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

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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

WITNESSES

Privilege statement

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Amended 20 May 2013

The committee met at 10 am.

RAMSAY, MR GORDON, Attorney-General, Minister for the Arts, Creative Industries and Cultural Events, Minister for Building Quality Improvement, Minister for Business and Regulatory Services, and Minister for Seniors and Veterans.**Error! Bookmark not defined.**
SNOWDEN, MR DAVID, Chief Operating Officer, Access Canberra, Chief Minister, Treasury and Economic Development Directorate
GREEN, MR BEN, Construction Occupations Registrar and Executive Branch Manager, Construction and Utilities, Access Canberra, Chief Minister, Treasury and Economic Development Directorate
PONTON, MR BEN, Director-General, Environment, Planning and Sustainable Development Directorate
BRADY, DR ERIN, Deputy Director-General, Land Strategy and Environment, Environment, Planning and Sustainable Development Directorate
MORRIS, MS VANESSA, Coordinator, Building Policy, Environment, Planning and Sustainable Development Directorate

THE CHAIR: Good morning, minister and officials. Thank you very much for attending today. We have you with us for a couple of hours, so I appreciate the time that you are taking out of your busy schedules. This is the final public hearing of the Standing Committee on Economic Development and Tourism inquiry into building quality in the ACT. Firstly, I draw your attention to the pink privilege statement. Could you indicate that you are all aware of its contents? Thank you. I remind you that these proceedings are being recorded, transcribed and broadcast. Based on media reports, I am fairly sure that you have an opening statement, minister.

Mr Ramsay: I do indeed.

THE CHAIR: If you would like to go to that, the committee will then go to questions.

Mr Ramsay: Thanks very much, chair. I appreciate the opportunity to appear before the committee today to discuss the work that the ACT government is doing to strengthen regulation and to improve building quality here in the territory. I want to acknowledge the traditional owners and pay my respects to elders past, present and emerging.

As you will have experienced in previous hearings, the policy area is complex and it is multifaceted. It contains a wide range of stakeholders, all of which drive particular agendas, often seeking different outcomes. I want to assure you that, by contrast, the government has one agenda, and that is to ensure that the ACT has the highest quality buildings in Australia. In pursuing our agenda to improve the quality of buildings here in the ACT, I do expect significant pushback from industry, but, as I have said before, we cannot allow industry to reform industry.

I want to say on the record that part of my role is to ensure that we provide the right tools to the regulator—to be a tough cop on the beat, in relation to building quality in the territory. As the Minister for Building Quality Improvement, I want to assure members of the committee and the broader public that the government's message is

clear: building compliance and practices must be improved, building policy must be improved, and industry education, participation and adherence to the policy and regulatory space are paramount.

Given the complexities of the area of the building and construction sector, I want to take the opportunity to reiterate at a high level the framework around the outcomes that we are seeking to achieve as part of the substantial reform work that we have here: firstly, improving building policy and increasing compliance measures; and, secondly, providing better access to justice outcomes for consumers when problems do occur. It is that framework that has allowed us, and continues to allow us, to develop and implement a number of substantial reforms in the ACT's building and construction sector for the betterment of industry and consumers. These reforms will set the parameters for high quality design and building and training practices across the ACT.

Our current reform agenda, which is by no means a small agenda, has already seen significant reforms introduced and implemented. As promised, we completed a substantial number of the reforms in the last financial year. They included new minimum documentation in the information guidelines for building approval applications for new or substantially altered apartment and commercial buildings, a new code of practice for building surveyors, builders licence exams for class A, B and C builder new licence applicants and licence renewals, and a new guide for nominees of corporate and partnership licences to help them to understand their role and obligations. There is a new requirement that, for any agreement for a builder to act as the landowner's agent, to appoint the building certifier and to apply for approvals for certain residential building work, they must be separate from a building contract.

At present, 29 of the 43 reforms from our building regulatory review have been completed, and the rest will be completed over the remainder of this financial year. Upcoming work will include consultation on alternative dispute resolution models for disputes about residential building work; licensing and accountability measures for people designing and building, as well as people contracting for off-the-plan sales; and insurance and other protections for clients and building owners, as well as for the security of payment issues. We will also be completing our reform program while working with colleagues nationally on specifically national reforms.

The government is continuing these reforms to make sure that we have an effective regulatory framework. However, while the government has a role to play, the responsibility for quality must ultimately rest with industry. They are, after all, as industry representatives have reminded us recently, the ones who carry out the physical building work.

In addition to the regulatory reforms, I have also worked to improve education for both the community and the industry. In June this year I launched the build, buy or renovate website. That site is designed to make it easier for consumers and businesses to access important information. The website outlines the obligations and the rights for builders, developers and consumers when they are considering whether to build, buy or renovate in the ACT. There are easy links that detail compliance and dispute resolution processes for consumers, as well as the disciplinary register and a register of licensed practitioners.

In addition to this, the government has increased the levels of enforcement and compliance activity around the territory. This year the ACT budget allocated an $8.9 million investment for eight new rapid response officers, to boost capacity for up to 1,000 additional building inspections across the ACT per year.

There is no room in the ACT for those in the industry who cut corners, who deliver poor outcomes or non-compliant work, those who flout necessary approvals or who fail to rectify issues that might emerge. I believe those issues have been well covered, with several high-profile building sites shut down for noncompliance and existing buildings requiring rectification works.

As part of my statement today, I am pleased to announce that the government is continuing a series of legislative reforms to support our work and to make sure that the framework operates effectively. The proposed legislation contains a number of changes that are designed to crack down on dodgy builders. The legislation will give industry and consumers more information and tools to progress rectification work if a building does not meet the standards that Canberrans rightfully expect.

Importantly, it will introduce provisions that make directors of licensed corporations personally liable for financial penalties and for requirements to rectify as a result of regulatory action under the Construction Occupations (Licensing) Act and operational acts, including the Building Act. It will propose additional options for our independent regulator and other regulatory officials to address issues of noncompliance. They include powers for building inspectors to direct builders and landowners, as well as provisions for court-enforceable undertakings in relation to rectification work and powers for the registrar to issue a rectification order if they are made aware of a relevant breach of construction legislation within six months before the 10-year period in which the order can be issued expires. To better inform the community, new provisions will also allow our watchdog to publish information about stop work notices.

Part of the ACT's comprehensive building regulatory reform program is to consider the expansion of rectification and other relevant powers to allow orders to be issued to people who are closely associated with an insolvent or a disappeared corporation. We have all seen instances where building corporations have produced substandard work and, when they have been legitimately called to account, they have wound up and they have left the cost of the rectification to the owners.

We have acted on the matters that fall within the responsibility of the territory. There is clearly an additional responsibility that lies with the federal government to reduce the negative impact of phoenixing within the building and construction sector. We know the consequences for building owners and for the reputation of the industry when people fail to meet their obligations and fail to act fairly. Our changes will go a significant way towards remedying those practices.

I can assure you, chair and members, that we are doing what we can to eliminate dodgy players from the construction sector. We are doing what we can to ensure that Canberrans live and work in the highest quality buildings. As I have said on multiple occasions, if you are a builder or a developer in the ACT and you do the right thing,

you are very welcome in our construction sector. However, if you do the wrong thing, we will seek to remove you from the industry.

I am pleased to have in attendance with me people from the EPSDD, who oversee the policy work in the government in the area of building quality, and people from Access Canberra, who oversee the regulatory side. Alongside my colleagues from both directorates, I am very pleased to take any questions that the committee may have today.

THE CHAIR: Thanks very much, minister, for your opening statement. At the outset I want to make a bit of a summation of a lot of the evidence that we have heard, and this is from a lot of the stakeholders that you have probably been checking as well—industry groups, unions, experts in the field. The view seems to be—and I characterise it as this—that there has been a recent flurry of activity in terms of accepting recommendations from previous reports, government-initiated legislation, as you have just announced today, and resourcing of bodies such as Access Canberra and people who will enforce those regulations. Let's say that this big flurry has all happened in the last six months.

Submitters to this inquiry have said that, prior to that, for a period of over a decade—15 years or so—the tough cop on the beat that you talk about has been absent, enforcement has been either weak or non-existent and the recommendations that have been put forward to government from various reports either have not been introduced or only a very small portion of them have. I note that you say that 29 of the 43 are now being introduced. I think when the committee was established that number was much smaller. It was about 13. Equally we have seen the resourcing in the budget.

The first part of my question goes to not what is coming forward—and I note all these recent recommendations—but to all those defects that have happened over the last 15 years, all the problems that we have got, where government was notified in some cases of a particular incident and did nothing or was notified about the systemic issue and did nothing. In what way are the government responsible or indeed even culpable for those defects that have been happening on their watch over the last 15 or more years?

Mr Ramsay: To the extent that you are asking about issues of culpability, which carry the implication of a legal liability, the determination of any legal liability is a matter for the courts. If at any stage a court determines that there is a responsibility, a legal responsibility, for the ACT government, that is clearly a matter that will be dealt with and adhered to at that stage.

In terms of the broader matter of work, the role of the government is to ensure that there are the right frameworks of policy and also the right frameworks of regulatory action. What we have seen over recent years across the nation is that it has been recognised in every single jurisdiction that the issue of building quality is something that is present in every jurisdiction. We have not shied away from that and we are committed to ensuring that our work is to lift the quality of building and to make sure that our regulator is active, is strong and is enforcing matters.

I am happy for officials from Access Canberra to talk, in a moment, about the work of

the regulator not only recently but in previous times as well. That is our responsibility. We take that very seriously.

THE CHAIR: This is not old ground for the sake of it. This is old ground because those defects now exist. There is a real problem out there for a lot of people—and we have heard from people who are going to be out tens of thousands of dollars, who are going to be ruined financially because somebody has not been doing their job. It would appear that there are builders at fault in many cases but the regulator—it has been asserted to us by numerous people—has not done its job. I guess that the flurry of activity recently goes to that point.

What does the government do now, retrospectively, to say, "Yes, we were asleep at the wheel"? What are you going to do about that? Are you going to just deal with it case by case, as it comes up through the court, or do you accept and acknowledge that you have a stake in this?

Mr Green: I say at the outset that I was only appointed to the role of Construction Occupations Registrar just over 12 months ago now. In terms of going back in the past, I am aware of some matters and some that have been ventilated in front of this committee. I think one of the things that have changed recently is the public narrative around what has occurred. I would suggest that over the last 10 to 15 years the public narrative around building quality has not been as excited, I suppose, in terms of the actions that are taken.

There is certainly one example that comes to mind that, yes, is still an outstanding issue where there was significant action taken. There were directions to the builder, the builder surrendered their licence, never to be licensed again, and there was Supreme Court action taken civilly against the engineer of the property. All building certifiers now have to get that engineer's work peer reviewed. There was a process to commence a rectification order for that particular entity, only for that entity to wind up in a phoenix company.

In addition, there is a lot of work that occurs outside the regulatory enforcement side of things. I understand that in that particular matter there were some civil negotiations that led to an offer being put that was ultimately refused. To make an assessment that there has been nothing done I do not think is a fair assessment. There were certainly, historically, a number of orders that were issued. There have been a number of negotiations that did not end up in fanfare and in the media that got results and got buildings fixed.

I think that, from now, I have three clear priorities as the regulator, and they are: engagement with citizens, rapid response and industry education and engagement. With those three pillars, that is what we are trying to achieve in our regulatory space now.

THE CHAIR: Are you confident that you have now got the resources to get out there and do the sorts of proactive audits and inspections that are necessary? There is never going to be a perfect world, but have you got enough resources to do the job?

Mr Green: I think I have enough resources to do the job. I think this comes down to

what we are actually trying to achieve in this regulatory environment. What we are trying to achieve is a behavioural change, above everything else. That can manifest in a number of ways. That can manifest in people in the industry understanding what their technical roles and responsibilities are. When you look at any regulated entity there are going to be people that always perform and always comply, there are going to be people that try to the best of their ability to comply and there are going to be people that choose not to comply.

From my perspective, we need to be targeting specifically those people who actively choose not to comply and also the people who do not comply because they have failed in their obligations—those that fail to take the responsibility to get things fixed.

I think you have seen recently a number of regulatory actions manifest. There have been orders issued, there have been projects that have been stopped, and that sends a clear message to industry that we are not here to stuff around. We want to be on the front foot because, above all else, we are here to protect citizens and we want to make sure that the places in which they live, work and raise their families are safe. That is why we look at citizen engagement. We want to be out there quickly.

We established the rapid regulatory response pilot team last year. That is now being funded by government. That enables our inspectors to be out there within five working days of receiving a complaint. That did not happen previously. Government has invested in that side of it. It also frees up our construction audit team. There has been an audit capability. Again, there has probably not been a lot of public narrative around what that looks like, but our audit program includes things like assessing building certifiers.

There is a new code of practice, which the minister mentioned—my colleagues from EPSDD might want to talk to it in a bit more detail—that sets straight what the obligations and the expectations are for building certifiers. That is one example of educational material for not only industry but also members of our community to understand what to expect from building certifiers.

The other key issue on our audit side, and what manifests through complaints, is documentation. The government implemented minimum documentation requirements, previously for single residential buildings a number of years ago and more recently for the multi-unit buildings. That, again, is a signal to industry that this is the minimum expectation that we require. That touches on things like engineering requirements. It touches on things like architectural aspects. It also touches on the importance of continuity of design and moving away from the blame game about who is actually responsible.

Frankly, it all starts with planning. If you plan right, if you design right and if you have appropriately skilled people undertaking the work, appropriate supervision by licensed builders, that is the start of a recipe for success. There are a number of builders around the ACT that do that. Equally, there are a number of builders around town that do not. I do not know whether my colleagues from EPSDD want to expand further on the code of practice and the minimum documentation requirements.

THE CHAIR: Just before we do that, can you provide the committee with a copy of

your audit program that you referred to, deleting particular buildings or whatever it might be?

Mr Green: Yes.

THE CHAIR: If you can provide that over the last three years?

Mr Green: I would need to go back because, as I said, I only came to the role just over 12 months ago.

THE CHAIR: I assume that there is an audit program that exists.

Mr Green: Yes. We can look at what the audit outcomes were.

THE CHAIR: Over, say, three years or four years or whatever period you have got?

Mr Green: We can look at the last three years. In terms of the audit program for this year, some of the areas we are targeting—and clearly we are not going to be in a position to say which builders we will be targeting—certainly will be things like weatherproofing. That is a matter that has been raised in front of this committee; it is a matter that is subject to complaint from an Access Canberra perspective.

Compliance with building approval plans is another. We see and we have seen, with the stop work notices that have been issued and publicly discussed in the media, that the fundamental issue of not building in accordance with building approval plans is an issue for some of our builders out there. That is on our audit program.

Another concern—and this is mainly in the single residential sector—is exempt development, developments that do not require a development approval, and some concerns that are raised by the community with Access Canberra. The main program that we will have going forward, now that we have got a code of practice for building certifiers, is an audit against that code of practice of what building certifiers actually are doing.

THE CHAIR: Do you want to add to that?

Ms Morris: We can talk to it. The code of practice is one of the reforms, but the reforms actually started earlier than the current reform program. A series of legislative reforms have been rolling out since 2013 to give the regulator the power to do what they need to do, as well as to do things like expand statutory warranties and give people civil protections.

When we looked at our framework for building regulation, certainly the concepts for stage inspections and responsibilities for building certifiers were there, but there was a lot of discretion as to how those were being applied. The code of practice does a number of things, one of which is to outline quite specific general obligations, and they are really to enforce that the role of the building certifier is to act in the public interest.

There are also some specific requirements around building approvals and stage

inspections, and a minimum number of things that they need to inspect and look at, at those particular stages. They set that benchmark for what people should be expecting and for what people know that they should be doing. Part of that is to inform people about their role. Also, part of that is to show that theirs is one of the roles in the building system, not the whole role. They inspect certain things that they can visually verify. There are other responsibilities on builders, and we are currently consulting on the builders code of practice about what they need to do at particular points in the building as well. These are things that set the benchmark and the minimum obligations and make clear to industry what is expected to reach those mandatory requirements.

MS CHEYNE: Where is the code of practice? Did you say it was publicly available?

Ms Morris: Yes.

MS CHEYNE: Where is it?

Ms Morris: It is on the legislation register and there is a link to it on our website.

MS CHEYNE: On the Access Canberra website?

Ms Morris: On the build, buy or renovate website.

MR PETTERSSON: Why are you proposing new laws to introduce director liability for construction companies?

Mr Ramsay: The issue around rectification orders—and the regulator can talk about the process of those rectification orders—is that rectification orders attach to the particular builder. One of the things that happen in a great number of building matters is that there is a particular company that is formed for it. In some of the circumstances when a rectification order is attached to a sub-quality building, that particular company is wound up. It means that we are unable to follow through with some of the rectification orders or the financial penalties that apply. There are financial penalties that apply to people when a rectification order is issued but not complied with. It is a significant penalty; is it 2,000 penalty units?

Mr Green: I would need to check that.

Ms Morris: It is.

Mr Ramsay: Does that sounds right? Excellent; 2,000 penalty units, which is about $300,000 for an individual. For people who are directors of companies, who establish those companies effectively to make money out of that construction process, we do not believe that it is appropriate to be involved to make money out of the process, yet, when a liability arises, for them to wind the company up and to move away. It is not the same as phoenixing. It is related, but it is a slightly separate matter.

We believe it is important to send that signal through, so that, if you want to be involved in the construction industry, you need to be looking not only for the benefits that come out of it but to carry your liabilities and your responsibilities with that.

Director responsibilities are very live in a number of areas, and this is a particular way of extending that. It sends a message through to those people who want to be involved, as I say: "If you are doing the right thing in the construction industry in the ACT, you are very welcome to be here, but if you are not going to do the right thing, if you are going to try to make some money but otherwise avoid your responsibilities and obligations, especially if work has not been up to quality, we do not want you in the industry here." This is one of the ways of being able to send through that message that only the people who are going to live up to their responsibilities should be involved in the industry.

MR PETTERSSON: This is a very new announcement. I am not sure if you have the full detail of it yet, but would this liability extend to buildings that have already been built?

Mr Ramsay: When we get to the fine detail of it, it is a matter for the legislation that will be passed, I anticipate, by the Assembly. It is probably too early for us to say exactly what that responsibility will be. I certainly would not want to pre-empt conversations and debates in the Assembly. In the legislation that we will introduce, we will be looking at the degree to which it can have an impact on buildings that have already been built and where there are issues of substandard quality.

MR PETTERSSON: Is the view that you would be taking forward that that liability should extend to buildings that already exist?

Mr Ramsay: I believe there is certainly scope in regard to a range of buildings that currently exist. I believe we should be putting to the Assembly for consideration an extension of the liability to directors who have been involved in those circumstances.

MR PETTERSSON: Simultaneously, you have called for the federal government to address their anti-phoenixing laws. What are you hoping that they change?

Mr Ramsay: There are a number of policy areas, but the key thing with phoenixing is that it is a matter of corporations law and what is known as a director's index, and it is very easy to trace people who are directors of companies who may set up a company and then "disappear" the company, only to come up with companies at a later stage. Also, there is the capacity for ASIC, for the federal regulator, to trace directors who are involved in one company and who go on to another, then another. That is absolutely fundamental to being able to ensure the reduction, the minimisation and, hopefully, the elimination of phoenixing across Australia.

I believe that that is something for which the federal government carries clear constitutional responsibility, as well as a clear moral and legal responsibility to act on quickly. There have been some conversations in recent days as to whether the federal government should delay those for another couple of years and tie them in with other reforms that it is doing in the corporations area. I think it would be entirely remiss of the federal government to avoid its responsibilities to act in the area of moving on phoenixing immediately. It is not a complex piece of legislative work for them to do. They need to step up and to have that legislation passed as quickly as possible.

MR PARTON: Can I add there on phoenixing—you have said on a number of

occasions that phoenixing is exclusively a federal issue and that it can only be dealt with by the feds—I am just not sure that that is correct. In the ACT we have the power to stop granting licences to builders who have demonstrated phoenixing behaviour. I cannot get away from the feeling that we have the power to deal with this, to some extent, on an ACT level but that you have chosen not to.

Mr Ramsay: Indeed, with respect, on both those areas I suggest that you are incorrect. The first one is that, fundamentally, phoenixing, which is about the directors of companies setting up companies, winding them down and coming back as other companies, is constitutionally the responsibility of the federal government. That is in its corporations power. It is the only government that can deal with phoenixing.

What we can do, and what we have done, is work in the area of the builders licence itself. It is our responsibility to deal with licences of builders—and I am very happy to pass to my officials to talk about that in further detail—but we have already worked on that. We are working in all the areas that we have constitutional responsibility for. It is so fundamentally important that the government that does have that constitutional responsibility around corporations law should act on that. And that is the federal government.

MR PARTON: Minister, are you aware that the Queensland government announced that they are going to set up a partnership with ASIC and, I think, another federal body in an offensive against phoenixing? They are going down that path. It flies in the face of what you have just said. The Victorian state government have announced a series of phoenixing reforms that they are pushing ahead with. In New South Wales there is some action in that space. But we are not doing anything.

Mr Ramsay: I disagree, again, that we are not doing anything. There are a number of things that we are already working on in the area, and part of the reforms that I have announced today is in the area of phoenixing. The distinction is the constitutional responsibility of the federal government to deal with corporations law. That is unquestionable. That is unquestioned. What states and territories have is the capacity to work in some areas that are linked to—

MR PARTON: Are we arguing about definitions here? Are they then a little liberal in suggesting that what they are doing is addressing phoenixing when they are really addressing aspects that are connected to phoenixing?

Mr Green: I think the question around phoenixing is that ASIC are clear in terms of their remit. They are the ones that regulate the establishment of, where they are required financially, corporations.

The provisions under the construction licensing laws have dealt with it to a certain extent, in that if a building corporation winds up and if any of those directors are associated with another corporation who seeks to hold a licence they will not be licensed or they may not be eligible for a licence. I think what we have seen manifest is: those corporations wind up and they appear as development entities who do not necessarily hold a construction occupations licence but engage construction occupations licensees to do the building work. From a practical perspective, that is how it is playing out.

Whether there is a role for ASIC to play in relation to whether those directors should be granted the right to be directors of another corporation I think is certainly a matter for ASIC and not one that I, as the regulator of construction, can deal with.

MS CHEYNE: Really why I am here is that Elara and Republic are both in my electorate. I appreciate, minister, the number of announcements that you made this morning that I think and hope will provide people with some comfort. Did I hear correctly that stop work notices are going to be published on the website in a greater level of detail?

Mr Ramsay: That is part of the work that we are doing. Yes, that is right. That is part of the work. We believe that it is important to have it so that people can be informed about what is happening. There are some limitations around what can and should be made immediately public. It is not necessarily the case that the reforms would mean that all stop work notices would be immediately placed on the register. Again, if you want to provide some details in just a moment about that—

MS CHEYNE: If you could give me some examples of what would be—

Mr Ramsay: But we are certainly looking to broaden the number and the style of stop work notices that are made publicly available.

MS CHEYNE: Would Geocon's recent stop work notice be on the website?

Mr Green: I cannot pre-empt the decision of the Assembly on what would be passed, but I think, in terms of some of the concerns that we may have around what is published—for example, owner-builder licensees who are doing their own building and engaging separately with a builder—there may be other issues that arise during the construction that are not necessarily in the public interest. Certainly I would have a reasonable expectation that, in regard to large developers—who should understand what their roles and responsibilities are under the law—if they fail to comply with that and it results in a stop work notice, that would be something I would like to see being able to be published more broadly.

There are decisions that we make, such as erecting signage on some of those sites. The decisions we take in relation to that are around the safety of workers so that they are not put in a position where they are going to go on site and start doing building work that is contrary. I think in the single residential sector that is a lot easier to control, as opposed to the large commercial and multi-unit construction sectors. Yes, depending on what comes out of the Assembly in terms of law, I would hope to see some powers to publish more information.

MS CHEYNE: What is not in the public interest?

Mr Green: As I said, it would depend on the circumstances and we would need to work through what they may look like. Again, if it is an owner-builder—it is the owner building their own home—really is that in the public interest in terms of the broader regulatory framework? They are not engaging with anyone else in the public. What value does that add to the public commentary? There may be other

circumstances.

MS CHEYNE: Stop work notices will be published in a more transparent level of detail. What about when fines are imposed on a builder or a developer? Are fines going to be made public? I am reflecting on that *Four Corners* report that Ivan Bulum had a $10,000 fine 10 years ago. Will there be something where people can go, "All right, this builder or developer not only has had X number of stop work notices; they have also had eight or nine fines for various things"?

Mr Green: Fines are an interesting topic because there is a difference between an offence being committed and prosecuted and a monetary penalty being applied versus an infringement notice being issued. If you liken it to a vehicle offence, the fact that you are issued demerit points and a fine, that is effectively an offer, if you pay that, to not prosecute you. That is a matter between the licensee and the regulator, effectively. I do not think there are any moves—and I am happy to be corrected if I am incorrect—to publish infringements. My colleagues might be able to talk more to what the legislation proposes in relation to fines.

Ms Morris: If it is a fine that results from disciplinary action, that is already required to be on the register. The register has a limitation of 10 years, though, because there is a certain amount of information that may be no longer relevant.

MS CHEYNE: Where is the register?

Ms Morris: The public register is on the Access Canberra site.

Mr Green: I think it is all put into the build, buy or renovate portal now, the disciplinary register.

Mr Ramsay: It is a very good website, the build, buy or renovate one.

MS CHEYNE: It is a very good website. It has got many links on it, though.

Mr Ramsay: It has drawn together a lot of information.

MS CHEYNE: It is already on the register.

Ms Morris: Yes, as Mr Green mentioned.

MS CHEYNE: If you get a decent fine you are already up there?

Ms Morris: Yes, that is right. I think also, in relation to the stop notices and publication, the register is against the licensees. The stop notice could be issued not just to a licensee but to a landowner. It could be issued to someone doing work unlawfully. Some of the grounds for stop notices are not necessarily the fault of the builder. It could be that there is actually a problem with the initial approval and it is not the builder's fault. We have to be careful in assigning a stop notice to a builder when it may not necessarily be the builder's responsibility.

That is why it is slightly separate to the occupation discipline register, which is very

specifically about action taken against a licensee, whereas some of these stop notices may be against, say, a landowner or someone who is not currently licensed. It is about the kind of information that is relevant to protect the public.

MS CHEYNE: In terms of stop work notices, will it be retrospective in publishing them online with that level of detail?

Mr Green: I do not know the detail of what has been passed. Whether the minister has—

Mr Ramsay: I think there would be some level of hesitation about publishing matters that were fully dealt with in the past. But, again, it is a matter of us looking through it, depending on what will happen in debate in the Assembly. I certainly do not want to pre-empt the debate in the Assembly, but I think the work that we want to do is trying to make sure that people are well informed and can make well-informed decisions about who it is that they choose as a builder, why they would choose that person as a builder, why they would engage with a particular property. If something has been fully dealt with then it may not necessarily be considered in the public interest for that to be made public.

MR PARTON: Minister, you have announced some pretty big changes today. How widely have you consulted industry specifically regarding these changes?

Ms Morris: There has been a range of consultation. It depends on the changes. Some of the changes that the minister has referred to relate to administrative powers, so they have come out of operating the law and things that might need to change. The director liability is related to reform 37, which is to consider those implications. We have looked quite closely at what is already in place in other jurisdictions, but there are certainly further discussions, potentially, to have on the final forms of those regulations. The initial decision about whether that is necessary is one that we have taken after considering how the legislation has operated and what is undermining the effectiveness of that system. With the particular reforms, some of them are purely about changing the administrative system so that it operates better, and some are part of the existing reform program.

MR PARTON: How many times has the building regulatory advisory committee met in the last 12 months?

Mr Green: The building regulatory advisory committee, to my knowledge, has met two or three times in the last 12 months. That committee was established from a regulatory perspective. It was not established to deal with the reforms. However, that has changed recently. The last meeting was a month or two ago, and responsibility for that has now shifted to be with our policy areas in EPSDD, to utilise that as an additional forum for consultation.

Mr Ponton: In terms of the building regulatory advisory committee, which includes a range of industry experts, as Mr Green said, that was very much focused on regulation. As we worked through the reforms from a policy perspective, it became apparent that it would be useful to adjust the terms of reference for that particular group, which is why it has now transferred to EPSDD. We met about a month ago, as Mr Green said,

and we agreed that we will meet on a reasonably regular basis. It may be every six weeks or eight weeks, as we work through many of the ongoing reforms that the government has committed to completing in this financial year. Over the last 12 to 18 months or so there has not been as great a need for it to meet, so I understand that it did not meet as often as it had previously. Certainly, with its shift in terms of reference, it will meet more regularly.

MR PARTON: The information that was given to me was that the building regulatory advisory committee had met just once in the last 12 months. Is that possible, rather than the two or three meetings that Mr Green suggested? Perhaps they were further back. Do you think it is more than once?

Mr Ponton: I have attended one, and I am sure you have attended more.

Mr Green: I am happy to take it on notice. To my knowledge, I think it is two to three in the last year.

MR PARTON: Based on what you are saying now, Mr Ponton, the changes that the minister has announced today have not been discussed at that level by that committee?

Mr Ponton: Not by that committee, no. Having said that, that is only one mechanism that we use to engage with the industry, and the community, for that matter. Ms Morris, I am aware, has meetings with the Master Builders Association, HIA and other groups. For particular aspects of the reform program, we have specific meetings to deal with those specific matters. I meet with chief executives of planning and the construction industry every two months. There is an environment and planning forum, although we are currently rethinking the environment and planning forum and considering recasting that. Both the community and industry attend that.

There are a range of mechanisms that we can use from a policy perspective to engage with industry. I would not say that it is just for that group, which is a very small group. The overall number is five or six industry people. It is important, when we are talking to industry on these matters, that we extend that consultation and engagement much more broadly, and we do that.

MR PARTON: Mr Green mentioned earlier, and I think he was spot on, that the public narrative in this space has changed dramatically in the last year and a half. Sometimes it is difficult to get away from the belief that a lot of what is going on in this space is about public perception. Obviously, we have to address confidence. I wonder how many of these changes were specifically designed as a response to the behaviour of one developer in the ACT. I think there will be some that draw that conclusion.

Mr Ramsay: Far be it from me to second-guess why people would draw particular conclusions on any particular matter. I can tell you that, from the government's perspective, the reforms that have been undertaken and the ongoing reforms that I outlined in my opening statement are part of a suite of reforms that have been going on for a number of years. It is particularly inaccurate to suggest that it is as a result of any one particular development or one instance.

We have been working on those 43 reforms specifically over the last couple of years. A number of those were completed before I commenced having responsibility for this particular portfolio. Clearly, things that pre-dated my time could not have been motivated by a recent event. The work that has been going on in the 29 reforms that have already been completed and the work that is going on in the remainder of those 43 reforms has been building up extensively over time, through broad consultation, broad policy work and active regulatory work.

The collaborative work that has been happening at the Building Ministers' Forum that meets several times per year has arisen out of the Shergold Weir report. That clearly has not been in relation to a particular instance in either this jurisdiction or any other jurisdiction; that has been building up. The work that has been going on out of the Murray review in relation to security of payments is certainly something that has been substantial, and it is built into our reforms as well.

What we have is work that has been going on over a number of years. There has been a renewed focus and renewed energy; there is no doubt about that. I am pleased to wear that. There is renewed energy and a renewed focus on that at the moment.

With respect to Mr Green's comments before about the public narrative, and your comment as well, it is important in one sense to respond to public narrative. If we have as our aim to have the highest quality of building, to have a strong level of confidence and to have a well-equipped regulator, that second point, which is the confidence of people in the sector, must be built on what is happening in the public narrative not only here in the ACT but right across Australia.

What has been clear to me in my meetings at the Building Ministers' Forum, each time that I have been there, is how common the issues that we are dealing with here in the ACT are right across the county. It is not an ACT-specific situation; it is something that we share in different ways in every jurisdiction. It is a matter of lifting the confidence of people across Australia. Our commitment as a government is that we want to do everything that we can to make sure that Canberrans have the highest quality of building and the highest quality of confidence in the building sector.

Mr Ponton: I will add to that, minister, to reinforce what you are saying, and to pick up on a comment by Mr Green earlier. The 43 reforms that we are talking about now, and that we have been working on for the last few years, have themselves come out of a comprehensive review of the Building Act. That review of the Building Act was a recommendation from an earlier body of work. In terms of the time frame for this work, it has been intuitive; we have been working on this for some time. The original lot would have been in 2013.

Ms Morris: Yes; the initial legislative changes that arose out of the review started in 2013.

Mr Ponton: As I said, there was a more comprehensive review, and that has led to these 43 reforms.

THE CHAIR: I want to clarify a couple of points, Ms Morris. You referred to reform 37. Is that a reform in that body of work that refers to director liability?

Ms Morris: Yes. That reform is particularly looking at the expansion of existing rectification on other relevant powers to people associated with licensing, including directors.

THE CHAIR: Does that reform talk about the issue of director responsibility?

Ms Morris: Yes.

THE CHAIR: On your point about other jurisdictions: have other jurisdictions legislated in this space, similar to what has been announced by the minister today?

Ms Morris: All jurisdictions other than South Australia have some form of director liability, or executive officer liability. It does depend. We have unique rectification powers in the ACT. We are looking at it particularly in relation to getting work completed. Various jurisdictions have things like full criminal liability for corporations, right through to disciplinary actions that may also be taken against individual directors.

THE CHAIR: Have you looked at particular models from interstate?

Ms Morris: There are a few models. As I mentioned, some focus more on the criminal penalty side; some focus more on the occupational discipline side. With reform 37, the intention relates to those mechanisms in our law that allow the work to be rectified and its application of those liabilities to those particular things. As I mentioned, we have slightly different rectification powers from most other jurisdictions. A couple of other jurisdictions have the ability to direct through occupational discipline, so we have looked at those models as well.

THE CHAIR: There are resources out there for consumers—the register of licensed builders and so on. Do you have a single portal point so that, if you are about to build a house, do a reno or buy off the plan, you can go to it and it is a bit of a one-stop shop? Perhaps it has the links to a list of certifiers or builders, or a guide to how strata management works.

One of the issues seems to be that, if you are buying off the plan, doing a renovation or building a house, this might be the one and only time you do it, whereas you are dealing with people who are experts in the field, and they have already done this a dozen times this year. A lot of people are fumbling around in the dark, and it has been put to us that it is a difficult space to navigate. If something goes wrong, what is the rectification process? Who deals with this? Do you have, or are you working on, that single point, so that it is either in written form and can be given to a consumer or it is web-based, or both, so that people can go to it and, from there, in a simple way, navigate what is a very complex space?

Mr Ramsay: Indeed, chair. In June this year, as I mentioned earlier, I launched the build, buy or renovate website. That draws together a very significant number of resources for people. It is there for consumers. People who are considering whether they are going to build, buy or renovate themselves can find information there. It is also there as a portal for industry so that they know about their responsibilities.

I certainly encourage people who are considering being involved in the industry from any perspective to spend some time on that website. It has been very carefully drawn together. The wording that has been used has been carefully chosen to be simple, understandable and accurate. It is important to hold all of those together in that area. Further resources will continue to be put in—simple videos that are available for people. It is a very substantial piece of work and it will continue to have more resources for people on that website.

THE CHAIR: As a consumer, how do you end up knowing that it is there? Do you have a mandatory requirement, perhaps, that, upon engaging a builder, they have to notify people of that website that gives them that information? Often people may not even be aware that it exists. The first thing they do is engage a builder, and they are already halfway through the process without knowing about it. Is there a way to make it part of the process so that people are given that information? That lack of information, or even awareness that that website exists, for example, is part of the problem. Is there a way that we can make that a mandatory requirement? Have you considered that?

Mr Green: One of the things that we have been funded for, going forward, is some community education and engagement. It is important to note that a website like this is not something that remains static. There will be some dedicated resources engaged with that. In addition to producing that type of information, we want to look at engaging with industry groups. For example, the Law Society would be one that we would be targeting. A lot of people engaged in a purchase in a multi-unit complex are engaging from a sales contract perspective and have a lawyer involved.

There are a number of pathways that we can employ on a voluntary basis to start getting that information out there. Prior to the launch of this website—I do not recall the time frame—there were a number of guides released in relation to unit living, the maintenance of units, what to do when you are buying off the plan and questions you should ask. That information is available. We know that groups like the Owners Corporation Network have that information. There are certainly opportunities. One of the things we will work towards is capitalising on those opportunities to give information.

THE CHAIR: Is it your intention to enhance that website and to make sure that more people are aware of it?

Mr Green: Yes. One of the things we need to realise is that a lot of people use a search engine as the place to start their journey. They will not necessarily go to the EPSDD or the Access Canberra website. Making sure that it is easily navigable through those search engines is one of the things that we will look at.

THE CHAIR: Have you worked on that?

Mr Green: Certainly. If you look for "building in Canberra" or terms like that, at least one of the search options will take you through to that build, buy or renovate portal.

THE CHAIR: There is no mechanism whereby you can work with industry to make sure that they have as part of their requirement, as part of a contract and so on, to make people aware of some of those resources—a list of registered builders or certifiers? Is there a list of certifiers available?

Mr Green: Yes, there is certainly a list of certifiers available. The first point is that it is a relatively new website. It has brought a lot of information together. From my perspective, it would be beneficial to try to get people to volunteer rather than to regulate mandatory disclosure of a website at this point in time. As the public narrative in this area increases, people are looking at that information. I do not have the statistics in front of me, but I am happy to provide them. There have been significant visitor numbers to the web page since it was launched.

THE CHAIR: I notice the title is "build, buy or renovate". What about "rectify"? Is that part of it as well? Are we going to add that to the name of the website or is it implied?

Mr Green: It is an interesting question. The website itself has information around enforcement capability. It also links to the Access Canberra website and discusses what our regulatory approach is, our accountability commitment and our compliance frameworks in this area.

THE CHAIR: But it is clear that, if you are wanting rectification, that is where you go as well?

Mr Green: I would not say it is clear in terms of: "Click this button if you want rectification." Certainly, there is a process that people navigate, and that starts off by making a complaint to Access Canberra. We go through a process of triaging that complaint. It is not necessarily a request to rectify, but we want to understand the complaint, what has happened, and we want to get some facts before we start getting to the point of a regulatory decision to rectify it.

Mr Ramsay: This is in the knowledge that some matters may well be regulatory matters, but some matters might be contractual Consumer Law matters. It is not appropriate to be heading down the direction of rectification if it is actually Consumer Law—if the wall is the wrong colour or something.

THE CHAIR: Just explaining all of that—

Mr Ramsay: Yes, that is right.

THE CHAIR: Each situation will be unique. It is about trying to get some basic understanding of: "Okay, there's a problem; what is the process? Is it a legal process? Is it the builder? Is it the strata management company? Who is responsible for what?" If you are starting at zero, it is very difficult to understand. Often what happens is that it gets tied up for a number of years and, the longer that process goes on, the more difficult it is for that rectification to happen and the more debilitating it is for consumers. It is about understanding where to go and who to speak to—a lawyer or someone like that.

Mr Green: Certainly, with the additional resources, we will look to improve what is already on there, and we would welcome any feedback that members have. I have already had members of my team listening to the suggestions coming out of the inquiry from members of the community, and we will take those on board.

MS CHEYNE: Could I give some feedback now?

Mr Ramsay: Please.

MS CHEYNE: Having just got acquainted with the disciplinary register—I see that Mr Pettersson has it up as well; maybe he has some comments too—I note, particularly from the FAQs about it, that it is for industry. I think there should be a focus here on the consumer, which there really seems to be from the minister's statement. It would help to understand a little more about what this means from a consumer perspective. Stuff here is classified into classes A, B, C and unrestricted and principal and contractor. To Tara Cheyne, that does not mean anything. What is a class A? Is that good? Is that naughty or is that really naughty? I do not know. I think a lot of that stuff is quite opaque for a consumer or someone who is looking at it.

I note as well that it is set up in an alphabetical way. You are not trying to put Geocon at No 1, but I see that they are here. Putting it from the most recent to the least recent—and I appreciate that it is the last 10 years; I read that in the FAQs—I think would be more useful for people as well.

THE CHAIR: I think it is a valid point. I very much agree with you that you have got to assume very little knowledge and you have got to assume that you have a simple portal that is there for consumers. It might be that an industry one—and this might come out in the committee report—and the issues for industry, who are hopefully experts in the field compared to consumers, might be very difficult. If you are trying to manage one website to do both jobs it might be unachievable perhaps.

MR PETTERSSON: Whilst we are giving feedback on that website, the disciplinary register does not include stop work orders. Is that correct?

Mr Green: That is correct. That is what the legislative amendments are looking to increase, in terms of what the Construction Occupations (Licensing) Act will allow to be permitted on that register.

MR PETTERSSON: The disciplinary register ultimately has on it very serious findings that have been completed. But if I was looking at building I would be very curious about their stop work orders. Is that linked to on the build, buy or renovate website?

Mr Green: That information is not currently available.

Mr Ramsay: That is one of the legislative changes that we are seeking to make.

MR PETTERSSON: I think adding that to the build, buy or renovate site would be very helpful. In terms of your building inspections, what is the rhyme or reason as to where you choose to inspect?

Mr Green: Are you talking from a regulatory perspective or are you talking about the role of building certifiers and building inspections?

MR PETTERSSON: No, not building certifiers but Access Canberra inspectors.

Mr Green: There are probably two main categories that we are looking at. One is as a response to a complaint that has been received. The second is part of our audit program. It depends on what our program is. For example, if our program relates to compliance with approved plans we will undertake a selection of active building approvals. They may be targeted to specific builders, for example. There might be other reasons we want to look at them.

We would then go out on site and undertake that audit, based on the approved plans that we have on our files that have been submitted by the building certifier and what is occurring on site. As part of that exercise we can take regulatory actions from there. Earlier this year we took significant regulatory action. We were made aware of some information about buildings in Taylor, and we went out, inspected and checked the compliance against the Building Code of Australia. A number of those related to timber framing issues, compliance with the timber framing code under the Building Code. We undertake that technical inspection and take our regulatory action from there, if any is warranted.

On the complaints side of things, obviously depending on the content of the complaint, we will undertake an inspection. A lot of the complaints are driven in relation to buildings that have already been completed, as opposed to active building projects. I suppose it is worth noting that—and it is just a bit of an observation, bearing in mind that this is only one measure—back in 2017-18 we had over 546 complaints about building. In 2018-19 that reduced to 226. At this stage, this year to date, we have 65 complaints and cases that we are investigating. As I said, it is only one measure, but we are seeing a reduction in the number of complaints.

I think it is probably fair to say that the complaints are more complex. As we see the territory grow, there are larger developments around and the time to respond to some of those complaints may be a little longer, due to the technical complexities of them. But we have seen over the last three years, or two-and-a-bit years at this stage, a reduction in the complaints coming through to us. I think part of that comes down to messaging to industry, through regulatory actions, through the education materials that go out, things that are now being implemented formally in relation to our documentation requirements. All those things feed into what we utilise in terms of our inspections.

As I mentioned earlier, one of the programs on our audit schedule for this coming year is certifier audits around compliance with their code of practice. Part of their code of practice talks about compliance with the minimum documentation requirement. There will be an extension to that component to make sure that the work that they are doing meets what is now set as the minimum standard for this industry.

MR PETTERSSON: I am particularly curious about the Taylor inspection, because it was quite a talking point in Gungahlin at the time. Was it a particular builder that was

working on numerous sites that was the cause of the issue or was it just the case that Taylor contained all these framing issues simultaneously?

Mr Green: I think I was asked in an inquiry previously whether there were issues with Taylor. I do not think you can draw any conclusions from the fact that a particular builder is building in a particular suburb. It does not reflect on the building quality of the entire suburb. The number of builders, from memory—and I will have to double-check this figure—was 12 separate builders in that area that had 29 stop work notices issued. I will need to double-check that figure. In that particular case we had received some information about a particular builder, and when we went looking around in the immediate vicinity there were a number of other builders that came to our attention, and things flowed from there.

MR PETTERSSON: In terms of the complaints you get about building quality—and you could answer in generalities on this one—where do those complaints come from? Do they come from people inside the industry or do they come from consumers?

Mr Green: Primarily from consumers. I see very little reporting internally from industry. I do not know whether that is a sign of anything. But certainly when people are living in circumstances where building quality has gone wrong, they are the ones that are contacting us. Generally, they are contacting us after engagement with the builder has failed. Quite often we are not the first point of call. Certainly we try to encourage people to resolve the issues with their builder if they can.

We are currently going through some consultation on a builders code of practice. Ms Morris might want to talk a bit more about that. One of the recommendations, in terms of that code of practice, is around builders setting up appropriate complaint handling mechanisms. From my perspective, the best result could be that (1) there are no problems to start with, but (2) if there are problems, builders take responsibility and go and fix them. I do not know whether Ms Morris wants to talk about the builders code of practice in that context.

Ms Morris: Certainly. There are also similar provisions in the building surveyors code of practice. It is really about people who are required by law to be engaged—licensed practitioners—having that mechanism for resolving issues that may arise as part of their services. This is really also about, as has been mentioned, resolving things before they become disputes.

Certainly we are looking at dispute resolution. But in a lot of cases—and I am sure Mr Green can talk more about what the rapid regulatory response team have found—sometimes it is the engagement that fleshes out that it can be solved quite quickly. That is the intent of requiring builders, building surveyors and potentially other licensees to have their own complaints processes for managing complaints. It is not always going to resolve issues, but it certainly allows people to feel like their issue has been heard and it may turn out to be something they can resolve quite quickly before it has to be escalated, say, to the regulator.

Mr Green: I think the other side of it is, particularly with our audit programs, utilising data that we have available to us to be targeted. That data comes through information from people within industry, not necessarily complaint information—

information from complaints—but also trends right across the country around particular elements. Mr Snowden might have some more to add on that.

Mr Snowden: One of the things in our agency that we have been really focused on over the last two years is building a systematic process of collecting information across the breadth of regulatory activity that we administer. We have set up a distinct and discrete complaints management team and attached an intelligence component to that and recruited to those particular positions. That has allowed us to really refine the information that comes into our agency in a much better way, to distinguish whether we have got issues around industry-type systemic problems or whether they are individual consumer-type matters.

We have been able to use that data really positively to direct our resources to the distinct harms that we are seeing in the marketplace. That is being used very effectively by Mr Green's team, especially in the rapid response area but also in relation to properly programming his audit program for the coming years in terms of the information that we are seeing locally and also aggregating other bits of open-source information so that we can see that there is detriment within the market. We have been much more refined over the last two years in all our systems internally, bringing the breadth of information that we have across our agency together to target our resources directly to the harmful events that are happening across this industry at the moment.

MR PETTERSSON: There was a figure thrown out at the very start that there are going to be a thousand more inspections. What is the base number that that is going to increase from?

Mr Green: I would need to take that on notice. That is based on last year's inspection numbers. I do not know which—

Mr Ramsay: Do you know how many inspections there were this year?

Mr Green: I do not know that figure off the top of my head; I am sorry. I would say around 700, potentially, but I will get the exact figure for you.

THE CHAIR: It has more than doubled?

Mr Green: Yes, it would be almost double, I would suggest.

THE CHAIR: That probably goes back to the original point that I made.

MS CHEYNE: On the website, the building action snapshot was last provided in March 2019. How regularly do we expect snapshots to be uploaded or published on the website?

Mr Green: We will be looking to publish those quarterly. I think there is one sitting in my inbox, and we will look at publishing it soon.

MS CHEYNE: It is very helpful to see how many rectification and stop work notices there are. I appreciate that the reforms will give a bit more detail about that, so

I assume that the snapshot will become a little more interesting.

Mr Ramsay: Without suggesting that it is not currently interesting!

MS CHEYNE: I am fascinated; don't worry! I note that in the three months to March 2019 there were two rectification orders. How many rectification orders have been issued since?

Mr Green: Since the March snapshot?

MS CHEYNE: Let us assume the end of March—the March 2019 snapshot.

Mr Green: I think it is good to understand the rectification order process. That commences with the requirement under the act to issue a notice of intention to issue a rectification order. In the calendar year to date, if I can give you those figures, we have issued seven notices of intention to issue a rectification order, and we have issued one rectification order as a result of that, at this stage.

MS CHEYNE: What is a notice of intention versus actually issuing?

Mr Green: You need to afford the licensee the opportunity to provide a response to the allegation that we put to them.

MS CHEYNE: Procedural fairness?

Mr Green: Yes, absolutely. We need to make sure that they are afforded that opportunity to respond to the allegations. A lot of times—in fact, almost every single time—where there is a rectification order, a show cause notice, a notice of intention, issued, it is accompanied by some technical reports. We need to afford people the opportunity to review those technical reports. There have been cases where individuals have sought additional time to get their own expert reports prepared so that they can feel that they have had the opportunity to respond to what is put before them.

Ultimately, we make the decision having regard to that balance. If we have competing reports, we need to take that view—whether to issue a rectification order or not. We issued a recent order on an apartment block in Kingston. There have also been orders issued on other multi-unit sites which are matters that are currently before ACAT. Bearing in mind the technical complexity behind this, this is a significant decision point in terms of regulatory action that we would take.

MS CHEYNE: Do rectification orders have to go to ACAT?

Mr Green: They do not. Again, there is a right to seek a review from the party who has been issued with a rectification order, a merits review through ACAT.

MS CHEYNE: Maybe you cannot answer this, but was a rectification order ever issued for Wayfarer?

Mr Green: I do not have that information.

Mr Ramsay: I note that, in terms of the reforms that I have announced today, one of the reforms that we are looking at in the area of rectification work is the opportunity for there to be court-enforceable undertakings—again, adding another opportunity which would mean that the process may be streamlined. If it is not going to be challenged, we may be able to have an enforceable undertaking, an agreed one, rather than going through the formal rectification process.

MS CHEYNE: How does it work?

Mr Snowden: Speaking in terms of my other role as Commissioner for Fair Trading, they are used very extensively as an alternative method for resolving matters where there is an identified breach of the law and a consumer has suffered some harm. Generally, they are done by a negotiated process. The regulator will put forward a series of steps to suggest a possible resolution of the matter.

One of those things, generally, from a consumer perspective is that there is admission of liability in relation to the conduct. There can then be some flexibility in relation to how the matter is resolved. It can be in terms of a compliance program that is set up within the particular organisation. It is generally independently audited and a report is given back to the registrar or the Work Safety Commissioner—because they have the same powers—over a period of a couple of years. That is really to enforce a change of behaviour internally and to make sure that training is in place so that, from the top down in that organisation, there is an understanding about their legal obligations and what they should be providing in terms of compliance.

There are other methods in which the organisation can contribute to the community through making donations to a range of particular sectors or organisations. In a lot of ways that works in part like a civil penalty. Instead of paying a fine to a court and that money going into consolidated revenue, they can make a donation—and it can be very substantial—in relation to supporting community infrastructure, training in other areas and the like.

As an example of that, in the past in the consumer framework, where we have identified breaches of the law, donations have been made to the Snowy Hydro helicopter service, who require funding for a whole range of reasons. Donations can go there instead of going into consolidated revenue as a fine. They do not take up the resources of the court. However, if the court-enforceable undertaking obligations are not adhered to by the party then the registrar or the regulator in whatever industry can make application to the court for those obligations to be enforced by the court.

From my experience, that does not happen very often. In fact, in the time that I have been using them here in the ACT government, it has not happened at all. We have been using them very successfully in the consumer space; also the work safety regulator has been using them very extensively over the last couple of years and has achieved some very good outcomes.

MS CHEYNE: That is good to hear. On my line of questioning about rectifications, have any builders or developers, to your knowledge, been issued with multiple rectification orders?

Mr Green: Not to my knowledge, no.

MS CHEYNE: They get one and then—

Mr Green: What we have seen in the past is that they get one and they wind their corporation up. The likelihood of getting two is non-existent. Having said that, there is nothing that—

MS CHEYNE: They wind their corporation up and then start a new one?

Mr Green: There are laws in the Construction Occupations (Licensing) Act that can prevent that from occurring. I do not necessarily want to go over the role of ASIC again, but there are other opportunities, such as issuing the order to a nominee of that building company that may have been wound up. The new provisions, depending on what the Assembly decides, may look at expanding that further.

From my perspective, from a regulatory position, we do not just want to be able to issue an order to a corporation when there is a reasonable expectation that some of them will just choose to wind up; we want to be able to issue multiples, to make sure that we try to get a result for the owners of whatever building it may be, and get it fixed.

MS CHEYNE: Thinking about it from a consumer perspective, if you see that company A has been issued with a rectification order, you might not realise that company B, who has four stop work notices, has the same people involved. In terms of making an informed decision about who you want to go with, it could be quite difficult.

Mr Green: It is a really complex topic that we need to look at simplifying; I agree. One of the things is to look beyond just that licensee. For example, if there is an issue with a building, of course the builders have the ultimate responsibility because they are the ones building it. Where a particular engineer or a particular architect is involved and, as a result of the building failure, you can tie it back to being part of the reason why the building failed, there is a level of complexity that exists that would be really hard to unpack. I agree that we need to be looking at how best we can communicate to people in the community who the builders are that are failing to comply with their obligations, as a broad message.

MR PARTON: My colleague Ms Cheyne mentioned earlier the Elara building. I know that there are some involved in that saga who are watching these hearings today. I straight up ask: is there any intention by the government to help the owners of the Elara apartments? Is there any intention to help them? When I say "help them" I mean help them financially. Is there an intention to help them or are we just going to walk away?

Mr Green: As I have mentioned earlier, I was not the registrar at the time with Elara. There were a number of regulatory actions taken. I understand that that is of little comfort to the owners of the units in that building. The builder of that building, we know, owns a number of units still. We also know that there is current action before

the Federal Court that the owners corporation is taking against the Master Builders fidelity fund. There was a decision that was made in relation to that and it is now subject to a review in the Federal Court.

I think, from my perspective as the regulator, I have exhausted all the regulatory tools that I have available to me at this point in time. Whether there are tools that come as part of the reforming legislation, that would be something that I would need to consider. But certainly, from a regulatory perspective, unfortunately those powers have been exhausted with the corporation being wound up.

MR PARTON: Outside that regulatory perspective, I specifically ask the minister: is there going to be any assistance coming from government to Elara? I ask: given that the government issued a rectification order to the builders of Elara apartments but did not enforce that order and given that the government was very much aware of the problems but was not able to enforce its own regulations, does that not make the ACT government responsible in part?

Mr Green: Can I clarify a point of fact in relation to that? There was no rectification order issued. What was issued was that first part of a notice of intention and, after that was issued, the corporation wound up, meaning that there was no entity to issue it to. Just to clarify.

MS CHEYNE: If we were going back in time and the new legislation had come into force, you would be able to pursue the person rather than the company?

Mr Green: That would be a potential if the legislation came into force around individual director liability.

MR PARTON: Is it your understanding, minister, that the way that Ms Cheyne has put it that, under these changes that were announced today, the chain of events that followed—I cannot remember exactly what you said; it was not a rectification order—

Mr Ramsay: Notice of intent.

MR PARTON: That chain of events would be different under the new framework?

Mr Ramsay: That is the situation that we are seeking to address. It has not happened in a large number of cases but the reality is that it has happened in too many cases, which is that the building corporation, the building company, when it is demonstrated that the work is substandard and regulatory action is commenced, is wound up, which currently severely curtails the capacity of the regulator to get the work rectified, to get the work remedied, and to ensure that people can live in a building of the quality that they rightfully deserve. That is what we are seeking to address in the announcements I have made today.

I look forward to the conversation that we will be having in the Assembly on this very matter in terms of Elara and in terms of finances. I feel deeply for the owners there. I think the situation that they are in at the moment is a particularly difficult situation and I do not downplay it in any way. At the moment there are active court proceedings about finances that may or may not be available from the fidelity fund. It

is not appropriate for me to pre-empt what may or may not happen in any court proceedings.

MR PARTON: Is there any fear of unintended consequences from the changes that you have announced today? Bear in mind I have not seen them in enormous detail. Obviously, as you say, we will get to debate them in the Assembly.

Mr Ramsay: And there will be the chance in the Assembly; that is right.

MR PARTON: But is there any fear of unintended consequences in regard to company closures? I know that some would say that company closures, in part, could be what we are looking for here but I am not talking about company closures for complex phoenixing reasons. But some individuals may be of the belief that, in respect of the difficulty to do business here as opposed to in another jurisdiction, we may see these changes lead to company closures from builders who are doing the right thing but this is just all a bit too hard.

Mr Ramsay: Certainly in the consultation that is taking place and will continue to take place between now and the time that the legislation is introduced, then debated and then ultimately, hopefully, passed, we will be looking at the intended consequences and minimising the risk of unintended consequences. There is no doubt about that.

Referring back to what Ms Morris mentioned earlier, similar, though potentially not identical, legislation exists in a number of other jurisdictions. It is not as if there is only going to be one thing happening in the ACT and people can move to another area and not have direct responsibilities in the area. I think that is also important to note.

The underlying message I want to get across not only to industry but also more broadly and, more importantly, to the Canberra community is that we want to make very clear that builders who are operating with integrity and the highest quality are extremely welcome here and that there will not be perverse outcomes or unintended consequences for those who are building high quality and for those who are willing to comply with any rectification orders that are made against them if, in the circumstances, they are made.

We hope that no rectification orders, no notices of intent, need to be made because what we are doing is lifting the quality of building, the quality of design, the quality of construction and the quality of work under all the codes of conduct by the people who are entering the industry in the first place with the licence exam. There is a suite of reforms and our intent is that the quality of building is truly lifted and that the number of times that regulatory rectification work is needed continues to decrease. That is certainly our goal. For those people who are doing the right thing, there is absolutely nothing to fear.

My background is that I practised in commercial law a number of years ago. I know the value that exists with the corporate persona and the value that can happen in the area. That is why corporations law exists but at the same time we do not have any appetite for the tolerance of people who use a good legal vehicle of corporations law to make it so that people end up with buildings that are not good quality and that

therefore they dodge their responsibilities. That is what we are intending to do and I will not apologise for following through on that area.

MR PARTON: I can flag that, in regard to the briefing that my office will be seeking on that bill when it gets tabled, we will be seeking some of that information that Ms Morris spoke of regarding the differences between these regulations here as opposed to those in other jurisdictions. I flag that that is the case.

Finally, you mentioned on a number of occasions the meeting of building ministers not all that long ago where there was a broad agreement to adopt a national approach to building regulation and reform. Much of the focus was on the findings of the Shergold Weir report. You signed off on that. We were all heading gung-ho in that national direction. I sense that there is not as much enthusiasm from you, minister, in terms of going down that national approach path, that there is much more of a focus on racing off in an ACT-only direction. I am just wondering if I can seek your feedback on that.

Mr Ramsay: Again, with respect, I would say you are wrong. The importance that we have of the ACT reforms is paramount. And we are working with those. There are a number of areas where there is crossover anyway.

I think it is important for us to be aware of what happened at the Building Ministers' Forum and what did not happen at the Building Ministers' Forum. For those of us who were there, each and every jurisdiction—each state, each territory and the commonwealth—is very clear on what was agreed. And that was that there would be additional resourcing to the ABCB as it follows through in a number of other specific areas—and I can ask Mr Ponton soon to talk about that as he is our representative on that—and ensuring that those areas of the Shergold Weir report that require national work are able to be facilitated and done properly.

But the Shergold Weir report actually says, as part of its outcome, "States and territories to do the work." What we have agreed to is that the states and territories will do the work that the states and territories are required under the Shergold Weir report to do.

There are a number of reforms in that report that are literally irrelevant to the ACT because of our jurisdictional structure. We are certainly not committing to implementing matters that are irrelevant to us.

We have also not agreed to do further work on matters that we have already completed. There are a number of areas that are connected to our ACT reforms. Each and every jurisdiction said that with the work that is going on it was a very positive time, coming out of the Building Ministers' Forum, and we are working together on that.

But each jurisdiction said, "And we will also continue with our own jurisdictional reforms." Every jurisdiction has its own reforms because every jurisdiction is in a different starting place. There are different priorities in every jurisdiction because the circumstances that are happening in the ACT are different from the circumstances and the priorities that are happening in New South Wales or that are happening in

Queensland or that are happening in Western Australia or around the country. That was a given, and every jurisdiction made that clear.

What we committed to was increased resourcing and increased attention to the work of the Shergold Weir report so that we will follow those through alongside the things that we are also concentrating on in the ACT.

MR PARTON: That is a good explanation, can I say. That is helpful to me.

Mr Ponton: I was going to add that since the Building Ministers' Forum meeting the senior officials group, and then from there the Building Codes Board, has developed a program. Essentially what we have done is look at those recommendations within the Shergold Weir report that require a national approach.

As the minister said, there were things that were identified within that report in terms of recommendations where it was acknowledged that some jurisdictions have already completed. And if you look at the implementation plan, that clearly identifies which jurisdictions have completed what actions, where jurisdictions have actions underway and where there is that opportunity for that collaboration to deal with things at a national level.

Importantly it is looking at a national approach. That does not necessarily mean that individual states and territories cannot have specific provisions within their particular piece of legislation to deal with local issues. It is looking at that national approach.

Importantly when building ministers were considering this issue they agreed that there may be opportunities for model provisions and model legislation or other model provisions but importantly that was then for the states and territories to consider whether to adopt those, because the circumstances may not necessarily align for a particular jurisdiction. In the ACT's case there are recommendations around the role of local government. That is clearly not something that we want to do work in because we are both local and state. That would be silly.

There are things that we have completed and have had completed for a number of years in relation to what was identified in Shergold and Weir. Again, we would not want to wind back what we already have to achieve a national approach. I think that is an important point too. If you seek to get everything done at the national level, that could mean that those jurisdictions that have gone over and above and have very high standards might be asked to wind back. I think the minster has made it very clear that that is not an option for the ACT.

MR PARTON: Well said.

Mr Ramsay: Could I note on that, by the way, that the original discussion at the BMF was that the report as to where every jurisdiction was up to was originally to be published at the end of December. And it was at my request that that be brought forward so that it could be published far more quickly and we can be very transparent as to what is happening in each of the jurisdictions.

MR PARTON: It really is a case that everyone was at a different point in the past but

that, on the things that apply to all jurisdictions, we want to end up in the same place but that it is a different journey for each jurisdiction?

Mr Ponton: Precisely.

THE CHAIR: Engineers Australia appeared the other week; you may have listened in or seen the media reports. They made a couple of points. Firstly, their view is that there are not enough engineers in the process: too many administrators and not enough engineers, to paraphrase. Secondly, in 2012 to 2013—that sort of time frame—there was a commitment by the ACT government to form a register of engineers. That register was due to be introduced by mid-2014. To date, five years hence, it has not happened. Is there going to be a register of engineers? If so, when? What is that process? Do you want to respond more broadly to the assertion that we need more engineers in the process and perhaps fewer administrators?

Ms Morris: That recommendation came out of the *Getting home safely* report. At the same time we were doing the review of the building regulatory system, so we looked at that in more context. In 2014-15 we consulted on a range of options that would be applicable not just for engineers but for other design practitioners working in the construction industry.

What came out of that quite strongly was that the registration-only approach was not necessarily going to be effective. Certainly, as Mr Green mentioned earlier, there was a particular engineer who ended up before the Supreme Court. That was a registered engineer. It is not the case that registration versus non-registration would necessarily have dealt with some of those problems. We rolled it in, effectively, to the reform program.

Also, there is the establishment of a benchmark against which people can be regulated. It is one thing to register people but it is another to say, "What standard are we holding you against?" The minimum documentation is one of the first starting points, not only in terms of saying, "This is what we expect," but also in determining where some of the issues are coming from.

When we did consultation there were a lot of different views about what was causing the issue. Some were that the people were not registered; some were that people were doing the right thing but were not getting asked to prepare decent documentation. It is very difficult for anyone to audit against a lack of documentation, because that is not necessarily an indication that the person does not have the skill. It may just be an indication that they were not asked to prepare those documents.

Part of the reform program now is to consult further on a model for the regulation of people preparing particular types of designs, especially in higher risk buildings, and how that works in with the building regulatory system.

THE CHAIR: Is there going to be a register of engineers or not?

Ms Morris: If we are talking about a separate register for engineers, that is a different question. But if we are talking about closer regulation—

THE CHAIR: That is the question. There was a recommendation to do that. The government accepted that recommendation and said it would do so. Although that was a recommendation in the *Getting home safely* report, and the government accepted that recommendation, five years later it has not happened, and this is the first I have heard that it is not going to happen.

Ms Morris: We are not suggesting that there will not be a list of people who are regulated, but if we are talking about a separate register outside the building regulatory system, that is something that we are still exploring. It is certainly used for other types of engineers, but this is specifically for the construction—

THE CHAIR: How is it that there is a report from 2012 saying that this needs to happen, and there are commitments from the government that it will be introduced? They said they would work through it and that, by June 2014, it would be introduced. We are now in August 2019 and we are still talking about working through this, five years after the commitment was made and seven years after the government got the recommendation. It seems to be an extraordinarily long time for action to happen. That was following pretty significant things that happened on worksites. We have seen bridges collapse and so on. How long is it going to take?

Ms Morris: As I mentioned, we are going through the process. Particularly, we are consulting on that final model. When we get to that final model, it will be a question of implementing that. Also, in implementing—

THE CHAIR: Is that weeks away, months away or years away?

Ms Morris: Part of the reform program, as we mentioned, is to consult in this financial year. From that, obviously, there is a process of legislative reform and things like that.

THE CHAIR: That goes to the point made at the beginning. There are all of these recommendations; government is saying, "We're going to do it." Seven years later, we are still consulting, we are still engaging and we are still discussing, even though you promised to do it five years ago. There seem to be a number of recommendations in that sort of space whereby the government has reports and says, "Yes, we're going to get on with it, we're going to crack on, we're going to do this by the end of the year or midyear," and we are still faffing around. In that interim period industry and others are wondering what the hell is going on, to be frank.

Mr Ramsay: With respect, I think it is an unfair characterisation with the wording that there is faffing around going on. We have a substantial piece of work and reforms across a broad range of areas. With that particular area of the potential registration of engineers, it is a live question, and we are looking at what is most effective and not just what is most active. As Ms Morris said, we want to see, with all of the reforms, what reforms will actually make the industry, the quality and the confidence lift. We will be doing it on the basis of the best available, current evidence.

THE CHAIR: Sure, but why did the government commit to do it five years ago, fail to do it and say that they are still ambiguous about what is going to happen? That seems to me to be part of the problem. There are problems across the board, but in

terms of the regulator, we get reports and make commitments; five years later, we are still ambiguous about what is going to happen.

MS CHEYNE: What is ambiguous?

THE CHAIR: Are we going to have a register of engineers, what is the regulation and who is going to be regulated?

Dr Brady: I think what Ms Morris is trying to say is that, while there may have been a commitment, there has been review work in the past few years and the establishment of the reform program. Even in the Shergold Weir report, they say that there is not a panacea; there is not a silver bullet. We have taken a holistic view of what will improve.

As Ms Morris said, one of the incidents that happened several years ago that sparked the *Getting home safely* report involved a registered engineer. The approach we have taken is that registration is not necessarily just one answer. We have been looking at—and the Shergold Weir report does this as well—who are the people involved in the design and construction industry and how do we best regulate—

THE CHAIR: You can appreciate that it is a bit confusing for people, though. You have a report to government saying, "Register engineers." The government accepts that recommendation and says they are going to do it. Essentially, that has not happened; it has changed its mind and it has now come up with a different model. That whole process has taken seven years and we still now do not have that body of work that you are talking about. You can appreciate what that means for industry and for people who are engaged in this space. You might not want to use the term "faffing around", and I accept that; you might not like that language. But it is about not responding to an urgent report that demanded urgent action. The government accepted it; then nothing has come about. There might be a lot of work being done within the bureaucracy, and I accept that, but nothing has been enacted.

MS CHEYNE: To get a better outcome.

THE CHAIR: If you do not actually enact it—

MS CHEYNE: I am not sure if you heard what they said.

THE CHAIR: This is not a matter for debate. I am asking questions of the government.

MS CHEYNE: Open your ears.

Mr Ponton: I was going to nuance that slightly.

THE CHAIR: I hope so.

Mr Ponton: There is a recommendation that relates to the registration of engineers. We are saying that, in implementing that recommendation, we have to do a body of work to make sure that registering the engineer will achieve the outcome that was

desired. What Ms Morris and Dr Brady are saying is that, as we have done that work, and as we have looked more broadly at the 43 reforms, simply registering engineers may not necessarily be the answer. Far from faffing around, the team has done a whole lot of work in looking at that piece, with a whole body of reform, to make sure that the system, when we get to the end of all of these reforms, will achieve better quality buildings.

THE CHAIR: Did the government say that it was going to register engineers by June 2014 or not?

Mr Ponton: The point I am making is that, in implementing—

THE CHAIR: Yes or no? I want to know. The answer is that, yes, it did. Anyway, I will move on. The government is looking at the issue of certification. The submission to the inquiry says:

> The Government is considering the most appropriate model for certification in the long term.

Beyond the reforms that are being introduced, are you looking at a significant change in the model of certification or are they more incremental changes that you are talking about?

Ms Morris: That is the certification law as it fits into the broader regulatory system. That could be different for different types of building. The work we have done so far has focused on what would be relevant in any system. In any system you are going to need decent documentation, you are going to need to be clear about what stage inspections are at, you are going to need to be clear about what is inspected at those stages. That is what we have been focusing on at this stage. The question of changes, in a broader sense, to that model is work that will effectively come out of that.

THE CHAIR: You are talking more about where the hold points might be and what is involved in each of those hold points, rather than a fundamental change in terms of who does certification, bringing it back into government or any reform of that nature?

Ms Morris: The current reform program is focused on how the system is working at the moment. In a longer term sense, that question obviously comes up a lot. But the current reform program is looking at strengthening the system that we have. There is not a particular reform to change the model at this point.

Mr Ramsay: In particular, that is specifically within the terms of reference of this particular committee. We would welcome the deliberations and any recommendations of this committee on this very area. I had anticipated that that may be one of the areas in the committee's final report that is an important aspect for government to consider, rather than for us to do work to pre-empt the outcome of a committee report in that area.

MR PETTERSSON: If you go through the submissions to this inquiry, most of them, in some form or another, talk about certifiers and their concerns with them. They often boil down to a perceived conflict of interest, whether it be a builder-developer

appointing the certifier or maybe someone who is building their first home and they get shoe-horned into using a certain certifier. Does the government have any concerns about conflicts of interest with certifiers in the ACT?

Mr Green: From a regulatory perspective, it is quite clear under the law what the requirements are; that is, the landowner appoints the building certifier. Clearly, there are complexities around that when you are talking about purchasing a unit off the plan, because at the time a building approval is issued, the landowner is the developer, and may be the builder.

Certainly, from our perspective, on a single residential site, we know that most people first engage a builder, and the builder may suggest a building certifier that they have worked with previously. It is not necessarily the case that that involves a conflict. Part of the work that we are doing on the consumer education side is really important. The minister mentioned some videos. One of those videos—in fact they were emailed to me yesterday for an initial review—focuses on that very issue, on the fact that it is the owner's responsibility to appoint the building certifier.

There is the education of certifiers on their code of practice; also, the community and citizens need to understand what they should expect from their building certifier. There is a clear provision in the law that requires certifiers not to undertake building certification work if there is a conflict.

MR PETTERSSON: On the point of consumer education, I am a bit fuzzy on why we need to educate consumers on the role of certifiers if they act so independently and upstandingly all the time. Surely, it should not matter what certifier someone gets. Why do we need to educate someone about it?

Mr Green: It is important that the consumer understands who is involved in the building process. The certifier does play an important role. You are right: their role is quite clear in terms of what the law requires and what they are required to do under the code of practice, so it should not matter. I think consumers are more empowered to understand that, from the regulatory side of things, the person who is checking to determine that the builder has complied with the Building Code and the approved plans is that certifier, is the person appointed by the owner and is someone the owner can go to, to seek any further information or raise concerns, particularly during the building process.

I do not agree that they should not be advised. I think that there is significant reason to advise them of what their certifier's role is.

Mr Ramsay: Certainly, I agree that if all action that is happening in the certification area is quality and is consistent, there is less of a gap that can exist between the consumer and the certifier. That is one of the core reasons behind the code of practice that has been introduced: making sure that, for all people, the building surveyors who are acting in that certification process know exactly what is expected of them, know when it is expected of them and know that they are accountable for that. It is actually tied to their licence as well.

Again there are clearly certifiers who are operating top-notch. What we are seeking to

do with the code of practice is to bring everyone up to best practice, so that it is not a race to the lowest common denominator and it is not a race to see who can cut particular corners. We want to make sure that everyone is operating at that best practice level. That is why such substantial work has gone into that code of practice.

THE CHAIR: What is the status of the code of practice?

Mr Ramsay: That is in force and it is legally enforceable. For the building surveyors code of practice, that was publicised earlier this year. As of 1 September, it is now tied to the licences as well. That is enforceable against—

THE CHAIR: As of 1 September.

Ms Morris: With respect to what Mr Green and the minister have mentioned, there is also a role in understanding what the building surveyor does not do. I think there has been a lot of confusion about them having a supervisory role instead of that being the builder's role. It is really about saying, "These are the discrete functions of the building certifier and how you can engage with them," as opposed to, "Here are the functions of the builder and what they are responsible for."

THE CHAIR: On the point that Mr Pettersson is making about the conflict of interest and the building surveyor is there with the consumer, that is not the case in a multi-unit complex where essentially the owner is the builder and developer and it is only the point at which that building is then handed over to the consumer that that all changes. What do we do about that situation where the consumer and the builder are essentially the same person? It is hard to argue that that is not a conflict of interest.

Mr Green: You could take a view that it is hard to argue that there is not a conflict of interest but building surveyors are required to operate independently, they are required to comply with a code of practice, they are required to undertake stage inspections as stipulated under the Building Act and they are required to make decisions. If certifiers want to put their licence on the line by making incorrect decisions in relation to building compliance elements, that is a decision they can make. And if we become aware of those things we can look at the regulatory actions we can take.

I think there is sufficient disincentive, if I can use that term, for certifiers to act in that way. We know in the ACT that the certification industry is quite a small industry. There are around 110 building certifiers licensed in the ACT. I think certifiers are well aware of their obligations and even more so now with the implementation of the code of practice.

THE CHAIR: What action have you or other parts of government taken against any building surveyors in recent times? Have you stripped any of their licences or have there been any disciplinary actions?

Mr Green: In recent times our focus has been on rectifying the issues at the source and primarily in relation to builders. Actions have been taken previously to strip building surveyors of their licence. I can recall some in the past. We want to work with certifiers. But, as I said, if they are taking those decisions we will take that

regulatory action.

THE CHAIR: In terms of those licensed surveyors—you say there are 110—I am sure the vast majority are very good but, as we were talking about with regard to builders and others, there are those that are the rogues. Have we not identified who those rogues are and taken action against any of them?

Mr Green: There has been no action taken since I have taken over as registrar in the past 12 months. But I go back to what I mentioned earlier in relation to our construction audit program. We will look at the role of building certifiers. And certainly that was one of the recommendations in the building confidence report.

THE CHAIR: Could you, on notice if it is possible, provide information to the committee about what action has been taken over the past five years, for example—pick a period—if that is doable, so that we can get a sense of how proactive government has been in actually dealing with this as an issue? The point is that if the regulator is not enforcing those regulations then some of those rogues can then operate in an environment where they can get away with it, which has been a disincentive for those guys doing the right thing to continue on. That would be interesting.

Mr Green: Yes, I am certainly happy to provide it. I think the other thing to mention is that whilst the regulatory tool of rectification orders is often directed to builders there are other regulatory tools such as our demerit point system and occupational discipline. We would be happy to provide information on that.

THE CHAIR: Yes, so that we can get a bit of a sense of where that is at. I think that there is also, as I think was mentioned before, a bit of a misunderstanding about what certifiers do and also what building quality means—certifiers looking at documents to identify structural problems as opposed to the window not fitting quite right. And there is a misunderstanding of who is responsible for what, I think, in terms of rectification and building quality.

Mr Ramsay: And Consumer Law, consumer contract law as well. That is right. If it has been the wrong kitchen bench that has gone in or the wrong colour wall paint or whatever it happens to be, again it is quite different from building quality or rectification process.

Mr Green: Can I clarify some comments I made earlier in relation to Elara apartments? I answered a question in the context of being able to issue rectification orders when a corporation has wound up. One thing I should clarify is that in relation to Elara apartments there was an emergency rectification order previously issued in 2012. I understand that that order was not in relation to repairing the work, that was in relation to propping. Just to be clear, there was an emergency rectification order issued in 2012. And then from that there were legal proceedings that continued in 2013-14 against the builder, which resulted in the nominee surrendering their licence and never to be able to be licensed in the ACT again.

Again, as I mentioned earlier, there was civil action taken by the registrar at the time in relation to the engineer. The commencement of the rectification order to fix the

work occurred in 2017. And a rectification notice was not issued because the company wound up on 20 July. Just to clarify, there was an emergency rectification order. But in the context of the previous question that related to rectification of the actual work rather than—

THE CHAIR: Thanks for that clarification. I note that we are very close to being out of time. You might need to be quick in your answer. On the issue of strata management and bodies corporate, they are appointed by the builder for the initial period. Again, we have had that conflict of interest issue raised with us. The organisation that was supposedly looking after each of the individual unit owners often appears to be actually working on behalf of the builder to stop complaints or, if they are coming forward, to minimise them and delay it and so on.

Have you looked at that as an issue in terms of strata management, bodies corporate and how that is managed? Does that form part of that body of work that you are doing?

Dr Brady: It does. It is not in Minister Ramsay's portfolio. It actually falls in Minister Gentleman's portfolio. But it is the same group that sits in my group that is looking at it. We are part way through a reform program on strata reform. Some of it is looking at the role that an owner-builder has in terms of voting rights and the distribution of voting rights and, when people are buying into property, changes that can be made—and this crosses over with the building; a lot of it has been crossing over—and changes that have to be notified when you are buying off the plan, as that process proceeds.

It is also on the build, buy or renovate website. We have got a section there on strata reform. We have just done one batch. It crosses over a little with Minister Ramsay's portfolio through to the Attorney-General—

THE CHAIR: You are aware of the issue and the problems there?

Dr Brady: Yes. And it is part of our package. We have just done one round of the reforms and we are into our second round, which is a bit more complex. We have been doing lots of consultation with the Owners Corporation Network. We have got a consultative group set up that we are working with on that.

MR PETTERSSON: I was wondering if I can get an update on builders licence exam results. How is that program going?

Mr Green: I am certainly happy to provide that. I will not go into the detail around the exams, other than some of the results. From 17 April this calendar year to 30 August we have had 133 individuals identified to undertake the exam. That includes new licence applicants and also renewals and those people who have an expired licence—existing licensees. We have had six of those individuals at this stage choose to not renew or re-engage in the industry. Seventy-nine in total have had a first attempt. Twenty-four of those 79 have failed. Fifteen of that 24 have sat a second attempt and six of those have failed. In addition, two licensees have elected to downgrade their license. That leaves a figure of around 48 individuals that have not sat the exam. Of that 48, 23 are existing licensees. We are still working with those

licensees to get them in.

I still think it is too early to glean any broad view around what impact this is having. Certainly we are seeing some people make the decision to not continue to engage in the industry. That is a decision that they have taken independently. Whether that is because they are no longer working in any case or whether that is because they just do not want to be part of the industry anymore, we do not have that information at hand at this point in time. I think, broadly, that is where we are sitting: 133 identified and quite a number who have sat.

THE CHAIR: Thanks very much. Thank you, minister, and all the officials as well. I appreciate that this is a difficult, demanding space and that you are at the centre of a lot of attention at the moment. Just as I thought it critical at the beginning to note that there had been a bit of stagnation, I note that there has been a lot of work going on lately. I imagine that there has been a lot of burning the midnight oil and a lot of activity, and I thank you for that because it is such an important area. Keep up the good work. It is important.

We will now conclude this inquiry. You are the last to attend. The committee will deliberate, and we look forward to giving you recommendations in due course. The committee secretary will follow up with some questions on notice that were taken. He will also provide a copy of the draft transcript for you to review to make sure it accurately reflects what we discussed today. But, again, thank you very much for attending today. Good on you.

The committee adjourned at 12.04 pm.