



**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**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 24 JULY 2019**

**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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*Amended 20 May 2013*

**The committee met at 9.03 am.**

**HARRIS, MR JOHN**, Trustee, Master Builders Fidelity Fund

**THE CHAIR:** Welcome to the sixth public hearing of inquiry of the Standing Committee on Economic Development and Tourism into building quality in the ACT. We are hearing today from industry and professional organisations. We will be starting with the Master Builders Fidelity Fund. Thank you very much for your submission and for appearing today. Can I draw your attention to the pink privilege statement that is on the table? Could you look at that and indicate that you understand the implications of it? I remind you that the proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live. Can I confirm that you are happy with the pink privilege statement?

**Mr Harris:** Yes, thank you. I have read that, and I understand it.

**THE CHAIR:** Would you like to make an opening statement, Mr Harris?

**Mr Harris:** I can make a brief one, if it will assist.

**THE CHAIR:** Yes, that would be good.

**Mr Harris:** I have been a practising solicitor in Canberra for 40 years. One of the specialities that I deal with is commercial law and disputes, and construction disputes. In 2002 I was engaged in a committee process to amend the Building Act, so that a fidelity fund scheme could be started. There were several people involved in that, including representatives of what was then the ACT Department of Fair Trading, the minister's office, the ACT Government Solicitor, plus industry representatives.

The impetus for the scheme came about because HIH Insurance had collapsed. It was a mandatory requirement for builders to have an indemnity certificate of some sort before they could commence a building job, and no certificates were available. Several of the larger insurance companies decided that it was too high risk an enterprise and withdrew their support; so there were no building starts for a period of about four months in the ACT, whilst the rudiments of the fidelity fund scheme were worked out.

Rather than being an insurance scheme, which the other companies offered, the fidelity fund scheme is a mutual benefits scheme. That is set out in the amendments to the Building Act which came in in that year, and they are still substantially in place today. That means a set fee is charged for each building start that the fund indemnifies. Those fees are pooled and the trustees of the fund administer those funds strictly in accordance with the guidelines set down by the Building Act regulations, and by the relevant minister, currently Mr Gentleman.

The fund reports to the Assembly every 12 months. If it wishes to make any significant variations to its method of operation, it seeks the approval of the Assembly and/or the relevant government departments, which have changed a little over the years from one to another. I think it is now all under the umbrella of Access Canberra.

Because it is such a strictly constrained scheme, it has a series of rules which the trustees seek not to breach in any way. One of the first and most significant ones is that an actuary is appointed. The actuary calculates each year what he believes the claims exposure for the fund will be. Based upon that we set the fees that we charge for each indemnity certificate. We are not a sort of free-enterprise organisation which simply works out how much the market can bear and then applies the appropriate fee or anything like that. We have a very mathematically constrained fund, so we charge the minimum fee that we are able to charge in order for the fund to have the resources that it needs to meet the expected claims incident.

Currently, the scheme operates on the basis that we indemnify each building to a total of \$85,000 for building defects. Structural defects are covered for six years from the date of issue of the final certificate, and they must be notified to us within that time. Non-structural defects are covered for two years on the same basis. A pre-condition to making a claim against the fund is that the owner must have exhausted his claims against the builder.

We issue about 2,000 certificates per annum. There is another scheme administered by the HIA, which issues insurance certificates under the old system. Those insurance certificates are underwritten by QBE. Of the 2,000 certificates a year that we issue, we estimate—and it is a very rough figure—that we have about one per cent claims. Why I say that it is a rough figure is because if a builder goes bankrupt and claims are made against him, he often goes bankrupt leaving three, four or five jobs unfinished; so he will amount to five claims for a particular year or something like that. Sometimes he only amounts to one.

When we are talking about a one per cent claims experience, the question is: is that one per cent of actual dwellings being claimed against or one per cent of the builders that we cover? I cannot answer that question. It is a very complex issue and you could go into a lot of mathematics about it. Essentially, to give a broad, general idea, about one per cent of the certificates that we issue result in claims.

I have been a trustee of the MBA Fidelity Fund since it commenced in 2002. There are currently six trustees. We try to ensure that they are drawn from a broad basis across the industry. We have a finance industry person, we have an insurance broking type person, and we have several builders, retired builders or people with construction industry experience.

We try to be proactive in managing our claims. To that extent we do investigate builders' financial capacity before we issue certificates. If a builder seems to be exceeding his financial capacity, we often ask him to accept fewer certificates and build his capacity up a little more slowly. We also look at the most frequently discovered defects and seek to intervene in the industry from time to time to train builders and to ask them to pre-empt certain things.

As an example of that, a few years ago a large number of the balconies being built on high-rise buildings were leaking and admitting water to the units underneath. There seemed to be incorrect procedures being adopted across the industry as a whole. People thought they were doing the right thing, but they were not necessarily. We

sought engineering advice and started running a series of seminars to advise people how we expected them to build their balconies so that they were waterproofed and they did not admit water to the units underneath.

As a result of that we think we have been a successful scheme. Several other state schemes have failed. A couple of them have just ceased to exist. A couple of them have had to fall back on the government purse and seek subsidies from their various state governments in order to continue to exist. Happily, our scheme has been self-sufficient. It has not had to do those things; so we are still here after some 16 years. We think it is operating reasonably well. I would be happy to take any questions you wish to ask about any of that.

**THE CHAIR:** Thanks very much, Mr Harris. I have a few, to start off with. Of the trustees, how do you make the decision? Who makes the decision that you are going to pay out an amount? Is that a collaborative decision?

**Mr Harris:** No, the trustees are a governance body. They set the rules and the guidelines. We engage staff to do the day-to-day things. We are very nervous about being accused of playing favourites, or favouring one group of people over another.

Having set the rules, the operational staff of the fund then determine the claims. They are reported to us every month and there is a meeting every second month. If issues transpire to be problems then the trustees take a closer interest in them as an entire board, but we delegate the day-to-day decisions.

**THE CHAIR:** There is a delegate as such, and there are named delegates, as to who they are, the CEO or—

**Mr Harris:** Yes. The cheapest way for the fund to operate, bearing in mind that we were originally an offshoot of the MBA, is to engage the Master Builders Association to perform our administrative function.

**THE CHAIR:** Is it staff of the MBA that do that?

**Mr Harris:** Specific officers. They have to be—

**THE CHAIR:** They are named officers?

**Mr Harris:** Yes, specifically named officers who are delegated to us and who attend the trust meetings. It is not as if anybody from the MBA might suddenly pick up a file and go out and—

**THE CHAIR:** You nominate who they are, but they are MBA staff?

**Mr Harris:** Yes, that is right. They are part appointments. They are half a full-time employee because we found that was the cheapest way to run the fund.

**THE CHAIR:** On the payouts, previous witnesses have said that there has not been much paid out. You have said that it is one per cent of the fund. But are you able to quantify how much has actually been paid out and to how many individual claimants?

**Mr Harris:** I could take that question on notice. I can inform you conversationally that \$1 million at least, quite possibly several million dollars, is paid out every year. The largest claim which I had something to do with, because it was a big claim and the trustees took a lot more personal interest in it, was a units plan in Turner where the external walls of the units admitted water. There were 14 units. The fund not only paid out but also, because the body corporate was not really competent to manage its own scheme, assisted them by appointing experts to determine the cause of the loss and how best to fix it and things. In that one instance we paid out about \$1.4 million. So the fund pays out very significant sums of money.

**THE CHAIR:** On notice, it would be really useful if you could tell us how many people are paid out. Even if that is sort of “Claimant A—

**Mr Harris:** I estimate that about 20 a year are paid out. Not all are paid out \$85,000. One of the problems we have, and one of the actuarial problems, is that we could always have a series of catastrophic claims. That is to say we could have a year when 200 claims are made on the one building, and that might involve a \$7 million, an \$8 million or a \$10 million payout. We average a couple of million dollars a year.

**MS ORR:** I am interested in knowing how many claims have been approved and how many have been received. I am trying to get an idea of how many have been approved, rejected and received and how many are still under assessment, if that is the balance, and the main issues as to what those claims are for, whether they are going to, say, water ingress or something else. Do you publish those sorts of things in the statement you make?

**Mr Harris:** I think all of that information is sent to the minister each year in our annual report, which is a substantial document. I do not think it gets issued as a press release or anything like that. There is no objection to it really but it just does not happen.

**THE CHAIR:** How does the \$85,000 figure work with multi-unit complexes? You alluded to the one in Turner.

**Mr Harris:** Every unit gets \$85,000. There has been a bit of a technical imbroglio. You will be aware that a units plan consists of X number of units plus the common property. The scheme does not allow for or provide for the issue of a certificate for the common property. So if there are 10 units, it is 10 times \$85,000. Maybe it should be 11 times \$85,000, being 10 units plus the common property. But that is not how the scheme as currently defined works.

**THE CHAIR:** Based on your experience, though, do you think that that is something that needs to be addressed? If you have lifts, for example, within a multi-unit complex and know there is a problem with those—

**Mr Harris:** How it has tended to work in units plans is that the unit holders pool the funds that they are given in order to pay for their common problems. So in practice it has not transpired to be an issue. The one in Turner, for instance, was external walls. That is all body corporate. If we had relied on one certificate for the external walls,

the \$85,000 would not have covered it by any stretch of the imagination. So the funds were pooled and a holistic job was done to complete them.

**THE CHAIR:** How much is in the fund at any one time? I assume it fluctuates.

**Mr Harris:** That varies. I would be happy to take that on notice. But I think we have about \$12 million or \$14 million currently being administered. Part of the actuarial calculations that I mentioned earlier are calculations designed to make the fund sufficient to cover its normally expected claims each year plus a catastrophic claim, plus a surplus. But it is by no means certain that the fund could not go broke. It could be the case that in any year the trustees have to approach the Legislative Assembly and say, “We can’t go on,” because we have exhausted our funds. So it is a constant issue that is before us all the time.

**THE CHAIR:** In terms of the payouts you have made, have you noticed a trend? Have you noticed that there has been an increase of late, or is it fairly static? Have we always had the same sorts of problems? You might have some insights in terms of all of a sudden there being significantly more problems with multi-unit complexes or something.

**Mr Harris:** The problems have changed over the years but it has been reasonably static. In the first two or three years of the fund there were almost no payouts, but that was because defects only manifest themselves after a building has been up for a couple of years. That was sort of expected. Since then there has been a regular series of claims. I would possibly say that a significant number of the claims occur as a result of new or innovative materials or construction practices which are not proved and which do not work. It makes you sound a bit like a fuddy-duddy when you say, “Just go back to bricks and mortar and do it properly and your buildings will stay up.” That is not how any industry is going to develop. There are going to be new schemes and new systems all the time. But the more technical buildings become, the more they tend to fail in some way.

**MS ORR:** On the access to the fund, we heard from a witness on 21 May 2019 that he experienced a lot of difficulty accessing the MBA fidelity fund. He said:

Identifying building defects usually takes some years. Overcoming inertia to actually act on that takes a further amount of time. And, even if you obtain a judgement against the builder, the builder can easily tie you up in appeal proceedings for some time. The way the fidelity fund scheme operates, as the law presently stands, it is very difficult for an owners corporation to make a claim on the fund.

In response to this witness, do you agree that limiting the period of reporting and remediating defects to six years makes the fidelity fund inaccessible?

**Mr Harris:** There is a point that he has made. I do not entirely agree with it but there is some validity to it. Many units plans have claimed against the fund and have been satisfactorily acquitted over the 16-year life of the fund.

The situation is like this. If the Legislative Assembly decides that the period should be 10 years rather than six, it only has to change the regulations and we would have to

abide by that. If it decides that it should not be \$85,000 but \$200,000, it only has to change the regulations and we would have to abide by that. Doing it proactively, that is to say for the future, means that the fees charged to the certificates for those new parameters would be significantly higher. Doing it retrospectively would probably break the fund. If we were to decide today that going back the past six years we would admit \$200,000 claims rather than \$85,000 claims or something, I think that the funds in the fund would run down and run out.

The parameters are in the Assembly's hands, in a sense. Having said that, we have consulted and been consulted about that on several occasions. We are not so sure that the mix is wrong. We think it is about right. We appreciate that it could be tinkered with at any stage. We do not shirk from that. But you then have the housing affordability issue. However you tinker with it, the fee will rise. However the fee rises, it will be paid by the ultimate consumer, which is the homebuyer. So it is a question of working out what parameters you want. I have not come today to make a passionate submission about whether it should be higher or lower, other than to explain how it works. However, I suppose that whenever anybody has a claim which is rejected they are going to be disappointed and are not going to be terribly happy with how the scheme works. The question is whether you think the social policy settings are right really.

**THE CHAIR:** Have you got the work that shows that if you were to increase it from, let's say, six to seven years or seven to eight years, what the impact would be on the cost of certificates? Equally, if you increase the amount from \$85,000, how much does it go up by? What is that? Have you quantified the impact on the cost of the certificates?

**Mr Harris:** That would be a complex calculation. I have not done it and I do not think the fund has done it. Really, the minister, whom we are accountable to, would be your mouthpiece. If he came to us and said, "Give me a couple of scenarios," the actuary could do it. But I do not think we actually have the figures to hand.

**MS ORR:** I go back to accessing the fund. I appreciate what you have just said, that, yes, one action will lead to a reaction and so forth.

**Mr Harris:** Yes.

**MS ORR:** But you do state in your submission that you think that the current provisions provide appropriate consumer protections without adding unreasonable cost. You say that you think they are generally okay. Given that you have just said that, yes, there could be other considerations, and that there is some validity in what the person said, can you clarify this for me: do you think there needs to be an examination of whether it needs to be changed or do you think—

**Mr Harris:** I think we are working reasonably well at the moment. I appreciate that we are on a spectrum. You could, say, offer less indemnity and charge the industry less, or you could offer more indemnity and charge the industry more. The fund has never attempted to set those parameters. We have always understood that we are administering the scheme for and on behalf of the territory. I just say that there would be a cost. I would not like to advocate too firmly to say that the present system is

perfect and must never change. At the same time, I can tell you that the present system is working reasonably well.

The particular complainant that you are referring to, I think, is a body corporate where they have sought to have the six-year period extended to about a 12 or 14-year period. I could tell you with complete certainty now that if that were an instant change that occurred tomorrow, the fund would go broke.

**MS ORR:** There were also some other witnesses—we had two witnesses on 10 April—who said that they had difficulty making a claim from the Master Builders fidelity fund to assist in fixing building defects. The witnesses said that it did not apply in this particular case because he, being the builder, did not die or did not disappear. We have had this come up quite a bit. Obviously, the letter attached to your submission in support of the fund notes that in that case the builder had passed away, which is why the claim was successful.

It has been raised with us quite a bit that the criteria are quite limited, particularly around death or disappearance. I want to get a better idea of why this is. Is there a broader criterion that could be applied? The issue that witnesses are raising is that it is actually quite limited in the sense of a death or a disappearance—

**Mr Harris:** The witnesses are perfectly correct. The builder has to be not able to resource the charge. We believe that the person who should be primarily responsible for any defect is the person who created the defect and, therefore, that the builder ought to be accessed first.

**MS ORR:** I think the point we have heard from witnesses is that the builder, not being able to access the defect and rectify the defect, is taken to be either completely disappeared or that he is dead. They are—

**Mr Harris:** Or bankrupt.

**MS ORR:** Or bankrupt; okay. I think it is fair to say, from what we have heard from witnesses, that they viewed the builder as not being in a financial position to pay out the claim. But because the builder is not deceased or disappeared, they still have not been able to access the fund. It is an imbalance between how those criteria apply.

**Mr Harris:** They are correct and it is a valid criticism of the scheme. To fix it, we would have to work out some new category of claim and we would have to charge for it. It is all a question of cause and effect, and the payment of a fee. This actuarial thing is taken very seriously. The actuary costs the fund a couple hundred thousand dollars a year. It is a firm of people. They have blokes who work on the fund's issues for two or three months of the year and produce a detailed report. On that basis, we are able to declare we are solvent each year. Without that, we would just be guessing in the dark and we would not be able to—

**THE CHAIR:** In essence, what you are saying is that you have a set range of parameters in terms of what you pay out for, what the amounts are, what the duration is—six years at this time. You would apply whatever it was that the government would set, noting that there would be a commensurate change in the amount that the

certificates would cost.

**Mr Harris:** Yes.

**THE CHAIR:** So any of those parameters can change. At this stage you are just adhering to the parameters as set by the government.

**Mr Harris:** That is right. Bearing in mind what I said earlier, that it is a mutual benefit scheme, that would mean that the two or three thousand consumers in the ACT each year who purchase a house and use our particular fund would subsidise, to a greater or lesser extent, the builders who created defects and for whom claims flow through.

**MS ORR:** Where I am going with a bit of this—it has come up in other hearings and you even touched on this in your opening statement—is the difference between the fund and an insurance product. Certainly, we have heard from some witnesses—I quote one of them—that most of the insurance issued in the ACT is fidelity fund insurance. The reality is that it is almost impossible to make a claim. It is not really an insurance. There is a difference. Can you give us more detail? I acknowledge that you mentioned this in your opening statement, but do you see the fidelity fund as a type of insurance or is it something separate to insurance?

**Mr Harris:** It is separate. It is a bit of an old-fashioned idea. Once upon a time all of these companies, which have now become large companies—the MLC was a mutual indemnity fund. The AMP was the Australian mutual provident society. It was an indemnity fund. The theory was that you collected from many in order to compensate for those people who suffered certain things: death, injury or whatever. A mutual benefit fund is a very specifically focused thing. We do not issue insurance on cars or anything else.

In our particular case, it is those events which occur within six years which result in structural defects where a builder has disappeared. Constraining it in that way means that the fee that we charge is a certain fee. It is a pool of money. We do not have the power; the trustees have a lot sympathy with people who come to us and say that they would like to claim too. We say that we are sorry, but they cannot. We take no personal interest in it. We are not coveting the money for ourselves. There is no fee being charged on the money or anything. It is a pure issue of administering a fund in accordance with those rules.

I have to admit that rules can change. If the rules change, the fund would be administered in a different way. It is as simple as that. Is the fund currently sufficient? It has been to date. Should it cover periods of 10 or 20 years and stuff like that? I mean, there are buildings cracking up in Sydney now that were built back in 1996 and stuff like that. Trying to be the point of last resort for every possible calamity that could occur in the building industry is going to be a very expensive process. That is all I can say. As a fund trustee, it is really indifferent to us as to what sort of fund we administer, but everybody has to realise that there are two sides to the equation.

**MS ORR:** We have also heard from witnesses that, to quote them, it must be an actual insurance and that there is a perception that there needs to be an insurance. So

if the fund is going to do one specific thing and stay to that, we have heard that there should be some sort of insurance offering. From your experience do you think there is a need for some sort of insurance?

**Mr Harris:** There might be; it is a thorny issue. The two things I would say about that are that lots of insurance companies will not touch it. They simply look at it and say, “This is too risky for us. We won’t offer you any insurance,” and we have got no capacity to force them to. Secondly, almost all of the funds have experienced financial difficulty around Australia. There are equivalent types of funds in each state. Some of them have just gone under while others have had to become a public benevolent fund based on government fees.

There will probably be, in an industry like the construction industry, no shortage of claims and defects and things over any given period of time. You have to work out how broad you want the safety net to be. It is a bit sixes and sevens, I suppose.

**MS ORR:** It is a bit confronting to think that it is almost to a point where it is not insurable because of the number of issues there will be and that that is almost a given.

**Mr Harris:** If you want to look at a broader thing—and I am going outside my remit now as a trustee of the fund and just commenting generally on the building industry—there is a whole-of-industry problem. Because the builder or the developer, as he is sometimes called, is the point at which the public intersects with the entire industry because he transfers the house to an individual, there is a tendency to say, “Dirty developers. How dare they? They’re doing the wrong thing by us all the time.” Our claims experience has been that 99 per cent of them do not do the wrong thing but that a significant number do, and that is where the claims arise.

Secondly, when you analyse the claims, the developer is sometimes at fault. I would not say that there are no shoddy builders out there or builders with not enough experience to undertake certain projects even though they think they can, but there are other issues. Some of the big issues that have arisen in the industry in the past few years have been manufactured goods. These claddings that burst into flames and tear up the sides of buildings and things. Those builders believed they were installing a correct, proper and verified product at the time they were putting them on. Now they are not.

You might recall in the not too distant past a company—I think it was called Lumix—sold many thousands of kilometres of electrical wire into the country and the wire was stamped Australian standard approved et cetera. It transpired not to be and the electromagnetic field created by electricity running through the electrical wires tarnished the plastic which ultimately became brittle and cracked and the wires were exposed so that they all had to be pulled out. Generally speaking that happened at the expense of the builder or the poor old tradesman who was only trying to earn a living and take a wage home to his wife and kids. That was a particularly hard instance of how a product can fail.

One of the other things is—and I do not see how you can stop this—that motor cars, mobile phones, aeroplanes and buildings have become much more technical and much more complex over the past few years. There is a tendency to want to produce cheaper

and better product and there are new designs and new issues coming onto the market all the time.

The engineering profession, the architecture profession and the suppliers of patent devices have all failed. So it is an industry wide problem and it needs to be looked at on an industry wide basis. How you solve precisely all of those things I do not know, but that is the cause of the current upsurge of issues.

**MS ORR:** In summary, there is no one specific pinch point; it is actually across every part of the industry.

**Mr Harris:** Exactly. One of the ways you can do it is to pull back a little bit and design something not quite as technically complex as you otherwise would. You might recall a marvellous new age project which looked very impressive at the time called the Cameron Offices. The complex was built 30 years ago and had to be demolished about 10 years ago because basically the design concept was not good enough for the buildings to stand up. They leaked like a sieve in the long run. That is a typical type of issue.

When we get a body corporate issue that fails it is not usually that the carpenter did not use enough nails or the builder never put enough cement powder into the concrete; it is normally some sort of failure in a design that causes something to crack or deteriorate.

**MR PETTERSSON:** Can you give me some examples of the longest claims to resolve?

**Mr Harris:** The Turner unit site that I talked about earlier took a couple of years to resolve. It was a really serious and difficult issue: there were people walking around in there with carpets that got soggy and they had to take their shoes off every time it was wet and walk around in their bare feet. It was an unpleasant issue. Working out exactly what was wrong and how best to use the available dollars we had to get that fixed was a frustrating process for those people. To their great credit, they stuck with it very well.

The first expert who came along said, "Tear off the roof and put a new roof on. That'll fix it." It transpired there was nothing wrong with the damn roof; it was coming in through the windows and the side walls when the wind was blowing. So that was an issue. But generally speaking most of our claims are resolved within about six months.

**MR PETTERSSON:** We have received submissions that state as a result of their claims lodged to the MBFF any repairs undertaken are not deemed as permanent fixes and are now classified as temporary fixes by repairers in the industry. That means that relevant building insurance does not cover the cost of any repairs or resultant damage while a claim is pending. These repairs could cost several hundred thousand dollars during the time the MBFF takes for the claim to be solved. Do you see a solution to that predicament?

**Mr Harris:** I started to frown as you were saying that because I cannot think of any circumstance where that particular complaint applies. The solutions which we pay for

are intended to be permanent and proper; they are not intended to be some sort of bandaid solution. Sometimes it involves the demolition of a certain part of a building and the reconstruction of it in a correct manner. Other times, of course, the defects are much less serious and can involve paring cracked brickwork and repairing it. I would not like to think our repairs were being funded in a way that meant they were only temporary, ad hoc things; they are intended to be permanent.

**MR PETTERSSON:** I understand that. The crux of the problem is that whilst they are waiting for this permanent solution to hopefully be deemed eligible under the MBFF, they might have to undertake temporary fixes. For example, for the apartment in Turner you were talking about that got soggy carpet, I assume you are trying to get some fixes in so residents are not walking around in water all the time.

**Mr Harris:** Yes, we did. Ultimately the exterior walls of the place were stripped and essentially speaking rebuilt at the cost of \$1.5 million or something like that.

**MR PETTERSSON:** But are the works done to try to maintain a standard of living covered by the MBFF?

**Mr Harris:** It is an interesting proposition. The most truthful answer I can give is that I do not know. Once a claim is notified to us our assessors and others would make efforts to ensure that further damage was not done. So if it was a leaking roof they would require some sort of temporary solution prior to the implementation of the final one.

To the best of my knowledge nobody has written a letter to the trust fund saying, "You've left me for six months with a dodgy aperture in the building whilst you were making a claim." We try to get onto the claims very promptly. Usually we try to get somebody sent out within a week or 10 days to have a physical look at the things. We have to assess how much it is worth; we will not pay out \$85,000 simply because a claim comes in, and many claims come in under \$85,000. It is not uncommon for a \$20,000 or a \$30,000 claim to be processed for a replacement of windows that have been incorrectly assembled or something like that.

**MR PETTERSSON:** So there is no payment of temporary works whilst someone is making a claim?

**Mr Harris:** I do not think that is correct. If temporary works were required, especially to preserve and protect the rest of the building, we would make such a provision immediately. But I do not know the answer. I cannot think of an instance where we have, or we have not.

**MS ORR:** Is there a distinction between temporary works that the owner undertakes to improve the situation as they see it and temporary works that need to be considered by the fund to make sure that they do not void the warranty or impact the issue?

**Mr Harris:** Yes, there may be. If an owner identifies a problem and decides to put a bit of mastic or something into it whilst contacting the fund, I do not know that we necessarily reimburse him for that. But I am not sure of the answer. I think it would depend upon our assessment of the situation.

**MS ORR:** I guess the point I am going to is whether that temporary fix somehow voids the permanent solution because it seems to impact it—makes it worse or takes away the ability to rectify the issue. Is that a possible scenario?

**Mr Harris:** Yes, I think that is probably—that is correct, yes.

**THE CHAIR:** I have a broader question for you that goes beyond your role in the fund. It relates to your experience in dealing with the legal aspects of the industry. When you look at these defects, the problems that have occurred, do you find that they are because of a failure in regulation, that the regulation is not there, or is it that people are just doing the wrong things? I am sort of trying to address the issue. Have we got the right regulatory scheme and people are just not adhering to it? Is the regulatory regime broken? Or is it a bit of both?

**Mr Harris:** I do not think the regulatory regime is completely broken. There is a frustration expressed from time to time in the hallowed halls of places like the MBA that the regulators are not tough enough on people who do not do their job properly. The regulators do have the capacity to remove people's building licences and things. Again, that is a discretion that has to be exercised in accordance with law because the builders are entitled to rush straight off to the court to try to get their licences back. But there is some sense in the industry that the regulators could be a bit tougher.

There is certainly a sense in the industry that because, let us say, one per cent are wrongdoers, the people who sort of really need to be excised from the industry or chastised in some way, there should not be a broad regulatory impediment put on the 99 per cent. It would be better to focus on the one per cent and get them in some way.

To come back to the fund's experience, persons who have had claims against them are looked at very carefully before they are issued with any further certificates. We can exercise in a perfectly legitimate way a minor exclusionary sort of role by saying, "Look, you have had three claims against you, mate. We are not going to issue you any more certificates." So that bloke presumably cannot get starts. That has led to a series of builders who have written to us, sometimes via their solicitors, saying, "How dare you? You have maligned me. This is defamation. I demand you give me more certificates and stuff." The fund has had that style of issue.

The fund is also very anxious to make sure that young inexperienced builders or builders who have only been rated to a certain level do not overcommit and jump from four or five-star tier to 30-star tier by taking on a big job and then finding themselves in trouble.

**THE CHAIR:** Just on that issue—the decision about who you issue certificates to—is this done on a sort of judgement by the MBA staff, is it done by the trustees or are there guidelines in the legislation?

**Mr Harris:** It is done by the MBA staff that are seconded to the fund applying the rules and regulations that the trustees administer. In fact, the bloke who determines whether a company has the financial capacity to do a job is actually an accountant.

That is subcontracted out not even to the MBA but to a person who looks at their previous cash flow, their capacities and whether they have the financial capacity.

If he puts in a report that says, “This bloke does not have the financial capacity to undertake this level of work; be careful here,” then the fund staff will generally look at it and go and speak to him. Sometimes the certificate would be issued after he has established that he has got greater financial capacity because of a new partner or something like that, or alternatively we sometimes reject.

**THE CHAIR:** We have to wrap up there, unfortunately, Mr Harris. Can you add to the information that you are going to provide to us on notice the occasions on which you have refused to issue a certificate and why—without identifying anybody—

**Mr Harris:** I understand.

**THE CHAIR:** so we get a sense of how many times you actually say, “No, we are not going to give you a certificate. It might be that they do not have enough funds or they are repeatedly coming up with problems. This would give us a sense of how proactive you are.

**Mr Harris:** I think we can do that.

**THE CHAIR:** That would be great.

**Mr Harris:** For clarification, what I have noted down is that you would like information on how many claims are received, how many are approved, how much is paid out per claim, and then the occasions on which certificates are refused to builders and why.

**THE CHAIR:** And if there is a sense that you can give of what the claims are for so that we can get a sense of whether it is water egress that is the bigger problem, whether it is electrical or structural. That would give us some sense of where the problems are. That would be good.

**MR PETTERSSON:** Just one more from me. Could you quantify what assets of the fidelity fund may be applied by the Master Builders for use in the ACT skills centre building fund?

**Mr Harris:** Yes, I can do that.

**THE CHAIR:** And the amount that is in the fund currently. We have the next witnesses here; so we had better crack on. Mr Harris, thank you for your attendance. You will be sent a draft *Hansard* by the secretary for you to review. We look forward to the responses to our questions. Thank you for the information you have provided us today and we look forward to the answers to our questions.

**Mr Harris:** I am happy to have been here. What is the normal timing for providing this? Is it 28 days?

**THE CHAIR:** Yes, there is no—

**Mr Harris:** I can probably get it quicker than that. The fund people have to do it, not me.

**THE CHAIR:** Whenever you can get it would be good. I note that we still have some ongoing public hearings. It is not like we are wrapping up next week. As soon as you are able to would be good. There is no mandated period.

**WELLER, MR GREG**, Executive Director, ACT and Southern New South Wales, Housing Industry Association

**CROFT, MR SIMON**, Executive Director, Building Policy, Housing Industry Association

**ADLER, MS MELISSA**, Executive Director, Industrial Relations, Housing Industry Association

**THE CHAIR:** Thanks very much for attending and for your submission. There is a privilege statement in front of you and I ask that you look at that to make sure you are aware of the requirements of the privilege attached to this committee. These recordings are being transcribed and broadcast live. I invite you to make an opening statement before the committee asks some questions.

**Mr Weller:** Thank you for providing the opportunity to the Housing Industry Association to address the inquiry into the quality of recently constructed buildings in the ACT. The Housing Industry Association is a national industry body representing the interests of and providing support and services to the residential building industry in Australia. This includes new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

Building quality is a challenge to be addressed across Australia and is rightfully an issue being considered by governments at a federal, state and territory level. A number of recent high-profile failures has certainly sharpened the focus of governments, community and the building industry.

HIA wholeheartedly agrees that when entering into a building contract or purchasing a property off a plan a consumer should reasonably expect that the final product is built in accordance with and meets the requirements set out in the ACT building legislation and, further, that the builder and those associated with the works—for example, certifiers and licensed trades—are accountable for the building works in accordance with any applicable statutory warranty provisions.

From a brief look at the submissions received by the inquiry it is clear there are consumers in the ACT whose expectations of their home building experience have not been met. Equally, it is important to acknowledge that this is the exception rather than the rule with thousands of Canberrans each year experiencing the joy of taking possession of a new home and any regulatory responses should reflect this balance.

During 2015-16 a building regulatory reform process was commenced by the ACT government which sought to respond to matters raised with respect to the ACT building and construction industry. HIA noted in its submission last year that movement towards finalising the recommendations of this initial inquiry have been slow. However, we recognise and acknowledge that over the past six months to a year there has been a significant amount of work progressed, and HIA have welcomed the opportunity afforded to us to participate in these processes.

We note the additional funding for staff for building compliance in the recent budget and the development of guidelines for design documentation to name two, both of

which were addressed by HIA in our submission to this inquiry. So to some degree the discussion has moved forward since the inquiry commenced. In this context we welcome today's chance to discuss not only the discussion paper and our response to the terms of reference but any other relevant matters members of the committee see fit to raise with respect to building quality and oversight in the ACT.

**THE CHAIR:** It seems from the submissions we have received and the evidence provided that a whole bunch of reviews have happened locally and nationally but many of recommendations have not been implemented over a period. Based on your own submission Access Canberra—the regulator—have been under-resourced and not really doing their job. It would seem in the last six to 12 months, as you have just said, there has been a flurry of activity to try to get on with the business that has been stalled for quite some time.

Is that an accurate assessment? That being the case, is the issue one of simply implementing what has already been addressed? There are always new things to look at, but is this a failure to implement the work that has been done and to then properly enforce regulations as opposed to coming up with something new?

**Mr Weller:** Certainly one of the key themes we raised in our submission is that a lot of work has been done already and a lot of rules are in place governing the industry. It is quite a highly governed sector. We see different regimes across Australia and a range of different ways of dealing with the building industry. There is not necessarily evidence that says that one particular jurisdiction has better quality building than another therefore pointing to that particular way of doing things.

There are a lot of answers out there but, as we said, that is not to say that more work cannot be done. Design documentation is one issue we raised, and that is a good example of something new we can do to improve the operating environment for the building industry and hopefully come up with a better quality product. It is a little bit of both; there are new things that we can do.

One of the things that we are very strong on is that there should be a re-investment from government within the industry on a number of levels. I note one of the questions you asked of the last speaker was about the nature of some of the problems. Unfortunately that is something we do not know. As industry we have said to government, "Look, tell us where the problems are and we can take those forward and government can take those forward." I understand some of the new staff from the recent budget announcement will be looking at collating information collected by inspectors and getting an understanding of where the problem is.

In short I think that there are new things we can do, but I think there is an awful lot we can do to better understand the problems and to also be out there actively working with industry and enforcing the rules as they stand.

**THE CHAIR:** So you are saying that we know that there is a problem and a lot of complaints but that we need to identify those particular weaknesses so they can be a particular area of attention?

**Mr Weller:** Yes. If you were to cite a problem in the ACT obviously water-related

issues have been a problem for a number of years. But beyond that we have not been provided with accurate data of where all the problems are. We would like to see a situation where government is able to say to the industry, “This is the big problem at the moment. This is what we’re consistently seeing as an issue.” We would like to—

**MS ORR:** Mr Weller, listening to that response you are saying that you would like to know where the issues are. In your opening statement you said that 99 per cent of builders are doing the right thing and it is only one per cent who are doing the wrong thing. I am confused as to how you know how many people are doing the right thing and the wrong thing when you do not know what the issues are.

**Mr Weller:** With respect, I did not quantify a number of who was doing what. But whether it is one per cent or five per cent we do not know where the problems are. Information exists from inspectors looking at work where problems occur, but the collation and publishing of that and the outreach to industry has not been there.

**MS ORR:** In your opinion where does that information exist?

**Mr Weller:** I suspect it exists with the inspectors who have collected the information. I imagine that within the directorate there are probably spreadsheets and different ways of recording information.

**MS ORR:** So you are basing this on government inspections being the source of identifying the issues? To the best of your knowledge there is no industry assessment of where things could be?

**Mr Weller:** Yes. From an industry point of view it is going to be anecdotal information. We do not collect data on disputes. The industry associations are not conducting the audits or inspections. That is backed up by the fact that around 16 new staff will be funded in the recent budget through an increase in the building levy and that some of those staff will be working on that exact task: getting a better understanding of where the problems are and some sort of outreach focus towards the industry.

**THE CHAIR:** Going to that point, in your submission you say that you are concerned that the directorate for some time has been under-resourced to properly undertake its function. You go on to say that this is currently manifesting in significant planning delays and has been a problem with respect to oversight of building quality. You have seen that recent injection of funds. Does that look like it is enough? Have you noticed a flowthrough, an improvement in terms of the number of inspectors out there or in the time lines for planning approvals, or is it too early to tell?

**Mr Weller:** I think that probably with planning approvals it is too early to tell. I suspect that there is a very big backlog within the directorate, and we are talking about two distinct areas here. In that respect, I imagine that it is going to take some time to recruit staff and to address backlogs. I know that that work is being done. I suspect that it is probably going to be a quicker process in terms of—it is not an issue in terms of inspections of sites, of there being backlog as such to deal with. When new people are on the ground, they can get out and start talking to industry and working with industry to address any issues. I suspect that that side of it is probably going to

be the quicker one to fix.

**MS ORR:** Following on from that, we are hearing from the ABIS next. They have quite an interesting point in their submission that I want to put to you. It is that surveyors are often seen as being the people responsible for the building quality. But in the opinion of the ABIS—I apologise if I have not quite paraphrased this accurately; they can pull me up—it is actually the builder and everyone who is working on the site that is responsible for the building quality. I thought that that was actually quite an astute observation. I was interested in what you are saying in the comments you have just made that governments should be out there enforcing and making sure that the standards are held up.

My question to you is: what responsibility does industry have? What responsibility do the builders have, the subbies have, what responsibility does the foreman, the building manager, everyone who is there on the site who is doing this day in and day out have—it is their job—to ensure that things are being done properly?

**Mr Weller:** Ultimately, the responsibility does rest with the builder. In terms of the work they are overseeing, the jobs they are doing, we have a regulatory regime and licensing function for that, and that is certainly accepted. But there obviously are other parties in there. The surveyors do have a role there as well, which is pretty clear, I think, that we are seeing now. We talked about the work that is being done. We are currently working on a code of practice for surveyors. I understand that in the wind there is one for builders as well.

I think that there are two documents. They are a way from being agreed and having consensus between government and industry. But certainly they are examples of where work is being done to much more clearly articulate and delineate what those responsibilities are.

**MS ORR:** I am glad you can acknowledge that throughout the chain the people doing the work are also responsible for the quality, because it certainly seems that quite a few of the arguments that come our way are saying that the government needs to do more enforcement. The implication is that that takes a lot of the responsibility off the people doing the actual work. It becomes this “Catch me if you can and, if not, I can get away with it” type of scenario.

Certainly, from the witnesses we have had before us who have been owners of properties that have had issues, that is the issue that I think they see a lot of problems with. Where is the accountability within industry? When I was reading your submission, I noted the design documentation suggestions which, by all accounts, seemed perfectly reasonable. What you were putting forward seemed logical. I note that those are already in train. But when reading those, I was very much struck with the question, “Why is this a big reform? Why is this not business as usual?”

Isn't it an indictment of your industry that the big reform we are doing is to require minimum documentation that actually makes it clear to people down the line what they need to do in order to do their job? Should this not be business as usual as opposed to a big reform?

**Mr Weller:** I think that in terms of the documentation that is required, there is a balance that has to be struck. If within legislation we set the bar too high, we find we are creating red tape and, for what would be reasonably simple processes, we are requiring a large amount of work. Of course, if we do set the bar a little lower, there is always the risk that there are going to be those individuals who see how low they can go, as such.

But I think it is a very important area of work. Certainly from the builders' point of view, one thing that we tend to get is that where the design documentation is not there, it means that the builders become the pseudo designer. They are having to do work on the run. They are having to do design on the run and it is not necessarily clear for them. That is not a role that builders should necessarily be doing. There is a certain amount of interpretation of plans when it comes to the building site. But I think that we also run a risk there if the builders are having to do too much guesswork. If there is not enough information in the plans that are put before them, that can create problems.

**Mr Croft:** Can I add a couple of things? There are probably a couple of bits. When we talked about government involvement and support and the codes and standards, the national construction code, as we know, is a robust document. It is over 700 pages long just as the housing document. Then it references over 100 primary standards and also secondary and tertiary standards from that.

When we are talking about the sort of support that the government could provide, it would be around support for interpretation, advice on codes and standards, and having an inquiry line that people can call if they have a question before trying to proceed with something when they might not know the answer to that question.

Some of the requirements are very complex. That is what we talk about in terms of support that could be provided. Through that process, through common areas of questions that the government receives through that inquiry line, the government could then develop up practice notes or develop up areas of things that can then support industry to actually apply the codes and standards. There is always a bit of a movable feast in terms of people's knowledge of certain things and when something might or might not arise.

Then in terms of the design documentation requirements, too often we are probably seeing that by the time it actually gets to constructing the building, there are some issues with the quality and the actual accuracy of the plans. At that stage, just assume that the builder builds a slab. He assumes that that slab has been designed by a structural engineer, that it complies with the relevant codes, and he builds it. If that slab were to fail, we sort of have to say that it is a bit disproportional that he should be held accountable for the non-compliance of that design. That would be the current case.

That is where we are saying that if we could actually get the improvements to the plans and the right level of detail on the plans, that would certainly help everybody throughout the process: the builder, the building certifier, everybody. We could actually have more transparency across it, even for auditing and things like that as well.

**THE CHAIR:** The government recently increased its requirements for design documentation, I think, didn't it? It made an announcement about that. You looked at that, I assume?

**Mr Croft:** Yes.

**THE CHAIR:** What is your view of that? Does it go far enough?

**Mr Weller:** We certainly contributed throughout the process. There was not necessarily consensus all the way through. It came down to getting that right balance. We wanted to make sure, exactly as Simon said, that we were increasing the level of documentation. But, at the same time, where there are references to standards, for example, we want to make sure that we are not creating another overlay and making it bigger than it needs to be. I think we were getting towards a reasonable balance.

**MS ORR:** Mr Croft, from what you were saying there, it certainly sounded a lot like continual professional development, of recognising that the industry is not held at a particular point in time, that it does change. It is fluid. There are amendments that come in and we need to make sure that everyone has the education to understand what they need to be responding to. But then in your submission you say that the HIA does not support continued professional development. That has left me a bit perplexed, given that what you have just outlined is essentially a continual professional development process.

**Mr Croft:** What I was alluding to was the ACT government seeing common areas through an inquiry service, which they do not have at the moment. For example, if it is seeing as a common problem damp-proofing being installed the wrong way, develop up a practice note that goes out to all of industry to say, "This is how you should be installing. We are seeing this as a common area of non-compliance or misunderstanding." That does not necessarily mean that there needs to be mandatory CPD. That should be proactive work that the ACT government is doing to educate on the rules around the building regulations.

We certainly do it ourselves as an industry association. We take 300 calls a week across the country around codes and standards. We develop up practice notes, advisory notes for members, and they find it highly valuable. But that is just us doing it. Our other colleagues and Master Builders do something similar and other industry associations also.

**MS ORR:** So what you are saying there is a feedback mechanism for continual knowledge improvement. Whether you call that continual professional development or not, essentially that is what it is.

**Mr Croft:** Yes.

**THE CHAIR:** Is government in the best position to do that or would one of the associations, if it had sufficient resourcing, be a better position to do it? A lot of knowledge comes from other jurisdictions that I assume industry groups have access to that perhaps the ACT government does not.

**Mr Croft:** It is a good question. It probably comes down to the types of questions. Industry will obviously be able to help to educate on the codes and standards, but when it comes to an interpretation matter we do not have any regulatory role to come up with any interpretation. It is up to the government to come up with that type of thing. If they are seeing some common areas they could do a member night and say, “Hey, these are the top five things we are seeing,” to help educate the industry.

**THE CHAIR:** At the moment they are not consolidating that list of defects, or if they are it is not apparent to industry?

**Mr Croft:** That is right.

**MS ORR:** Is there any requirement on industry to report to government so they have the information?

**Mr Croft:** No.

**MS ORR:** So there is not a dedicated mechanism for government to find this out?

**Mr Croft:** No. Through our channels and the committees we are all on we look to continually improve our codes and standards, but there is no formal mechanism.

**THE CHAIR:** A formal mechanism reporting to government where those defects are so government can then, be it through their inspectors or you guys reporting—

**Mr Croft:** I do not think “defects” is the word; it might just be a matter of understanding the code or a grey area where the industry could benefit from further information or education or supporting material. I do not think it is a defect matter a lot of the time; it is an information matter.

**THE CHAIR:** The regulatory regime is very complex and it is problematic for a builder trying to interpret that. You are saying that there needs to be improvement within government to provide a one-stop shop to provide advice on what that builder needs to look for and what the interpretation of the regulation is?

**Mr Croft:** Yes, and it is a national issue. There are few places across the country where you can get advice from the government on what might be an interpretation matter on the code or standard.

**MS ORR:** In your opinion is it possible to go to the registrar in the ACT and clarify these issues?

**Mr Croft:** You could get some advice, but there is no proactive line that you could be going to.

**MS ORR:** So you would like to see it more formalised and bigger?

**Mr Croft:** Yes.

**MR PETTERSSON:** In your submission you said that greater consideration needs to be given to what final approval and issuing certificates should attest to. Can you clarify what we should be considering?

**Mr Croft:** There are probably two parts to that response. One is people's understanding of what a certificate of final is or what a certificate of occupancy actually means. Does it mean that every single thing in the building has been inspected and been approved and someone can put their hand on their heart and say everything complies with the code? The other is what government expects a final inspection to entail. There is not a whole lot of guidance around that.

A lot of building certifiers and surveyors will develop their own check lists about what they actually look at over time, and they will better be able to speak to the final inspection when you talk to them. But we see a lack of guidance around what that final inspection should entail. It is not feasible to look at every single element in the building so what items should be looked at.

Then there is people's understanding of what a certificate of final or a certificate of completion means. It is from what they have seen through the inspections done throughout the process that they have built in accordance with the plans and specs. It means that in all likelihood it complies with the code. There is an understanding thing for everybody about what that certificate of final actually means.

**MR PETTERSSON:** If you asked most people on the street I suspect they would want that final sign-off to be fully comprehensive. I do not think they would want to be better informed about it not checking everything. Is there a way we could ever properly sign off and certify every element of a building in that final stage?

**Mr Croft:** I do not think it is foreseeable. For instance, there might be 20 Australian standards that a brick wall needs to comply with. No-one can say hand on their heart that that brick has been manufactured in this plant and that the sand and the cement in that brick all meet the relevant standards. You have to make some assumptions throughout the process, and you make that throughout different parts of the process, particularly for the products themselves.

**MR PETTERSSON:** How should we go about informing consumers that we cannot check these things?

**Mr Croft:** That is a good question; it is a difficult thing to do. It is probably an understanding of what a certificate of final actually means.

**MS ORR:** Taking the production of materials out of the equation and looking to the workmanship happening on site, is there a way to verify at the final completion check that the building has been constructed in a way that meets all the requirements?

**Mr Croft:** It is probably difficult for the stuff that might be within cavities of wall systems that are not able to be physically seen. The building surveyors will see it as they go through the process for the stage inspections, but they might not see absolutely everything that is covered.

**MS ORR:** Should there be a check during the construction?

**Mr Croft:** There are checks throughout but not every single element can be checked before it is installed. Better guidance, as I said earlier, or a checklist saying, ‘Here are the elements we expect will be looked at,’ would be beneficial and give greater clarity to people around this.

**THE CHAIR:** I was surprised at how few points there are at which buildings get certified; I thought there was more certification through the process. Do you think that there is scope to increase the points at which certification occurs and to include things which currently are not certified but which should be? I imagine there is a cost element to that, but have we got the balance right in terms of where that certification occurs?

**Mr Croft:** The mandatory stage inspections in the ACT are fairly consistent with a number of the states around the country. In states that have more inspections there is no correlation with better levels of not having the same issues. To have a waterproofing inspection, for instance, and actually look that the waterproofing is done, a lot of the issues do not arise from the waterproofing itself. It is usually the subsequent work undertaken afterwards where the perfect waterproofing might have been done but a non-compatible glue is used with the tiles or a shower screen has been put on where someone has drilled straight through the waterproofing membrane.

One thing the Shergold Weir report has looked at nationally is some of those inspections and having greater consistency in the different types of inspections that should be had. Certainly for houses there are points in time for the key critical elements and in our view they are probably the right ones. As I have said, they are consistent with a number of other states as well.

**MR PETTERSSON:** One of the key things you put forward is that you want more building inspectors. What exactly do you want them to be looking at?

**Mr Croft:** Our point for more funding was for the government to give more support through the advisory service I mentioned before, the development of supporting material where they see common items being raised and doing awareness seminars across the ACT. Very few if any have been done. I cannot remember one being done on external waterproofing of balconies even though people are aware that that has been an issue in the ACT. I do not believe that has happened. That would be highly beneficial for people to do that.

That is what we are trying to say, and that would underpin the already rigorous codes and standards we have. The support for them is what we see will make a bigger difference to improve people’s knowledge, understanding and, in turn, compliance.

**MR PETTERSSON:** It sounds like you want the regulator to be an educator. The regulator’s role is to regulate. Whose role should education be?

**Mr Croft:** They already have the regulatory role; they have that function and are doing that work. But we would also like to see the other part of it: these are your rules; be able to give advice on your rules. We want to proactively get some of this

stuff from them. We are not saying that you need more rules; we are saying that you should give support to the rules you have already.

**MR PETTERSSON:** But there is a difference between asking for education as opposed to clarifying the regulation and practice on the ground.

**Mr Croft:** Yes.

**MR PETTERSSON:** Do you think it is the role of Access Canberra to provide broad education services to industry?

**Ms Adler:** Absolutely. If they have rules they want to enforce it is incumbent on a regulator to educate the community on those rules. In a lot of areas, safety particularly, regulators enforce very important rules, and it is highly critical for compliance with those rules that regulators provide education and materials to support that.

**MR PETTERSSON:** I broadly accept and understand your point. But in terms of ensuring that people live up to their qualifications, is it the role of the regulator to educate people on how to do their job? Surely there is someone better placed to tell someone how to be a builder.

**Ms Adler:** You are talking about two different things. A qualification is something you need to obtain a licence. It is a regulatory function to issue a licence and make sure you obtain those qualifications. We are talking about very complex codes and standards that Simon has been discussing. While a builder is required to have a certain level of qualification, when you get on the ground what that looks like in practice can be different. Industry needs support from a regulator—the one who will enforce the rules as to whether it complies—to make sure that they are doing the right thing. The role of the regulator is a big question but it is a multifaceted one.

**THE CHAIR:** In broad terms you are saying that the more proactive the regulator can be in identifying where the problems are and alerting industry the more likely we are to then prevent a number of issues?

**Ms Adler:** Absolutely.

**THE CHAIR:** In your view they are in the best position to do that because they are the central agency that is both the expert on the regulation but also gets the broader view of what is happening across all elements of industry?

**Mr Weller:** Yes, and Melissa touched on a very good point with respect to occupational health and safety. We have seen a lot of proactive work within the ACT and also cooperating with counterparts across the border over the past couple of years to do that outreach work. Industry associations can educate our members and can hold forums, and we often do. We often have guests from government across a range of subject matters.

But something we have been raising through the building regulatory advisory committee for a couple of years now is that rather than going down the approach of CPD we would love to see something much more targeted where government comes

out and says, “These are the problems for this year,” or “This is what we’re going to be looking at over the next six months.” The description of the regulator becoming an educator might overcook what that exactly means. We are not asking people to teach people how to do their jobs, but I think a more proactive role in—

**THE CHAIR:** Where there is a potential failure of compliance you want Access Canberra to step and say, “Hey, this is a problem area. Industries need to pay more attention to make sure they are compliant and this is what compliance means.”

**MS ORR:** But there needs to be a way of identifying that problem.

**THE CHAIR:** The Master Builders Fidelity Fund mentioned this morning that the HIA has an insurance product. Can you explain what that is and how that works? The MBA has a certificate issued from the fidelity fund. Do your members use that? Do they offer an insurance product?

**Mr Weller:** In short, in the ACT there is a requirement under the legislation that an insurance product is taken out. It also allows for a fidelity fund certificate, which the general community will call insurance. It is a slightly different product to an insurance product but it has a similar effect.

HIA is a joint venture partner with Aon in a group called HIA Insurance Services. There is a product unwritten through QBE which is a home warranty insurance product similar to the fidelity fund. All builders, regardless of membership of which organisation, will in accordance with the law take up one of those two products.

**THE CHAIR:** Are they the only two products available in the ACT?

**Mr Weller:** To my knowledge. It may be possible to access the QBE products through other brokers other than HIA Insurance Services. We are not the sole broker offering that product, but the QBE product and the MBA fidelity fund product are the two to my knowledge.

**THE CHAIR:** One is insurance and one is a fund. What is the difference? The fund has a six-year window on structural issues and an \$85,000 limit. Is that the same for the QBE product?

**Mr Weller:** Issues like the \$85,000 and \$10,000 maximum for a deposit are regulated values the products have to comply with.

**THE CHAIR:** Do you hear back from people who may have had an issue that it is easier to access funds—for want of another word—from the QBE product or the MBA product? Is one product easier to access than the other or do they seem broadly compatible?

**Mr Weller:** I suggest it would be the latter.

**THE CHAIR:** So you do not hear people say that one is a problem?

**Ms Adler:** No.

**THE CHAIR:** They are essentially delivering the same sort of product under regulation?

**Mr Weller:** Mel's team across the border in New South Wales and in the ACT take a lot of inquiries from members on a regular basis as they are going through issues. That could be a broad range of issues. I heard you touch on some before to do with the structure of businesses and the level of capital in businesses. As a general rule I can say that you have to go through a few hoops to get the product. As to whether one is seen as easier than the other, I would say all require a fair few hoops to be jumped through.

**MS ORR:** I want to turn attention to the perceived trust by consumers with the HIA. We have had a few people bring this up with us as a topic. I quote one witness who appeared on 10 April, who said:

Most builders—I would say 98 per cent of builders in the ACT—are registered with either HIA or MBA. They will advertise those builders on their websites. They certainly do not advertise how many complaints they have had against them, what the disciplinary action was arising from those complaints.

We have also heard from witnesses that they have experienced building quality issues when they based the design of their house on another house that had won HIA awards. When asked if they had trust in the HIA, they said that there was no reason not to when they were choosing their options but that, on reflection of their experience, they might change their mind. In response to these statements, do you accept the view that the HIA membership or HIA awards provide legitimacy and credibility to a builder or to a business?

**Mr Weller:** Look, I would certainly agree that as a general rule belonging to an industry association—this probably goes beyond the building sector—gives a member access to information and advice. Both my colleagues here today have teams that provide technical advice, legal advice and contractual advice. So I think that at a general level, it is a good thing for members to belong.

Certainly, voluntary associations, just as with any other association, club or union, cannot guarantee the conduct of their members. We cannot do the same, either. But certainly I can say that belonging to an organisation like this provides participants with opportunities to attend events and to receive access to information and training that they would not be able to do otherwise.

**MS ORR:** I think it is fair to say, based on the witnesses we have had in here, that they certainly do put value on the HIA branding and, for want of a better word, the endorsement that builders will have if they are a member of that brand. I also note that you have a code of conduct. Just on your statement there—I am paraphrasing; so if I have not quite done it correctly, feel free to correct me—you are saying that you cannot actually control, for want of a better word, what the builders do. How do you hold people accountable to the code of conduct and the other standards that you would like to see from your membership?

**Ms Adler:** We have a complaints process. If a homeowner or consumer feels aggrieved by what a member of ours has done, they can contact us and lodge a formal complaint. That complaint is assessed against the code of conduct. If we agree with the homeowner as to what their complaint is and that they have breached the code of conduct, we can refuse membership and take the membership off them.

**MS ORR:** Is refusing membership the only outcome from that or are there other actions that can be undertaken as a result of a non-compliance with the code?

**Ms Adler:** From my memory, that is the ultimate—

**Mr Weller:** That is the ultimate sanction. I mean, it is a long process. I would add to Melissa's answer that it could also be people—members of the community do not necessarily have to be a party to the contract. It is quite broad-reaching in terms of who can access this process. In short, complaints are required to be in writing. Those are assessed. They are taken out to the member to seek a response. Within that, it can then go into a process. At a regional level, we can form a complaints committee which has a range of expertise coming into that. That is set out within our processes, which I think are available on the website. It then works through that process. Refusal of membership is the ultimate sanction. Obviously, as a membership organisation we do not have the other potential sanctions available through a legal process or through a licensing process.

**MS ORR:** Am I right in my understanding that the only review of a membership would come from a complaint from an aggrieved person or is there some other mechanism where you review on an ongoing basis whether members are sticking to the code of conduct?

**Mr Weller:** We do not conduct a regular review of members as such. Obviously the committee would understand that this would be an almost impossible process when talking about tens of thousands of members across Australia to be regularly auditing their work or their financials. As members join, certainly there are a number of checks that are done at the time. There is also a process—I suspect it is the same with other associations—whereby they are vetted through a regional committee. There is an opportunity there—I have seen that happen—when there have been issues raised in the past. It could be non-payment of subbies or phoenixing activity. The regional committee has denied a membership for an individual when they are aware of particular issues.

**MS ORR:** From the complaints you have received, do you know if any of them have resulted in a membership in the ACT being taken away?

**Mr Weller:** Certainly not in my time.

**MS ORR:** Sorry, Mr Weller, what is your time?

**Mr Weller:** Probably over my time at HIA, over the past around eight years I have not been aware of any. I have been in this role for around three years now. I can certainly say that there have not been any in that time.

**MR PETTERSSON:** I note some of the recent changes to class C builders licence examination processes. I note the recent results; 48 per cent of applicants failed their first attempt at the exam, with a further 44 per cent failing their second and final attempt. Do you draw any conclusions from those results?

**Mr Weller:** I guess I would call that both good news and bad news. It is not a great number, that of the people who are applicants for licences, a significant number of them are unable to pass the exam on two attempts. But it is certainly good news in terms of there now being a check in place that was not there before this reform, which is hopefully doing something to add to the quality of the people who are being issued with a builders licence.

**MR PETTERSSON:** Do you hold any concerns for the potential buildings that these builders might have been building in previous years, in previous generations?

**Mr Weller:** We certainly supported this reform because there has been concern expressed by members that, in terms of the process of licensing, we have a requirement that there is two years, one of those years being after the cert IV was undertaken, which is the other key requirement for a class C licence. We have some concerns about how well enforced that two years is potentially as well in terms of that working and experience within the industry. That could be something that is more robust as well. We are certainly supportive of the reforms in this space and think that the more that is done to ensure that quality applicants are coming through for a licence, the better.

**MR PETTERSSON:** An aspiring class C applicant who may fail their exams, where would they go to to improve their skills?

**Mr Weller:** If they were a member of an association, depending on what they do, whether they are eligible for membership, they could well go to an association. We have certainly not, to my knowledge, had any approaches with regards to the class C exam. We have certainly had contact from members, in terms of their renewal for the B and A licences, saying “I have been notified; I have got an exam. Can you point me to resources? Can you provide assistance to ensure that I am on top of the knowledge that is required for the exam?” I have not heard of any with respect to the class C. I would imagine that they have completed the certificate IV. I imagine they would have access to some resources from having done that.

**MR PETTERSSON:** So you do not run any informal or structured exam prep sessions; it is very impromptu and it is directing them to outside resources?

**Mr Weller:** No, we do not, with respect to the exams for the class C licence.

**MS ORR:** I note that we are almost out of time but I have one more question. You state in your submission that you disagree with the statement that, “The buyer is always at a disadvantage.” However, regarding contracts, witnesses have told us—and I quote one in particular:

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.

What is your response to this witness who suggests that the buyer is at a disadvantage with a HIA or, in fairness, an MBA contract compared to a standard contract?

**Ms Adler:** I guess my first question is: what do they mean by standard contract?

**MS ORR:** The standard contract as a standing government issue contract, not an industry body initiated contract.

**Ms Adler:** Okay.

**MS ORR:** For example, my understanding is that Queensland has a standing government issue contract that—

**Ms Adler:** Yes, we obviously produce standard contracts. We feel that ours are a good balance between industry and consumers in the community. They are drafted in plain language. I would like to think they are pretty easy to read. It is incumbent on both parties to discuss that contract, raise any issues and have a good discussion about what it all means, what the expectations are and what the responsibilities are on each party in accordance with that contract.

I guess I am probably biased; I think our contract is pretty good. Our members can ring us and get information about it from my team across the country. About 85 per cent of the calls we get are about our contracts, what they mean, how they work and how they should explain them to the homeowner. Obviously, if government were to put their own contract out there, that would certainly inform associations and industry about what the expectations of government are in terms of contractual requirements.

I am familiar with the New South Wales fair trading contract as well. We have consulted with them and worked with them on their contract and gone backwards and forwards. If government were to have their own contract, it is another mechanism for that engagement between industry and government about what the expectations are on all parties to end up with a good result.

**Mr Weller:** We certainly hope and would encourage consumers when they get a contract from a builder to get a second opinion. It is a very big purchase. We would certainly hope that they are taking it to a solicitor. From the feedback and queries that we get from members through Mel's team, that is certainly something that does happen and we would encourage it strongly.

**MS ORR:** I think it is fair to say from the evidence we have had from the witnesses so far—I completely acknowledge, Ms Adler, that you feel your contract is quite good—that they have put forward a contrary view. It is that when they have tried to negotiate points they are not necessarily happy with or if they have been given advice that says perhaps this could be balanced a little better, the view is that they do not actually have a lot of negotiating power because everyone is using either the HIA contract or the MBA contract. There is not an alternative to go to. Therefore, they feel that there is a power imbalance, that you cannot negotiate and do as you

have just said, Mr Weller—get the advice and go backwards and forwards. That is the context in which they are bringing up this idea of a standard contract saying that it would be a much better balance between those interests of the industry, the consumer and the government.

**Mr Weller:** There certainly are other contracts available. We are aware of a number of law firms around town that have home building contracts as well. There are other options. Obviously, the HIA and the MBA contracts offer a contract that is written by people who would hopefully have the best understanding of the home building industry and the process. It is obviously more reasonably priced than doing it through a solicitor as well, which is to the consumer's benefit. Again, it comes down to if they are uncomfortable or unsure about terms, we would certainly encourage them to be getting a second set of eyes to have a look at any of our contracts.

**THE CHAIR:** We will have to wrap it up there. Thank you very much for your submission and for appearing today. Good luck out there with the industry. I think that it is in all of our interests that we get some improvements where we can, from our side and also from yours. The secretary will send you a draft copy of the *Hansard* for you to review. Make sure it reflects what was discussed today. I do not think we had any follow up questions. Thanks very much.

**Mr Weller:** Thank you very much.

**Ms Adler:** Thank you.

**MACE, MR BRETT**, Chief Executive Officer, Australian Institute of Building Surveyors

**TURNER, MR JEREMY**, National Technical Manager, Australian Institute of Building Surveyors

**DELCHAU, MR DAVID**, Branch Convenor, ACT, Australian Institute of Building Surveyors

**THE CHAIR:** Thanks very much for coming today. Are you aware of the privilege statement in front of you that sets out the requirements and obligations of witnesses?

**Mr Mace:** Yes

**Mr Turner:** Yes

**Mr Delchau:** Yes.

**THE CHAIR:** I remind you that these proceedings are being transcribed and broadcast and webstreamed live. Would you like to make an opening statement?

**Mr Mace:** On behalf of the board and members of the Australian Institute of Building Surveyors—AIBS—I thank the committee for the opportunity to make a written submission and appear before this public hearing to present the view of the profession of building surveying.

Various factors—including the high-profile failure of a number of high-rise buildings, issues surrounding external combustible cladding and the lack of suitable professional indemnity insurance for building professionals—have diminished the public's confidence in the building industry and the governance that regulates that sector.

This lack of confidence is reflected in the insurance industry where many insurers have deserted the building industry over the past 10 to 15 years, especially in the area of professional indemnity. This was confirmed recently by a delegation of Australian insurance brokers who visited London to meet with underwriters. At that meeting it was confirmed that there is little appetite for the Australian market due to what they perceive as a lack of appropriate regulation and therefore building quality.

Only when significant reform of the industry is undertaken will we be likely to see any confidence return to the sector. Undertaking reform is never easy, nor is it easy to understand what reform might look like. But the building confidence report by Professor Peter Shergold and Ms Bronwyn Weir commissioned by the building ministers forum provides an excellent platform to commence significant reform.

The report has been roundly applauded and accepted by governments and industry but has been gathering dust due to differences amongst states and territories or a lack of agreement on a national approach to the delivery of the report's 24 recommendations.

Fortunately the most recent building ministers forum agreed to implement the recommendations of the report through a newly resourced Australian Building Codes Board. AIBS welcomes the decision by the ministers. While it is not the total answer,

if the 24 recommendations are properly implemented as intended, including a professional standard scheme for building professions including building surveyors, this will go a very considerable way to restoring confidence in the industry.

Thank you again for this opportunity to appear before this committee. We hope that through our submission and our recommendations we can make a positive contribution to addressing the issues related to building quality in the ACT.

**Mr Turner:** Building surveyors have as their core interest the upholding of appropriate standards of building quality. Their ability to achieve this is limited by the regulatory framework they operate within. A robust framework is therefore key in facilitating the work of a building surveyor in contributing to this outcome as much if not more than the clarity of technical requirements.

As referenced extensively in our submission to this inquiry the AIBS policy building regulatory reform in Australia sets out how the different elements of a regulatory system interplay to ensure consistent delivery of quality outcomes, particularly through the mechanisms that deliver greater accountability for all involved, supply chain included. Additionally, we say that the economic benefits or the uniform set of technical requirements are well known, and the same arises for greater uniformity in regulatory requirements governing the building industry.

In charting a course of reform of the building industry it is important to understand that the industry is broader than the needs of the ACT alone, particularly if the ACT and Australia are to withstand the effects and take advantage of a global economy.

Currently the formulation of technical requirements in Australia happens largely within the auspices of the Australian Building Codes Board, which is established pursuant to an agreement between all three tiers of Australian governments, including the ACT government. This produces a great benefit to the Australian economy, including the economy of the ACT, and should continue to be supported.

Until the announcement following the BMF meeting last week, there was no equivalent body dealing with the formulation of legislative provisions governing the construction industry in Australia. We are delighted there is now an opportunity to reach national consensus on legislative reform.

**Mr Delchau:** I represent the ACT branch of the AIBS and I am also a local building surveyor. Reform of any building regulations should make sure that they are clearer not only to the building industry professionals but as much as possible to members of the community, including building owners. As it is now, the regulations are so complex and incomprehensible to everyone, including building professionals, that building owners are almost completely excluded from the building process. Reform should therefore aim to simplify and clarify regulations wherever possible.

The process of reform of building regulations should be undertaken in collaboration with industry and the community to best take advantage of the knowledge that is available to the government from consultation. It is encouraging to hear from the BMF that reform will be undertaken in concert with industry. In contrast, we have

recently seen the introduction of changes that have added substantially to the cost of building surveying roles and to the risk building surveyors carry in these roles.

Building surveyors do not draw plans or prepare documentation for construction. They are also not involved in constructing the buildings. It is quite extraordinary that the latest changes to legislation requirements impose a responsibility on building surveyors for work they do not do. The risk implications arising from having legislated responsibility for something you do not do are significant and very unfair.

The community is paying for these changes as well as the elevation of risk to building surveyors that come from the new requirements. Our submission provides a view on how we believe the ACT could better approach building regulation to achieve desired outcomes we can all afford.

**THE CHAIR:** Thank you for your written and verbal submissions. I will go to an issue that has come up a lot in respect of the certification process. It is the perceived imbalance between the owner of the building and builder, because the builder often is the person who appoints the building surveyor to complete certification. It seems to people who have appeared before this committee that these surveyors are working on behalf of the builder rather than on behalf of the homeowner when it should actually be the other way around. Do you have a comment on that? Do you see a way in which that perceived conflict of interest that you would be aware of, I am sure, can be addressed?

**Mr Mace:** I think broadly the role of the building surveyor, and it is a statutory one at that, is to act in the broad public interest, including their homeowner and the consumers out there. That is the main responsibility of our role on a broad term.

**Mr Turner:** I add to that that I think members of the Australian Institute of Building Surveyors must abide by our code of conduct, which also says that all engagements need to be in the public interest and that we are beholden to the public interest in all that we do. Certainly, I think there are structures within legislation that will actually support an approach by building surveyors to act in the public interest.

If you have an auditing scheme that looks at the types of engagements that occur and the relationships that evolve throughout the industry, those sorts of things can detect problems where there is a potential risk or a conflict of interest arising and certainly address not only real conflicts of interest but perhaps perceived conflicts as well. So there is a number of things that can be done outside of some of the things—

**THE CHAIR:** This issue seems to be one whereby the builder has a relationship with a surveyor. When it comes to someone building a house, that surveyor is meant to be working on behalf of the homeowner. But it seems that, in a lot of cases, the builder is the person who then really engages that surveyor that they know. There seems to be that ongoing relationship. The advice that we have, the evidence that we have received, is that in a lot of cases the builder and surveyor appear to be in cahoots and not working necessarily in the best interest of the homeowner.

That is the perception out there. It is a reality that that is the perception. Are there ways that that can be addressed? Is there a way? We do not necessarily want to go

back to the government doing all building certification. But how can you stop that perception of conflict of interest?

**Mr Delchau:** I guess, yes, the conflict of interest these guys can talk to. But it is a bit disappointing when you find out that you have got those sorts of responses from the people who have been in front of this inquiry. The building surveyor is always engaged to the building owner. Any building surveyor in this town is always working to the best interest of the building owner. That is our statutory obligation. It is our statutory requirement. We take that very seriously.

The education from the regulator is not there to be letting people know that it is their own choice to choose what building surveyor they would like. I am sure there are conversations between builders and future homeowners, “I have got this person who I work with. I have worked with him in the past. I can give you his name.” But they should be having the conversation that it is the owner’s choice as to who makes that determination.

**THE CHAIR:** Sure, but when a building goes through—I know this experience personally. The building surveyor was my builder’s wife. That is an example. You have a situation where as a customer you engage with the builder. If the builder is the person giving you the information and they are building 10 houses a year, and this is the first time you have ever done it and probably the last time you will ever do it, how does the consumer get informed in an objective sense? They have this whole panel of people to choose from but they have a builder there saying, “Go with this surveyor because they are a good. They are the one I use all the time”?

Is there a document that people looking to build a building should be provided with from either the institute or from a regulator to say, “This is your power. This is how you can choose. There is a panel. Approach us and we will provide you with someone that your builder cannot provide at a discounted price.” That is the other thing. They can say, “It will cost less if you go with this bloke than if you go with someone else.” How do you empower the consumer?

**Mr Turner:** There are a few hurdles to get across before we can get the consumer into a position of knowledge. The first is that most have never ever heard of a building surveyor. Often people talk about building certifiers. That is a very confusing term because they do not really understand that certification is a function of a building surveying professional. There are some hurdles to get across.

I think the fact that the ACT government registers building surveyors in order for them to be able to practise as building certifiers in the ACT is the first thing that provides an opportunity for consumers to become informed. They can go to the ACT government’s website and actually find information about who is registered and therefore can begin that process of understanding who is available.

But what triggers them to actually go to that website is another major hurdle. Perhaps if there was something that a builder was obliged to tell a consumer when they were engaging with them that they have this opportunity to go and find this information for themselves, that might be a very good start.

**THE CHAIR:** Perhaps as part of the contract or as part of the engagement—

**Mr Turner:** Yes.

**THE CHAIR:** they get given perhaps—

**Mr Mace:** I am not sure.

**THE CHAIR:** a written document to prevent the builder from skewing how it is presented so that the consumer can independently get another certifier at no disadvantage.

**Mr Mace:** Yes, I am not sure. I would have to confirm this. But I think Victoria has something like that. But they have only recently introduced that it is the owner—previously it was the builder—who could engage the building surveyor. I think they do have an explanatory note to the owner that outlines their responsibility.

**MS ORR:** I completely acknowledge your point, Mr Delchau, that it is the owner who appoints the surveyor.

**Mr Delchau:** Yes.

**MS ORR:** One example we have heard about that is the exception to the rule is in multi-unit developments where the ultimate owners have not taken ownership of the building. It is either the developer or the builder who is making the appointment. There is definitely, from the evidence we have heard, a perception out there that that is a direct conflict of interest, because it is not the ultimate owner who gets to appoint in that situation. How do we overcome that perceived or actual conflict of interest, depending on how you want to interpret it?

**Mr Delchau:** I will speak briefly on that. That is a tricky one, I acknowledge that, because we are always going to be bound to the building owner as per the legislation. So it would probably involve a legislative change. As to how you would enforce that, perhaps Jeremy has a few ideas.

**Mr Turner:** Yes, there are a couple of elements to that. I think it is worth thinking about some of those. One is if you have a very specialist type of development. It might be somebody who specialises in building aged care facilities or perhaps laboratory facilities. You tend to need very specialist design people involved in that process. But you also need people who understand the technical requirements for those types of buildings very well in order to get a good outcome. Well-informed owners are very good at identifying appropriately skilled people to actually engage with in that process. Whilst it might look like it is a conflict of interest, in fact it is a mechanism that the private involvement actually allows for specialisation and a much better outcome to be achieved as a result of that specialisation.

The important things to have in place to prevent that turning into a conflict of interest are auditing schemes, to make sure that the people who are engaging in those projects are actually upholding the public interest in all of those engagements. If you do not have an effective auditing scheme, you are running the risk that those sorts of things

will in fact manifest into at least perceptions of conflict of interest or even worse.

**MS ORR:** You state in your submission that AIBS believes that it is important that the role and function of building surveyors is understood within industry and the community and that the term “certifier” is too easily confused with unrelated functions such as product certification. You state that certification is a function of a profession rather than a term which describes a profession. Can you explain what you consider the role of a building surveyor to be how that differs from a certifier?

**Mr Mace:** At the building ministers forum in Hobart in February we raised this issue and we asked for a standard adoption right across the country of a statutory building surveyor. The only difference is the name. They are known as certifiers in Queensland and in New South Wales; they are building surveyors in Victoria and Western Australian, so we have this conflict of terms.

Our view and the position we asked the building ministers to consider was adopting the term “statutory building surveyor” across all jurisdictions to clarify the statutory role of certification in the function.

It is difficult for us to educate as a national body on the role of a building surveyor when the term is not readily known in Queensland and New South Wales in particular. So there is no real difference in the functions except for the difference in how the roles are carried out in different jurisdictions. Overall there is no difference between a certifier and a building surveyor; they all have the same qualifications.

**MS ORR:** In that case, what is the role and the function of the building surveyor, in your opinion?

**Mr Mace:** David and Jeremy are both building surveyors, so I will pass to them.

**Mr Turner:** A building surveyor is capable of operating as a consultant in a design capacity or also in an expert-witness-type capacity. A building surveyor will have a statutory role also pursuant to legislation where they are involved in the assessment of technical details and so on within designs to confirm compliance of those designs and in relation to inspections undertaken during construction.

There are also building surveyors who are involved in a regulatory role relating to the enforcement of legislation and requirements around making sure that buildings are maintained and operated in accordance with the approvals that have been issued post occupation and so on.

There is a wide range of roles that building surveyors can actually be engaged in. It is really important to understand that in a statutory role certification and inspections are functions of the professional. There are no degrees in building certification; you become a qualified building surveyor in order to become a building certifier. That is an important distinction.—

**THE CHAIR:** What is the qualification for a building surveyor?

**Mr Turner:** There are degree qualifications, so AQF levels 7 or 8, offered by tertiary

institutions around Australia in building surveying.

**Mr Mace:** There are three levels of building surveyors, which probably complicates it even more. The second level is restricted. We have an accreditation scheme and we accredit three levels. Level one is unlimited—they can work on anything from class 1 and 10 buildings through to the most complex projects. Level 2 requires an advanced diploma qualification and about 2,000 squares and three storeys is the limitation of that qualification. The diploma has now been replaced by a subset of the advanced diploma which allows somebody to work with class 1 and 10 buildings—houses and sheds and the like.

**Mr Turner:** The role of the building surveyor, particularly the statutory building surveying, is about compliance with technical standards and much less about quality. So there is that really important distinction that is often missed by the community, the media and even regulators to a large degree. Building surveyors have an ability to apply technical requirements that is created within the legislative environment. In my opening I said that building surveyors are actually limited in what they can do in respect to building quality by the legislation they operate within.

If we were able to deal with things like buildability or quality matters under the legislation then certainly we would do so, but we cannot. All legislation in Australia has a provision that if a set of documentation demonstrates conformity with the minimum requirements of the building code and standards we are obliged to issue an approval.

**MS ORR:** In your view should building surveyors be able to engage more on discussions of quality and not just meeting minimum technical standards?

**Mr Turner:** I do not believe they should. Matters of quality are issues that much better fit with a negotiation between the builder and the owner. For example, as a building surveyor, if you are looking at a timber framed wall under construction that has reached the completion of the framing construction phase, you would be looking at that frame to make sure that the timber elements were the right size, that the bracing elements were all there and installed correctly and so on.

You would not be looking at whether the studs all line up nicely so that when the plasterboard goes on the wall you get a flat surface. That becomes a quality issue that the builder would need to address with the owner. The owner may not be fussed by that and be quite happy that the hallway wall has a bit of a waver or ripple effect in it, but some owners would find that to be very difficult, particularly if it was an art gallery or something like that or if somebody wanted to light that wall in a particular way.

**MS ORR:** I can see we are getting into issues with terminology and definitions around what someone would take to be a definition of quality.

**Mr Turner:** Indeed, yes.

**MS ORR:** I would take quality to be looking at whether a building leaks, which is going back to the technical standards. If they have been applied, in theory your

building should not be leaking. So going back to quality where technical standards are involved as opposed to quality of, for lack of better terminology, decorative finishes, do you think building surveyors should have a larger role in ensuring that the quality of the technical standards workmanship has been achieved?

**Mr Turner:** I do not believe there is any need to expand the role. The role at the moment is adequate in terms of ensuring that technical compliance is achieved. If a building is leaking it would most likely not comply with the technical requirement in some respect. It is very difficult to say why a building might leak. Indeed, foundations designed to the residential footing code—AS2870—are designed to be flexible so you will get a degree of movement in the building as a result of that flexibility with seasonal soil moisture changes, for example.

That does not raise a quality issue if you get a crack in the wall because of that foundation movement, providing a movement is within the tolerances designed into that standard. It becomes a quality issue if that movement exceeds those tolerances. So there is a real issue where the community will have a lot of trouble. We heard Simon Croft talking earlier about the lack of understanding of technical standards, particularly the technical complexity that exists.

Industry is struggling to understand some of this technical complexity so the job of the community in coming to grips with an understanding of those things is much harder as they are coming from a position of far less knowledge about these sorts of matters.

This is always going to be an issue for the building surveying profession; we are never going to overcome the problem of the community having expectation and us being all things to all people about everything building related. But if we use an analogy that Brett most often raises, the building surveyor is like the goalie standing at one end of the soccer field. A whole team of people sits in front of them on the field, and if all those people are not doing the right thing then it is much harder for the goalie to prevent the ball from being kicked into the net.

If you have a really good architect, a really good engineer, really good design people and a good builder then the building surveyor's job is far easier. That is why we say we need a regulatory system that supports having the right people in the process that makes sure that those people have appropriate levels of accountability for their area of responsibility. When you put all those things together you get a better outcome. I think that that will address a lot of the issues we are seeing that the community are experiencing.

**MR PETTERSSON:** In that context, we are hearing that most buildings do not have a problem and that most buildings already have good architects and good builders. The community sees your role as the goalkeeper, to be the final stop when those things are not in place. It is quite strange that you are talking about something already in place as a solution. We are here to try to find out how you can improve in your role as the final backstop. How often do building certifiers/building surveyors have their work audited?

**Mr Delchau:** It is fairly rare. It would only be if an issue has been identified by a

home owner, which might be a complaint to the regulator.

**THE CHAIR:** So it is reactive?

**Mr Delchau:** It is very reactive.

**MR PETTERSSON:** Could you quantify it in some way?

**Mr Delchau:** I have been practising for the last seven years and I do not believe I have been audited. It depends on whether I am being audited as a building surveyor in my role out on the site or in my role with the building approvals. The ACT government do audits on documentation requirements, particularly for class 1 buildings, and they audit our building approvals. But they do not necessarily audit the building approvals for compliance as to what I have done as a building surveyor.

**THE CHAIR:** They are not going out on the ground?

**Mr Delchau:** They will go out on the ground and do audit inspections at random, but in terms of auditing the building surveyor and coming to the office and sitting down and saying, “Run me through this process. How did you come to this determination? Why have you done it this way?” that has never occurred.

**Mr Turner:** If an auditor is looking at work that is occurring on site, the relevance of that audit to the practice of a building surveyor is really interesting. If a building surveyor has been out and done an inspection, you can imagine that the auditor would be going there and seeing whether that inspection has been done properly. But more often than not—correct me if I am wrong, David—when they are going out on site it may or may not be after the building surveyor has been there. In fact, what they are auditing is the conduct of the builder and the practitioners who have been involved in building what is there. We need to be careful about what we are looking at in that respect as well.

**MR PETTERSSON:** So if we were to try to set up a system to better monitor the quality of work of building surveyors, what would that look like? Would that be random audits at a higher rate than currently takes place? Would it be a change in the way audits take place?

**Mr Mace:** I think it would be a combination of things. I think it is more audits, but we have also been putting forward for the last number of years a professional standards scheme to lift the quality of building surveyors’ work. That would include both auditing the building surveyors and changing the accreditation scheme. We have an accreditation scheme, but it is about lifting the standard even further than that and introducing audits into that scheme to make the building surveyors more accountable and to give the real ability to take action against those that are not performing to the required standards.

**THE CHAIR:** Who do you see as taking action? You guys as an institute?

**Mr Mace:** Under a professional standards scheme, yes. Effectively we would enter into a regulatory agreement with government where we have a greater responsibility

to regulate our own and we are in turn regulated by the Professional Standards Council to make sure we are undertaking that.

**THE CHAIR:** Is that similar to other professions?

**Mr Mace:** Yes.

**THE CHAIR:** So could you draw a parallel with another body?

**Mr Mace:** This was discussed at the building ministers forum on Thursday, and they referred a lot to the valuers who have recently introduced a professional standards scheme. Accountants have a professional standards scheme. There are quite a number of professions that have such schemes. It brings greater rigour, but essentially it comes back to us as a body to take responsibility for our own, obviously working with government to make that happen.

**MR PETTERSSON:** What mechanisms would a professional standards scheme utilise to identify those who might be in need of more attention?

**Mr Mace:** It would still take the work of the local authority and what they have identified. It would be more for us to take action against the building surveyor and make sure they are doing their job. We probably would not have the authority to investigate the builder; that would still come down to the government.

**THE CHAIR:** Have other jurisdictions got what you are suggesting?

**Mr Mace:** No. We are trying to implement this and develop this nationally. New South Wales and Queensland have recently put that forward as one of their recommendations.

**MR PETTERSSON:** I am trying to identify the mechanism by which we identify building surveyors or certifiers that are not meeting the standards required of them. Is it simply random audits?

**Mr Turner:** It is part of the picture. There are certainly a number of inputs into an audit scheme that would allow for appropriate allocation of auditing resources. You would obviously look at the consumer complaints around the country, and if you saw a trend there you would start to look at auditing in a particular way. I guess it is very similar to the way the Taxation Office audits are arranged—they identify high-risk areas and target those for a period. Obviously that focus will change from time to time as needs arise. A range of data would inform that process so that you can identify that. But random audit is certainly prime amongst the elements of that.

**MR PETTERSSON:** You mentioned before, Mr Delchau, that only certain elements of paperwork really draw attention. Are there other elements that could comprise an auditing scheme that would be effective?

**Mr Delchau:** From the regulator or from the professional standards scheme?

**MR PETTERSSON:** Both.

**THE CHAIR:** We need to leave it there.

**MS ORR:** Can we put some questions on notice?

**THE CHAIR:** We have run out of time, gents, but a couple of the members have further questions. Would you be happy to respond to those in writing in due course?

**Mr Mace:** Yes, certainly.

**THE CHAIR:** Thank you very much for your submission and for appearing today. In anticipation, I thank you for the responses you will provide to any questions we might ask. You will get a copy of the draft *Hansard* for you to review.

**LEESON, MR PHILIP**, President, ACT Chapter, Australian Institute of Architects  
**McPHERSON, MR DEAN**, Director, AMC Architecture  
**MILLMAN, MR CHRIS**, Director, Cox Architecture  
**GARDNER, MR WILL**, Associate, Guida Moseley Brown Architects

**THE CHAIR:** Gentlemen, thank you for appearing before the committee today and also for your written submission. Before we start, I draw your attention to the pink card before you, which is the privilege statement. Can you make sure that you are across the detail in that? I also confirm that these proceedings are being recorded for transcription purposes and being webstreamed and live broadcast. Before the committee asks questions, would you like to make an opening statement, either one of you or all of you?

**Mr Leeson:** We have one opening statement. Thank you for the opportunity to present to this inquiry and to discuss how architects as a professional group can assist with improving the building quality in the ACT. Really, it is to protect the public interest and the investment the public makes in the built environment. At the outset, we would like to commend the government for its initiatives to progress this and to address the construction quality issues, including the delivery of new minimum documentation guidelines—that is a new initiative that is being proposed—the hiring of eight new building inspectors in the May budget, and codes of practice for builders and building certifiers.

In the ACT we have seen many cases highlighted in the media where poor quality, particularly in the apartments sector, is of significant and ongoing concern. So I ask: why are we seeing these failures in building quality? It is because quality is not embedded in the value system of the design and construction process. That is the big one. The roles and responsibilities of those involved are not clearly identified and there is a general lack of appreciation of good design and the value of thorough documentation.

Therefore, it is time to change the current building practice, where time and cost are put above quality and safety, jeopardising both people's safety and the economic security of their investment. Of course, there are examples in the ACT where a construction process has delivered good outcomes for the community, largely where a combination of good building procurement methods, continuity of professional engagement, and quality assurance and construction management systems are in place.

So what can be done to lift building quality? We propose to focus on the following seven key areas. Community safety must be paramount. The Australian Institute of Architects code of conduct expects architects—I quote from our policy documents—to “improve standards of health and safety for the protection and welfare of all communities and all members of the community”. This has an important distinction beyond the basics of safety. It is not just for the client, the developer or the financial institution but for everyone. Poor quality buildings leave a lasting legacy that diminishes the overall quality of our built and living environments.

Second, we propose regulation and registration of all building practitioners. To further ensure community protection, we are of the view that all building practitioners,

including project managers, building designers and drafters need to be brought under a regulatory regime, a level playing field, where all are required to hold public liability and professional indemnity insurances and demonstrate appropriate skills in the building type and class that they are working with.

It is difficult to protect the public if there are no insurances in place or where construction companies can be rebirthed or phoenixed. For example, unregulated practitioners should not be able to take responsibility for the design of multi-residential buildings, the design and certification of any parts of the construction works, the structural design of buildings and the watertightness of buildings.

Architects are regulated in the ACT under the Architects Act 2004. All architects are insured and are required to have ongoing registration with state and territory bodies, following five years of tertiary education and an average of five to six years of practical experience and completion of logbooks, before taking a registration exam and calling themselves an architect. That is the important point. Why, then, is a profession which is so heavily regulated, with extensive professional training, not required to be more involved in the design of buildings?

The third key area is that minimum qualifications and experience of building design professionals need to be set. With regard to higher risk buildings such as multi-unit residential buildings, mixed use buildings and speculative commercial buildings, we are of the view that only fully qualified and experienced professionals should be responsible for the delivery of design services and project management of these types of buildings. Further, different classes of licence could be issued according to the class and size of the building.

Fourth, as professionals, architects are well placed to ensure design quality throughout the construction process. The current market sees developers and builders breaking up the design documentation and construction stage services of the design team. That includes architects and engineers. Instead of maintaining continuity through the life of the project, they shop around the market, mid-project, to change the team, ostensibly to reduce fees. This process, by default, militates against quality outcomes.

Architects are not always engaged to prepare documents for all stages of the design and documentation process. This lack of continuity is, in the institute's opinion, one of the key contributors to poor building quality, which the consumer ultimately pays for. It has been said by others that a person buying a fridge has greater consumer protection than someone buying an apartment.

Fifth is the oversight of the whole construction process by qualified professionals. For large, complex projects, oversight and quality assurance need to occur continuously through the design and construction stages. We suggest that this could be achieved through the appointment of clerks of works, for instance, as has operated effectively in the past.

Point six is that certification must be independent. In the ACT it is the building owner who engages the certifier, not the builder. However, when the owner is the developer and the builder, or has a close relationship with the builder, the certifier's position is

compromised. We recommend maintaining a third-party distance between builder and certifier—that is, those who certify should be independent and not be employed directly by the developer-builder.

Those providing certification must also have professional indemnity insurance to provide consumer protection and be trained and registered to keep up to date with continuing professional development. This notwithstanding, certifiers are neither trained nor have the capacity to constantly monitor the quality of the material that is used nor the quality of workmanship. Their role is to make periodic inspections of the building work to gather certificates of compliance, often from trades that are allowed to self-certify, and to make necessary preparations for the application of certificates of use.

The seventh and final point is procurement of building services. While there have been many contributing factors to the current crisis, a significant part of the problem has been new and expanding forms of building procurement that allow building quality to be systematically eroded. Essentially, many of these forms or contracts see the client and developer hand over decision-making powers and risks to the builder. Whereas previously the building professionals, including architects, maintained a direct relationship with the client and developer, today that is rarely the case.

In conclusion, to sum up, quality across the building process is what it comes down to. This includes measures that I have outlined this morning to protect the public interest.

**THE CHAIR:** Thank you. I go to a point in your submission. You talked about the fact that you are developing a consumer guide. Is that going to be aimed just at the architectural aspects? Is it going to be more broad based if you are a consumer buying an apartment or a house? Is it going to cover the issue of certification that you have discussed and other factors? Is it going to be limited in scope because it is coming from a section of the industry? Do you see, then, that there is perhaps a need for a consumer guide?

We were talking to the previous witnesses, the surveyors. If you are a builder, you have got all this knowledge, and you could say power. But as a consumer, you do not. It certainly seems limited, in a one-stop help sense, to find out how this all works. What is a building surveyor and so on? Is your guide going to cover all that or do you think there is scope for someone, be it the regulator or someone else, to provide and develop a guide, in written form or on a website somewhere?

**Mr Leeson:** It will be a web-based document. It is largely targeting people buying apartment buildings but not necessarily that. It is really to get people to think about the quality of the design of a unit, where it is placed within a building, what its outlook might be, what its exposure to the elements might be. Is it facing north, for instance? Does it have west-facing glass that is unprotected? How does the building perform thermally? It gets down to design matters—

**THE CHAIR:** You mention design matters. It appears that there is no sort of consumer guide out there that covers that and other factors. If you are out there to buy an apartment, there are no guides to buying an apartment.

**Mr McPherson:** There are a few—

**THE CHAIR:** Are there?

**Mr McPherson:** Yes, there are several guides out there from the Property Council and others about apartments. The institute's one is reasonably broad in that it does also talk about the process around understanding the developer, the history of that developer in the town—a bunch of that sort of broad advice. It is not fully design focused. But, naturally, from the institute, it is going to have more of a focus on the quality of the built environment.

**THE CHAIR:** You mentioned continuity—and this was raised by a previous witness—whereby the architect might be engaged to design a building but then is no longer employed by the builder or developer and moves on to their next task while someone else turns up to try to build what the architect has designed. If the architect was still engaged through the project, that would assist. It would make sense, you would think, if you were a builder to do that, but there is no enforcement of that. How would you implement that? Do you think it should be a regulation that for a multi-unit complex the original architect must be engaged through the process of the build?

**Mr Leeson:** We think it would generally work towards the improvement of the built environment. There is a term “starchitect”, where a developer might engage a high-profile architect—whether it is someone from the ACT or someone they bring in—to come up with a concept. That architect might be bumped in favour of another team that can ostensibly save money by reducing fees. Will and Chris can address this better than I can.

**Mr Millman:** It is probably too difficult to assume you can put something in place so that an architect is mandated to go from the beginning to the end of a project, only because there may be problems on either side of the ledger. For example, the Sydney Opera House did not quite work out for Mr Utzon. But regardless of whether the original architect is engaged throughout the process, it would be the view of the institute that it would be relevant for an architect to continue from the beginning to the end. Ideally, the concept design architect would take through the documentation if he or she or the company had the skills. But certainly engaging an architect through the process would be of value and increase the ability for quality to be ensured.

**THE CHAIR:** Without being restrictive—you cannot demand that someone be employed—do you think there should be a reg requiring that the developer must continue to employ an architect?

**Mr Millman:** You could simply have a system whereby the certifier needed to sight a drawing that has been stamped by an architect. Simple as that. If the drawing is certified by an architect that means that process has had due course. Rightly or wrongly, that provides at least some comfort, in that the certification or stamp means the regulatory system we have put in place as an institute, for what it is worth, is adhered to.

**Mr Gardner:** I am the 2019 emerging architect for the ACT chapter. What is really important is understanding what architects provide in terms of documentation and

why documentation is important. Low levels of documentation lead to levels of misinterpretation on site. Construction brings together a wide variety of people from different backgrounds and levels of education and skill and knowledge.

What we consider to be a good series of documents is legible to any person who has a level of skill within the trades profession, so that they can understand the intent of how a building comes together. This transcends language; it transcends background, culture, anything.

For instance, we could put together a set of drawings in Canberra and send them to China. While we may not speak the same language we can all come across a table, look at a set of drawings, point at certain things, scribble something and everyone understands and there is a general consensus.

I have been in a situation where we have not spoken the language of the contractor, and this is becoming more and more of an issue within Canberra as we have a larger population of migration and involvement in the construction industry of people who are not necessarily from strong English-speaking backgrounds.

I have seen that play out over there and I have seen it play out over here where clients have brought in contractors from other countries and the drawing is the one piece of language that we all understand. Having a minimum level of documentation removes that level of misinterpretation.

**THE CHAIR:** The government has recently introduced or is introducing—I am not quite sure where it is at—the requirement for additional documentation. Are you comfortable with what they have come up with?

**Mr Gardner:** I believe it is a good step forward. One of the things architects regularly do is rely on the Australian standard to produce a level of quality. That is where we pin our flag, in a way. When the documentation levels are such that there is no mention of an Australian standard then what are we working towards? That is fundamentally what we come back to.

**Mr McPherson:** We have advocated heavily for minimum documentation, and the document is a great one. That is the document—that is the thickness of the minimum documentation requirements. In some ways the devil is in the detail. There are components of that which are very high level detail at DA which might lead to some redundant work or might lead to certifiers not being able to tick it because there is not that sufficient level of DA.

Certifiers also have a new regulatory regime that requires them to almost have no flexibility in assessing that. So there is some considerable level of detail. The document is a fantastic one. It basically requires the level of construction documentation to be brought forward for the DA component. It essentially guarantees a level of detail in construction. So tick: great win.

We were talking about continuity earlier and what good documentation brings. Obviously, a building professional who does not have professional indemnity insurance and public liability insurance does not protect the public. One of the reasons

we are advocating for not necessarily an architect but a rigorous process being put in place around the accreditation of the person providing those technical details is essentially to protect the public.

If you cannot come after a building draftsman or others for their professional indemnity or their public liability, as is the case with an architect, that is not a level playing field. That allows them to potentially deliver that service cheaper at, depending on your interpretation, a lower quality. We are not protecting the public in that sense.

**MS ORR:** You have called for other design professionals such as draftspeople or building designers and even project managers to come under a regulatory regime. What would that regime look like and how would it be implemented in practice?

**Mr Leeson:** I noted in my opening statement that, of all the people involved in the building industry, architects are one of the few, if not the only ones, that have this very heavy regulation imposed on them. You have to have five years of tertiary education, five to six years of practical experience, logbooks and examinations which are quite onerous before you can call yourself an architect and operate as an architect. No other professional or allied organisation requires anything like that.

You do not have to be registered to be a project manager; you do not necessarily have to have any qualifications to call yourself a project manager. You might have some skills that allow you to organise things, but you are an organiser. You can call yourself a project manager and basically do all sorts of things. Engineers are not regulated. They have a degree, but there is no regulatory body requiring them to perform to a certain standard. Engineering covers a whole gamut of services within construction.

The question was: how would a regulatory system work? If people put themselves up as being project managers they should demonstrate that they have the necessary skills, background, knowledge of building, and professional indemnity and public liability insurances.

**Mr Gardner:** Using a project manager as an example, a project manager has a level of control over a project that can affect design decisions and can make those decisions without knowing the flow-on effect and implications of those decisions. For example, an architect may have designed a facade to be waterproofed in a certain way. The project manager may change the product stipulated and may make that call potentially without the architect's engagement on the basis of time, cost or whatever. That flows through the project to deliver a certain outcome, and when said thing potentially fails the person who has made that call has a very limited knowledge of that. They are just going on the basis of "it might satisfy other criteria" but not in the sense of providing a consumer protection.

That comes back to what Philip was saying about regulation and how having knowledge of the implications of decision-making is really critical. That needs to have some level of regulation. Most project managers do not have any professional indemnity insurance; they are not required to. But they could make a call which then flows through a project—

**THE CHAIR:** By project manager, are you talking about a developer?

**Mr Gardner:** There are many different types of project managers. There are project managers within a developer. There are client-side project managers who are independent consultants who are engaged. There are construction managers who make calls who work within a building company that may be engaged by a developer. Not all developers are builders, and these types of professionals do not even require a tertiary education to be a project manager. Many do have qualifications, but they do not cover building systems or things like that. It is more about the organisation and the management of the project and less to do with the delivery of a project in the sense of its construction.

**MR PETTERSSON:** In your submission you state that the ACT chapter holds ongoing concerns around the quality of apartments in the ACT. It is a pretty big claim. I understand, based on the conversation we have been having this morning, that you hold that view. My question is: how long have you held that view and are there any reasons that you have not expanded on yet as to why you hold those concerns?

**Mr Leeson:** Within the industry there is fairly topical discussion about the quality of certain developments. Certain real estate agents will say, “I would never buy an apartment in that development; it is so shoddily built.” People who are involved in a project see on a day-to-day basis how poorly constructed some buildings are.

There is also a growing body of people who are providing services to rectify faults in buildings. There are builders or tradespeople who are setting themselves up as people who will come in to re-waterproof wet areas of balconies because they were not properly treated in the first place.

There are standards that are not being complied with—balconies being level with the inside floor, for instance. So the interior gets flooded. There are regulations now that demand that there is a thing that you have to step over or step down to so that you do not get that flooding occurring. But even then, there is not proper waterproofing done. Waterproofing is one of the big issues that keeps cropping up. I did not want to necessarily home in on that one, but it is a big one. There is an industry of people now providing those services to buildings that are not very old.

Will has examples of projects where he has been involved from start to finish. Those buildings are standing up there beautifully. They are well maintained, often owner occupied or developer retained. But that is an example of where there is a culture of quality from the outset that is not always seen in developments where the units are mostly for sale. It is get in, get out as quickly as possible and maximise the profit. It is in those sorts of instances where you do not always get the best quality.

**THE CHAIR:** How can a consumer then—

**MR PETTERSSON:** Just one quick one. How long have you held these concerns? Is this a new problem that has emerged or has this existed for a long time?

**Mr Millman:** If you look at the history of the ACT, for example, and you go back

20 years, the advent of multi-unit housing was almost in its infancy. There were only a handful of multi-unit residences that you could count 25 years ago, for example. Now it is mainstream. To deal with our population growth it will continue to be a significant part of the building industry. I think that, in fairness, most of the concerns that we are talking about and that we see crop up are mainly to do with water ingress or waterproofing. That is probably the biggest one. To a lesser extent, it is structural issues.

But those two things in isolation are probably the two items within the industry that we see both on site and anecdotally around the place as being the biggest concerns. To answer your question in regard to how long: as we see the increase of multi-unit housing, those issues are the two that continue to crop up as a result of the increased demand for multi-unit housing. Probably within the last 10 years in particular, but even more recently than that, we have been seeing more and more issues crop up within that realm of waterproofing and water ingress.

**MR PETTERSSON:** Is that a function of growth in the industry?

**Mr Millman:** It is a function of a number of things, some of which Philip touched on. But certainly the industry is growing and will continue to grow. So the quicker we can assist in the process of trying to rectify some of these issues before they become problems—that is what I suppose we would be most interested in looking at.

**Mr Gardner:** It is particularly concerning for people in my demographic, the age demographic in your sub 40s, trying to buy first homes and whatever and just getting really burnt. And people have no recourse. You are left really twisting in the wind, at the mercy of the body corporate, trying to rectify these issues because there is no-one to answer—no-one who answers to the original concern. Buildings need maintenance. We all know that buildings need maintenance because it is just one of those things—like a car.

**MS ORR:** I actually had a question on maintenance. Sorry to cut you off, but we are a bit short on time. Mr Leeson raised maintenance and, Mr Gardner, you have now raised it too. Who is best placed to provide the owner of, say, a multi-unit development, which is quite a complex building, with guidance on how to maintain that building?

**Mr Gardner:** When we finish a project you are provided with an operations and maintenance manual. That goes to the building owner; so it should go to the body corporate. That will tell you that your roof needs to be maintained in this way after this many years, and that is part of your ongoing schedule of maintenance. Facilities managers in a commercial sense will follow that operations and maintenance manual to do that. So there is a system there. Whether that is actually flowing through to the right people and those people—the body corporates, for instance—are actually engaging people to manage that on their behalf, I cannot say. But there is a system there. When you complete a building you get a manual on how that works.

**Mr Leeson:** Our consumer guide will highlight asking the interested party to check what the building is made from. You can look at apartments or units that were built maybe 10 years ago. A material that was commonly called blue board was frequently

used as fibre cement. It got rendered over and painted, like a rendered building. But one of its inherent faults is that it moves with the timber framing that is behind it and you get cracking all over the building. Those sorts of buildings require a lot of maintenance and a lot of costs to keep them looking good.

There is a real legacy of poorly constructed facades made out of that material, particularly in the inner north, around about that period and perhaps some of the newer suburbs where two and three-storey buildings were commonly built out of that material. You do not find it in high rise stuff, but poor quality extends down to those lower level buildings as well.

**Mr McPherson:** The building quality issues we are talking about are usually identified within the defect liability period for that project. To answer your question, my answer is that the builder is best to undertake that maintenance in an ongoing sense, for a number of reasons. They understand the project; they understand the constraints and so forth. If some of the things we are talking about, like the balcony, do not comply with building standard 4654 and leak, the builder is best to rectify that in whatever way is necessary to understand that.

If windows or a facade is leaking as a result, the builder is best to undertake that work in the warranty liability period, as long as it is identified early enough, and usually the more significant problems are. You get wet carpet because your terrace is not working properly or windows leak et cetera. So the builder is the best place because of their knowledge.

Outside the defects liability period, the builder might still be best placed if there is a relationship that allows that maintenance, because they have the expertise. They understand the construction and the drawings. They have access to the full set of drawings. That is another point of discussion. How does the ACT government hold documentation on the buildings so that that documentation is accessible in the future when a problem crops up 15 years down the track and not three years down the track? So it is the builder.

**THE CHAIR:** We could probably continue for a while, but sadly we are time limited. Again, thanks very much for appearing today. You will be sent a copy of the draft transcript to have a look at to make sure that that accurately reflects what we were talking about here. Thanks again for your submission and thanks for appearing today.

**The committee adjourned at 11.46 am.**