the slab is laid properly or whether it is that the water

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membrane that was supposed to be put in was not put in. As I said, number one is the expertise of the people doing it and making sure that builders and certifiers are qualified: the compliance process and checks.

Number three is where it does go wrong, because no system is perfect. There should be a safety net for people who have problems to be able to put in a claim, make a complaint, and have a mediation process rather than just dealing with the bureaucracy. As an asterisk, I am not saying put in a system that is going to put in layers of bureaucracy that will cause people heaps of problems.

The lady next to me built on the central coast years ago. She knew I was doing a renovation and that it was taking a while. She said, "Is that because the certifier, the public servant certifier, is doing every single step and you are getting delayed?" That is what happened to her when she was on the central coast. I said, "No, they are private certifiers now." But that has its own issue; the builder appoints them. If you have a tough certifier, they are not going to get the job over an easier one.

To summarise again, I think that there is the expertise; checks and balances are required; and there needs to be a safety net. This might mean that the builder has done everything correctly but if there are issues between the customer and the builder, there should be like a mediation scenario. Years ago I was at the residential tenancies tribunal. There was a dispute relating to someone who had to get out of a house. It was, like, both giving their sides. Then there is a decision around what remediation can happen. That is the summary really.

THE CHAIR: Thank you. You gave a scenario of the builder coming to you and saying, "I have a certifier that is a compliant certifier," so to speak. Did you question that and say, "No, I want to appoint someone," or did you find that it was just going to be too hard to do that and you sort of went along with the—

Mr Kane: It is a good question. I do not think it is part of the process. You get a builder, and then they say, "Here is my certifier." So it is not a thing that I even thought about.

THE CHAIR: This has been raised a lot in submissions and also in hearings. The public certifier has the issues that you raise as well in terms of there being delays. What do you think of a system in which you would essentially have a certifier appointed somewhat randomly who then was working for you as opposed to the builder? The certifier would be there to certify on your behalf to make sure that the work was okay before the builder went to the next step. Rather than being the builder's certifier, they would be your certifier. Basically, you would be the one who engaged them. However that system might work, do you see that as a more satisfactory way to go, or how do you think that you get around that?

Mr Kane: I think whether I appoint the certifier or the builder appoints the certifier, it is the compliance checks. We are just completing a renovation now. Maybe the certifier has been there to make sure that the correct roof trusses were put in. I do not know. That is the point I am making. Whoever appoints the certifier, is the certifier undertaking their checks that they need to undertake? We have got a new roof truss. Is it the correct structure? I think that with the builder we had, it looks like it is great to

me, but I am not a building expert. I would need a compliance expert, a certifying expert. Yes, I could appoint the certifier myself but how would I know which certifier to pick out of any others. I would not know.

THE CHAIR: Sure.

Mr Kane: I do not think that that would solve it. I am an accountant. You have auditors who come in to audit financial statements to make sure that they are put together properly. To me, you have compliance or an auditor to check that certification is being done properly. That, to me, would give more of a stick for builders and certifiers to do the right thing. If they are doing the right thing, they have nothing to worry about.

THE CHAIR: Essentially, then, it gets down to the regulator, which is the ACT government.

Mr Kane: Yes.

THE CHAIR: I guess that for the people doing the right thing, it is fine. For people doing the wrong thing, a bigger stick is needed to monitor and make sure that they are actually being compliant. As you have said in your submission, you do not want it to have too many more layers of bureaucracy for the people doing the right thing then to slow down and increase costs. What we are trying to do is target the people doing the wrong thing. Is that right?

Mr Kane: Even then, there could be random audits to ensure that someone is doing something well. You could have a change in company structure. Everyone should be subject to audits.

THE CHAIR: Yes, absolutely.

Mr Kane: You actually could target the ones who have offended. I would give the example of the GFC in America. Lack of market regulation allowed people to sell-on loans of bad quality. If you fully let the market run its process—builders doing their thing, certifiers doing their thing—there is no-one regulating it. You ended up with the subprime crisis in America, and we saw what happened there.

THE CHAIR: Do you get a sense that it is a problem with the way regulations are currently written or is it a problem with them not being properly enforced?

Mr Kane: I could not comment. I do not know the details enough.

THE CHAIR: Fair enough.

Mr Kane: I think that as a person who is not an expert, I am trusting that the government has the regulations and the enforcement there. I think, as a general taxpayer, that most people believe that. I do not know whether the regulations are good enough. I am having faith that the government has put in the regulations and that it enforces them. When I hear the sad stories of people who are in apartment buildings or of the National Portrait Gallery, it would appear that that is not the case.

MS ORR: You mentioned that you think the remediation system should be better. What does a good remediation system look like to you?

Mr Kane: Again, I will not specify. I do not have it exactly but I gave the example of the residential tribunal. It is an avenue for people to come together to try to resolve an issue. I said in my submission that there are people at Gungahlin who we know who did an extension. It rained. Water came through the roof, through the light fittings and into their house. Something had fundamentally gone wrong with the build, with the building process.

They were able to get a representative from the MBA to come out and the builder to come out. Basically, the builder swore his head off at the MBA and the owner and said, “I do not care.” So in respect of the remediation process, if someone does not care, there has to be a government authority to get him in the room to say, “You fix this or we will fix it and the expense will be taken off your contract value,” or at worst, “You will lose your building licence.” I would say that there should be a tribunal or an avenue for people to complain. There are probably other methods.

MR PETTERSSON: You say that MBA certification is not necessarily a sign of quality work. You have built several houses. How do you pick a builder?

Mr Kane: Good question. Recommendations; if anyone was asking me, “How do you pick a builder?” the answer is someone else who has used the builder and who has recommended them. I have not enough faith to pick someone—yes, I just would not do it.

MR PETTERSSON: I understand why you have answered in that way. But do you have any ideas for how we could maybe make that information more accessible to people? Having to know someone who has had a successful build might be a challenge for a first homebuyer.

Mr Kane: Correct. Even if someone is brand new—there was a young guy who did most of the work on our renovation. He seemed very good to me. I know that there were comments from the government around making builders do training every 12 months or whatever. The main thing is to make sure that builders are appropriately trained and that certifiers are there. Then someone who might not think to choose an MBA builder—they should be able to choose any builder—knows they are qualified. But, again, unless you have the compliance and regulation checks, you are always going to have people, even if they have been in the industry for years and years, whose circumstances could be changed. They could be under financial pressure. They could take cuts.

For someone brand new, I think they need faith that the government has a regulatory and a compliance process, because most people will not do it. Everyone is busy; they will just say, “I saw that a builder has advertised there. I am going to give them a crack.” They should know that when they have built it, the government has a system in place to make sure that the building works have been checked.

THE CHAIR: Thank you for appearing today and thank you for your submission.

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The secretary will send you a copy of the draft *Hansard* to check that there are no transcription errors. We appreciate your interest in this matter. I am glad that you have had a good outcome yourself, but it is good of you to be concerned about the impact on others. It is a serious issue for people.

Mr Kane: Thank you

McKAY, MR DAVID

THE CHAIR: Welcome. Thank you very much for coming today. Can I point you to the pink piece of paper called the privilege statement. If you could have a bit of a look through that and confirm that you understand its contents. It just explains the rights with regard to privilege attached to this hearing.

Mr McKay: I think I had some of this information sent to me. I am aware of that situation.

THE CHAIR: As I said to the previous witness, and I think you were here, these hearings are being transcribed by Hansard and are also being broadcast, webstreamed and reticulated throughout the building.

We have not got a great deal of time but I would like to start by inviting you—and you have provided a submission as well—to make an opening statement and then we will ask you some questions. I am particularly interested in what you think the problems are and what you might think some of the solutions are.

Mr McKay: First of all, thank you very much for the opportunity to make a submission and to appear before this committee. My experience goes back a decade and a half now. I initially wondered whether this was still relevant but the continuing complaints that we see in the press suggest that it probably is still relevant.

Also, mine was a small problem as an individual having to deal with a dodgy builder rather than a large setup. I guess the eventual outcome was that there was simply no redress through the building regulator, who was not interested, and the only other way to seek redress was through maybe the fit-for-purpose requirements in ACAT. It just gets too complicated; so you give up. Life is too short.

I suspect that there are probably hundreds of other small individuals who simply reach a brick wall, give up and just get on with life. I thought it was still worth making a submission. You have seen my submission. There is probably not much point going through that and I am happy for you to ask questions about it.

At the end of it all what occurs to me is: how could a system which clearly has been so unsatisfactory, if you judge it by the number of complaints and the grumbling that has been going on for at least 15 years, perhaps more, have been put in place in the first place? And with the continued grumbles from people on the wrong end of bad building practices and bad building quality, how could the system have continued for so long? One wonders: when the regulations were set up what consideration was given to the balance between the rights of the individual consumers and of the vested interests who can often have a powerful voice?

We have seen in other jurisdictions the need for laws to prohibit political donations from developers. I guess that is the problem: the influence the vested interests have as opposed to the requirements. The only reason we have government is to look after the interests of individuals about the matters which they cannot deal with themselves, things like defence, health and education, and that includes also things like buildings

that have got to be safe to prevent people simply being ripped off.

What is it about the system? How did it come to be so bad? How has it continued to be so bad? I suspect that perhaps the balance between the influence of vested interests and the interest of consumers has not been a good balance.

THE CHAIR: Given that we are doing this inquiry, I think those questions are valid. Why is it that 15 years or more along the track we find ourselves here? With regard to the concerns that you had then, you went, you say, to the regulator. The regulator was not interested or was not able to do anything. The only legal recourse was through ACAT. When you say “the regulator”, whom did you go to?

Mr McKay: First of all, it was extremely difficult to find out at that stage who actually was responsible for building controls. But I eventually did get through to an office that was responsible for this. They frankly were not interested. I pointed out that I thought there were certain conflicts of interest in having a certifier appointed by the builder. They were quite affronted that I should have even hinted that perhaps the system was less than perfect. There was absolutely nothing they could do. There were no inspectors who might come and look at work to see if they thought it was up to standard. That was simply impossible.

MS ORR: And this was back in early 2000?

Mr McKay: Yes.

MS ORR: Before approaching the regulator, which has been identified as an officer of the public service, did you approach the builder with the issue?

Mr McKay: Yes.

MS ORR: I just want to get a full idea of the time line.

Mr McKay: There were two parts to this problem, I guess. The first part was when I was buying this building there were certain aspects of it that I thought looked a little less than desirable. The building is set very low and it depended entirely on the drainage system in order to prevent flooding.

I wanted to talk to the regulator then to see whether it was possible to have the work of the certifier in the design aspects of the building checked independently. And it certainly was not through the building regulation area. They were completely uninterested. And it was impossible to get another certifier to go and have a look because once it was there you were looking at perhaps checking the work of a certifier. It was just a club; not interested.

THE CHAIR: One of the issues that seem to be coming through is, I guess, the power imbalance that occurs because the builder knows the system and often people engage a builder or buy off the plan. They do not know how it all works. Do you think that there is scope for the regulator to provide a simple document to people engaging a builder or buying off the plan, with their rights and responsibilities, so that they know, if there is a problem, who is the regulator at the first point; if there is a problem,

whom to go to; and provide information about certifiers and the fact that the owner has got rights when it comes to that—a separate piece of information that is provided at the outset so that when things do go wrong you know what the process is? Whereas in your case, and in others, we are hearing that people just do not know where to go, what to do and what their rights are.

Mr McKay: That would be extremely helpful. And it was very difficult to find out whom to speak to and where to go. Having a system which was much more user friendly but then having got the people who should have had an interest in this problem—there was absolutely no interest at all—we require a regulator to actually regulate. You can have as many building—

THE CHAIR: Even when you got to the point where you worked the system out, the system did not work for you?

Mr McKay: Yes. “Go away. We can’t do anything for you.”

MS ORR: There are privatised certifiers but they are independent certifiers who are working for the owner, which would have, in this instance, been you. Did you feel that the certifier was working in your best interest?

Mr McKay: Clearly not. Nor did I have any way of knowing what the certifier had done. Eventually the problem turned out to be drainage, which was already buried two metres underground. There was no way to check that.

MS ORR: Did you appoint the certifier that certified your building?

Mr McKay: I did not appoint the certifier, no.

MS ORR: Who did then?

Mr McKay: The builder. The builder appoints the certifier.

MS ORR: And when that happened did the builder make a recommendation to you or did they just say it has been taken care of?

Mr McKay: No. The building had already been built. All this certification had already been done. This was between the builder and the certifier.

MR PETTERSSON: When you approached certifiers to come and check out your property, what did they say to you exactly?

Mr McKay: When I explained that I had some serious concerns about the design of this building—at that stage I had no knowledge that underneath the ground was another lurking problem—once I explained that I wanted to have some checks done on aspects of the building design and that this would involve looking at the work that another certifier had already done, they simply were not interested.

MR PETTERSSON: What did they say? Did they say, “We don’t do that,” or did they come up with other excuses?

Mr McKay: They came up with every excuse. They did not clearly say, “We are not going to come and check another certifier.” But that was the only interpretation you could put on the complete lack of interest in doing any work once it became known what I wanted to do.

MR PETTERSSON: You managed to get a building surveyor to come in?

Mr McKay: I had a building surveyor come and have a look, yes.

MR PETTERSSON: But a building surveyor is not a certifier?

Mr McKay: A building surveyor is not a certifier. All he could do was say that from his point of view—and let us face it, knowledge of what the actual building requirements are is a volume about this thick; it is quite opaque to the uninitiated—there were aspects of the design here which if the drainage system fails is going to result in a flood. I went ahead and bought the place anyway because it otherwise satisfied so many of the requirements. If you tick off the good and the bad—24 requirements, 20 of them are well met—on balance we took it on knowing that there could be problems.

Then what happened was that five years later there was a good, heavy shower of rain. The drainage system, which I think I said in the submission had been very badly designed, failed. The builder claimed, when I talked to him after this problem, it had been designed in consultation with the certifier. I found that hard to believe. But either the certifier was utterly incompetent or the builder was lying. Nobody could have accepted that design, coupled with the fact that the actual workmanship was of such an abysmal quality it was destined to fail.

MS ORR: Once this major downpour occurred and you had flooding issues, how was the plumbing rectified, or was it?

Mr McKay: Two four-inch drainage systems were combined into a single four-inch drainage system, which did not sound like a really good idea. That in turn was then connected to the existing tie to the main. The existing tie to the main was concrete and it was crumbling. In addition to that, the person who did the work had attempted to connect an agricultural drain to the system of this crumbling pipe. And when it was excavated the one four-inch pipe was half full of concrete and geotextile. It was simply designed to fail.

MS ORR: Going to the issue of remediation, the pipes were excavated and replaced, is that correct?

Mr McKay: Yes.

MS ORR: And was this done at your own expense or was this done under a case against the builder?

Mr McKay: I talked to the builder and the initial problem was that this was five years down the track from the building. I found that warranties for structural elements went

to six years. But non-structural elements, like drains, went for two years. If you had a flood because the roof was crooked it was covered by warranty for six years. But if you had a flood because of very poor quality drainage work it was only covered for two years. I think this is just crazy. Your drains and your sewerage system are just as important to the integrity of the house as the building.

MS ORR: There have been changes to warranties coverage since your build.

Mr McKay: That was the problem with the warranty. The builder carried no insurance, because it was an owner-builder who built purely for making a profit on the sale. And the owner-builder is not required to carry any insurance. Even if I took them to court under the fit-for-purpose type regulations there was no guarantee that there would have been money because there was no insurance carried by the builder.

Much of the damage to the flooring and this sort of thing was covered by insurance. But there was about probably \$9,000 to \$10,000 worth of additional plumbing work for which I had to carry the costs, which were not covered by insurance, just to ensure that the drainage system was adequate. And this meant hiring a plumber to put in a single 150-millimetre drain, which has got a little more than twice the capacity of two four-inch drains, and take this directly into the main drainage system.

The additional cost of \$10,000 that we were out of pocket is small compared with what some people have faced. There was no redress under the warranty and the builder was not going to have anything to do with it. There was no practical way for me to chase it up. Simply it just was not worth it.

THE CHAIR: Thank you very much for your submission and appearing here today. I think that your point about not having the information at the beginning in terms of who the regulator is and what the rights are and so on is really interesting.

Mr McKay: Perhaps I could also add that having a regulator is of no use if the regulator does not regulate.

THE CHAIR: Absolutely, yes.

Mr McKay: And that the penalties for not following regulations have to be substantial and there has to be a reasonable chance that the regulator will come across things. This I think should mean unannounced inspections, as has been required in other regulatory systems. And in the area in which I worked, unannounced inspections were necessary. We see it necessary in the current information coming out about the retirement homes, where there have been some bad practices, and they are not detected unless the regulator walks in and has a look at how it is working at the time.

THE CHAIR: That is a good point.

Mr McKay: It must be substantial. There must be a reasonable prospect of being caught up, and the regulator itself must be given the resources to regulate. And I have seen, again, where the regulator is under pressure not to do their job, not to rock the boat. You were winding up, and I will stop now.

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THE CHAIR: No, that is a good extra comment. I appreciate it. Thank you very much. Hamish will send you a copy of the draft *Hansard* for you to check that it is an accurate reflection of what you have said. Thanks very much for attending and for the evidence you provided today.

Mr McKay: Thank you for this opportunity.

Short suspension.

PETHERBRIDGE, MR GARY, President, Owners Corporation Network

THE CHAIR: Mr Petherbridge, thank you for attending today. I refer you to the pink privilege statement before you to make sure that you are aware of its contents.

Mr Petherbridge: Yes.

THE CHAIR: These hearings are being transcribed for Hansard and also being webstreamed live and reticulated throughout the building. Thank you for your submission, for your interest in this matter and for the work that you do out there in the community. I invite you to make an opening statement.

Mr Petherbridge: Do you want this document? I brought this with me but you have it already.

THE CHAIR: I have it.

Mr Petherbridge: That is fine. You do not need it. One of the key things is this: who suffers by this sort of bad practice of poor building quality? I think the fact that we have a Minister for Building Quality Improvement in the ACT suggests that we recognise that there is a serious problem. In fact, we are the only jurisdiction where that is the case. Maybe our problem is worse than anywhere else. Who suffers? It is mostly the young and the old. The young ones are trying to get into affordable housing; so they do that. The old ones are being encouraged to downsize by various parts of the government over the years. They have followed through with that and helped the government to minimise the amount of land that is being used.

They are the two ends of the scale who generally suffer the most, and they are the ones that can probably least afford it. The young ones are trying to get their lives together, have families and whatever. The old ones have a fixed income. I am not talking about me because I am obviously sort of okay. I am here representing the community; so I am a community advocate, I suppose you could say.

Only this morning I made the comment that it is great to have this Assembly inquiry happening. I thank Suzanne for initiating some of it. Jeremy, I appreciate your support in making it happen as well. I think Mark Parton was also there at one stage but he has now moved around to another position. To have the inquiry coming from the elected representatives is a great move because it has been nine years. I have a letter here that I am happy to show you from Andrew Barr in which he congratulated the OCN for putting forward the issues back in July 2010. There was a public forum held. He wrote us a very nice letter thanking us for that and the fact that we initiated the whole exercise.

That was nine years ago; so it has taken nine years for this to happen. Hopefully, something really substantial comes out of it. It is a matter of the politicians, the ones we elect, being in charge, not the bureaucrats telling us over nine years that they cannot do this, they cannot do that and they cannot do the other because it does not suit one way or another. Either it does not suit the developers, who obviously have a heavy say in this town, or it does not suit the bureaucrats themselves. I want to be

particularly strong on that point. This is a positive thing. I think the politicians need to be congratulated for making it happen.

Let me summarise a couple of the key issues. You may have questions about various parts of my submission and I am happy to answer those. But, as I said, we have been considering these issues since 2010. Just recently—about a year and a half ago—the commonwealth government, together with the various building ministers, and I am not sure all of them are ministers for quality, but that is another point, engaged Shergold Weir to do a report on the building quality. The report that has come out of it is called *Building confidence*.

I think the Opal thing in Sydney highlighted it; the fires in Melbourne highlighted it. We now have cladding issues arising in Canberra. Only yesterday I had a call from one of the properties that I thought was one of the best in Canberra. I can name it if you want but I do not have to. It is in Northbourne Avenue. They rang me and said that they are having difficulty getting insurance because of the cladding issues they have.

It is a serious issue. I thought that there was to be some sort of inquiry or some sort of report done by the government to say what buildings had a problem and what should be done about it. I have not seen that. Interestingly, interim reports to the final Shergold Weir report were on asbestos and on cladding. They thought it was a serious issue. Nothing seems to be happening relative to people's capabilities to deal with that. Therefore, insurance of properties is going to be a problem. It is happening right now.

Moving on from that, there has been weak oversight by the licensing body or regulator. In our case, it is Access Canberra. They have not been prepared to move strongly on the issues. Only today, I saw in today's paper—I think it is part of the spin; obviously someone is feeling the heat—that they are out there saying that they have just prosecuted or are talking about prosecuting a particular property in Bruce. The developer is now saying, "This is unfair. It is unfair that you are telling me to fix stuff that I have already agreed to fix." If he has already agreed to fix it, I cannot see why he is complaining. The article did not make a lot of sense to me but maybe Dan could tell us what it really meant in the end.

These are things that are supported by the Shergold Weir report as well. Inadequate documentation in the development approval process is critical. If you were building a \$1 million or a \$2 million house, you would have an architect; you would have an engineer; you would have those people supporting the certifier. In developments worth \$200 million, the architect is the concept architect. He simply designs something that is nice to produce the sales material. He is no longer the architect. The architect is then engaged by the builder or the draftsman, whoever it is who is engaged by the builder to do a build and construct contract. That does not work. There is not proper documentation there to go forward with the actual building quality that is needed. It is a serious problem.

The independence of certifiers is an issue. But it is not only the certifiers that are needed to supervise what a building looks like and how it is built. As I said, if you build a \$2 million property, you would not do it without an architect. The certifier needs the support of the original architect with decent documentation—full

documentation, not stuff that says, “When the person comes off the boat, you decide where you put the expansion joints in the wall,” because they do not necessarily know how to do that. It needs to be done properly by the architect and be supervised by the same architect and the same engineers.

All of those aspects of the building need to be combined together: certification, architect and engineers. They need to be there. The developer needs to make sure that they engage the people they really need to do the full job, not pass it on to someone else further down the track. That is about supervision.

That will do me for the minute. You have enough to chew on. You can move on and maybe think about some of the other questions. Culture was something that was interesting that was in the Weir report as well. I start off with that in the submission. Maybe you might have a view on the culture issue.

THE CHAIR: Thank you for your opening statement and for your submission. With regard to the regulator and the process, you refer to the *Building confidence* report. There has been a raft of reports with a whole bunch of recommendations in relation to the existing regulations and laws. You would be across a lot of this. Is the issue actually with the regulations and laws as they stand—the recommendations have been accepted and hopefully are going to be implemented—or is it with the actual regulator not enforcing them? I think certification is a little different. I think that there is a body of work that needs to be done there. But aside from the certification, is the issue with the laws or is the issue with the enforcement of those laws?

Mr Petherbridge: I think it starts with the enforcement. There is enough regulation there to do most of what needs to be done. Sure, if the excuse of the regulator is that he cannot do it because there is a lack in the laws, well, fix the laws. If he is saying he cannot do it, fine, but in my view there is enough regulation there right now.

I think I saw a week or so ago an interview with John Grant who was an ex-CEO of the Building Codes Board. This has really come through in the last day or so. Minister Ramsay has done a turn around and said, “Alright, yes, we will get on with it earlier than September. We will do some of that stuff soon.” That is interesting that he should turn around so quickly, especially as the MBA obviously were well aware of what was going on and so were their members. When John Grant last week said that the problem is with the regulator, he meant that the problem is with the regulator, not with the fact that they do not have enough regulations. Look, if their excuse is that they do not have enough regulation, fix it.

MS ORR: You said in your submission that self-regulation by developers, builders, architects, engineers, building certifiers and the real estate sector has not produced and delivered buildings to the community without serious defects. You outline in your submission that all these people—and it is self-regulation essentially by industry—are not enforcing the regulations themselves. Where does that fit with the statement you have just made that the regulator is not doing enough?

Mr Petherbridge: I think that it is pretty obvious that I do not think self-regulation works. Therefore the regulator has to do it. This is not about all developers. Some developers are fantastic. In fact I can see a green shoot coming through with one of

our prime developers—I can mention their name if you want me to—but they are doing a peer review-type approach now which is targeting, avoiding some of the more serious defects like water penetration, structural issues to do with cracking like I mentioned, spy safety. They are doing that sort of stuff now. That is fantastic.

Maybe they are setting the scene for others to come and follow. If you are running a star rating system like you do for restaurants and things, maybe you would give them a seven-star. But some of the others you clearly would not give any stars to. There are good ones out there, and maybe that is an example of how we can move forward.

When people say you cannot build quality, that is not true. You have the Kingston towers, you have the Carrington, two high rise buildings in Kingston that were probably the first high rise buildings in Canberra from a residential point of view. They are fantastic. There has never been a problem with them. It can be done.

All the buildings associated with the airport were built and are still owned by the same owner. He clearly built it to provide low maintenance. He knew what he was going to own. Whereas some of the current developers, not all of them—and I have already been positive about one—know that they are not going to be there in two years time. The problems are not going to occur for two or three years. They know it is going to be the next guy's problem.

I talk in the submission about maintenance versus defects

MS ORR: I will come back to that.

Mr Petherbridge: I try to be fair about that. In fact it was an initiative that was taken by Mr Peffer and co at Access Canberra—a positive thing that they have done—to put guidelines out there about maintenance versus defects. That is a good thing. And we worked very closely with them on that.

But there are certainly developers out there who are willing to go as close to the line as they can because they know that, with the ownership and the committee formation of an owners corporation, it is going to be very difficult to get all those owners together to prosecute, if you like, a case. I do not mean that in a legal sense. I mean to implement a case or agree to do something about their defects.

MS ORR: Is it fair to say then that you would like government to take a bigger role because you do not trust all parts of the industry to self-regulate to a reasonable standard?

Mr Petherbridge: Absolutely. The MBA and co might have some variation on that. I did hear the MBA claim that they started the whole exercise back in 2010. That was a bit disingenuous because they did not. They came along, and we are very much in line with them. But it was very much the OCN that started that whole process back in 2010.

MS ORR: What would the regulatory system, the enforcement system that you are looking at, look like?

Mr Petherbridge: It should start with better, stronger regulation on the whole development application process. We do not need concept plans, we need complete plans. We need the original architect to be regulated to stay involved with the project until its end. We need the original engineer to be dictated that they stay there until the end. There needs to be a bit of force put on the developer to do those three things: decent, full documentation, engagement of the original architect and the original engineers so that they carry the responsibility through. That is part of it.

Maybe there needs to be licensing of more of those professionals. The Weir report talks about this as well. It goes beyond the plumber and the electrician, which are licensed, to some of these other critical areas. It is not only about safety, it is about the community's confidence in building. And right now people are going to stop buying apartments. I am not sure if the government would want that. If they are going to have this string of apartments along the tram corridor and they are all empty, it is going to look like a poor entrance to Canberra.

MR PETTERSSON: In your submission you have hinted that some developers have been known to maintain enough unit ownership to control decisions. How commonplace is this in Canberra?

Mr Petherbridge: I think you have only got to look at today's paper where the guy says, "I own some of these apartments; so I am concerned as well." The reason he owns some is so that he can avoid getting an agreement of the owners corporation to do something about the defects. He has got enough apartments to control the voting, if you like, of the owners corporation. That is an example—and I have seen it happen—not all cases obviously, but there has been enough.

MR PETTERSSON: Should these builders or developers be concerned about their reputation around Canberra?

Mr Petherbridge: I would hope that they would be but some of them would prefer to maximise their profit and take the risk that their reputation does not matter too much.

MR PETTERSSON: Is there a reason that owners of units do not often speak out about defects in their buildings?

Mr Petherbridge: Absolutely, yes. They are scared about the value of their property. They pay \$300,000, \$400,000, \$500,000, \$600,000, \$700,000—whatever the number is. That might be the biggest investment they have ever made. And if they then go through and start to talk about the fact that their building has got defects and this that and the other, obviously that is going to have an impact on the value of their investment.

MR PETTERSSON: Are builders and developers actually concerned about their reputation, if no-one wanted to speak out?

Mr Petherbridge: Some are, yes. I could name you two or three out of about 30 that are. But certainly not all.

MS ORR: You have brought up the perspective of multi-unit developments and how

they vary a little from single unit dwellings, just in the way that it is done. I want to drill down on that a little more. In particular we have heard quite a bit about the certification process. You note in your submission that you also have concerns about the certification process. Given that with multi-unit developments the certifier is not appointed by the owners corporation or the people who ultimately own the building, in your opinion how could greater accountability be put into the certification, with a particular interest in how that can help for multi-unit developments?

Mr Petherbridge: You recognise there the difference between a single house and an owners corporation. One has got one owner, and it is clearly the person who is buying the house or maybe, if they are buying off a project builder or whatever, it is the project builder and then they buy it. But the directness of the relationship between the person who buys it and the builder or the original developer is very close. There is not much of an issue there for that person to try to make sure that everything happens in a satisfactory way. If the owner is asking a builder to build it, he has got the opportunity to appoint the certifier—the real owner, the future owner.

In regard to an apartment complex, again Minister Ramsay was may be a touch confused about this because he talked about the stakeholders being all in favour of moving the building code implementation out. He talked about the owners had even been consulted. By that I am sure he meant the developers were the owners. For years I have been trying to get through to various people in the old ACTPLA that the owner in a big, high rise residential place initially is the developer but the real owners further down the track, within two years, are all those 200, 300, 400 people. I am not sure I provided the rest of an answer. I drew the difference on why some of that happens.

MS ORR: I think it has broadly been covered. I was asking you: do you see there being a conflict of interest in the way that certification is currently applied to multi-unit developments?

Mr Petherbridge: Yes I do because often the developer appoints the certifier. And then his builder comes along, and that certifier is looking for the next job with that developer. He has clearly got interests in where the developer is going further down the track.

But, again, I also wish to remind you of what I said about the whole supervision process. It cannot be laid totally on the certifier. It needs those original architects, original engineers, decent plans. And then the problem will be solved. I feel a bit sorry for some of the certifiers because some of them are really good people and do the right thing. And they are not out there just certifying for their next job or their next project.

THE CHAIR: The issue that has been raised there is that during the period the building is being built the builder and the owner are the same person; therefore the certifier is working for the builder, in a sense, not the eventual owner. Do you have a recommendation about how that could be changed? Is there a process whereby—and I am just speculating here—the certification has to be independent until such a stage as there is an eventual owner? What is the solution to that issue?

Mr Petherbridge: I think there could be a pool of certifiers who are known by the

government, and they could be allocated by some system like that rather than the developer. Often the developer and the builder might have different names. The developer has a name for the company that he has set up so that he can disappear in a couple of years time and leave all the problems with whoever owns it. And he usually deregisters the company and whatever.

Clearly the directors of that company are well known, and in Canberra they are very well known because we all know who they are. That is one benefit we have in a small town like this or a small place. We do not have to go back to government certifiers. We do not have to do that. We can simply have government in control of allocating certifiers.

THE CHAIR: The government would, for a multi-unit development, say to the developer, “This is your certifier,” or certainly—

Mr Petherbridge: “This is yours this time around.”

THE CHAIR: “This is your panel of three to choose from,” or something like that?

Mr Petherbridge: Yes, or something like that.

THE CHAIR: And each one of those people must be on the government panel and have demonstrated the ability and qualifications to be an appropriate certifier?

Mr Petherbridge: I think that would be work.

MS ORR: Just on that note, if I have understood correctly—and correct me if I have not, Mr Hanson—your proposition is: if it is a panel where they say, “Here are three from this panel to choose from,” does that actually break the nexus, the potential conflict of interest of the builder choosing the certifier? Would you have to go a step further and have government actually appoint people, not give the builder choice?

Mr Petherbridge: Either way would be a step forward but it would probably be better if it was your way and to actually appoint. But it is a matter of what you think is a reasonable thing. You guys are in charge of this. But either way would be a major step.

THE CHAIR: The point being that it is not the person that is purely selected, employed by and has a relationship with that builder; it is someone that is independent?

Mr Petherbridge: Yes, that is the key thing.

THE CHAIR: Not public but independent?

Mr Petherbridge: Create that independence somehow.

THE CHAIR: This might be a question better put to certifiers but do you have a view on the consequences for certifiers when things go wrong, in auditing them and then deregistering and so on? If something goes wrong, what is the kickback on the

certifier at the moment?

Mr Petherbridge: I have not seen certifiers prosecuted in any way, shape or form at this stage. I think that that goes to the whole issue of stronger licensing and registration of all those building professionals, not just the certifiers or surveyors but also the architects and the engineers.

MS ORR: On your point of licensing and accreditation, other witnesses have noticed that developers are not accredited and, in their opinion they have expressed that they should be. Do you have a view on that?

Mr Petherbridge: Absolutely, yes. I think where we have got good evidence that when certain developers and certain developers with different names, eg different company names—the people are obvious—have had a number of situations where it has been found that there is action against them they should be seriously looked at and maybe some way of them having some sort of licensing or qualification would be good.

MS ORR: Just going back to a topic that was noted a bit earlier, in your submission you note that disputes could be further reduced if regulation mandated the developers/builders provided initial complex maintenance documentation and the initial input into sinking fund plans. Can you elaborate on how you formed this view?

Mr Petherbridge: Yes. Thanks for raising that; it is a good one. I think that the people who build the properties know what products they have used. I did not need to read the Shergold Weir report to get this; I have understood it for about eight or nine years now. But they also support that there are a lot of nonconforming building products being used.

My first experience of this was where I live, and it has now been rectified. There are no issues in me telling you that. But there was glass put in the balustrades. Without any reason at all, the pieces were falling out from the sixth storey down. People could have been killed by that. In subsequent investigation we tried to get the builder to tell us where the glass came from and how it was certified to Australian standards. They could not produce anything to show that. That was a classic example of a nonconforming product that could have created a major problem for owners' safety, people working, whatever. That was a Brian Kimble report. Brian Kimble used to work for ABC way back. And that was on a television show back in about 2007 or 2008 where it showed those particular things. There is a good example of nonconforming product.

Sometimes I have noticed with garage doors, for example, the developer will turn around and say, "The price for those is too much. Mr Builder, you need to go back to your garage door supplier and get ones that really only last for so many ups and downs." The fact that there are 120 cars in the place, and most people would go in and out once a day, means you can pretty easily work out how many ups and downs you might need from the door. But the garage provider, after the event, a couple of years later, said, "Your garage door, and your overall basement door, needs to be replaced because it was only ever designed to do one-tenth of the ups and downs that you are doing." Clearly, the developer and the builder together knew that. They did not do

something that was fit for purpose.

If you drive them towards the fact that they need to have input into the sinking fund relative to future maintenance—a classic example would be lifts that do not last as long as they are supposed to; they know that—they should actually be part of the whole process of creating the maintenance plan for what is required over the first 10 years and, therefore, input into the sinking fund because they should know what it cost. Someone might audit that as well.

The owners might say at the first AGM, “This doesn’t quite look right. That doesn’t seem like the right number.” I think that that is a really important point. It would be a change to what happens now.

MS ORR: Just on what happens now, are you aware of any apartment developments where the builder or the developer has provided a maintenance schedule?

Mr Petherbridge: No.

MS ORR: So from all the member organisations—

Mr Petherbridge: I have not seen any green shoots in that area yet.

MS ORR: In your experience with the maintenance schedules and defects, is there much? There is not a lot of guidance on what the maintenance is. Is there a little bit of argy-bargy between people, between the two sides of the coin, saying, “No, that is a maintenance issue,” as opposed to it being a defect? Have you ever encountered that?

Mr Petherbridge: There probably is but, look, the fact that the Access Canberra people put out those guides, to be honest, I have had many other things I have been doing since they came out; so I have not gone through them and seen that everything that I wanted is in there. Nevertheless, it is a great start. Version 2 might be better than version 1. But I think those sort of things can be done. If there is a willingness between the various stakeholders to get it right, I think that can work. But those guides are a useful thing. I think they could be further enhanced maybe to differentiate between what might be a defect and what might be a maintenance requirement. I think that could work and it could work via that system. But I think it needs you guys to tell Access Canberra.

MS ORR: You have made reference in a few of your answers to the difference with a multi-unit development. There are a number of owners; it is not one owner; you can have potentially hundreds. In your experience, what difficulties does that present for owners corporations to identify defects, particularly with the common areas where it is the group that is responsible, as opposed to a unit owner in their own title?

Mr Petherbridge: Usually it does. A lot of these problem do not occur in the first year. It might be two, three, four years before they really are evident. Then some of them become very obvious because there is a shower of rain after the drought is finished and you get all these leaks. That happens and you find that with the steel in the roof, instead of having an overlap like that, it has an overlap like that. So clearly it is going to leak. Or someone may discover that the steel in parts of the building is of a

standard that is not fire compliant in terms of the time before it will collapse and burn down. It takes 10 minutes.

MS ORR: Can I take from your answer that, to the best of your knowledge, there is not necessarily an undertaking of a review to make sure that everything is in order a couple of years after there has been—

Mr Petherbridge: No, there is not.

MS ORR: It is not a requirement. Do you think that multi-unit developments would benefit from a requirement to undertake a survey of the building a few years after their development?

Mr Petherbridge: Yes, I think that that is a good idea. But it might well be that it has to be three years or whatever when things are evident. While you are on that sort of thing, I mention award schemes, for example. What is the point of having an awards scheme for the best-looking building one year after it is built? It really needs to be an awards scheme for the best looking and most sustainable building four or five years after it is built.

These were suggestions; I have some documents that I might leave with you. You can use them or not use them. There are four things that I have that I will give to you. Back quite a while, the then minister for planning, the Chief Minister now, wrote a letter to me itemising 11 things that he believed needed to be done. I thought it was a very good, practical answer to a lot of issues. I responded to that with comments to each of the 11 things. I will give you both things.

MS ORR: Can we have those tabled?

THE CHAIR: Yes, that would be good. If you are happy, we will table those documents.

Mr Petherbridge: Yes, happy to do that. I have four pieces to give to you.

THE CHAIR: Yes, that is good.

Mr Petherbridge: In addition to those two, I have something from the architects who commented on the Shergold Weir report that really highlighted some of the things that they saw. They are consistent with what I think. I will give you that as well.

THE CHAIR: Given the time, Mr Petherbridge, we are going to have to wrap up.

Mr Petherbridge: Yes, I am happy to go whenever you want me to leave.

THE CHAIR: I get the sense that we could probably go on quite a bit longer.

Mr Petherbridge: No, it is up to you.

MS ORR: I ask one more question that requires only perhaps a short answer. Mr Petherbridge, we have had quite a bit evidence talking about dispute resolution

and rectifying remedies. In your experience with your members, when they have identified a defect, have they been able to get it remedied in a fair and accessible way?

Mr Petherbridge: No. No, usually with the unbeknown type of people that are involved with this, they are dependent on good faith. The best result would probably be that they go back to the builder-developer and say, “We want this fixed.” The builder-developer then goes back to the same people who did it before and they create the same problem, because they use the same products. The only way that can be done is if the owners are prepared to take out proper deeds and follow through with a proper building consultant to actually supervise that it is done a different way to the way it was done originally.

Look, it is very rare. I know of one example. It was one I gained a lot experience from. It was one I was involved with. I suppose that is where my education in all this has come from. But I like being a community advocate as well. I have applied my nine years of time—

THE CHAIR: I am afraid we are going to have to hold it there, Ms Orr. I know that you are eager to—

Mr Petherbridge: I have one more paper that I will give you at the same time. I mentioned three but there is a fourth one. It is from the first ACT architect, a guy called Alastair Swayn. I will leave you that as well. But can I summarise? You usually give people an opportunity in the last couple of minutes. I will be very quick.

THE CHAIR: Let us go quickly then.

Mr Petherbridge: We should move away from design and construct, as architects and engineers become subcontractors to the builders. Ownership, we have raised many times; so I think you have got that. I have made the positive about the peer review for developers and some of them are showing good signs on that. The cladding issue is a very significant problem that has only just come up. That is it. I do not have anything else much to say.

THE CHAIR: We may have some more questions for you.

Mr Petherbridge: Yes.

THE CHAIR: If we do, we will be in touch with any questions that we have because you have certainly raised a lot of issues. Thanks for your comprehensive submission and for all your activism and interest in this space over many years. It is very useful for the committee but also for the many building owners and occupiers that you have supported over that time. Thank you for that. You will get a copy of the draft *Hansard* to review. Could you provide those documents to the secretary? Thank you for attending.

Mr Petherbridge: Okay, good show. Thank you.

The committee adjourned at 11.40 am.