



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND
TOURISM**

(Reference: [Inquiry into building quality in the ACT](#))

Members:

**MR J HANSON (Chair)
MS S ORR (Deputy Chair)
MR M PETTERSSON**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 10 APRIL 2019

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 20 May 2013

The committee met at 10.04 am.

HOWARD, MR JERRY

THE CHAIR: Good morning, everybody. Welcome to the first public hearing of the Standing Committee on Economic Development and Tourism inquiry into building quality in the ACT. We have received 100 submissions to the inquiry. We will be hearing from a range of submitters over the next few months, beginning with individuals, then moving on to executive committees, professionals, peak bodies and, finally, the ACT government.

On behalf of the committee, I would like to thank you, Mr Howard, as our first witness, for appearing today. Can I draw your attention to the privilege statement that is before you on the table, and confirm that you are aware of and understand the implications?

Mr Howard: Yes, I understand.

THE CHAIR: I remind you that the proceedings are being recorded for Hansard transcription. We are not being webstreamed today. Are you appearing today as an individual citizen?

Mr Howard: Yes.

THE CHAIR: Before we go to questions, do you have an opening statement that you would like to make?

Mr Howard: Yes. I thank the committee for the opportunity to put my views forward. I also thank the ACT government for their initiative in setting up this inquiry. It is long overdue. I hope that the recommendations of the committee are taken very seriously so that, once and for all, we can put this whole building quality issue to bed and move forward in a collaborative way for this great industry.

THE CHAIR: On behalf of the committee, I thank you for your submission. It was very useful. In particular, the series of recommendations was useful. One of the points that you make in your submission is that we already have a lot of regulation and legislation, that there are people who are not complying with it, and that the issue may be not necessarily with the existing regulation but with the enforcement of that regulation. Could you expand on that point and on what you mean by that?

Mr Howard: Yes. We are very good at writing regulation in the ACT, but there is regulation and there is good regulation. At the moment we have about 700 pages of regulation dealing with occupational licensing, building regulations and the Building Act. You cannot expect any reasonable builder to go through 700 pages of regulation.

We need to be careful, and I would probably admit that there has been a crisis of confidence in the industry in the last 15 years. We have had examples. We had the 2010 building quality report that identified issues. The great risk is that the regulatory authorities tend to respond with more regulation and probably do not look at the

effectiveness of the regulations that are already in place. I, for one, believe that we have adequate regulation in place. We have had systems that have slipped through the years. There have been lax qualifications for builders. In the ACT we have had to comply with some national standards. It is no different from some of the agreements we sign up to, such as world trade agreements, because we get non-conforming building products. Some of those issues are beyond our control, such as trying to write and enforce regulations on materials that essentially we do not have a lot of control over.

To me, importantly, we need to have a really collaborative approach with the regulators. I believe this has probably been lacking in the last 15 years. We have let the industry get to a state whereby we now have to look at taking some dramatic action, and we need to be careful.

MS ORR: Am I right in understanding that it is not a case of having more or less regulation; it is about a refocusing of the regulation that is there?

Mr Howard: Yes.

MS ORR: Is it very much about the implementation of this regulation? Am I correct in understanding that?

Mr Howard: Yes.

MS ORR: When you refer to working more collaboratively together with industry and government to achieve better enforcement of the existing regulation, can you articulate for me what you actually mean by that? How do you see that working?

Mr Howard: The regulators work in a silo. You will see from time to time that there is a blitz, but that is a bit like having a police car on the road—everybody slows down and, when the police car drives away, they go back to the same old problems of speeding. Good leadership from the regulator is so important in order to bring the industry along on the journey. These sporadic efforts with blitzes get some media attention, but we are not really sure what the real issues are.

From my experience, I could go to any building site and write a bible on a project, but it may not necessarily mean that that is really bad work or that it has any major, inherent defects. I think it is important that the people that are actually driving the regulatory system understand the building process as well and engage with the industry to help to improve industry practices. There should probably be less of a big stick approach. To me, that has not worked in the past. I am fearful of the fact that we have had a lot of publicised problems. I have been writing for many years on building quality, and no doubt in the last 15 years we have seen some really bad examples. I can address the reasons why, because I do know the reasons why.

MS ORR: Hold that thought, because I want to ask some more supplementary questions on this proposition of more or less regulation, or whether the regulation that we have is correct. You noted in your submission that the insistence on more regulation from industry is confusing.

Mr Howard: Yes.

MS ORR: Could you elaborate on that statement and on your reasons for that view?

Mr Howard: Industry calls for more regulation of trades, and Engineers Australia call for more regulation of their engineers. It is disappointing, in that an institution that has about 30,000 members Australia-wide can't set standards for their own profession because they are a professional institution. Asking to be regulated by another authority, to me, seems to be a bit confusing. I would say that you should sort out your own backyard first before you ask for more regulation.

MS ORR: Do you feel that there is a little bit of passing the buck, so to speak?

Mr Howard: That is a perfect example, and I go back to the whole point of trade licensing, and industry calling for trade licensing. That is an opportunity for builders to pass the buck and blame the licensed contractor for the work, when in fact the builder, the contractor, has the primary responsibility to pick the best trades to do the work. It is not about licensing per se; it is about the skills of the individuals to do the work.

MS ORR: Could you clarify, for me and for the record, what the role of the principal contractor and builder is?

Mr Howard: The principal contractor has an enormously important role. We do tend to get confused with the role of the nominee, who is the licensed nominee, the principal contractor and the people who manage the projects. I see many great projects and many great builders, and they have common themes. They have people on the sites who actually know what they are doing. They get properly directed, they have proper documentation and they have proper systems on projects. It should not be any different for any other builder. But you should not have to regulate for that; that should just be good practice.

We should be using the builders that have great systems. I deal with them all the time. For example, they test their waterproofing systems before they actually close them in, and they do detailed planning. Those builders do not have problems with their buildings. We should not be punishing those builders with more regulation when in fact they are doing in excess of what is required under the building code.

MS ORR: For the ones who are not doing what is required, how do you suggest that we address their inadequacies, for lack of a better word?

Mr Howard: There are two issues. There are the small percentage of builders that you will never get to do anything; they will simply try to cut corners. But I do emphasise that they are a very small percentage. If we look back through the 15 years of defects, especially in multi-unit, which is to me one of the most complex types of buildings to build, we have had inherent defects built into those buildings simply with a combination of factors: poor design, poor building practices, poor supervision, builders who did not actually understand how to build a multi-unit development because they came from building single-storey houses.

Let's face it, two-thirds of our buildings are now multi-units, whereas in the past one-third of our buildings were multi-units. That is the way we are building. To move from one building system to another building system requires a real training and education program of those builders. Sorry, I might not have answered: how do you deal, then, with the repeat offenders? They should not be allowed to operate in the industry. I strongly believe that.

MS ORR: In looking at the compliance of repeat offenders and looking at whether they have licences, do you think that is a role for industry to self-regulate or a role for government to be a part of?

Mr Howard: I think the licensing, the granting of a licence, is certainly the role of government. When I talk about industry I talk about builders, certifiers, educational institutions and the regulator, because that is the entire industry. I have put a lot of effort and time, with the University of Canberra and the TAFE institutions, into developing training programs to better prepare builders for the industry. I think that a lot of the training programs that are in place probably do not really prepare people to be project managers. You have got a lot of short courses. They do not prepare people to actually control a building site and understand the complexities of controlling a building site.

MS ORR: And these short courses, correct me if I am wrong, are administered through TAFE, through the universities and through the other certified training organisations?

Mr Howard: A lot of the industry associations run short courses, but you will find that a lot of them deal with work health and safety induction and asbestos awareness. If you look at the University of Canberra course, for example, it is a degree, a Bachelor of Building and Construction Management. It prepares people reasonably well for the role of managing the processes but does not actually train them in the detailed building knowledge that you need to manage a construction project.

The point I make is that you need people that are very much aware of what inherent defects you can actually build into a building. The problems of remedying defects in buildings, and especially latent defects, can be just a case—and we have probably seen examples in Canberra—where it is probably easier to demolish the building than it is to fix the problem. That just should not happen.

MS ORR: I think we can all agree on that. My substantive was actually on certification. A number of submissions have raised concerns with the certification process, and you note in your submission that some approvals and certification had also been questionable and found to be deficient. In your opinion, is there an issue with the certification process?

Mr Howard: Probably it is not as bad as is stated, surprisingly. I will give you an example. I work for the public housing renewal task force. We have early engagement with the building certifier at the very front end and we have early engagement with the consultants at the front end and we clearly specify what we want from the building certifier. Again, it is no different to the builders. There are some certifiers that certainly do not work with the same level of diligence as other certifiers work. But

there is a perception that, especially when you have large multi-unit developments, because the owner is the developer, the owner has absolute say in who is appointed as certifier. They will generally shop around, usually to get the cheapest price.

I do not know how you can actually break that nexus because this is something that was discussed in the very, very early days when they were establishing private certification: should the regulator have a role in appointing the certifier? The advice at the time that came back was that the regulator should not have a role, because then the regulator could very well become part of the problem. But there has been a lot of discussion on that issue of probity and how you distance the certifier.

MS ORR: I think that, certainly from the submissions I have read, there is a theme developing there where people see that the relationship between the certifier and the appointer, which is usually the developer, is actually questioned quite strongly. In your opinion, do you think there is a way that we can put greater accountability into the certification process?

Mr Howard: Again, I think a good audit system where you have competent auditors will certainly do that because, as an auditor, they will probably know their targets. It is a bit like building.

MS ORR: In your opinion, do you think we had better compliance with building standards when certifiers were government run, not private?

Mr Howard: I was a government certifier. It is an interesting question. I do believe we had better quality builders in my time, to be honest, and I think we had a lot of respect as well from the builders. There has been a loss of respect for the role of the regulator through the years.

The issue that we were confronted with was that we could no longer have the capacity to do the work. Again, we had a large influx of builders and nationally all states were moving to a private certification system because they felt that that would actually deliver more efficient and more cost-effective buildings, but I am not sure that it has.

From my experience dealing with the certifiers that we deal with, I can say that they do exactly what we want them to do. I am not saying that all certifiers do. There probably is no perfect system. There certainly is the inference that anything that the government does will have a greater level of independence than something that is done by the private sector.

MR PETERSSON: I wanted to flesh out some of your recommendations. In recommendation 2 you recommend that principal contractors be required to implement mandatory inspections and testing for key elements during the construction process. How would that differ to what is going on now? And what is happening now?

Mr Howard: What is happening is that the good builders now actually do that. What I am saying is that that should be a practice that should be implemented across all, especially multi-units, where there are critical elements in the construction like weatherproofing, waterproofing. They should have mandatory hold points in

waterproofing before you proceed to the next stage. Once you have built something in, you are building in inherent defects. This is just a good practice system that we should implement.

MR PETTERSSON: Who is doing those inspections?

Mr Howard: They have independent inspecting people with experts in waterproofing that actually do the testing. I know this is actually happening on jobs that I am responsible for.

MS ORR: But just to clarify, waterproofing is not a current hold point in the certification?

Mr Howard: It is not.

MR PETTERSSON: Recommendation 5 is to implement peer review systems for more complex projects. First and foremost, what is the peer review system and what are most people using currently?

Mr Howard: With the peer review system, I think, especially when you get into more complex designs, again mistakes can be made in the design. It is always good to have an external peer review. We have had external peer reviews of our projects from engineers and professionals in Sydney. I believe that that is a great way of sharing information as well and getting the best quality outcomes, especially when it comes to fire safety and weatherproofing. Remember that now we are dealing with what is a performance-based building code. So it can be a bit subjective.

MR PETTERSSON: Recommendation 10 is to implement stricter guidelines for the granting and renewing of individual and corporate builders licences. You have already mentioned the recent government announcement. Is there anything more that needs to be done?

Mr Howard: I think there is a lot of emphasis placed on the individual, but individuals do not build projects; corporate entities build projects. I think the corporate structure of the company that has been granted a licence should be looked at, and the capacity and the people they have on site to actually manage the construction process.

THE CHAIR: Mr Howard, I get the sense that we could probably go on for hours, but I thank you very much for your attendance today and also for your submission. If we have got any follow-up questions we will be in touch. We will send you a copy of the draft transcript for you to review to make sure there are no errors in it. But, again, thank you very much for your contribution to the inquiry.

Mr Howard: Thank you very much. Thanks for the opportunity to sit here in front of you.

PEEK, MR STEPHEN

THE CHAIR: On behalf of the committee, thank you for attending today. Can you confirm that you have read the pink paper that gives you an understanding of the privilege implications?

Mr Peek: Yes, I have.

THE CHAIR: I think you were in the room before when I went through my introductory spiel, so I will not go through that again. Thanks for your submission. You have obviously a bit of a story to tell. Could you summarise your experience, with the key points, just briefly.

Mr Peek: Yes.

THE CHAIR: Without necessarily naming names.

Mr Peek: Yes, that is fine.

THE CHAIR: Keep it in generic terms; I know you have issues with phoenixing and other issues. Can you give us some sense of your experience?

Mr Peek: Firstly, thank you for allowing us to appear. I think it is very timely in our particular case. Certainly, some of the previous comments ring true and start to click into place with our story. Ours is slightly different. We did not actually have too many build issues. Ours was largely a contractual basis and the fact that there is no consumer or customer protection, basically, once you build a house. If I build a house, buy off the plan, I am the guy that is responsible for sorting out the issues. There are very few avenues for me to actually engage somebody, apart from seeking expensive legal advice.

Short story: build went great. We went to pick up the keys. At that point in time, we were hit with about \$80,000 of on-costs. We did not know they were coming. Our pool allowance, landscaping allowance and underfloor heating—those allowances that I had not used at that point—simply evaporated; gone.

Our rental was gone; that had been re-let. We had just about a full mortgage. We had three kids studying. We were not in a position to argue and say no and go for another rental. We just had to go and move. So we had to get in; mistake number one on my part. But I think that, apart from the issues, the tone that I am trying to get to here is consumer protection. When things happen, it is very hard to find your way through a process that can actually help. I think the industry bodies need to actually stand up and take account for their members.

We signed their contracts, but if there are issues in that, they just throw it back to the builder and say that it is not their problem. Yes, there are some points. Probably the easier thing to start with is what worked and what did not work in our case. What worked from our perspective? Builders insurance: as soon as our builder went bankrupt—he did that following a ruling against him from ACAT—three days later

this building company was gone. He paid \$20,000 to get rid of it; done and dusted. So from our perspective, building insurance works. It was a relatively easy process.

But what I see with that is that the actual limits on building claims, particularly with today's building costs, are too low. The maximum is \$85,000. The theory is that that covers you to finish that stage and you engage another builder. That, in our case, was considerably lower than what our stage payments were for our house. We have claimed. We have got what we need to finish some stuff, but that is it. That is what worked.

What did not work is really the list I want to get to. I go back to consumer protection. There really is none. It just does not exist. We can try non-binding mediation. In our case, we tried to run that through Master Builders. On the advice from Master Builders, they said that mediation was not going to go anywhere in our case. The builder claimed that he had a cost-plus contract through a verbal agreement and all that he could bring to the table was additional cost.

On the advice from Hamish of Master Builders, that mediation process stopped and I started legal processes. I was quite prepared to pay probably \$40,000 or \$50,000 to follow this through. That is the amount—I was \$100,000 down at that point in time. We did not get too far with that process when our builder decided to terminate the company, go into liquidation. So really everything stopped from there.

I mentioned before that, from a consumer perspective, it is very hard to find out who are the good builders and who are the bad builders. Most builders—I would say 98 per cent of builders in the ACT—are registered with either HIA or MBA. They will advertise those builders on their websites. They certainly do not advertise how many complaints they have had against them, what the disciplinary action was arising from those complaints. They tell you, "Here are our members." They portray them as being quality builders with integrity but in actual fact they are simply taking the fees and, to some extent, and in our case, they were protecting the builder.

MS ORR: Mr Peek, when you entered into your contract with the builder, would you have considered that builder to be a good builder?

Mr Peek: From what I saw of his builds, from the due diligence we could do, I thought he was pretty good.

MS ORR: And what was the due diligence?

Mr Peek: We looked at his build. I was actually his next-door neighbour to start with. We looked at that house and the ones he was building. That is about all I had. He has a builders licence. I know that because I looked it up. There is really not much else out there.

MS ORR: Did you look it up? My understanding was he was not a member of the MBA—

Mr Peek: He was a member of Master Builders with his old company. Where else do I find out? If I ring Master Builders and ask about complaints—I actually did this

because I put in a complaint myself about him with Master Builders—they will not tell you how many complaints there are. They will not give you any feedback. I had no feedback on the complaint I raised with Master Builders. That is a closed shop. You know nothing. In fact, four days after I put the complaint in, I rang them and that is when they first looked at it.

THE CHAIR: We have the MBA and other people appearing shortly. We can ask them those sorts of questions, what their processes are.

Mr Peek: I think the MBA and all the building industry associations themselves really need to take an internal look at what their function is in the building industry. They are certainly not consumer focused. They are an organisation paid for by the builders themselves, but they portray themselves as looking after the customer through mediation and those types of things.

THE CHAIR: As a result of your problems, you ended up going down the legal avenue, which is, I suppose, the only option open to you. You have made points about ACAT and the limits there that you think are too low. Is that right?

Mr Peek: I did look at ACAT. I spoke to ACAT actually on a number of occasions. Their focus seemed to be on building defects. That seemed a bit—

MS ORR: Whereas yours is contractual.

Mr Peek: Mine I see as contractual, and in the builder's case maybe habit. ACAT will only look at anything under \$25,000. That is their ceiling for what they need to do. I also believe ACAT is non-binding as well. So we really did not have too much choice apart from start looking at legal.

THE CHAIR: With your contract, you said you got these variations that took away what you put aside for various parts of the build.

Mr Peek: Yes.

MR HANSON: Did your builder advise you, discuss that with you before those variations occurred or did you just get stung in the end?

Mr Peek: Not until he was dangling the keys in front of us. At that point in time, he said, "I have had other additional costs. I have to take these and you owe me this, and that is it."

THE CHAIR: Have you looked to see whether the contract stipulated that he should have had those discussions with you? Is it a problem with the way the contract is structured or did he just ignore the way the contract was actually written?

Mr Peek: The contract stated that he had seven days to present those. Some of those, I believe, went back to the original engineering decisions that were made.

THE CHAIR: So he just ignored the contract, basically?

Mr Peek: He just ignored the contract.

THE CHAIR: So the contract is not necessarily—

Mr Peek: The contract is not necessarily wrong. I think it is still slanted towards the builder because they are industry contracts; so it is slanted towards the builder.

MS ORR: Was it an MBA contract?

Mr Peek: It was an MBA contract. It is actually slanted towards the builder in favouring them, whereas it should be favoured towards us. I am the guy the paying the money.

THE CHAIR: But, ultimately, at that stage, he had seven days to speak with you and did not do so. So he was in breach of the contract.

Mr Peek: He had seven days from the point where he knew those costs were going to be incurred. He had seven days to speak to us and he chose not to do that.

THE CHAIR: Right, and then he just sort of stung you at the end.

Mr Peek: Yes, at the worst time. Like I said, we had nowhere to go.

MS ORR: You made the observation that in your opinion the contract is weighted in favour of the builder. Did you have any opportunity in the negotiations before entering the contract to change some of the provisions you felt were a little bit weighted to one side?

Mr Peek: To be honest, I did not consider it.

MS ORR: Why not?

Mr Peek: I think my wife and I were both caught up in, “This is the house for the next 15 years.” We lost all common sense in some of these discussions. I look back now and it is not the way I operate, but we were so invested in the house we just did not consider it. Brendan came across as a reasonable guy and we trusted him. It is a bit like your dentist—you trust your dentist, and your mechanic. We trusted this guy to do the right thing and unfortunately we got stung.

MS ORR: Obviously you are not the first person to be in that situation where you have seen your dream house and that is what you want to progress with, so perhaps you do not necessarily think as rationally as you might when emotion is not in the field. I want to draw on the Queensland example because they have a standard government contract. Do you think that is a consideration the ACT should look at? So instead of having an industry-based contract it should be a standard—

Mr Peek: I think it needs to be. I think that was one of my recommendations—a common ACT government-based building contract that takes those leanings out of it. It should be a fair and unbiased contract that the building industries do not control and cannot manage. I think that would be a good start.

MS ORR: Having that removed from the interested parties—being industry and the purchaser—and having a contract put together by a different party would take away some of this conflict and perception that perhaps it is weighted in one direction?

Mr Peek: I think so.

MS ORR: The HIA have said in their submission that they do not believe it is weighted, so there are obviously two sides to the story.

Mr Peek: Perception—

THE CHAIR: If you are in breach of the contract, whether it is a government one or an MBA one or an HIA one—

Mr Peek: It is irrelevant.

THE CHAIR: Yes, that is right. If the contract had been complied with there would not have been an issue. The problem is if a contract is breached how do you remedy that? There is no way other than through the legal system.

Mr Peek: There are no options other than the legal system. If it had been \$20,000 I would have kicked myself and just walked away and left it.

MR PETTERSSON: I want to go back to the mediation you undertook through the MBA. Could you tell me more about that process?

Mr Peek: Obviously the contract had the mediation clause in it. I engaged Master Builders and spoke to, I believe, their legal guy, Hamish. I did a very detailed statement of evidence to support my case. There were a number of phone calls. Our builder was prepared to come and mediate. A couple of days later the discussion was that he was now claiming we had a cost-plus contract, which—

MS ORR: But this was a claim of a verbal agreement?

Mr Peek: Yes, this was purely a verbal agreement from his point. I would have thought if we had changed the contract there would be some email or something that would dictate this.

MR PETTERSSON: You would think so.

Mr Peek: So he was now claiming we had changed the contract verbally to cost plus. A couple of days later—I think 17 December—Hamish from Master Builders rang me and said, “Seriously, your builder is not prepared to sit down and negotiate this to a meaningful outcome. He says he has additional costs that you will be paying if we go down this route.” His advice to us was, “You need to seek other avenues.” He did not think we were going to achieve anything through that process. His advice was that we not continue, and we did not.

MR PETTERSSON: Can changes be made to the mediation process that would have

led to a more beneficial outcome or do you think it is fatally flawed because of the individual you are trying to mediate with?

Mr Peek: I think it depends on the problem you have. Mediation relies on both parties wanting to come to an agreement. If one of those parties does not want to come to an agreement then mediation is never going to work. We struck that situation where our builder was not prepared to negotiate this through at all.

MS ORR: When you approached the MBA to start mediation, did they give you an overview of their processes and if things did not work out how it would escalate so that you could make informed decisions?

Mr Peek: They gave me a view of the process from a mediation perspective. We did not touch on what would happen if one party simply chose not to mediate. It is a voluntary process, obviously. We really did not get into that until that discussion where the advice was, “Look, don’t waste your time because it’s not going to go anywhere.”

MR PETTERSSON: Would you have preferred to have gone through an independent mediation process instead of a mediation process organised and sponsored by the builder’s representative?

Mr Peek: I may have looked at it. I think I leant towards Master Builders because he was one of their members. He was in breach of contract. He was in breach of a Master Builders contract that we both signed. Irrespective of the company that was sitting on the contract, his personal builder’s licence is on our contract, but that has no bearing on any of this at all. He just keeps that and continues. That is why I leant towards Master Builders. I believed they would look at the evidence and go, “Mate, you’ve got it wrong. You really need to buck up here.”

MS ORR: And when you say you leant towards them, you mean you went to them to assist you.

Mr Peek: I went to them because they were the industry body and we signed their contract. He was a member. At that time I believed Master Builders tried to hold their builders to account. In our case it was very clear that they do not.

MS ORR: You say “at that time”. Does that suggest that your opinion has changed subsequently?

Mr Peek: No, I do not think my opinion has changed. I think the role of Master Builders in the building industry needs to be reviewed. Probably their charter needs to be reviewed and I think they need to be more customer focused. At the moment they are builder focused. If they want to have an industry they need to make sure their builders abide by their standards and that they are reputable. If they are not, hoik them out. At the moment there is no benefit in deregistering their builders because they simply lose income.

MS ORR: You have stated in your submission that the Master Builders Association provides very little value to the home builder or consumer as their prime role is to

represent the builders and the building industry. They are an industry body; that is their role and we cannot begrudge them that. But, given that they have that specified role and that is their interest, do you think an industry-based group has a role within the consumer complaints process or do you think the consumer should have a representative?

Mr Peek: I think they need to take the consumer into account, certainly. The consumer keeps them in business, so they certainly need to take them into account. I think they need to view their own membership. If they know their members are doing the wrong thing they have to take action against those members and show the community that they are making a difference and trying to weed out the problem builders. At the moment, complaints simply go into a black hole and go nowhere.

THE CHAIR: We will follow up these issues you have raised. Thank you very much for attending today.

Mr Peek: I appreciate it. Thank you very much for your time.

THE CHAIR: It is very useful, and thank you for your submission. I am sorry to hear about the experience you had.

Mr Peek: From a build perspective the building came up well. It was just the way it finished from the contract perspective that was really disappointing. But you live and learn.

THE CHAIR: Thanks very much.

BICE, MS NATALIE
PRATT, MR BRENDAN

THE CHAIR: Could you look at the privilege statement in front of you and make sure you are aware of its contents. Thanks much for coming today and thank you for your submission. Can you give an outline of the issues you face and the specific recommendations you have made about improvements, and then we will have questions.

Mr Pratt: We have a statement prepared to set the scene. Thanks very much for the opportunity to present. We feel very strongly about the outcomes we are looking for. We are addressing the committee with the position that the laws, policies, standards and codes of conduct pertaining to the business of building in the ACT are failing ACT citizens.

Our experience and the experience of many families we have made contact with while attempting to recover from the traumatic outcomes of building our house show clear vulnerabilities and failings in protecting the interests of consumers. We have witnessed breaches of law and regulation that may have been through ignorance, but we have also witnessed deliberate and knowing breaches of the law and manipulation of financial situations by multiple builders for the purposes of financial gain.

Our attempts to get support from industry and government bodies were futile, and the options for civil resolution were expensive, time consuming and ultimately futile. The options for civil resolution were a worthless experience, particularly when a master builder simply declared insolvency to escape his debts and legal responsibilities whilst still running an identical business, and he remains unaffected by his malfeasance other than the pittance he paid to a liquidator in order to walk away from his debts.

We pursued the Master Builders Association for assistance and support only to find they are nothing more than a lobby group focused on protecting their paying members by hiding behind a non-binding and completely obfuscated code of conduct through misdirection and time wasting.

We engaged with professional engineers and insurance assessors who repeatedly expressed amazement that breaches of standards and legislation had occurred continuously in the construction of our house and could not understand how stage approvals and the final certificate of occupancy could have been issued for our property. Over a year later we are still discovering faults and flaws that affect the long-term viability of our home and we are having to commit time and money in rectifying these issues.

During our time building in the ACT we have been subjected to lies, abuse, direct threats of violence by builders and a threat to withhold our keys after final payment. There were threats of spurious legal action and even a case of outright extortion that was referred to the AFP.

In summary, as consumers we feel controls to ensure the protection of all parties that wish to build in the ACT fall egregiously short of the mark. Builders are free to

operate with minimal oversight and the current options for recourse are inadequate, through expense, impracticality, low probability of success or a staggering number of unassailable legal pathways for builders to escape responsibility while still retaining a licence and the right to repeat their actions over and over ad infinitum. In fact, the builders mentor each other in how to do this.

THE CHAIR: Thanks for your opening statement; that is pretty powerful stuff. In your submission you raised the issue of certifiers as one of the problems. Can you give an explanation of how that played out with you, how the problems arose and what you think might be some of the solutions?

Ms Bice: As first-time builders we were very naive going into this. I thought we had done our due diligence in looking over everything, but the builders use their own recommended certifiers. We ended up with a certificate of occupancy but had no handrail on our staircase. We actually slipped down the staircase until we got one put in.

Mr Pratt: Three times for me.

Ms Bice: We had a hole the size of a tennis ball in the outside wall of our house at the corner of the gutter. They are just two things. One other thing was the electrical box they placed on the outside wall was apparently too high and should not have been certified. They are three big things.

MS ORR: So you have received advice that these should not have been certified.

Mr Pratt: They should have prevented certification. There were a lot of other things: lack of appropriate pathways; doors that did not open and close appropriately. We were quite surprised because we assumed the insurance assessor would be looking to minimise the payout. In fact, he was just going through and saying, “That’s wrong. That’s wrong. That’s wrong. That’s wrong.”

He compiled an extraordinary list and we were deeply concerned that our builder’s insurance was not going to cover it. Fortunately, after many, many months of searching we managed to find a builder who was willing to not only take on the job but do it for a price within our budget.

We would hit milestone payment points. We do not have a problem with the idea of milestone payments; it keeps everyone honest. We would receive a demand for payment within seven days of hitting the milestone but no assessor had been out to look at these things.

When the bank assessor turned up he would get out of the car, he would take one look at the property without even taking a step further from his car and go, “That’s not done. That’s not done. That’s not done.” Really obvious stuff. He would then get in his car and drive away. The builder would pursue us for payment, causing a degree of distress, and we would say, “Well, sorry, the assessor said the work’s not done.”

Ms Bice: The big one was the roof; he was demanding payment for the roof when the roof was not complete.

MS ORR: And the bank was saying, “We’re not going to release—

Ms Bice: The bank was saying, “We’re not releasing the money; that roof is not complete.” And he was saying, “We’re stopping work because you’re not paying.” You get caught in the middle of this hole and you cannot move forward because he is demanding payment and he is not going to keep working till he has got his payment, but he has not completed the stages.

THE CHAIR: How did that resolve itself?

Mr Pratt: He received no payment until such time as the work was resolved, which caused delays. Being a master builder is really being a project manager, and scheduling and dovetailing your resources to work across multiple sites is a bit of an art form. Every time they get a delay they attempt to bulldoze through, secure payment and they will “fix it up in the future”. Well, they may not fix it up in the future.

We engaged a professional engineering firm prior to accepting handover. The engineering firm was very blunt—it is impossible to design a perfect house, and we had our eyes open on that. But they found enough flaws for us to have concern. The builder said, “Yep, I’ll go about fixing those. By the way, I’m declaring insolvency in five minutes, so you’d better get all of your claims done straight away.” We are going, “Hang on, we’ve got years of warranty ahead,” and he goes, “Well, you would do except that I’m declaring insolvency and walking away.”

THE CHAIR: The builder has declared insolvency. Are you saying they have now set up under another name?

Mr Pratt: They already had.

Ms Bice: He set it up before. He was delivering houses in July and we got our keys in December. He was already building and delivering—

MS ORR: So the other company was already completely operational before the company even—

Ms Bice: Yes. He delivered, I think, five houses under the new company before he finished ours.

Mr Pratt: We experienced delays to delivery because his time was being committed to his other business. That is a business decision; that is not what we are here to talk about. We spoke to the engineering firm Peak Consulting. We sought legal advice through a specialist building law operator very close to here.

Ms Bice: Just across the road.

Mr Pratt: They all made a lot of anecdotal statements saying that because they are using private certifiers in many cases they have sweetheart deals and a lot of these stage payments, a lot of these evaluations when a private contractor is involved, are

just a matter of course.

MS ORR: Is it fair to say that in your opinion you do not believe the certifier was acting in the interests of making sure the building was as rigorous as it could be?

Mr Pratt: That is exactly our position, yes.

Ms Bice: Yes.

THE CHAIR: Did you have any choice in who that certifier was or did the builder simply say—

Ms Bice: It was the builder's recommended certifier. He said, "He's my guy. Use him. He's really good." So we went, "Okay, he must be good." We trusted our builder at the beginning of the build. We trusted him.

THE CHAIR: Were you given an option in those negotiations with your builder to use your own certifier?

Ms Bice: It is recommended in the contract that you seek your own certifier. Again, being first-time builders and naive, if your builder, who you trust, recommends someone, why wouldn't you go with them?

Mr Pratt: It was not just the builder, though; we had advice from multiple different groups. We were dealing with a developer that we had a prior relationship with, who had been nothing but forthcoming with us and who was working in the interests of the organisation that we dealt with, 2020 Projects. They were doing their best to keep us happy and to keep things moving along. We had time constraints. We had sold our house; we moved into a rental. We had a lease that was running out. Our landlord wanted to redevelop the building; in fact, there was a lot of pressure on us to move on very early. We did not have a lot of money available. We have four children, three of whom have special needs. We built the house because we wanted a house that could support three autistic boys, one autistic adult and an autistic cat.

THE CHAIR: I have one of those.

Mr Pratt: All cats are autistic! The pressures on us are significant. We do not come from a position of an expert background. I have a strong legal understanding, and that is probably why we came off better than a lot of other people who find themselves in this situation. The moment I started to encounter unreasonable things, I dug my heels in, I read up on the law and I read the contract.

The contract itself is not particularly flawed; it is about the fact that, with the options for resolution of a contract, not just here but Australia-wide, under Westminster law, you can try mediation but mediation is non-binding. Ultimately, it is a waste of time. It is an expensive process, it is drawn out and it will not give us the results we need.

We learnt from the lessons of other people, including the previous presenter, as to which paths not to follow, because they were a waste of time, and we could see that up front. This turned into a very toxic relationship, with our builder literally

physically threatening me on more than one occasion, and attempting to withhold our keys after we had made final payments. He made changes to the build outside the agreed design, without consultation, and refused to change it back.

Ms Bice: The big one is that he presented us with a document he had drawn up, a deed of release, and he wanted us to sign that; otherwise he was going to sue us.

Mr Pratt: He wanted to walk away from his legal responsibilities.

THE CHAIR: Without naming individuals, my understanding is that one of the other witnesses that appeared this morning had the same builder.

Ms Bice: Yes.

Mr Pratt: Yes.

THE CHAIR: It appears to be someone that is then not complying with various aspects of the code, the contract and so on. You have someone that is simply not complying with whatever regulation exists.

Mr Pratt: Yes.

Ms Bice: Yes. When we took that to the MBA—

THE CHAIR: It is then a matter of—

MS ORR: You did take this to the MBA?

Ms Bice: Yes, and I have had many email conversations with Michael Hopkins.

Mr Pratt: And phone conversations.

Ms Bice: The end result was that he did not see that the builder was doing anything wrong.

THE CHAIR: Is that builder now still a member of the MBA?

Ms Bice: Yes.

Mr Pratt: Yes. He is actually their poster boy.

MS ORR: This is under the other company that was opened prior to—

Ms Bice: Under the new company.

MS ORR: When you say “poster boy”, what is it that makes you—

Ms Bice: He is one of the up-and-coming young builders. He is doing amazing things, so he gets a lot of promotion.

Mr Pratt: He was in a paid *Canberra Times* promotion that was—

MS ORR: When was that?

Ms Bice: That was in 2016, when another company went bust. He was coming in to save the day and finish all of the builds that this company had left behind.

MS ORR: Just to get the time line correct, was that before or after he had liquidated the company?

Ms Bice: That was before. We saw that article. We found him not long after that article, through another person who was helping us to find a new house.

MS ORR: That was one of my questions: how did you come into contact? It was a recommendation?

Mr Pratt: Yes. It was a developer that we had been dealing with, in our attempts to buy a pre-existing house. We found that, with the houses that were on the market, in general five-bedroom houses are—

Ms Bice: Hard to come by.

Mr Pratt: They are hard to come by. Also, often they are an extended four-bedroom house. We needed something for a special needs family. We formed a trust relationship with the developer. He had never steered us wrong on anything. He was acting as a salesperson for this company, so we trusted him. We met with one of the partners. Again, they promised us the earth but they did not make unreasonable promises. That relationship internally, between master builder, partner and developer, fell apart in the course of our build. We were increasingly having to deal directly with the master builder, and it was toxic.

MS ORR: Just to clarify, the “master builder” is the builder who was building, not the Master Builders Association?

Ms Bice: Yes.

Mr Pratt: Correct.

Ms Bice: Because we cannot name names.

Mr Pratt: This is not something that we found was confined to one particular individual, because during the time afterwards when we needed to try and fix everything, under builder’s insurance, we sought input from a lot of different builders. One of those builders literally tried to extort us, and I had to refer it to the Australian Federal Police last year. This is not something that we believe is confined to an individual.

MS ORR: Your experience is that it has now happened with two different builders?

Ms Bice: Yes.

MR PETTERSSON: You have mentioned threats of violence against you. Could you expand on the circumstances?

Mr Pratt: The builder literally threatened to beat me within an inch of my life unless I signed his deed of non-disclosure. The whole relationship had been terrible and he said that, if he had his way, we would be fighting this out right now, physically. Fortunately, I had taken a 300-kilo witness with me, in order to avoid this sort of thing.

MR PETTERSSON: Was that because you suspected—

Mr Pratt: Exactly; I suspected that this would occur.

Ms Bice: We had made final payments and we did not hear from him.

Mr Pratt: They actively avoided our communication.

Ms Bice: We needed to get the keys. Eventually, after about three days of phone calls and emails, he arranged for Brendan to go over and meet him at another site to pick up the keys, and that is when this occurred—when he handed this deed of release to us again, because he had handed it to us previously and we had just refused to sign it. We showed it to our lawyer and he said, “That’s ridiculous.” That is when that occurred—when we tried to get the keys to our house.

THE CHAIR: With your insurance, did that cover how much you were out of pocket, or what percentage—

Mr Pratt: Yes, it did.

MS ORR: Was there a limit on that, though?

Ms Bice: There is, and the limit is not enough. We are also financially out of pocket. He owes us \$10,000.

THE CHAIR: Fundamentally, I am trying to find ways through this. If you end up with someone that is not complying with a contract or doing various things, while noting that insurance is not necessarily going to cover the full cost, it is a way through. Do you think that having an increase in the amounts that could be paid out would be a way of doing it?

Ms Bice: Yes, absolutely.

THE CHAIR: You might have to pay more insurance at the time, but if all else fails—

Ms Bice: The sticking point there was trying to find a builder who would come in and look at the things that needed to be done.

Mr Pratt: High complexity, low return.

Ms Bice: I contacted about 15 builders over the course of 10 months and I got seven builders to come on site to have a look. I got two quotes, because no-one wants to touch another builder's work.

MS ORR: Once you had identified all of these defects, what recourse did you have to get them fixed?

Ms Bice: None. The company had closed. He was gone. There was nothing we could do.

MS ORR: You approached Master Builders; is that correct?

Mr Pratt: Yes.

MS ORR: What was their response? You had all of these defects; what was their response to how you could reconcile those?

Mr Pratt: They made it clear that they are actually only a lobby group, if you will. Their role is to provide advice. In principle, we discovered that everything they do is concealed. If they do inquire into anything, they will not involve us in the process; they will not give us any details on the outcomes. They claim not to have any legal standing, so the reality is that they were a mouse maze for us.

Ms Bice: Something that kept coming up was that the contract is with the company. Once the company is not there, the contract does not exist anymore. You have no recourse. If the contract was tied to the builder, we could follow that builder through every single one of his businesses.

MS ORR: Was there any discussion on making a claim from the MBA fidelity fund—the fidelity fund that the MBA administers?

Mr Pratt: We did speak to them about it. They said that it did not apply in this particular case.

Ms Bice: No, because he did not die and he did not disappear.

THE CHAIR: We have to wrap it up there. Thank you very much for appearing. Thank you for sharing with us what is obviously a very harrowing story for you. Hopefully, out of your submission and that of others, we can—

Mr Pratt: We are still recovering from it now.

THE CHAIR: I imagine you are. Hopefully, out of this process, we can get some recommendations that may not help you but will help others.

Ms Bice: Yes. Hopefully, it will help everyone else.

THE CHAIR: Indeed. You will be provided with a copy of the transcript, just to make sure there are no errors in it. Once again, thank you very much.

PINKAS, MS GEORGINA

THE CHAIR: Ms Pinkas, I imagine that this is not the first time you have appeared before a committee.

Ms Pinkas: No, but hopefully it is the last.

THE CHAIR: You never know; I doubt it is.

MS ORR: I always enjoy your testimony.

Ms Pinkas: Thank you.

THE CHAIR: Thank you for attending today. Can I confirm that you have read the privilege statement and are aware of its implications?

Ms Pinkas: Yes, I have.

THE CHAIR: Thanks for your submission and your participation in the inquiry today. I invite you to make an opening statement, noting that we have only 20 minutes.

Ms Pinkas: Thank you for the opportunity to discuss my submission to the inquiry. Firstly, I would like to acknowledge and congratulate the Minister for Building Quality Improvements, Gordon Ramsay, for the improvements he has made and for the recent actions he announced in the Assembly. It was very gratifying to see the report today in the *Canberra Times* about progress that is being made on compliance. That is quite heartening.

In my submission I outline my background, which has enabled me to provide recommendations to the inquiry on how current issues can be addressed. I briefly outline that again for the benefit of the committee. I have been a partner in a family small building business and worked in the then BEPCON building control as a manager when private certification was introduced in the mid-1990s.

From 2001 to 2007 I worked as the policy adviser on planning and building to the then minister for planning. In that position I liaised constantly with members of the development and building industry, particularly on the introduction of the master builders warranty scheme. I also worked in the New South Wales government in assessing tenders for the construction of Olympic facilities. So I have a broad understanding of major construction projects.

On a person level, I have seen the emotional and financial toll the current building control regime has on many of my acquaintances as they age and downsize into apartments. The key issues I wish to emphasise today are the evaluation of the issues. This inquiry has drawn out a whole lot of the issues, but I think we need to have some statistics on the failure or otherwise to address issues of the current building control legislation and practice.

Some quantitative assessment should be made of the known numbers of multi-unit

developments with construction faults, an assessment of the legal costs in seeking rectification, the cost to the builder and the cost to the owners. In suggesting this, it is recognised that building occupiers are hesitant to disclose that their building has issues due to possible resale value impacts. A comparison between building quality pre and post private certification would be illustrative of the issue. It is recognised that there was little high-rise development through that time.

While the committee's discussion paper focuses on the economic costs, as you would be aware also there are huge emotional costs and costs to individuals. I am mainly focusing on the impact of private certification. The switch from public building inspectors to private certification occurred at the time when many public services were being privatised. It is now widely recognised in many jurisdictions that putting building quality inspection under the control of a certifier reliant on builders and developers for future work can often result in a conflict of interest. The failure of this scheme is evidenced by the huge increase in building faults since its introduction.

Governments at the time saw it as a means of reducing cost to government and answering industry pressure to fast track inspections. There was a belief that the private sector could do it better. It was expected that there would be audits of at least 10 per cent at the time, but this was not achieved due to lack of funding. I was there at the time, so I know what treasury did.

Many of the issues identified in submissions to the inquiry can be attributed to the failure of building inspectors and compliance. It is essential that the nexus between certifiers and developers be broken as a matter of urgency. Action needs to be taken now, not after this committee reports and the next election is held. It has been rumoured that that is what might happen. During that time many more examples of poor practice can occur, ultimately negatively impacting on Canberrans. We cannot wait another two years.

I turn to compliance. Until recently there was little action in penalising non-compliance with the approved plan. That is one of the things that I want to stress. It is the fact that builders are actually building what they want to build, not necessarily what is on the plan and then, of course, seeking approval afterwards. When I was working with the minister for planning, he actually put his foot down and made some developers pull down what they had done wrong. That message soon got out at the time that if you build it you are not going to get approval after you have built it. That stopped that practice to a certain extent.

The government has taken action to toughen this up now, I have noticed. It is essential to stop this practice by not approving major changes post-construction. While it may be initially expensive in terms of litigation, if the government requires the unapproved work to be demolished or be made good then the message will soon get out to industry that it is just not worth it.

Currently some practitioners build and seek agreement to change from the approved plan post-construction. Penalties need to be reviewed to ensure they are in line with any advantage to the developer of non-compliance. I think the previous witnesses just attested to the fact that there needed to be some extra penalties. In the case of phoenixing, possible criminal charges could be explored. I know some jurisdictions

are exploring introducing criminal charges into their compliance regime.

The committee's discussion paper refers to detailed building contracts, as in some other jurisdictions. This was certainly effective for small house building using the Master Builders contract with specifications etcetera spelt out. I am not sure what happens now.

I turn to my main solution, because I always like to bring solutions to committees. In the past, compliance auditing and action have been hampered by reduced budgets, often at the whim of efficiency cuts, political priorities or treasury impositions. In my submission I have proposed a major funding mechanism to ensure that the building industry can be fully regulated.

The only way to ensure sufficient funding which is flexible, ensuring resources are targeted to respond to the growth and decline of building works, is to establish a building quality board, fully funded by development charges. While treasury may disagree, there are examples of industry funding regulation, and we have the model of the ACT Long Service Leave Authority in the ACT. Financial penalties could also top up the work of the board. It would be interesting to know what other constraints there are to introducing this policy. I have been told treasury would not agree, but treasury is just an instrument of government, which I am sure you all recognise. It is not the government.

The industry may object but the ratepayer should not have to pay for industry regulation and compliance, and the voter will be very happy to know that the industry will fully fund its own compliance. I would also suggest as an addition, which I have not written here, that we should name and shame. If we are naming and shaming people who do not comply with health regulations in restaurants, we should be also naming and shaming builders and developers.

THE CHAIR: In your submission you talk about certification. You mentioned it in your opening statement as well. You compared the private system we have now with the government system. One of the issues that has come from other submissions and evidence we have heard today is not necessarily whether it is a government or private certifier. It is the fact that it is the builder's certifier as opposed to the consumer's certifier. Do you see a way forward, without necessarily going all the way back to the government certifier, with a system whereby we make sure that there is an independence to that certifier, that the consumer gets to choose, be it from a panel or something else, rather than, as is being alleged by some people, the builder's mate?

Ms Pinkas: I certainly do not believe it has to be publicly funded—a public certifier employed by the government. In my view, it worked well in those days but that is ancient times. I think we have to break the nexus between the two. When you referred to the consumer, the consumer can also be the person employing the certifier. We have to be careful there. It has to be a random allocation to a job, in my view.

My internet research has shown that a lot of jurisdictions are looking at whether they have a random allocation or whatever. As I see it, the problem is what you pay, because there are all different charges from certifiers. I have not managed to find anything that resolves that issue, because private certifiers charge what they like. If

you are allocated a certain certifier, you might get the expensive one and the next person will get—I do not know. That is an issue, but it certainly has to be broken, because you cannot have an employee, basically, of a contractor depending on the goodwill of that contractor. I mean, even the best intentions of people will probably err on the side of supporting their contractor, the person that contracts them.

THE CHAIR: Yes. Can you give an explanation of the South Australian extended warranty scheme? You have raised that in your submission. What is that?

Ms Pinkas: I have missed that, Jeremy, I apologise. I cannot at the moment. I could come back.

THE CHAIR: No, that is fine. We can do some research.

Ms Pinkas: It is obviously something I researched a year ago—whenever I did my submission.

THE CHAIR: Fair enough; we will get the secretary to research it for us. He is really good like that.

Ms Pinkas: Thank you.

MS ORR: In your view, is certification the only issue presenting challenges to achieving quality across the building industry?

Ms Pinkas: No, definitely not. It is a whole range of issues. I focused on that because I could see some answers in that. But the point was that there was not rigorous compliance. You have heard all the examples from people who have been victims of what we are doing now. We certainly need to tighten up the approvals process to make sure it complies with the current planning and leasing requirements.

We need to make sure that we do not allow this negligence in terms of not complying with the approved plan, that we get plan approvals pre-building. I think that is a very important thing to actually make people accountable. At the moment, I understand they are saying, “We want to do this, but they are not allowing it. We will do it and then they will approve it because they do not want to take the tough view of going to litigation or whatever and getting us to pull it down.” I think the government has to stand strong and then the industry will comply, once it realises it is standing strong. It will not be continuous litigation but there may be some litigation to start with.

MR PETERSSON: You mentioned very briefly at the end of your opening statement that naming and shaming non-compliant builders would be a good idea.

Ms Pinkas: That was just an idea I got then.

MR PETERSSON: It is a good one. How do you balance that, though, with the wishes of many home owners not to devalue the property?

Ms Pinkas: Yes, that is true. I would imagine that you could look at the demerits or whatever that the government has actually against them. Rather than saying, “This is

to do with X's property," you could say, "This builder has not complied with certain whatevers," and you could say he has got whatever demerit points or worse. It could be a list of builders, how they have performed on projects, without actually going into the specific project as a public document. I imagine you would need legal advice on how you managed all that.

MR PETTERSSON: But you think we can manage it?

Ms Pinkas: I do. You do it with restaurants. My local restaurant, Ricardo's, had great problems with their public naming. I think you can do it. And it is a wonderful threat, shall we say, to a building company or whatever to know that if it does not comply people will know. If I was employing a builder I would want to be able to look up and see their performance.

MR PETTERSSON: I think you made many good points.

MS ORR: You make reference in your submission to a clerk of works system. Can you elaborate on what this system was or could be?

Ms Pinkas: This is something that my friends in the building industry that used to be public employees have said, that we need to go back to the clerk of works for major buildings, where they are actually responsible for signing off a whole lot of things and they are legally responsible. In everything that I recommended, I am trying to hone it to making people legally responsible for what they are doing. With companies, as we know and we have heard, people can come and go and disappear. If there is a clerk of works who is legally responsible for that particular building then he or she is going to be much more involved in ensuring that it all complies.

MS ORR: And the clerk of works is a government employee?

Ms Pinkas: It could be or it could be, again, an expansion of what we are talking about with the certifier. But it is someone who has got the skills and the training and would have to have qualifications as well because we are doing so many more high-rise buildings than we did 20 years ago when a building was low-rise.

MS ORR: If I am understanding this role correctly, the clerk of works would be responsible for overseeing the construction—

Ms Pinkas: The compliance and all that stuff.

MS ORR: The compliance, far in excess of what the hold points on a certification process would enable?

Ms Pinkas: That is right, yes.

MS ORR: And it would be legally binding?

Ms Pinkas: That is right. The person would have legal responsibility for whatever they are doing. I also mention that we should be looking at perhaps some criminal penalties, depending on the size, which I think some other jurisdictions are looking at.

Maybe the secretary could look into that too.

MS ORR: How does the clerk of works role fit with your suggestion to establish a building quality board?

Ms Pinkas: The clerk of works would obviously be approved by the building quality board and registered to the building quality board. The building quality board is just to make sure that all the lines are aligned and complying. The main thing I was trying to get to is not to enable it to be subject to the whims of efficiency dividends, politics, priorities and treasury because that is where the problem has occurred in the past, when they have not had the resources.

MS ORR: You noted that the original system with the certification was meant to be audited 10 per cent—it was expected to be 10 per cent.

Ms Pinkas: It was not.

MS ORR: And it was not. Do you know what the percentage of audits was?

Ms Pinkas: No, I do not, but I do know that it was not. I did speak to somebody who will remain nameless that was fairly high up in the Master Builders and a few other people that had been in the Master Builders Association previously and asked them why on earth they supported this scheme in the first place. They said the major reason was that they could not get the inspections quickly enough. My view is that if you want inspections quicker you pay for it. In other words, you can get people quicker if you pay.

MS ORR: Is that a view that you put to your friends in the industry?

Ms Pinkas: Yes. They are quite happy with that idea. They said in the old system it was a problem waiting for inspections. Being a person that likes to see user pays, you just pay if you want a quicker inspection.

MS ORR: In your opinion, do you feel there has been a trade-off between trying to get a faster turnaround on inspections done and the quality of the compliance regime?

Ms Pinkas: I would not necessarily say that. I think the bigger issue is the skills of the people involved in compliance and the independence of those people. They are the two issues as far as I can see it.

THE CHAIR: On that issue as well, in your submission you have made the point that the Building Act should be amended to specify and make it mandatory for more inspection points in multi-unit developments.

Ms Pinkas: That is right. I do not know if that legislation has been amended since. That was at the time of writing. I know there have been some changes to the act, which, quite frankly, I did not read because I did not know about them.

THE CHAIR: We can look into that issue.

Ms Pinkas: Again, this is from my discussion with people that I knew in the industry from working with the minister. I did discuss this with him because I was trying to work out what the best options were. The real issue was that the Building Act, in relation to high-rise developments, did not have enough inspection points. These are people that have worked in the industry. It is not my view, and I accept that view that there were not. I do not know if the legislation—has it been changed recently?

THE CHAIR: There have been a whole raft of amendments, but that specific point we can look into.

Ms Pinkas: I did not know but at that stage, which was about 18 months ago or something. Definitely they said they needed—

THE CHAIR: Certainly waterproofing seems to be an issue.

Ms Pinkas: Yes, but there is just the actually looking at it beforehand. This is the issue: you go and look at it but you cannot tell. If you are going to pass waterproofing you need to see the waterproofing before everything is put on top of it.

MS ORR: Certainly the idea of a clerk of works, or a role where essentially you are looking at things as they go along, has been raised. The other idea that was put forward earlier today was a peer review of documentation to make sure that there is a good understanding, particularly in an outcomes-based regulatory system. Do you have any comment you would make on that suggestion that was put forward—more peer review at the design stage?

Ms Pinkas: It depends on whether it is an independent group. Initially, when I first worked in the Assembly, there was a committee appointed of very eminent people to look at the planning, review the planning stuff. This major building audit had sat in that context. That was actually abolished when funding to the planning authority was cut and they won the argument that they could not afford to service this group. The point is, again: who would pay for the peer review group and who would fund it? I would suggest that my proposal for a building quality control board would also provide funding for that. I think it is very important to respect the standards and to ensure that peers also are responsible for ensuring a high standard.

MS ORR: You note in your submission that statistics in this area would be useful to understand the size of the issue. Are there any things in particular you can suggest should be recorded and monitored and do you consider that the mandatory reporting of certain things would potentially improve the system?

Ms Pinkas: I think mandatory reporting would definitely improve it and, as I said, naming and shaming and reporting, I think it is very important to bring this out in public because at the moment individuals are having to fight these issues and it should be a community-wide issue.

THE CHAIR: Thank you very much for attending. Thank you very much for your submission. I note your continuing interest in these sorts of matters in the community.

Ms Pinkas: It is purely because of my experience that I just cannot sit at home and

ignore them.

THE CHAIR: Thank you very much.

Short suspension.

HOPNER, MR PETER

THE CHAIR: Welcome to the public hearings for the inquiry on building quality. Before you there is a privilege statement and I ask you to read that before we proceed. It sets out the implications of privilege for the committee.

Mr Hopner: Yes.

THE CHAIR: Rather than naming and shaming individuals, could you keep names out of it.

Mr Hopner: Yes.

THE CHAIR: I ask you to explain the issues that have arisen, and the committee will ask you a series of questions.

Mr Hopner: My family and I purchased a property in the Infinity complex in Gungahlin built by Geocon. We purchased it off the plan approximately 12 months ago. The two issues I want to address which I have addressed in my submission directly relate to building quality and also to risk within the building.

The first one relates to a gap in a balustrade. I have added some photos of that for the committee's reference. My concern was this excessive gap between the deck of the balcony and the bottom of the glass panel of the balustrade. My professional background is in occupational health and safety so I have a view about identifying hazards and risks. What I found in research is that there does not appear to be any direct regulatory guidance in relation to these gaps.

The only reference I could find—I am using the old term of the Building Code of Australia, the BCA—in the National Construction Code was some vague reference to heights of a balustrade and the gaps therein; not gaps at a lateral horizontal level. I see a couple of issues. I will leave the legislative side aside. From a practical sense the gap is approximately 130 millimetres. You will see in some of my photos that you can put your hand through it. One of the things other owners have highlighted is that a stubby or any container can drop through the gap.

My property is on the top level, the 22nd level. It is about 70 metres to the ground. At ground level you have a fairly high traffic area. There is a childcare centre adjacent, with parents and families accessing and egressing the area. Two buildings are under construction adjoining the site, so there will be an increased volume of people. The issue on my unit is replicated in every other unit—the gaps appear to be similar. There is no ability to stop anything rolling off and dropping down.

When we purchased the property we raised it with the builder. The builder said, "Yeah, it's all been approved. It's all to standard and everything." We said, "No, hang on." Even the principal real estate agent from Independent who sold us the property said everybody immediately raised concerns or pointed out this gap.

MS ORR: This is after the construction had been completed?

Mr Hopner: Yes.

MS ORR: You are saying that anecdotally the real estate agent said, “A number of people have raised this concern with us”?

Mr Hopner: Yes, and that has also been articulated further down the track by other people at AGMs and things like that. It has been put to the executive committee of the strata but no-one has come up with a solution apart from that it will have to be lumped on—

THE CHAIR: Have you had it confirmed that it is in compliance with the building code or are you not sure?

Mr Hopner: I have put in a complaint to the building inspectorate, Access Canberra. They are currently investigating and it has been escalated in investigation levels.

MS ORR: The other issue you raised in your submission was the thermal performance of the roof and the solution that was put in place.

Mr Hopner: Yes.

MS ORR: What I took away from your submission is that two major concerns post build were identified by the owners. I am interested in how you have or have not been able to reconcile those with the construction company. Once these issues were identified, what was the process for you to have them addressed?

Mr Hopner: The first one, the balustrade gap—nothing. It has been attempted to be progressed by the executive of the body corporate but with no success there. It has been eight or nine months that it has been on the agenda.

MS ORR: It has been put to the original builder and they have said it is compliant, so they are essentially not going to take it any further?

Mr Hopner: Yes.

THE CHAIR: You made a complaint to Access Canberra, but you have not heard back from them; is that right?

Mr Hopner: No, I have. To clarify that, my submission was done prior to them becoming fully engaged. They have made a number of inspections. They appear to be advancing it. They have said, “Well, look, there’s nothing in the legislation that covers this type of gap,” which confirmed my initial view and inquiries.

There may be some solutions that could be looked at further down the track, but my immediate concern is that these are the obvious issues with this building. There may be others that emerge in time. I personally think the builder is a learner. Even though they are one of or the biggest in the ACT they just do not seem to get it. When I raised it a couple of times specifically with the Geocon representatives they just shrugged their shoulders and said, “It’s been approved.” I assume what they mean is

self-certification.

MS ORR: How did you educate yourself on what the process was for raising this concern and looking for rectification?

Mr Hopner: It is pretty straightforward. You can go to the builder directly or you can go through the body corporate. But it was just shrugging the shoulders and the response: “It’s been approved.” I asked if there was anything that could be done and it was: “No, it’s been approved. It’s okay.” I said, “But blind Freddy can see it’s not safe.”

MR PETTERSSON: Do you know whether your building actually needs thermal insulation?

Mr Hopner: I do not know. I have been told anecdotally through Independent real estate that they put all these pebbles, large river stones, up there based on what had happened at the Wayfarer over in Belconnen, where, last year or the year before, there was an issue of bangs and all sorts of crazy things going on at night.

MS ORR: Was your building having these bangs?

Mr Hopner: Not that I know of.

MR PETTERSSON: Had people moved in at the time they installed the insulation?

Mr Hopner: Yes, I think so. We took ownership in April and people had already occupied.

MS ORR: When you say “insulation”, are you referring to the pebbles?

MR PETTERSSON: The pebbles on top, yes.

Mr Hopner: I am assuming that is what you mean.

MR PETTERSSON: So people had moved in, and that is when they put in the pebbles, if we want to call it that?

Mr Hopner: I assume so. I do not really have any evidence of the exact time.

MR PETTERSSON: Are you aware of complaints in the building about noise, similar to the previous building we heard about?

Mr Hopner: No, it has not been raised.

MR PETTERSSON: But they still put in the insulation, on top?

Mr Hopner: They put it on top, yes.

MR PETTERSSON: Why do you think they did that?

Mr Hopner: I suspect it might have been a case of thinking, “We can possibly head it off.” The design may be similar, or the concrete. I do not have that structural expertise. It may be that they have looked at it as a risk management approach—

MS ORR: Pre-empting a potential issue?

Mr Hopner: and have put them up there. I understand they put them up by helicopter over at the Wayfarer, but these were put up using other means, when they had a tower crane there.

MS ORR: To the best of your knowledge, in coming forward with that remedy for an issue that they had identified, was there any consultation with the owners as to that remedy and any sign-off on whether it was appropriate?

Mr Hopner: I do not think so. There is nothing that I am aware of. I have attended all of the meetings of the body corporate and have all of the correspondence, and I have not seen anything.

MR PETTERSSON: In your submission you mention that there is a systemic failure driven by a corporate culture of complacency. Can you expand on what you mean by that?

Mr Hopner: When raising these issues with the Geocon representative, there was just a shrug of the shoulders and a glassy-eyed sort of smile in response. I paid a lot of money for a property that should be fit for use, fit for purpose. It should also be safe to use.

Going back to what I see as probably the most serious, immediate issue, the balustrade gap, they have allowed that to be built like that; I do not know why. No-one can seem to fathom why such a wide gap exists right around this whole balustrade, on what appears to be every single one of the 426 units. It just does not make any sense. No-one seems to be able to answer it. They say, “It’s all been approved.”

I suspect that that is what has been fed back to other owners. I know that other owners have specifically raised with the builder that it is dangerous. I know of one owner who has said, “I won’t let my grandchildren out on the balcony because potentially they could fall through.” A little kiddie may do so. An adult would probably get a leg trapped or something like that if they slipped down; you then have to try and pull the glass and everything off. Again, this compounds the particular issue. Certainly, a small animal could fall through. People have cats and dogs in the premises. There is potential for them to fall through.

With respect to the systemic side of it, it seems to be, from my feedback, a culture within that organisation. It is only my assessment, but it is a matter of saying, “If you’re taking a blasé approach to this, what else have you taken a blasé approach to? How did you come to the conclusion that it was a proper thing to do to have this sort of gap?” This is where I come back to my professional background: “What sort of risk assessment did you do?” Anybody walking in there could look at it and say, “Hang on.” I know people who will go up to the edge and they will step back. They will not

look down towards the edge, because you can see straight down.

The other point is about the thermal insulation. With what they put up there, again, this reinforces my view about a systemic approach, having regard to their failures. They put up netting. I did not believe it until I actually saw it: crows were picking up these white stones, river rocks, thinking they were eggs or something like that. I thought, “No, that’s rubbish.” I then saw one fly across—there was an adjoining tower crane at the time—sit on the tower crane, pick it up and just drop it, because it realised it was not something edible. I thought, “Okay, I’m proven wrong.”

To stop the birds from getting at the rocks, they put in what was basically soccer netting. Three weeks later, there were strong winds and it blew off. With the ultraviolet rays, how long is soccer netting going to last? I said to them, “Why don’t you put something like chicken wire up there, something a bit more robust?” Again, there was a glassy-eyed smile and just a shrug.

MS ORR: This goes back to a question I asked earlier. There is an issue here and there is a remedy, but who is authorising the remedy? It sounds like you as owners did not have any say in what was done.

Mr Hopner: No.

MS ORR: It sounds like you are not necessarily completely happy with the remedy and that there are certainly issues coming from that.

Mr Hopner: It is a temporary remedy. The next issue comes—

MS ORR: Temporary in your view or have the company said they are working on a different solution?

Mr Hopner: No, that is in my view. Again, with the soccer netting that has been put up there, the birds will eventually get through. Where does the cost go to from there, to do a proper fix? The proper fix will be done by the owners. The same is the case with the balustrade. People are saying, “I’m going to try and get some welding done or something done to fix it.” The cost is on us.

MR PETTERSSON: You keep saying the word “remedy” as if there is a problem. You do not know that there is a problem. Does everyone assume that there will be a problem here?

Mr Hopner: Do you mean with the insulation?

MR PETTERSSON: The insulation on the roof.

Mr Hopner: There is the mere fact that it has been demonstrated. Do you mean a problem with respect to thermal insulation or the hazard created by the birds?

MR PETTERSSON: In terms of insulation for heat, you said earlier that they do not know if this building is going to make noises in the same way.

Mr Hopner: Yes. There is an assumption, I think.

MR PETTERSSON: So it is an assumption, and you are assuming that you are going to have to contend with that problem in the future, which is why you need permanent, long-term solutions to this issue.

Mr Hopner: I am not assuming that there is a problem with it. That came from Geocon, from the builder, making some assumptions that there will be that thermal expansion and they did not want all of the negative press that would go with it. I assume that—again you would need to get exact evidence from them—it is a similar design or concrete layout, as far as the roofing goes.

MR PETTERSSON: Would you buy from this builder again, knowing what you know now?

Mr Hopner: No, definitely not. When we walked out and did our preliminary inspection, we looked at it and thought, “What have we done?” Initially, we were going to move in there, but because of a few personal issues we decided not to, and now I have rented it out.

MR PETTERSSON: You wanted to live there but you will not live there?

Mr Hopner: I would like to live there. The view is not bad.

MR PETTERSSON: You saw what it was and you decided not to live there?

Mr Hopner: Yes. That was a partial reason, not the major reason. I cannot say that. I could certainly look at fixes that I would pay for myself to make that balcony safe. Upstairs, with the thermal insulation, that issue is going to recur, with items coming off. I still get stones and things on my balcony that have been dropped by birds.

THE CHAIR: Thanks very much for attending today. We will forward you a copy of the transcript so that you can go through it and make sure there are no transcription errors. Thanks for your submission and for attending.

Mr Hopner: Thank you very much for the opportunity.

OLLEY, MR PETER
McALLISTER, MR KRIS

THE CHAIR: Before we start, if I can just draw your attention to the pink privilege statement that is in front of you. Have you had a chance to have a look at that?

Mr Olley: No.

THE CHAIR: Just have a quick look through that.

Mr Olley: Is this so that we can say whatever we like and not get sued?

THE CHAIR: You can say certain things.

MR PETTERSSON: We can say whatever we like.

THE CHAIR: In accordance with the privilege statement, yes, you have certain protections that apply. You have had a look? All good?

Mr Olley: Yes.

Mr McAllister: Yes, I am pretty familiar with that.

THE CHAIR: Thanks very much for your submission. Thanks very much for attending. Maybe what we will do is start off with you just giving a bit of an outline for the committee on what the substantive issues are.

Mr Olley: Okay.

THE CHAIR: As I understand, it is to do with access and wheelchair access and so on. Then we will ask some questions.

Mr Olley: Yes, and it is actually more of a legislative problem than anything else.

THE CHAIR: The building may be in accordance with the code. It is just about whether the code meets the needs of people with a disability; is that right?

Mr Olley: That is correct. What happened was that my wife and I downsized. We bought an apartment in a building. We had a look at the plans and it had disabled parking and adaptable units, ramps and the whole lot. When we went for an inspection they only gave us 15 minutes to actually go into the unit. Subsequently I discovered that all the doors were manual. I do not know if you have ever tried to get up a ramp and through a door. This is my wife here. She could probably give you a demonstration of how she cannot get through the door.

THE CHAIR: We will spare her the indignity.

Mr Olley: But I do not want this to be a theoretical exercise, because it is actually a real exercise.

THE CHAIR: Indeed, yes.

Mr Olley: Subsequently what I have discovered is that it has been unreported. I believe mine is the only submission of this kind.

THE CHAIR: That I am aware of, yes.

MS ORR: On this particular issue.

Mr Olley: I am not surprised. It has been totally unreported because people in the position that my wife is in are physically unable to do it. You are going to get the same sorts of issues that you have got with the aged care royal commission and the royal commission into disabilities, if it ever arises. My wife simply, with all the good intentions in the world, with the infrastructure that is there, cannot use any of it—not one thing—because she cannot get out the door. You have got a glass door that takes you up a ramp to a pool; she cannot get past the door. We have got infrastructure up the top. We have got a disabled toilet that is behind a fire door that is spring loaded.

There were a whole lot of things put into place and there was not one thought put in. My wife is probably better than some people. You have people who are amputees who simply would not be able to get up at all and they would be totally reliant on it.

My wife has gone for an aged-care package. There are 120,000 people in front of her and I suspect a lot of them are wanting to downsize. This is not going to go away. This is not a small problem just in relation to my wife. This is actually quite a huge problem that is not being reported. I would strongly suggest that there is actually a matter of life and death with it.

MS ORR: Mr Olley, when you purchased your apartment, am I right in my understanding that you purchased this because it was put to you that it was accessible?

Mr Olley: Absolutely, yes, the whole lot. It had ramps, disabled car parking, large lifts, adaptable units—you name it, the whole lot.

MS ORR: Just help me to understand. Once the place was built, did it deviate from what was suggested to you would be delivered? Was what was delivered once it was built what you were expecting?

Mr Olley: No, it certainly was not what I was expecting. I expected if you had a ramp you would actually have a door that would open.

MS ORR: The ramps and so forth are all there, the issue is that once you—

Mr Olley: The infrastructure is there, yes, but you cannot use it.

MS ORR: Once you move beyond the individual apartment, the complex is not necessarily accessible, is that correct? Have I understood that?

Mr Olley: Nothing in the common areas is accessible to my wife simply because she

cannot get through manual doors. You have got all the infrastructure in place; you have got ramps in place; you have got disabled toilets behind a fire door; you have got adaptable units; you have got disabled car parking; you have got large lifts. But she cannot get past the door to get to the lift even. So it renders everything else that is in there absolutely useless.

My wife is lucky because I have never got sick since we got here. The reason we moved is that the doctor is about five minutes down the road. If Pam ever gets sick, if she gets a cold, it goes straight to her lungs. She has got 18 per cent lung function. That means her oxygen levels will drop dramatically, which means that within three or four hours it could be death. I am not being dramatic about this; I am actually telling you the way it is. She cannot even do a basic thing like going to a doctor on her own. I have to be there all the time to get her to do that.

THE CHAIR: I might ask Mr McAllister a question from the body corporate point of view.

Mr McAllister: Okay. I have got to be careful.

THE CHAIR: Identifying that this issue exists, have you investigated whether this was a deviation from the original plan, whether the plans are in accordance with the building code or whether there is any rectification? Does that fall on the builder or is it a matter of their having complied with the plans and the building code and therefore it falls to the body corporate? Where does it sit from your point of view?

Mr McAllister: That is a very good question. I commenced on the executive committee for this unit complex in November last year, for the second year of the committee. I have not investigated that aspect of this, but I have been a strong advocate of Mr Olley and of Pam for the duration of this issue since I became aware of it. I am aware of the delineation between the building code and the premises standards guide. While it was built in accordance with the plans—and one of the notes that I have made to talk about, if time allows, is that it does appear in the view that I have seen as a person, not as a member of the committee as such—there is a lot of just sort of box ticking.

You need to have a number of disabled car parks on a number of floors—yes, done that, great—without any real regard to the practicality of that. There are elderly people that live on, I think, level 9 and they do not have a disabled car park space. It is all about, “Yes, I’ve done my job; yes, tick the boxes.” But I do not see a lot of actual practicality.

THE CHAIR: I suppose that from the builder’s perspective they have certain legislative requirements. They are going to build to those. They have plans that everyone agreed to and they will go ahead with that. So we just have to make sure—

Mr Olley: In regard to this, I have been to the minister’s office down. Minister Ramsay introduced me to Mr Gaze in Access Canberra. They have gone through the whole lot, from the consumer affairs part of it through to the compliance with the building code—the whole thing. This is the really frustrating part about it. He was very surprised that the premises standards guide and the building code had not been

harmonised. If you google it, on all the information from 1 May 2011 it was supposed to have been done. To his surprise, it had not been. He was not even aware until I told him that this was the case.

THE CHAIR: Have you got correspondence from the ACT government that outlines that issue, or is it all verbal?

Mr Olley: No. I have correspondence, but it is not here with me at this moment in time.

THE CHAIR: No; that is all right.

MS ORR: When they say that it has not been done, is it federal regulation or is it state regulation that you are referring to?

Mr Olley: As far as the building code is concerned, it would be whatever the building code is within—

MS ORR: It is federal.

Mr Olley: Yes, in Canberra it is a funny thing because it covers buying federal and local has to comply with the federal, yes.

MS ORR: If I have my regulation correct—I could be wrong because I am speaking off the top of my head here—the disability access guidelines for buildings are actually under the department of industry and innovation, or whatever it is called.

Mr Olley: That is correct, yes.

MS ORR: Yes; so it is federal. So the harmonisation is between the building code and the disability access standards. Is this the harmonisation we are talking about?

Mr Olley: Yes, the harmonisation was supposed to happen between the building code and the premises standards guide. Who was actually responsible for that, I have no idea.

Mr McAllister: It sounds like it would be the same people, though.

MS ORR: Yes. It was a bit of finger pointing both ways with that one—you know, “It is not our responsibility.”

THE CHAIR: Are you able to provide to the committee the response you got back from the ACT government on your issue? That might be useful, so we can then—

Mr Olley: Yes. Basically they closed it down. They said that they had complied with the building code.

THE CHAIR: They may well have, but what you may have uncovered is a legislative gap.

Mr Olley: There is a legislative gap, I can tell you that. This is the contract. I will read out portions of it. It actually refers specifically to people with disability. This is why my expectations were not met.

Mr McAllister: While you are locating that, Peter, I do not think I quite answered your question before. I do not believe that they have not complied with the code. I do not believe that they have not complied with the rules or the regs. It certainly is that delineation between the two that Mr Olley is trying to highlight. I have investigated, on behalf of the committee, retrofitting the doors. I sought a quote from a company to retrofit the doors with automatic swing openers. There is a cost of about \$200,000—

THE CHAIR: Wow!

Mr McAllister: which has terrified every single person I have mentioned it to, because no-one wants to spend that money. It is going to be a bit of an impasse if we start talking about potentially retrofitting. We have written to the developer asking them to negotiate with us to fund it, but we have not had a response yet.

THE CHAIR: We are looking for very much the systemic issues and if there are those systemic issues where the code is inconsistent with—

Mr Olley: Yes. When I found this out, I actually walked to every apartment block from one end of Tuggeranong to the other. I suspect this is a systemic problem, it is an unreported problem and it is going to be a really big problem.

THE CHAIR: I think it possibly could be. Thank you very much for raising it with us.

Mr Olley: Yes, it has in here:

... access on the land for persons with a disability in accordance with plans and specifications prepared by the Lessee and previously submitted to and approved in writing by the Authority ...

But I am gathering that because they have complied with the code, they look at this and say, “No, you do have access,” even though she does not.

Then further back here, it is stated, “Permitted use of common property: all common areas within stage will be fully completed in accordance with the plans and/or subsequent amendments and will be useable without limitations by all residents as intended.” My thing is that it was intended that people with a disability could get into common areas. That is simply not the case, but I have been told that because this complies with the building code, this is actually rendered useless in our contract.

THE CHAIR: If you can provide some of that documentation to the secretary of the committee—you have the email address—that would be really useful. I am not sure quite what the answer is. Obviously, there is a problem here. I guess that that is why we as a committee are looking into these issues.

Mr Olley: I would like just the simple thing of actually mandating electronic doors on class 2 buildings.

THE CHAIR: That may be the solution.

Mr Olley: I also would like, because this was supposed to have been done in 2011, for it to be backdated. In other words, retrofit any building that has been done from 1 May 2011 onwards—

THE CHAIR: Noted.

Mr Olley: because we bought it. I read all the legislation. I read the contract, and all of the disability facilities are absolutely rendered useless.

THE CHAIR: You have certainly uncovered a problem. Thank you.

Mr Olley: It is a large problem. I tell my wife how lucky she is because I am 13 years younger than she is. But you will find that most people are like the couple that Chris was referring to. They are both in their 90s. I have been dealing with this for a year and a half.

Mr McAllister: They are not very empowered people to try to get this kind of issue resolved.

Mr Olley: They are not very empowered to try and get this done, which is why you are not getting any responses from this particular demographic.

Mr McAllister: And there is not a lot of advocacy from other people.

THE CHAIR: Thank you very much for advocating not just on your behalf but on their behalf. To both of you, thank you for appearing today, and to Pam out there in the audience, thank you very much for attending today as well. You will be sent a copy of the transcript. Can you make sure that there are no factual errors in it? If you have that documentation you referred to, could you forward it to the secretary? Again, thank you both for your submissions and also for the evidence you provided today.

Mr Olley: Yes. You will see in the submission that I actually was quite wide ranging. I went to every place, to every man and his dog, to try to get a solution to this, but I have not been able to.

THE CHAIR: Good on you.

MS ORR: Thank you.

Mr McAllister: Thank you very much for listening. It is appreciated.

The committee adjourned at 12.01 pm.