



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON PLANNING, TRANSPORT  
AND CITY SERVICES**

(Reference: [Inquiry into ACT Budget 2021-22](#))

**Members:**

**MS J CLAY (Chair)**  
**MS S ORR (Deputy Chair)**  
**MR M PARTON**

**PROOF TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 22 OCTOBER 2021**

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**Acting Secretary to the committee:**  
**Ms J Rafferty (Ph: 620 50557)**

**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.

## **APPEARANCES**

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*Amended 20 May 2013*

**The committee met at 3.45 pm.**

Appearances:

Vassarotti, Ms Rebecca, Minister for the Environment, Minister for Heritage, Minister for Homelessness and Housing Services and Minister for Sustainable Building and Construction

Environment, Planning and Sustainable Development Directorate

Ponton, Mr Ben, Director-General

Rutledge, Mr Geoffrey, Deputy Director-General; Sustainability and the Built Environment; Environment, Water and Emissions Reduction

Brady, Dr Erin, Deputy Director-General, Planning and Sustainable Development

Sendaba, Ms Bethel, Executive Branch Manager, Planning and Sustainable Development

Major Projects Canberra

Edghill, Mr Duncan, Chief Projects Officer

Piani, Mr Adrian, Chief Engineer/Executive Group Manager, Infrastructure Delivery Partners

**THE CHAIR:** Good afternoon and welcome to the 2021-22 ACT budget inquiry for the Standing Committee on Planning, Transport and City Services. The committee would like to acknowledge the traditional owners of the land; we are meeting on Ngunawal land and sovereignty was never ceded. We would like to acknowledge their continuing contribution to the living culture of our city. I acknowledge any Indigenous or Aboriginal elders or people who are watching from wherever you are; it is great to have you here.

The proceedings this afternoon will examine the expenditure proposals and the revenue estimates for the Environment, Planning and Sustainable Development Directorate, City Renewal Authority and Suburban Land Agency in relation to budget statements E and Major Projects Canberra in relation to budget statements I. The minister has tabled an opening statement, which we thank her for, and we note that for the record.

When you take a question on notice, please state clearly that you are doing so as that will help us with our secretariat. These proceedings are being recorded and transcribed by Hansard and you will be given a chance to review that transcript.

I welcome the Minister for Sustainable Building and Construction, Major Projects Canberra directorate officials and EPSDD officials.

**Ms Vassarotti:** Thank you very much, Ms Clay. I acknowledge that I have read and understood the privilege statement.

**THE CHAIR:** I was wondering if you could give us an update on an item that is in the parliamentary and governing agreement, where you have committed to commencing a 10-year pathway to shift to world's best practice on climate ready and environmentally sustainable buildings. That will include expanding the ACT appendix

to the Building Code of Australia. Can you let us know where that is up to?

**Ms Vassarotti:** Yes, thank you for the question. As you know, this is a commitment that we have made as part of the parliamentary and the governing agreement; it is an ambitious agenda but one that we are really excited to work through how we are going to achieve that. This is the beginning of the journey, but it is also building on the fantastic work that the ACT government has done in terms of being a leader in the area of emissions reduction, and this is another key way that we can do it.

In terms of the work that we have done to date, we have been really keen that we do link in with the work that is happening at a national level, particularly around our national construction code. There is currently a major review of the construction code going on at the moment, with a new code being delivered in 2022.

The current conversations are about energy efficiency, and we think that it is really important to have the baseline in terms of what is happening at a national level in terms of energy efficiency and ensuring that we are meeting the environmental standards. That process is currently underway and there is a regulatory impact statement that is out. The ACT government will be providing submissions into that and providing our perspectives on the national process. I think, often, that these national processes have a variety of views. We would certainly see that as a baseline and a floor rather than a ceiling, in relation to our ambition.

We are working across a number of directorates. This ambition will not just be around the work that happens within the sustainable building area; it will also require work around planning and the work that is happening within the planning review. We are thinking about how that can influence this ambition. We are working with colleagues who are working with climate action and adaptation and working with our ministerial colleagues in relation to that.

We are also looking at some of the opportunities around demonstration projects that we might be able to do. So over the next six months we are expecting that we will be in a position to be able to start a really strong conversation with the community in terms of some of the key elements that we will be looking at. We will certainly be looking at the issue of energy efficiency in our homes. We also really want to look at the issue of embodied energy and how we look at what happens in terms of the construction process.

This whole issue of readaptation will also be an important element of it, so we really look at the whole of life. There will be a number of elements to this. Certainly work has begun, but we will see work ramp up over the next six months in relation to that.

I will ask officials if there are any additional things that we might want to speak to at the moment. Dr Brady, is there anything you would like to add in relation to the work that is happening right now?

**Dr Brady:** I have read and understood the statement. Minister, I think that you have covered quite a lot of it. It cuts across a few portfolios and, as you said, in the next six months we will be probably getting more clarity on that pathway and some of the pieces of work that feed into that.

**MS ORR:** Minister, can you give us an update on the formation of a developer licensing scheme and how your work is progressing with that?

**Ms Vassarotti:** Absolutely. Thank you very much for the question, Ms Orr. As you know, the concept of a developer licence is a project that has been identified and, again, is contained as one of the major projects as part of the reform project and the reform work that is happening around building quality and is contained within the parliamentary and the governing agreement.

We have started some significant work around the development of a property developer licence. We probably just need to note that a property developer licence is not actually something that exists in any other jurisdiction. There was a process in Queensland for a period of time where property developers had to apply for a building licence, but this is quite a novel idea in terms of that it has not been tried before.

There has been quite a lot of analysis that has gone into ensuring that we understand how we can deliver on the objectives of what we are trying to do, and this is really around transparency and around accountability, so ensuring that people understand who are the people behind the entities that do have a significant influence on a build and are accountable for decisions. We also recognise that there is a whole range of people that may become a property developer and that there is not a course that you do. So we are working through some of those issues. There has been analysis that has been done within the directorate to understand the scope.

We are now at the point where we will be getting some support through a consultancy that will go out and work with stakeholders in terms of the key issues. Some of the issues that we have been looking at are things like what is the appropriate definition of a property developer and what are the interactions between the different parties involved in projects. There will be instances where we see that developers and builders are one and the same. We also need to look at the different legislation; there are some quite significant corporate entities and corporate law that sits behind this.

We are in the process of engaging a consultant right now, and our officials might be able to provide some additional information in relation to that. We will work around a legislative model over the first period of next year and really look to develop some legislation and introduce it and pass it through 2022. Again, I might ask Dr Brady if she has any additional information to add around where we are up to in the process.

**Dr Brady:** I think that is quite good. I am not sure whether Bethel Sendaba might, but I think you have covered a lot of where we are at, Minister.

**Ms Sendaba:** I acknowledge I have read and understood the privilege statement. Yes, I would agree that the minister has covered off most of the key elements. I might just mention a couple of the areas that we are looking at in relation to the regulation of property developers, and that is things like project trust accounts and also bond schemes.

They are elements and tools that we have seen in other jurisdictions that have been used in part to increase the accountability around the role of the developer in

particular, and they form some of the elements that we are looking at. So we are looking quite broadly at all of the different ways in which we can understand the role that a property developer plays in the development process and the appropriate and best avenues to ensure that the right checks and balances are there.

**MS ORR:** If I understood correctly, the things that you are looking at now include a scope as to what should be taken into account in relation to a property developer. You are looking at the different corporate forms that groups take, so the project trust accounts and the bond schemes. You are looking at the relationship when it is a property developer-builder. I assume you are still including them, because they are a developer per se. Can you just run me through what other elements that might not have come out through this discussion that you are currently looking at so that we can get a picture of all the parts of the project that you are considering?

**Ms Sendaba:** I think what you have summarised covers the field. I can elaborate a little further. When it comes to things like project trust accounts, that is really about the role that property developers have in project finances and how that relays down to subcontractors and other parties. That is certainly one of the bits of feedback we have had in some of the earlier engagements that we have had with stakeholders. That is an element of the licensing scheme they would like to see included, just to be a little bit more specific about that. Likewise, with trust accounts, again, it is about ensuring that there is funding available should there be issues that can be attributable to the property developer as opposed to the builder who has been licensed.

**MS ORR:** Is this going to be an issue of phoenixing and multiple—

**Ms Sendaba:** Exactly, yes. There is a lot of interaction between commonwealth legislation that already exists, both around phoenixing and security of payments. They are two of the elements that would be considered. I am sure that you would appreciate that quite complex and sometimes entirely appropriate corporate and financial vehicle arrangements are set up per development that property developers use. It is just getting some expertise around those legal and financial structures that sometimes are appropriate and sometimes are misused. It is that kind of level of expertise that we are looking for beyond the kind of analysis that we would normally do within the policy team.

**MS ORR:** With the licensing at this point in time, looking at the scope and how you define it and how you make sure that it reaches the end entity that you want it to reach, work seems to be going on there. What else are you looking at, in the sense of the compliance aspect of the scheme? What sorts of things are you going to look at in terms of compliance?

**Ms Vassarotti:** That is actually a really good question, Ms Orr, because it goes back to what we are trying to do with this concept of a property developer licence. There has, in fact, been quite a lot of work that has happened through the initial phases of the reform that has tried to address some of the key issues that come up. Security of payment is a really good example of that.

One of the things that we are trying to see the property developer licence do is go that step of accountability. If things are not followed and there are concerns around

conduct, then there is accountability in relation to that. I think that speaks directly to one of the reasons we believe a property developer licence could be a useful tool, because it gives another lever, particularly around compliance. Certainly, they are some of the key issues that we will be looking at. I am sure the officials will have a bit more to add to that.

**MS ORR:** It does sound very promising. It will be interesting to know what objectives you are looking at responding to as part of the scheme as well. It is not just the scope and who it is going to cover.

**Ms Vassarotti:** We are really happy to come back. We are in the initial phase of the project. As we work through it, and particularly as we start to engage with stakeholders, we are really happy to continue to provide briefings as well, Ms Orr.

**MS ORR:** I think Bethel was going to tell us what objectives the scheme was looking at responding to.

**Ms Sendaba:** At the end of the day, we are trying to ensure that we have a regulatory system that fairly attributes accountability and transparency of the decisions that all parties involved in the building process and in the construction of buildings should be held accountable for. To go to the point about some of the other criteria or objectives that we are trying to see, it is about making sure that, as has been mentioned, developers are accountable for the decisions they make outside of the licensing regimen that is already there for practitioners, so builders who have quite a high responsibility already around ensuring that buildings are built to the standards of the National Construction Code.

It is really trying to focus on ensuring that, where we have seen regulatory issues, that would be the primary focus. Again, we might be focusing on project trust accounts. For example, they are typically used on larger scale multi-unit residential projects as opposed to, say, every single residential or commercial development that you might see. We are using the information available to us to really target any interventions that might be agreed upon.

**MR PARTON:** Minister, this is a genuine question and I am hoping that I can get a genuine answer. Based on the evidence that has been presented at this hearing in this line of questioning, it would appear to me that this ambitious process that the government is undertaking has become more difficult the deeper that you have got into it. It would appear, based on what I am hearing, that the list of unintended consequences and potential problems that seem to have been presented, based on the evidence that we have been given today, are mounting and that perhaps there is an understanding of why, at this stage, other jurisdictions have not gone down this path. I would just ask the minister whether that is the case, if this task now appears more difficult today than it did when it was first mooted?

**Ms Vassarotti:** I always give you a genuine answer; I can promise you that. I do not know that it has become more difficult. Often when we are working in this area of building reform, it is quite complex. We are also moving through a process where we have a significant level of reform that is already happening and we are now moving to this second stage of reform. What we are trying to do is to ensure that, in the early



phases, we have a really good understanding of the picture so that any system that we design meets the policy objectives.

As we move in, it might look a little bit different to what we envisaged at the beginning, because that is the whole idea of doing the work and doing the analysis. One of the issues about a licence per se is that it usually has some qualification processes attached to it. That is one of the issues that we are grappling with. It might actually be a registration process, for instance, in terms of us really looking at what the policy objective is in terms of accountability and transparency. This is all work that we need to do.

Certainly, we know that some other jurisdictions are interested in this. Our understanding is that Queensland is again looking at this issue. We are actually sharing information in relation to that. I think there is a genuine view that there is merit in this proposal, but it might look a little bit different to when we first started doing it. That is how good policy development works: we have an idea, we look at the evidence, we do the stress test, we talk to our stakeholders and then we develop the proposal. We did not run in straightaway and go, "Let's just put in a scheme that hasn't had all the testing." It will take us a little bit of time, but I think that we will get a good process through it. There is absolutely a commitment that we will deliver it, but in terms of how it looks, we need to go through that development process.

**MR PARTON:** I would have to take that as a genuine answer.

**MS ORR:** Minister, you say that it might look a little different to when you first envisaged it. What do you think will look different?

**Ms Vassarotti:** The example that I touched on just before, in terms of when we traditionally look at a licence; if you look at a building licence, a key element of that is qualifications. When you look at the types of qualifications that people with a property developer background come with, it might look a little bit different. That is one example of how it might absolutely deliver in terms of the intent of the policy, but we might be tweaking how it looks in terms of the model. That is one concept that, certainly in our analysis, we have identified. This is also early thinking. This is work that we do need to test with stakeholders and work within government on as well.

**MS ORR:** What consultation have you done so far? Who have you spoken with and sought feedback from?

**Ms Vassarotti:** There has been consultation, primarily through our internal ongoing stakeholder groups such as our building regulation advisory committee. I might ask officials to provide a bit more information about the discussions that have happened to date.

**Ms Sendaba:** The conversations we have been having at this stage have just been through our regular forums, as the minister has indicated. It has come up through a couple of presentations and engagements with stakeholders like the Property Council, for example. I know that there have been previous direct engagements between builders and the government as well, giving their views on areas of concern. That would be appropriate. Conversations have been very formative as we work through

these policy development stages. Certainly, once we come up with more detailed proposals, there will need to be a much greater level of engagement with industry stakeholders.

**MS ORR:** When do you anticipate going out for broader consultation on a more formed proposition?

**Ms Vassarotti:** As we bring on the consultant, we would see that happening quite quickly. Ms Sendaba will probably have a bit more detail.

**Ms Sendaba:** I imagine that through the further detailed policy development stage, we will continue to engage through various stakeholder forums that are already available to us and that we consult with on a regular and semi-regular basis. I think that a much broader stage of options and broader consultation would be a 2022 action at this stage. We will continue to reach out and have direct conversations.

**MS ORR:** So, for the time being, it is still very much stakeholder groups.

**Ms Sendaba:** Internal—

**MS ORR:** And the broader consultation you do not anticipate happening until 2022. But 2022 is also when you anticipate introducing and passing the legislation. This is a very tight time frame; how realistic do you think it is?

**Ms Vassarotti:** Ms Orr, we are absolutely committed to delivering the commitment. Obviously 2020 and 2021 have not panned out exactly as any of us would have hoped; we may have been a bit further advanced if we had not had the public health emergency. It is an ambitious time frame. We certainly want to meet it, but in terms of delivering legislation, I would not expect that to be happening in early 2022. That is for sure. We are working through the legislative time frame. We think that this is an important reform, so it is a priority and we are working through it.

**MR PARTON:** Speaking of time frames, I note that we have spent 20 minutes on this question.

**MS ORR:** I could spend all day on it.

**MR PARTON:** I understand, Ms Orr.

**MS ORR:** Mr Parton got to sit through the build quality inquiry with me, so he definitely understands. I think Mr Ponton wanted to say something; then I will take Mr Parton's hint and wrap up my line of questioning.

**Mr Ponton:** I just wanted to note that in terms of that time frame, yes, it is ambitious, but, importantly, we are doing that really detailed analysis now. It is really important to do that work up front—work through what we knew would be the challenges.

When we embarked on this, we had a pretty good sense of the areas that we needed to really focus our energies on. But working through all of those and having a really well considered proposal to engage with industry and community on is more likely to

result in success in terms of achieving that time frame, rather than going out too early without all those issues having been well resolved. That is the point I want to make.

**MR PARTON:** I want to go to budget statements E, page 21, talking about building reform and the building confidence report. The jurisdictional update of December 2019 presented a solid account of reform achievements as of that date. It also said that more reforms were forthcoming. The government has been working on these reforms for six years now. By reforms, I mean reforms relating to building quality industry conformance with quality standards and certification processes. Minister, can you tell me broadly and briefly what evidence you have obtained on the impact of the government's reforms to date?

**Ms Vassarotti:** The building reform work that has been happening both at a local level and at a national level has been a significant body of work. The building confidence report in particular highlighted that some of the issues that we have been grappling with at a local level are quite complementary to issues we have been faced with nationally.

That was a real opportunity, with the building confidence report, where we were able to pool our experience and expertise and get a very solid action plan which sat in parallel with the work that we had already embarked on and also the work of the local parliamentary inquiries that we delivered recommendations on about 12 months ago. It has been a really significant body of work.

We are starting to see the impacts of some of these reforms. This reform process is a long process. It takes time to see some of the impacts of the reform. We know that we have more work to do. We have talked about one of the major projects that we have been working on. There are a number of additional projects, such as the public certification scheme and engineer registration, that we believe will deliver even more benefits for the community. So there is the work that we have done in terms of those reforms.

The compliance element is an area that sits within Minister Cheyne's portfolio, but significant additional resources have been put into that compliance area. That gives us confidence that we have a much more robust system. I might ask Dr Brady if she wants to say anything.

**MR PARTON:** Minister, I did discuss this issue with Minister Cheyne, who reverted to talking about policy development in this space. She specifically asked me whether we had any bright ideas for policy reform in this space, which I found interesting.

In regard to the various reforms, I am still getting a steady flow of pleas for help on building issues, including construction taking several years instead of nine months; builders demanding progress payments for work not completed; poor quality work; builders failing to properly protect partially completed renovations from adverse weather; a roof collapse due to poor protection; and builders going into voluntary liquidation. You are getting the same emails as me. Building work on one property impacted on neighbours' property. From where I sit, I cannot yet see the positive impact of reforms.

**Ms Vassarotti:** I think one of the challenges is that we hear about where things go wrong but we do not hear when things go more smoothly. Building is a difficult process, and things happen. I absolutely recognise that all of our officers hear about situations where there have been issues. That is what the compliance regimen is there for, and there is additional work to be done.

I might ask if Dr Brady could give some reflections on some of the key areas where we see that a shift is happening.

**Dr Brady:** Mr Parton, I think some of the items that you referred to are compliance issues and some of them are related to the second stage of reforms that we are doing. Some of those would fall into the second stage of work that we are doing around security of payments and some of the auditing work.

In the auditing work, we are starting to see improvements in being able to pick up on some of those. Auditors are able to go out more frequently; they have a tool that was developed through the reforms that helps them. One of the other areas where we have seen an improvement is in the documentation. That was one of the reforms as well—getting better documentation. That will help us in the long run as well, and it helps us with the auditing.

With some of these things, it will take time for us to see improvements. Some of them are still in their second stage of development. We analyse them in the first stage and now we are developing the schemes to implement them; but some of them are flowing through in the auditing. While you have had some complaints come through to you, through our liaison with Access Canberra, we are seeing a lift in dealing with some of those matters.

**MR PARTON:** Thank you.

**THE CHAIR:** Minister, you mentioned a new registration scheme for engineers. Can you tell us a bit about where that is up to?

**Ms Vassarotti:** Yes. Thank you very much for the question. The issue of engineer registration is one of the key things that we have been working on. We have had quite a bit of work in working with stakeholders on what a scheme might look like.

In happier, or slightly easier, news than developer licensing, there are a number of engineer registration schemes that are now operational in different jurisdictions. Sadly, they are quite different in different jurisdictions. One of the key issues for us has been analysing the key schemes and asking what schemes are best and what do we want for our own. We have done a lot of work there, and we are at the point where we are finalising what we think is a scheme that will work well for the ACT. We are looking forward to getting together with stakeholders in the next few weeks to talk through the scheme—to look at what the scheme looks like; develop the legislation; and have the legislation in the Assembly and passed in 2022. We are at the pointy end of finalising what a scheme might look like.

Again, I might ask Dr Brady if she wants to add anything.

**THE CHAIR:** If you do, I might get Dr Brady to tell us whether that scheme would align with New South Wales to facilitate cross-border practice.

**Dr Brady:** I might get Bethel to talk to the detail.

**Ms Sendaba:** The New South Wales registration scheme has only recently been implemented. It has quite a narrow focus that just relates to engineers needing to be registered if they are undertaking work on certain types of building developments. The scheme that the ACT is looking at is more closely aligned to what has been put in place in Victoria, which picks up on elements they have in Queensland, which is establishing a broader registration framework for engineers in the first instance. If you are undertaking certain types of engineering work and certain scopes of work there, as an engineer, you must meet certain qualification and experience requirements.

Then we have prioritised the classes. There are many classes of engineers, many types of different engineers. We focus primarily, initially, on those operating in building and construction. Then the intention will be to connect that registration to the building regulatory framework as well.

To answer your question about cross-border relations, already we have mutual recognition. There has already been a mutual recognition legislative framework at a national level, and from 1 July this year, there has also been what is referred to as automatic mutual recognition. If somebody is registered in their home jurisdiction, they will be able to rely on that registration to operate in the ACT if we have a similar requirement on registration, and that is an automatic right. So yes.

**Ms Vassarotti:** Building on that, there will be alignment, but it will probably be broader. Certainly, for people with a registration in New South Wales, if they want to do the same work in the ACT, there will be alignment in relation to that.

The feedback we have had with stakeholders is that there was significant support for a broader scheme than what was in New South Wales. Again, we will be testing that with stakeholders over the next few weeks when we have those conversations with them.

**MS ORR:** I have a supplementary on building reforms.

**Ms Vassarotti:** We love to talk about building reforms; that is great.

**MS ORR:** Minister, in your opening statement you noted a lot of the things that we have just discussed but there is one thing we have not touched on that was in your statement, which is the residential dispute resolution scheme. Can you please give us an indication of your thinking around this scheme, what it will cover and what it will look like?

**Ms Vassarotti:** Thank you very much for the question. Dispute resolution, I think, is a really important piece of the puzzle. As we noted in answer to one of the previous questions, we do know that there are things that do go wrong occasionally. Certainly the feedback that we have had is that the threshold is quite high in terms of managing disputes, particularly if that sits outside the usual defect process. The work that has

happened to date is that there has been legislation that has been introduced that provides a head power, but there is more work that needs to happen in terms of finalising that.

I might ask either Dr Brady or Bethel if you are able to provide a bit more information about exactly where we are up to in the process.

**Dr Brady:** I will start, Bethel, and you can jump in. I think it is one of the items that we have also been tracking at a commonwealth level because it was one of the items also under the *Building Confidence* report. We have been monitoring what has been happening and looking at different schemes that exist nationally and in different jurisdictions to help inform us on what those jurisdictions are doing. Building ministers have had it as an item that they have monitored, as well, over the last couple of years. That is also framing what we are doing. We are just monitoring that as well. I am not sure, Bethel, if you wanted to add more.

**Ms Sendaba:** Just some key elements, Ms Orr, that might give you some further information about what the scheme will cover. The aim is to provide a service for residential building disputes that will cover both contractual issues as well as technical issues. We will be looking to provide a service where the parties, both willing and coming to the service in good faith, will be assisted in getting a negotiated outcome for that decision. That is what the legislative framework allows for, an agreed decision to be supported.

We have been looking at picking up on what Dr Brady has indicated around other jurisdictions. Some have a mandatory requirement that before parties are able to go to their administrative tribunal, or through a courts process, they would be required to go through alternative dispute resolution. Our intention at this stage, and this is something that we will get further feedback on through consultation, is whether it should be a mandatory process.

The other element of it is that it is not just for the home owner or the landowner to bring a complaint. It is actually something that small business owners who are builders, or other trades persons, would be able to use that service as well.

**MS LEE:** Can I go to combustible cladding please? Minister, how many privately owned or non-government owned buildings are potentially affected by combustible cladding and what investigations were undertaken to determine that figure?

**Ms Vassarotti:** Thank you for the question. What has happened in relation to assessing what the issue might be is that we have had ACT Fire and Rescue undertake an initial identification of apartment buildings, three stories and higher, that could potentially contain combustible cladding. Through that analysis it was identified that there was around 90 buildings that appeared to have cladding. That is the scope which we have been working through to determine how we might be able to support private apartment owners around this. I might just ask if any of the officials from MPC are able to provide a little more detail about how that assessment was undertaken.

**Mr Edghill:** Yes, certainly. The way that you described it is correct. Ultimately it is not possible to be 100 per cent definitive as to whether it is potentially combustible

cladding or not, until you have actually taken part of it off and tested it and undertaken that assessment process, which is really what the first phase of the private potentially combustible cladding scheme is getting towards.

That is the scheme that is now underway, and we are in that first phase at the moment with four eligible partner buildings. That gives us the opportunity to engage with all the owners corporations to engage a number of suitably qualified different firms to undertake that work, including firms who can actually remove pieces of the cladding and undertake that testing work. The results of that then give us the indication for that particular building as to whether the cladding is potentially combustible. There are other experts that we have involved in that phase 1 of the process which then enables us to form a view as to the extent of the potential issue on the building and the cost of remediation.

The 90 figure, the one that the minister mentioned, is the one that we are working off. But, certainly, phase 1 of the scheme is geared towards actually facilitating private building owners who are eligible for the scheme to actually go to that next step and definitely determine whether the cladding is something which is potentially combustible or not.

**MS LEE:** What is the method that ACT Fire and Rescue uses to come up with that initial 90 figure? If you are saying that you are in phase 1, where we are actually going to that process of testing the cladding, how long will that take?

**Ms Vassarotti:** I was just going to make a comment in terms of the responsibility for cladding. That responsibility lies with the building owner. What we have done is open up a scheme to really encourage building owners to engage with the process and determine whether or not they do have combustible cladding. This is an issue that people are aware of.

We do not potentially have an end date. This is actually an action that sits within the remit of private owners. Again, I might ask Major Projects if they have anything to add.

**Mr Edghill:** Yes, certainly. In terms of the initial assessment by Fire and Rescue, that was a kerbside assessment, working with other parts of government, knowing which buildings would potentially fall into the category where there might be potentially combustible cladding. There was that kerbside assessment, but that assessment did not, of course, then extend to taking panels off, which is what phase 1 of the scheme is now geared towards.

In terms of the actual time frames to actually undertake the testing and assessment, once you have actually taken the panel off the wall and sent it to the laboratory, you can get the results back within, say, a month or so. But in terms of the way that the scheme itself is running, there are a lot of steps that need to happen before we get to that point.

The scheme has been launched. Owners corporations need to meet and determine whether they are interested in participating in the scheme. There is then the application process and they come to us. They then need to engage the suitably

qualified experts to come and actually undertake the work. It is not necessarily just one person or one firm. The firm has to come and take the panel itself off. It gets sent off to testing. There are quantity surveyors involved in actually then quantifying the amount of work that needs to be undertaken and, at some point in time, there are some builders involved too.

In terms of phase 1, the scheme is underway, but we are still in that kind of recently early phase of the scheme. We would expect that testing and assessment of cladding on buildings will progressively roll through the remainder of the financial year.

**MS LEE:** The Equity Economics report of 2019 estimated that there are almost 160—I think the figure is 157—buildings in the ACT that might potentially have this dangerous combustible cladding and 71 of them are actually deemed extreme or high risk. How is the government responding to the pretty concerning findings of that report?

**Ms Vassarotti:** Thank you for the question. In terms of the assessment, there are a range of buildings that sit in a whole lot of categories. We have talked here about, and our real focus has been obviously on, government buildings where we have a primary responsibility, and we have also—

**MS LEE:** I am asking about private buildings.

**Ms Vassarotti:** Then we have also identified, particularly, private apartment residential as an area that may need some assistance. There are a whole lot of other buildings, which would include commonwealth government buildings that the commonwealth government obviously has the responsibility for. There will be other private and corporate owners that have responsibility. There is a range of processes. In terms of where our responsibilities lie, it really is within those two areas. Again, Major Projects, I do not know if you have anything to add. I know that there is engagement in terms of other categories of building owners, ensuring that they are meeting responsibilities and our role with them.

**THE CHAIR:** In the interest of time, we might keep the comments brief.

**Mr Edghill:** Yes. I think the numbers quoted there are in the same ballpark as the 90 that was noted. Particularly, there are government buildings that we are working through. The commonwealth government may have its own suite of buildings as well. I think what we are certainly finding is that there is not necessarily a neat way of defining what falls into the bucket or not.

It could well be a case of a building that has potentially combustible cladding but, given where it is on the building or the extent of it, even though the cladding itself is potentially combustible, it presents a very low risk to the building itself. This is not being facetious but there are instances where there is cladding but it is around a letter box structure out the front. Yes, it has potentially combustible cladding, but it poses a very, very low risk to the building itself.

I think the numbers that were quoted, depending upon exactly how you define what falls into high risk or otherwise, are potentially consistent with the figure that we



quoted earlier.

**MR PARTON:** Minister, you confirmed, in an answer to a question on notice from the opposition, that the government had received legal advice in relation to the government's potential liability for the cost of remediation works to buildings where combustible cladding had been identified; remediation for buildings that have not reported the presence of cladding; and other things such as the relocation of tenants and all sorts of things. Why won't the government release that advice and, given that the ACT government issues certificates of occupancy for privately owned buildings, can you categorically confirm that the ACT government is not potentially liable for the cost of remediation as a result of the potential scenarios that have been outlined?

**Ms Vassarotti:** Thank you, Mr Parton, for the question. My understanding is that we are actually not able to release the legal advice, but I will look to officials just to confirm that. Certainly, the scheme has been designed in a way that is really supporting private owners that have responsibility to respond to this issue.

In terms of the fact that certificates of occupancy were provided, at the time these buildings were compliant with the standards. This is something that happens quite often, particularly in terms of the national construction code; standards change on a pretty regular basis. It isn't the case that governments are retrospectively liable for standards as they change. You might look at the issue of lead paint. There are many buildings in the ACT that have lead paint. We know that that presents some potential hazards, and it is the responsibility of owners to manage and deal with that issue.

What our scheme is doing—the private scheme, in particular—is providing support, particularly for a group of owners who have difficulties responding to this issue, particularly when there are a number of owners in a building. It is really about facilitation and support, and that is what our focus has been. I am not sure if, again, Major Projects officials have anything to add.

**MR PARTON:** That is sufficient for me. Thank you, Minister.

**THE CHAIR:** We might move onto the next substantive question. I note that we have 20 minutes left, and we are very much hoping that each committee member gets one more question. Minister, earlier you mentioned embedded emissions. I was pleased to hear you mention that. Earlier in the week we spoke to the Chief Minister and the Special Minister for State about embedded emissions, in the light of a government report that will be coming shortly about scope 3 and embedded emissions. I am wondering if you have had a chance to think about that. The Chief Minister explained that it would be a whole-of-government coordinated response, but I imagine that it would have particularly significant implications in your portfolio. Have you thought about what sorts of resources you will need to be able to participate in that properly?

**Ms Vassarotti:** Thank you, Ms Clay, for the question. I assume that, when you talk about an upcoming government report, it is the report that we have commissioned the Commissioner for the Environment to provide on scope 3 emissions, which is actually a report that I will be tabling shortly in the Assembly. Absolutely, we have been thinking about this.

In the ACT we have really focused, rightly, on scope 1 and scope 2 emissions. In terms of the international process, that is where we should be focusing our effort. We know that there are specific challenges around scope 3 emissions because they are the emissions that we have the least ability to influence, except through our consumer behaviour. But, absolutely, we do have real opportunities, and I think that the sustainable building area is an area where we can look at what we can do to make a difference. When we look at some of the work that is happening around sustainable building, often it is on issues such as energy efficiency and the energy use of buildings in their operations.

Because of the great work that we have already done in the ACT, an all-electric building pretty well ticks that off. So we really want to start looking at embedded energy. There are some real opportunities with things like low-carbon concrete, where we can make some real changes and it is a real opportunity. I have done quite a lot of thinking about this issue in this area, as well as some of my other portfolio areas, and we will really start to do some work on that. I would absolutely reiterate the comments of the Chief Minister in terms of needing to look at this in terms of the whole of government. We have opportunities to influence our supply chain through our procurement and through the way that we do our major projects. There are lots of opportunities in this area, so it is something that we will be talking about and exploring quite significantly over the next six to 12 months.

**THE CHAIR:** Ms Orr, do you have a substantive question?

**MS ORR:** I sure do. It is on the theme of residential dispute resolution schemes. Can I just pick up where I left off: is it the Victorian model that you are looking to when you say that you are looking at other jurisdictions and what they are doing?

**Ms Sendaba:** Yes, we have looked at several different models. Queensland and Victoria are two of those that we have looked at.

**MS ORR:** So is it fair to say that you are looking very much at a scheme that is pre legal action but still within a legal remedy framework, and it is focused on mediation rather than litigation? Is that what the intention is?

**Ms Sendaba:** Yes, very much so. The general principle we are relying on is that, often, the sooner the parties can speak to each other and the sooner we can get a third party to provide some guidance through that discussion and also provide some assessment of technical elements, the better. Building disputes, unlike other contractual disputes, sometimes create this additional requirement to consider whether or not something, for example, has met the code. So we have a third party facilitate that part of the discussion. But, yes, it is very much pre litigation. We are trying to avoid people having to go through costly legal processes and before they would end up in, say, a tribunal, for example.

**MS ORR:** Okay, so it will not necessarily replace things that could be heard through ACAT either.

**Ms Sendaba:** No, it is a complementary measure.

**MS ORR:** I think that there was one other comment you made, if my memory serves me correctly, that it would not just be for, say, the owner or the builder; that the contractors would also be involved. Are there any other parties that you are looking at that could bring action under this arrangement?

**Ms Sendaba:** No, it is just that it would have to be the two parties that are involved in the dispute, and that is usually the home owner and the person that they have contracted with—either of those two parties. We are not considering this to be a dispute resolution process between two businesses. So it would not necessarily be available to a subcontractor and a head contractor to resolve that dispute.

**MS ORR:** Okay, great. I think that covers off on my questions, thank you.

**THE CHAIR:** Excellent. Mr Parton, do you have a substantive question?

**MR PARTON:** Yes, I do. In budget statements E, page 19 and elsewhere, output 3.1 shows the substantial program of spending on a number of things, including energy efficiency. Minister, is this output purely focused on policy development and advice or does it have a role in program implementation?

**Ms Vassarotti:** Thank you very much for the question, Mr Parton. I cannot see everyone on my screen, but I think Mr Ponton is here. It might be worth asking him to substantively respond to that because it does include a significant implementation spend that actually sits outside my portfolio responsibility. I might ask Mr Ponton if he could speak to this question.

**Mr Ponton:** I was going to see whether my colleague Mr Rutledge might be well placed to respond to this one.

**MR PARTON:** It is always good hearing from Mr Rutledge.

**Mr Rutledge:** Mr Parton, I was hoping that I could get through this afternoon without a question.

No, building reform is predominantly around the work as outlined today. The output class 6.2 is \$2.697 million, and that is entirely the work led by Dr Brady and Bethel Sendaba around policy, not direct program delivery, in energy efficiency.

**MR PARTON:** I may be way out of whack on this—and please excuse me if I have misunderstood—but does this program include the planning and scoping of requirements for improved energy efficiency in public housing, or is that handled somewhere else?

**Mr Rutledge:** Mr Parton, it is handled in consultation with this group but not handled directly through this. We spoke about that earlier in the week. Most of that work is done in the climate action and emission reduction functions, which are doing that design work, with the policy work being done in concert with Ms Sendaba and her team. We are working on a standard for renters and lower-income households and then that is backed up by the Vulnerable Household Scheme, which is the direct installation of some of those activities.

**MR PARTON:** In closing, tell me if it is even possible for me to do this question on notice, given that some of it is being handled by other areas. Given that public housing, energy efficiency and sustainability requirements are being assessed in this, what is the number of public housing properties that are below energy efficiency and sustainability standards and therefore need attention? That is the question that I am looking for an answer on. I know that there are a number of directorates potentially that I could ask but I am just asking here.

**Mr Rutledge:** Yes. Mr Parton, that would need to be taken on notice by the Minister for Housing.

**MR PARTON:** Okay.

**Mr Rutledge:** That is where you need to aim that question, because they will have that information. Thank you, Mr Parton.

**MR PARTON:** She is still to come, so we will find out from her on Monday.

**MS LEE:** Can I go back to combustible cladding, please. Minister, there is obviously some significant concern within the industry that if there is identification of combustible cladding, it is going to have some major impacts on home building insurance. What are those risks and what is the government doing to address those concerns?

**Ms Vassarotti:** Are you talking primarily about private owners, Ms Lee?

**MS LEE:** Yes.

**Ms Vassarotti:** That is absolutely what the second phase of the scheme is focused around. If there is a situation where building owners identify that they have potentially combustible cladding that needs to be removed, we are in the process of developing up a concessional loan scheme in order to support people to do this. This is something that we are working in close collaboration with Treasury on in terms of developing it up. Some substantial work has occurred in this area. I might ask Major Projects Canberra to provide a bit more information about how that process will work.

**Mr Edghill:** As has been discussed, the Private Buildings Cladding Scheme has two phases. We are in the first phase at the moment, which is the testing and assessment phase, and then we will move into phase 2, which is the concessional loan phase. The concessional loan details will be finalised and announced later in the financial year. Part of the reason for that is the final design of that scheme will very much depend upon what is found in phase 1 of the scheme. To that end, we have been working very closely with our colleagues in Treasury in defining what that looks like.

If, for example, there were to be a small number of applicants, eligible applicants, and the total cost of remediating that potentially combustible cladding was reasonably modest, that may point then to one particular model for setting up the concessional loan scheme. If, on the other hand, there is a large number and the cost is large, then that may lend itself to another particular model.

Phase 1 of the scheme will definitely inform phase 2 of the scheme. In broad terms, the idea behind phase 2 of the scheme is to, firstly, provide encouragement to the owners of those eligible buildings and to facilitate them actually obtaining loans to rectify the cladding issue that they may have. Then the second element, which under any model will be a feature of the loans, is that concessional element, so leveraging the size and the creditworthiness of the ACT government to enable access to those loans at a lower interest rate than would otherwise be the case if they were acting simply by themselves.

**MS LEE:** Have you completed that modelling on those different options and is that some information that you can actually provide to the committee, on notice, in terms of the details of that modelling?

**Mr Edghill:** Minister, would you like me to answer that question? The answer is unfortunately not. Because, firstly, it is work that is still underway and because it will be informed by phase 1 of the scheme. The final contours of that are not exactly known yet. Secondly, we would need to go through, ultimately, an internal cabinet process to decide upon the exact structure of the loan scheme.

**MS LEE:** Minister, I understand that you or the directorate may have met representatives from the Insurance Council about this issue. Can you please provide an update on the details of that discussion and what you learned from them?

**Ms Vassarotti:** From my recollection, I cannot remember meeting with the Insurance Council. Officials may have. I just look to officials but I am fairly sure that I have not met with the council.

**MS LEE:** It is in an official answer to a question on notice that you received some advice from the Insurance Council. I am wondering what that was, what the details of that discussion were.

**Mr Edghill:** Minister, I am happy to answer if I may. I may pass to Adrian as part of our broad stakeholder consultation in the design of the scheme. Both my colleagues have met; so I may pass to Adrian.

**Mr Piani:** I have read and acknowledge the privilege statement. As part of our industry consultation, we have met with the Insurance Council. I believe we might have met with them twice, early in the development and just recently. We were keen to understand how the insurance sector was engaging in the cladding conversation with the customers and, as the Insurance Council is a peak body, they gave us that national view.

One of the questions we were keen to explore was how the insurance industry was thinking through this risk. One of the key items we wanted to understand was what they were requiring from apartment owners, in terms of cladding risk. Would they require an apartment to remove all combustible cladding, irrespective of risk, or would they consider that a low-risk rectification option would still be an insurable outcome for them?

The advice we got from the Insurance Council was broadly that they would consider a low-risk option appropriate, so that if an owners corporation decided that they wanted a risk assessment done, a fire engineering assessment done—this risk assessment of the cladding on their building—it might find cladding and it might find combustible cladding, but it might conclude that that combustible cladding represents a low risk. As Mr Edghill referred to, it depends on the actual flammability of the cladding, where it is located, how much there is and the type of facility. There is a lot of variables that go into defining the actual risk related to cladding. We were keen to understand whether the insurance industry would consider a low-risk outcome acceptable for them.

The advice we got from the Insurance Council was yes, nationally and at a broad level they would expect that it is okay to accept the low-risk outcome, but ultimately it comes down to the individual insurer's view and how they want to engage in risk on cladding. Although the Insurance Council might have a view, that is a national policy view, if you like, and it might not be replicated at an individual insurer level.

**MS LEE:** Did the ACT government consider or look into the option of providing more supporting insurance coverage for private buildings at all?

**Mr Piani:** I do not think we have.

**MR PARTON:** Regarding this issue, in response to a question on notice from us in relation to how the \$20,000 cap to conduct an assessment was reached, the government said the number was reached following consultation with industry. I just want to know: how can the government come to this arbitrary number, given that you do not know the extent of the issue?

**Ms Vassarotti:** Thank you for the question. I might hand on to Major Projects. While we do not know what the scope of the issue was, there was certainly significant analysis that was done. There were a number of properties that would have gone through assessment. We were able to draw on the experience particularly of other jurisdictions. I know that Major Projects have worked quite a lot with other jurisdictions in terms of the design of the scheme, but again I will just ask officials if they have anything to add.

**Mr Edghill:** That is correct. While the ultimate cost of rectifying potentially combustible cladding will, of course, vary depending upon the nature of the building, the costs are actually undertaken in the phase that we are in at the moment and to which the rebate relates, which is the test and conditioning phase.

We had spoken with everyone, all the typical trades and experts that would be involved in actually undertaking the testing commissioning—fire engineers, the QS and so forth. We also have our own experiences in relation to ACT government buildings. We have been undertaking that work ourselves.

Based upon speaking with various experts in the market and our own experiences, we formed the view that the cap that was referred to would be sufficient to cover the testing assessment phase of the program. So there was some science there behind arriving at that number.

PROOF

**MS LEE:** Finally, only because you have given me the opportunity, just in terms of the three contracts in relation to the replacement program—you have got the three in terms of the private contractors—are these contracts in relation to the ACT government or are they for private building rectification programs?

**Ms Vassarotti:** They are projects for the government scheme. Major Projects, if you want to add any information in relation to that? But yes, it is a government scheme is my understanding.

**Mr Edghill:** Correct, yes. If they are the contracts on the contract register, Ms Lee, that you are referring to, they would be government.

**THE CHAIR:** Thank you for coming along today and providing your evidence. It has been a long estimates, I imagine, for a lot of people involved. That has been good. The secretary will provide you with a proof transcript for you to check for accuracy. I do not think any questions were taken on notice. If any were taken on notice, the secretary will liaise with you to make sure that those answers are provided. I would now like to close the hearings. Thank you very much.

**The committee adjourned at 5.01 pm.**