LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Inquiry into the management of strata properties)

Members:

MS C BARRY (Chair)
MR T WERNER-GIBBINGS (Deputy Chair)
MR S RATTENBURY

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 3 JULY 2025

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Secretary to the committee:
Ms K de Kleuver (Ph: 6207 0524)

By authority of the Legislative Assembly for the Australian Capital Territory

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

WITNESSES

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Amended 20 May 2013

The committee met at 11.00 am.

HEXTELL, MS ALYSSA, Head of Policy and Advocacy, National Insurance Brokers Association of Australia
HORDERN, MS ALEXANDRA, General Manager of Regulatory and Consumer Policy, Insurance Council of Australia
KLIPIN, MR RICHARD, Chief Executive Officer, National Insurance Brokers Association of Australia

THE CHAIR: Good morning and welcome to this public hearing of the Standing Committee on Legal Affairs for its inquiry into the management of strata properties. The committee will now hear from the National Insurance Brokers Association; the Insurance Council of Australia; the ACT Discrimination, Health Services, Disability and Community Services Commissioner; and the Attorney-General.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contributions they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending this event today.

The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also broadcast and web-streamed live. When taking a question on notice, it would be useful if the witness used these words: "I will take that question on notice." This will help the committee and the witnesses to confirm questions taken on notice from the transcript.

We now welcome witnesses from National Insurance Brokers Association and the Insurance Council of Australia. This hearing is a legal proceeding of the Assembly and has the same standing as the proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If you wish to make an opening statement, please keep it to one to two minutes as we have a few questions that we would love to get to today. Do you have an opening statement?

Ms Hordern: A very short one. I think I can keep it to two minutes.

THE CHAIR: Excellent. Please go ahead.

Ms Hordern: Thank you very much for the opportunity to attend today's hearing and provide a brief opening statement. The Insurance Council of Australia is the representative body for the general insurance industry in Australia and our members provide a range of general insurance products, including strata insurance. It is essential, in our view, that strata communities are provided with a legal and regulatory framework that empowers them to make effective risk management and mitigation decisions so that their strata complexes remain well-maintained, safe, insurable and financially sustainable.

The ICA's submission to this inquiry and our November 2024 report on this matter

identified several potential reforms that could help address these challenges. Recommendations include improving and uplifting education for owners corporation executive committees to provide them with the necessary skills and knowledge to effectively manage a strata property; uplifting and enforcing education requirements for strata managers to improve service standards; and strengthening and enforcing the execution of appropriate maintenance and repair regimes. The ICA also supports controls to ensure the transparency of fees and service provider relationships and better management of potential conflicts of interest across the strata management claim.

When discussing fees and commissions, it is important to note a distinction between commissions paid by insurers to brokers and underwriters, and other payments exchanged along strata supply chains. Commissions paid by insurers to brokers or underwriting agents are common across many different insurance products. A commission is provided as payment for placing the insurance, as well as for other services provided by the broker or underwriting agent, including providing advice to the insured party, claims management and support, and other operational matters which would otherwise be undertaken by the insurer or the consumer.

However, there might be other fees and charges paid between brokers and strata managers. We understand that these fees and charges are not always fully disclosed to owners corporations or their executive committees and therefore reasonably raise questions as to whether there are any conflicts of interest. Insurers do not have any involvement with those payments and are unlikely to have visibility over them. We support full transparency of all fees and charges paid through the purchase of insurance and recommend that the ACT consider strengthening disclosure requirements to support full transparency across those supply chains. The ACT may also wish to consider implementation of similar reforms to some recently undertaken in New South Wales. I am happy to take any questions.

THE CHAIR: Thank you. Does anyone else have an opening statement?

Mr Klipin: Yes; thank you, Chair. Similarly, thank you for the opportunity to appear before the committee today. The National Insurance Brokers Association is the peak body that represents insurance brokers across Australia. Our members play a vital role in helping individuals, businesses and communities navigate risk and secure appropriate insurance cover. In the context of strata properties, brokers work closely with strata managers and owners corps to ensure that strata communities are adequately protected.

Strata living in the ACT is growing, driven by shifts in urban development and housing demand, and with this growth comes increased complexity and increased responsibility for managing these properties, particularly in relation to insurance and risk management. Strata insurance is compulsory, but it is also complex, and it requires professional expertise to ensure that coverage is appropriate for the unique risks each strata scheme faces, including those related to common property liability and building defects.

This is where brokers provide significant value. They offer tailored advice, access to a wide range of insurers and products, and essential support throughout the claims process. Their collaboration with strata managers enhances the resilience of strata communities and ensures better outcomes for property owners and residents. NIBA

supports reforms to strengthen strata governance, improve transparency and promote effective risk management. We encourage the committee to recognise the distinct but complementary roles that brokers and strata managers play, and to ensure that future regulation continues to support these partnerships. We welcome the opportunity to contribute to this important inquiry and look forward to supporting its outcomes. Thanks very much.

THE CHAIR: Thank you, Mr Klipin. I will now move on to questions, if that is all right with everybody. My first question is to anybody. We have heard a lot about commissions and how they blow up insurance and the fact that sometimes owners do not have the choice to go to another insurer, because the strata manager acts as the go-between, between them and the insurance company. We also heard in a previous session how difficult it is to get insurance for buildings here in Australia, generally. I want to get your views on what you think is causing that difficulty and whether it is something specific to the ACT or it is generally the case in Australia?

Ms Hordern: Pending Richard's views, I am happy to jump in on insurance generally. What we have seen across the insurance market generally over the last several years is what we call a hardening insurance market. Insurance markets usually operate in cycles: they go from hard to soft. A hard market is usually characterised by rising premiums and, in some instances, a reduction in availability of coverage, either through caps on the amount of cover offered or insurers choosing not to insure certain risks. That is always a direct reflection of rising risks and losses. Insurers need to make a certain number of dollars for the amount of money brought in, and, if they are paying out more in claims than they are bringing in in premiums, obviously they need to adjust their ratios to make sure that they are still able to run a profitable business.

The risks that insurers are seeing, and have been seeing over the years in both residential property and strata, have been rising, and these are driven by a range of things. Maintenance is a major concern across strata communities. Often strata complexes can be quite difficult to manage. What we see through our membership is that sometimes maintenance is not done proactively and it is not done effectively. Sometimes there are big debates about why the maintenance requirement has occurred—whether it is a defect or for some other reason—and that can delay making decisions around maintenance requirements, which can lead to the degradation of buildings and heightened risks.

Where we see a challenge in obtaining insurance, it is often because a property or a development has had number of maintenance issues that have not been addressed for some time or it may be a particularly high-risk development, for whatever reason. It may have flammable cladding. That was in the media a while ago. A lot of that has been remediated. There may be water ingress issues, which can be very costly in strata complexes, or it may be subject to natural disasters—less so in the ACT, but, obviously, we see challenges in Queensland, on the coast and those sorts of places. There is a range of reasons that a complex may be struggling, but we find that well-managed and well-maintained complexes are able to access insurance. There are a number of providers of strata insurance operating in the market. We are not seeing a situation where well-managed and well-maintained buildings are unable to access insurance.

THE CHAIR: Thank you. Mr Klipin, do you have anything to add?

Mr Klipin: Yes. I will defer to Allyssa in a moment. Picking up Alexandra's thread, I think she is spot on. The appropriate cover for well-managed buildings, using brokers, is readily available. That is a key part of what brokers do. They work with clients and think through some risk mitigation and maintenance issues to make sure that availability is there. That is why there is a close relationship between the strata managers and insurance brokers, so that you end up with an appropriate level of cover, but there are a lot of other things that go into keeping a building healthy, if you will. I will hand to Allyssa for her comments and then I would be happy to take any other questions.

Ms Hextell: As Alexandra mentioned, it is a national issue. These are not issues restricted solely to the ACT. We have started to see, within the last few months, a bit of softening in many of these markets. When we talk about a softening, that means that insurers have increased capacity, and with increased capacity comes an increased appetite, which usually results in lower premiums. Most insurance policies for businesses are up for renewal on 30 June. We have received feedback from our members that the market has begun to soften, as well as the global reinsurance market, which is very instrumental in the pricing of Australian policies.

With regard to your point about strata committees being unable to use a different insurer because the strata manager is acting on behalf of a single insurer, that is not almost a relationship by choice; it is as a result of financial services legislation. In carrying out their duties, strata managers collect premiums, issue invoices and provide insurance documentation. Under Australian financial services legislation, that is considered providing a financial service and, in order to do that, the strata manager must either be an AFSL holder or be an authorised representative of an AFSL holder. When they are doing those activities, they have to either have a licence or be acting under someone else's licence.

Some strata managers become an authorised representative of an insurer, so they are restricted to that insurer because they are operating under their licence. It is a bit different when the strata manager is acting under the licence of an insurance broker. That gives them a bit more flexibility in the insurance that they can approach, but that relationship has sprung up as a result of the Australian financial services licensing regime.

THE CHAIR: Thank you. That is really useful information.

MR RATTENBURY: Ms Hordern, I noted in the Insurance Council's submission your recommendation that the ACT government consider strengthening and enforcing the execution of appropriate maintenance. That is the point you were just touching on. What role do you see for government in lifting the maintenance performance of buildings?

Ms Hordern: It is a challenging conversation to have because there are challenges for executive committees that are running buildings. I recognise that they are all volunteers. I happen to sit on the executive committee for the building that I live in. Often the time commitment required is really significant and often you have very well-meaning volunteers who do not understand the complexity of managing a very complex building. Often, if you have commercial and residential units in the building, that adds complexity as well. We believe that there is a role for government to play in providing

education and guidance to executive committees about the type of maintenance that is required on buildings, because it is not necessarily something that people will come in contact with every day. An example we like to talk about is flexi-hoses. Are you familiar with flexi-hoses?

MR RATTENBURY: Yes.

Ms Hordern: They have the soft plumbing that goes into most modern apartments and buildings, because they have to get around tight corners and we are putting plumbing into much smaller spaces than we used to. Those flexi-hoses have about a seven-year natural lifespan, because they made with rubber and have metal around the outside. If they are not adequately maintained or checked, they can burst. In an apartment complex, if you are on level 7 and one in the wall bursts, you are probably not going to find out about it until the people on level 6 are saying, "Hey, where's all the water coming from through the wall?" or, even worse, it will go down through the wall cavity and cost an enormous amount.

Making sure that owners corporations have proactive maintenance regimes to look at all these things is really important. Where strata managers may not be proactively working with executive committees to undertake those maintenance regimes, we think that there is room for the government to say, "Here's an education opportunity for you. You could do a course to understand what it takes to manage a strata complex. Here are examples of standard maintenance regimes that you may want to consider." It would also help owners corporations plan. Maintenance obviously costs quite a bit, but it costs much less than fixing a problem after it has occurred. Having, say, a three- or five-year maintenance regime laid out—an example that people can adapt for their complex with their strata managers or any other advisors—would help them plan better and bring in the necessary strata levies to do the work over a period.

MR RATTENBURY: One of the bits of feedback we have had is that it can be particularly difficult for ECs to convince the rest of the owners to want to contribute. Thinking about the role of government, I take your point around education. We were also discussing the code of conduct for ECs yesterday. Do you think there would be value in government bringing in a positive duty on the EC to—I do not quite know what the words are—maintain the building appropriately? Do you think that would assist the ECs, in that context?

Ms Hordern: It is a really good question and one that is kicked around often. A balance needs to be struck between supporting executive committee members that are volunteers and putting so many obligations on them that they would not want to do it. If you end up placing some form of liability on them for when they have not done something correctly, because it is challenging to negotiate with the rest of the owners, you may find that executive committee volunteers would be reluctant to volunteer. I know that there are a number of complexes already where it is hard to get the requisite number of executive committee members to put their hand up, based purely on the time commitment and energy involved in doing this.

You would need to balance placing a duty on people with making sure that we still have an adequate pool of volunteers to undertake this work. That needs to be balanced with the fact that someone's unit is often their largest financial asset, so there needs to be

some way of ensuring that the people managing the complex have an understanding and respect for the fact that they are managing other people's largest financial asset. Sometimes those people may be in a vulnerable position; they may be downsizers; they may be on a lower income, which is why they have bought into a unit complex; or they may be working multiple jobs to make ends meet. Ensuring that we are protecting the assets of those people is really important. That is probably not an entirely satisfying answer, but it is a very complex question.

MR RATTENBURY: The whole space is complex. I think we can accept that.

Ms Hordern: Yes; it is really hard.

MR WERNER-GIBBINGS: I have a question for the Insurance Council of Australia on lithium ion battery risks and the recommendation that the ACT government should promote safer use, storage and disposal. Is this promotion activity happening in other Australian jurisdictions? Is the ACT government lagging behind?

Ms Hordern: In relation to lithium ion batteries, the New South Wales fire service is doing some brilliant work, in terms of highlighting the risks of batteries and making sure that people know how to manage them. I want to draw a really clear distinction between lithium ion batteries and EV batteries. We see very few problems with EV batteries. They are broadly extremely safe. Where we see problems is scooter batteries—

MR WERNER-GIBBINGS: Exploding scooters.

Ms Hordern: Exploding scooter batteries. Chargers have often been imported and are not up to Australian standards. It often happens when people charge them overnight or charge them on their bed, in a warm environment. I am sure we have all had the experience where, all of a sudden, our laptop heats up and we say, "This doesn't feel quite right." We are increasingly seeing that. When those batteries overheat, the fire is incredibly intense and is extremely difficult to put out. When people have scooters or e-bikes and they are not charging the batteries effectively, that is extremely problematic, particularly in strata complexes. We work very closely with Fire and Rescue NSW and are supportive of the work that they have been doing in that space.

We would love to see a broader campaign about how to safely manage and charge batteries—even as simple as not charging them overnight or not plugging them in and leaving the house for a few hours. Those are things that we think people could be doing more effectively to manage the risk, as well as making sure that, when batteries are damaged, they are disposed of correctly. In some larger complexes, we see people installing battery charging areas in basements for e-bikes and e-scooters. They are putting designated charging areas in place to contain the fire risk, and that is effective, but it is not particularly cheap. It needs to be considered by owners corporations in the context of the risk to their building.

MR WERNER-GIBBINGS: So it might not necessarily be a matter of the ACT lagging behind at the moment but, rather, New South Wales is leading the way.

Ms Hordern: They are in front.

MR WERNER-GIBBINGS: Thank you.

MR RATTENBURY: I want to commend the Insurance Council for the work done in drawing that distinction and publishing information on the risks around EVs. People are learning. It is new technology. The information you have put out has been really helpful for a range of ECs and other people to point to, so thank you for that work.

I want to ask both groups about the transparency issue. In the Insurance Council's submission, you talk about the new requirement in the Corporations Act to obtain consent. I remember new New South Wales provisions around disclosures and the like. I want to get an understanding of whether you think there is a degree of duplication across commonwealth and subnational approaches, and, if so, where should the ACT focus its efforts? Should we just copy what New South Wales has done? Is that considered to be best practice, or are there different ways to go about it?

Ms Hordern: We are supportive of the amendments in New South Wales to ensure transparency of fees and charges. We think that it is important that executive committees are aware of the fees and charges across the entire supply chain, whether it is being paid by brokers to strata managers or by strata managers to builders or other service providers, or in the other direction. We think it is really important that people are aware of what they are being charged so that they can make appropriate decisions.

I know that some strata managers will, for example, offer different prices to owners corporations based on whether they receive an insurance commission or they do not. They will disclose that up-front. That is important information for executive committees to understand. We have suggested in our submission that the ACT government may want to consider strengthening disclosure requirements, to require absolute transparency around those fees and charges. We would support that.

MR RATTENBURY: To the colleague online, do you have any observations in this space?

Ms Hextell: A few years ago, we updated our code of practice to require all of our members, regardless of whether they are providing general or personal advice, if they are providing advice to a retail client—which quite often includes owners corporations—to disclose the dollar amount of the commission they are receiving, as well as any fees and charges. That is something that we were really proud to implement within the profession. There is further disclosure. For example, the strata manager discloses that information to the EC or the strata manager discloses whether there is any sharing of that commission amount.

One of the underlying principles of our code of practice, which also applies to strata managers when they are acting as an authorised representative of a broker who is a co-subscriber—and we released guidance on that late last year that I am happy to share with the committee, if you would like. Sorry—I will get back to what I was saying. One of the underlying principles of the code is transparency, so we would be supportive of measures that aim to promote transparency around the relationships that exist within the strata space, as well as why these relationships exist and the value they are providing.

MR RATTENBURY: Thank you. We have had quite a bit of evidence about mixed use buildings, around the way certain commercial leases, retail outlets or business types can change the risk profile of a building. The favourite example has been a tobacconist, in light of the issues we know exist around them. Do you have any advice for the committee on how we insulate residential owners against that consequence from an insurer? I think everyone recognises the risk problem, but is it fair for the residential owners when, suddenly, a retail operation on the ground floor opens, which they have no say over, and they are cross-subsidising the insurance coverage?

Ms Hordern: This is a difficult issue. The ICA has been working with law enforcement on the issue of illegal tobacco and the arson that is occurring as a result of that. Again, this one needs a bit of a balanced approach because it would be unfortunate to put in place regulation that would deter legitimate businesses and legally operating businesses—businesses that were not doing anything wrong—simply because people on an owners corporation had a view that maybe that industry is dodgy. There are some instances where there the perception around industries is not accurate and perhaps not accurate to the business owner. It is also difficult to put in place regulation to deal with organised crime, because traditionally organised crime is not particularly responsive to regulation. That is the nature of the beast, isn't it?

It is an issue that probably needs a fair bit more thought and consideration, engagement with law enforcement officials, and dealing with the crux of the problem, which is the illegal sale of tobacco, and empowering owners corporations to ask questions and feel that there is a place that they can go to resolve disputes if they are having a dispute with a commercial unit owner.

There is a less significant example. There are sometimes issues with restaurants and commercial premises—for example, if grease traps are not cleaned as frequently as they should be. That can present a fire risk. So it is not just in the illegal space; there are risks presented by commercial outfits in legal areas as well. It is through no intent to do harm. It might just be that the grease traps were not cleaned that week because everyone was busy, and they got smashed on Sunday when they were planning on doing the cleaning.

I think it goes back to education and training being available for executive committees so that they understand the different types of risks that may present in a building, be it mixed use or single use, so that they can feel confident in managing them in conjunction with their strata manager, if they have one.

MR RATTENBURY: Thank you.

THE CHAIR: There have been conversations around removing commissions completely—getting rid of them. I want to get your thoughts around that and whether you think that is something that could hopefully promote confidence in the system.

Ms Hordern: From the perspective of insurers and the Insurance Council, we do not support a ban on commissions being paid by insurers to brokers or underwriters, because those commissions apply across a range of products. The vast majority of commercial products are sold through brokers and the brokers are remunerated for the

work that they do. I think there is often a misunderstanding about the amount of work that brokers do in order to understand the risk, provide advice to clients, source the right insurance for those clients, and explain the coverage once they have a few quotes available. Once a claim is made, they do an enormous amount of work in managing, lodging and facilitating the claim, and they should be remunerated for that work. If they did not to do it, someone else would have to, and it could be the owners on the executive committee or it could be the strata manager if they had capacity. Someone will need to undertake that quite significant amount of work and, usually, someone will want to be remunerated for doing that work, so a payment will need to be made at some point in the chain.

Transparency around the work that these people do to earn their commissions is important, as well as transparency around commissions so that people know how much they are paying and what they are paying for, and they can accurately compare the different policies in front of them. They would see: "On this amount of premium, we're paying this amount of commission, which equates to this many dollars, and this is what we're getting for it." They see it across the different quotes that they get. But we would not support a ban on commissions from insurers to brokers.

Mr Klipin: Everything Alexandra said is spot on. When a professional broker sits down with someone with complex needs, the broker brings their professional expertise to bear, understands the risk, educates people and then finds the most appropriate products and services. That is the placing piece once you understand the needs. But there is a really important role that brokers then play at claim time. Time and time again, we hear stories about brokers. It is the first call clients make when the property burns down or when there is an issue, and brokers are very well-equipped to step in and help navigate the complexity, solve the problem, get the claim paid, negotiate with the insurer, and so on. The role is really clear.

To Alexandra's point, remuneration that is clear and disclosed so that people know about it is a really effective way to manage this. Within the broking profession, there are a number of different business models. Some are fee based, some are commission based and some are a combination. It really depends on the size and the scale of the type of risk, the type of client and the sophistication. That is a really important part of market competitiveness.

Of course, if we step away from our day roles, we understand that, as consumers, we have a right to know things. As more and more people head into strata environments, people need to know what is being delivered, what is being paid for, and how much has been transacted and sold. That is a really powerful conversation to have, because, in the end, as we know, brokers are delivering significant value through the process, but we also need to make sure that people in your positions and the community at large really understand that.

THE CHAIR: Do you have any views on commissions from brokers to strata managers? That was the big issue, so do you have any views on commissions paid by brokers to strata managers?

Ms Hordern: We often do not have any visibility over that. Our members have visibility over what they will pay to either underwriting agents or brokers, but we do

not have visibility over any of the payments. Just as a general principle, transparency is important.

THE CHAIR: Thank you.

MR RATTENBURY: It has been a key distinction in the discussion. No-one is exercised by brokers and insurance companies. The issue is between the brokers and the strata managers, as I understand the evidence so far.

Ms Hextell: I can probably give an answer. If the strata manager is an authorised representative of the broker, they are doing a portion of the work and they will be entitled to a portion of the commission. That is where they are receiving a commission as a strata manager, but they are also receiving a portion of the commission as an authorised representative of a brokerage for the value that they provide.

The UTMA has put certain obligations on OCs that are usually delegated to the strata manager—for example, the lodgement of claims. Claims handling is a financial service under financial services legislation, so, if they were not to receive a portion of the commission in recognition of that work but they were still required to carry out those obligations and those responsibilities on behalf of the OC or the EC, they would charge a fee. There are certain areas where commissions have been removed across the insurance market. Clearly, that is only in workers compensation in New South Wales. They removed commissions and they moved to a fee based model. It did not result in a decrease in premiums, but there is a fee on top.

Again, we would 100 per cent support disclosure and transparency, but, in terms of a mechanism to reduce premiums, we would not see that as something that would meaningfully impact premiums.

THE CHAIR: Thank you. That is really useful information to have as well. We are now slightly over time. On behalf of the committee, thank you for your attendance today. You have undertaken to provide a document to the panel. If you can, please provide that as soon as possible.

Hearing suspended from 11.36 am to 1.00 pm.

TOOHEY, MS KAREN, Discrimination, Health Services, Disability and Community Services Commissioner, ACT Human Rights Commission

THE CHAIR: We welcome Ms Karen Toohey, the ACT Discrimination, Health Services, Disability and Community Services Commissioner. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If you wish to make an opening statement, please keep it to one to two minutes, as we do have a lot of questions. Do you have an opening statement?

Ms Toohey: No. It is a very brief submission, so I am happy to move to questions.

THE CHAIR: We will now move to questions. Ms Toohey, in your submission you provided some examples of disability and race discrimination for people living in strata properties. Some of the outcomes that you identified were satisfactory; others were not. Does the Human Rights Commission receive a lot of these types of complaints?

Ms Toohey: We do not get a high volume of these types of complaints. We do sometimes get inquiries about these matters, so sometimes we will give the person information about how they might go away and frame the issue under discrimination law. Sometimes that resolves it informally. It is a relatively small number of complaints. Part of the point of making a submission was also to put on the record that these pathways are available to people. Again, while it is a small number of matters, we find that, because it is about a person's home, it is really critical that we try and resolve it.

MR RATTENBURY: We had a presentation yesterday from a gentleman who had been the Queensland strata commissioner. We had an interesting discussion about the difference between a dispute and a complaint. He talked about the fact that the strata commissioner in Queensland could only deal with disputes, as opposed to complaints. His articulation was that disputes generally had a financial component, and complaints were more about conduct and the like. I thought it was an interesting discussion as their legislation was set up quite distinctly. Do you have any reflections on that? In your experience, is that a useful line that we could draw?

Ms Toohey: It is certainly not a line, as you are aware, that we would draw. For example, if I compare it to retirement village complaints, some of those are about conduct and some are about financial disputes. They are matters that we will try and resolve. As you know, some of those financial arrangements, because they are contractual, can get very difficult and very entrenched. As I said, it is not a line that I would draw. I am not sure that there is a lot of value in saying, with that particular type of matter, that we are not going to deal with it, in our circumstances in the ACT. As you know, with some of the people living in these settings, that level of detail or that sort of separation will not benefit them, in trying to resolve the issue to do with their home.

MR RATTENBURY: I would need to have a look at their legislation. I have not had a chance do so, in the course of the hearings. I was surprised by the distinction, to some extent. Given your experience with dispute settlement et cetera, I was interested in whether you had seen something like that before or understood perhaps why they had drawn that line.

Ms Toohey: Personally, I have not. Again, if I compare it to retirement village matters, the financial matters are often, as I said, contractual. I do not know whether there is some reluctance to get involved in those sorts of issues as opposed to conduct matters, where you can refer back to a code of conduct, and they are much more subjective in some ways. In the retirement village space, we certainly deal with those sorts of financial disputes, particularly where it is unclear. As you know, in that space it can be quite unclear as to whether it is actually set out by contract or whether it is the interpretation. In those matters, we have assisted the parties to resolve them. I am not sure that I am helping.

MR RATTENBURY: It is one that we will have to contemplate, as we work our way through this process. In a similar vein, and in that context, there was a lot of discussion about resourcing. A big part of their point was that they have to match their scope to the available resources. Are you able to give the committee any insight as to the scale of work that is involved in this, in what you do with retirement villages? We have seen a proposition where the government has put a costed model for a strata commissioner at the level of appointing a deputy director-general in an existing agency to do it, with one staffer to assist them. Are you able to give us a sense perhaps of what FTE you apply to this kind of work or how much effort it takes? I realise that it is a little arbitrary, having regard to the remit you have, but is there a way that you can help us to articulate that?

Ms Toohey: One of the issues in the Retirement Village Residents Association submission was that there are 42 villages, for example, at the moment, versus the number of strata organisations. We get a small number of retirement village matters relative to the number of complaints that I get. For retirement villages this year, it will be about 20 complaints. This year, I will get over 1,700 complaints across all of my jurisdictions. I do not have a dedicated resource, obviously, and it is a small number of matters, as are the strata matters that we get—accommodation, status discrimination. We are seeing matters to do with tenancy, occupancy and those things. For occupancy, we will get about 50 this year. Again, for me, that would work out to be half a person. I am not sure whether that is helpful. There are 20 people in my team for the 1,700 matters that we get. We are quite efficient, though, as you know.

MR RATTENBURY: Yes, it is a lean operation.

Ms Toohey: I had to get that on the record!

THE CHAIR: Going back to the disability and race discrimination conversation, I want to find out whether there are any things that you think could be a standard responsibility for owners corporations and strata managers in relation to these cohorts of people. Are there any things that you think we can standardise, in terms of rules and responsibilities, to make it easier?

Ms Toohey: One of the things, as you know, is that there are codes of conduct. Some of those codes do not reflect things like our legislative responsibilities—things like the Discrimination Act, which, obviously, the rules are bound by. In some ways it is about clarifying some of those broader responsibilities that they have. Even though, for example, with a number of the matters that we see, the owners corporation or the strata

manager will not get involved because they say it is not within their remit, the complainant will say, "Quiet enjoyment is part of my agreement," so you have a responsibility to step in and try to resolve those concerns.

With some of the matters that we have seen, we would write to either the strata manager or the owners corp and say, "Here's some information about the sorts of obligations in the ACT that we have"—disability vilification, disability access and racial vilification. We would expect information to be provided to the residents about their rights and obligations to other people in the particular setting. I do think there might be some room to clarify, in those codes, that these other obligations also exist, and that they have to be mindful of what their responsibility is, in those circumstances, to the person bringing the issue to them.

THE CHAIR: We have had conversations about whether, in terms of the code of conduct, there should be a consequence for breaching the code of conduct. I want to get your views on how far you think that needs to go. One example that was given in the course of the hearing was: why have a code if there is no way, essentially, of enforcing the code? I want to get your thoughts on whether you think there is value in having some consequence attached to a breach of a code of conduct.

Ms Toohey: The consequence, though, is also related to the education requirements and the training requirements. Certainly, a number of the submissions make reference to the fact that there are no standardised training requirements. I am on an executive committee, and there is absolutely no training, I can confidently say, that any of my colleagues on that committee have undertaken. I think there is that reliance on the notion of the sensible person being there, in those circumstances. My view would be that, for any consequence, we would have to front-load that process with some training and capability. Again, it is about whether people would then step forward to be on those committees if those were the obligations. Strata managers are a different issue. I think we would need to balance those out.

We use the codes in the matters that we deal with, so we will certainly refer back to those codes. It is not an enforcement mechanism per se, but because our legislation allows us to look at relevant standards when we are dealing with complaints, we will certainly use those. Again, for example, in the retirement village space, we will look at whether the village is a member of the Property Council's Retirement Living Council. They also have a code of conduct, so we will refer them back to that, in the way we manage the complaint.

MR WERNER-GIBBINGS: Commissioner, with respect to conversations we have had previously with this committee—could you extrapolate out of your submission as well—are you supportive, not supportive or neutral about the concept of a strata commissioner—a standalone strata commissioner?

Ms Toohey: The reason I have not really expressed a view on it is that it is a policy question for government.

MR WERNER-GIBBINGS: I am happy if you prefer not to. Yes, that is exactly right. Based on your expertise and your understanding of how it is working in the system—I can be more explicit—do you think that a strata commissioner could be effective in the

ACT?

Ms Toohey: People are looking for some guidance about what the expectations in these settings are. I will again revert to the retirement village setting, as a comparative example. We do not have a retirement village commissioner per se, but we do have a systemic approach from government to how that setting is regulated, who people can go to if they have a concern, and how we do policy work. Whether that is established in a single person or established by law is clearly a question for government.

MR WERNER-GIBBINGS: This is not a policy question: from your professional perspective, are there risks with fragmenting or duplicating existing processes, if a strata commissioner was established?

Ms Toohey: It would depend on the scope. As I have said here, from my perspective, it is a scope question. In particular, as you know, with some of the documentation around retirement villages, there are well-established processes, visibility and those sorts of things. I think that has been reflected in some of the submissions. There would be concern about having yet another pathway which would replicate existing pathways. With tenancy, as you know, there are well-established pathways through ACAT.

MR WERNER-GIBBINGS: Tenancy, as I am learning—yes.

Ms Toohey: I do tenancy complaints, and I do occupancy complaints. I think it goes back to that question of scope, so that people are not getting another option which may or may not be better than what is already there. For example, in the occupancy space, a few years ago we got an occupancy dispute jurisdiction, so that occupants had an option to bring a matter to us prior to going to the tribunal. Similarly, with the retirement village model, people could go straight to the tribunal or use an internal process. The idea, in putting us in place, was that they had an alternative to the tribunal. My submission is just in that space: further options are great, but let us not duplicate what is already there in what is a very small jurisdiction.

MR RATTENBURY: I was really interested in this diagram that you provided to the committee—this circle of options. I found it to be very clear in its communication. In terms of your point about fragmentation, I was struck by the number of options that exist for people, in an escalating kind of way. I think the document portrays that quite well.

Ms Toohey: Yes.

MR RATTENBURY: Is there a risk in people having too many options and getting confused? Is that feedback that you are getting or has this helped people to better understand what their options are?

Ms Toohey: Mr Rattenbury, as you know, that was put together by the Property Council and the Retirement Village Residents Association. When they put it together, they were trying to ensure that people had the informal options, the formal options, the options around, as I said, the property code, the retirement living code and those sorts of things. I would suspect that, if we developed this now, they might narrow that down a bit. Certainly, what we see, as you know, with some of these options, such as the Retirement

Living Council, is that there is not an outcome at the end of that process; it is purely a reporting process.

As I said, now that we have had the jurisdiction for longer—this is about two years old—it might be that this diagram could be narrowed down a bit. For example, again, in the occupancy space, as you know, you can go straight to ACAT, you can bring a complaint to us, and you can go to Legal Aid to get some advice. With respect to expanding those options in a small jurisdiction, firstly, there are limited resources, as you know, and, secondly, it means that sometimes people will say, "I'm not going to do anything. It's too confusing. Which one is the best one for me? Who is going to tell me what's the best one for me?" I think that, in some of these settings where, again, it is about someone's home—and this came up in the retirement village work, as you know—they can be reluctant to bring a matter because they do not want to upset the people that they live next to. There is a real delicacy in going about that.

Part of what I have tried to express is that, in some of those spaces, it is not known that we are an option, which is why I wanted to get it on the record. I am also conscious that it can be a barrier for people if there are too many pathways, as has been expressed to me. I will get calls from people saying, "You're the third person I've been told to call about my occupancy dispute. Are you actually going to do anything or are you just going to refer me somewhere else?" I am not sure whether that was helpful or not.

MR RATTENBURY: That is part of it; thanks.

THE CHAIR: Discussing options, multiple referrals and duplicating existing processes, do you think there is a role for the Human Rights Commission in strata properties in the ACT?

Ms Toohey: Certainly, the commission is not offering to be the strata commissioner; let me put that on the record. I think I can say that safely. We have a role; it is not well known, and it is limited in some ways. This process—and, again, part of the reason we put in the submission—in part was to get some more visibility of that option for people, so that they do not think there is nothing. Part of the benefit of these processes is to let people know that there are options. They are not as broad as some of the proposals for the strata commissioner that have been suggested. Certainly, they are matters that we can currently deal with, so we do say that we have a role.

THE CHAIR: Is there an expanded role?

Ms Toohey: Again, it goes to that question: if there is a strata commissioner, what is their scope? Is it complaint resolution or is it a referral pathway?

MR RATTENBURY: In that context, some of the examples you provided were very helpful and very illustrative of alternative ways to solve problems. I refer to the examples of an AGM rejecting a vote to install electronic doors for somebody who had a mobility issue.

Ms Toohey: Yes.

MR RATTENBURY: You can imagine the difficulty that would drive in that

environment. I thought that putting a discrimination filter across it was a very interesting way of trying to resolve the issue, and it would perhaps make the owners corporation aware of their responsibilities.

Ms Toohey: Yes. Again, as viewed through retirement villages, it is an area where we can do more work to be more visible, particularly in terms of people understanding that they may have some options, or we could use some more language around some of these issues. With some of the matters we have dealt with where there have been vilification issues, for example, in apartment complexes, it has been around talking to the strata manager and the owners corp about putting signs up, putting some educational material around, and making people aware of their individual obligations.

Again, while it is a small number of matters, as you know, we try and be creative in how we work with people to resolve matters. Again, because they are people's homes, if there is somebody in that setting who is causing distress or concern to the other residents, people either want them to go, which is not ideal for anybody, or find a way to resolve it. That, again, is the service that we can provide.

MR RATTENBURY: Am I correct in surmising that part of the effectiveness of the work is the title of the "Human Rights Commission"? Perhaps that is bringing the parties to the table in a focused way. I think that is what a lot of people are looking for, in a strata commissioner—that sense of a powerful, independent body that you have to listen to, in plain English. It plays an important role. Would you agree that that is partly the strength of having the Human Rights Commission in the spaces in which you are operating as well?

Ms Toohey: People would say that, when they get a call from the Human Rights Commission, they take it slightly more seriously than some of the other calls they get. As you know, we have a very broad range of statutory powers that we can use. Again, I agree that it might be appropriate for there to be a strata commissioner from a compliance perspective, or for some of those aspects of it.

My question—again, I am not saying that we do all of that work—is about making sure that the scope does not overlap with many other functions or responsibilities that already exist. But I completely agree about there being a role that is seen to be a leading light. With the Privacy Commissioner, for example, people know that there is someone they can go to if it relates to that particular issue. My question, again, and part of what I put in the submission, is about the committee being aware of the options that already exist and, if the proposal is to put a strata commissioner in place, what its role is within that existing field.

MR RATTENBURY: We would not want to hand some of these things to the strata commissioner because that issue of discrimination based on disability should continue to go to you.

Ms Toohey: I think we bring particular expertise in that space. Again, that was part of the point of putting in a submission.

MR RATTENBURY: That was a very helpful submission.

Ms Toohey: There is particular expertise already out there. Sometimes it is about the lens that you put over it. As you know, accommodation status, in the Discrimination Act, has quite a broad remit, which we use to bring matters in, so that people have the benefit of the process that we provide.

THE CHAIR: Sometimes it is about having creative solutions or creative interpretations of something that already exists.

Ms Toohey: It is a beneficial interpretation.

MR RATTENBURY: We appreciate your submission. It has given us important clarity, as we think about the various roles and what recommendations we might make, so we appreciate it.

Ms Toohey: I am grateful for the time today.

THE CHAIR: Is there anything else that you think we have missed that you wanted to touch on today?

Ms Toohey: No. As I said, it was discrete, and an attempt to get some visibility on some of those issues.

THE CHAIR: On behalf of the committee, I thank you for your attendance today. I do not think you have taken any questions on notice.

Short suspension.

CHEYNE, MS TARA, Attorney-General, Minister for Human Rights, Minister for City and Government Services and Minister for the Night-Time Economy
BASSETT, DR LOUISE, Executive Branch Manager, Fair Trading and Compliance, Access Canberra
CUBIN, MS DERISE, Executive Branch Manager, Licensing and Registration Branch, Access Canberra and the ACT Commissioner for Fair Trading
LHUEDE, MR NICK, Executive Branch Manager of Construction and Planning Registration Regulation, Access Canberra, City and Environment Directorate and the Constructions Occupations Registrar
MARJAN, MS NADIA, Acting Executive Branch Manager, Civil and Regulatory Law Branch, Legislation, Policy and Programs Division, Justice and Community Safety Directorate
NG, MR DANIEL, Executive Group Manager, Legislation, Policy and Programs Division, Justice and Community Safety Directorate

THE CHAIR: We welcome Ms Tara Cheyne MLA, Attorney-General, and officials.

Mr Ng: I have read and acknowledge the privilege statement.

Ms Marjan: I acknowledge the privilege statement before me today.

THE CHAIR: Thank you. Please note that as witnesses you are protected by parliamentary privilege and bound by its obligation. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

Before we proceed, Ms Cheyne, the committee would like to acknowledge the disclosure of a potential conflict of interest you raised with us because you are a unit owner. The committee would like to thank you for raising this with us. We are comfortable to note this and for proceedings to continue. If you wish to make an opening statement please keep it short, as we only have a short time to get through questions today. Do you have an opening statement?

Ms Cheyne: Briefly, chair, thank you. The government really welcomes this inquiry and, if I might paraphrase Mr Rattenbury's comments before, this is an incredibly complex area of law and it is rapidly evolving, particularly with the government's focus on having more diverse housing in the ACT. There are emerging issues, there are some long-standing issues and then there are some that we know are coming and yet we do not have a solution to.

We now have over 4,850 registered units plans in the ACT consisting of over 79,000 individual units. There are over 1,600 class A units plans, so typically apartment complexes, and over 3,200 class B units plans, which are generally townhouses. Our transition arrangements from gas to electricity is something that the government is working on and is focused on but does not necessarily have all of the solutions yet. The maintenance issues, the longevity of some of these complex types, together with the shared goal among, I think, all of our members in this place, of establishing a strata commissioner, does reflect that there are some areas where further reform is needed.

Quite frankly, the government has not been running a concurrent process, despite our

stated commitment for a strata commissioner to be established. With the committee deciding on this inquiry, I made the decision that we would not duplicate a process and, rather, that we would be guided by this process. So I appreciate our submission might be a bit frustrating because we have not taken a firm position on most matters, but we do want to keep an open mind so that we can carefully consider both the proposals that have been raised in the submissions and also the distilled recommendations of the committee.

So while my answers today might be a little light-on in terms of what we are doing or thinking about, I am genuinely not trying to be cute. I am trying to create a bit more of a linear process. Certainly we can speak about some of the recent reforms, the existing legislation—of which there is plenty—what structures are currently available, where there might be possibilities and the current regulatory posture. I will note that there are other officials here as well regarding the regulation of real estate agents and construction, building et cetera, who you are welcome to invite to the table to answer any questions.

THE CHAIR: Ms Cheyne, you touched on recent reforms and one thing we have heard in the process of this hearing is the qualifications of strata managers. I wondered whether those reforms include you looking at this issue in particular, and whether there is a role for government in ensuring minimum standards are met in terms of the quality of the strata managers that are out there looking after these properties.

Ms Cheyne: So unless an owners' corporation, as you have heard, is self-managing their units plan, there is a requirement that a strata manager be a licensed real estate agent, but I would note that licensing obligations only apply to the principal agent and not their employees. So I think one of the concerns that we are grappling with is that much of these functions are delegated to employees to manage and they are not subject to the same licence requirements.

It is clear from the swathe of submissions that you have that the community does want to see licence requirements reviewed at the very least, including giving consideration to what minimum training or licensing might be required for strata managers. At the same time, I think we have heard a little bit in the commentary as well that this is an industry that is itself challenging. It is challenging to attract people to and, even once they are in, it is then a high turnover industry. So we would certainly want to be careful about what might become mandatory, if anything, and the cost of that and who bears the cost. I guess, the corollary is, how we support executive committees to understand their obligations and their rights and also ensure they are appropriately supported in order to perform their tasks as well.

THE CHAIR: In your opening statement you indicated that you are leaving your options open so you can take on recommendations from this hearing. I was wondering, because strata has existed for some time, whether you are doing anything in the interim to increase the education of strata managers to ensure that at least they are meeting those obligations that you have already stated are in legislation, whether there is anything that is currently happening at the moment whilst the hearing chooses its recommendations.

Ms Cheyne: Those codes of conduct that exist in the legislation for strata managers and for executive committees and for owners' corporations do detail the obligations for

those persons, including that they are aware of those codes of conduct and, indeed, the legislative framework that they are working in. I do very much appreciate though that, I think, we can have a much greater role in terms of communicating that in plain language to everyone.

Just recently the government has reissued a website that is in pretty easy to understand plain language regarding strata obligations for executive committees, owners' corporations and strata managers as well and pointing to what is available and what your obligations are. I think we can build on that, to be honest. There are a lot of pieces of legislation as well, but largely this is covered within the Unit Titles (Management) Act.

I think I would very much take the point of what we have heard, that while things exist, some people are not necessarily aware of them. I have heard in some of the contributions earlier this week that some people who appeared were surprised that other people did not realise that they could do XYZ. That certainly gives pause for thought that it is not just reform we need, and I recognise we need further reform, but how we join it all up for everyone so that they understand their obligations and we can support them to meet them.

MR WERNER-GIBBINGS: The current regulation framework for strata managers in the ACT—and you just mentioned joining up the reforms and thinking—in the ACT government's assessment, is the current framework joined up enough? Is it fit for purpose? Is there more of a role, or a role, that the ACT government could feasibly play in ensuring minimum standards of strata management are met by managers?

Ms Cheyne: I think in the first instance the dispute resolution pathways and perceptions of barriers to those, real or simply perceived, is something that we need to be clearer about. Obviously, you heard Ms Toohey before with her evidence and about how these things can be conciliated. People can be reminded by different bodies about what their obligations are and work towards a solution.

It has been noted in some of the submissions and commentary about ACAT being less accessible than people would like and being costly. ACAT has just released their 2023-24 annual review and I think it recognises that. But equally, the average days to finalisation for unit titles matters has come down from this three-year high between 2020-21 financial year and 2022-23 from 146, 101, 114, to last year being 74. So I think there has been some real dedication by ACAT in working this through.

They also note in the annual report that often self-represented applicants will come, make their application and fill in the form, but do not really know what they want. They do not really know what orders ACAT can make. So that adds a level of complexity and working it through can require multiple directions hearings. Again, I think this is where the government can have a greater role in making it much more obvious to people what those options are, what the standards are already and what they can do if they do not think they are being met, and really just step that out as plainly as possible.

MR RATTENBURY: I note your opening remarks and I think that is really fair. For a lot of the questions I want to ask I do not expect you to take a defined position, but it would be helpful, in a dialogue sense, to understand the factors the government has

been thinking about as well, because I think the committee has a big deliberation job to do and it would be useful to get some feedback on some of these issues rather than a definitive position. So I put that rider out there as I ask a few of these.

One of the issues that has really come up is needing executive committees to raise their skills and whether we should offer voluntary or mandatory training. We have seen a series of arguments put in both directions around, "Well, it should be mandatory because it is a big responsibility, but we do not want to discourage people from volunteering." It probably goes to the scale of the training we require people to do. Has the government done anything in this space and have any considerations that the committee should bear in mind?

Ms Cheyne: I think what is very clear in the submissions, and what is weighing on my mind, is that being on an executive committee is a special type of volunteering. The obligations that are placed on the executive committee, and even on the owners' corporation as a whole, are significant. There might be some executive committees that are managing a handful of townhouses and there might be others that are managing, in many ways, effectively a multimillion dollar business.

I think we make delegations in the legislation where the owners' corporation or the executive committee—in writing given to the strata manager—delegate to them any of their functions under the act. You can imagine that for some executive committees that is exactly what they do. Then the issue becomes, how experienced is the strata manager? I have seen that in various iterations in Belconnen where that has happened. People have been too time-poor or whatever it might have been—not understood the legislation—and have handed it all to the strata manager and then gone. We are in a situation where we need to really take back some control and provide some further guidance. I am not saying we are making it too easy for functions to be delegated. I think that should be open to executive committees.

Equally, I do think it is an enormous obligation for anyone to be on an executive committee. I think something that has come through time and time again is the mental health of people who are on it. I think most people, if they have experienced being on an executive committee—because they are usually quite small as well—know there is a lot of pressure put on a very few people, especially when there are significant areas of change that are needed, such as flammable cladding, transition away from gas, things that cost, as well as trying to find a way through about managing common areas. I am not giving you an acute response, Mr Rattenbury, and I apologise.

MR RATTENBURY: No, no, I am not looking for an acute answer, it is all right.

Ms Cheyne: I think on the one hand it is a special type of volunteering because it is not just turning up to read a book to someone. There are a whole lot of legislative frameworks that executive committee members are obliged to know and to adhere to and they may not necessarily know that when they are signing up.

MR RATTENBURY: I think that is something that has emerged for me through the hearings, that we are putting people into a significant position of responsibility and not necessarily giving them the tools or adequately equipping them. I think that has come through as the important thing. Whether we make the training voluntary or mandatory,

we actually need to give people the capability to do the job.

Ms Cheyne: I think that is right and I would welcome recommendations of that nature.

MR RATTENBURY: One of the suggestions that has come to us is that the government consider some sort of concessions for those that serve on an EC. There are two ways to do it. One is that the owners' corporation would actually give a fees concession to those that do it, or the other is the government provides a rates concession. I am perhaps looking at officials, and yourself minister as well, as to whether we have seen a model like that anywhere else and whether it is something the government has any research on that you could share with the committee?

Ms Cheyne: Not necessarily the government, although someone tell me if I am wrong. I have personal experience with my own owners' corporation which, just two months ago, established a relatively modest fee or stipend for those who are on executive committees, scaling it up over time served. Obviously I did not participate in that AGM and, as far as I am aware, I think it is unique. I think the legislation is pretty silent on it but it was ultimately a decision of the general meeting. I guess we will see over time what that does in terms of stability of membership and also attracting people to put their hands up.

THE CHAIR: I have a question around regulation and enforcement. In your submission you noted that where a strata manager is a licensed real estate agent they are also required to comply with the rules of conduct under schedule 8 of the Agents Regulations. I wanted to find out from you how regularly you have received those sorts of compliance issues, if at all. And because we have been hearing different things about Access Canberra and the ability or the knowledge base of people in Access Canberra around strata issues, I wanted to know what the process is.

Dr Bassett: I have read and acknowledge the privilege statement.

Ms Cubin: I have read and acknowledge the privilege statement.

Dr Bassett: We might ask if you could repeat the question. I am terribly sorry but we were just trying to get ourselves organised.

THE CHAIR: That is okay. You have mentioned in your submission that a strata manager, where they are a licensed agent, are required to comply with the rules of conduct under schedule 8. I wanted to find out whether or not you have undertaken any of these compliance issues and how frequent it is, because what we have heard in the last couple of days is that the ability and the knowledge of Access Canberra is quite lacking in terms of strata issues. I think the example that was given was someone called Access Canberra and could not get a definite answer because they just did not understand strata well. So I wanted to know what role you play and how you go about playing that role.

Dr Bassett: Do you want to start?

Ms Cubin: Yes, sure, I can start.

Dr Bassett: I should say, before we kick off, that the responsibility is shared across a number of areas of Access Canberra. So our answers will be a bit of a tag-team in order to cover the ground.

Ms Cubin: I will talk in generalised terms around a complaint process when a matter might get referred to Access Canberra. So there is an assessment element that happens when someone lodges a complaint with us, and part of that is around jurisdiction. As you highlighted, Access Canberra has a regulatory jurisdiction. If the strata manager is also a licensed agent, then the code of conduct elements relate, as well as obligations under the Agents Act. So that is an element where the team will assess that component. There are also potentially elements under the Australian consumer law as well, depending on the conduct.

But there are also circumstances where a complaint might fall outside of either of those and therefore the jurisdiction of Access Canberra is then incredibly limited because actually we do not have the regulatory jurisdiction. In that process there is an opportunity to provide guidance, but I acknowledge what you are saying, that maybe some of the guidance or where that individual came through into the agency, did not answer the question that was being asked, but that becomes a situation where an assessment might not be on the phone. It might actually take a few weeks or take some time, depending on the complexity, and at the end of that, we might need to then refer the person through to the ACAT, as the minister suggested. So it really depends on the nuances and the complexity of the issue as to the role that Access Canberra can play, or not play, as the case may be. I do not know if you wanted to add anything?

Dr Bassett: I was just going to say with the code of conduct rules, obviously we receive complaints about the agents operating not only in strata but also in more general terms in real estate. When we are looking at those code of conduct complaints, as Derise has already said, we have to look at what obligations there are, whether or not that is something that Access Canberra can take on as an investigation or as a matter that we need to take action on.

Sometimes those things are around due care and skill. You talked a bit earlier, and the minister in her introductory remarks referred to, the education and training of those strata managers. That is part of that due care and skill; that they are understanding their obligations, that they know what the legislation requires of them and that they are able to exercise those functions correctly. Sometimes we get complaints in through that Agents Act avenue, if you like, and we can have a look at obligations under the Agents Act as well. So sometimes it can be difficult to determine where exactly the jurisdiction for the complaint lies.

THE CHAIR: Thank you very much for that response. You mentioned that sometimes when a matter does not fall within your jurisdiction you refer it out to ACAT, for example. Are there any other referral pathways that you would use when referring matters that do not fall within your jurisdiction? Or is it just ACAT?

Ms Cubin: I think in some circumstances—again, depending on the nature of the conduct—there might be circumstances where some legal representation is required. I think there are a range of avenues where our assessment teams might provide guidance, even to Care Financial. So there are different avenues. It really turns on the

circumstances and what has been highlighted and the complaint or issue that has been raised.

THE CHAIR: So you do tap into various referral pathways.

MR RATTENBURY: New South Wales has been quite active in recent times in reform in this space. Has there been any analysis by the ACT government of those New South Wales reforms? Again, I take your earlier comment where you said you were waiting to see where this committee goes, but have there been any issues identified in those New South Wales reforms that are problematic for the ACT or look like they would work especially well?

Ms Cheyne: I would say I think much of the reform in New South Wales is welcome and I do think it can be applicable here. There are some things that I have read about and gone, "Well, that seems obvious. Why wouldn't we do that?" I think it was in someone's submission, or perhaps in evidence, about having standardised fee payment forms for owners regarding their levy contributions, and then if you are having trouble paying, what to do. When those are designed or tinkered with by different strata managers we may be limiting the successful resolution of some matters by not giving people a mandatory amount of information or explaining what some of these technical terms mean. That is the one that immediately comes to mind but there are others as well.

I think the transparency of commissions—to give you a steer on my own thinking, I think I do recognise that commissions have a place. I do think that transparency needs to be better. Funnily enough, our act does require transparency from strata managers. They cannot mislead executive committees or owners' corporations by not revealing that something was not independent, as in that they were receiving a benefit from recommending XYZ insurer. The fact that those provisions are not well-known but we cannot—

MR RATTENBURY: —and may not be being observed in practice.

Ms Cheyne: Again, I would welcome recommendations in that space but, of course, our regulators may be able to share whether they have had any complaints in that space too.

Ms Basset: Not that I am aware of.

Ms Cubin: No, me either.

MR RATTENBURY: In terms of looking at other jurisdictions, there has been a lot of discussion about a role for a strata commissioner in the territory. There are models in other places. On page 15 of your submission, you speak about the government having started some preliminary policy work in relation to the potential scope and functions. In the spirit of not asking about any of those policies here, are there any issues that have come up that you think are particularly pertinent for the ACT and that may set us apart from other jurisdictions?

Ms Cheyne: A few things immediately come to mind. The first is our own election

commitment—and I see this referenced in the submissions as well—about the function of this being assigned to an existing DDG role and whether that is appropriate, and the staffing allocation for it. Again, that goes to questions of scope. Ms Toohey put it well. It is about whether it will be a referral and conciliatory body or education based. Will it involve mediation? What will it potentially duplicate that might exist elsewhere or might already have the skillset? I think that is what we need to define.

MR RATTENBURY: You have touched on my next question, which is one about resourcing.

Ms Cheyne: I want to mention the Human Rights Commission and retirement villages. I do not want to tinker with something that is working. That is probably where there is something a little more unique for us in the ACT—the function that Ms Toohey's role now has, in terms of retirement villages and disputes. Of course, there is still an ACAT jurisdiction, but I think that is working well. I cannot, quite honestly, see any reason to take that function and roll it into that of a strata commissioner, just because it might look neater or whatever it might be.

The Property Council has done a terrific job in having retirement village forums, which Ms Toohey attends. The Property Council hosts them regularly. Those relationships mean that it is made clear to those who are in those occupancy arrangements what pathways exist when they need to seek a resolution. I think it is working well, and I think the knowledge of it and access to it are growing.

MR RATTENBURY: You have touched on my next question, which is about what went forward in the election costing and the scale. As you said, there has been quite some commentary through the processes, as I am sure you have seen. We had a submission from a witness yesterday who provided the scale of the New South Wales strata commissioner. Obviously, the scale is different, but they had a budget of $11.8 million. The Queensland office had $4.6 million. Those that have commented have gone to scope and expectation. Do you have any reflections on the material you have seen and those issues?

Ms Cheyne: Creating something for the sake of it is not the path I would like to go down. I am very conscious that you have already heard about ACAT, Access Canberra and the Human Rights Commission. The Owners Corporation Network, in its volunteer capacity, does a tremendous job of explaining things, reviewing ACAT decisions, and trying to assist volunteers.

I am not seeking to duplicate something that already exists. But where we can provide some clarity or refinement, and if we need to bundle things into that role, we can look at that. There has to be a very clear reason as to why we would do that. If there is a perception that it is not working or that it could be improved, it is not necessarily going to work or be improved just by moving it.

The issue might be about the regulatory settings, the resourcing, or whatever it might be. I appreciate as well that the New South Wales and Queensland commissioners' functions are very different. Again, this is a small jurisdiction, and I think we know what our deficit is. There are considerations for us about what we could do that is sustainable and that addresses a gap—not just a knowledge gap or where we can make

things clearer to people, which I think we could do, but where there is a genuine need and where having a commissioner in place to do this would really assist.

That is where I have been struggling with this whole process. From reading the submissions—I think it is borne out in the submissions as well—there are varied ideas about what this commissioner should do.

THE CHAIR: There have been conversations—I think it was with Care Financial yesterday or the day before—around having internal dispute resolution. We are talking about how we can make the process easier and better—having an internal dispute resolution mechanism within the strata body itself, before you progress to a strata commissioner and a more formal process. I want to get your thoughts on that, and on whether there is a role for government in setting that up, or whether there is even an appetite to do that.

Ms Cheyne: I think there is a willingness to consider it. Again, for me personally to be convinced that that is a solution, it would need to show that ACAT and the orders it provides are not meeting a particular need, because I think the orders that it can provide are pretty extensive. It may well be that there are a few things that we need to expand in the legislation, or something similar. It may well involve the barriers to applying to ACAT, the time impost or whatever it might be. That is what I would be seeking to understand, because even an internal dispute resolution service will have a cost.

THE CHAIR: The argument for that was that sometimes ACAT does add some costs. Care Financial mentioned that there is an additional $1,000 for one matter to go to ACAT, which is an added cost that the applicant or respondent have to pay. That was some of the conversation. There was also a suggestion by Care Financial to set up a specialised legal advice service specifically for strata. I want to get your thoughts on whether there is an appetite for that.

Ms Cheyne: What really struck me, Chair, in familiarising myself with ACAT's recent annual statement, is that they have more recently grouped unit title disputes on a particular day. I think it is Fridays. One of the reasons that they had done so, notwithstanding that it is more complex, and it is about being able to know they have appropriate time dedicated, was to have a duty lawyer available for self-represented applicants, to assist them through that process.

No duty lawyer has emerged. I am not sure what to make of it. If there is no duty lawyer emerging there, maybe there is not the interest in or engagement by the profession, or a need being understood. Maybe we need to say, "Actually, this is something that is needed." Maybe, instead of a duty lawyer, there is the step beforehand that we were talking about, in terms of the lawyer being able to decipher some of the legislation, for example, and provide some advice and perhaps some mediation. Again, we are starting to stray into areas covered by other organisations, like the Human Rights Commission.

MR RATTENBURY: When you say that no duty lawyer has emerged, where was the duty lawyer expected to emerge from?

Ms Cheyne: That is a great question. It might be a question to put to ACAT. The paragraph reads:

> Directions hearings are held on a dedicated day—during the 2023-24 years this was on Fridays—to ensure appropriate time is available for the complex nature of these matters. The dedicated day would accommodate provision of duty lawyer services to unit owners or occupiers, however to date no suitable free legal assistance provider has been identified.

I do not know.

MR RATTENBURY: ACAT is hoping someone will, and no agency has been funded to do it or sees a role?

Ms Cheyne: I do not have that level of detail. That got my attention.

MR RATTENBURY: That is interesting. That is why I followed it up with a question.

MR WERNER-GIBBINGS: I have a question about quorum issues for executive committees and the rules around those. The Australian College of Strata Lawyers suggested that quorum issues for executive committees might be a problem that is unique to the ACT. Relaxing quorum restrictions is one suggestion that I do not think has a cost attached to it. Would there be any issues from the perspective of the legislative and administrative framework?

Ms Cheyne: Correct me if I am wrong, but my understanding of the evidence is that perhaps this is most acute where there is a reduced quorum and, for people in the room who are waiting for that time to elapse, it is annoying. I refer also to the 28 days for decisions to take effect after the reduced quorum meeting has been held, especially if some pretty big decisions have been made that need to be implemented, fees need to be calculated—whatever it might be. This is something that we have been doing some work on—quorums, reduced quorums and reduced quorum procedures. We do not wish to announce government policy, but we recognise that there is an issue. Hopefully, you can expect some movement in this space.

MR RATTENBURY: I might come back to the question of the duty lawyer, given that the answer is not available. Perhaps you can take that on notice and give the committee any further information that you may be able to ascertain.

Ms Cheyne: Yes. I will have to ask ACAT, though.

MR RATTENBURY: That is fine. You are more able to ask them than we are.

Ms Cheyne: I am happy to.

MR RATTENBURY: I want to ask about mixed use developments. This has been quite a contentious point through the hearings as well. As you will have picked up, some key evidence has been put to us. There is frustration amongst a range of residential strata owners, who find that they have no say over the commercial premises in their building. The commercial premises can present a range of risk factors. In a well-celebrated, well-known case of a tobacconist, they can push up the insurance premiums materially.

Has the government done any analysis of the potential to change the rules around options for how body corporates might deal with that, and in having an ability either to preclude a type of business from operating in an environment where there is residential as well, or to shift the premium on to particular businesses if they take up residency in that building and drive up the premiums?

Ms Cheyne: There have been some reforms, in 2022, I think, with the Unit Titles (Management) Act. This probably calls into question knowledge of these reforms. In section 78(3)(b), there are mechanisms provided in contributions from different owners, which allows an owners corporation to have a different method of levy calculation, other than by unit entitlement. The owners corporation can apportion costs to units based on use, for example—and, I would assume, potentially risk as well.

The example that probably comes up—again, in my own personal circumstances—is water. If there was a commercial drycleaner present, they will probably be using a lot more water than any unit alone. The owners corporation does have power under the legislation—I think through a decision at a general meeting, probably a special general meeting—to make a rule that that unit needs to pay more.

MR RATTENBURY: We have heard examples where, because the developer still owns the building or there is a particular set-up of a commercial environment, the commercial operators retain an ability to block those kinds of resolutions in an AGM or a special meeting that is being held. Are there other options that are available? I take your point around the reform that has been done, and that will work in some circumstances. The question is: if it cannot, are there other options that are being considered or that you are aware of?

Ms Cheyne: That goes more broadly to the question that has been posed about the rights of renters, the rights of owner-occupiers and the rights of people who are investors. That can really tip the scales in terms of who is controlling decisions. Sometimes, the persons who own the unit have no interest or engagement, except in trying to keep the fees under control, until they are really required to engage.

It is not just about whether the legislative provision is fit for purpose; it is about the make-up of those who are making decisions. This is another reform that New South Wales has progressed that I am particularly attracted to.

THE CHAIR: A few sessions ago, I asked one of the attendees what specific changes they would like to see made to the UTMA. The response that I got was that, essentially, the act was just trying to resolve some of the issues that already exist, in terms of planning and all those other things that support the UTMA. Has there been any consideration of how changes to other legislation, for example, affect the application or implementation of the act, and whether any further work needs to be done in terms of ensuring that some of the changes in other areas, especially planning, help to support some of those changes that we want to see in the UTMA, regarding those issues that I identified?

Ms Cheyne: Apart from insurance and some of those hard negotiations that I know several complexes have had to go through in my own suburb, the other biggest issue that creates much more than just a headache and can be incredibly debilitating is where

there are building defects. There has been considerable work done in terms of both the Construction Occupations (Licensing) Act and compliance, including Mr Lhuede's team having particular regard to class A buildings, given we have had so many apartments built recently.

Also, there has been engagement with several buildings where there were some unfortunate circumstances, in that the legislation changed after the fact, and there were limited options regarding what we could do. There are other cases where obligations can be put on the builder to make good. Mr Lhuede can probably give you some examples.

Mr Lhuede: I have read and acknowledge the privilege statement. Following on from the minister's comments, the Construction Occupations (Licensing) Act in particular provides the regulatory framework to cover three core areas. It provides a licensing framework for construction occupations—that is, builders, certifiers, plumbers, electricians et cetera—and ensures that people undertaking those roles have the necessary skills, qualifications and experience. It provides an accountability framework for those entities in terms of their licence and how it is held. Coming to the point, it provides a framework for rectification and holding those entities, particularly builders, their nominees or the companies, accountable for building defects.

As stated, there are limitations on that, though. There is a statutory warranty framework within the Building Act. We receive roughly 200 to 300 building-related complaints a year. The majority of those are dealt with through the stat warranty processes. We encourage owners, whether they are in class 1 residential or mixed-use developments, in the first instance, to engage with the builders. If they can resolve issues in the most effective, efficient way that does not involve complex legal processes, that is what we would encourage.

Where that does not occur, for a variety of reasons, and where that relationship may have broken down or it is complex, there are other orders. We do have a 10-year reach-back mechanism, in which we can impose orders on the builder of that property to undertake rectification. We do not issue a lot of those a year. Last year, 2024-25, we issued nine rectification orders and three emergency orders. Often, they are challenged in the ACAT and high-level courts.

The important point is that, with all the matters that come to us, often they do come to us late in the period, in the context of that 10-year timeframe, and where a lot of the attempts to resolve matters have not been successful, but we will pursue them.

For commercial-residential, mixed use, they are often complex. You are not often limited to just single defects or single issues; they are often repeated across multiple units and across common property which, in itself, creates its own challenges. They are complex processes. Often, they are high-value processes and, as such, we end up in legal dispute in those cases, and they can carry on. We have quite a few of them in the courts as we speak. But we will continue to pursue that.

With some of the challenging spaces that have been mentioned, I refer to the 10-year life span, the 10-year remit. It is effective. There is some data—and this goes back to the 1990s, when the national legislation around building and building regulation was

developed—that shows the majority of latent defects should become apparent within that timeframe. We do have buildings that fall outside that, and that is particularly challenging. As government, as a regulatory agency, we do not necessarily have broader reach-back powers to builders after that 10-year period.

There are circumstances where the regulatory remit of government is constrained. We can direct orders for repair on owners. Those powers are available quite separately under the Building Act. Obviously, that comes with issues, if we are imposing enforceable legal orders on owners, who might already be in quite difficult circumstances, because of the long-running nature of defects. We do that—not as often, though. It is often where there is a significant associated safety risk. For example, it could be associated with fire safety issues in a building, and we might target those particular areas.

There are limits to the regulatory powers that we have. The further back you go, it is about how we can demonstrate that it was a latent building defect, or there might be other issues.

We continually try to improve it. Coming in this year, we have a property developers regulation. We will now be licensing separately individuals and entities who are undertaking residential development. That licensing will commence in October, with the actual act commencing next year.

What is really important is that it now brings developers into that accountability chain. The powers are very similar to what we have under the Construction Occupations (Licensing) Act, in terms of issuing rectification orders and 10-year reach-back. The statutory authority for that sits with the role that my delegates and I occupy, but that now brings that other group of entities—property developers in this case—into that accountability framework as well. It broadens our scope, where there are defective buildings, to rectify and have those fixed.

I will finish by saying that that is not the place where we want to be. The focus likewise has been on putting a lot of effort into our audit and compliance, particularly in class 2, the residential-commercial space, before the COU is issued, before the building is completed.

One of the things that will drive difference and will see difference over time has been to engage within Access Canberra engineers and certifiers who are now looking at all class 2 buildings coming through, in terms of their plans, and at the building approval and COU stage. That is done so that we can identify those issues before occupancy commences, and not after, which is often the case, and which has the most impact on owners.

THE CHAIR: You mentioned that there is a 10-year defect warranty span, but there was a building component material—I think it was flexible pipes—and our understanding is that it has a six-year span and needs to be changed after six years. How does that interact with the 10-year span?

Mr Lhuede: That is a really interesting question. I will endeavour to answer it, if I can. Where you have a component or an element of a building that has a life span of less

than the 10-year span, it would be difficult to regulate it, in that sense. That is a responsibility, ultimately, of the owners. One of the aspects of the property developers regulation is to bring in, at the COU stage, at completion, a maintenance manual. It is about starting to ensure that we have in place, provided by the builder through the certifier, a building manual, in effect, looking at how it works.

It goes to the exact point of addressing those types of issues, of what is the maintenance regime for the HVAC, waterproofing et cetera, to ensure that those problems are addressed, and that they are addressed in a timely manner. That specific example would likely come down to a maintenance issue, I would suspect, without knowing the details. It is likely to be maintenance, as long as that is specified in the standard and in the documentation that came with that particular product.

THE CHAIR: The committee will now suspend the proceedings.

Hearing suspended from 2.32 to 2.52 pm.

THE CHAIR: We welcome back Minister Cheyne and officials. I remind you that as witnesses you are protected by parliamentary privilege and bound by its obligations. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

We will move on to questions, if that is all right. Minister, there have been lots and lots of conversations around the qualifications of strata managers and essentially standardising that and also licensing strata managers. I understand that the current scheme is the licence is with the strata organisation itself but the individuals that sit under that management are not licensed. I wanted to get your views on that and whether that was something that you would strongly consider implementing if there were to be recommendations to that effect?

Ms Cheyne: The remuneration and training for the executive committees are the two things where I recognise something needs to change. But I do not have a firm answer, because I recognise for strata managers that it is an industry that few people stay in for long and of those who do join it, I absolutely appreciate, many are learning on the job, which can cause its own issues for owners corporations and executive committees.

Given they are having such a difficult time attracting people to that profession in the first place, I think any training, licensing and qualifications that we require them to have is going to have to be carefully thought through so that we are not providing a further barrier and having another issue come up, which is strata managers having too many owners corporations with whom they work and then being stretched thin. I can see a world where we exacerbate that problem. It is about how we ensure that those who are in those positions as strata managers are equipped to do a good job and find it a rewarding career and stay while also not discouraging them from joining in the first place. I welcome any bright ideas about how to navigate this, because I do not know.

THE CHAIR: My understanding from the hearing is that there is no career progression or pathway. One suggestion has been to have the qualifications that lead to maybe project manager, property manager or whatever advanced level qualifications that has a career path. Currently there is an organisation—I cannot remember the name of the

organisation—that is providing training to strata managers.

Ms Cheyne: SCA, I assume.

THE CHAIR: No, not SCA; it was another independent organisation that is providing training. One suggestion was to provide some kind of rebate so you get as many strata managers trained up as possible and to boost the intake. I was just wondering whether there are any organisations that you are working with to determine whether there is an appetite to expand that program to attract more people into the profession?

Ms Cheyne: I am aware of the training, and I think it is a positive. Again, not trying to duplicate function, not trying to reinvent the wheel, if a product exists that meets the need, then that would be attractive to government. There is a broader question, though, about who pays. On the one hand, the more skilled and knowledgeable strata managers are, everyone benefits. But, on the other hand, it is a business and they are working in a business setting that is for profit. So what is the government's role in subsidising an organisation that is making money and could probably reinvest itself in terms of a real estate agent. That is probably the philosophical conundrum for me there.

In terms of engagement, I think it is probably a little premature for us to be exploring a training package at this stage, because I think we would want to know what we want it to achieve first and, again, that gap of what we are missing here that the training will solve. If that is clearly articulated in any recommendations in the report, that would provide government with some direction.

MR RATTENBURY: One particular issue that has come up is strata scheme renewal and if a building gets old and needs to be demolished or rebuilt. Some witnesses talked about utilising the land more because you have got some buildings that are on a large piece of land with a small building. At the moment in the ACT, we require 100 per cent of owners to sign up. We were given an example that, even when 100 per cent of owners had agreed, it was still a whole process to get through the Supreme Court and it took ages. The suggestion has put to us that a more practical threshold would be like 75 per cent with a safe gap or some sort of safeguards put in place. My question is: does the government see any barrier to reducing the threshold, or are there any issues that would be of concern?

Ms Cheyne: This predates my time and—

MR RATTENBURY: I think it has been there for a long time; it is not a recent phenomenon.

Ms Cheyne: No; what I am about to say predates my time so I might not be as accurate as I could be. I believe this issue has been considered before. Reform has been identified for some time, but there was some active opposition in terms of industry representation, or whomever it might have been, and so did not get up. However, I understand that the need has become a lot more prominent in people's minds and I think the appetite for reform there is back—and I am ready. I think it is necessary.

There are some obvious examples. I think there are some complexes where the defects or circumstances might change, or whatever it might be, where, quite honestly, the best

solution is to raze it to the ground and start again. But one unit owner who may not even live there can be restricting that option. I think there is a real issue there about fairness, especially if there is quite an exorbitant cost in terms of upkeep or ongoing maintenance that is creating a financial pressure on the rest of the owners corporation. Again, that goes to the question before about who gets a vote. I do not have a view on this, but I think there are questions about owners, occupiers and owner-occupiers and what counts for what.

MR RATTENBURY: Yes, that is a whole other discussion, particularly in the context of renters. It has come up quite a bit, and you touched on this earlier. We have had one model put to us not in a context of perhaps demolishing the whole building. I think that is a very specific issue around the owner.

Ms Cheyne: And I think it would be a different threshold, because imagine if it is just renters and they have lots of votes and they say, "Let's demolish it."

MR RATTENBURY: Yes, it is an interesting question. We have seen a model put to us that suggested that each unit be given two votes, where you have an owner-occupier they have both votes and where you have an investor or renter they one vote each in AGMs and various other matters. I think this is a probably one of the more creative things that has come before the committee. My question is: is the government aware of that model? Have you seen any examples of it anywhere else and see any pitfalls?

MR WERNER-GIBBINGS: I think they did it in the British parliament in the 1780s, where you would have two votes per borough. It did not work well.

MR RATTENBURY: I had something a little more contemporaneous in mind, Mr Werner-Gibbings.

Ms Cheyne: I am attracted to a rejigging. I think there is then still a question about equity. I still think the formula where an occupier who owns it having double the vote of someone who is a renter when, ultimately, the person paying the levy contribution and having an ongoing interest in the property might need a closer look at. It might just be a bit too skewed. I think there is probably a formula that could be applied that better reflects ongoing interest to owners, to investors, to owner-occupiers and to anyone who is wanting to benefit from the quiet enjoyment of the complex.

MR RATTENBURY: Certainly in that discussion there has been a range of other suggestions around tenants being able to directly communicate to the body corporate, the strata manager and the like at a much more practical level of being able to say, "There is a maintenance issue," or "There is water leaking." I think those reforms are less complicated. We have heard some very interesting examples of people who work quite hard to include the tenants in their process. They have residents' gatherings rather than owners' gatherings, for example. So I think there are some interesting things happening. Then there will be, "What can we do in the legislative space that improves the situation for renters?"

Ms Cheyne: Exactly. I think when it comes down to decision-making it is what is the balance that is ultimately fair and represents someone's financial interest and financial liability and the nature of the asset being an ongoing concern.

MR BRADDOCK: I have a couple of streams of questions related to electric vehicle charging. The first one goes to the funding. A couple of submitters have raised the question of the ability to utilise the sinking fund, whether that be borrowing from the fund or potentially just utilisation of the fund to support EV charging. They suggest the current act is silent in terms of whether this is possible or not. Their suggestion was basically a request for guidance to clarify that that is indeed possible. I just wondered if you had any views on, one, whether that basically meets the intent of the act and, two, whether there is a possibility of issuing such guidance.

Ms Cheyne: I do not know, to be frank. I feel like there are examples of some complexes that have used their sinking fund.

THE CHAIR: Would you like to take it on notice, Ms Cheyne?

Ms Cheyne: Let me check, as I just think this through. I am certainly happy to look at the purpose of a sinking fund and whether it needs to be clarified that you definitely can or you definitely cannot. That is what I am happy to provide advice on and an indication of openness to change or not.

Mr Ng: Attorney, if I could just add to that—

Ms Cheyne: Perfect; thank you.

Mr Ng: In this financial year, the current proposed ACT government budget processed expenditure on resourcing in JACS to progress work under the Integrated Energy Plan. One of those activities is to review and progress reforms to unit titles management legislation to remove any barriers which relate to the adoption of electric vehicles by unit owners and also to support unit plans to transition away from gas. One of the bits of work that we will be doing, Mr Braddock, is identifying where those barriers and challenges exist and supporting government to develop solutions in relation to that.

MR BRADDOCK: You were referring to the budget. Is that where that is referred to?

Mr Ng: Yes, that is correct.

MR BRADDOCK: Okay; I will have a look in there.

Mr Ng: The initiative is the "Climate action—Continuing climate change action and environmental protection" initiative in the budget.

MR BRADDOCK: Thank you.

Ms Cheyne: You will recall that the Integrated Energy Plan came out last year.

MR BRADDOCK: Yes.

Ms Cheyne: There is a pilot program of apartments across the ACT. I think it is seven, and I need to declare that mine is one. I did not know that until recently. In terms of working with the executive committee, strata and owners corporations about, "What do

you need here," I think electric vehicle charging is one thing. I think the serious issue that needs lots of attention is transitioning from gas hot water to whatever else, just simply because of how the apartments are designed. There are some that just do not have any space for any of the current solutions that are available on the market, and the transition is going to be complex and costly, even if there were government support to assist with that. Again, getting all owners to agree on a significant cost is very tricky. It is important that this work is being progressed, absolutely, and I think the best thing that we can do is ensure there are no additional barriers in our legislation that inhibits those changes. I know you are talking about EVs, and we can go back to that.

MR BRADDOCK: No; that is totally fine. I suppose it is not a barrier in the legislation; there just seems to be a lack of clarity or guidance.

Ms Cheyne: Yes, sure. I will come back.

MR BRADDOCK: Secondly, a submitter also suggested putting in a right to charge into the act, and I wondered if the government had considered any of the challenges or difficulties or whether that could actually work.

Ms Cheyne: I believe that we are looking at that as part of the Integrated Energy Plan. I also think that there has been some further work about new units that are coming on line and what the minimum standard is for charging infrastructure. Where I think we are having a lot of issues at the moment is where there are existing unit plans and people wanting to transition to an EV but the charging infrastructure is not there and to retrofit it in a basement is difficult.

There has been a question about the safety of electric vehicles in basement settings. All the advice that I have had from fire experts, ESA, the consumers and ministers meetings is that it is not electric vehicles, the cars; it is micromobility, and people using a different plug than the one it came with, and that is how fires start. So do not get your charging infrastructure off Temu; you really need to be making sure that it is fit for purpose. That is a broader question, because I think micromobility is here to stay. That is certainly the ACT government's position. But how do we support that in a way that is safe for everybody involved?

On EVs, as the car, I think where we are seeing particular challenges that government cannot solve alone is capacity in the grid. I think it was the EV people that said in their submission or their evidence that there are low-voltage charging options and they should be pursued. I think that in an area like Belconnen, for example, that has such significant density, even doing that when a complex like Republic, for example, is effectively its own suburb in terms of size, the density and the intensity of the network is not yet ready. Indeed, a lot of people say to me, "The Belconnen town centre is very busy and lots of people live there. Why don't we have more public charging infrastructure?" It is because we cannot; the grid is not ready.

MR BRADDOCK: Thank you.

THE CHAIR: I have a few more questions. We have heard lots of conversations about insurance and how expensive insurance is, not just in the ACT. There were some suggestions about the government underwriting some of this very difficult insurance to

get. I was wondering what some of the barriers would be and whether this is something that you would consider.

Ms Cheyne: This is a vexed issue and something that has been occupying my mind across a whole lot of industries, including the night-time economy, which is also facing what I would describe as an insurance crisis, let alone the festival scene and whatever it might be. As you know, there is a separate inquiry into insurance being undertaken by another committee, and I very much look forward to the outcomes of that.

I think what we have seen in some of the evidence provided and the experiences I am aware of are interrelated with some of the other issues that the committee has been looking at, such as the types of businesses that are in mixed-use developments and what that does to an insurance premium, to the risk profile, to the likelihood of being able to find an insurer and potentially the way that a strata manager might be representing insurance options as it relates to what commissions they might be getting.

I cannot see a silver bullet that solves this. I would hope that there are perhaps some more regulatory actions that we can take, including around transparency and not putting owners corporations or executive committees in positions where at the eleventh hour they are having to sign the only option presented to them which is pretty unpalatable, but the alternative is to have an uninsured building, which has its own consequences. I think that is the area that I would be really focused on in the first place. With government being an insurer of last resort, when insurance is effectively a private business and private industry, I think there is a question about precedent.

THE CHAIR: In ACAT's submission they noted that there would be fewer disputes if the scale of the allowable fee is set by an independent body. I just wanted to know whether this is feasible and whether it is something that could be considered.

Ms Cheyne: You said the scale of the—

THE CHAIR: Allowed fees is set by an independent body. That is on, I think, page 2 of their submission.

Ms Cheyne: Okay. Are they talking about fees for applications to ACAT or fees within units?

THE CHAIR: Fees for application to ACAT. I think the court fee is what they were referring to.

Ms Cheyne: I think there is a separate question about fairness of fees that are decided—

THE CHAIR: Outside of ACAT, yes.

Ms Cheyne: Yes, for owners corporations to pay. I am pretty sure that the fees are set by a disallowable instrument that I may have signed recently. Mr Rattenbury knows what it is like with the many DIs that we have. Whether it is independently set, I think usually we have got some pretty clear guidelines to government about the indexation that we are applying to fees. I would need to have a look at that submission in more detail, unless someone can help me.

THE CHAIR: I will probably not read it out because it is quite long.

Ms Cheyne: Sure; okay.

MR WERNER-GIBBINGS: A number of witnesses have suggested that the ACT guidelines or the government guides to strata, having been produced in 2018, are not as up to date as they could be and do not cover recent strata reforms. Is that a fair assessment? If yes, is there updating work being undertaken, when can it be expected et cetera? There is also a question about the Owners Corporation Network. Is that the same thing—the *Unit titles management in the ACT: What you need to know*? That is also a 2018 document that some users are finding out of date. It might not be. The government might be able to take responsibility for that.

Ms Cheyne: There is definitely a role for government in providing information that is accessible and easy to understand, and that work has been undertaken quite recently. We have a new website which Mr Ng is demonstrating.

MR WERNER-GIBBINGS: Excellent, it looks great.

Ms Cheyne: It is not a prop.

Mr Ng: Mr Werner-Gibbings, if I could assist?

Ms Cheyne: Please go ahead.

Mr Ng: The most up-to-date information is on the ACT government website. It outlines both the different types of unit title premises that can be created and some of the rules around it. It is not as detailed as the former guidance, which I think is some of the feedback that the committee has received and has been received from the service more generally.

Ms Cheyne: I appreciate it had not been updated in some time, but this has been recently updated.

MR WERNER-GIBBINGS: We will put the links in the report.

Ms Cheyne: Yes, I can send it through. The Owners Corporation Network, of course, is its own body and produces its own material, which I think is incredibly helpful.

MR WERNER-GIBBINGS: Thank you.

THE CHAIR: Mr Rattenbury?

MR RATTENBURY: One of the issues that has come up is the loss of documents at various points. This is where, in the transfer from the building developer to the first strata committee or from strata committee to strata committee, there is a loss of documents. Some of them are quite important schematics for the building, records of maintenance and these kinds of things. The proposition that is being put is whether there might be a central repository of records.

We have certainly had a number of private strata companies saying they are developing their own databases. This sort of raises its own obvious questions. Is this a space the government has contemplated action in? It might go back to the time of some of the earlier discussions around defects and the moving from building phase into occupancy phase.

Ms Cheyne: In the Unit Titles Management Act owners corporations have an obligation to maintain a register. That needs to include who the unit owners are and who the occupiers of the unit are and whether there are any subleases available in the plan. I think it would be helpful to understand what are the documents that are going missing in the transfer, because that may narrow where the issue is.

MR RATTENBURY: The suggestion was—

Ms Cheyne: It is about developers.

MR RATTENBURY: Yes, how air conditioning systems work, schematic diagrams and those sorts of things, which are quite important. Buildings are increasingly complex and detailed. I was surprised. I thought they would be in some public register somewhere, but they seem not to be.

Mr Lhuede: I have a little bit to add. I touched on earlier that, as part of the new property developers regulation, that is including and requiring a building manual. So I think that goes part of the way to addressing the points you raised, because they will be held on the building files, which are accessible. I think the other important part of that is the work we have been doing over the past three or four years around minimum documentation standards for class 2 to 9 buildings. There is an instrument under the Building Act that requires that documentation standard of all the plans, which is really the fundamental roadmap for a building. It has been a fairly significant focus of audit of our compliance teams in recent years to really ensure that documentation has been in place because, historically, yes, there have been issues around the quality of documentation on file. They are a couple of elements that are touching on that.

MR RATTENBURY: Thank you. Yes, it touches on a few of the concerns. Are those building files readily accessible? Who holds them and are they publicly accessible?

Mr Lhuede: They are accessible to the owners. They are not publicly accessible, but owners can access building files, yes.

MR RATTENBURY: They are held by EPSDD?

Mr Lhuede: Yes, they are held by the ACT government.

MR RATTENBURY: Yes, whatever the agency that used to be known as EPSDD.

Mr Lhuede: Yes. As we transition to some new software with e-development as well, that further strengthens our opportunities as to how those files are held and managed. But they are accessible and we do provide them on request and give owners access.

MR RATTENBURY: Is there a fee to access those documents? I do not know if you have a number, but—

Mr Lhuede: Yes, I think there is a fee to access. I will have to check that, but I am pretty sure there is a fee associated with requests to access building files.

MR RATTENBURY: Perhaps if we can get that one on notice, just as a factual thing

Ms Cheyne: Yes, we can do that.

MR RATTENBURY: Mr Lhuede, with a 10 minute break, you might be able to come back and tell us once you have had a chance to look on your—

Mr Lhuede: Yes.

MR RATTENBURY: Thank you; that is helpful. On my next question, Minister, I feel you may say it is your colleague's responsibility but, as you are here for the government, we will give it a go. Housing ACT has over, I think, some period of time now expressed a reluctance to be part of bodies corporate. I wanted to explore whether that is the policy position.

Ms Cheyne: Do you mean in situations where Housing ACT has one, two or 10 units in a complex but the complex has a private—

MR RATTENBURY: Yes. My understanding is that there is a reluctance for public housing to be in those buildings, because of issues with bodies corporate with the fees, the participation requirements and the like.

Ms Cheyne: I will take as much as I can on notice. The information that I have, if it is of use, is that there are a total of 1,093 units across 413 unit plans in the public housing portfolio, with 918 dwellings across 381 unit plans being managed by external strata companies and 175 dwellings across 32 unit plans being managed directly by Housing assistance.

MR RATTENBURY: They certainly have quite a few.

Ms Cheyne: That is the extent of my knowledge, but I am happy to take whatever else on notice.

MR RATTENBURY: No. It is not they do not do it; I think the question has been whether it is a barrier to the further purchasing of units in private bodies corporate in private buildings.

Ms Cheyne: I will take that on notice.

MR RATTENBURY: Thank you.

THE CHAIR: You talked about the obligation in the code of conduct to maintain those documents. Are there any enforcements that you would undertake if that obligation were not met?

Mr Lhuede: In relation to?

THE CHAIR: Mr Rattenbury asked you a question about documents that are held, and the conversation was that owners have shared with us that there are some documents that they cannot access. You mentioned that there is an obligation to maintain documents. I was wondering whether there was an enforcement obligation on you that where, those documents are not maintained, you take any action.

Mr Lhuede: That is a good question. In relation to the forthcoming obligations under the Property Developers Act to have a building manual, that will be a requirement at the time of issue of Certificate of Occupancy and Use. As we go through that process of assessing an application for COU, that will simply be one of the elements that has to be ticked off and, if it is not provided, then they do not get COU. That is the mechanism by which it is ensured that is provided.

THE CHAIR: Thank you.

MR RATTENBURY: I want to ask about short-term rental accommodation. Again, it has come up that there are a range of concerns, particularly around the use of so-called party units—to use the colloquial expression around it. A range of models have been put to us for how we might approach it. Does the government have any legal advice or legal analysis on options that are available for bodies corporate to, where there are problems with a short-term rental, for the strata owners to have some influence or some say?

Ms Cheyne: Is this you, Mr Lhuede?

Mr Lhuede: To some extent, yes.

Ms Cheyne: Okay. Let me answer as much as I can and then maybe, between us, we will cover it. I believe that it is interrelated with the Crown lease and the purpose clauses in that and potentially anything else that sits on top of that. That can dictate the types of rules that can or cannot be issued by an owners corporation through agreeing to a rule at a special general meeting. I think the example I could give—although it does not relate to party units or Airbnb so much—is that where I personally live has a different sublease clause to most of the rest of my complex because I have a street frontage and I am commercially zoned as well as residential, unless it has changed. That is what it was when I bought it. That was to reflect that units that had street frontage may wish to have a home business or a business. I think in that circumstance, that if I did have a business running out of my home, there could not be a rule made that would disallow that. But, in circumstances where the lease conditions or whatever it might be, provide for something different, that is where it starts to depend—I think, but I could be wrong.

Mr Lhuede: I can probably assist in answering—again, in the context of an example but obviously without necessarily identifying names and locations. There is a range of short-term rentals in that broader context of a room to a house, and the example I will give is where it was clearly being used and advertised as a hostel for commercial purposes. In those sorts of circumstances, we will look at the lease use provisions, as discussed, but also the class of the building and whether it has actually been designed

for those sorts of uses.

We do operate within an accountability framework in terms of risk and harm. At one end of the spectrum, arguably, leasing a room for short-term accommodation may not present a significant risk of harm and may or may not be consistent with the lease, through to the other end of the spectrum in the example I gave, whereas that is something we actively regulate. In effect, it disappeared. Whether that was through pressure from the owners and the owners corporation and through other processes or because of regulatory action we were taking under the Planning Act through a prohibition notice or potentially a prohibition notice, we never quite resolved because they stopped it.

But we do look at short-term rental in the context of risk and harm but also in the context that it provides a really important resource for accommodation within the city, both in terms of people visiting short-term but also in other sort of issues such as crisis and other accommodation as well. So, to answer that, we have lease provisions and we have building class conditions. Most critically for us, though, is looking at safety issues associated with it.

MR RATTENBURY: The evidence we have had is that, essentially, permanent residents find themselves in a situation where the house rules are frequently being broken by short-term visitors. Are you aware of what the remedy is for a strata in that circumstance?

Mr Lhuede: I would not be able to answer in terms of a strata and the rules under the UTMA, sorry.

MR RATTENBURY: We spoke earlier about the ability to put in place differentiated fees. Does the government have any advice on whether, if somebody chose to rent their unit out as a short-term rental, there is a series of additional costs to the body corporate because of the issues that arise out of that and the application of a differential set of annual fees? I realise you are not going to offer me a legal opinion but I am just—

Ms Cheyne: Why I am looking at you a little blankly is that this strays into Minister Steel's territory with strata. So I do not quite have the information about how the new legislation is interacting with both what Mr Lhuede is responsible for and then the unit titles legislation.

MR RATTENBURY: I am trying to think through where the committee is going to take this. We have had quite a bit of representation, and I think we are all trying to think about what a practical answer is going to look like in this space to deal with the negative consequences for neighbours, perhaps whilst recognising there is a legitimate place for people to offer that service.

Ms Cheyne: Again, we may need to check the records, but I feel like Mr Drover gave some particular evidence about this.

MR RATTENBURY: I missed that session. I will go and review that bit of transcript. I had to step out briefly. We will review that later.

Ms Cheyne: If that does not answer it, I am happy for you to submit a question on notice.

MR RATTENBURY: Thank you.

THE CHAIR: Mr Lhuede, do you have something you want to add?

Mr Lhuede: If I may, I will give the response in relation to the fees for a building file search. A building file search has fees. A person can access the file for a whole building with consent from the strata. That is a commercial fee of $68.66. An individual can access their own unit file for a fee, and that residential fee is $46.

MR RATTENBURY: Thank you.

THE CHAIR: On behalf of the committee, I thank you for your attendance today. I note that two questions have been taken on notice. Please provide your answers to the committee secretary within five days of receiving the uncorrected proof *Hansard*.

On behalf of the committee, I would like to thank our witnesses who have assisted the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. If a member wishes to ask a question or notice, please upload them to the parliamentary portal as soon as possible and no later than five business days from today. Thank you.

The committee adjourned at 3.37 pm.