



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)
MR M PETTERSSON (Deputy Chair)
MR D GUPTA

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 28 AUGUST 2019

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 20 May 2013

The committee met at 10.27 am.

RUSSELL, MR JONATHAN, National Manager, Public Affairs, Engineers Australia

WILSON, MR MAL, Director, Advanced Structural Designs

THE CHAIR: On behalf of the committee, welcome. Thank you very much for coming. Thank you for your submission as well. I draw your attention to the pink privilege statement that is before you. Can you make sure that you are aware of what that says. I remind you that the proceedings are being recorded by Hansard and are being webstreamed. There will be people tuning in online from Brussels. Are you comfortable with the privilege statement?

Mr Russell: Sure.

THE CHAIR: I invite you to make an opening statement if you wish to do so.

Mr Russell: Thank you for inviting Engineers Australia to be here to give evidence. As part of the opening statement, I want to provide, for the record, a very basic outline of Engineers Australia, the two roles of the organisation and the context of our submission.

Engineers Australia is a professional body with individual members—not company members but individuals. We have about 100,000 members around the country and some overseas. We cover all engineering disciplines. It is not niche for just the building sector; we have those operating in space, aviation, infrastructure and the whole gamut. The organisation operates under a royal charter. The royal charter is to promote the science and practice of engineering for the benefit of the community. So the community is our primary constituent, if you like, although we have engineers as our members.

The main business of Engineers Australia is the setting and maintaining of professional standards. The two key ways we do that are by accrediting all undergraduate engineering programs in the country and by maintaining a voluntary register for engineers. It is voluntary because there is an absence of regulation in most jurisdictions, so we have provided our own.

My role with Engineers Australia is National Manager, Public Affairs. I manage a team that looks at a wide range of public policy issues. One of our key areas of interest is building quality and the role that engineering standards play in that. I am joined by Mal Wilson, who is a very valued member of ours. He is the owner of Advanced Structural Designs, a Canberra-based engineering company. It is a small but highly engaged firm that has been in the majority of forensic investigations of buildings that are suffering from poor quality in the ACT.

A simple example that I think everyone knows about is the Elara apartment complex. As a member of Engineers Australia, he has been on the Canberra division committee, a member leadership committee in the ACT for the organisation, and is currently on the Structural College Board. That is a group of our members that specialise in

structural engineering. Being on the board means that he is widely recognised amongst the membership and the community as a leader of structural engineering.

The scope of our evidence, as reflected in our written submission that we made last year, is around the reforms that we think need to be made through the building ministers forum process, and the role that registration of engineers can play in that. Also, especially with Mal here, you can hear about ACT real world examples of building quality, or lack thereof.

Mr Wilson: There are some things that I would like to come out of this. I think the emphasis in the past has been more on what the issues are—the squeaky wheels like, “My unit is leaking,” or “My balcony is leaking.” And, sure, we do a lot of work on that. I employed a guy for almost eight or nine years who was almost exclusively doing those kinds of things. My concern is not that and has never been that. There are a lot of issues I could talk about. Everyone talks about, “We need to train this,” but most of the issues are on the drawings. You show me a set of drawings, if you have any. Sometimes there are no drawings, in which case I would say, “Yes, you’re going to have a leaky balcony.” A lot of times when there are drawings, I can look at the drawings and say, “Yes, that balcony is going to leak here, here, here and here.” It is that simple.

The level of documentation is a really important thing if we are going to nail it down. I do not think the emphasis has been enough about engineers getting together with hydraulic consultants and architects and saying, “Okay, you’ve got the low points here but my balcony is going to sag,” or “My balcony is going to lift up because it’s short compared to the back span and we’re going to have problems,” and solving those problems as a team, on the drawings, before it even gets there. There has not been enough emphasis on that. The other point is that most people are talking about these things which in my mind are little. I worry more about: is this building going to collapse? Is it properly fire rated?

I made a few notes of things that I wanted to get across. One was the lack of an auditing system, how the government does not know anything. The government is so ignorant of what the problems are, because we have to wait for a building to have a problem. A good example would be the building I am working on at the moment, where there are pretty major cracks, eight-millimetre cracks in the basement, in some of the slabs. People are saying, “This doesn’t look normal.” So we go down there and look at it, and I think we have about 40 props in that basement at the moment. It is not normal and it is a problem. It is not just my opinion. I have taken recently to getting academics from universities to give a second opinion, to say, “Yes, I’m sure this really does need propping,” because it stops a lot of knee-jerk reaction from people like developers and builders saying, “Let’s sue him. Let’s get rid of him and get him conflicted so that the body corporate now will have another engineer who’s a mate of mine who’ll be much more friendly.”

These are serious problems. That building in particular is a good case study. I said to the body corporate, “Do you want me to check this building for everything—audit the building?” It is a hard ask for them to say yes to, because they say, “What are the ramifications?” and I say, “I could find a lot of problems. The building may have to come down. I’m not saying it will; that would be an extreme case. But you’re inviting

scrutiny of your building. Is that what you want?" So they quite rightly say, "No, I don't want that. We've got problems here that we can see. We want you to deal with those."

A little bit later on in the process we were asked to come and look at a balcony that was going to be deconstructed. A few engineers turned up and they were looking at the balcony and saying, "Forget about fixing the leaking issue. This balcony is coming off the walls that are supposed to be holding it up. This is a life or death situation. Get some props under it now." So we then looked at that issue. The ferrules that are holding these things up—which the code says have to be ductile, have to fail in a ductile manner, which means there is some give associated with each one—are actually failing brittlely. They are not allowed to do that, and they have got that through the building. In just a few phone calls around the industry I heard, "Oh yeah, they're doing that everywhere in Canberra." The code says you cannot do it, but that is what is happening there.

These things are failing one at a time on the building. But to see how that is failing and how the load is getting there, I need to run some runs across the building slab to make sure how much load gets to the balcony. When I do that, I am finding punching shear problems in the columns. Punching shear problems are when the whole slab goes through the column and leaves the column standing. These are not out by a factor of 20 per cent or something; they are twice the load that they should have. So that is a huge problem. But to see those problems, I also start modelling the balcony and what contribution the balcony has, and the balcony does not have enough shear reinforcement in it or does not have ductility in the shear reinforcement.

What I am trying to get to here is that this building is full of problems. The consultant who has done this building has been, historically, doing 30 per cent of the buildings in Canberra. This is what we are faced with, whether it be Elara or this building or whatnot. The government needs to know. The government needs to have something in place where we check five per cent, 10 per cent or whatever—maybe apartment buildings more, because apartment buildings are fundamentally different to everything else that is constructed.

THE CHAIR: This is a sort of engineer/auditor that would supervise what is being done through the certification process. Is that what you are saying?

Mr Wilson: There would be a lot of different ways of doing it. Everyone does their own thing. But some councils now in Australia will send out 10 per cent of the buildings that come through. They choose someone from an independent panel and say, "Audit that and tell us if there are any problems." It just means the government is constantly aware of what is going on.

THE CHAIR: So your impression is that the government has been absent from this whole process in a sense, that there is—

Mr Wilson: Completely. The government has no clue what goes on. I spoke to someone from the auditing team who go out and look at problems recently. I was discussing the fact that a number of building sites around town had stopped for about a month while a particular company was audited, and when those cranes started

swinging again, suddenly they were doing a whole lot of fix-up work. Throughout the industry, people were talking about that every second day. But I rang someone in that auditing team a month after it happened, and they knew nothing about it. It is like they live in a little bubble where they do not really have access to the information, which makes me sometimes think that maybe there should be compulsory reporting of things outside.

There is compulsory reporting of problems with buildings being constructed. But with buildings that have been constructed and problems start to manifest themselves, if that is an apartment building then it is just a different world to everything else. It just goes into secrecy. I am called out and people say, “Yes, we need to find out what the problem is. But let’s just fix it. Just get somebody in to fix it.” The last thing you want is the government to know. The last thing you want is the papers to know. The last thing you want is anyone to know, because that all affects the value of the units at the end of the day.

THE CHAIR: Going through your submission, it seems that your concern is that a whole bunch of recommendations have been made—Shergold and Weir and others—that the government has not enacted.

Mr Wilson: That is true.

THE CHAIR: So they are tardy there. There is a failure in regulating and sending out people to audit, to be aware of what the problems are. So they are two things that need to be addressed that one could see as quite simple: implement some of those recommendations or all of them, and get more auditing and inspections—get more active in the process. But, beyond that, you see the need for more engineering expertise, particularly in that process where you have certifiers who may not be qualified to understand perhaps some of the structural issues. They have got, through their qualifications, a limited skill set, you are saying, and if engineers are not part of that process they are just not going to know whether something is going to be structurally sound. Is that what you are saying?

Mr Wilson: That is a problem. It is a problem I would probably like to talk about separately. My problem day to day is more the government’s inability to administer the regulations. There are a lot of regulations that need to change, but it is their inability to administer the regulations that are there. When I come in and someone says, “We’ve got a crack in the building. We think this is dangerous,” the first fight I have is to get drawings. By law, all drawings have to be with the government and have to be on file so that I have access to them, so that everyone can be made safe as quickly as possible.

I have got copies of letters here that I have sent to Gordon Ramsay and others in past years saying, “Can you please get your house in order?” because they are not checking that any drawings are there. Certifiers are not putting in the right drawings. They are sometimes putting in drawings that are illegible. They are sometimes putting in drawings that are just insane. I have got copies here of just a couple of drawings, to show you an example, where they have got a big certifier stamp blotting out half the drawing, so you just cannot read it.

THE CHAIR: The government recently announced changes to the documentation requirements. Are you across those?

Mr Wilson: Yes, I am across them. They are still missing the boat in some respects. They are saying, “We think we need more documentation up front than we’ve had.” But what I think is that you need a full set of work-as-executed drawings. You need to include the shop drawings of everything—that is the shop drawings of the steelwork, the shop drawings of the concrete, the precast. Take a job that I am working on today. The allegedly work-as-executed drawings that were produced by the structural engineer bear little resemblance to what they actually built, because the shop detailer came back and said, “I don’t want to do that; I want to do this,” and then the engineer allegedly signed off on it and said, “Yeah, you can do that,” but never reflected it back in his drawings.

THE CHAIR: So the government is provided with a set of documentation and then someone makes a decision to basically change significant aspects of that.

Mr Wilson: All day, every day, yes.

THE CHAIR: There is no requirement to then get agreement from anyone that that has changed? They can just submit what they like and then build something completely different. Is that what you are saying?

Mr Wilson: I am saying that is what they do; I am not saying that is what should be happening within the system. But I have certainly got names of people within the government who have sat down with each other and decided that they have a policy that when it says in the legislation “all plans” they have interpreted that as “a couple of architectural plans”. That is coming from the top down. Certainly people who are working in the plan room in the department are pulling their hair out. They are saying, “People are coming in here asking for drawings for really important reasons. We don’t have them. Sometimes we’ve got none.”

I had a 16-storey building I went to look at in Belconnen where they did not have a single structural drawing, and it was new. Then they had to go begging, and the developer sits there and says, “We want to give you the drawings, but maybe we’ve lost the drawings.” You have got to deal with that on a daily basis. We have had developers and builders come to us and say, “We’ll give you the drawings but you need to sign an affidavit to say that you will never sue us for anything that’s on these drawings.”

THE CHAIR: So you think that as part of the DA process all plans, not just a limited set but basically all plans pertaining to that building, need to be provided to the government.

Mr Wilson: That is right. You do not get a C of O unless somebody in the government has checked off that you have work-as-executed drawings of everything.

THE CHAIR: And then someone in the government, presumably with engineering qualifications, can look at that to see if they meet the requirements.

Mr Russell: Even, importantly, the eventual owners, like the strata corporation 20 years down the track or whenever it is when problems start arising, should have the comprehensive as-built drawings. The Shergold and Weir report has a recommendation—I think it is No 20—about having a building manual. That is essentially a way to describe what Mal is talking about: having the owners have actual drawings of what exists in front of their eyes, not the concept drawings of what was intended before anything was built.

Mr Wilson: I have spoken to people within the department and they say to me things like, “You don’t have to worry because the strata management act says that all of the drawings need to be given to the body corporate.” That is the most hilarious thing I have heard in a long time, because the strata manager for the body corporate is normally appointed by the developer, and they are appointed specifically to make sure that that never happens. They never ask for all the drawings, and if you do not ask for all the drawings and you do not get them, you cannot get them later on. Also, under the legislation the penalty is not \$5 million or \$2 million; it is nothing. So the actual number of times that the body corporate knows that they should be getting the drawings or asks for them is almost zero, and even if they asked they probably would not get them.

If the body corporate knew what was good for them, the first point of order at the first meeting would be to sack the strata manager who was just appointed by the builder. They are often locked into five-year contracts, and that is a very hard thing to do, but the strata manager is quite often the same person who is selling the units on the next development and the next development after that and they are going and telling the builder every single thing that is happening at every meeting. To try to disguise that a bit, they have now started to change the name to some other name, but the same person still owns both companies. The poor mums and dads are lambs to the slaughter, because they do not know what is going on.

That needs to change, and it changes by the government doing their job and saying, “This regulation that we already have is important. We’re going to check that you give us all those drawings.” That changes everything, because suddenly engineers who know that their drawings are never being recorded, know they are cutting corners and know they are not quite finishing their drawings are suddenly thinking, “Jeez, we might be held to account now, because our drawings actually have records in the department,” which is something that has not been happening.

THE CHAIR: Is there a recommendation in Shergold Weir that says those documents and plans should be provided to the government?

Mr Wilson: It is not that clear. It does not get down to that level of detail. I think that is the problem with Shergold Weir; it is good in terms of its principles, but unless you nail down the details of those things then it all just gets lost. I am not sure how this happened in our government, because it does not happen in a lot of councils. Some councils are very strongly engineering focused. Their chief engineer is running the show and they just say, “Mate, this is what we are getting. If you don’t give it to us, all hell’s going to break loose,” whereas we tend to be run by a bunch of administrators with not that much background in actually understanding buildings and how they work. I think that changes things a lot. Here it is more about perceptions

than it is about action.

THE CHAIR: So at the moment someone might submit documents, but because the person looking at them is an administrator they are just happy that they have got the documents, as opposed to actually having an engineer look at them and say, “These documents are junk.”

Mr Wilson: A beautiful example is this one I have here. This is a document I showed to somebody in the department and said, “This is the sort of thing we’re getting.” They looked at it for over a minute and said, “What’s wrong with that?” I said, “Well, it’s completely covered by a stamp and that particular drawing, of about 50 drawings, tells you what all the symbols mean on all the drawings. So you don’t know what any symbols mean on any drawings because someone has put a stamp over it. That’s what is wrong with it.” It is not that they do not in the department have people who could do the job. Some of the people down in the plan room are excellent and they do understand drawings and they can read drawings. They have got a problem with that area in that there is a big throughput, so a lot of people cannot. But they have people and they could certainly employ people who could do that job, and it would be the most valuable money that the government ever spent, just making sure that they had good records of what was constructed.

MR PETTERSSON: One of the most common issues that has been raised with us is an issue with waterproofing in the ACT. In your submission you talk about some of the causes of that. Could you expand on that? What is causing all these waterproofing issues?

Mr Wilson: I talk about a few different issues. One is who is making the decisions. Again, this comes down to a very important distinction. With apartment buildings, the person making the decisions as to how good this building is going to be, how reliable it is going to be, what the maintenance costs are going to be and everything else, is not an owner—is never going to own any of these. Well, they might own them in the short term but in the long term, within two years, they are gone. They might all be sold off the plan. So the person who is making the decisions and saying: “We’re going to use this particular product here and we are going to do it this particular way, so we’re using cheap products. We’re using cheap form and construction. We’re not going to worry too much about the falls. We’re not going to get a hydraulic consultant to design anything. We’re not going to do proper drawings. We’re not going to; we’re not going to; we’re not going to.” is the developer.

Developers have come to me in the past and said they are going to do a floor in a particular way. I say, “That floor has to be waterproofed; we cannot do it that way.” They just say to me, “Mate, there are plenty of engineers around. I’ll go and find someone who will.” I just say goodbye. I am not doing that to people. But fundamentally it is not that developers are bad people at all. No, the developers are just like you and me, but we have created a regulatory regime in which, if you want to make the most money out of the system then you make it in a certain way.

There are interesting things going on in the paper, in that they have come back and defended themselves in a lot of ways. People are sometimes annoyed that developers will set up a two-dollar company to mitigate risks on the job. People are saying that

that should not be happening, because obviously that is unethical or whatever, but it is just the regulatory regime. It is what they are allowed to do. They are just doing what they would normally do.

Accountants and other developers have come out and said that that is a legitimate way of mitigating risk for them, because that is how they control it. What I am saying is, sure, but if we shut that down, they would find a new way of mitigating risk, and a new way of mitigating risk might be associated with building a decent building in the first place. If you have got good engineers together and good architects to do excellent documentation, and you have a good builder who has a decent margin to do the job, and you are paying a certifier and telling your certifier he needs to turn up here, here, here, here and here and he needs to have structural engineers certifying this, this, this and this and inspecting it that way, that is another way of mitigating the risk. It is a beautiful way of mitigating the risk, because everybody is happy.

That is the argument that should come back: “We understand that you have a legitimate way of mitigating risk at the moment, but here’s a better way. Here’s a way where everyone walks away happy. At the end of the day, if these buildings cost five per cent more and had better documentation, I think everybody would be happy. I think the punters would pay five or even 10 per cent more to have a building that does not leak, that is structurally sound, that just works.

THE CHAIR: The problem is how you can know that when you are buying it. If you are in a market and there is an apartment that looks as good as the one down the road and one is 10 per cent cheaper, how do the mum and dad investors or owners understand that one has better engineering?

Mr Wilson: That is an excellent question. That is what the regulatory regime ought to be about. Because we are now auditing a percentage of structural engineering drawings, now all engineers are going, “Hang on a minute. I can lose my licence here in the ACT. Okay, I’ll go and operate in New South Wales.” But the aim of the Institution of Engineers, and everybody, is to have good regulation around the country so that if you get knocked out here, you get knocked out everywhere, and so that mums and dads can be assured that every engineer is trying their hardest.

I have talked to the engineers who have failed, and failed miserably. It is not about, “I didn’t understand the code.” It is not about, “I didn’t know that that regulation existed.” In the past they have been pretty much just making stuff up to get the edge over another consultant, because builders like the way that is cheaper to do. Another issue is that some of the engineering companies have had a history of rebirthing their companies as well, because that mitigates their risks and they are allowed to do it. Again, you can do things about that. These same engineering companies are working on government jobs. If the government said, “Hang on a minute. If you rebirth your company, you can’t get another government job for 10 years,” or something like that—

THE CHAIR: You said at the outset that it is the engineer that is registered, as opposed to a company. Is that right?

Mr Russell: Yes. I want to jump in there about what Mal is saying. The potential is

there to have a system where engineers know that their licence is on the line. But in the ACT there is no requirement for engineers to be registered to practise. Queensland requires all engineers in any industry, in any area of practice, to be registered, and has done for 80 years. Victoria last night passed in the upper house a bill to require engineers across the five dominant areas of practice in any industry to be registered. New South Wales is heading that way. We are working closely with them to introduce registration, at least for the building sector. There is a high risk in the ACT, if it does not come good in its commitments from 2014 to introduce registration for engineers, that this is where the dross is going to end up.

THE CHAIR: Talk to me about the commitment from 2014.

Mr Russell: In 2014—was that when the bridge collapsed? Was that when it happened?

Mr Wilson: Yes. We did one of the investigations into the Barton bridge collapse, but there were a number of reports—I think six reports, written by—

THE CHAIR: Is there a commitment from government? Where is that?

Mr Russell: There was a bridge collapse on the Barton Highway. As a result of the investigations into that, recommendations were made about registering engineers. At that point, the government of the day committed to: “We’re going to do this. We’re going to register engineers.”

THE CHAIR: Do you know where they committed to that? Did they commit it in a response to a report, or—

Mr Russell: I believe that that is correct. Further to that, for the last two territory elections, the commitment has been remade. Not in this year’s territory budget but the previous year’s, there was a line item put aside to further the registration of engineers. We have not really seen much action.

THE CHAIR: So we have had about four or five years of promising to do something. Can you get me, if it is possible, the original 2014 commitment—

Mr Russell: Yes.

THE CHAIR: just so that we can track what was actually proposed. It sounds like we do not need to reinvent the wheel; we just need to do what we have already said we were going to do.

Mr Russell: It is in the ACT’s interest, I think, to make its registration scheme marry what is happening in Queensland—we see that as the model—and to make sure that the requirements are the same so that people can travel and operate especially across borders.

THE CHAIR: Would it not be more sensible to do what is happening in New South Wales? Or is New South Wales governed very—

Mr Russell: We are giving the same advice to New South Wales. We want everybody to start modelling their system on—

THE CHAIR: And is that what they are doing? The reality for us is that a lot of builders—we have heard from people—will do stuff in Googong and will do stuff in Molonglo. Adherence to the same requirements makes a lot of sense, I would have thought.

Mr Russell: In New South Wales, I am unsure of their commitment to the breadth of their registration requirements as to which particular engineers need to be registered, but we can be fairly confident that they are going to make the criteria to be registered match Queensland's, so that if you are registered in New South Wales it is going to carry across to Queensland. I think it is reasonably safe to say that if they introduce registration it will meet the same benchmark quality.

THE CHAIR: You say that Queensland registers everybody; other jurisdictions have limited numbers. Do you think that needs to be all engineers?

Mr Russell: Yes. The Queensland model is what we promote. We recognise that your inquiry is about building quality and that for a lot of jurisdictions at the moment building quality is the real concern. But that is just an area of engineering practice which is in the public light. Engineers are involved in almost everything, and an awful lot of it is safety critical. It is just that the building sector has the most uninformed purchasers, like the mum and dad apartment owners who do not have a—

THE CHAIR: What other examples of engineers are you talking about?

Mr Russell: Good examples we have been using in Victoria are things like farm silos, which are engineered products, collapsing. The engineers who work on those are now, because of the bill that was passed last night, going to be required to be registered to practise independently. Digging pits in built-up areas to enable the development of an underground car park—things like that.

THE CHAIR: But still relating to construction.

Mr Russell: Yes. In Victoria they are also requiring mechanical, electrical and civil engineers. We talked about the Barton bridge collapse. That would not be covered by the building sector; that is civil infrastructure, which New South Wales at the moment is not proposing to include in its requirements. That is a fantastic example in the ACT of how it is not just apartments that are facing some issues; there are major infrastructure problems. It might take a long time for issues to manifest themselves, as Mal has mentioned, but a thing like a bridge—if that collapses when you are driving or walking across, that is a big deal.

MR GUPTA: Mal, you were talking about the auditing. Who are the auditors? Are they internal or external?

Mr Wilson: I am not suggesting any particular model of auditing. I have certainly spoken to people who have systems in place where they have a panel of five or six who they think are eminent engineers and they send it out to one of them. Some have

a panel where three people look at it, spend a few hours. In a lot of councils they already have a lot of expertise in house. Councils are good at doing the bread-and-butter stuff, which is: “Do my house footings comply with the Australian standards?” You would think the answer in the ACT would be, “Of course they do,” but in fact they do not.

It is an area that we are not talking about here much, because it is not one of the things that make the paper, but you quite often find that if a structural engineer wants to get a lot of work with builders then they will say, “We won’t comply with the codes; we’ll let you do a floating slab and strip footings on an M-class site.” That would be a good example. That is cheaper to do. Then that engineer will start to get all of the builders in town, so he will be driving flash cars and doing really well for himself but not complying with the code. The people who take the risk then are the mums and dads.

In the ACT it is running through an apartment where no-one knows anything, no-one ever checks and it is all good until I have written a report. Then maybe they will get taken to court, or maybe they have rebirthed twice since then. But in a council it is all full of engineers. They look at the drawing and say, “Mate, this is rubbish; you can’t do that,” send it back, send them a bill for \$500 and say, “Do it properly.” So it is a completely different world. Here we are just a bunch of administrators, but in a little council they know what they are doing at that level, where they are only talking about houses.

MR GUPTA: There is no audit trail of the documentation or—

Mr Wilson: In Canberra, actually, houses at the moment are running better than apartment buildings, quite a lot better. But still I would say that 20 per cent of the time if I want the drawing structure or drawings for a house they are not there. Generally, if people are not complying with the codes they will be pretty keen not to have their drawings on file, and since the government does not check, there is a good chance that they are not there.

MR PETTERSSON: You said the inspections of structural items should be carried out by practising structural engineers and not certifiers. Why?

Mr Wilson: That is an excellent question. I always look to have examples, because I do not want to talk so much about the principles. But I guess the principle is that it is what we do for a living. Sometimes it is quite complex. Sometimes we know what the really critical issue is, and sometimes a certifier does not.

In terms of examples, there was in O’Malley a retaining wall that had leaned over about 10 to 20 degrees off vertical. The certifier did all the inspections by themselves. I said to the certifier, “What the hell did you inspect? I’ve looked at the reinforcements and they’re miles out of position.” He said, “I checked that the numbers of bars were correct.” I said, “As a structural engineer, here’s our checklist. There are 17 things on that checklist. The first one, and the most important, is that they are in exactly the right position, because if they are 30 millimetres out of position that wall is going to be leaning over.” These in that particular wall were about 50 or 60 millimetres out of position. The certifier said they didn’t know that. That is just one example, but certifiers really are out of their depth.

I have been on jobs with certifiers where the certifier is checking the reinforcement and saying, “I think they’re missing a few bars over here.” I look at his drawing over his shoulder, because I am thinking the job is excellent, and I say, “Sorry, mate, but north is that way and we’re on a different floor, and that is the bottom reinforcement, not the top reinforcement.” It can get that bad. I am not saying all certifiers are that bad, but it is what we do all day, every day. When we look at a set of drawings, we are looking at what we designed. We are looking straight at the critical elements in that drawing and saying, “These two bars have to be there.” If they are not there, the building comes down.

Certifiers are looking at a drawing and saying, “I think this needs to look like that,” and trying to match the two. It is a very different thing. I do site inspections for other engineers from time to time when they are out of town. I do not go around and look at whether what is on the drawing matches what is being built. The first thing I go around and look at is whether what is being built makes sense to me as a designer. Is there a mistake there? I am not as interested in whether it matches the drawings as I am in whether it works, whether it makes sense, whether there is a problem there. So it is a very different inspection.

THE CHAIR: We could probably go on for a while, but we have to leave it there. Thank you very much for your attendance today. You will be sent a draft copy of the transcript, of the *Hansard*, for you to review to check that it accurately reflects the discussion here. I remind you that you have volunteered to try to find the advice from government that they were going to—

Mr Russell: When do you need that by?

THE CHAIR: There is not an urgent rush. If you can get it in the next week or so, that would be good. If you cannot, that is fine as well; just let us know.

Mr Russell: Thank you. I will get you an answer.

Mr Wilson: Just so you are aware how close that was to happening, they actually had two meetings and went out to the Institution of Engineers and met us. They told us that this was happening. They gave us a hard date and said, “This is when it’s going to happen. This is what it means for you.” Then they kind of wandered off.

THE CHAIR: The secretary is doing some digging as well, so he may be able to find it.

Mr Russell: We will see who gets there first.

THE CHAIR: Thank you, gentlemen.

O'MARA, MR JASON, ACT Divisional Branch Secretary, Construction and General Division, CFMEU

SMITH, MR ZACHARY, ACT Divisional Branch Assistant Secretary, Construction and General Division, CFMEU

THE CHAIR: Welcome. Thanks very much for attending today and thanks also for your submission. Please confirm that you have seen and are aware of the pink privilege statement that is before you. Just indicate to the committee that you are aware of that. Before we go to questions, I invite you to make an opening statement.

Mr O'Mara: With regard to building quality, I appreciate the ability to come and have a conversation and try to put our point forward around where we think the issues are in the construction industry across the ACT. In our submission we looked at three main areas: occupational licensing, building surveyors, how defects get repaired and issues around there being no money left in the tank when buildings have been done and the contractors run off and open up a new company. I do not know whether we need to put in an extra submission, but we would also like to talk about the potential for the licensing of developers, which is an interesting concept which may help to hold the people who have the real impact on how things are done to account.

THE CHAIR: I want to go to the issue of trade licensing. You have raised that. A number of people have raised that. Have you looked at models from interstate? Other states do that. I think in New South Wales most of their trades are licensed, and so on. Do you have a view as to which model we should try to emulate? Is it New South Wales? You have got a bit of a list in your submission. Do you think that is a starting point, or do you think that is the end of it?

Mr O'Mara: I think it would be a good starting point. New South Wales currently require all their trades to be licensed. They are a pretty strict regime. In Queensland, they have more of a key trades sort of occupational licensing. We also understand that Victoria are currently in the position where they are licensing trades as well. I think it would be a good start. We are the laxest territory or state around at the moment as far as occupation licensing goes. We think it would go a big way towards improving the quality.

THE CHAIR: Start with the list that you have proposed and then take the next step from there down the track; is that what you are saying?

Mr Smith: The Queensland model is probably the most detailed, the most substantial model of trade licensing, and occupation. But the position our branch has taken is that there are a number of key trades that should be licensed first, as a priority, and then we can look in the future at expanding the scope of trade and building licensing. We have identified some of the trades that we think are key priorities in our submission. That is the approach, I believe, that is being proposed in Victoria too: a number of key trades and then we look to expand further from there.

THE CHAIR: Moving on to the proposal to license developers, have you got a concept of how that might work? That is not happening anywhere else at the moment interstate, is it? I am not aware of it.

Mr Smith: No, it is not. So that would be an original concept here in the ACT. The proposition is pretty basic, from our perspective. The people with the most skin in the game, the people that actually have control, whether it be contractual or economic control, of a building project ultimately are the developers. They set the time frames. They set the budgets for the job. They also derive the most profit out of any building development, generally speaking, so it stands to reason that they also should be held to account or have some sort of obligations and expectations placed on them.

We talk a lot about trade licensing, which is important. The registration licensing of builders is also important. There has been a lot of focus on that. But it seems that there is a missing link, in that at the top of the tree or the top of the supply chain there is not much focus or much attention on how we hold developers to account. So it is new but it is entirely in keeping with the economic structure of the industry.

THE CHAIR: What about overseas? Are you aware of any models overseas where they do that, in England or America or—

Mr O'Mara: No, we are not. To supplement Zach's answer on the proposal, the industry is changing pretty rapidly. We are seeing a whole lot more involvement from developers. They want to have a far bigger say in the process. They originally select the builder, so the quality of builder they select sets the precedent for how the job is going to be done and how the building works are done. They set the budget for the builder. If they are hiring a builder who has a bad track record or uses terrible trades—unqualified trades and the like—again you are going to the building certification and the surveyors and all that. You are starting right from the top to raise that quality down to the bottom.

Ten or 15 years ago, a developer would come in and say, "Here's a budget. Here's a builder. Off you go. Go and build me the building." Now they want to have an input into trades, into materials, into all sorts of stuff. We are seeing far more often with the developers around town and around the country that they want to have more input. As Zach mentioned, they have got really no skin in the game, only their financial interest. But the fact is that if they can cheat or game the system by using cheaper quality products or cheaper quality labour, which gives us a worse outcome, it means that they increase their profits. So sometimes for the dodgy developer—there are pretty of good ones out there, but for the ones who are not doing the right thing there is a real incentive to cheat.

MR PETTERSSON: On the topic of property developer licensing, what are the key elements of a licensing regime that would make it successful?

Mr Smith: What we have proposed in terms of the obligations of any registration scheme—and as Jason said, we are happy to submit a secondary paper outlining these for the committee—is obligations around developers setting requirements or time frames on the job that are unreasonable or lead to unsafe or poor building practices, where the developer says, "I've engaged this builder but now I'm going to set a time frame or impose conditions or requirements on that builder," which leads to either unsafe work practices or otherwise just breaches of commonwealth or territory law. That was a main component: that if the developer selects a builder they then cannot

impose requirements, time frames and whatever conditions on that build that lead to substandard practices or unlawful practices. That was a main one.

The second part of it was about the actual nature of the developers, their legal structure and having enough money to build the project and money being held in a trust account that then can be used to service the debts with the builder and subcontractors and ultimately service any defects or rectification works that need to be undertaken, so consumers and businesses know that when they engage that developer there is enough money there to service any of the foreseeable liabilities, whether it be for trade work or rectifications.

Some of the other conditions that we looked at too were obligations around misleading and deceptive conduct in advertising; around requiring builders to use certain trades or certain subcontractors, where those trades or subcontractors might not be fit or are substandard, for lack of a better term; and around public disclosure of where they are receiving their finance from to build that project. That gives the consumer some confidence and gives the trade some confidence that when they engage with that developer they know that there is a secure source of credit.

THE CHAIR: So basically you are saying it is like a project plan and a finance plan?

Mr Smith: That is one way of looking at it, yes.

THE CHAIR: So you can actually see that what is being proposed is reasonable and sustainable.

Mr Smith: In terms of time frames, money and the whole package, yes.

Mr O'Mara: You also find a lot of people using this job's money to finance the next job's money. That is where you have the gap in payment of subcontractors and trades. Again, that forces them to cut corners to get jobs done, because the money not being there puts a lot of undue stress and pressure on them.

There is not one magic bullet to fix the build quality issues. But if you can get some decent developer licensing stuff in, you can quarantine the money so that it is paid to the people who do the work. The occupational licensing comes in so that you increase the skill. At the moment, only the licence holder or the contractor needs to be licensed or have a cert IV in the trade. All the workers underneath do not have to. So you can certainly get a lot more cheap and unskilled labour if that is the way you want to go. You then have the quality products. So the people doing the right thing compete against the other ones.

Then you put all those things together, as well as the certification issues. We feel there can be some sort of conflict there where, if you are working for the same people and they are paying you to certify all their gear, they can put an undue amount of influence and pressure on you to sign off. We continually see areas in the building process where people are signing off, whether they are doing it over the phone or from a photo or they are just putting a little note in saying, "That needs to be fixed," and there is no checking or anything. That happens because the people who pay the bills are the people who you are signing off on it.

THE CHAIR: Yes, and that has been raised with us before. Short of taking it all back in house, which is one option, have you got a view of how you could actually try to break that potential conflict of interest?

Mr O'Mara: In house would be the gold standard for us. If you did not go in house, some sort of cab-rank system where you are basically lined up at the rank and you have got that job and that job, and you could not do the same builder every time—they could not select you if they got selected—there would potentially be a reasonable outcome, but not as good as having it in house.

THE CHAIR: One thing that has been proposed, regardless of whether that comes to fruition, is increased auditing of certification. As a first step, you would support that?

Mr O'Mara: Yes.

THE CHAIR: I am not sure that that is the solution you are after. But as a first step, increasing the—

Mr Smith: Increase the frequency of visits that the certifiers make—is that what you mean?

THE CHAIR: Increase the government auditing, the work that certifiers are doing, to make sure that they are actually doing their job.

Mr O'Mara: Yes. We have noticed it happening around the industry over the last six to eight months. What we are finding when they are checking them is that we are seeing as a result that people are not doing the right thing. There have been a number of high-profile jobs around town that have had issues around DAs and how they are building and what they are doing. That probably shows that a higher profile for government inspectors will make a difference. But, as I said before, a whole suite of things need to be done to fix the issue.

THE CHAIR: Some of the feedback we have been getting is that there has not been a lot happening for many years—the government has been inactive; it has not been enforcing the regulations—but of late there has been a flurry of activity. Is that mirrored by your experience on the ground: that there has not been a lot going on, but of late the government seems to be taking a greater interest in what is going on?

Mr Smith: There has certainly been a pick-up in activity in the past period of time. That, I suppose, is reflected by the fact that the government employed, or put on, a suite of new building inspectors, and they have certainly hit the ground running.

THE CHAIR: They are out there?

Mr Smith: If the public attention that some of these issues have got is anything to go by, then, yes. But, as a general proposition, more independent certifying, more auditing from the government, greater oversight of the process—any increase—is going to be welcomed by us.

THE CHAIR: I am aware that your members would let someone know on a safety issue, but if they see something that they just know is not right in terms of build quality, do they have a mechanism to report that?

Mr O'Mara: From time to time members will ring up and say, "You should see what's happening out here. This isn't right." There is no formal process around the build quality mechanisms these days. But our members generally are reasonably skilled and they know what should and should not be done. A big one we get a lot of the time is around concrete pouring and pouring of slabs, where there is a real push on the time frame. If you do not get your concrete poured on the day you have booked in, you can have a real delay in your project, so you see a whole heap of time cutting. A whole heap of trades get pushed to work in circumstances where there is concrete being poured, while the slabs are being finished off, and the certifiers are on the phone saying, "We'll give you a little list saying to fix it." That is probably the biggest one where we get notified. From a safety perspective we will go down and do what we have to do. But the build quality and the safety—some of those things overlap.

THE CHAIR: If you see something that is not necessarily a safety issue but is a build quality issue, do you then report it to Access Canberra? What action do you take?

Mr Smith: There have been a number of occasions where it has fallen into building defects or building quality issues and we have engaged with the building inspectors inside the ACT government. We do not have a formalised process. We are primarily focused on the safety issues. But if there is something, as you say, that cannot be dealt with by WorkSafe or by the safety regulator, then, yes, on occasion we have dealt with the building quality inspectors.

MR PETTERSSON: One of the big issues that keep popping up is that building quality issues only emerge years after the completion of the project. Are there any ways that people can predict when building quality issues are going to arise?

Mr O'Mara: I think it is pretty hard to predict when they are going to arise. Sometimes it is a long time after. The issue, I guess, is: if the issues arise, how do you fix them? The way that a lot of company structures are set up and either developers or builders are set up, they quarantine the money in one job. Once the job is finished they have a little bit of time, wait until after the warranty is over and then shut the company down and move on. So there is no-one to go back to.

The developers are similar. They get the money out, they put it in one little quarantine spot and, as a body corp or as a purchaser, it is very hard to get. I am not saying that this is an industry-wide issue, but there are pockets of the industry, the same ones who are doing the wrong thing with building quality. They do not have any assets left in their accounts to fix the building quality issues if they arise down the track, and it is a business model for some of them.

Mr Smith: Just on that, going back to the licensing or registration of developers, what that does create is a capacity to hold someone, an individual or corporate entity, to account, long after the project has been finished. If there is some form of registration that they need to maintain to continue develop, you now have a mechanism to hold someone to account after the residents have moved in.

What you see is that there is a specific account or a specific corporate entity set up for each building project; that is not an uncommon practice across industry. So if there was a form of registration for individuals as well as corporate entities then that would create a mechanism for the government, or for home owners, to hold someone to account and at least get some rectifications paid for after the event.

THE CHAIR: You have also recommended a scheme similar to New South Wales—

Mr Smith: Yes, building bonds.

THE CHAIR: where there is an amount that is held for a period of time. Have you looked at that? We have certainly heard that before. Do you have a specific amount, in terms of percentage and time frame, that you think is appropriate? Do you think they got it right in New South Wales as a starting point?

Mr Smith: We thought the New South Wales scheme was worth having a look at. We primarily are looking at it from the point of view of trades and subcontractors that we deal with. But one of the issues that keep getting raised with us is that, like Jason said, the account is often dry and there is no money to be found after the event. So we proposed that something that this committee could look at is the building bonds scheme in New South Wales. To say whether they have got the amount right or whether people have accessed the scheme there, you would have to test that with the New South Wales government, but we just put it up as one option that this committee could look at.

MR GUPTA: On upskilling, you suggested that there should be mandatory training for all certifiers. Who is absorbing the cost of that training? Is it the government or is it the building certifier for the refresher training?

Mr Smith: Generally, if you are doing upskilling or refresher training, you would have a certifier cop that themselves. Part of the cost of having a certification would be keeping it up to standard.

MR PETERSSON: In discussions earlier today we heard that there has been an increase in activity from the government in terms of building quality. That has largely been in response to a lot of media interest and an increasing number of issues in the community. Has there been a change in the construction industry in previous years that has led to these issues?

Mr O'Mara: I think there has been awareness over the last few months. There have been a number of high-profile build quality issues in New South Wales. There are two major projects there with structural defects where residents have been put out of their homes. So I think now everyone is having a much harder look at what is happening. For the layperson on the street, you purchase the biggest purchase of your life in a new house or unit. Part of it is about not being qualified to know if everything has been done right when you buy it. You are taking a lot on trust. Even when you get someone in to do your inspection pre handover, you are really looking at aesthetic issues, not so much structural issues. So there is a whole heap of expectation on the builder and developer to have done that right. The issues in Sydney, I think, have

really jumped out at people and made people a whole heap more aware of the things that can go wrong if it is not done properly.

MR PETTERSSON: Is it the case that we are building different buildings than we used to and there are more defects in these modern buildings? Is it the case that the people building these buildings have changed or is it that the way construction companies are building has changed?

Mr Smith: One of the things we have noticed over the past number of years, in terms of the way the industry has changed, is time frames. It is not just cost anymore, in terms of how the builder might be selected, in terms of getting the best value for money. There is also a major factor now of building it quicker than anyone else—and there is obviously an economic pay-off there in terms of getting the number of sales settling sooner, paying back whatever loans you have to your financiers quicker. But we are seeing more and more that time frames are getting more and more compressed. Jobs that might have once been 24-month builds are now becoming 12 months.

Canberra is in a massive apartment boom; that is certainly true. There are still new suburbs being constructed, especially out in Molonglo Valley and out in Gungahlin, where it is traditional housing, but we are seeing in Canberra a lot of apartments. We are also seeing the constriction of time frames. Like I say, projects that were previously so long are now being condensed by factors of 25 or 50 per cent. We have said for a long time that something has to give when you look at those sorts of time frames that are being imposed on builders. There is only so much productivity you can get out of the labour force, or out of a project, over that period of time.

Going back to your first question, the earlier question too, in support of what Jason is saying, I meet on a weekly basis with builders and property developers in the course of my job. I think that in the last 12 months one thing we have seen is a change in attitudes, a sensitivity to building quality issues and a realisation from a lot of the major builders and developers that they have to get it right.

This is happening to the point that, talking to some developers and builders, they are now trying to market themselves not necessarily as the cheapest apartments available on the market but as a high level of quality, or giving warranties and guarantees. We know a number of builders, in fact, who are trying to market themselves in that space: “We will give additional warranties,” or “We will guarantee the quality of our work. We will make sure that you are not necessarily paying the cheapest price but getting better quality work.” So we are seeing a change in industry attitudes, but obviously the competitive nature of the market means that there are people who are going to go for the lowest price as well.

Mr O’Mara: I just might add a bit about when you talk about the time frames and how they have compressed. Everyone—all the builders and the subcontractors—is out there looking for a competitive edge as to how quick you do it, how quick you can build it. So they are using different building products and they are trying to design things closer to the bone—less reo, less concrete, less everything—and I think that is having a massive issue around some of the defects we are having. It is a real race to be able to do things quicker. The less you put in, the quicker you can build it. And the less it costs you, the more profit you get. So that is a major factor which is

contributing to all of the quality issues we are having.

THE CHAIR: Thank you for coming today. You said that you might be able to provide an additional submission. We would be happy to take that, but just be aware of the time frames. You are now the last people before the government, who are appearing on 4 September. So if you have something ready to go, we would be happy to receive it, but it would need to be in the next week or so.

Mr Smith: We could provide something in the next few days. We have something prepared already.

THE CHAIR: That is great. You will be sent a copy of the draft transcript to review and make sure that what is in the *Hansard* reflects what you said. Thank you very much for appearing today, for the submission that you provided and also, in anticipation, for your next one as well. Thank you.

The committee adjourned at 11.33 am.