



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, 7 AUGUST 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 9.01 am.

HOPKINS, MR MICHAEL, Chief Executive Officer, Master Builders ACT

BERRY, MS ASHLEE, Legal and Compliance Director, Master Builders ACT

THE CHAIR: Welcome to the seventh public hearing of the Standing Committee on Economic Development and Tourism inquiry into building quality in the ACT. We will be hearing from industry and professional organisations. We start with Master Builders ACT. I thank you both for attending today. I firstly draw your attention to the pink privilege statement in front of you. Can you indicate to me that you are aware of its contents?

Mr Hopkins: Yes.

Ms Berry: Yes

THE CHAIR: Thank you. I remind you that these proceedings are being recorded by Hansard for transcription purposes, and webstreamed and broadcast live. I invite you to make an opening statement before we go to questions.

Mr Hopkins: We have a short opening statement, because this is a complex area of law. We would like to try to get a few key points out on the table, which we could discuss later. Initially we would like to say that while there are many building practitioners in the ACT that perform high quality work and display integrity, this is not universal. Of course, where an instance of poor quality design or building is identified, it is the practitioners involved who have a responsibility. But we would like to point out that government also has a responsibility to enforce its minimum standards.

The building regulatory system is complex. It relies on everyone in the building supply chain, both industry and the regulators, to do their part. Master Builders thinks that improving building quality should be an urgent priority of this government. We have made numerous submissions over the past 10 years, which we have outlined in our most recent submission, on ways to improve building quality. We have even written to government or we have sometimes spoken to government with warnings about individual builders. But unfortunately very few of our suggestions have been acted on.

In the past the ACT government's response to implement the building confidence report recommendations, the ACT building reforms and even to investigate and respond to complaints has been too slow and it has only gathered pace in very recent months. To understand the different parts of the regulatory system, we think the committee would be well advised to refer to the building confidence report, the Shergold Weir report. It was commissioned by the Building Ministers' Forum. It sets out, in a fairly easy to understand way, all of the inter-related issues associated with design and building quality, because there are many.

The building confidence report is the most recent national review of building regulation in existence. It is a thorough and well considered report and it has been

supported by industry and governments alike. The report addresses some issues that are not ACT government policy, including compulsory and professional development training and also the broadening of the licensing regime to include practitioners, all the way from the architect to the site supervisor.

A site supervisor is employed by a builder to oversee all of the building work on a construction site. This role is critical to building quality. A new category of licensing, as recommended by the building confidence report, to capture the role of the site supervisor will provide a real and material improvement to building quality. Importantly, this role should have mandated training and experience before a licence is granted. The building confidence report also highlights the importance of design. Many defects start with poor design and poorly undocumented drawings. We note that the Institute of Architects has made a number of valid points on that issue.

One part of the discussion that has not received much attention from the committee or the submissions so far is the role that trade contractors play in building quality. Trade contractors actually undertake the majority of the actual physical building work on a site. We believe that the role of trade contractors, and a potential extension of the licensing regime to at least capture critical high-risk trade trades, could be considered by the committee.

If the government wants to make the greatest short-term improvement in building quality, we believe it should resource Access Canberra, the building regulator, so that existing building laws and standards are enforced and so that there is an easy-to-access, fair and responsive team to respond to complaints from both industry and consumers. Guidance notes to assist in the interpretation of building laws and response to common defect issues would assist further.

While the attention by government to the enforcement of minimum standards has recently improved, we have a poor history of enforcing these standards in the past in the territory. This has led to a legacy of poorly designed and constructed buildings, which future building reforms are not going to be able to address. Many of the submissions to this committee have identified these buildings. We think that the committee should consider specifically how a government will address this legacy problem.

It is also important that all stakeholders understand their rights and obligations in the building regulatory system. Government, for example, as I have mentioned, has an obligation to set the minimum quality standards through the building laws and regulations and to ensure that the minimum standard is met. Industry associations have an opportunity to demonstrate industry best practice to their members.

Associations like ours do that by setting codes of conduct, delivering industry training, providing advice to our members, and sharing information with our members about new regulations, industry issues and new innovations. But also clients have an important obligation to set a quality culture. By “clients” I refer to in some cases government, developers and homebuyers. Quality starts with the example set by clients. Clients set the budgets and the quality expectations. They establish the program and the expected completion dates.

Government should be a model client and for the most part it performs that role well. But the example set by developers and homeowners is variable. In most cases our regulatory system does not allow the developer or the homeowners to be held to account. Security of payment regimes are one example. They exclude developers and consumers from the security payment system.

Finally, I want to make a comment on the government's engagement with industry in the most recent, or the current, building reforms. Since the commencement of this inquiry, a number of the ACT government's 43 priorities have been completed or they are well underway. It is critical that these reforms be undertaken in partnership with industry and the community stakeholders. Our experience, though, has been that the quality of engagement to date has been poor. This is despite our members and our staff being available to volunteer their time to assist government on the building reforms.

Our suggestion is that the level of engagement with local industry should be improved, that future building reforms align with the now agreed 24 recommendations of the building confidence report and that the expertise of other states and territories be used to make sure that the ACT's building and regulatory system is the best in Australia. We are happy to take any questions.

THE CHAIR: Thank you. You make the point in your submission that there have been a lot of submissions, a lot of reviews, a lot of inquiries. There are any number of recommendations. You list a whole heap of them that simply have not been implemented—

Mr Hopkins: Yes.

THE CHAIR: that are stagnant. They are good recommendations and they just have not been implemented by government. You draw the point that they need to be implemented. What I take from your submission—correct me if I am wrong—is that if we were to implement the recommendations that are already there through ACT bodies of work and also national bodies of work, and properly resource and regulate—through Access Canberra—we would be a long way down the track to resolving the issue. There seems to have been a flurry of activity of late, which coincidentally coincides with the timing of this inquiry being established. It seems to be consistent with that. But I am sure that that is just a coincidence. Is that an accurate summation of your view, that we just need to get on with what we have already identified as the problem? It is just that government has not done anything.

Mr Hopkins: I think that is a fair summary. There were the important reviews of the past, the 2010 ACT review, the 2015 ACT review, and then the more recent 2018 Building Ministers' Forum review, which resulted in the building confidence report. In our submission we tried to link the various recommendations of those three landmark reviews together. They all deal with very similar themes and issues.

If we were to look specifically at current ACT government policy, there are two standout areas that other recommendations have highlighted, which are not yet ACT policy. They would be implementing a continuing professional development training system for building practitioners, not just for builders but for all building

practitioners. The second area would be a broadening of the licensing regime. We would suggest that that should go as far as capturing some trade contractors. I note that that has not been recommended by any of the reviews that I mentioned—

THE CHAIR: Right.

Mr Hopkins: and I have not noticed it mentioned in previous submissions or discussions to the inquiry.

THE CHAIR: Do you want to expand on that for me?

Mr Hopkins: I think the point that is often missed is that it is actually the trade contractors who do a majority of the work the physical building work. This is not solely the problem that we are talking about here but it is a large part of the issue we are talking about here. It is carried out by people who in the ACT do not require a licence. So essentially they have no oversight or accountability in the ACT building system.

MS ORR: But Mr Hopkins, is there not an onus on the person who is employing them to make sure that they are equipped to do the job?

Mr Hopkins: Yes, of course there is. But—

MS ORR: So the person employing them at the moment would be the head contractor, the builder?

Mr Hopkins: Yes, that is true. We are not suggesting that that responsibility should not be in any way less than what it currently is. Broadly speaking, our position is that if everyone through the whole building supply chain did their job and had appropriate oversight and accountability, we would have much better outcomes than what we currently have. I think we are just missing a very large and important piece of the whole building supply chain, which is the people who actually do the work—

THE CHAIR: Which trades are you are talking about? Have you listed them anywhere?

Mr Hopkins: No, we have not listed them in our submission and we are not suggesting that we go as far as, say, New South Wales or Queensland where I think they have in some cases up to 80 trades which require a licence. We are not suggesting a scheme as complex as that. But, for example, there is a lot of discussion about waterproofing. Waterproofers do not require a licence. Carpenters do not require a licence at the moment. In the ACT electricians do and plumbers do, and we support that. But there is a large range of other trades which do not—

THE CHAIR: So go somewhere towards where New South Wales is at.

Mr Hopkins: Yes.

MS ORR: Because in New South Wales currently licensing is needed for waterproofers, if I am not mistaken, and carpenters?

Mr Hopkins: I think so, yes. It is an extensive list.

MS ORR: But even with the licensing—putting aside whether it is a pro or a con—New South Wales still has issues. If that is part of the story, what is the rest of the story?

Mr Hopkins: I think we will get through that over the next 30 minutes. I think it is the combination of all of those recommendations that have been laid out—

THE CHAIR: Basically, what you are saying is that, beyond the work that is already done, licensing of trades is the one that seems to be a recommendation that does not exist at the moment in the ACT.

Mr Hopkins: Correct, yes.

THE CHAIR: Can you name another one; you said there were two?

Mr Hopkins: The continuing professional development scheme for building practitioners. That does not exist in the ACT. Some professions have various schemes—architects or engineers—

MS ORR: Planners.

Mr Hopkins: but it is quite commonly used in other industries. There is a minimum qualification to enter the industry initially. Then there is an ongoing requirement for training. We see that training education has a great role to improve building quality. Obviously, we need to focus at the training end when people are first getting their licence. But people then may stay in the industry for 30, 40 or 50 years—

THE CHAIR: Would this be for builders specifically?

Mr Hopkins: No, I think for all building practitioners—

THE CHAIR: All building practitioners.

Mr Hopkins: So it could be linked—

MS ORR: So going on to trade contractors?

Mr Hopkins: to the licensing system, for example. If the government requires a licence that could identify the trades or the companies that require the CPD training.

MS ORR: Mr Hopkins, I note that the changes you have mentioned are actually getting progressed. I think that 28 of about 40 are being done and another eight are due for completion pretty soon. The Shergold Weir report has been approved at the Building Ministers' Forum—

Mr Hopkins: Yes.

MS ORR: So that work will get underway. If we do these two other things that you said—put in continual professional development and put up a bit of additional licensing—does that mean that our building system is going to start working perfectly and we are never going to see another problem again?

Mr Hopkins: Sorry, the third point that I mentioned in my opening statement that is picked up in the building confidence report is that government also needs to make sure that all of those standards are enforced. If you compare this to driving on the roads, if we did not have police making sure that people did not speed, we would have a much worse record of accidents and injuries on the road.

MS ORR: How do you see that being enforced?

Mr Hopkins: By the ACT building regulator.

MS ORR: Yes, but how in practice? Do you have someone standing over the building site?

Mr Hopkins: Through a number of ways. Looking at how ACT WorkSafe regulates safety would be a good example where there could be a number of lessons learnt.

MS ORR: Do you think that that would be palatable to industry, though? As soon as we add more regulation, industry usually says it is over-regulating, it is stifling industry. So there is that tension there. Obviously, finding the balance is a challenge. Would industry come along on that journey, so to speak?

Mr Hopkins: I think that what we were talking about was enforcement of existing regulation. New regulation is quite a separate issue. What we are suggesting is that if there are existing building laws, which there are, there needs to be someone making sure that that minimum standard is being achieved. It needs to be the ACT government building regulator.

The way that that would be done would be, firstly, through a way of responding to complaints, making sure that the regulator is resourced to be able to respond to complaints. That may mean, for example, the homeowner or another member of industry could ring up and make a complaint and someone would be sent out to do a site inspection and investigate the situation.

But it should also be proactive as well. As trends, themes or particular defects are reoccurring, there could be a proactive series of audits done of building sites or building practitioners. Then the results of those audits should be shared with industry so that improvements, training or whatever could be undertaken so that they do not continue into the future.

MS ORR: You mentioned proactive and reactive there. But what I have just taken from what you said is that quite a lot of this would be happening at the completion of the building or post completion of the building. Do you see anything during construction as part of that?

Mr Hopkins: I think what I described would be both during construction and post

construction. Yes, there is a warranty period as well and it would be reasonable that the same process apply from before construction commences, all the way through until the warranty period completed.

MS ORR: What did you consider to be the critical trades? You have mentioned waterproofing. Are there any others that you consider in that?

Mr Hopkins: Yes. We have not identified a list, but we would be keen to work with government to identify what they should be. Waterproofers and carpenters, for example, might be a good place to start, but I suspect that there would be a few more as well. We just need to make sure that we are capturing the high-risk ones without going too far and, to your point, Mrs Orr, not over-regulating industry to the point where the regulation is of little benefit.

MS ORR: Just as a bit of a side note, I am Ms Orr. My mum is Mrs Orr.

Mr Hopkins: Sorry; yes.

MS ORR: It just freaks me out when I hear that.

Mr Hopkins: I apologise.

MR PETTERSSON: You mentioned that there should be appropriate accountability over the entire line of construction. We have spent a lot of time talking about occupational trades licences. Do you have a view on property developer licences?

Mr Hopkins: We noticed that that had been flagged by the government as a possible response. We would be keen to see the detail of that. It is hard to provide—

MS ORR: Just for the record, we might just say that it is not so much the government that flagged that as the Labor Party. Just so that we are clear.

Mr Hopkins: Yes. It goes to the issue that we raised in our opening statement about the role of the client. Where the developer is a client, for example, they have a very important role in ensuring quality. They set the budget; they set the expectations of when the job has to be completed; they employ all the various consultants and builders that do the work. In a way, they set the culture. As I said, when government is the client, often that results in very good outcomes, but when it is a developer or when it is a home owner, it is variable. There are some very good examples and there are some poor examples.

Whether developer licensing is a solution, I am not sure. I think we would need to see the detail of what that regulation looks like. I imagine it would be quite impractical to try to achieve that. But it has tapped on a very important issue, which is the role of the client.

MR PETTERSSON: In terms of the ACT context, do your members experience a culture in the ACT of pressure from property developers?

Mr Hopkins: That is one of the examples that I mentioned, yes. When a client is

pressuring for a job to be completed to a particular budget or to a particular time frame, that puts pressure on quality. Often quality is what is sacrificed in return for a quick job or a cheap job. We agree that clients need to be part of the discussion about how to improve quality; I am just not sure whether developer licensing is the solution until we see the detail of what that might look like.

MS ORR: When you talk about clients—and you picked up on this—developers can be one client and government can be another, but you can also have individuals and smaller groups. You did say that that is where it starts to get a bit variable in how the client can articulate what is going on. We have heard a lot of evidence, particularly from owner-builders, where people have said that it has been quite difficult to navigate the system.

In your opinion, how do we start to address the playing field so that it is a bit more even for people who are not necessarily coming from a professional background who want to build their home, and have a right to a home, but would not necessarily be experts in the area?

Mr Hopkins: Education of both the building practitioners and the consumers is a key part of that. We receive hundreds of phone calls to our offices from either builders or home owners who find themselves in a dispute. Often it simply boils down to either side or both sides not fully understanding the contract that they have signed, not understanding their obligations and their rights. We think that there is a big role for education of homebuyers, consumers and also industry members on some of those common issues such as a simple home building contract. I should not say “simple”, because they are not simple; they are complex contracts.

MS ORR: The issue of contracts has come up quite a bit throughout the hearings. We have had quite a few witnesses express concern with industry-specific contracts and claims of imbalances with these. You have an MBA industry contract. Do you think that that provides the best outcome for consumers in comparison to, say, a standard government contract? That is the proposition that has been put to the committee quite a bit.

Mr Hopkins: I might let Ashlee answer that one.

Ms Berry: The issue with a standard government contract—I know that in previous submissions there have been references to, say, the ACT Law Society contract for the sale of land—is that just having a standard contract provided by a government authority or the Law Society does not prevent anyone adding special conditions or other sections onto the end of that contract. In my experience, most contracts for the sale of land end up with pages and pages of special conditions at the end.

The key issue from my perspective is, as we have said, educating both industry practitioners and home owners on what those terms mean, and also encouraging all home owners to obtain independent legal advice before they enter into the contract. That is something that we find very rarely happens, which perplexes me as a lawyer. People will engage a solicitor or a conveyancer when they are buying their block of land, and then they will enter into their building contract, which is usually for two, three or four times the value of their block of land, and sign it without having anyone

look over it.

MS ORR: There was certainly a position put forward by quite a few of the witnesses, though, that even if you went and got independent legal advice, if you went back with proposed changes to the contract, it came back from the developer or the builder and they just said, “No. Either you accept what we are doing or you do not.” There certainly seems to be a perception out there that it does not matter what you want to do; the power is with the person, with the builder or the developer, and there is nothing that the individual can do.

The point of the government contract was that it breaks this power imbalance. Ms Berry, I take what you are saying, that defining the absolutely perfect contract is probably something that is outside the remit of every field and sector, but there is definitely a perception there that a government contract, a standard one, at least starts you off on a more even playing field.

From that perspective, would you have any comment about the perceptions out there that you cannot go back? Your advice is to go and negotiate, to get independent legal advice. The feedback we get from individuals is that in reality that is not an option. Where do we go to?

Mr Hopkins: There is a simple answer to that. If a home owner is not happy with the contract that is presented, they should not sign it. It is as simple as that. The ACT has no shortage of builders. It is not as though we are in a market where there are not enough options to go and find an alternative.

If either party signs a contract, it is important that they understand they are committing to rights and obligations; if they do not like them or if they do not accept those, they should not sign the contract. I understand the point about the power imbalance, but it is a critical point that when we are dealing with complaints at the end of the process, we often come back to this point where people did not agree, did not like something or simply did not understand what they had signed up to.

There are some areas, though, where government could assist here, without going all the way to having a government template contract. That is through having some greater standardisation of terms, things like the building progress points, when payments are often made. If there were some standard definitions of the various progress points, that is something that would assist, particularly at the practical completion stage, because that is when the final payment is due and that is when often a lot of these small disputes boil up. They often arise at the practical completion stage.

We would definitely be keen to work with the ACT government on some of those standard definitions that then could be adopted through all contracts. And remember that here we are not talking just about industry template contracts; there are a lot of bespoke contracts that are prepared individually by lawyers or owners.

I think some standardisation would work, but we have identified some issues with a government set contract because of the ability to vary from it.

MR PETTERSSON: In terms of the idea that people can go and find a builder

somewhere else, what is the membership density of Master Builders in the ACT?

Mr Hopkins: Yes, that is an important point, and we would like to correct some facts that have been raised in previous submissions on this. We deal with it in our submission. The last time we reviewed the Access Canberra website, which lists all of the licensed builders, there were more than 4,000 licensed builders in the ACT. The number probably changes daily.

Our membership sits at around 1,200—just short of 1,200—companies. But they are not only builders; they include companies or building practitioners which would not be captured in those 4,000—civil contractors, trade contractors and professionals. The actual number of MBA members who would be a commercial builder or a residential builder and require a licence would be—I think we identified it in our submission—500 or 600. We noticed that a previous submitter mentioned that our membership would be close to 98 per cent of the industry. It would be nothing like that. It would be well less than 50 per cent of the industry.

THE CHAIR: About 10 per cent is the figure, based on the statistics that you just outlined.

Mr Hopkins: Yes, based on our information about member numbers that we can try to cross-check with government information.

MR PETTERSSON: That is coming off licence numbers, though.

Mr Hopkins: Yes.

MR PETTERSSON: If you actually look at industry participation and economic activity, how much of the ACT construction industry is run by MBA members?

Mr Hopkins: In truth, I do not know. There are no statistics on that. We can give you ideas about the number of our members. We know the numbers of ACT licence holders. We can make some assumptions but, in truth, we do not record that sort of information and I do not believe that government records that sort of information. It would be hard to tell.

MS ORR: In 2015 the MBA ACT conducted a survey to better understand potential problems with the industry. The survey showed that your make-up is 40 per cent head contractor and 56 per cent subcontractor. Is that still about the right proportion?

Mr Hopkins: Of our membership?

MS ORR: Yes.

Mr Hopkins: Yes, roughly. If those were the survey results back then, it would not have changed materially since then.

MS ORR: How are your fees determined? Is it a flat fee or a progressive scale?

Mr Hopkins: I am not sure how that relates to building quality, but our fees are based

on the turnover of the business.

MS ORR: What processes does a builder have to go through in order to become a member of the MBA?

Mr Hopkins: It is extensive. Ms Berry will elaborate on that.

Ms Berry: Yes. If someone wants to become a member, it is not just a matter of them filling out an application form and then being accepted; they need to provide two references or at least two people that we can obtain a reference from, and that process is followed by our membership team. Once they have been vetted, essentially, the member is referred through our sector council process and up through to our executive committee, our board, where the membership application is either approved or rejected. At times further information needs to be sought before a membership is approved.

MS ORR: Once accepted, for how long does a membership last?

Mr Hopkins: For 12 months.

MS ORR: After 12 months you have to reapply or renew?

Mr Hopkins: Renew.

Ms Berry: It is renewed.

MS ORR: What is the renewal process?

Mr Hopkins: The renewal process is simply repaying the membership fee.

MS ORR: How many applications, if any, have been declined or revoked in, say, the past 12 months, five years or 10 years or whatever time period you would have information on?

Mr Hopkins: I do not have statistics for that, but I will proudly tell you that we often reject membership applications. Our objective is not to achieve greater market share of the industry. We are proud to say that we want to accept only quality members. We enforce our membership recruitment processes, an ongoing audit process and a complaints process to make sure that our members do meet our expectations of quality.

That is not a position that is commonly held by industry associations generally. When I joined Master Builders ACT, what I found quite different and unique about the ACT Master Builders is how passionately our board feels about controlling the quality of their membership. Membership is discussed at every board meeting. Every membership application and every complaint about a member is discussed at a board meeting. We are currently investigating four or five complaints about members that have come from either home owners or other industry members. We have regularly evicted members from the association if they do not meet our code of conduct.

MS ORR: I should have asked, before asking how many were declined or revoked,

how many on average apply? Over a year, how many applications for membership would you have?

Mr Hopkins: Around 200.

MS ORR: You do not know, off the top of your head, roughly what the acceptance rate might be?

Mr Hopkins: It is probably not as simple as that. We will not try to recruit a member that we know is not going to meet the approval process. We are only trying to recruit members, often, based off a referral from an existing member. Our success rate in recruiting members that we are targeting is quite high. That is because we are not trying to recruit members that we know are not going to meet the code of conduct expectation.

MS ORR: Is it fair to say that there are not many applications that are declined or revoked?

Mr Hopkins: There are some, for sure.

MS ORR: Is there any way that you would be able to give us a more concrete idea of what the acceptance rate might be and what the revoke or decline rate might be?

Mr Hopkins: We do not regularly keep those sorts of statistics, but we have a code of conduct and we have a membership process for a reason. It is there because we enforce it, and we enforce it regularly.

THE CHAIR: Can I suggest that if there is a whole bunch of data like that, you might want to put it on notice?

MS ORR: Yes. I have actually gone through most of it.

THE CHAIR: There are some pretty important matters that we want to get to.

MS ORR: That is fine. Mr Hopkins, you said—and I am paraphrasing, so I am sorry if I do not get it exactly correct—that you have reported to the ACT government instances where you do not think a builder is up to standard, or repeat offenders. Are these people that have come through complaints to your members, where you have said, “Actually, they’re not doing the right thing”? How is that reporting taking place and what is the feedback loop? In these instances, whether they are members or not, what do you do for your own disciplinary purposes when you have reported it to the ACT government?

Mr Hopkins: There are a few points there. They would have been practitioners where complaints have been received to us from either other industry members or from the community. They would generally be MBA members. We do not see much interest in us getting involved in the business of non-members. In some cases that has been in writing; in other cases it has been less formal.

It does identify an issue about sharing of information between industry associations

and government, because we do collect—even if a lot of it is anecdotal—a large amount of information about what is going on in the industry. If government were to investigate or talk to us about some formal information-sharing process, that would probably be a positive outcome of the committee inquiry. You could extend that even to information sharing with the fidelity fund and the home warranty insurance provider, because they also see a lot of information about the conduct of licence holders. You have probably touched on an area which could be improved.

MS ORR: Mr Hopkins, you recently said in a *Canberra Times* article that all MBA members had to comply with the association's code of conduct—you have also mentioned that in this hearing today—which includes the requirement to adhere to the law and the industry standards. Can you just talk me through what action is taken against MBA members who fail to comply with the code of conduct?

Ms Berry: I will answer that one. When a complaint is made, the key is to determine early on whether it is a complaint under our code of conduct or whether it is a commercial dispute. Often the lines on that are quite blurred and it is quite a difficult process.

If it is a commercial dispute, then the MBA does not have the resources or the power to investigate whether party A or party B, whether that is the builder or the home owner, is the person in the right. This is where we keep coming back to the point that it is really important for both builders and home owners to understand their rights and obligations under the contract.

If we have determined that this is not a commercial dispute and it is a code of conduct matter, we invite either the building industry participant, if they are making the code of conduct complaint, or the home owner to complete a code of conduct complaint form. It is reviewed; we consult with the person whom the complaint is being made against; and then the matter is referred to the executive committee.

MS ORR: Do you know how many complaints a year you would have, on average?

Ms Berry: That is difficult to determine, on the basis that some people will make complaints thinking that they are making a code of conduct complaint—

MS ORR: Which ones are found to be actually complaints with standing, for argument's sake?

Mr Hopkins: I mentioned that we are currently dealing with four or five.

MS ORR: Is that an average? I am trying to get an idea. In a year, would you have something like 20? Would you have four or five? I appreciate that it is going to fluctuate.

Ms Berry: I would have thought that in a year there would be no more than 10 formal code of conduct complaints.

MS ORR: And they are the ones that are found to be—

Mr Hopkins: Formal ones, yes.

Ms Berry: Yes.

MS ORR: They are the ones that, under the code of conduct, warrant investigation?

Mr Hopkins: Yes.

Ms Berry: Correct, yes.

Mr Hopkins: If you expanded that to general disputes that we are dealing with, that would be hundreds over a year.

Ms Berry: Correct, yes.

MS ORR: This is something that came up quite a bit in the earlier hearings. People have come to us and said, "We have made a complaint to the MBA." Perhaps this goes back a bit to what you have both outlined. You are saying that there is quite a difference in whether it is a contractual complaint or a code of conduct complaint. We are trying to get to the bottom of how we can better deal with this. For example, in one submission the person wrote:

I contacted the Master Builders Association for advice and direction. To cut a long story short, they conducted an inspection, agreed with my concerns and said that the only thing they could do would be to provide an arbitration service as they have no powers over the builder or enforcement of the Building Code.

If the code of conduct requires members to adhere to the law and industry standards, why is there a perception that you are powerless in taking action against builders? That was the question they put to the MBA. With right of reply, would you like to say anything?

Mr Hopkins: Yes. I think we have missed a really fundamental point in this last discussion about membership of the MBA. We are not the regulator. We are often dealing with these complaints because the regulator has failed these consumers. They have come to us because they might have seen our logo on a contract they signed and they think that we can assist them. Wherever we can, we do. We are most successful in assisting in disputes when people come early, before the dispute has got out of hand. But in each of these cases, where a consumer, a home owner or a unit buyer has had a dispute with their builder, this committee needs to examine why the ACT building regulator has not been able to deal with these complaints. We are not the regulator. They are right; we have no power over the regulator.

MS ORR: If it is a contractual complaint, though, would the regulator necessarily deal with it?

Mr Hopkins: The MBA could not deal with that.

MS ORR: The MBA could not?

Mr Hopkins: We would assist.

MS ORR: But you say the regulator should.

Mr Hopkins: We could provide education; we could explain terms; we could put people in contact with arbitrators. We could even explain the ACT government's dispute resolution process and direct them to the phone number to call. But unfortunately we are not the regulator.

MS ORR: I appreciate that, but you say it should go to the regulator. What I am looking for is this. Noting that I am a planner, not a contractual lawyer, if it is under contract law it is a legal matter that gets dealt with through legal processes, not necessarily by a regulator. If your answer is that the regulator should be doing it, is that a fair answer, given that it is more nuanced than that and there is a role for legal?

Mr Hopkins: If we wanted to talk about the commercial dispute resolution process, that would be worth exploring in further detail and maybe you could talk to that, but as a first point of call, the building regulator is always a good place for home owners to go to get the initial advice. If that means referring—

THE CHAIR: Ms Orr—

MS ORR: I just have one more question.

THE CHAIR: You have had a pretty good crack of the whip.

MR PETTERSSON: Could you explain to me what the relationship between Master Builders and the Master Builders fidelity fund is?

Mr Hopkins: Yes, the fidelity fund is independent of the MBA. It is approved and set up under the ACT Building Act. I note that you had a trustee of the fidelity fund present at the last set of hearings who explained this in further detail. As he pointed out, the fidelity fund, if you like, contracts with or engages the MBA to manage the day-to-day operations of the fidelity fund. But it is important to understand that the fund itself is independent of the MBA. It is run by a number of independent trustees who are accountable to and report to the relevant ACT minister.

MR PETTERSSON: What are the services that the association provides to the fund?

Mr Hopkins: As I said, the day-to-day operation of it. We employ a number of staff dedicated to operating the fund. They take the initial annual applications that builders need to make to get their level of cover approved. They manage the outsourcing of that to get a financial assessment done. They receive the applications for individual certificates and issue those certificates to builders. But in respect of the fund itself, all of that is done for and on behalf of the fidelity fund, which is independent of the MBA.

MR PETTERSSON: Are those staff working full time on fidelity fund work or do they mix their work between the association and the fund?

Mr Hopkins: One is full-time dedicated. A number, including Ashlee and me, are part-time or shared, if you like.

MR PETTERSSON: How is the cost of services provided calculated?

Mr Hopkins: Cost of the fidelity fund certificates?

MR PETTERSSON: No, the cost of services that you provide to the fund.

Mr Hopkins: Okay; they are set independently by the fidelity fund, yes.

MR PETTERSSON: The fidelity fund sets the rates at which the association members work?

Mr Hopkins: The fidelity fund has to engage a number of consultants and service providers to do its job. How it does that, I guess, is a question for the fidelity fund. Some of those are provided by MBA. Some of those are provided by external consultants. But I think that that is really a question for the fidelity fund.

MR PETTERSSON: What is the total cost of services that you provide to the fidelity fund?

Mr Hopkins: Again, I think that is a question for the fidelity fund and would require examination of their financials, which I note are reported each year, as required by the act, to the minister.

MR PETTERSSON: I understand why you want me to ask the fidelity fund that question.

Mr Hopkins: Yes.

MR PETTERSSON: But I am asking about the services that you provide.

Mr Hopkins: Yes, I think I have outlined the services we have provided and the number of staff that we provide. We do that for and on behalf of the fidelity fund, and we have since the beginning. I will note that the fidelity fund first commenced out of a partnership between the MBA and the ACT government to respond to a crisis in the insurance industry because HIH exited the market. The idea that the fidelity fund is independent of the MBA, but that it contracts with and gets services from the MBA, was set out and agreed originally by government and MBA at the time and has operated successfully that way since.

MR PETTERSSON: Why I am so interested is that the insurance fund is not an insurance fund. It has the MBA's name all over it. My question, and I hope that we can actually get to the detail this time, is: do you know how many staff provide services to the fund.

Mr Hopkins: Yes.

MR PETTERSSON: Do you know the total cost of those services?

Mr Hopkins: We know how much our staff costs, yes, of course. As I said, it is one full-time staff member and three—four part-time staff members—or four staff members who provide part of their time to the fund.

THE CHAIR: If you are happy to do so, are you able to provide the dollar amount, which I think you are after, Mr Pettersson, on notice, because you do not have it here?

Mr Hopkins: No, I do not intend to disclose salary information or financial information about the MBA. What I would refer you to, though, is that the fidelity fund provides detailed actuarial reports, including, I think you will find, the cost of the services that it engages, to government. That information is with government, with the minister each year. I would direct you to that. I am not about to agree to disclose information about how much we pay our staff—

MR PETTERSSON: No, not at all. I do not want to know salaries. What I am trying to get to is to understand the administrative costs of managing this fund.

Mr Hopkins: The majority of the administration cost is salaries. It is providing people who provide services, yes.

MR PETTERSSON: The point is that we cannot actually find out the cost of administering the insurance fund that is not an insurance fund. There is a level of oversight that is—

THE CHAIR: But the fidelity fund, you are saying, would have that information and reports that information to government?

Mr Hopkins: Yes.

THE CHAIR: Thank you for attending today. Unfortunately we have run out of time.

MS ORR: I have actually got quite a few questions. Given that we have a break, would you indulge the committee and just stick around a bit longer?

Mr Hopkins: Yes, there are probably—

MS ORR: Is that alright?

THE CHAIR: Yes, if you are happy to—

Mr Hopkins: Happy to, yes.

MS ORR: Yes, I think get it over with—like a bandaid; rip it.

THE CHAIR: If you are happy to—

Mr Hopkins: Yes, certainly.

THE CHAIR: I will move to a question. The issue of certification is one that has

come up regularly before the committee. I think that there is a misunderstanding in the community about what certifiers do. There seem to be calls for a greater amount of certification on building sites to expand the scope of and the points at which certification occurs. Then the other issue is one of the potential conflict of interest where the certification is meant to be on behalf of the client but appears to be more on behalf of the builder. The certifier is engaged by the builder. Do you have a view of how we could change that regime to improve certification, perhaps increase the points of certification or whether this needs to be done?

Mr Hopkins: Yes.

THE CHAIR: But how do we get that conflict of interest, or perceived conflict of interest, resolved?

Mr Hopkins: Yes, I might let Ashlee answer the detail. In the first instance I would refer you to the building confidence report. It goes to this issue in detail, because this is an issue that all jurisdictions are dealing with at the moment, this issue of conflict and the certifier issue. We support the recommendations in the building confidence report. I think that that would be a good place to start around building certifiers. In terms of that conflict issue in particular, maybe you would like to address that?

Ms Berry: Absolutely, yes. At the moment the way that the contracts are worded, and also just the general perception as you have pointed out, is that the builder is appointing the certifier, even if they are doing that on behalf of the owner. Legally, it is the owner that is appointing the certifier. One of the ways that I consider that the ACT government could improve that is by educating homeowners, and industry associations can contribute to that as well to reinforce that the homeowner is the person who appoints the certifier, that they have choice in who they appoint. Whilst the builder may provide suggestions, because they have worked with company Y or company Z previously, at the end of the day it is the homeowner who has that choice.

I have been working with the EPSD on a few changes to the MBA contract to make that abundantly clear that it is the homeowner who is appointing the certifier and to put it there in black and white so it cannot be missed. Also, I understand that there are some regulations being developed at the moment by the EPSD and some government forms that will be produced to really highlight that a homeowner is the person who needs to appoint that certifier.

THE CHAIR: The reality is, though—and I have been through this personally, and certainly a lot of witnesses have expressed this—that that may be the case. The homeowner often is someone who is doing this once in their lifetime. The builder is doing it five or six times a year, maybe. If the builder is saying, “This is the person I recommend; this is the person I’ve got,” I think it is unlikely, amongst everything else going on, that the homeowner would then say, “No, I’m going with someone else.” That is just the reality of it.

We probably do not want to take certification back into government, but is there a midway point? If the education fails, if people are bombarded by contractual arrangements and they are probably more worried about what the sink will look like than with some of the detail of the contract, is there a way that we could make sure

that that nexus is broken, particularly in the circumstances of multi-unit developments where the developer is the client, not the eventual owner? Is there a way that we can have a panel or something like that, so that there is a random certifier that the builder engages, rather than someone that they have developed an ongoing relationship with?

Mr Hopkins: I think the threshold question for government is: do you support private certification or do you support government certification? If you support private certification, the issues that you are identifying are valid issues, but I do not think that the solution to them is to try to set up a pseudo-government certification model.

It comes back to our initial point: the community and industry should be able to rely on the fact that if a certifier has received a licence from the ACT government, they meet the minimum standard. There should not be a problem, in theory, about whether it is certifier A or Z, because they should all be doing the same job to the same minimum standard. If they are not, they should not hold a licence, or they should be disciplined. There should be auditing of certifiers, just as there should be auditing of all practitioners.

I take the point about the independence issue, but at the end of the day, regardless of which certifier is appointed, everyone should have confidence that they meet the minimum standard. That comes back to government having a role in ensuring that they do.

THE CHAIR: Certainly, but the point that has been made to us is that if that certifier wants to have an ongoing relationship with a builder, if they want to keep getting work and they want to keep being the favoured certifier of a builder that is doing a lot of work, it puts a lot of pressure on that certifier to then act on behalf of the builder, in a sense, rather than cause problems by acting on behalf of the client.

I take the point, but rather than having a black-and-white circumstance here, is there a shade of grey? Beyond auditing and education, is there a way that you can change the actual system in terms of engagement of certifiers, perhaps, that you have considered that stops that relationship that leads potentially to these problems?

Mr Hopkins: We have considered the recommendations of the *Building confidence* report. We support those in addressing this issue. The second point that you touched on was about the relationship and the services provided. In some cases that service is very beneficial for building quality, because a certifier can advise a builder or a developer about complying with standards, and that advice is important. Imagine if they were not receiving advice on how to comply with the minimum standards.

Getting advice from a qualified certifier—and they are degree qualified—about what the minimum standards are and whether their plans comply with them is actually a very beneficial outcome. The fact that there is a relationship that exists is not always a bad thing.

MS ORR: It has been raised with us quite a few times that there should be more hold points within the ACT certification process. Do you support that?

Mr Hopkins: Yes, we raised that in our submission. We note that it has also been

mentioned in the building surveyors code of practice, and possibly the builders code of practice. We will work through that detail with government.

MS ORR: You mentioned the broadening of licensing to include—

Mr Hopkins: Site supervisors?

MS ORR: Site supervisors, yes. How would this interact with the certifier, in your view? How would the relationship work? A lot of people who have come before the committee would probably see the role of the certifier as doing quite a bit of what the site supervisor might actually do. I am trying to get an idea of the nuances between the two roles and how they fit together.

Mr Hopkins: They would be very separate roles. Site supervisors exist now. Builders currently employ site supervisors to supervise the various trades and work happening on site. There is no formal position, and there are no minimum qualifications or experience required around what a site supervisor is; therefore the quality is variable.

MS ORR: The site supervisor is there on a day-to-day basis, looking at the process, looking at how things are put together, making sure that the quality is assured that way in the construction.

Mr Hopkins: Yes.

MS ORR: The certifier is still coming in and checking everything is being done to best practice. Is that the way you see those two roles?

Mr Hopkins: The certifier, yes, is still coming in to check that it is being done in accordance with the approval.

MS ORR: I think it is fair to say that there has been a perception out there that certifiers should be spending more time on the building site, essentially doing what a site supervisor would do. I am trying to figure out whether we change the role of the certifier or whether we look at other roles and increase those, such as that of the supervisor, and say, “No, they need to have a higher level of”—

Mr Hopkins: We think focusing on the role of the site supervisor would be more beneficial. Granted, we just mentioned additional hold points, which would impact the certifier, and they would be on site more often checking things. But they are still only on site at various points over, say, a 12-month job. A site supervisor would be there most of the time.

THE CHAIR: I may have missed it, but do site supervisors operate in other jurisdictions?

Mr Hopkins: Yes. It would be common practice that a commercial builder would employ a site supervisor, a project manager and various layers of—

THE CHAIR: In terms of their licensing—

Mr Hopkins: Yes, they do.

THE CHAIR: can you point us to a—

Mr Hopkins: Yes, Queensland has a site supervisor licence code.

MS ORR: Many of the submissions have called on industry awards to not be awarded until a period of three or four years after construction is completed. Do you have any comment to make on that suggestion?

Mr Hopkins: Not particularly, other than to say that, again, something that is often missed in this discussion about building quality is that, overwhelmingly, the majority of ACT buildings are built to a very high quality. We should not forget about highlighting the positives, because there are a number of builders out there trying to do the right thing; in fact, they are leading the industry, and awards provide one way of highlighting that.

MS ORR: Perhaps I should have provided a bit more context. The context that these suggestions have been raised in is where properties have received awards, and a few years down the track they have been shown to have some issues. The idea was, “Let’s wait and see how the building holds up before we say it’s an example of excellence.” Given that I have provided a bit more context, is there anything you would like to add?

Mr Hopkins: No, there is not.

MS ORR: Just on awards, if a situation arose where an entity was dissolved but the builder or director continued operating through another entity, is there anything that stops them displaying the awards they have won previously under the former entity? The MBA brand stands for something, you would hope; I am sure you would hope that it stands for something. If you have someone who previously had shut down a business that had issues, where there was no track record, and where they might not be a member of the MBA anymore because of that, but they are still saying they have won awards previously and using that in their new entity, is there any way for you to say, “That’s not actually okay”?

Mr Hopkins: I can probably imagine the particular case that you are referring to.

MS ORR: Yes.

Mr Hopkins: We will work through that particular case with the people involved. The only comment I would make is to say that when the awards are given, at a particular point in time, in the future we do not go back and retrospectively try to add awards or remove awards. What has happened in the past is in the past, and it is pretty common that a company might, 10 years or five years down the track, change name and change structure. We are not in the process of trying to capture every time that happens, and going back and dealing retrospectively with awards.

MS ORR: The reason I raise this is very much because it has been raised with us as an area of concern, particularly from consumers out there who looked at industry

organisations such as yourselves as a sign of quality and as an assurance that they are getting a reputable source. Granted that 99.9 per cent of the time it is fine—maybe, maybe not; who knows?—they go in good faith and think, “This person’s an MBA member, this person has an award from the MBA, therefore they must be good.” What I am trying to get to is: if you are putting your reputation on the line, and people are taking that, how can it be more rigorous in how it is applied so that consumers out there are not being misled? One of the things that you have raised is that consumers need to educate themselves. How do they get the information they need to do that?

Mr Hopkins: If they engage with us early, when they are going through the building process, we will help them through that process. There is something else that may have been assumed when we are talking about awards. Our awards are given to projects; they are not given to builders. A builder will win an award for a particular project. Unlike maybe a business award, which might be given for how the business conducts itself throughout a whole period of time, we give awards for a particular project. So even if the actual entity that creates that project morphs or changes over time, our award is still to that individual project, which probably deals with part of the issue we are trying to unpack there, in that case.

MR PETTERSSON: Recommendation 15 of your submission is:

That the ACT Government publish monthly data on complaints received, including a list of the most common building defects so that professional development training and industry training can be tailored to the most common building defects.

What are the essential elements that you think are required in publishing data or information about building defects?

Mr Hopkins: On the technical issue that the defect relates to. Other jurisdictions will publish a top 10 defect list or something like that. Again, going back to our point about information sharing, that could be a combination of defects that are reported to us, a fidelity fund or the home warranty insurance providers.

Let us say, for example, that in the last year waterproofing was reported as a top 10 defect. We could respond and say, “Okay; let us craft a training session around waterproofing. Let us understand whether it is design in waterproofing or the application of the waterproofing membrane.” We would go and educate our members on how to address that issue so that it is addressed for the future.

We have our own ideas about what those defects are, but I imagine government has a much greater pool of information about what they actually are. We all know that waterproofing is one of them, but we would like to know some of the other issues that they are commonly seeing in the audits. I imagine some of them are not even technical related. They might be around a builder’s business management practices, a complaints process or dealing with contracts, as we were talking about. If that information were provided, we would address it by providing training and advice to our members, as we have done with waterproofing.

In response, we have produced waterproofing manuals and waterproofing training courses, which we deliver to our members. Often, because we do not have a mandatory continuing professional development scheme, when we run those courses it is the good practitioners who turn up to the training courses, and probably the few who need to be trained do not attend. That is one of the gaps that a CPD scheme would fill. It would require everyone to come through those training programs so that those defects are being addressed and improved.

MS ORR: If I am right in my understanding, your idea of a continual professional development scheme is very much along the ideas of areas of weakness, for lack of a better word, that have been identified through defects that have been reported, that that is the feedback mechanism for pulling it up?

Mr Hopkins: Yes; at least a component of it. There should at least be a mandatory component in CPD where trends or common problems are addressed. That is not to say that there could not be another component where there is a degree of choice on the part of the licence holder. "I would like to do some training in this area," for example. It should be rigorous. The training should have some oversight. We are also a registered training organisation, so we know that our training has to meet federally accredited standards.

MS ORR: At our last hearing we heard from the HIA that they did not support a continual professional development scheme for industry because they believed it was the role of government to provide education as well as regulate. Based on what you have said, it seems as though your view differs a bit. Would you be able to articulate why you might see it as important that it is out there rather than government just educating as needed?

Mr Hopkins: I think it would be a combination, but as I said, using that waterproofing example, there is a big gap. We have been talking about waterproofing problems for years and years. If there had been a CPD scheme in place, that would have helped to address that.

THE CHAIR: The problem being, as you have said, that you might run a training session, but only for the members that you have, which is a small percentage, or an indefinable percentage. The good guys turn up. The problem, from what you are saying, is that we need to enforce it so that everybody turns up and everybody is part of that scheme; otherwise you are only capturing the people who are trying to do the right thing, not the 80 per cent who do not, or whatever the percentage is.

Mr Hopkins: Correct. Yes.

MS ORR: Correct me if my understanding is incorrect, but is that linked to licensing? If you do not get X amount of CDP points, for argument's sake, as a qualification towards your licence, you cannot get your licence? Is that the way you see it working?

Mr Hopkins: Yes.

MS ORR: So it is mandatory.

Mr Hopkins: Yes, mandatory.

THE CHAIR: And that training could be run by government or by you?

Mr Hopkins: I think a combination.

THE CHAIR: But the point is—and this goes to some broader point, I suppose, and you have raised it—that in the industry, the people doing the right thing are not the issue. We do not need to punish them further or make their life harder. What we need to do is capture the ones who are doing the wrong thing, who are not complying, and make sure that they are brought up to the standard. In that case, it is about enforcing, because they have to be dragged there, whereas the good guys are there willingly.

Mr Hopkins: Yes, and to unpack that a bit further, if there is a continual lack of enforcement, which there has been in the past—up until recently there has almost been no enforcement of standards in the ACT—that not only allows the bad guys to keep on doing bad things, but eventually lowers everyone's standard. If the guys trying to do the good thing—who are trying to charge appropriately, who have all the proper safety processes and quality processes—are continually undercut by those getting away with a lesser job, the whole industry eventually comes down.

Enforcing the minimum standards is as much about dealing with the people doing the wrong thing as trying to support those who are doing the right thing. We should be trying to do as much as we can to support those doing the right thing, as well as dealing with the other end of the spectrum.

THE CHAIR: The point is, as you said, that there is almost no enforcement of standards in the ACT.

Mr Hopkins: In the past.

THE CHAIR: In the past. When you say in the past, would that be a decade of no enforcement? It might be longer; it might be whatever. There has now been a change in attitude, a change in resourcing?

Mr Hopkins: Yes.

THE CHAIR: In the past few months? When did that start?

Mr Hopkins: Probably over the past 12 months there has been a noticeable increase. In the most recent ACT budget, there were 16 additional resources provided. That is a substantial number of resources, which we wholeheartedly support. Even though industry will pay for those resources by an increase in the building levy, we think that the benefit outweighs the cost. We think it is also good that some of those 16 resources—I think four—are dedicated to facing consumer education. The others are inspectors and auditors.

THE CHAIR: If we have gone from almost no enforcement, and there has now been some activity in the past 12 months, has it gone far enough? Is it at the right level? Are we going to see how that goes and then see if more is required down the track?

Are you still calling for more?

Mr Hopkins: More resources?

THE CHAIR: Yes.

Mr Hopkins: Let's see how we go with the 16. I think the signs are positive about the current approach that government is taking to enforcing minimum standards and how they are working—

THE CHAIR: So it is about right now, and let's see how it goes for a period of time as to whether more is required down the track?

Mr Hopkins: Yes.

MS ORR: I have a question based on what we have had come up today. From the previous witness and from what we have heard from you, there seems to be quite a big disconnect between the perception out in the public of what the MBA does and what the MBA actually does. In your opinion, how can that be better clarified so that people are operating with the clearest idea possible?

Mr Hopkins: There are a couple of points. I have been surprised that the committee and the submissions have focused so much on the role of the MBA and other industry associations. As we have said a number of times, it is not our job to enforce the minimum standards. That is just a misconception. It is a misconception and it also shows the failure of government in the past where consumers' only alternative has been to come to an industry association which clearly represents employers. We are not a consumer advocate group; we are an employer-builder advocate group. That shows a failing of the system in the past.

In terms of the MBA's reputation and the services we provide, that is an issue for us. We will do everything we can to make sure that we are improving the service to our members and, in turn, help their consumers. But this fixation, if you like, on the role of the MBA and other industry associations has missed a fundamental point: it is the ACT government that enforces building standards, not the industry associations.

MS ORR: As an industry association representing your members, what role do your members have in making sure there is a minimum standard met? I know you say it is the government's role to enforce it, but what role do members and industry have to come to the table to make sure that they are providing good quality?

Mr Hopkins: It is not about the members; everyone in the industry has that responsibility. Being a member of an association, you do not have any greater or lesser responsibility.

MS ORR: Point taken.

Mr Hopkins: Everyone has that responsibility.

MS ORR: Maybe I said members because that is who you represent, but stepping

aside from members and going to the industry—I guess this is where I am going with this—is the only way that government can get industry to pull up its socks to have stronger enforcement? Is there no way that industry would aim for a higher standard of its own?

Mr Hopkins: I think we have been aiming for that higher standard for years by ourselves. That is why we have been participating in all these previous reforms and reviews, calling for greater reforms. We have identified ourselves that building quality is an issue. We have said that we cannot do this by ourselves, that we need other stakeholders to work with us. Government is obviously a key part of that.

THE CHAIR: Thank you very much for your attendance today. I particularly thank you for extending your period of time to field further questions. You will be sent a copy of the draft transcript to review to make sure it accurately reflects what we have been talking about. We look forward to seeing improvements in building quality, but I take your point, and it is important, that there are a lot of very good buildings being built and we should not lose sight of that.

Mr Hopkins: Thank you.

Hearing suspended from 10.09 am to 10.59 am.

POLSEN, MR SCOTT, President, Air Conditioning and Mechanical Contractors Association ACT

CAMERON, MR JAMES, Executive Director, Air Conditioning and Mechanical Contractors Association ACT

THE CHAIR: Welcome; thanks very much for attending. This is the seventh public hearing of the inquiry into building quality in the ACT. We have already heard from the MBA. Could I make sure that you are aware of the pink privilege statement that is in front of you? It outlines the protections, in terms of parliamentary privilege.

Mr Polsen: Yes.

Mr Cameron: Understood.

THE CHAIR: Thank you very much. I remind you that we are being recorded and transcribed for Hansard purposes. Would you like to make an opening statement before we go to questions?

Mr Polsen: No, I think we can refer to the submission.

THE CHAIR: You made points in your submission about licensing and training. I take it that you see that there is a deficit in terms of trades that are licensed, and that a licensing regime would go some way towards improving quality as well as ongoing training. Could you extrapolate on both of those points?

Mr Polsen: From an industry perspective, air conditioning and mechanical services probably round out at about 12 to 15 per cent of the total cost of a commercial build, a fairly significant portion of the build.

To date only electrical and plumbing activities that are undertaken within sight of the mechanical field—that is drainage—are required to have licensing. Fifty per cent of the labour force undertaking mechanical work could be unskilled. The CIT, as it sits at the moment, does not offer a mechanical trade certificate, so there is no real pathway for us as an industry to even contemplate training. Some of our members actually use training from Victoria, which is obviously quite a costly and difficult exercise.

From the point of view of the mechanical industry, we cover design through to installation, and maintenance. When we talk about trade-specific training, we are also covering not just the installation but the ongoing maintenance. Those systems that we would like to highlight are active and passive fire systems. The mechanical field ventures well past air conditioning. It is ventilation, active and passive fire systems, medical gas systems, ventilation systems for operating theatres in hospitals, and laboratories. We are talking about really critical infrastructure. The requirement as it stands at the moment is that the installation and maintenance are self-certified.

THE CHAIR: If you are a client, a customer, how do you know if someone is qualified to do this or not? If there is no licensing regime, and you want to employ someone to put in ventilation or fire protection systems and so on, how do you check

that they are qualified or able to it? Even if they are a member of yours, there is no guarantee.

Mr Cameron: That is exactly right. There are rigorous training systems within the full members of AMCA ACT. We cannot speak for all of the companies in the industry in that regard. Given the public safety implications that Scott just mentioned, we do have some concerns that if mechanical services are not licensed in the ACT, there could be implications for public safety.

THE CHAIR: What we heard from the MBA is that, with their members, when there is a particular issue, they will run a training session, but only a percentage of people turn up. I imagine it is the same with you as well: only a certain percentage of your members will actually turn up for training. They are out there and busy doing their jobs.

Mr Polsen: Yes.

THE CHAIR: If it is not part of the licensing regime, where they are mandated to attend that training, there is no guarantee that people are—

MS ORR: You mentioned that it is self-certifying. Can you explain what you mean by that?

Mr Polsen: On the completion of a mechanical installation, we would give a certificate of compliance.

MS ORR: But the installer is the one who does that?

Mr Polsen: Yes, that is right. That is by a suitably qualified person. I read in the Engineers Australia submission that they were talking about the registration of engineers, and designing and certifying. We would support that as well. A lot of our members do go through that process of the design phase as well as installation and maintenance. As far back as 15 years ago, our business in particular was 10 per cent design and construct. That would now be closer to 80 per cent. So there is a significant shift in the market in how facilities are delivered, making sure that that is captured and that suitably qualified people are actually designing and certifying.

THE CHAIR: Can you point to a licensing or training regime in another state that you can look at and say, “That’s what we want here”—Queensland or New South Wales?

Mr Cameron: At present Victoria is the only state or territory which has licensing for mechanical services.

THE CHAIR: Do you look at that model and think, “That would work well here”?

Mr Cameron: Yes, roughly it is a good one to emulate. Some staff from AMCA ACT go to Victoria for training, because there is not that ability to do so in the ACT. Without giving blanket approval for the Victorian system—

THE CHAIR: But it is an indication of where a system is set up. Without necessarily copying it exactly, it is a good indication of where to go.

Mr Polsen: Yes. It would appear from discussions at national meetings that each state is looking into something around licensing, understanding the importance of all of the different facets of mechanical being delivered by competent people. The critical thing is that competency of not just the installer but the maintenance people.

MR PETERSSON: Could you spell out in detail what is included in these plumbing modules that TAFE providers are providing that meet the requirements for the general work that you do? What is the ultimate course offering that you would like to see offered?

Mr Polsen: That is a good question. Currently, any mechanical pipe fitter, as a trade used to be called, would be forced to undertake a plumbing apprenticeship in the ACT. That is general hydraulic plumbing, roof and guttering, which is not at all applicable to the trade. In years past there were a lot of similarities in the type of work in terms of the material usage, but with new technologies on the hydraulic side, those similarities are widening and there is a significant gap appearing. A lot of the hydraulic side is now focused on plastics and more efficient, different technologies, whereas the mechanical side is still metals and coppers; so it is welding and brazing.

As I said there are some basic competencies that are common across the two. I know from an industry point of view that, with the member companies, the people who do undertake those apprenticeships do not necessarily mind that it is plumbing because they just want a ticket so that they have something to show for their time as an apprentice. Almost all of the industry-specific training is undertaken by the businesses.

Obviously, as time goes on and those suitably trained people from when the course was present years ago start to get to retirement age, that passing on of knowledge, from an industry point of view, happening inside the businesses will become harder and harder. Newer businesses, in particular, that do not have access to some of that knowledge have no opportunity to pass down any of that knowledge because they will not have any of those people to lead that charge.

From an industry point of view, the specific training that we would like to focus on is the things that are critical, as I said, the life safety systems, and any work undertaken within passive and active fire systems. The AMCA runs a course on, for example, fire damper installations and things like that. Again, as we were talking about before, because it is not mandated training, anybody can install those systems within a building. We try to police it with certification at the back end to say that everything is okay.

THE CHAIR: On the mandated training and licensing, there is a cost with all of this?

Mr Polsen: Yes.

THE CHAIR: Are you confident, as an industry association, that your members will be happy to bear that cost because it will lift the standard and the quality within the jurisdiction? Do you accept and acknowledge that there is a cost to this?

Mr Polsen: Yes, we definitely do; and understanding that, even with licensing, there is obviously some cost and significant hardship at some point in time, especially with the adoption of a licensing scheme and proving the competency of people who have been in the industry for long periods of time. If we took a long-term view of mechanical services in ACT, we would see that, over time, if we get to 10 or 20 years down the track, if we have fully qualified, competent people operating within this area, that is the best result for industry and the public.

MS ORR: As well as suggesting that the workers should be licensed—you note particularly that there should be an appropriate CIT course—I am interested to know why you believe CIT to be the best option for this education. And do you think that more licensing training should be provided by CIT?

Mr Polsen: We have engaged with CIT over many years; they are just the natural fit from an ACT point of view. I am not saying that CIT is the only option; there have been discussions about the industry bodies trying to pick up some of the supplementary training requirements and delivering them. But as an industry association, we are not a training organisation, so that is a whole different field for us to look after.

MS ORR: So you think it is fair to say that CIT is the best place to deliver the training component?

Mr Polsen: I would think so. As I said before, there are a lot of the core competencies that they already have there. I know from personal experience that in past times we have got to the point of getting a lot of that training package up and running. And there is the facility at the CIT to teach the course. At present, I can say that there are suitably qualified people to teach the course; we just do not have the numbers because it is not a requirement to do the training.

THE CHAIR: If it became a requirement, the volume increases and it becomes sustainable?

Mr Polsen: We mentioned the ARC licence before. Estimates suggest there might be 150 mechanical pipe fitters in the industry in ACT at the moment. Our membership would be 14 apprentices within that space, and that is across the four years, which is very low. CIT dropout rates can be as low as 60 per cent. For the renewal of the trade inside the ACT, we would need to get that number higher. If you reference the ARC licence, refrigeration apprenticeships are well over 30.

MS ORR: Can you run through in a bit more detail what some of the issues are that arise from poor ventilation in buildings?

Mr Polsen: Yes, sure. Mould is the classic. Obviously, there is the indoor air quality in terms of fresh air rates. Also, obviously, there is the heating ventilation side, the heating and cooling. There is ventilation inside the critical areas of toilets and kitchens, and obviously the flammable components in kitchens. You would also talk about the active fire systems: smoke management inside commercial buildings and stair pressurisation systems in fire egress paths. We are talking about really critical

life safety systems. And that is not to mention hospitals. Obviously there are hospital gases, oxygen bedheads and—

THE CHAIR: With the sorts of things you are talking about, would you see that everybody would need to be licensed, from people doing a small renovation on a house that involves this as compared to people doing a hospital? There is a different scale. Would you have different licences? How would you approach that? Have you considered that? For example, does Victoria have different tiers of licensing or is it just one size fits all?

Mr Cameron: Just to put things in perspective for you, AMCA ACT members largely deal with non-residential. It is roughly a \$160 million market in the ACT; our members cover about \$110 million of that. There are about 1,000 people employed in the industry. It is mostly the bigger government buildings, bigger commercial buildings. Our members do not really deal so much with the residential side of things.

MS ORR: Would that include the larger multi-unit developments?

Mr Polsen: Yes. There are members who would undertake work in large-scale residential, so multi-unit. There are not very many in the straight-out domestic market of housing.

Within the unitary development there are different requirements in terms of quality outcomes that you would expect as opposed to a commercial outcome. The bigger developments you are seeing now in Canberra are well over the height limits for stair pressurisation, so they do have smoke management systems in them. There is ventilation, obviously, with new building requirements. Air tightness in unitary developments is causing fresh air issues. Canberra is a cold climate. With code compliance, you can rely on operable doors for fresh air into a unit. There are not many people who open their doors through the months of winter, but the requirement for that quality outcome is still present even in large-scale buildings.

MS ORR: Are these standards put out in the building code for ventilation? Is it a case where, because our climate zone is unique within the population, the ventilation standards just are not necessarily fit for purpose for the ACT?

Mr Polsen: The NCC does have a special section, not just for the ACT but for zone 7, which is what the ACT is.

Mr Cameron: The relevant national construction code area is section 1668, part 1, ventilation, and part 2, which deals with fire.

MS ORR: With your members, and calling for licensing, do you see that as being a case of going more towards the commercial side of it or do you think that there needs to be a licensing regime applied to the residential side of building as well?

Mr Polsen: The residential side is largely covered at the moment with the ARC licensing. A lot of the residential work that happens in Canberra would be small unitary DX style, which needs to be undertaken by licensed ARC businesses.

MR PETTERSSON: The phrase ARC licensing has been mentioned a couple of times.

Mr Polsen: It stands for Australian Refrigeration Council. It is for any work with inside refrigerants. To be able to handle the work with that equipment or to deal with refrigerants, you need to be a licensed business.

MS ORR: The ARC licensing would cover, say, a single dwelling house, a townhouse or perhaps a small multi-unit residential building whereas the work you do would be—is it a height requirement that triggers it or is it a scale?

Mr Polsen: The height requirement triggers the life safety systems. Stair pressurisation systems and so forth come in at above 25 metres in the ACT.

MS ORR: I am just trying to get an idea of where you fit in the whole process.

Mr Polsen: The AMCA?

MS ORR: Yes.

Mr Polsen: The AMCA deals with buildings like this, really. You are talking large-scale commercial buildings like this, the airport, public dwellings, the law courts, the universities, hospitals.

THE CHAIR: The big stuff.

Mr Polsen: Mostly public occupied buildings.

MR PETTERSSON: I want to get a wider feel for how licensing works. You are calling for licensing to be implemented for the workers who are installing these systems? Is that correct? You have talked about ARC licensing. ARC licensing is for the worker who is dealing with refrigerants?

Mr Polsen: Business.

MR PETTERSSON: The business?

Mr Polsen: It is a business licence, yes.

MR PETTERSSON: What is the business licence for air-conditioning services in large commercial jobs? Is there one?

Mr Polsen: No.

MR PETTERSSON: Is that a problem?

Mr Polsen: Yes. We have that down to raise as pre-qualification even, proof of expertise.

Mr Cameron: As part of the procurement process. You could have both individual

licensing and then a form of company qualification as well. Within that procurement process, it is definitely something to be looked at.

THE CHAIR: So the tradie is licensed, the person doing the job? The managing director does not necessarily need to be, but they need to demonstrate as a company that they have the requisite skills to do the job?

Mr Cameron: We would see that to be a suitable way, yes.

THE CHAIR: Not necessarily a licence, but some form of demonstration that they are able to do it.

Thanks very much for your submission and for attending today and answering our questions. You will be sent a draft copy of the *Hansard* by the secretary, to make sure that it reflects the discussions that we have had today.

Mr Cameron: Thank you for your time.

Short suspension.

POELS, MR ROGER, President, ACT Chapter, Australian Institute of Building
HARDY, DR ROBYN, National Council Representative for ACT, Australian
Institute of Building

THE CHAIR: Thanks very much for coming along today. This is our seventh public hearing. There is a pink privilege statement in front of you. Can you confirm that you are aware of that? It outlines the privileges attached to this committee. The hearings are being transcribed by Hansard and are being webstreamed. Would you like to make an opening statement?

Mr Poels: Yes, we would. I am the General Manager of Shaw Building Group, as well as being the President of the ACT chapter of the Australian Institute of Building.

The Australian Institute of Building represents building professionals in the building and construction industry and government and universities. It encourages excellence in the construction of building, advances the study of building and encourages a friendly exchange in practical, technical and ethical matters. In short, it is an organisation that supports the building professional.

Many reports and inquiries have been conducted throughout Australia, particularly over the past few years, into the quality of our built environment. With recent events in the news lately of flammable building facades and the cracking of tower structures, there has been a considerable erosion in the confidence of the construction industry in general.

The construction industry has seen major changes over the past few decades. Some of these changes can be partly attributed to the issues currently faced, and the changes have not always been for the betterment of the industry. The design and documentation process has changed from a fully detailed and documented design with a bill of quantities to a fast-tracked design and construct approach. The other changes have been the outsourcing of building inspections from the government to private, the considerable pressures on fast build times, and imported building materials not up to standard, to name just a few.

Who is responsible for quality? We are all in it together. Everyone must have some responsibility. Unfortunately, our current litigious environment will often see all the parties in the construction process as adversaries and will try to offload the risk to the other party wherever possible.

As building professionals, all parties to the process should be responsible for their portion of the risk while simultaneously being a party to a collaborative approach. This would see the best outcomes for quality as well as long-term innovation and improvement. Parties to the responsibilities for quality include the government, designers, surveyors, builders, our trade contractors and suppliers, and research organisations, to name just a few of the main parties.

While the current inquiry is focused on the ACT, we also now have the opportunity for a national discussion, and even possibly a national approach. For each state and territory to develop their own systems, guidelines and regulations seems like

duplication and certainly not a best practice model. The AIB is currently consulting with its members to develop a consensus view across the states and territories and will present this to successive governments as a plan for a coordinated approach across jurisdictions as soon as possible. We believe that a coordinated approach is the only way forward to ensure compliance, and reduce confusion and the costs of regulation.

It is interesting to note that we already have a nationally consistent blueprint to work with, the Shergold Weir report. The title is *Building confidence—improving effectiveness of compliance and enforcement systems for the building and construction industry across Australia*. You have probably had that referenced a few times.

THE CHAIR: Once or twice!

Mr Poels: Released in February 2018, it has been strongly endorsed by many industry associations as a way forward. The fact that the implementation of the report has not been taken up, either at a national or at a state or territory level, means that there is a real danger that this body of work will be swamped by the various reports and inquiries being conducted currently across the nation.

The adoption of the report recommendations would require funding in order to be implemented. However, this should be seen as a small investment compared to the potential future costs that poor quality outcomes will deliver. Thank you for the opportunity to present before this committee.

THE CHAIR: We are aware of the point about the existing reviews that are happening nationally and in the ACT. It is not aiming to duplicate but to identify where those recommendations are. I suppose we have heard very strongly that they need to be implemented. If I can go to the point on certification that you have made in your submission, you have looked at the New South Wales system, which has more hold points. You think that that is something that needs to be looked at, as well as increased audit and government inspection.

You also made the point, which I find interesting, that if that does not work, take the system back into government. That is not controversial, but it is certainly a significant step to take it all back into government.

Mr Poels: It certainly is. I suppose it is the way it was a few decades ago, and it is feeding into that clerk of works aspect of the inspectors being a lot more independent and checking the stages of the work as they are ongoing. You can possibly trace some of the erosion of the quality back to changing it out to private. I am sure our private certifiers would like to debate that a little bit more with me. Having that government inspector, where you knew exactly how they were going to look at you, and you knew that there was not any room for movement on the quality that you had to produce, was a good outcome at the time.

THE CHAIR: One of the reasons that the change was made 20 years ago, or whenever it was, was because of timeliness, that it was delaying builds in the ACT. Do you see that as a factor?

Mr Poels: I am not sure the system is such that we can now change it back to that. With the skill sets of the people that we used to have come out, they were generally experienced practitioners. To try to bring that back into government would be a difficult thing to do.

THE CHAIR: I am trying to work out whether you are recommending it. You have raised it in your submission.

Mr Poels: I think it worked well at the time. We made the changes. One of the recommendations was that it goes back to that, because it does shortcut a lot of the processes of who engages them and the independence, but whether the skill sets and the experience are there, I am not so sure.

THE CHAIR: You also raised the issue of more hold points and greater auditing.

Mr Poels: Yes.

THE CHAIR: At this stage are you saying that we need more hold points and greater auditing or are you saying, “Take it back into government”? I am just trying to get a definitive—

Mr Poels: Sure.

THE CHAIR: They are quite different approaches. Do you favour greater auditing of the existing system or are you saying, “It’s all broken; tape it back together”?

Dr Hardy: I am an AIB national council member as well as an AIB chapter representative.

To take building surveying back into government would require a long transition and training period, I believe. It also would involve a greater cost to government, because once you have outsourced that, you have given away that cost into business in industry. The issue is the conflict of interest. That is the major issue between having it in government and having it in private enterprise.

If you have more hold points, essentially what you are saying is that the certifier needs to look at something more often during the building process. But even so, a building certifier is not on site seven days a week, 24 hours a day. They do not see everything. To have more hold points is more of a safety measure, essentially, so that they could see some issues.

The old idea of the clerk of works, which was someone employed by the client, on the client’s side, represents something like superintendents in civil projects. Roads and bridges have a concept of superintendent in some of their contracts. The superintendent is employed by the client; however, they act as an independent overseer of the project. The clerk of works did a little more, I believe, in the old days than what a superintendent does now. That process would be complementary to what the building surveyor does now.

As you said before, the clerk of works has gone. It went because of this timing thing.

It was this change over time that came in the 1980s and 1990s. The fully design something and then build it concept was considered too slow. The thinking at the time was “Let’s do this design and build where we design it and build it literally at the same time.” When that happens, essentially the regulators are not seeing all of the documentation up front, not all the detailed documentation. Even the designers have not come ahead with the building.

You have a situation where you are designing as you go, so the certifier is not even knowing what is down the road. You have some level of uncertainty. Sure, it is quicker, and yes, it has worked. It works where you have a very experienced building firm and everyone on board is well aware of what they can do. Nowadays documentation often lacks great detail. It does not actually say, “Put nail here.” It often assumes that the builder provides a sort of—not a conceptual framework, but a—

Mr Poels: It is often a lot of open—

Dr Hardy: Often almost. The builder looks at it and has to interpret: “Okay. How will I actually build that?”

THE CHAIR: The government has made some changes recently in terms of the amount of documentation that has to be provided. Does that address that or do you still think it does not go far enough?

Mr Poels: That will go some way to addressing it. I think that there is a draft code of practice on the documentation that is out at the moment to look at the amount of documentation required at a BA stage, I think.

MS ORR: Minimum standards, yes.

Mr Poels: Yes. That will go some way towards it. I would be the last person to put my hand up and say that we want more regulation and more hold points and this and that, but from an industry point of view, unless you mandate a few of these things—a lot of the builders are going to do the right thing. They will have their own hold points and they will have their own inspections at certain stages that are not a regulatory requirement but are good building practice. But you also know that there are a few who are not going to do that. It is just going to be human nature.

MS ORR: On that point, when we talk about minimum standards, do you think it is fair to say that minimum standards are just good practice? Is that what we are looking at here? What is the difference? When you say minimum standards, are we essentially saying, “Go above and beyond”? Or are you saying that this is what you need to do to have—

Mr Poels: It is a good question. I think there need to be minimum standards. Whether that is good practice or not, I am not too sure. Again it depends on each of the individual companies that are doing the building work. I think there needs to be at least a line in the sand to say, “You have to at least address these items, the things that you cannot review again, things that affect the safety of the building in the longer term.”

MS ORR: On contracts, can you outline why the AIB supports standard contracts?

Mr Poels: The beauty about standard contracts—I am probably talking more about the commercial sector; I notice that a lot of the focus was on the residential side, but it is probably more the commercial aspect—is that if you have a standard contract and it is something that has been used for a while, everyone becomes comfortable with it and they know the rules of engagement. From that respect at least, when people are putting prices in and looking at how they are going to do the work, they know what they need to do and what they are allowed to do and not allowed to do. The special contracts that we sign are often a bit scary because they have been done as a one-off.

MS ORR: When you say special contracts, what do they take in?

Mr Poels: A client will engage a solicitor to do a one-off contract for them for the build. It is generally reasonably draconian; it is generally quite one-sided. You hope that the client is going to be reasonably benevolent about their application of the contract.

As far as standardisation of contracts goes, at least then all parties to the contract know the requirements, what is good and what is not.

THE CHAIR: On the standard contract, you are talking about a sort of boutique from scratch contract?

Mr Poels: Yes.

THE CHAIR: As opposed to an MBA contract, an HIA contract and so on.

Dr Hardy: Yes.

Mr Poels: Or a 2124 or something like that.

THE CHAIR: You are not too concerned about that? You would see that as a standard contract? Even though it is not a government contract, it is a standard contract?

Dr Hardy: Yes. There are Australian standard contracts, like the old AS2124, AS2000 and AS4000 models. They are designed so that they are proportional in terms of responsibility, but they also reference all the relevant legislation throughout Australia and the relevant standards et cetera.

THE CHAIR: Are the contracts that operate in the ACT by the major industry groups okay?

Mr Poels: I am not sure from an AIB perspective that we would have a lot to say on that.

THE CHAIR: You are not criticising them; you do not have a particular view?

Mr Poels: Not from an AIB perspective, no.

MS ORR: Just picking up on what Dr Hardy said, is it a case where, when looking at a standard contract, you want it to be a fair balance of responsibility and you want it to have standardised clauses.

Mr Poels: Yes.

Dr Hardy: Exactly. And they protect both sides. They protect both the builder and the client. In the commercial environment, you usually get more informed clients. In the residential sector, you get less informed clients. Contracts are complex documents, so standardisation tends to mean that you get a balance of responsibility and protections.

Mr Poels: Even with the MBA and HIA standard contract suite, the home owner who is potentially going to sign up to it can at least go to their solicitor and their solicitor can go, “I know this contract. I do not need to spend a heap of hours looking at it. Here are the things you need to look out for.” From this industry perspective, it certainly helps to have standardised contracts, yes.

MR PETTERSSON: In your submission you identify one of the major issues in the ACT as being the different quality of trade training. Could you perhaps shed some light on professional education providers in the ACT and where the issue is coming from?

Mr Poels: There are different RTOs and they have different ways that they do things. Some RTOs are better than others. Others are a bit more of a business. Others do push the training aspect of it as well. From that point of view it is often difficult, when you are paying someone to get a certificate; again you have to make sure that there is enough robustness about the RTO status to know that they will deliver the right training.

Dr Hardy: The training thing is not necessarily just about the quality of the training operators; it is also about the level of training required. We support the idea of licensing of more of the trades. Your previous witnesses were talking about licensing of services industries.

In a commercial building now, building services is an enormous part of a building: the transportation, the lifts, the data cabling, the fire safety, and that sort of stuff. The licensing regimes have not gone ahead of what is actually happening in the industry, as to how buildings are built nowadays. I do not know what the percentage of services in a building is nowadays; it is fairly large. We license electricians and plumbers, and I think we need to license a lot more of those, as well as requiring sufficient education to give that licence.

MS ORR: On the point of licensing, are there any trades in particular that you see that should be licensed? We have heard about waterproofers. Is there anything that you would like to draw the committee’s attention to?

Mr Poels: I think it is trades that potentially affect the safety of the built structure. Plumbers and electricians are already licensed, and that makes good sense. With

waterproofers, you get a certificate at the end, but who knows what happens after the certificate has been done? Something could have been knocked through the waterproofing membrane and you have some egress of water happening there and that type of thing. With respect to other trades from a licensing point of view, I am not sure that we actually went down to that level of detail. I know that when we work in New South Wales, pretty much every trade needs to be licensed. It is almost a little bit too much the other way. But when we are in the ACT it is almost not enough being licensed.

MS ORR: A better balance, yes. You also note in your submission that licensing or a registration regime alone do not prevent poor practice. What other mechanisms do you think need to be in place to prevent poor practice?

Mr Poels: It is certainly one of the planks that we need. We also need to regulate how that licensing happens. We also need to have the will to check, inspect and discipline, if need be, people who are not doing the right thing. That is really what we are talking about: people that are not doing the right thing. There are so many people who are doing the right thing; then you get more regulation for everyone else, to try to bring them up to standard. There is certainly a role for a regulator to have a look at how that licensing regime is not just operating but is constant, so that people are constantly being trained, and they are getting extra educational training as the industry changes, CPD and that type of thing. It is also about having the will to prosecute the people who are not doing the right thing.

THE CHAIR: Broadly speaking, there is a group of people who are doing the right thing, who are doing their training and so on and delivering a good product. The problem is with those who are not, and without an effective licensing and training regime and a regulator who goes out there and—

Mr Poels: Is active, yes.

THE CHAIR: enforces that, that is where the problem is. We need to really make sure that we have those three elements of licensing, training and regulating, but not necessarily increasing a whole bunch of regulation for the people who are already adhering to requirements.

Mr Poels: Spot on.

THE CHAIR: Bringing up the bottom of the system, rather than trying to keep improving the top of the system.

MS ORR: Having said that, though, it does sound like it goes across the whole supply chain of—

Mr Poels: Yes.

Ms Hardy: Absolutely.

MS ORR: the building industry.

Mr Poels: Designers—right from the beginning.

MS ORR: This goes back to a comment you made earlier, which I want to go into a bit more. You said in your opening statement, Mr Poels, that there was a lot of trying to offload responsibility to others going on. My question is: how do you stop the shifting of responsibility and get people to take responsibility for the bit that they are actually meant to be responsible for? If you can answer that, you can probably solve all of our problems. No pressure!

Mr Poels: We need to know what the minimum level of documentation is, and we require, for example, a designer to say, “This has been constructed in accordance with a national construction code,” not, “This now needs to comply with the national construction code and Australian standards.” They need to do that. When the builder comes on board with their procurement for the trades and actually builds the building, they have a lot more confidence in what they are actually constructing. They do not need to interpret too much.

It almost comes down to briefing the project: “This is exactly what we want the project to be.” The designers then need to come on board. It is about the whole supply chain. I am not just talking about the construction phase; it is at the end as well, the handover to the client, making sure that all the manuals are handed over for the construction, so that they know exactly what has gone where. One of the recommendations of the Shergold Weir report was having a better level of documentation, or documentation handover.

MS ORR: You noted in your submission that you opposed architectural engineering degrees being considered as appropriate qualifications for building licences. Can you briefly clarify that for me?

Dr Hardy: That is essentially because their education does not educate them on how to build. If you look at their degrees, often they might be about art history. Essentially, they are not educated throughout their formal education in actually how to build.

Mr Poels: We actually helped with a submission recently in New South Wales, because we do a lot of cross-border work. It was quite interesting to read it. They listed the architectural and engineering degrees and the units that they study, and there is not a lot on construction technology, how to set a site up, how to run a site, how to manage, how to procure, how to do contracts and those sorts of things. That is really what your A-class licence holder, who has a construction management degree, focuses on.

MS ORR: It has been raised with us, including by the architects and the engineers, that there should be licensing for their professions. Am I right in my understanding that, while there should be a licensing scheme for them that goes to what they do, you see that as being separate from a building licence?

Dr Hardy: Yes.

MS ORR: But you are supportive of them having a licensing—

Dr Hardy: Yes, absolutely. Essentially, we support engineers being licensed because they are part of the structural side and the hydraulic side. They have a specific role in the building processes, as does the architect in terms of designing. Even what they are doing at the moment, in terms of documentation, needs to be regulated and required. When they do a drawing, it says, “This will be according to Australian standard such-and-such.” So the builder will do that. At the moment they are not necessarily educated in the national construction code. The limitations in those degrees are, we believe, an issue that should be looked at.

The Australian Institute of Building accredits building degrees in 13 universities throughout Australia. The University of Canberra is one of those. I have been lucky to be an adjunct professor at the university and I have seen a number of the degrees at other universities. We look very carefully at what is being taught. Residential building is taught, commercial building is taught, tall building is taught, services, and project management. It is quite a broad and comprehensive four-year degree that is accredited for building construction. That is what we believe should be the type of degree that requires a licence and years of experience on the job. To actually get experience on the job, you might need to be at least five years in the industry to get even three projects under your belt. We just do not believe that architecture degrees, as they are now, and engineering degrees, as they are now, are sufficient to provide—

MS ORR: For a building licence?

Mr Poels: For a building licence; that is right. We strongly support that they are licensed in their specific area of expertise.

MR PETTERSSON: You identify phoenixing as an issue in the construction industry. Do you have any specific recommendations on how the ACT could address it?

Mr Poels: That is probably more the residential sector. Just to backtrack a bit before I answer the question, a lot of the commercial builders have been well established in the ACT, so from a phoenixing point of view, that is not too bad. It is possibly more about the multi-unit residential sector. They might set up a company just to build a block of units and then shut the company down. Is that phoenixing? Is that smart? There is nothing technically wrong with doing that. In the residential sector it is a bit more rife.

As to a recommendation on how to get away from it, I am not too sure. It is a lot less regulated than the commercial industry. You have a lot more individual clients who are doing the builds. Probably one of the best things would be to say that if a company closes down for any reason—liquidation or anything—we make it a bit tougher for those individuals who had responsibility, whether they were directors or even just partners, to be able to get a licence again.

THE CHAIR: It becomes part of the licensing process?

Mr Poels: Yes. I know there are ways and means around it: you can get wives and whatever else. That has been a problem as well. If you are bankrupt, you can be up and running again in just a few years time. When you talk to the people who have been on the receiving end of that, who have been owed hundreds of thousands of

dollars and who see the person who was bankrupt still living in their castle and driving in their flash car, they are going, “There is something wrong with the system there.”

I think there needs to be something a bit tougher for the people who are involved in a company that has folded, not allowing them to start up again within a time frame or whatever, and hitting them on a building licence as well.

THE CHAIR: This is a generic question. How does the AIB differ from the other industry groups?

Mr Poels: We do not represent parts of the industry or the industry; we represent the people of the industry.

Dr Hardy: The person, the profession.

Mr Poels: The professionals of the industry. We are not driven by a particular segment, if you like, of the industry, like a lot of the others are. We are for the professional builder. It is about the personal development and professionalism of that professional.

THE CHAIR: So you are much more involved in the technical, regulatory process of building?

Dr Hardy: Yes. Roger is a member of the AIB as a person, as a professional, but his company could, for instance, be a member of Master Builders.

THE CHAIR: I see, yes.

Mr Poels: We are members of a couple. There is the chamber of commerce.

THE CHAIR: You are probably a member of three or four of them?

Mr Poels: Yes, that is right. Each has a very good role to play, to my mind, but AIB is a bit different in that respect. It is for the individual.

THE CHAIR: I see.

MS ORR: You raised the issue of dispute resolutions in your submission. In your opinion, how would mandated alternative dispute resolution improve the rectification of defects and building issues?

Dr Hardy: The issue with defects is that there are scratches, there are defects and then there are catastrophic things like in Sydney and Melbourne et cetera. You have to draw a definition around what you mean by defects. There is always a defects liability period at the end of the build. When handover happens, really good companies handle that very well by meeting with the client, walking through the site, pointing out defects and having a plan to correct them.

Disputation arises when the client and the builder disagree on whether something is a

defect or not or on who is responsible for the defect. That often happens as a result of unclear lines of responsibility. For instance, a waterproofing issue or something like that might come out a couple of years down the track. Then the client is wondering who to ring. They would normally go straight to the builder. The builder then has to have recourse to the subcontractor who actually did that work. Then you get into an often litigious situation about who does what and when, and how much.

In contracts there are often written standard clauses which say, “This is how disputes will be handled as a first process.” Eventually it ratchets right up to the courts.

At a meeting this morning, we were talking to a colleague of ours thinking of doing some research at the university in relation to defects. We do not think there are statistics in the ACT which say that this is how many defects there are or this is the level of defects in buildings that there are, and what does that mean. If you have a standard process that people can work through, generally that helps to guide that process. It does not stop it happening, though.

MS ORR: When you say a standard process, is that essentially an evaluation at some point in time that checks a certain number of things to make sure they are working? Or is it more of a resolution—

Dr Hardy: A dispute resolution process occurs when the dispute has arisen between the parties.

MS ORR: Yes, when two parties do not agree.

Dr Hardy: Yes. Generally, rather than resorting to fist cuffs or going to court, mediation processes tend to bring about a better solution to things. It is often about clients not understanding processes or understanding their responsibilities as well as the builder. So standard processes help, and the only way you can build them in is through the contractual process or through some regulatory mechanism.

Mr Poels: Going to the courts is never a good situation for anyone. Once you have gone down that road, you are both in a world of pain and, as they say, there is generally only one winner, and it is neither of those parties.

MS ORR: When you say an alternative dispute resolution process, it is something that keeps it out of the courts?

Mr Poels: Almost a mandated mediation before you go to court, to say, “Have you guys actually sat down.” It is in contracts sometimes.

Dr Hardy: Not always.

Mr Poels: But it is often a bit of a lower limit on the contract. Also, contracts do not always get followed. Someone might just go straight and—

Dr Hardy: The better process is to ensure, during the construction process, that you have these hold points, checks and balances or something like a clerk of works or building surveyors who are far more attuned to the work. It is still possible, because a

building surveyor is not there all the time, but if you had that during the process, you would get fewer defects by the end. And I mean real defects, not scratches.

THE CHAIR: Thanks very much for your submission and attending today. You will be sent a draft copy of the *Hansard* so you can check that it reflects our discussions today. That concludes our hearings for today.

The committee adjourned at 11.58 am.