

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

**REGULATION OF BUILDING STANDARDS, BUILDING QUALITY
AND BUILDING DISPUTES**

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At Macquarie Room, Parliament House, Sydney, on Wednesday 11 December 2019

The Committee met at 10:20

PRESENT

Mr David Shoebridge (Chair)

The Hon. Mark Buttigieg

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Courtney Houssos (Deputy Chair)

The Hon. Trevor Khan

The Hon. Matthew Mason-Cox

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The CHAIR: Welcome to the fifth hearing of the Public Accountability Committee Inquiry into Regulation of Building Standards, Building Quality and Building Disputes. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay my respects to the Elders past, present and emerging of the Eora nation and extend that respect to all Aboriginal persons present. This hearing will focus on the issue of flammable cladding and non-conforming building products on New South Wales buildings. Today's hearing will start with evidence from individuals who are currently navigating the rectification of cladding on their buildings. We will then hear from a number of industry professionals and unions as well as local government and the Insurance Council of Australia. We will finish by taking evidence from New South Wales Government officials, including the NSW Fair Trading Commissioner and representatives from Fire and Rescue NSW and the NSW Police Force.

Before we commence I make some brief comments about the procedures for today. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation.

The Guidelines for the Broadcast of Proceedings are available from the secretariat. There may be some questions a witness could only answer if they had more time or with certain documents. In those circumstances witnesses are advised that they may take a question on notice and the Committee has resolved that written answers to those questions should be returned on or before 28 January 2020. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. To aid the audibility of this hearing I remind Committee members and witnesses to speak into the long microphones. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, I ask everyone to turn their mobile phones to silent or off for the duration of the hearing.

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RAVENDRA MAWJEE, Resident in a building containing cladding, sworn and examined

CHRIS RUMORE, Resident and Chair, Sub-committee Owners Corporation, sworn and examined

The CHAIR: Thank you both very much for attending today. I now invite either or both of you to provide a short opening statement.

Mr RUMORE: Thank you, Mr Chairman and thank you for the opportunity to address the Committee. Our strata committee commenced the process of looking into cladding approximately 18 months ago when one of the proprietors expressed some concern about whether our cladding may be or may not be flammable. After more than \$100,000 worth of expense and hundreds of hours of time it has been determined that we do have flammable cladding and it has caused great stress and concern to our proprietors. We have over 100 proprietors, the majority of whom are residents and many of whom are retired so the prospect of significant financial strain is one that is playing on their minds on a constant basis. The cost of replacing our cladding is going to be very great—we are talking \$5 million plus. Our cladding is also difficult in that it is not sheet cladding on the outside of the building, it is cladding that is predominantly used for aesthetic and acoustic purposes. It is on panels, on balconies and on the exterior of the building so it has to be removed piece by piece and it is going to be a very long and expensive process.

In our view the Government has not taken proper responsibility for the cladding disaster. Firstly, it has not given clear guidelines as to what products can be used as replacement cladding. We have spent hundreds of hours with eight different consultants trying to work out what we can safely put on our building and not find that something we use may later on be deemed unacceptable. For example, one product that is still available but many people tell us they believe will shortly be banned is waffle cladding, which has a core that is still allowed. If you use that it is quite likely that it will be banned. What can be used and what cannot be used, I suppose, is highlighted by the recent NSW Civil and Administrative Tribunal [NCAT] decision, where suddenly Biowood is now also banned and no-one was even talking about that up until two weeks ago. The Government's response—we have contacted the Minister's office and the response we received was possibly a pro forma type response. Basically it said, "Consider your options—who you can sue, get some legal advice and good luck."

If anyone had bothered reading our initial submission that would have been a totally inappropriate response. Our building is more than 10 years old and therefore what was allowed more than 10 years ago is now banned and we do not have the right to sue anybody because the Government has mandated an absolute 10-year liability maximum period and we are outside that. Our situation is that we are talking about many retirees who are panicking about paying special levies and wondering how they are going to fund special levies of more than \$50,000 per unit, on average. We also have a situation where some people own more than one unit and they are now panicking, thinking where they are going to get multiples of that figure from. Trying to get finance as an owners corporation is almost impossible—we have only been able to source two companies that are prepared to even consider lending the money to us and the rates in the current interest rate environment are astronomical. We are talking 8 per cent to 9 per cent. You can understand why, because it is a totally unsecured loan.

The situation is that the Government has not thought through what the problem is, how to address it and how to help the affected owners address it. For example, we have been told, "You have flammable cladding, take it off." The fact that it is in areas where it is very remote that they will catch fire, you still have to take it off because it is a banned product. We also have a situation where what we have to replace it with is not clear and the Government is not helping by not giving any guidelines and the advice that we are getting is conflicting. In fact, if you speak to Fire and Rescue NSW, they have no clear guidelines that they can give you either. We are in a quandary as to what to do. We are in the worst possible situation because we started early: We were up-front and disclosed to both the Department of Planning and to the local council what our test results gave us so, of course, we are going to be the first residential people hit with an order. Once the clock is ticking we have to spend the money.

To us, therein lies the rub: If the Government acts responsibly and comes up with a package, we do not want to be disadvantaged because we happened to be the first cab off the rank and because we have acted responsibly. We have been asked to perhaps provide some comments on solutions and what the Government should be doing. First and foremost, the Government has to come up with some sort of guidelines as to what exactly is going to be allowed and give people assurance that if they use that product it will not later on be retrospectively banned. Secondly, we believe it should give some consideration to retrospectively making people that put the cladding on the buildings liable, even if it is outside the 10-year period. It has retrospectively banned something that was not unlawful when it was put on so, in our opinion, it should retrospectively make those who put it on liable. Those that do act first because they are either responsible or get a government order to do so, should be compensated, irrespective of when any compensation package is put together.

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The Government should also take responsibility and make sure that it has some sort of certification process—whether it is through Fair Trading NSW or the Building Commissioner—to make sure that people who do the work are appropriately qualified. We are already getting people who we believe are not qualified saying that they can do the job for us, when you have picked the product and have got the consultants onboard. We do not believe them. We think they are home unit builders who do not have enough work in the current market and put their hand up to say, "We want to do cladding work now to fill the void." That is not going to be a satisfactory solution from anyone's perspective. The Government needs to take responsibility for this. It has allowed the products—in our case an imported product—to be imported and it has allowed the products to be certified. It also set-up the private certifier process and we have a situation where private certifiers have certified things to be compliant and now we are picking up the mess of them being retrospectively deemed not compliant.

We also have a situation where people either may not have the financial ability or wherewithal to sue to recover, if they do have a right of recovery. Even if they are successful, firstly, it does not help them because it takes so long to go through the legal process and, secondly, it might be a pyrrhic victory because many of the companies we have dealt with, for example, are no longer in existence. Or, you will get what usually happens in the building industry: They will wind the company up and the person we could sue no longer exists or has got no assets and they will start trading under another name. In summary, it is a terrible situation that is creating enormous stress for owners, and strata managers are at a loss. It is a new virgin field for them. They are really unable to provide very much assistance. People are being left to their own devices in a very uncertain environment and with the spectre of huge special levies that some people will not be able to afford. Government has to take responsibility on all those fronts and make good the terrible situation we find ourselves in.

Mr MAWJEE: Mr Rumore covered most of the things I wanted to cover as well. The only thing I would like to add to that is that we are a small building of 31 lots where the impact is much greater. The builder is still in business. We are having issues trying to fight the builder to get the builder to get the flammable cladding removed and put a compliant product in. There is no assistance, no guidance from people, we are just on our own to get the whole process done and sorted. In my opinion the residents and owners are the victims in this. We are bearing the financial, the emotional and the social cost for this whole situation.

The whole process is so complex. We are on our own in this. There is nobody who is taking responsibility. We have approached the local member. Our building is under six years old and the local member said it is highly unlikely, although the legislation says that cladding is a major defect if the building is under six years old and it is flammable, that we have any chance of winning a legal case considering that when the cladding was put in the building it was compliant at that time and an occupation certificate was issued. This is the advice we have been getting. We have been going to every angle to try and get assistance to get the developer and the builder to do what they are supposed to do, take out the flammable cladding and replace it, but there is no assistance there.

The local council has given us no information as to why they have come to the conclusion that the cladding is flammable. All they have given us is a directive to take it out, to get it tested; which we paid for, at our cost. Once it was deemed flammable they gave us a 90-day directive to get the cladding removed and replaced. We asked them if they could approach the developer, they said, no, that is our job. Yet the developer is building in the area and they are approving all these buildings. We are on our own. We are struggling with this.

The Hon. TREVOR KHAN: How far into your 90 days are you?

Mr MAWJEE: Very far. What has happened is we have asked for an extension. Initially when this whole cladding issue became a problem in 2017-18 I think it was, late 2017, we were on the front foot. We asked for some kind of information from the developer on what type of cladding was on the building. We had no information provided. Then we had the wrong information provided. I cannot understand why a supplier in a supply chain cannot tell us what product they used on the building, they have no information. We had to go and test it. We started in 2017. We had Fire and Rescue NSW come out.

We had a whole 16 months, almost two years, of the whole process where we were taking the initiative to try and verify what type of cladding was on the building. There was no framework from government on what exactly it is we need to do, what Fire and Rescue NSW needs to do, it was completely a new area. We then tested it. It was 90 days towards 2018, in September, and council has given us an extension. We have been doing a lot of work in that time to try and address the issue and to try and get all the parties engaged but there has been no resolution.

The CHAIR: Has this been the strata committee working with the strata manager? Who has been trying to do all this? Is it the home owners who make up the strata committee?

Mr MAWJEE: Yes, the strata committee, which I was part of, and the strata manager, as well as we have been working with council.

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The CHAIR: Is it the same with you, Mr Rumore? Are home owners trying to find the information as best they can?

Mr RUMORE: Exactly. Our strata manager has basically thrown their hands in the air and said more or less, "We have no experience. We do not know how to deal with it. You are on your own."

The Hon. TREVOR KHAN: Mr Rumore, you are in a large unit development. I do not want to know anything in particular about it. I think we are mindful of some of the complexity of this. You may or may not know, but I think you are sufficiently qualified to answer this: Do you know what disclosures any of the unit holders are making if they attempt to sell the units?

Mr RUMORE: The strata manager is disclosing when they do strata inspection reports. The deliberations of the committee and the reports that we have commissioned, which are two fire experts plus a Government scientific laboratory in Canberra who tested our panels.

The Hon. TREVOR KHAN: It is a long time since I have done conveyancing and it was not a major area of my work. In my day it was not obligatory for a prospective purchaser to get a strata inspection report and in fact, notwithstanding advice, some clients would not do it. If a prospective purchaser were not to seek a strata inspection report what would they know about this issue?

Mr RUMORE: Possibly nothing.

The Hon. COURTNEY HOUSSOS: You would disclose it if they got a strata inspection report but are you under any legal obligation or is the owner who is selling under any legal obligation to disclose that?

Mr RUMORE: No.

The CHAIR: The answer is no?

Mr RUMORE: The answer is no.

The Hon. TREVOR KHAN: Mr Rumore, I take it you might be able to say that with some degree of certainty?

Mr RUMORE: Yes.

The Hon. TREVOR KHAN: From your occupation?

Mr RUMORE: That is right.

The Hon. JOHN GRAHAM: In some ways the most concerning bit of what you are saying to us is you have both been through this very difficult experience but you are trying to ensure this does not happen again as you replace this cladding and there is no guidance. You have had to go to eight consultants in one case to try and get an answer to that question. Tell us more about how difficult it has been to make sure, knowing all you know, to not repeat this mistake? Where do you go for help? Who should tell you a path forward?

Mr RUMORE: Basically, we have made our own inquiries. To take the chairman's point, we are just lay people, this is just way beyond us from a technical perspective. What we have decided to do is to basically project manage the rectification process. We were looking for two consultants basically; a project manager and a fire consultant. I think we interviewed four fire consultants and seven project managers. From what I understand from the only other residential building that is doing this work they went through exactly the same process.

I think they ended up going to 10 consultants before they picked their panel. All you can do is try and assess whether these people really know their business and try and pick their brains in respect of what they are doing and what they are recommending and ask them to provide you with documentation as to why they are saying what they are saying. Such as what replacement products might be appropriate, the process for replacing them and issues such as inconvenience to residents. It was an exhaustive process.

The Hon. JOHN GRAHAM: But there is just no central point of truth to say this has happened, we are sorting it out, we do not want to repeat the error. What should we replace this with? You are left in a sea of consultants?

Mr RUMORE: It is entirely up to what the consultants believe.

The CHAIR: But products are currently being sold on the market that you believe if you put that on your building you would be required to take it off again at some point in the future because it is actually a fire risk. Is that right?

Mr RUMORE: A number of the consultants are saying that is a very real possibility.

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The CHAIR: Mr Mawjee, in terms of your work to try and identify a replacement for the existing flammable cladding have you been able to identify a product you are comfortable is safe?

Mr MAWJEE: No, we are not at that stage yet. That is the biggest concern, that if we have got to replace and identify a product, what guarantee is there that that product is compliant?

The Hon. TREVOR KHAN: That may not be the issue. It may be compliant in that sense, it just may not be compliant next year.

Mr MAWJEE: Correct, and then we are back in the situation. The other thing is the whole process—where is the developer in this? The council told us 90 days, so the developer knows we have got 90 days to comply to get the cladding off. The moment we touch it they will relinquish any responsibility. There are all these landmines that we have to go through. So we have got a 90-day time constraint or 120 or whatever the council says. We are working with a builder/developer that can drag things on for a long time; so we are in a situation where we have got to do it, we have got no choice. We have got mostly people that are retired, it is a 31-lot unit; that is a lot of money to replace that cladding. This is cost that we have undertaken.

The Hon. TREVOR KHAN: What is your cost?

Mr MAWJEE: It cost us \$20,000 to get it tested and get it reported to council and it is going to cost us about \$300,000 or \$400,000 minimum to replace it.

The Hon. TREVOR KHAN: So that is around about—

Mr MAWJEE: It is \$7,000 or \$8,000—

The Hon. TREVOR KHAN: Per unit, \$7,000 or \$8,000?

Mr MAWJEE: I think so, yes.

The CHAIR: Mr Mawjee, have you obtained independent legal advice? You said you got some advice from the local member and I just urge you to get some advice from someone other than that who has professional indemnity insurance. So you have obtained independent legal advice.

Mr MAWJEE: Yes.

The CHAIR: Have they spoken to you about whether or not there is a litigation path available to you and what the likely costs and time frame for that would be?

Mr MAWJEE: Yes. We have been trying to get information from Fair Trading, from NCAT. What the process is I am not clearly sure. We have actually lodged it with Fair Trading and I think it goes to NCAT, which is the tribunal, but the lawyer's advice was that we sent a letter of demand, a 30-day letter of demand, which we have done three times. The builder just responded and said they have received it after 90 days, on the third letter of demand. We then have got to go through the court process if we need to to take the developer to task to get him to replace it, and the advice we have got is we can only recover 60 per cent or 70 per cent of that cost.

The Hon. JOHN GRAHAM: But you are saying you are under a legal obligation, the developer is not, and you are worried if you comply with the law you might cut off your options to receive compensation through those—

Mr MAWJEE: Correct.

The Hon. JOHN GRAHAM: But there is no real legal obligation in your case on the builder, on the developer, even though you are within the—

The Hon. TREVOR KHAN: Well, there may. That is why they are before NCAT.

The Hon. JOHN GRAHAM: Yes.

The Hon. TREVOR KHAN: There may, it is just an unknown. Mr Rumore's situation is different. He is outside the 10 years. He is alone without a leader.

The Hon. JOHN GRAHAM: Yes, understood.

Mr MAWJEE: But generally the information we have been getting is that we do not have a chance. A lot of us are thinking we will just pay for it and we will do it ourselves.

The CHAIR: And Fair Trading, have they come out to your property?

Mr MAWJEE: Yes.

The CHAIR: Have they offered you a solution?

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Mr MAWJEE: They have come out to the property. They have got the builder onsite, they have got the developer onsite—they are two different people, two companies, different companies—they had a committee onsite and they basically, I think, had a discussion, and that process is still taking place. The developer feels, the builder feels that when the cladding went on it was compliant then, so he is not responsible for it, but there is some kind of talk about maybe sharing the cost, which again comes back to us.

The CHAIR: So you had a meeting organised by Fair Trading but they do not seem to have the capacity to make the builder fix it?

Mr MAWJEE: Correct. There is no enforcement.

The CHAIR: Mr Rumore, what is the time frame for you resolving the safety issue—or both of you? I suppose each of you are anxious about it and if you move first and then we have a delayed response from the Government, you might be prejudiced by addressing your safety issues promptly.

Mr MAWJEE: For our building the local council has been really good because they have been considerate with the situation we are in and we trying to get the developer to do it. So we have had a lot of extension—almost a full year now. But that is not going to go on for longer. So a time constraint—we need to do it fairly quick; I am thinking probably in the next three months. The problem is that we have got cladding that is almost 90 per cent flammable; it is 87 per cent on one set of cladding and the other one is 31 per cent. We have got to do something and we have got two commercial shops downstairs that operate—

The CHAIR: And you need your homes to be safe.

Mr MAWJEE: Correct.

The CHAIR: And no-one is helping you make your home safe.

Mr MAWJEE: No, no-one. There is no kind of authority that we can go to and say, "It is under the six-year period. The product is non-compliant. It is a risk to safety and people's lives. Can we get this replaced? Can you enforce the developer, who is still in business, who is still approving plans for new buildings, to come and fix this?"

The Hon. JOHN GRAHAM: Mr Rumore, just to return briefly to your submission. You are both saying this is all on you as the strata committee, as the owners, but there is no help. That is not the case in Victoria, is the submission you are making; there is some financial assistance there, there is some more guidance.

Mr RUMORE: It is more than financial assistance. There are clear guidelines in Victoria as to the process of what you should do, who should do it, and the Government is taking responsibility for solving the problem. Here, if I can just take Mr Mawjee's point, our experience has been—we got a notice recently from our council, it is a notice of intention to issue an order; so it gives us the opportunity to go and get some advice and then go and talk to council about it. The best we could get out of council is, "We will give you a bit more time to do the work", simply because, as I mentioned to the Chairman before, our building is unique in that it is just not straight-up cladding, it is all over the place, and we have now discovered that because the cladding serves different purposes in different parts of the building—some of it is aesthetic, some of it is acoustic, some of it has insulation properties—it has actually been affixed differently in every part of the building. All we got from council was, "We can't tell you what you should use, we can't tell you who you should use, but you had better hurry up and do it and we will give you a bit more time to do it."

The Hon. JOHN GRAHAM: But your point is that it does not have to be that way; there is another model where there is financial support, there is guidance if the Government takes its role seriously, as it has in Victoria?

Mr RUMORE: Yes, and it is for the benefit of the whole community because there is certainty then; people know what they can use and they know that the people are going to be certified and be proper people who can do this work and then they know there will not be a repeat. That is what everybody is scared of, not just in our strata scheme but everybody else we speak to, they are scared if we make the wrong decision, and that is one of the reasons we have gone to a fairly expensive course of getting a project manager, because we are just petrified we will make the wrong decision and, as the member has just said, in two years time someone will come back and say, "Do it all again", and we just cannot do it.

The Hon. JOHN GRAHAM: You are in a nightmare scenario. You just do not want it to be a recurring nightmare.

Mr RUMORE: Absolutely.

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The Hon. COURTNEY HOUSSOS: I thank both of you for your submissions and for your time today. It is very, very powerful evidence for us. It is clear there is a significant financial imperative and there is a lack of clarity from the Government. Would we agree that the Government has actually vacated the space; you guys are on your own here?

Mr RUMORE: That is right.

Mr MAWJEE: Yes.

The Hon. COURTNEY HOUSSOS: You have talked to us about the legal issues and the obligations. Can you just explain it a little bit. These are your homes. There are two parts to it: there is a financial investment but there is also an emotional toll that this would no doubt be taking on you. This is the place you are going home to every night and there is an impending danger, potentially. Can you just explain a little bit about that for us? Perhaps your own personal experience and the experience of other people in your—

Mr RUMORE: If I can speak just for our strata members: the stress on them is enormous. Firstly, some of them are elderly and obviously they are worried what it is doing to their principal asset. If they have to sell it there is this dark cloud. It has already been talked about, people having disclosed to them that there is this problem. Firstly, it is not an attractive building because it has got a problem and, secondly, there are going to be special levies. So that is one issue. The second issue is because we are a larger strata scheme and because of the way the work will have to be done, it is going to be an enormous inconvenience to the residents. We are talking 12 months of hoardings, people on your balconies, dust and all of that. People are now coming to grips with that or coming to the realisation that that is what it is going to mean and they are most concerned and upset by that. We have people who are really stressed about how they are going to afford this. Some of them are retirees; some of them are young couples, who have obviously taken on significant mortgages.

They are now just panicking about how they are going to fund what is going to be a fairly significant cost. People are worried. They are saying, "One consultant is telling us we do not have to worry about it because it is not really sheet cladding it is different cladding for different purposes, but we have got a government order now saying take it all down; it is flammable. Am I living in a death trap?" We have had one couple who have let their unit out and moved out because they are convinced that they are living in a box that is going to go up any minute now, which is not the case.

The Hon. TREVOR KHAN: It is a bit of a worry for the tenant.

Mr RUMORE: Exactly. It is a worry for everybody.

The CHAIR: But also there is no set standard that you can rectify your building to, because as you point out, it may be one thing to have an entire external wall of flammable cladding. To have one or two sheets in a hallway which is working for an acoustic outcome may not actually pose the kind of fire risk that would require removal. But you have just simply had an order that simply says wherever it is, whatever its purpose, whatever the risk, it all needs to be removed. Is that the situation you are in?

Mr RUMORE: That is exactly it.

The CHAIR: That is because we do not have a set of standards identified by the Government that you can repair your building to.

Mr RUMORE: Ours is in exterior doorways—little, thin panels, two panels on a balcony. Yet, we have now got to spend millions and millions of dollars taking it down when the risk of—it cannot spread. It has got concrete above and below it. It is not going to go anywhere, but because the product is banned we now have to do it. The other thing I should mention, Mr Chair, is that we have a significant problem in that this year when we went to renew our insurance—again, we were doing the right thing by disclosing that we have flammable cladding—we really had trouble reinsuring our building because people are saying, "Well, what are you doing about it?" The only reason we have got it is that we said, "We have done all of these things. We have spoken to the New South Wales Fire and Rescue. We have spoken to council. We have spoken to the Department of Planning. Here are all of our reports." And we got one person who was prepared to insure our building.

The Hon. MARK BUTTIGIEG: Because of the Government's vacating of the space in this situation—total abrogation of responsibility, clearly—it has actually created a perverse environment where it actually pays people not to be proactive like you both have done because being proactive, coming forward and reporting that you have got flammable cladding has actually put you in a worse position because of the lack of direction and lack of compensation provided by the Government. That is the situation, is it not?

Mr MAWJEE: Yes.

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The Hon. MARK BUTTIGIEG: You are actually better off not being proactive under this current regime.

The CHAIR: Subject to making your building safe, of course.

Mr MAWJEE: Correct.

The Hon. MATTHEW MASON-COX: That is a fairly loaded question.

The Hon. MARK BUTTIGIEG: That is the situation, is it not?

Mr MAWJEE: In hindsight we would have just kept quiet. You are right.

The Hon. TREVOR KHAN: But in hindsight, if you had waited beyond the six years, you would have absolutely no opportunity.

Mr MAWJEE: Yes, and these buildings are like that. The other thing is that—to answer the question—it is concerning. We know there is a safety issue; there is a cost issue. Emotionally it is stressing because we have got to replace this. The building becomes a building site essentially because you have scaffolding going up and you have got all of that. We have got three different technical people coming in and telling us that it is not only the panel that goes on; it is the way that it is applied. It is the corkage around it that needs to be also not flammable. There are all these different specifications and technical advice that we are not—

The Hon. MARK BUTTIGIEG: Have either of you had correspondence with the Minister's office in respect to these specific issues that you have experienced?

Mr RUMORE: Yes.

The CHAIR: You said you had. Would you be in a position to table that with the Committee at some point?

Mr RUMORE: I have got it here, if you would like, Mr Chair.

The CHAIR: That would be useful. Mr Mawjee, you have presented a one-page document that had a number of issues to the secretariat.

Mr MAWJEE: Yes.

The CHAIR: Would you like to formally table that with the Committee now? We have all had a copy distributed. We need it formally presented by you so it can be on the record.

Mr MAWJEE: Yes, I will present it.

The CHAIR: We will treat that as tabled by you.

Mr MAWJEE: Tabled, yes.

The CHAIR: We have unfortunately run out of time. I thank both of you for the evidence that you have given. I think you have shone a light on this terrible vice that owners are caught between—safety and the financial burden. Owners are being squeezed by it yet developers and builders just seem to be able to step away. The obvious need that you have for the Government to help you in your situation, I think, has been understood by the Committee. Did you want to have anything final to say that you have not been able to express today?

Mr MAWJEE: No, I am fine. I think I basically covered everything. I would like to thank you for your time and for this inquiry.

The Hon. MATTHEW MASON-COX: Sorry, I was late. I was caught in a plane crisis at Sydney airport. I want to ask you one question. What would you ask the Government to do if you had a clear sheet of paper? What are the things you would want the Government to rectify the situation that faces you?

Mr RUMORE: Firstly, it would be a clear direction on what products can be used and will not be subsequently banned. Secondly, it would be to make retrospectively developers and builders liable. Their products have been banned retrospectively so retrospectively they should be liable. There should be some form of compensation package similar perhaps to what the Victorian Government has implemented. Any such package should be retrospective because people such as Mr Mawjee and my body corporate—we are being responsible and moving promptly so we should not be disadvantaged if a compensation package comes in later on. I just think that the Government needs to take responsibility for setting up a regime where there is clear direction and where people know they can go to get clear direction when they have to deal with this issue because at the moment it is just left to the individuals just to flounder around and try to work it out for themselves.

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Mr MAWJEE: For me, from my experience, we need local council to tell us exactly why, to provide us more information on why a product on a building is non-compliant or how they have come to that conclusion. There is no information provided so there is a lack of information. That is really important. We need to understand how they have come to certain conclusions because they have not provided that and we have to do exactly what we have been told, "It is non-compliant; take it out." The other thing is exactly as Mr Rumore said. There should be a clear understanding and a clear process on how we deal with things. If we do find flammable cladding, what is the procedure and whom do we approach. At the moment it just seems the legal route is very Americanised. It is illegal. You go and take the developer or the builder to court, and good luck if you win or not. It is not a system that is going to work.

The Hon. TREVOR KHAN: We have been careful in not identifying the location of your premises. The Parliament—that is, the upper House, or perhaps the Committee—is going to have to decide whether the cladding register is made public. Do you have a view as to whether the addresses of your buildings should be made public at this time?

The CHAIR: Assuming that they are on a high-risk register, which they may or may not be.

The Hon. TREVOR KHAN: Assuming they are—of course, yes.

Mr MAWJEE: For someone who is calling for more information, I would say a lot have an issue and a problem with it. All that information is important for people—buyers, sellers and everybody. To me, I do not have an issue with it.

The Hon. TREVOR KHAN: Mr Rumore?

Mr RUMORE: I do, on the basis that it does present certain risks of existing proprietors and also some security risks. If it is out there that we have a building that is flammable, it does heighten the security concerns that people would have.

The Hon. TREVOR KHAN: Thank you.

The CHAIR: On behalf of the Committee I again thank you both your very frank evidence today. We will have a short break for morning tea. We cannot offer you a compensation package right now but if you would like a cup of tea, we could do that. Thanks again.

Mr RUMORE: Mr Chair, could I ask if copies of those documents can be emailed back to me? They are the only copies I have.

The CHAIR: Of course. We will give you the originals back.

Mr RUMORE: At your convenience, thank you.

(The witnesses withdrew.)

(Short adjournment)

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LINDA SCOTT, President, Local Government NSW, on former affirmation

The CHAIR: We now resume this hearing of the inquiry into the regulation of building standards, building quality and building disputes. Would you like to provide us with a short opening statement?

Ms SCOTT: I would, thank you. I thank the Committee again for the opportunity to appear today to discuss the issue of flammable cladding and non-conforming building products. The issue is by far a very challenging one for all of those involved. As the peak body for New South Wales local governments, we have called on the State to take more of a leadership role in the management of cladding issues in New South Wales. This means having clear communication between State agencies and local governments about roles, responsibilities and expectations; technical guidance for issuing notices and orders to building owners; consistent frequently asked questions and other supporting information; and opportunities to share information between State agencies and councils about how they are managing their regulation and enforcement responsibilities.

Until recently, as you would know, coordination between the various State agencies and councils has been quite limited. In the absence of statewide guidance, each council has been left to take its own approach. That is why in September we were encouraged to see that our persistent calls for a central point of contact for councils on the cladding issues had paid off when the Government announced the establishment of a cladding support unit to help councils identify potential issues. Although it took more than two years, it is a welcome change for councils to have a dedicated point of contact within the State Government and some support for the work councils are doing. Early reports are that it has been a helpful start. Nevertheless, resourcing remains a challenge for many councils, with the process requiring detailed work, expertise and time to review relevant approvals and certification; obtain fire engineering reports and specialist advice; issue letters, notices and orders; and facilitate and monitor any necessary upgrade works.

As I indicated in the hearings in November, our members' heightened concerns about building and cladding have resulted in a number of resolutions at this year's local government annual conference in October. One of the resolutions relates to combustible cladding. It seeks additional action, support and funding to deal with the cladding crisis and the release of details surrounding identified high-risk building. Local Government NSW and our members are keen to work in partnership with the Government in responding to this very challenging issue. From the outset we assisted with the NSW cladding task force by providing a coordinating role with councils, facilitating briefings and sharing information. In conclusion, I reiterate that after more than two years of advocating for some coordination and direction, we welcome the establishment of the cladding support unit. But it is a first step and more needs to happen to ensure that we can successfully collectively manage the issue of flammable cladding in the months and years ahead. Thank you.

The CHAIR: Thank you, Councillor Scott.

The Hon. JOHN GRAHAM: Thanks for your evidence. I want to ask you a bit about how councils navigate this system, because there are significant obligations being pushed by the Government onto councils where they have been the consent authorities. Government has repeatedly written to councils to say, "Here's what is going on in your area", or it has said to councils, "You're now responsible for doing inspections and potentially drafting orders." What guidance do councils have about what products are and are not safe when it comes to making those assessments in New South Wales?

Ms SCOTT: I might speak first to the powers that councils have and then the limitations of those powers to actually create solutions, and then secondly about their access to support and information about technical issues. Councils have the power to issue fire orders under the Environmental Planning and Assessment Act, and they have those powers to do three things. They can ask a body corporate, for example, to do or stop doing things for the purposes of ensuring fire safety; to stop doing activities for the purposes of shared accommodation; or to stop use, evacuate or not enter. So councils have those powers and regularly issue fire orders with respect to those that are resolved by the local government body.

However, if a council issues, in a serious circumstance, an order to stop use, evacuate or not enter a premises, they need to do so bearing in mind that, for example, it may make a significant number of people homeless. The council is required to provide information about other accommodation alternatives, although in many cases there are none aside from a private hotel, for example. If the residents of the building refuse to comply—that is, they refuse to leave the building—the council does not have the power to remove people and would have to rely on police powers or take further action in the legal system to ensure that that is complied with. Some of these powers that councils have are, we hear, reportedly repeatedly breached. Councils lack the ability to enforce them and we lack the resourcing to do that as well.

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The Hon. JOHN GRAHAM: So you have got significant responsibilities, but maybe not significant powers in this area.

Ms SCOTT: Yes.

The Hon. JOHN GRAHAM: What guidelines are there about what products are compliant or whether a building is high risk? Because councils are making these judgements.

Ms SCOTT: We are. We are acting on advice in some cases from Fire and Rescue NSW. Equally, in many cases when we receive a report, for example, from the body corporate that there may be cladding, for example, that is flammable in a building and we report that on to Fire and Rescue to seek expertise, we have very long waiting times. I have some examples here from councils; they are speaking about delays of more than six months where they might have referred a series of cases to Fire and Rescue NSW and they have not heard back.

The CHAIR: This is to get advice on the fire safety aspects of flammable cladding waiting more than six months for an answer from Fire and Rescue NSW.

Ms SCOTT: That is correct. Can I say it is evidently the case in New South Wales that Fire and Rescue NSW have a range of other important duties that they are attending to at this time.

The CHAIR: But that does not explain the six-month delay to date.

Ms SCOTT: In no way do I wish to have my comments in any way perceived as a criticism of that agency. It is clearly a resourcing issue where the large number of new reports that councils are providing on to them is clearly taking some time. But this needs to be resourced so that they can act and provide advice.

The Hon. JOHN GRAHAM: What sorts of questions would councils be asking? Is it about whether a product is safe or is it about the risk of the way a product is applied in a particular building?

Ms SCOTT: In one example I have from a council, they say, "Two fire engineering reports proposing alternative fire solutions were referred to Fire and Rescue NSW for comment six months ago. We are still awaiting a reply." I have another example: "Council referred all of our received cladding assessment fire engineer reports to Fire and Rescue NSW for comment and after several months council is yet to receive a reply."

The Hon. JOHN GRAHAM: And really your point has been—

The Hon. TREVOR KHAN: Are you able to give us on notice any more of those sorts of examples?

Ms SCOTT: We have sought these examples on a de-identified basis.

The Hon. TREVOR KHAN: I am not asking to point the finger at councils or—

Ms SCOTT: If we have more examples that our staff are aware of I am happy to provide them on a de-identified basis—yes.

The Hon. JOHN GRAHAM: Great. Councils are dealing with this in a variety of ways, if it is left to councils without clear guidance about the standards either about the products or about the risks when they are applied to buildings. We have been taking evidence from owners saying it is almost impossible to get that guidance in New South Wales. How are councils dealing with that situation? How are we making sure this is not just a patchwork quilt of people making the best decisions they can but different decisions in different areas?

Ms SCOTT: Councils are grateful for the cladding support unit but hopeful that in the future that unit might be able to provide technical expertise which we are hearing from councils the unit is not able to provide at the moment.

The CHAIR: So what does it provide? If it is not providing technical expertise about how to fix the problem, what does it provide?

Ms SCOTT: Again, another comment from a council: The cladding support unit is not providing technical advice, largely directing councils to simplistic questions and answers. This is not a criticism of the unit but as with many Government initiatives they are underfunded and under-resourced. And they give the example of the assessment of private buildings clad with aluminium composite panels [ACPs] "has largely been left to local government with limited resources and support". Adding to this particular material, for example, has been that there has been the introduction of an ACP ban in certain circumstances in 2017—the withdrawal of a number of code mark certifications.

What this actually means is that some of these aluminium panels that were compliant before 2017 are now not, some of these aluminium panels have never been compliant and some of them still are. How you find that out goes to what is in the panel. That requires, obviously, a very detailed process to check what is in the panel

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physically. That requires technical knowledge about levels of particular materials in a panel to check that it is compliant or not, and technical support and advice around that. The cladding unit currently is not able to provide that advice or expertise either to communities, stratas or councils.

The CHAIR: So you have only one number to call, which is useful, but when you call that number you do not get the help that you need?

Ms SCOTT: Correct.

The Hon. COURTNEY HOUSSOS: And there are only four people there.

The Hon. MATTHEW MASON-COX: Where do you get that information about the actual composition of the cladding? Is it only from Fire and Rescue NSW or can you independently source that information through other sources?

Ms SCOTT: Again, councils are sometimes getting reports and therefore information about components from strata—engineering reports that they have commissioned. If it is a State building, the State as the owner of the building would provide that information to councils if they were making a report. Councils have the power to go and undertake inspections but we are then relying on our own technical expertise to check a range of technical matters. Some councils are unable to afford to have those kinds of staff, to pay them to come in with that expertise and knowledge. And the cladding support unit also does not have that knowledge. So I am painting a picture of a world where there are a lot of gaps.

The Hon. MATTHEW MASON-COX: Yes. So it depends on the expertise of the council particularly. But councils that do not have the expertise are going to refer it to Fire and Rescue NSW.

Ms SCOTT: They are going to refer it to Fire and Rescue NSW. I am not sure if Fire and Rescue NSW have offered or ever offer to come and do inspections again with that technical level of expertise about every problematic product. They have some capacity to do that but again we are hearing from councils that they are experiencing large delays.

The CHAIR: Are you able to identify what the product is, either through a brand name or through some other method? When you look at the plans for the building and all the planning and construction certificate documentation, does it include what the nature of the product is?

Ms SCOTT: I am not a technical expert here, so I cannot give you answer to that. What I can say is that we hear from councils and therefore we know that many of these things are honoured in the breach. So even if you had a set of plans before you with details about the brands of products in particular areas—and that would seem an unusual scenario—

The CHAIR: What is actually built may be a very different thing.

Ms SCOTT: —what is in the building before you does not necessarily correspond with that because of all the issues about certification and other things.

The Hon. TREVOR KHAN: A set of plans would not normally go to the level of detail of having the product name, would it?

Ms SCOTT: I think it would be unusual but I am not a technical expert.

The CHAIR: Does that mean that on each occasion you effectively have to get a laboratory test of the product?

Ms SCOTT: For some of these components you have to get into the place where the product is, and sometimes that is behind a wall or underground, and then get a laboratory test to check. It is also why there is some level of over-reporting of strata. For example, we are hearing examples of a council who spoke about having 62 properties listed on the New South Wales cladding register. They have been reviewed and triaged. Most were found to have no cladding, non-combustible cladding or cladding that posed a minimal risk. So there are buildings that have been reported as having flammable cladding that have no cladding in the building but because the strata has a responsibility to report and they do not have enough money to undertake the technical specification reports to understand what is in their building they just report.

The CHAIR: Let alone have guidance from the State Government.

Ms SCOTT: Correct.

The Hon. COURTNEY HOUSSOS: It is pretty clear that councils are becoming a crucial source of information, albeit it is coming from a range of different options. Are there any reporting mechanisms for councils

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directly back to the cladding unit or back to the NSW Cladding Taskforce? What is the information flow there? Do they report back to you?

Ms SCOTT: Local Government NSW is their peak body so we advocate on their behalf but we do not have a regulatory or reporting role. We have assisted the NSW Cladding Taskforce on councils' behalf to coordinate with councils, facilitate briefings and share information. Councils do have contact with the cladding support unit in order to seek policy and technical advice, although the unit is unable to provide technical advice at this stage. So they are the main sources of contact. And then of course with the New South Wales fire brigade.

The Hon. COURTNEY HOUSSOS: So local government does not have representation on the NSW Cladding Taskforce?

Ms SCOTT: No.

The Hon. COURTNEY HOUSSOS: They do not provide a direct source of information? Let me get this right: The NSW Cladding Taskforce—and we have covered this in previous testimony—has sent through a range of options including facts to local governments in order for them to verify where the issues may be. Is there no reporting back to government on what that is?

Ms SCOTT: We are not on the taskforce, so I do not know how the taskforce is reporting back to the Government. I do not have knowledge of that because Local Government NSW is not on it.

The Hon. COURTNEY HOUSSOS: Are you able to take the question on notice and see if there is any way that councils are reporting back to the taskforce or to the delivery unit on the status of individual buildings and the ways they are working through that?

Ms SCOTT: Yes.

The CHAIR: Councillor Scott, do you think it would be useful, given the crucial role that local government has, to have Local Government NSW on the taskforce?

Ms SCOTT: Yes, it would be useful. As a regulator, along with a range of other State regulators, it would be helpful to have coordination.

The CHAIR: Have you requested that?

Ms SCOTT: I am happy to double check. I know that there has been liaison with our staff, but I do not know whether there has been a formal request. There has certainly been communication from our staff about our eagerness and willingness to participate. Just to come to your question about whether or not it would be useful to have a State list, yes is the answer. Of course, it has been the subject of some media that there has been some confusion around lists and the blaming of councils when, in fact, some of the buildings on those lists were State owned. Again, it is in absolutely nobody's interest to have a blame game. It is everybody's interest to have one list and to try to make sure that list is as accurate as possible, to have everybody in all the regulatory sections of this puzzle on top of the remediation plans and where they are up to have and to have some oversight of that by the State. It should be centralised and supported with technical information, advice, and, following the lead of other State governments, some resourcing.

The Hon. COURTNEY HOUSSOS: You make a good point that it is a contrasting approach to the approach of the State of Victoria, which has a clear agency, a financial package that supports it and a clear list of technical specifications that remediation needs to be made to. It is much easier for councils to be the enforcing authority if there is some clarity provided by the State Government.

Ms SCOTT: We would strongly support the State Government of New South Wales following the lead of the Victorian Government.

The Hon. JOHN GRAHAM: On that point, as the Victorian process has developed, the Victorian Building Authority has taken control of most of the high-risk buildings. Councils certainly have a role, but as that process has developed it has become the case that if a building is high risk it comes into a centralised process. Would you like to see that process for the most high-risk buildings in New South Wales or would you prefer that councils retain their responsibility?

Ms SCOTT: Councils would welcome State support in that way and in a range of other ways. Councils do not take the view that we are protective of our powers here. We would strongly welcome more State involvement and support.

The Hon. JOHN GRAHAM: And that would avoid the patchwork quilt of assessment and rectification that we risk at the moment.

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Ms SCOTT: Correct.

The CHAIR: Surely it starts with the State Government setting out some very clear guidelines that indicate: If you have got flammable cladding in these areas it needs to be removed; if you have got it in these areas it needs to be managed in this way. Here is a whitelist of what appropriate alternative products can be put in to replace them. Does a clear set of guidelines exist about how to fix it and what products are suitable for replacement? Does the State Government give that information to councils?

Ms SCOTT: We are grateful for the cooperation of the new Building Commissioner, who as recently as last week undertook a seminar with local governments to present to them about his role. Although his powers have not yet been announced, as I understand it, he indicated that he would have forthcoming powers that may deal with a range of these matters. For example, he indicated that he would be able to go into Bunnings and tell them what products to remove from the shelf because they are not compliant. There may be powers in the future that are available—

The CHAIR: But I am asking if there is a set of guidelines or regulations delivered by the State Government now that state: If you have got flammable cladding in these areas it needs to be removed; if you have got it in these areas it needs to be managed in this way, and here are the products that you can safely put on to replace it. Does that exist?

Ms SCOTT: No.

The CHAIR: Should that exist?

Ms SCOTT: Yes.

The Hon. TREVOR KHAN: One of the problems in this exercise is that it has been an evolving field in terms of what may or may not be flammable cladding. Mr Shoebridge seems to see that there is some simple answer.

Mr DAVID SHOEBRIDGE: No, I do not.

The Hon. TREVOR KHAN: You seem to present it that way. But it is pretty clear that the problem is far more nuanced than some may seek to paint, is it not?

Ms SCOTT: Again, I am not a technical expert, but I think there is what I would characterise as a large amount of agreement—for example, in the wake of the Grenfell Tower fire—about what kind of cladding is combustible and therefore dangerous. Perhaps there was a technical discussion about that before, but in light of that very horrific fire there has been a much higher level of public awareness about the need to mitigate against the risk of combustible cladding.

The Hon. TREVOR KHAN: I do not think there is any doubt about that. The question is: What constitutes combustible cladding?

Ms SCOTT: I do not think there has been enough disagreement to justify the inaction. I am sure there is debate amongst experts about whether 20 per cent or 30 per cent, for example, of a material in a product is a problem. But I do not think that is enough to justify the level of inaction that we have seen.

The Hon. TREVOR KHAN: I am not seeking to address that point. But if one is seeking to come up with some clearly clarified list, which Mr Shoebridge suggests, there is going to be some technical issues as to what falls in and what falls out. That is going to be a continuing problem.

The Hon. COURTNEY HOUSSOS: I have a follow-on question from that. In the assessment process that councils are undertaking, if they are referring it to Fire and Rescue, is there any kind of list that is prepared that says, "This is the existing cladding that we see on the building. We have gone out and inspected this building and we think it is unsafe because it does not conform to our technical requirements."? Is there any recording of other cladding that may be on the building so that if in some point in the future—as happened at the NCAT last week—there are concerns about Biowood, what some people call "waffle cladding" or "honeycomb" cladding or any of the other claddings?

The CHAIR: High pressure laminates.

The Hon. COURTNEY HOUSSOS: Thank you. High pressure laminates. Is that information being collected, is it being retained by councils and are you being provided with any direction from the State Government on that issue?

Ms SCOTT: As I understand it, the direction that councils are provided with is in the form of product bans. A number of product bans have been introduced by the State Government. That has resulted in buildings in

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New South Wales being identified as containing the banned product. That identification is largely done through inspection. It is not the case that there is a register of buildings and what they contain in New South Wales, to my knowledge. Therefore, should a product be banned based on evidence that it is problematic, the only regime to allow for that identification to occur is a program of inspections undertaken either by the building owning themselves, with a report undertaken by councils on a risk-based inspection regime, and/or by NSW Fire and Rescue. It does that either because it gets information about a building or councils refer a building.

The CHAIR: Councillor Scott, this is no criticism of you and the position that councils are taking—which relies on the banned product list—but we had two home owners give evidence earlier today who said that they are very anxious about what they replace the existing flammable cladding with because there is material on the market now that their own consultants and experts are saying is likely to be banned or banned for cladding purposes in the future. Is the only advice you are getting from the State Government about products that are banned or not banned? Is it giving you any guidance about that uncertainty into the future?

Ms SCOTT: I might have to take that on notice. I do not have any feedback from councils about that.

The Hon. TREVOR KHAN: I do not know whether you were here for Mr Rumore's evidence, but according to the evidence he gave, it seems to me that some of the questions around the safety of these products, whether they are banned or not banned, depend on how they are used. If you have a strip 20 metres or higher up the side of the building, that may create different issues than if it is used in some sort of patchwork arrangement on verandas.

The CHAIR: He gave an example of a small piece of cladding on a veranda with concrete above it.

The Hon. TREVOR KHAN: Yes. So it is not simply a question of whether the product is banned or not, but how it is used on a building. It almost does in some cases become a case-by-case assessment, would it not?

Ms SCOTT: I think there are two clear levels. One is whether a product is problematic or not in the first place. If it is, it clearly should be banned. Separately from that, of course there are then going to be a range of other materials that need to be used appropriately.

The Hon. TREVOR KHAN: Discretely, yes.

Ms SCOTT: That is an onsite inspection. As I have referred to in the series of hearings I have appeared in before, there still remains a gap in having a statewide standard. Councils have imposed 128 standards about those kinds of things because they all have to make these decisions for themselves. That is unhelpful. Similarly, the notion that councils are resourced to continuously inspect every single building in their local government area whenever a new product is banned is also totally financially impossible. We need to find a better way moving forward to manage these things.

The Hon. COURTNEY HOUSSOS: And that may be the situation that we find ourselves in because these new products are emerging and there is no clear register or record of the products at the moment.

The Hon. TREVOR KHAN: A register may not fix it in itself.

The Hon. COURTNEY HOUSSOS: I am just saying we might have to start the inspection process again, that is basically the evidence that we have just received. I have two questions on notice.

The CHAIR: You did ask a question and I am sure Councillor Scott is ready to answer it.

Ms SCOTT: Sorry, can you just remind me what that was?

The Hon. COURTNEY HOUSSOS: Are we in a situation where we may need to go back to the start and start reinspecting properties?

Ms SCOTT: If there are more product bans, yes.

The CHAIR: As you understand it, to date, have the inspections been largely about aluminium composite materials? Have they been focused on that product?

Ms SCOTT: No, that is one example. I think there are a range of examples, to be fair. Councils do inspections with the bans that are in place and where a building comes to their attention.

The Hon. COURTNEY HOUSSOS: Can you take two things on notice: If you or any of your councils have received any advice in the wake of the NCAT decision around the Biowood products, or any other type of cladding that may now be considered flammable. The second thing is if you could just provide us on notice any of your motions that were passed by your councils at your conference on cladding.

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The CHAIR: That is advice from the State Government.

The Hon. COURTNEY HOUSSOS: That is right, yes.

Ms SCOTT: I can leave the motions here and table that today and take on notice the advice from the State about Biowood and other newer products.

The Hon. COURTNEY HOUSSOS: Thank you so much.

The CHAIR: Councillor Scott, did you have a final message?

Ms SCOTT: This is a really important public safety issue. We hope that we can move away from the regulatory confusion that we have experienced with three separate State agencies giving lists and instructions to councils over two years on combustible cladding: Fair Trading NSW, the Department of Planning, Industry and Environment and Fire and Rescue NSW. We welcome the Cladding Support Unit. It needs to be properly funded so that it can provide the technical expertise to councils and the community that will support this process in a more meaningful way. We hope that there would also be appropriate funding made for Fire and Rescue NSW to ensure that it can undertake inspections of possibly hazardous buildings in a timely manner.

The CHAIR: Thank you again for your evidence. It has been of enormous assistance.

(The witness withdrew.)

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KARL SULLIVAN, Head of Risk and Operations, Insurance Council of Australia, on former oath

The CHAIR: Mr Sullivan, thank you for attending today and thank you for the submission of the Insurance Council of Australia. I remind you that you are on your former oath or affirmation. Would you like to give a brief opening statement?

Mr SULLIVAN: Yes, I will. Thank you for the opportunity. My original opening statement was going to be quite broad around our views on building regulation and confidence in that. Given the nature of the questions and the witnesses you have had this morning I thought I might narrow that down to cladding and the insurance industry's approach to cladding. First and foremost, this is obviously a public safety issue in a number of buildings. What that number is we are not sure. The insurance industry has been flagging this for a number of years. It is not just about aluminium clad panelling, but that is the most visible one since Grenfell. There are a number of other insurance products that insurers are starting to lean back from in quite a noticeable fashion as well.

So the approach of insurers to this has been twofold. First of all, professional indemnity insurance now has a very clear exclusion in it: For anybody who needs to be insured with professional indemnity, they will not be able to rely on that for a cladding-related claim. If it is in the past and they had that non-exclusion product in the past and they notified the insurer that they might have a claim before the exclusion was put in, they can obviously still make the claim. But, more focused, the testimony we have heard this morning has been very instructive for us. The first two witnesses, of course, are in the same position that insurers are in. In New South Wales there is no clear guidance on what is a high risk, what is a low risk, what is a medium risk and then what do you need to do about it.

If you do commit significant resources to rectifying the problem, is that rectification still going to be sound in a year's time when further evidence comes forward? This is a terrible position for property owners to be in. The insurer, as the person taking the risk for them, finds itself in the same position. We have called for a national approach to this problem, which would include remediation standards, acceptable products and acceptable regimes for actually measuring what the residual hazard is at a site. The complexity in all of that is that each State has its own regimes. Each State is actually quite competitive in this space and each claim to be leading the fight on cladding. There is no national approach. In response to that the insurance industry has developed its own Residual Hazard Identification Protocol for cladding. That is publicly available.

Within that we put forward an agreed process for all insurers about how a property owner should approach, through a fire protection engineer, the assessment of what is on their building, what the residual hazard is and it is not as simple as saying, "There is a piece of cladding on the side of that building and it is potentially flammable." It is complicated. It is to do with what the material is; how much of the material there is; is it contiguous, in that it is long enough to cause a serious problem to the building; how is it fixed to the building; are there accessible ignition points—for example, balconies and barbecues—and lastly, what other mitigation systems are in the building that might limit the risk.

In some circumstances you could have the worst possible material on the side of a building, but with all of those other factors being taken into account you could say that the building is low or medium risk, which may de-prioritise it in terms of having to find a very expensive recladding situation. So that protocol has been available now for about 18 months. In the protocol we name six, possibly seven, testing laboratories that the insurance industry has the confidence can actually undertake a destructive test of a cladding sample from the building and determine what its polyethylene constituent products are. So, stratifying that into the most flammable products through to the safest products.

That protocol then leads into work that has been done by the Society of Fire Safety through the Engineers Australia, or the Institute of Engineers, and the Fire Protection Association Australia about how to remediate this in a safe way, taking into account all of that complexity that exists beforehand. The industry has tried to fill the gap here, but that is not a great substitute for very clear guidance preferably nationally, through the Building Ministers' Forum, but, if needs be, through State Government about what is an acceptable remediation regime so that those first two witnesses that you spoke to today are not left in this terrible position about having to remediate, wanting to do the right thing about occupant safety, but being in this quandary: Is my remediation plan going to stand up in a year or two years time? I will leave it there.

The CHAIR: Thanks, Mr Sullivan.

The Hon. JOHN GRAHAM: Thank you for those comments. It has been really useful. Along with the other witnesses, you have really spelt out the evidence about the patchwork quilt that exists at a range of levels. The products themselves—what is dangerous now might be regarded as dangerous in a year or two. Then assessing the risk, which you have made the point that it is very complicated. There is a range of factors but there is not

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clear guidance. And then also at the rectification level, what is a sensible way to remediate? What is a safe way to do that? There is a patchwork quilt at each one of those levels. That is a really valuable point to make. How are you dealing with the new products that are coming under attention? We have talked this morning about a number of them including the recent decision about Biowood. How do insurers intend to deal with some of the new products coming under the spotlight?

Mr SULLIVAN: Insurers typically approach this on a claims-made basis. If they start to see claims appearing at any kind of frequency that relate back to a particular product—and we rightly assume that when a building is constructed, certified and given occupancy, that has been done in accordance with the code. Having said that, if a product comes to our attention that while it may be being used in a compliant manner is leading to claims, insurers start to price that into their premiums. In extreme cases, and there are a few building products of this nature, insurers may refuse to offer cover on a building. A relevant example of that is not aluminium clad panelling. Insurers are still insuring those buildings but it is factoring into price and availability. Things like expandable polystyrene insulation, most insurers are leaning back from that at the moment.

The Hon. TREVOR KHAN: What does "leaning back" mean?

Mr SULLIVAN: Not willing to even offer a price on a building that has a gross level of exposure to a building material that they consider to be high risk. Perhaps compliant with the building code but not insurable. There are other examples: refrigerated panels, insulated panels.

The Hon. JOHN GRAHAM: Can you give us any sense of the scale of the category of products that are not banned but where insurers are on this basis starting to say, "Look, we are not prepared to insure here"?

Mr SULLIVAN: We have a piece of work going on around trying to estimate the scale of that. I am happy to take that on notice and come back to the Committee.

The Hon. COURTNEY HOUSSOS: Basically what you are saying is that there could be buildings built in accordance with Australian standards, as they are at the moment, but are not able to be insured by owners or residents?

Mr SULLIVAN: There is certainly buildings in that category that will find it increasingly difficult to get insurance. I am not aware of any individual buildings that have been outright refused cover for a particular building material. In high risk zones in other parts of Australia where the building has been built in compliance with the National Construction Code but because of its location in relation to, say, cyclones, they are starting to become extremely difficult to insure because the building code standards only go up to safety of life. For an insurer, we are insuring the building not the occupants. We need to see that the building is resilient and that often in a high-risk area, some situations will require it to be built above and beyond the National Construction Code.

The CHAIR: This hearing is focused on flammable cladding, but your evidence is that there is a number of other products that also have a significant fire risk that the insurance industry is aware of. That includes some insulation products and some internal cladding products, is that right?

Mr SULLIVAN: That is right.

The CHAIR: Are there any other products you would want to put on that list?

Mr SULLIVAN: I am happy to take that on notice and supply a list.

The CHAIR: Have you raised those concerns with the State Government?

Mr SULLIVAN: I believe we have. But our focus is Federal and going back to the Australian Building Codes board to require different testing regimes that individually take and may authorise the use of some of those products in circumstances where we do not believe they should be used.

The CHAIR: You said that your residual hazard clarification protocol includes amongst other things a whitelist six or seven laboratories that you would be satisfied can test products to the Australian standard, is that right?

Mr SULLIVAN: That is right.

The CHAIR: Does that mean that there is a variety of laboratories out there that perhaps do not have NATA accreditation or the like that are testing products?

Mr SULLIVAN: Potentially. The insurance industry has no regulatory role in this space. We have stepped in here to develop this protocol because of the absence of any other national or State Government level testing. Potentially there are other laboratories out there conducting tests that are not on our list. To get onto our list all you have to do is be an accredited laboratory. We provide six samples of materials that we know what the

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material is and they have to respond with the correct identification of those. We almost literally do not care how they do it as long as they can correctly identify all the materials on there. Some will do it through destructive means, others will do it through visual means or other chemical means.

The Hon. JOHN GRAHAM: To be on that list do you have to be accredited under the national scheme?

Mr SULLIVAN: Yes, you do.

The CHAIR: Do you not think that should just be a basic requirement? That anybody testing building products needs to be accredited?

Mr SULLIVAN: Yes, I do.

The CHAIR: Is it an existing requirement?

Mr SULLIVAN: I could not answer that question.

The Hon. TREVOR KHAN: It would seem to be implied from your earlier answers that it is not. If you put it down as a precondition to be on the list, one assumes that there must be labs out there that are testing that are not accredited.

Mr SULLIVAN: I appreciate the question. I am unaware of any labs that are doing testing that are unaccredited. The only labs I am aware of are ones that we have whitelisted onto our protocol because they are accredited and they have proven that their methodology is able to accurately identify things to our standards.

The CHAIR: But going to the trouble of whitelisting would suggest that you realised there was a problem here and you wanted to make sure of the integrity of the tests. You say that should be Government's obligation, not yours?

Mr SULLIVAN: Yes, but I would say that we have put together that whitelist more from the perspective of being able to facilitate building owners being able to reach out to laboratories that their insurer has already whitelisted.

The Hon. COURTNEY HOUSSOS: You have gone to some pretty extensive lengths to compensate for Government not fulfilling its duties in this space, would you agree? You have started your own testing labs. You have come up with your own standards. You are giving advice to buildings but the Government is not providing any of this?

Mr SULLIVAN: No governments are doing this. It is not just a New South Wales challenge. This is a national challenge. Different State Governments have taken slightly different approaches to it. Victoria has probably taken the most proactive approach and we endorse elements of their program for New South Wales. In a national sense, there has been a reluctance to take this issue on. Particularly remediation frameworks for property owners who at the end of the day will be probably be footing most of the bill to do something with confidence that they are not going to have to repeat it later on.

Mr SULLIVAN: You have spent some time speaking about the regulatory framework but we have not had a chance yet to explore the issue of professional indemnity insurance. We might go onto that briefly.

The Hon. JOHN GRAHAM: Before we do that, can you just say what are the elements of the Victorian scheme that you would most like to see imported to New South Wales?

The Hon. TREVOR KHAN: And the reverse.

The CHAIR: The ones you do not want.

The Hon. JOHN GRAHAM: Exactly.

The Hon. TREVOR KHAN: Pros and cons.

Mr SULLIVAN: For a start, we have had a great deal of proactive involvement from the Victorian Cladding Taskforce with insurers constantly testing what they are doing against what we may anticipate as being the most appropriate solution. That is the first thing I would like to see in New South Wales. They have done a rigorous audit program and identified the highest risk buildings, which I understand are identifiable by the fire truck positioned outside of them 24/7. They have a remediation standard program that allows them to go in in a consistent way and say, "What is the most appropriate remediation here?"

All of those elements I would like to see translated to New South Wales and to Queensland and the other States. I have no view on the funding of the remediation process. Obviously, Victoria has taken a very proactive view on how they are going to do that. It is an expensive exercise, as you have heard from witnesses earlier on.

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I would like to see—the industry would like to see—a consistent approach to identification, reporting and remediation standards.

The CHAIR: Are there any aspects of the Victorian package that you think we should not adopt?

Mr SULLIVAN: I will take that on notice. There are probably some technical matters deep in their process.

The Hon. JOHN GRAHAM: Obviously, you would like to see that dealt with as soon as possible—this is an urgent public safety issue. Would you agree with that?

Mr SULLIVAN: At a minimum the urgency here is consistent auditing of all the buildings.

The Hon. TREVOR KHAN: Can I just ask—seeing as the Victorian scheme has been raised—do you know how many buildings have been rectified in Victoria?

Mr SULLIVAN: I know they have a hit list of 15 that they are piloting their remediation process on at the moment. I will take on notice as to how far through that process they are at the moment. Once they have proven it with the first 15 of the highest priority buildings, they will then roll that out further.

The Hon. TREVOR KHAN: Again, I am not being critical of anyone but it seems to me that whilst there has been some talk of the Victorian scheme, what you are suggesting is that its implementation is not quite as advanced as some people might seek to imply. Is that a reasonable assessment of the position? If they are looking at 15 buildings and they will check once they have done 15 buildings—is that the general position?

Mr SULLIVAN: That is my understanding of where they are up to at the moment.

The Hon. TREVOR KHAN: Right. So they are essentially also at the start of the process?

The Hon. JOHN GRAHAM: On rectification. Would you agree with that? Their audit process is a long way further ahead.

The Hon. TREVOR KHAN: I am asking this question.

The Hon. JOHN GRAHAM: I am just asking for a distinction between audit and rectification.

Mr SULLIVAN: My understanding is that they have completed their audit program and they have picked 15 buildings that they consider to be the highest risk. I think it would be unfair to categorise that as just being at the start of the process. They have done a lot of the technical work required to get them to the point where they are remediating the actual risks in these buildings. Part of the problem there is: How many of these buildings are there to get through? How do you fund that? How long does that take? Do we even have the resources in that State alone to tackle that?

The CHAIR: The co-chair at a conference that the Hon. John Graham and I were at very recently indicated that even with the Victorian model in place it may be a 10-year process to rectify all those buildings. We are not talking about a fix by June of next year.

Mr SULLIVAN: Certainly not.

The Hon. TREVOR KHAN: One further thing in terms of your role, you had an opportunity of, or are you planning to meet with the Building Commissioner in New South Wales to discuss where you see it going?

Mr SULLIVAN: Yes. The Building Commissioner has been very proactive on the broader building defects and compliance regime aspects with the insurance industry. He has some very clear concepts that he wants to bring forward around defects, liability periods and insurance products that can back that in a more sustainable and meaningful way. There has been no shortage of engagement with the Building Commissioner around this—very proactive. Cladding as a subset of the broader issue is still something that we have to discuss in detail.

The Hon. COURTNEY HOUSSOS: Can I just ask, you said that you had engagement with the Victorian Cladding Taskforce. How much engagement have you had with the NSW Cladding Taskforce?

Mr SULLIVAN: Very little.

The Hon. COURTNEY HOUSSOS: So, some with the Building Commissioner but little with the NSW Cladding Taskforce?

Mr SULLIVAN: Correct.

The CHAIR: Given you may be footing the bill for a fair bit of it, that seems odd.

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Mr SULLIVAN: I think it is important to note that we are probably not going to be footing the bill for a lot of it. There will be some professional indemnity claims, where a portion of the rectification may be funded through professional indemnity, but in most of these cases—and we have yet to see them go through the courts in New South Wales—there will be liability allocated out to different parts of the building spectrum.

The CHAIR: Which brings us to the issue about professional indemnity. A number of building owners have said that their first difficulty is getting an appropriately qualified expert who has professional indemnity to even write the report about how to rectify their building because of the collapse in the professional indemnity market. Because of the concerns the insurance industry has about building standards, getting to first base has been very difficult. What is the situation now, in terms of providing that insurance cover to the professionals to even write the reports?

Mr SULLIVAN: There has been no change, particularly in New South Wales, around the provision of non-exclusion professional indemnity cover. All professional indemnity cover, particularly for certifiers, surveyors and engineers, carries the exclusion around nonconforming building products, or specifically around cladding.

The CHAIR: That is what I was asking you. My question is directed to flammable cladding.

Mr SULLIVAN: Yes, that exclusion exists in all products. This is a global exclusion so other markets have led the way in this in many respects. Where this becomes a particular problem is not what has gone on in the past but the rectification of it—precisely what you are identifying there. If an engineer is engaged to design a remediation process, his professional indemnity [PI] may not address the fact that he is dealing with a cladding problem there.

The Hon. TREVOR KHAN: Sorry, what does that mean? That he is not covered?

Mr SULLIVAN: He is not covered. His professional indemnity insurance bars claims relating to cladding, to put it in lay terms. That is principally designed to pick up anything he might have done in the past but it also affects what he wants to do in the future.

The CHAIR: Which is going to greatly reduce the appetite for engineers to write those reports if they are not covered and if something goes wrong in the future?

The Hon. TREVOR KHAN: Well, they won't.

Mr SULLIVAN: It is having an observable effect on the appetite, absolutely.

The Hon. TREVOR KHAN: You potentially cannot retain a fire engineer, who is going to give you an opinion either as to the quality of the cladding that is on the building now or what needs to be done?

Mr SULLIVAN: Notwithstanding that they have an exemption in the regulations that the New South Wales Government has applied, there is a lack of appetite in some engineers and some surveyors to do the work regardless, because their product still excludes it. Even though they can lawfully undertake the work—

The CHAIR: Commercially.

Mr SULLIVAN: —having the exclusion in their product—

The Hon. MATTHEW MASON-COX: That is a licensing issue.

Mr SULLIVAN: Yes, a licensing issue, thank you. Even though they can do it in a compliant way, the fact that they do not have the cover is leading to a loss of appetite.

The CHAIR: We had the Government recognise this problem, which is why it amended the licensing obligations to say, "You can still do the work even if you have an exclusion." That does not mean that the work gets done, does it? That is the problem. The work is not getting done because people do not have professional indemnity cover so that they can write the report to fix it.

Mr SULLIVAN: It is a big challenge. It is one that Victoria is trying to solve through their process of having a very clear and concise remediation program and standards. They have engaged professional indemnity insurers to get them to try to write a product specifically for each one of those projects.

The CHAIR: Their building authority actually has a panel that is helping write those remediation reports.

Mr SULLIVAN: Correct.

The CHAIR: So picking up that risk, if you like, through the authority. Do we need the New South Wales Government to pick up the risk and allow these reports to be written, in some form or another?

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Mr SULLIVAN: I would advocate that the State Government needs to implement a very clear remediation protocol and regime and a clear set of standards that need to be met. That would assist the insurance industry to recognise that if someone undertakes that work they are operating within a very clear regime and the opportunity for them to fail in their professional requirements is quite narrow. In the absence of any standards or any regime at a State level, I can entirely understand how an engineer or a surveyor or a certifier may be left not really being able to comply.

The Hon. TREVOR KHAN: The answer is the same in Victoria, isn't it? The industry is not providing indemnity cover for appropriately qualified engineers in Victoria, even though you say they have a different regime?

Mr SULLIVAN: They are in close negotiation with some insurers right now to have the insurers write a product specifically for remediation of buildings.

The Hon. TREVOR KHAN: So the industry is presently not providing product in Victoria?

Mr SULLIVAN: That is correct.

The CHAIR: But it is significantly more advanced in Victoria because they have a clear set of protocols in place and guidelines. You know what the risk is if people are compliant with those guidelines. You are much more likely to insure that risk if it is constrained. Is that the situation?

Mr SULLIVAN: We are presently not insuring it but we are much closer to being able to do it down there. That is no guarantee that it will happen but that is the only State with a standard that the insurers are actually engaging with at a State government level to consider if they will reintroduce product without the exclusion.

The Hon. JOHN GRAHAM: Just to consider what happens if that process is left undone, if something does not happen here, would you agree that that will significantly contribute to the delays in getting this issue dealt with? There is a significant public safety risk. This is contributing to the delays and will continue, do you agree with that?

Mr SULLIVAN: It is certainly not helping.

The Hon. MATTHEW MASON-COX: You say much closer but it may never happen. What would solve this problem? What de-risks this to a level which actually is very likely to see the insurer step into the market to cover PI in these matters?

Mr SULLIVAN: It comes down to the technical specifics of the remediation program: Products, design, execution and compliance. If the standards meet insurers requirements in that space in Victoria for those 15 pilot programs then some insurers may consider those standards are acceptable. If I have confidence that they will work, I have confidence that they will be implemented in the right way and signed off then it is de-risked; not entirely, but de-risked to a point where I am happy to remove my exclusion on a specific case by case basis. Once those 15 are done, if they are done, then you might see adoption of those standards more broadly.

The Hon. MATTHEW MASON-COX: So confidence might return?

Mr SULLIVAN: Yes.

The CHAIR: Thank you for your evidence. It might have been good to have more time to speak about some of the other broader issues in the building industry and maybe there will be an opportunity to do that at some point. I think it would be fair to say that if the insurance industry is withdrawing cover it is more than the canary in the coal mine, it is the whole aviary is in trouble. If you are withdrawing cover from the industry I think it puts a clear obligation on Government to step up and provide you with the standards so you can deliver that protection. Thank you for your evidence.

Mr SULLIVAN: Thank you.

(The witness withdrew.)

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LEIGHTON DRURY, State Secretary, Fire Brigade Employees Union, affirmed and examined

ANASTASIA POLITES, Senior Industrial Officer, Fire Brigade Employees Union, affirmed and examined

The CHAIR: Thank you for your attendance today. Do one or both of you want to start with a brief opening statement?

Mr DRURY: I will. Thank you for the opportunity to provide evidence to the Committee. I am the State Secretary of the Fire Brigade Employees Union. I have been in this role since 2016. The FBEU has over 6,000 professional firefighter members and our density is very high, 99.97 per cent. Although I am a secretary in a full-time role I still go out on the trucks and do a few shifts here and there every few months. In my 20 years as a firefighter I have seen buildings start to burn faster and faster. In the current building developments, and certainly their contents, what we are finding is that fire safety is not as big a priority as it should be.

The materials that buildings are made out of and the contents that go in them are generally made out of a synthetic material, which burns faster, hotter and with more toxic smoke. At the beginning of my career it might have taken a building with more natural materials 20 minutes to fully catch alight, but we are finding that now within minutes buildings are going up in smoke. When you throw in materials like cladding that is flammable it poses bigger problems and more complex problems to an already dangerous job that we do. So, in addition to the immediate and obvious problem of fire spreading at speeds that make them quite difficult to stop they add different elements.

We have the problems with what they do to the people inside those buildings but certainly there is a risk to my members as well. Some of those risks are with flammable cladding. Obviously, once it starts catching on fire it is a rapid spread of fire. We do not always know where it is going because once you are inside the building obviously it is generally on the outside. Once you are entering the building the cladding comes away, as we saw in Grenfell and most other cladding fires, and becomes a risk not only to firefighters going in but the people evacuating out. Due to the composition it creates a toxic, thick black smoke which then has other different risks.

We have a higher injury rate around firefighter cancer from these products, synthetic materials and the cladding materials that have all those compounds in them and create that problem. I have not officially been trained, and I might have missed it in my brief stints at Fire and Rescue, on how to deal with flammable cladding. I am advised that Fire and Rescue NSW has provided some bandaid training since Grenfell but the feedback I have received is that it is reasonably inadequate. Another is the building design. It is not just the use of the materials that concerns me as a firefighter. Even buildings with combustible cladding can have fire safety risks minimised if they have rigorous safety designs, have a well maintained network of fire safety doors and exits, have short escape distances, provide good firefighter access, which is absolutely key, and have layouts that minimise risk.

Prior to construction the developers, at the moment, submit their development application [DA] or building approval [BA] to Fire and Rescue and they apply for an initial fire safety report. Fire safety is a branch of Fire and Rescue NSW. It has an opportunity to analyse and make recommendations to the proposal within a certain amount of time. Unfortunately, many of these reports are not being analysed or scrutinised within the timeframe by the fire safety branch because of the lack of resources and lack of staffing. The volume of these initial fire safety reports is too high due to the building boom but certainly due to a lack of staffing. Many of these, at the initial stage, are going unchecked.

The only other point I will move on to: What we have seen over the last eight years under the current Government is over 800,000 more people in New South Wales and yet we have less professional firefighters than we did eight years ago. If we have one of those jobs, and heaven help we do not, one of the major tools we would use are our aerial ladder platforms, they are big cherrypickers. We now have less of those than we did eight years ago. We are not seeing the resourcing of the Fire and Rescue needs to deal with one of those incidents. That is the two things Fire and Rescue NSW do: Hopefully we cut it off at the pass at the initial fire check and the ongoing checks, but if we do have one of these jobs we are the response agency.

The CHAIR: Thank you for that opening evidence.

The Hon. JOHN GRAHAM: I want to ask about the lack of guidance, the patchwork quilt of solutions which are here in assessing the risk and in working out how to rectify. We have evidence from the council where they have to do that assessment but they have no guidance and the same view from owners. From a Fire and Rescue side of things is there a sense in New South Wales that there is a clear set of guidelines in place about which products are safe, how to assess these risks and how to rectify it so it is not being done in different ways in different places?

Mr DRURY: No. I put that simply.

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The Hon. JOHN GRAHAM: How far away from that are we?

Ms POLITES: You need the staff first.

Mr DRURY: We need the funding to kick off that process. We are far away from that until we get the funding.

Ms POLITES: The safety branch of Fire and Rescue NSW is under staffed. It does not even have minimum staffing. They have not filled the minimum staffing criteria and that is inadequate.

The Hon. COURTNEY HOUSSOS: Do you have that on hand or can you provide that on notice?

Mr DRURY: We will try and do that.

Ms POLITES: We will try and do that. But, as I understand, Fire and Rescue NSW are coming to give evidence later today.

The CHAIR: There was a regulatory change recently about the function, in terms of the circumstances in which it is required to see and sign-off on the fire safety of a building. Can you explain that?

Ms POLITES: There is an initial fire safety report that developers give to Fire and Rescue and Fire and Rescue has 28 days to make comment on this. They are overwhelmed with the work, overwhelmed with these requests for these reports to be analysed and scrutinised and, unfortunately, they slip through the cracks; so the 28-day period passes and a lot of the developments are left unscrutinised. They go up, they are constructed. To rectify some of the problems post-construction is expensive, sometimes impossible, and sometimes mitigating measures are put in place to try to deal with the lack of adequate safety plans in the first place. If the department was resourced appropriately in the first instance a lot of these things would be fixed.

The CHAIR: That was one of those removing red tape to allow for the more rapid approval for developments, and part of the red tape was getting rid of the requirement to have a certificate from Fire and Rescue about buildings they have audited. No report is delivered, no response is made within 28 days; they are deemed to be compliant.

Ms POLITES: That is my understanding, yes.

Mr DRURY: The regulation changed from "must provide an initial fire safety report" to "may". It is now Fire and Rescue risk assess what buildings they have a look at. The regulation is actually quite rigid on, I think it is within 10 or 14 days from receiving the development application from a developer, then Fire and Rescue needs to say they will or will not give them an initial fire safety report, whether they will comment on that. Then they have another certain period of time to then actually fill that out. If either of those two things do not happen then it is just assumed that development can go ahead. And then on that back-end, when these things go up and we are provided no advice on how to better make this building safe for either obviously occupants but also firefighters, you then come to these alternative solutions, and a lot of that comes down to money in a lot of respects.

The Hon. JOHN GRAHAM: They are making a risk assessment but they are doing it within the resources that are there to do that. So they are getting to only the most urgent part of the pie?

Mr DRURY: To put it into context, we have got roughly 20 firefighters in fire safety. There are other engineers and so forth, but the Queensland model would, say, have 100.

The Hon. JOHN GRAHAM: Okay, that is useful.

Mr DRURY: If that puts it into context.

The CHAIR: It does.

Mr DRURY: I suppose one of the things that has occurred during this cladding process is that those 20 people work in five different units that do, obviously, five very different things, obviously around fire safety, but what has been occurring is that basically the Government has said yes, we have got a Cladding Taskforce and we are throwing resources at it, but we are taking generally most of those people out and putting them into the Cladding Taskforce along with supplementing it from the fire station level as well. So over in these other sections now we are now not doing the normal checking and inspection—

The CHAIR: Robbing Jane to pay Susan.

Mr DRURY: Very much so. But the fire safety reports that councils say: Look, we have heard this. Can you go out here? Or we get reports from MPs stating: This looks a bit dodgy, or one of your constituents might say: Hey, can you look at this? and we go and look into those things, all of that work is now stacking up. So the

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reality is that we have now got a whole bunch of unsafe, maybe not necessarily to do with cladding, but blocked fire exits, dismantled fire panels, all sorts of different issues that our fire safety guys go out and check and inspect and report to council. So there is a lot of work now not being done due to the cladding.

The Hon. TREVOR KHAN: Is there a standard time to respond to one of these concerns? Say the council raises an issue. Is there a protocol that sets out a time frame to respond?

Mr DRURY: I would have to take that on notice. I do not know myself.

The Hon. COURTNEY HOUSSOS: Local Government NSW told us that even with direct concerns raised about cladding and then they are referred to Fire and Rescue, that can face delays—six months or months on end. So even with these resources being diverted we are still seeing quite a delay in terms of addressing even the cladding issues, not to mention these other fire issues.

Mr DRURY: Absolutely. There have been a few examples brought up here. It is not just cladding; there is high-pressure laminate, there is a whole bunch of building products that development has moved ahead of the Building Code of Australia [BCA] in a lot of ways, as it does. So there is a whole bunch of products out there being put onto buildings to make them look nice and desirable to purchase, but at the same time it is a fire issue in one sense—they burn faster and they are a bigger problem for us.

The CHAIR: Would it be fair to say the bulk of the work of the Cladding Taskforce and authorities so far in New South Wales has been on the aluminium composite material [ACM] of cladding?

Mr DRURY: I would suggest so.

Ms POLITES: We cannot comment.

Mr DRURY: We cannot comment if they have moved any further on that, but initially certainly over what we have seen over the few years as we sent firefighters out to identify these and broke down in the order of 3,500 buildings that had cladding on them down to the 400 that were deemed high risk, I do not think anything else was done other than that.

The CHAIR: ACM product?

Mr DRURY: ACM product.

The CHAIR: You would have seen the decision in just the last fortnight from the NSW Civil and Administrative Tribunal that found a Biowood cladding product was dangerous and flammable and should be removed.

Mr DRURY: Absolutely.

The CHAIR: Yet that product is still for sale and is still permissible under the National Construction Code. Is that product unusual in that regard?

Mr DRURY: No, I do not think so. I think there are probably plenty of products out there at the moment that allow fires to burn faster, hotter and become more problematic.

The CHAIR: There was a fire last month in Bolton in the United Kingdom where the cladding material was high-pressure laminate. I might see if we can show you this image of the fire.

Mr DRURY: Is this the student accommodation?

The CHAIR: Yes. This is a six-storey building.

Mr DRURY: Just in that last shot you can see the guys up in the cherry pickers. They were the fire trucks that were referenced before.

The CHAIR: But you can also see from that footage flaming debris falling to the ground. Is that one of the indicators for, you said, one of those additional safety issues where you can see the flammable cladding?

Mr DRURY: Yes.

The CHAIR: Do you think, given that, that there should be additional focus on not just ACM but the array of other cladding products out there including high-pressure laminates and Biowood?

Mr DRURY: Certainly on a regulatory level, absolutely, and that is I suppose where you guys need to make some decisions about that stuff. I suppose as firefighters we try and keep things reasonably simple although we are very highly professionally trained, but if it is on fire we try and put it out. The issue that we have got with that is that it is more than one product, and as you will probably see a shift away from cladding we will probably find the next product that is easy to work with, looks good and that will be the next issue that we have got.

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The Hon. JOHN GRAHAM: Can I just ask about the register as it stands at the moment. The 444 high-risk buildings that you refer to, obviously that has come together from a variety of sources, it has been tested to some extent, but how confident are you—it is much less rigorous than the audit process in Victoria, is the evidence we have got—that that register captures the right buildings in New South Wales? Separate to the point that has just been made about the other cladding types, how confident are we that what is on this register is what is actually done in addressing New South Wales?

Mr DRURY: Good question. I have asked what was the formula to put together what was high risk or not. Certainly, Fire and Rescue hopefully should be able to answer that. My understanding is that there are some buildings out there that I would consider at times—I do not mention them here—would go onto the high-risk category that are not. Some of that methodology needs to be looked at. It is certainly good to know if it is a medium high risk or is it just high. These are the questions that should be asked.

The Hon. JOHN GRAHAM: We have been told it is less rigorous than that of Victoria and you are saying on the ground there are examples that you are aware of—without naming them—that would lead you to question whether it is all in order as to assessing the risk rigorously.

Mr DRURY: Yes. I would suggest that some of the buildings that have flammable cladding on them at times would be high risk but obviously not all the time. I suppose one thing that I would like to make a point on this is that we are talking about high-rise buildings here. Flammable cladding for a firefighter on a three-storey walk-up or a service station or anything is a problem. The reality is that, sure, we have these big high-rise buildings and they look really dramatic on TV but it is your three-storey unit block that is going to lock in a whole bunch of people as well. Hopefully, they can get out. Obviously, the distance is not as bad but at night, people are asleep and you already have a building that is half going. That is the problem that firefighters are going to have, not just on high-risk buildings but every building with cladding.

The Hon. TREVOR KHAN: I will ask a question that flows on from that. I do not know where I have heard it but my understanding is that the time that it takes for a building to catch fire now is dramatically shorter than it was 20 years ago. That is because of the products—I am talking in terms of unit blocks but in each of the units themselves—the flammability of the stuff that is used in it and the toxicity of the gas that is released is far greater than it used to be. Is that right?

Mr DRURY: Yes, correct.

The Hon. TREVOR KHAN: You are looking at fires that burn quicker, create more toxic chemicals in the process, and potentially burn hotter. Is that the general environment?

Mr DRURY: Yes, or they can get hotter. If you look at the Melbourne fire at Docklands, from memory, that was started by someone not putting out a cigarette into an ice cream bucket that caught fire and lit the planning. That is how little you need for a significant damage to that building.

The CHAIR: Buildings should be designed so that if an ice cream container catches on fire in the apartment, the whole thing does not become an inferno.

Mr DRURY: That is right.

The CHAIR: Yet, we cannot be certain of even that basic build safety.

Mr DRURY: I suppose if you go back 20 years or 30 years, we all had hardwood timber chairs, lounges, beds and all this sort of stuff. Now we have wonderful plastic furniture's on everything—a cheaper construction. Plywood is generally used now or medium-density fibreboard [MDF]. There are a whole bunch of products now that are, sure, fit for purpose and a lot cheaper in a lot of ways, but they certainly burn well.

The Hon. COURTNEY HOUSSOS: I come back to the question of resourcing. We heard from Local Government NSW this morning that obviously there has been an initial inspection regime. We have raised concerns around that inspection regime but as these new products come online—Biowood, laminate cladding, whatever the next one might be—there may actually be a need to go back and reinspect buildings because there is no register that is actually being kept. In terms of a resourcing perspective, how is Fire and Rescue NSW placed to start that process over again?

Mr DRURY: At the moment we are stretched thin. Obviously, with the current bushfires, we have multiple strike teams out in the field. On the hotter days and the more catastrophic days, we then spread the network in the metro even thinner. I suppose to then resource our fire safety division, we do not have those resources at the moment, and it does not look like we will be able to resource that for the next three to four months depending on the fire season. But I do not think it actually solves the problem. We really need to be resourcing our fire safety division with some standalone staff. Like I said, we could double, if not triple, that division. For

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some comfort for the Government, it actually makes money because it obviously charges developers for each one of these initial fire safety reports. So it actually does cover its own cost, but you obviously get a safer community and safer buildings.

The Hon. JOHN GRAHAM: I will ask about the government submission. We will put this to Fire and Rescue. The government submission has the figures about how many visual inspections have taken place. As at July, Fire and Rescue had gone out and visually inspected 4,019 buildings. We have had some other evidence though that often it is hard with these products to tell just with a visual inspection. You need to do the destructive testing at a laboratory to really tell. I wondered if you had any view about that extensive visual testing that has gone on. How much is that going to be able to actually get to the bottom of this issue or do you really need to be doing additional testing in more detail to determine whether there is a risk in a building?

Mr DRURY: I cannot tell the two different types of cladding apart. The guys in my fire safety division, the firefighters in there, can—in most cases. To be 100 per cent sure, you need to test. But again you need trained people to do that. Again, I am not sure if that is occurring in the way that it should.

Ms POLITES: You also need training in whether or not these products have been installed correctly. It is not just about the problem of cladding but it is actually about installation process. You need the expertise to be able to assess whether the installation is correct as well.

The Hon. TREVOR KHAN: You talk in terms of installation but the use of a small amount of cladding—I used the example of verandahs or balconies, which might be one thing, but if you have tens of metres of it going up the side of a building, that is creating a whole different set of hazards. It is not simply a question of fixing. It is the quantum of this stuff.

Mr DRURY: Yes, it is the fire spread for us. It is not necessarily always about quantity; it is about how many continuous levels that it goes up a building.

The Hon. TREVOR KHAN: That is why I used the example of balconies as opposed to—

Mr DRURY: That is a good example. If you have a strip a metre wide but it goes up 13 floors—

The Hon. TREVOR KHAN: That is problematic.

Mr DRURY: —it becomes very problematic.

The CHAIR: There are some other composite materials more so for internal fit-outs that can be a composite of perhaps two laminates, which may have a polystyrene centre in them, which, as I understand—if you go into building where a fire has started, because the polystyrene centre may just catch fire—can run tens of meters ahead of where you can actually see the fire and can lead to very rapid spread and highly unpredictable fire behaviour. Is that right?

Mr DRURY: Yes. We found an issue with what they call sandwich panelling, which they use in cool rooms and spray booths for auto repair shops, where it is basically just chock-full of foam. You get the fire inside of that and it travels through. Now there is a new product, from my understanding, which is very similar to the cladding, where it does the same thing. It actually travels through and does not actually—because it is a chemical burn rather than an absolute need for oxygen. It travels through the panel and then pops out somewhere else. All these materials are problematic for firefighting. I think the other question of Ms Houssos around resourcing is that when you have one of these fires, you did what we call a weight of attack, which means we need more firefighters at the start. A lot of these buildings that have cladding are in built-up areas. What we find at the moment is that five, 10, 15 minutes after a fire there is a gridlock, which means we cannot get trucks in. City of Sydney, fortunately but unfortunately, is the only one that actually has extra firefighters on the truck for that risk. But to move forward and deal with this risk going into the future, I would suggest we are going to need more stations that have more firefighters on the truck just for that weight of attack. Parramatta is the other biggest.

The CHAIR: Chatswood?

Mr DRURY: Chatswood, places like that.

The CHAIR: North Sydney. Mr Drury, Ms Polites, thank you so much for your evidence today. On behalf of the Committee, I also thank your members for the work they are doing and will no doubt continue to do over the summer. We genuinely appreciate that.

Mr DRURY: Cheers. Thank you.

(The witnesses withdrew.)

(Luncheon adjournment)

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CHRIS DUGGAN, NSW President, Strata Community Association NSW, sworn and examined

PHILIP GALL, Chair, Owners Corporation Network, on former affirmation

JANE HEARN, Vice Chair, Owners Corporation Network, on former affirmation

LEO PATTERSON ROSS, Senior Policy Officer, Tenants' Union of NSW, affirmed and examined

The CHAIR: Welcome to the afternoon session of the inquiry into the regulation of building standards, building quality and building disputes. This afternoon's hearing will commence with evidence from the Strata Community Association NSW, the Owners Corporation Network and the Tenants' Union of NSW. I welcome Mr Duggan, Mr Gall, Ms Hearn and Mr Patterson Ross. Thank you all for your time and for coming here to give evidence this afternoon. I invite each organisation to give a brief opening.

Mr DUGGAN: Strata Community Association [SCA] NSW is the peak body for strata and community title management in New South Wales. Our membership includes strata managers, support staff, strata owners and committee members and suppliers of professional services and products to the industry. SCA NSW has 3,200 members who help oversee, advise and manage a combined property portfolio representing more than 75 per cent of strata lots in New South Wales. SCA NSW proudly fulfils the dual roles of a professional institute and a consumer advocate. We support any initiatives to assist strata consumers, including a review of any initiatives that seek to introduce better protections and measures that assist owners to deal with the complexities and issues currently impacting the apartment sector. Our membership is at the coalface of addressing the combustible cladding crisis and has been thrust into the role of professional advisor to owners' corporations. We are there to assist navigate the ever-increasing fixity and challenges this issue presents. Thank you.

The CHAIR: Thank you, Mr Duggan. Mr Gall and Ms Hearn?

Mr GALL: Thank you, Chair and Committee members, for the opportunity to appear before you. You already have my name; I am Philip Gall, the Chairman of the Owners Corporation Network. With me today is deputy chair Jane Hearn. Our association is an association of apartment owners and owners' corporations. We do not include strata managers or other people. We are owners only and we are a non-profit organisation with a focus on consumer protection. We support Recommendation 3 of the Committee's report:

That the NSW Government act now to address the issue of flammable cladding.

In particular, we support the Committee's position that a more centralised approach to the issue of flammable cladding in New South Wales buildings is needed, including a financial support package to assist buildings to remove and rectify it as a matter of urgency. We also note the Committee's references to the initiatives in Victoria on flammable cladding, particularly those aimed at helping, communicating and supporting owners' corporations and their service providers to deal with this issue. An excessive and unreasonable burden has been imposed on many apartment owners and their strata committees as a result of building safety defects like flammable cladding. This burden is not of their making. The Australian Building Code has a minimum standard and meeting the code does not guarantee safe homes, even though I heard this morning it was supposed to do just that. The design and construct model allows builders to deal, with a great deal of discretion, with the end of a global supply chain of unsafe products circulating in the Australian market.

The Strata Schemes Management Act is crafted on the assumption that new apartment buildings are safe and relatively cost free when certified for occupation. Instead, far too many new schemes are confronted with large, complex and expensive rectification projects from day one that would challenge the most experienced and capable project managers. Funding these projects almost always involves either complex legal claims on third parties or imposing significant new compulsory levies on unsuspecting homeowners. This challenge is often beyond the skills and financial capability of the owners' corporation and also often the strata managers who support those schemes. Indeed, in some instances some strata managers are appointed by the developers and are somewhat conflicted. That is not a reflection as a general statement to say they misbehave; they are in that position that they can be conflicted.

Many people buying apartments are retirees living on fixed incomes, first home owners relying on first home owner grants to get a foothold in the housing market, essential workers on modest incomes or people without English as their first language. I have had experience myself with a strata community just like that. Every rectification project is unique, picking up some of the comments earlier today. The nature and extent of the problem and the solution varies from building to building. The recent decision by the NSW Civil and Administrative Tribunal [NCAT] about Biowood cladding as a major defect illustrates the complexity of the problem. Driving ordinary people, under threat of prosecution, to expensive solutions without proper assistance

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is to deprive them of the opportunity of the most cost-effective outcome. This is not a substitute for leadership and coordination.

We are in the middle of a crisis of confidence in both apartment construction and apartment living right now, despite the importance of strata property for meeting housing needs of a growing population. It follows that a high-profile safety issue like flammable cladding needs leadership and a high-profile response that is demonstrably aimed at helping people. This is part of a wider issue of restoring confidence in the strata sector and the construction industry. Governments have a duty to help ensure people are safe in their homes. Another major cladding fire like the Lacrosse fire in Melbourne not only could cost lives but also would further shatter the confidence in apartment living and the construction industry. It also shatters people's confidence in our elected officials, who are expected to protect them and their interests. What is more fundamental than being safe in your own home?

Financial assistance does not have to overburden the State or the State budget to be effective. It can include low-interest loans, assistance with legal costs to recover costs from builders and manufacturers, payment for technical investigations and financial guarantees. There is also a place for special measures for owners facing severe hardship. Temporary mortgage or rates relief can also help owners meet special levies. The Commonwealth could consider making a special levy for defect rectification and an income tax deduction, for example. Non-financial assistance is equally important. This could include detailed guides to owners' corporations on how to deal with the cladding problem. Legal action by our consumer protection regulator could be an option. A panel or a register of properly qualified experts and materials—we heard today about testing: a whitelist of testing people that people could go to. An independent certification of rectification projects is possible. We could reduce insurance premiums and make things insurable.

There is a lot of common sense in having a dedicated authority set up with a charter and a budget to provide this assistance to strata owners directly. Done properly, this provides a management structure and a critical mass of expertise to deliver cost-effective assistance program linked to timely remediation of unsafe buildings. It would provide a central port of call for owners' corporations—the people responsible for these buildings in the end; the people you heard from this morning—local councils and new buyers and it would greatly improve the transparency around the issue. The authority would report to Parliament and it could report regularly to the Public Accountability Committee, ensuring there is democratic accountability. The Commonwealth Government has a role—we have heard that this morning too—in assisting apartment owners. The New South Wales Government probably should join with Victoria and other State governments to press the Commonwealth to assist both financially and with improved controls and testing to reduce the prevalence of unsafe products in the market.

Finally, all policy programs involving residential strata schemes need effective communication channels. In particular with each strata scheme, with each owners corporation, it seems to be lacking in the current framework. It is actually not possible at the moment for a government to communicate directly with owners corporations and I think that is a big gap. However, it would certainly help if there was an up-to-date register of the basic details of each and every strata scheme in New South Wales that included, among other things, the contact details of the secretary of the owners corporation. That does not exist yet. Thank you anyway for the opportunity to make a short statement—a longish short statement—on our position. I certainly welcome questions. Thanks very much.

The CHAIR: Thanks, Mr Gall.

Mr PATTERSON ROSS: Thank you, Chair, and thanks to the Committee for the invitation to appear today. The Tenants' Union is the peak body representing tenants' interests in New South Wales. We have done so since 1976. We are a specialist community legal centre and we are a resource service for a network of tenants advice services that give advice and assistance to more than 25,000 people a year across the State. We have a keen interest in ensuring that people who rent their homes are treated equitably and respectfully in their homes. Our interest and expertise in this particular area focuses on the information available to the people who make informed decisions about the premises they are about to live in as well as the experiences of people who rent once something goes wrong in their homes.

So when a building has had some quality issue—whether it is cladding, which is the focus today, or stability—tenants have faced two big issues. The first is that it can be very difficult to get reliable information about what is happening in their building. Tenants are generally excluded from strata meetings where the information is discussed, particularly where it has financial implications. Governments have generally relied upon the landlord or their agent to deal fairly with the tenants in letting them know what is happening and what their options are. In our experience this is not a reasonable expectation.

I acknowledge that the Government's approach here is actually improving, particularly in relation to the buildings with cladding issues. They have started contacting people using bond records, which means people are

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getting informed that there may be an issue about the building much, much earlier and in a much more reliable fashion. But on other building quality issues tenants are still likely to be left in the dark. This means people are often left to rely on media reports and rumours from neighbours.

The second issue that many tenants have faced is that if their home becomes uninhabitable they actually incur significant financial costs with very little assistance. Tenants are generally entitled to a reduction in their rent, possibly to zero, but this does not cover moving costs or extra costs like food or replacement of belongings. The experience at Opal was that the developer did start contributing to those costs without compulsion and immediately multiple landlords began trying to claim that money as rent for uninhabitable premises. And some of those cases went on for six, seven, eight months.

We recommend that where homes become uninhabitable in instances where building standards are at fault, whether that is cladding or other issues, occupants should be given greater temporary support from government, with the intention to recoup this money from the responsible people, if that becomes practical, once the immediate crisis has passed. Importantly, tenants living in affected buildings also have to have access to independent advice and advocacy services so that they can understand their position, receive quality advice and evaluate their options.

In New South Wales, however, tenants advice and advocacy services have not had a funding increase in more than 17 years, despite the number of tenants and these kinds of issues increasing. The number of tenants has increased by 50 per cent over that time. This has put real pressure on advocates' ability to advise people at an early stage, which would prevent further and more complicated litigation down the line, as well as the assistance at crisis points. When people make decisions without sufficient advice it can cost them severely further down the line. Even though tenants are more flexible in their living arrangements, they can move more easily, there is still significant financial burden that can be placed upon them. So it is important that people have access to independent services that can frankly and expertly explore their personal situation. Thank you.

The CHAIR: Thank you all for your opening submissions.

The Hon. JOHN GRAHAM: Obviously we are talking about a range of issues—and some of you have given evidence here before—in your area. Would you agree, though, that this cladding issue that we are focusing on today is probably the most urgent, given the public safety issues involved?

Mr GALL: It is the most obvious. Fire safety generally is an important issue, I think because of the fact that you can see visual pictures of cladding going up buildings and it is a terrifying thing to witness. But to hear the people from the unions talk about having to divert resources from other vital fire safety areas to deal with cladding is troubling. In terms of the wider defect issues, the implications for owners are very parallel no matter what the issue is, if it is waterproofing or structural or whatever.

The Hon. JOHN GRAHAM: Understood.

The CHAIR: But waterproofing issues are unlikely to lead to loss of life. I know that it is visually quite graphic.

The Hon. TREVOR KHAN: It can be more than visual.

The CHAIR: But it is also the risk of loss of life. We have seen loss of life.

Mr GALL: Public safety is paramount, Chairman. Yes.

The CHAIR: And I think that is why the Hon. John Graham is putting to you that maybe flammable cladding is the most urgent. Do any of the rest of you have any views about it being the most urgent issue?

Mr DUGGAN: No. We would agree that flammable cladding is the most critical issue in terms of the timeliness of rectification, understanding and, obviously, removal. But that is not losing sight of the economic and emotional impact the broader defect issues have on owners. I think that cannot be lost as part of this discussion.

The CHAIR: Absolutely.

The Hon. JOHN GRAHAM: Agreed.

The CHAIR: Mr Patterson Ross, from a tenant's perspective?

Mr PATTERSON ROSS: Yes. I think I would agree. Cladding is the thing that is front of most people's minds. Obviously the Opal and Mascot towers, if they had been more unstable and actually fallen down then quite possibly that would have changed. But I think that is an extreme end of the defects. In terms of the number of people affected, clearly cladding is the thing that looms largest in people's minds.

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The Hon. JOHN GRAHAM: And then we took some quite affecting evidence this morning from a couple of individual properties about how difficult it is to know what products to use, know what the risk is on the building or even know how to rectify it. They came and said they were worried. They knew all about this issue; they were in the middle of it. They were worried about repeating it by rectifying it in a way that got them back in the cycle where once again they were left with a product that then had to be removed down the track. Do you agree with that evidence that was put to the Committee this morning about the lack of guidance here?

Mr GALL: I have more examples right here in front of me.

The Hon. JOHN GRAHAM: Feel free to provide them.

Mr GALL: One of those presenters today was one of our members. I have another example here from a building which is a four-storey apartment block. I will read the points that he said: "An occupancy certificate was issued. They had Kingspan steel composite cladding installed, approved by the first certifying authority. The interim compliance reports from the fire engineer nominated by the strata manager certified the cladding is not flammable, the final compliance report issued by the same fire engineers determining that the cladding was noncompliant after the event."

The Hon. COURTNEY HOUSSOS: Sorry, so they actually rectified?

Mr GALL: They are now in a quandary. I will give another example: "The final draft was sent to Sutherland Shire Council by the strata manager. It was challenged. When challenged, the fire engineer states that the company's professional indemnity insurer had sent them a circular advising caution in their recommendations. The composite is advised as non-flammable and therefore outside the scope of the legislation. The strata manager has several buildings with this cladding in other council areas." So this example is in other places.

The Hon. TREVOR KHAN: Are you able to give us that document that you are reading off in a de-identified form, seeing as we are trying to be a bit careful about that?

Mr GALL: Yes, I can do that. No problem. That is fine. He is in the same position as the person this morning. There is a builder involved. It is a small building. They are not getting a lot of joy out of the builder. They are forced into a situation where they, as a small building and a small number—I think it is 13 lots—have to pursue the builder. The litigation is more expensive than the thing. That is one example. I have another example here from one of our big buildings who went through the full process. They were fortunate they had a senior engineering guy who was actually very committed and he took them through the whole process. Originally it was a \$6 million project. By going through a proper process and not being pushed and driven hard, and to go through a lengthy process over 18 months, they were able to reduce that cost to half and come up with a satisfactory solution. If you put a burden on some of these smaller buildings to get things done quickly, you are forcing them into sub-optimal outcomes and possibly having to re-do it again because the products they use are not right.

The Hon. JOHN GRAHAM: Where do you go for help or to get advice at the moment on some of these issues: the products, the risks and the ways to rectify them?

The CHAIR: Mr Duggan, why don't we start with you? You represent the people that owners' corporations look to. They go to your members for advice. Where are your members going to get critical information to make these properties safe?

The Hon. COURTNEY HOUSSOS: Can I ask a first question? How equipped do your managers feel?

The CHAIR: We will ask the questions in two sections. Where do your members go to find the critical information to help their clients?

Mr DUGGAN: This underpins just how complex this issue is and how much it is evolving at a breakneck speed. The Government, experts, advisors, strata management and the public are all trying to come to grips with this. We have expert advisors, who are consultants and lawyers. These types of issues require a broad spectrum of understanding and the first thing you need to understand is: What are the legal consequences and what actions are available to the building in order to pursue a liable party for actions of recovery? There is a heavy reliance on the legal fraternity to provide that advice. There is a heavy reliance on expert consultants, whether that be testing consultants, engineers, fire assessors or other consultants who may be required from time to time. Generally there is a need for much broader awareness. But I would underpin that with the statement that only last week we saw a new product be identified as potentially non-compliant. Therefore, the need to upskill is occurring at a greater speed than the market is accustomed to.

The CHAIR: In that list of various places you go to for assistance, at no point did you mention Fair Trading, the New South Wales Government or the Commonwealth Government.

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Mr DUGGAN: They are not experts I would approach in terms of specific advice on specific buildings. They advise on process in terms of the best way forward. Fair Trading has a number of resources available online, but we caution that that needs to be complemented with expert advice specifically around the building, the cladding affected in that building and the actions available. It is a complementary process.

The CHAIR: In terms of getting consultants on board, earlier we heard from the Insurance Council of Australia that its members, for solid commercial reasons, are not offering professional indemnity [PI] coverage to consultants to write the reports that your members' clients will need. Have you found it to be a difficulty in terms of obtaining independent experts who have got the insurance coverage and are willing to put their hand up and write the report?

Mr DUGGAN: It is becoming more challenging to find consultants who are willing to give advice, particularly third-party peer reviews on the assessment of an alternative solution or a deemed to satisfy solution. We are finding that there is more of a conservative outlook in the way they assess the fire suitability of those products.

The Hon. TREVOR KHAN: Can you explain what you just said?

Mr DUGGAN: Our understanding is that the PI insurance market has been tightened around the risks around third-party reviews or peer reviews of whether a product is suitable and is a compliant product. Due to that uncertainty we are seeing less people put up their hands to do those third-party reviews. Whether it is because of their PI restraints we do not know. We are certainly seeing a more limited stock of advisors available. And we are seeing a lean towards more conservative assessments. That goes to the point of the uncertainty of the situation around what products are and are not compliant.

The Hon. JOHN GRAHAM: How much is it slowing things down by having less people do that work?

Mr DUGGAN: It is certainly creating a bottle stop because it all needs to go through that particular consultant or peer review process. We are finding it very difficult in some cases to find qualified parties and then multiple qualified parties. Capacity on an expertise basis is an issue.

The Hon. TREVOR KHAN: Is a more conservative assessment more likely to say that cladding has to be removed and replaced?

The CHAIR: Every single bit of it.

Mr DUGGAN: We are seeing that they are more likely to err on the side of caution, absolutely.

The CHAIR: You can see why, if they have not got insurance coverage and one of the risks is flammable cladding, their report would say that every single bit of it needs to be removed. But that is just passing the burden on to owners. Is that your experience?

Mr DUGGAN: Our experience is that it is a situation where there are probably not enough resources in the marketplace to deal with the complexity and volume of issues that are currently before us.

The Hon. SCOTT FARLOW: In terms of the resources in the market place, do you mean the assessors or the expertise?

Mr DUGGAN: The third-party engineers who are providing independent assessment on the suitability of the cladding products.

Mr GALL: It does ultimately fall on the owners. At the end of the chain it is the owners who carry the cost for all of this. If you have a bunch of conservative decision makers all the way down the line, you are creating higher costs and more pressure to rapidly solve problems that take time to sort out. The owners' corporation I mentioned earlier was able to—because it is a big building with lots of resources—spend time, go through the process and do a lot that a 13-lot building could not do. Because of that they were able to reduce the costs of that project by half of what of the original estimate was and come up with a satisfactory solution. Small buildings cannot do that. To have fire orders served on them out of a conservative framework to get something done in a hurry just forces them to do something that may not be necessary. Also, doing something in a hurry to make the building safe creates much higher costs per lot.

The CHAIR: The Victorian Building Authority has a panel of experts who address risk and remediation reports. That panel of experts can write the reports for buildings. Would such a mechanism be useful or necessary in New South Wales given these bottlenecks?

Mr DUGGAN: Absolutely. I think the key here is clarity as to who an expert is, what they are assessing against in terms of the criteria and who an owners' corporation and their advisors—which includes the strata

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management sector—should rely on. That is what is missing in this piece. That need for clarity is underpinned by the fact that just last week another product got added into the potentially non-compliant risk category. That makes it very difficult for any advisor to provide clarity.

Mr GALL: One of the recommendations in the Victorian report states, "If rectification is to be achieved through partial removal of cladding or a performance solution, that solution should be independently approved by the Building Appeals Board." That is a board set up by the Victorian Government to remove that uncertainty. That gives you the opportunity to come up with solutions that are cost effective.

Ms HEARN: That seems like a far more efficient way to proceed than the ad hoc, unmanaged way that is occurring now.

The Hon. COURTNEY HOUSSOS: Mr Patterson Ross, I have a couple of questions around the notification of tenants. This is something that the Labor Opposition has pursued not so much in this inquiry but also through the budget estimates process. How would you characterise the notification process as it currently stands and how has it worked previously in terms of tenants?

Mr PATTERSON ROSS: On the cladding issue in particular and the asbestos register as a side issue, things are getting better. With the bond board data that I mentioned at beginning, there was a general mail out in November of this year. Subsequently when a building that has been identified as having a problem and the bond changes in that building the tenants and new tenant will get a notice. That is very useful because it gets around the communication through the owners' corporation and through the landlord, which was, frankly, very ineffective. That had been what people had relied on for a long time. I understand that there was a general mail out in 2017 as well, but there was a gap there of about 18 months where people would not have known about any change unless the owners' corporation was particularly conscientious and was letting people know. I am sure some were, but others were not.

The other issue was that there were some social housing properties on the register. I am not sure where their assessments are up to, but they have an entirely different set up. We cannot rely on the Strata Schemes Management Act to convey that information. That is another element. There was at least a handful of those buildings. I am not sure how many are affected, particularly by the Biowood. We are keen to see tenants be notified directly from government and that information is available for tenants to access themselves if they feel uncertain. It should go both ways. That would be very useful, even if it is just to put people's minds at rest that their building has not been flagged, has been assessed and found to be safe or is in the process of being assessed. I think that kind of assurance is what people are looking for from that notice.

People want to make informed decisions about the place they are about to move into. They need to have that information at a reasonable time. At the moment New South Wales has a disclosures mechanism that landlords have to disclose information so as to not mislead someone into entering into an agreement. But that disclosure happens at the microsecond before they sign the tenancy agreement. You have already applied, you have already booked your removalist and you have already given notice at your old place, and then you get told that there is some issue with the property. It is a very ineffective disclosure arrangement. We think they should come much earlier; probably at the application stage.

The Hon. COURTNEY HOUSSOS: Or perhaps as someone is inspecting a property, when you are opening the door and having a look through it and deciding whether this is the place for you, to be able to have information that is the full picture of the property that you are inspecting.

Mr PATTERSON ROSS: Yes, but people need to know the right questions to ask and often that does not happen. If you ask, "Has there been any problem with this property?" They might talk about the property itself and they might not talk about the common area or the external cladding. There is fuzziness in some of those questions.

The CHAIR: But although it is better to be notified when the bond comes out, I assume that is when you have lodged your bond, so you have probably moved in and you get the notification afterwards.

Mr PATTERSON ROSS: Yes.

The CHAIR: It is a very second-rate solution because you are committed to the property by that point.

Mr PATTERSON ROSS: Yes.

The Hon. TREVOR KHAN: You are more than committed. You are in it.

Mr PATTERSON ROSS: Yes.

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The Hon. TREVOR KHAN: I have a question that goes to disclosure, but a slightly different issue of disclosure. There is an issue that is arising before this Parliament at the present time relating to the cladding register. I asked this morning—obviously some of you either saw it here, maybe on the television if you were desperate or on the computer. My question relates to the release of that cladding register now. I got a split decision this morning when I asked the question. What is your view on the release of the data, including the addresses on that cladding register?

Mr DUGGAN: We have caution around the release of that register and we would recommend that it be considered in terms of the content and the context of what its awareness in the public domain would be. We would advocate that there be a full need for disclosure to any affected stakeholders, whether they be owners, tenants or any third party in terms of government and others. But we have concerns around the premature publication of that register and the impact, probably the enduring impact, on the value of those properties for some owners who may well have registered their scheme as a precaution. We have been made aware of some owners who have now found that their building is in fact compliant, but they were still on the register because it is a point-of-time registration.

We think there is still more work to be done to clarify and whittled down that list until it is a defined list of affected properties. Our final footnote would be what is the public benefit of that publication outside of putting out a marketing list for trades, suppliers and others to target these buildings? If there is public awareness around needing to get information to those buildings, I think there are better ways to access that.

The Hon. MATTHEW MASON-COX: What about if it is a prospective purchaser?

The Hon. TREVOR KHAN: I was going to ask that, but on that question can we find out the view of the other witnesses?

Mr GALL: It comes back to the objectives and it comes back to the risks. Clearly if government is going to be more accountable and you are going to be able to monitor the progress, you probably need more disclosure than there is at the moment. Does that mean you need to name names and name buildings? Probably not. There is a question mark there. Is it about making sure that all of the affected parties know that they are in a building that is—again, is releasing the list the best way to do that, or are there other ways? I think it comes back to what are the objectives. We are very cautious about saying "release a list" when you have people talking about fire, fire hazards and terrorism and stuff like that if you do not need to do it. But we are also very keen on proper accountability and transparency of the delivery of a very important program. If the list needs to be expanded and more information made public to achieve that, then good. So it comes back to the objectives.

Ms HEARN: I would just add that we would not be advocating publication to the world, because I think we would certainly take the advice of our fire professionals. You do not want to put people at risk. There would be no public benefit in that at all, I do not think. Certainly, if you are a prospective purchaser, I think you have a right to know. You can obtain that through the strata report.

The Hon. TREVOR KHAN: But, Ms Hearn, you might have heard me this morning. Taking into account it is a long time since I have done it, not every prospective purchaser does a strata inspection—foolishly.

Ms HEARN: That is quite right, which might raise another issue about whether or not strata reports should be something that the vendor provides. I think that is the position in the ACT, sending property inspections. That might be another aspect of policy to look at as a way of ensuring there is disclosure on a number of fronts.

The Hon. TREVOR KHAN: Sure, but there could also be a requirement to simply disclose, for instance, if you are on the register as a direct disclosure obligation.

Ms HEARN: Yes. But then, of course, we take Mr Duggan's point that if there has been oversubscription or over registration because people are concerned about prosecution, which we understand—I mean, I think the original list was something like 4,000 and they have narrowed that list down—then you want to have confidence in the integrity of the information on that register.

Mr PATTERSON ROSS: We would be supportive of more information and more transparency around this issue. I think it does have to ensure that people can know whether the building they are moving at looking into, or that they are currently living in, has some risk or may be impacted. A common problem that comes up for people in a range of situations is that they move in and no-one discloses that actually there was going to be building work on the outside of the building for the next six months and they were not going to get any sleep or they could not work from home. These are relevant decisions to someone moving in. It would not be good public policy to hide that. The balance, then, is at what level it should be public?

Is it something that people should have disclosed to them in an active way, should they have to go chasing information? A public register on a government website probably would be relied on. A tenant would be

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sufficiently motivated to find the information. I think there is a balance there. I take the point that we need relevant information. So, if it is a building that has not been assessed and is merely there is a precaution, perhaps that does not need to be disclosed, but I think what we would be interested in is what is the process there. If it is going to be subscribed but no-one is having a look at it, I suspect that is actually an issue that should be addressed.

If we can say, "Look, you have been listed. After six months you have to have done an assessment"—and I know that there is a shortage of appropriate expertise—"and you have to be able to tell people what is happening in this building in a reasonable time frame. These things should be disclosed." I do not see any reason not to name names because you are asking someone about the building that they want to move into or the building that they are living in. They know what building it is. I do not think there is a need to be coy about that.

The CHAIR: We have spoken about notification of tenants, but what about nursing homes, hospitals, shopping centres, cinemas or theatres? You cannot possibly notify all of the people coming or going into those various properties. The only possible way that information could be made public would be by putting it on a public register, would it not? Do some of you form the view that people going to a cinema, theatre or shopping centre should not have a right to know?

Mr GALL: Chairman, I was answering from the perspective from which we look at the world and the members that we are talking about. You have really just nailed the essence of this. What is the purpose of releasing the information and in what form? If there is a good public policy argument, which goes beyond strata buildings, make the case because I think it is a very different case.

Ms HEARN: Hospitals are an example where you have people in a very vulnerable position. Evacuating a hospital or a nursing home would be extraordinarily difficult to do. I think as a member of the public I would want to know.

The CHAIR: Yet we have had a major Sydney hospital, the Sydney Adventist Hospital in north-west Sydney, which has had flammable cladding on it, surrounded by bushfire prone land and the first that the patients and staff and visitors found out about it was when a circular was issued by the proprietor there more than 18 months after they first became aware of the problem. That is not acceptable, is it?

Ms HEARN: Speaking as a member of the public, no, I do not think it is.

Mr GALL: Speaking as a member of the public, I would agree.

Mr PATTERSON ROSS: I think this really applies to the residential buildings as well. I have struggled with the assessment of the terrorism and arson threat taken seriously, but if that is a legitimate threat that people are very worried about, what that suggests to me is that there should be great haste in rectifying these buildings and that the cost of that should be borne and then recovered where it is possible, rather than spending 18 months thinking about doing something about it. I think that applies to residential buildings as much as hospitals and cinemas.

The CHAIR: If Fire and Rescue can do a visual survey of 4,000-odd buildings and identify flammable cladding, it would not be impossible for third-party agents, for some other third party, to do a visual inspection and find the properties too.

Mr PATTERSON ROSS: I imagine so.

The Hon. SCOTT FARLOW: I want to pick up on this point about haste. Mr Gall, you were outlining an issue before where the cost comes onto your members and owners because someone would make a conservative assessment effectively saying, "We cannot make an assessment as to whether this is safe or not so you should therefore remove the flammable cladding". Is there a need in this process to be able to make sure we get it right so that this cost is not unfairly worn by people who do not necessarily need to pay for it because it is not flammable?

Mr GALL: Yes, absolutely. Again, the owners corporations are in a very difficult position to make that assessment. They need help. Particularly the smaller buildings. They need help not just in identifying the problem but also in the project management of what are complex projects. These are often small groups of families living in blocks of 30; retirees, new homeowners, workers and so on trying to deal with these issues and manage complex legal claims—

The Hon. COURTNEY HOUSSOS: In their spare time.

Mr GALL: In their spare time. And they do not get the help from professionals in the smaller buildings that they do in the bigger buildings. Let us make that very clear. They cannot afford that either. It is a different role in the smaller buildings. On that point, the Victorian recommendations again are interesting in this regard. They talk about establishing a dedicated authority to support owners and occupants. That is a very different focus

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to what we have seen so far in New South Wales, which is more about passing it to the consent authorities and dealing with the information to the tenants, which are very important people of course. They talk about providing that support through providing funding for rectification works. We talked about how you might do that in a cost-effective way. Providing project management support. If there was somewhere where a small scheme like we had here this morning and the other example you could go to to get assistance from government to manage these projects, assistance in managing the legal claims—Chris Duggan's people can provide it again for the bigger buildings but the strata managers are looking after the small ones.

The CHAIR: It is hard to manage a project if you do not know what you have to do to rectify it. We are not even at first base in New South Wales, are we?

Mr GALL: That is part of the project management issue because the small buildings need to get to that place. Having a whitelist of this and whitelist of that would be a big help for the small buildings, but it would also be a help finding the experts from an authority, something that states: Here is how you go about it. Here is a list of people who we trust et cetera. It would make a big difference to their ability to work through that.

The CHAIR: Mr Duggan, you said that one of the tasks that your members do is they pull together the panel of experts. You said you lean heavily on lawyers, but I assume you also get a fire safety engineer and will probably also need a builder or project manager or quantity surveyor to identify what the cost will be. Can you give an indication what sort of costs we are talking about to get the information and to understand what needs to be done?

Mr DUGGAN: Absolutely. If you go back one step, the first point of call in any identification process is to test the product. There is a consultant that typically provides a set of core samples that gets them off to a laboratory. We heard this morning what laboratories may or may not be qualified to do so. That process itself, depending on the number of samples taken, which can vary significantly based on the different types of cladding on the building from both a visual inspection and then any specifications they may have that have been handed across, but that can be several thousand dollars to \$10,000 in terms of the initial assessment phase. Then you move through—

The CHAIR: Can I stop you there.

Mr DUGGAN: Please.

The CHAIR: Is that required to be done by an accredited laboratory? Is there any actual legal requirement?

Mr DUGGAN: I am not familiar with that requirement.

The CHAIR: So largely your members are left to their own devices to work out who the best? I am not being critical of your members. They are being left to their own devices to source somebody to do that testing?

Mr DUGGAN: They will engage a third-party testing company that in turn will select a laboratory based on its experience that can provide the material.

The CHAIR: Okay, sorry to interrupt.

Mr DUGGAN: Following identification and assuming it is a positive identification for a non-compliant product, there is the whole suite of experts that get involved. There may be planners involved if there is a development application is required. There may be cost assessors required if they are required to pull together pricing. We also need to be mindful that owners corporations have compliance obligations under the Strata Schemes Management Act around multiple quotes and general meeting approvals. Then there is administrative oversight required through that process. The legal process shadows all of this because at that point in time hopefully you have identified a third party other than the owners who potentially can be liable to pay. You may well commence proceedings at that point in time and then you have a whole different suite of experts that have to bring a legal case into preparation. This is prior to any sort of funding requirement which is done into existing funds within the owners corporation, a special levy or alternative third-party funding which is available to strata plans.

The Hon. TREVOR KHAN: Two questions that arise from that description. Firstly, by that stage there would be a heck of a lot of notes in the body corporate records, would there not? A strata inspection would pick it up if a strata inspection is undertaken.

Mr DUGGAN: Absolutely.

The Hon. TREVOR KHAN: Having got the core sample and finding that it is potentially flammable or is flammable, at that point in time there would be a notification to the cladding register, is that right?

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Mr DUGGAN: That is right.

Mr GALL: With respect, Mr Duggan, to clarify that question: It goes beyond the actual material. It goes to how it is used in the building as well as to whether it is a high risk building.

The Hon. TREVOR KHAN: That I suppose is the question. Once you have the core sample back and it potentially identifies it as flammable, you potentially will not have had a fire engineer in to say it is or it is not an overall hazard to the building. I used the example of the balconies before as opposed to all over the side of the building.

Mr GALL: Good example.

The Hon. TREVOR KHAN: Once you have an indication that your cladding is potentially flammable—that is why I asked the question—would you be notifying it for inclusion on the cladding register at that point?

Mr GALL: You should declare yourself and then have a risk assessment done in my understanding of it.

Mr DUGGAN: That is correct. Can I just clarify: There is criteria under that particular piece of legislation that defines what external combustible cladding is. It was narrowed around aluminium composite panels in particular. Adding to that needed for clarity is the complexity that is overlaid now with alternative products now found to be non-compliant.

The CHAIR: There is the regulation that retrospectively said that cladding—which is aluminium composite of material cladding or similar—has been retrospectively declared to be a major defect. That is separate to whether or not that is the only cladding that should be assessed as flammable cladding. For the purposes of cladding being a major defect and deemed to be a major defect, the regulations provide that aluminium composite materials are deemed to be a major defect notwithstanding. I do not think it goes beyond that.

Mr DUGGAN: I was making reference specifically to the register and the requirement for registration on that register.

The CHAIR: So is only if it is aluminium composite materials?

Mr DUGGAN: There is a definition of external combustible cladding that includes for a number of styles and types of products.

The Hon. TREVOR KHAN: But if it is inclusive that may not be determinative. It may be a guide but not exhaustive.

Mr DUGGAN: Correct.

The CHAIR: Is your understanding that it is primarily focused on ACM?

Mr DUGGAN: Correct.

The Hon. COURTNEY HOUSSOS: There could be, for a prospective owner who is looking at purchasing a property that does have significant flammable cladding that is going to have a significant bill for rectification—

The Hon. TREVOR KHAN: It may.

The Hon. COURTNEY HOUSSOS: It may, but yet would it not appear on the register?

Mr DUGGAN: Correct. If that building was not on the register we would expect it to occur in the strata records and to be documented and to be available than for any conveyancing search. That comes back to your point that perhaps there has been some shortcomings in the conveyance process that does not obligate the need for a strata search for every property transaction.

The Hon. TREVOR KHAN: It is the strata inspection that will uncover—

The CHAIR: What about this scenario: A property is clad in Biowood. A core sample was done six months ago. It went off to a laboratory. It came back that it does not fit the definition of flammable cladding. It is not aluminium composite material and the report comes back and says that it is all clear. If you do a strata search of those minutes, you may find that trail of information and you may well purchase the property thinking that it is all good.

Mr DUGGAN: In that limited window now, between the awareness around this product and I assume further testing and investigation on those products, it may not be in the records.

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The Hon. TREVOR KHAN: But do you send it off for testing on the basis that it is an aluminium composite product or do you send it off for testing on the basis of its flammability?

Mr DUGGAN: I am by no means an expert in this regard but the assessors who attend a site determine whether it requires core hole sampling. They have a variety of measures based on visual inspections, based on code mark stamps, based on specifications and based on their experience to identify whether it does require further testing.

The Hon. COURTNEY HOUSSOS: But they do not have a standard from the New South Wales Government that says what they are assessing against, right?

Mr DUGGAN: I do not believe so.

The CHAIR: I could be wrong, but as I understand it the principle test to determine whether or not cladding is flammable whether or not the product complies with Australian Standard 5113 which is not about a core sample. It is about an eight square metres of cladding that is put on a structure and a fire is set underneath it to see how it deals with the fire. You cannot do that on a core sample, can you?

Mr DUGGAN: I would need to take that on notice. It is probably too technical for my understanding.

The Hon. TREVOR KHAN: What was your standard?

The CHAIR: AS 5113.

The Hon. TREVOR KHAN: What about AS 1530? Does that have to also be tested for? That is the combustibility standard.

The CHAIR: Yes.

The Hon. COURTNEY HOUSSOS: Mr Duggan, how many people have been through this actual process or how many of your members have been through the process?

Mr DUGGAN: To clarify, the process of registering a scheme or through to rectification of the cladding?

The Hon. COURTNEY HOUSSOS: At any point. How many have started the process and where are they—

Mr DUGGAN: Sure. As far as we are aware, most buildings in New South Wales have gone through the desktop review of whether they require registration. That occurred between the time that the legislation was introduced in November 2018 through to March 2019, or thereabouts, which was a four-month window. During that window there was a series of visual assessments and then follow-up destructive or core sample testing that occurred. It would be our expectation that most, if not all, strata portfolios would have gone through some level of assessment in that way. There were also other ways that buildings were identified, whether they be council, offices, fire brigades or insurance companies. If you would like, I would just like to touch very quickly on the fact that the insurance market has stepped the tempo in terms of its expectations for rectification and identification of combustible materials. Every building requires—

The Hon. TREVOR KHAN: Sorry, what does that mean?

Mr DUGGAN: It means that on an annual basis every building requires a disclosure about whether it has any combustible materials on it. So it is forcing the tempo on a regular basis to ensure that buildings are up to date with their assessment of their fire safety measures.

Mr GALL: It is also forcing the tempo on insurance costs as a result.

The Hon. TREVOR KHAN: Is it reflecting in cost or is it reflecting in availability of insurance?

Mr DUGGAN: Both.

The CHAIR: Can you give an indication of what the impact is, just on costs?

Mr DUGGAN: It is very difficult to give a single indication because there are broader issues impacting the insurance markets but there has certainly been an increase in buildings—if the building is affected. I think you heard earlier that there is a price premium or a risk rating that is applied to that and that is assuming that you can place that risk.

The CHAIR: What kind of premium are we talking about? A 25 per cent, 50 per cent, 100 per cent premium? What are your members reporting to you?

Mr DUGGAN: It does vary. It varies based on the mitigants in place, how much cladding—

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The Hon. TREVOR KHAN: Sorry, the—

The CHAIR: The mitigation.

Mr DUGGAN: Yes, the mitigants in place, whether the building has a plan, whether they are rectifying or whether they are in post- or pre-identification and the extent of that cladding. There are a number of measures there. Any sort of increase I have heard anecdotally is between 10 per cent and 50 per cent of that premium depending on the severity of impact.

The Hon. COURTNEY HOUSSOS: If someone does go through the process after the desktop review—there is an issue with some cladding, that is established and they do go through the tests—is it a test of flammability or a test of whether that product is banned? I think someone kind of touched on this before but I was not quite sure.

Mr DUGGAN: Which one is being used to determine—

The Hon. COURTNEY HOUSSOS: Yes, that is right. What is the determination?

Mr DUGGAN: I would have to take that on notice and refer back to the experts. The risk adverse approach, I imagine, is to ensure that it is non-combustible, that it complies with the aluminium composite panels 30 per cent criteria—although we are seeing that that is obviously being challenged around its applicability at all, and whether there is any other risk measure that is raised by a fire engineer.

The Hon. COURTNEY HOUSSOS: Is that then kept on file? Because what we have seen in the wake of the NCAT decision and then all these other sorts of products that concerns are being raised around—are records being kept? Are you advising your members or are you aware of people keeping records so that they can say, "We tested it. We went through the process. We know we have Biowood. We know we have laminate panels so we now know what we have"?

Mr DUGGAN: Certainly, records are being kept. To the extent that they could identify whether the particular material is Biowood, I am unsure.

The Hon. COURTNEY HOUSSOS: Are you able to take that on notice?

Mr DUGGAN: Absolutely.

The Hon. COURTNEY HOUSSOS: And come back with more information about whether we are going to have to go back to the start of the process? Are we going to have to start inspecting again every time we discover a new dangerous product?

Mr DUGGAN: I will take that on notice.

The CHAIR: We have run out of time but I will invite the panel to comment if they have any final thoughts or issues they think we have not addressed, before we move onto the next witnesses.

Mr GALL: Chairman, I will take the opportunity, briefly. The issue for us is that today we have talked a lot about—and I understand why—making sure we have all the buildings on the register that need to be there and whether we need to come back. But a big part of this from the owner's point of view is the whole process of doing the rectification. We get them on the list, we get to the point where they get told to do something and then they get left to do it on their own. If you read the material from the Government at the moment, that is where the process stops. It has identified one line: You have a problem, get it fixed. That involves getting consultants, it involves organising tenders, it involves getting projects underway and project management, it involves disruption to tenants, it involves costs, it involves a whole process—

The CHAIR: Finding a replacement product that you are not going to have to pull off in two years time.

Mr GALL: Exactly right. You get to the end of that. That is the bit where it says here, from Victoria, providing project management support means so much to the owners.

The Hon. COURTNEY HOUSSOS: Mr Gall, I want to ask one quick question. We received evidence this morning from Mr Mawjee. I think you may have been here for his evidence. Mr Mawjee said that their advice had been that they had limited legal recourse, even if they were within the defects period. Is that the advice that you are providing to your owners?

Mr GALL: I have suggested to him that he should talk to one of the litigation lawyers who we deal with. I do not think I am alone in that.

The Hon. SCOTT FARLOW: Just quickly on that point as well, are you familiar with the Design and Building Practitioners Bill that was before Parliament?

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Mr GALL: Yes.

The Hon. SCOTT FARLOW: What do you think the duty of care provisions would do in terms of addressing that issue?

The CHAIR: I would love to spend ages on the Design and Building Practitioners Bill but I think we have run out of time and it will probably open up a new can of worms.

The Hon. SCOTT FARLOW: Maybe on notice then.

The CHAIR: Yes, I think we can put that on notice.

Mr GALL: I am happy to answer that on notice. With pleasure.

The CHAIR: Mr Patterson Ross, did you have any final thoughts?

Mr PATTERSON ROSS: Very briefly—I do not want to open a can of worms. A lot of the consternation around the costs to owners and owners corporations, particularly from our perspective—for landlords and investors—is that they are not well regulated as a business provider for an essential service. We are talking about homes and it is something that people need just as much as electricity, water, food and so on. People are entering into the property "game"—as people call it—without the skills, without the appropriate mindset. They do not come into it viable with a cash reserve to be able to deal with issues like this and so I think that it is a very awkward spot for government to then move people along that continuum to being more viable and more professional in their approach. But it is probably a necessary move in order to really address the kinds of issues that we are hearing.

The CHAIR: Mr Duggan?

Mr DUGGAN: Just briefly, I think this highlights the vulnerability of owners throughout this process and the absolute need for certainty of process, product and outcome. That certainty would obviously hopefully restore confidence back to the apartment sector.

The CHAIR: On behalf of the Committee, thank you all for your time and your evidence today.

(The witnesses withdrew.)

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GREG EWING, Sydney Division General Manager, Engineers Australia, on former oath

SARNIA RUSBRIDGE, National Seminar Coordination Chair, Society for Fire Safety, Engineers Australia, affirmed and examined

EDMUND ANG, NSW Chapter Chair, Society for Fire Safety, Engineers Australia, sworn and examined

The CHAIR: I invite you to give a brief opening statement.

Mr EWING: I would like to give a brief opening statement. I know we have said this before and for those perhaps that have not listened to these proceedings: Engineers Australia has operated under a royal charter since 1938. Our royal charter was issued then by King George VI and recently has been updated in 2015 by the Governor-General. Under that charter our purpose is to advance the science and practice of engineering for the benefit of the community. It is in that context that we give evidence today. It is the largest and most diverse body of engineers in Australia. We have a really good association with about 100,000 professionals, around 25,000 of those in New South Wales. We work across every field of practice.

The Society of Fire Safety is a technical society of Engineers Australia. The society was established in 1994 to 1995 to foster excellence in fire safety in Australia. As a learned society the aims of the Society of Fire Safety are to: Draw together individuals who are actively engaged in fire safety to provide a national focus and leadership for the development, understanding, practice and application of fire safety engineering to achieve reductions of risk for life, property and environmental damage and implementation of cost effective fire safety codes and regulations. There is a range of broad objectives that this society has all aimed at dissemination of the society's ideals into the wider community.

They include: Developing and extending the application of the science and technology of fire safety; promote excellence in the practice of fire safety engineering; promote the use of the science and technology of fire safety engineering in the built environment; promoting education, training and research in all aspects of fire safety engineering; maintaining and improving professional and educational standards for fire safety practitioners; influence community, corporate and regulatory attitudes and practices in relation to fire safety; communicate knowledge about fire safety engineering with and to promote collaboration between members, organisations and other societies; and, to provide expert advice for government, industry and the community. There are three key issues that we think are important in this conversation. I will hand over to Mr Ang.

Mr ANG: I will start with two of them. The first is regarding professional indemnity [PI] insurance and its impact to the practice of fire safety engineering. The exclusion currently found in the PI insurance is creating significant barriers for practitioners, and New South Wales as of yesterday only has 156 accredited fire safety engineers. The exclusions found in the insurance further reduces the number of engineers who can practice in the discipline of fire safety. We believe that the government needs to play an active role in the discussion and actions around resolving the issue for professional indemnity insurance.

The second item we wanted to talk about is professional registration. Mr Ewing has covered that previously so I will keep it short. Coming from an engineer, having professional registration is welcome because it sets a minimum benchmark to practice for the whole industry. The second point: Registration formalises the accountability an engineer has towards the society and the world we operate in. This is important because our world touches the lives of hundreds and thousands of people.

Ms RUSBRIDGE: Our third point relates to combustible cladding in that we do not believe a blanket ban is the long-term solution. Bans on products cannot keep up with technology. There is always going to be something new coming along which is outside the ban which may not be appropriate and may push the market towards using something that is inappropriate but not subject to a ban. What we need to do is increase and improve our technical and scientific understanding of behaviour of these products and some of this is underway with the University of Queensland's testing of all the core samples so there is a database of information we can use and other fire research around the world. The approach has to be proactive. Banning something after the fact does not help anybody and the cost is more expensive to fix it afterwards than to deal with something early on. Improving our knowledge to understand how everything works we can prevent incidents from occurring in the future. The usage is on a case by case basis. Not every building is the same, not every usage is the same, not every product is the same.

The CHAIR: Thank you, that has opened up a whole series of questions.

The Hon. JOHN GRAHAM: We are not going to cover all of these but I might start with the last point about banning pro-actively. We have been told that there is a lot of uncertainty here. Some of that is just natural, it is about each building, each place. But, there is a lot more uncertainty than there should be. There is a lack of

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guidance about what products, what uses, what way to rectify. Do you agree with that and how do you cope with that on a day-to-day basis?

Ms RUSBRIDGE: I would not say entirely there is no guidance. The building code is quite clear, you cannot have combustible external walls. It is looking at it from a fire engineering point of view; how each product impacts the building and the risk of it on an individual basis.

Mr ANG: From our perspective that is why we had the opening statement of a blanket ban because products are combustible. The key is understanding their behaviour and we can then assess whether it is appropriate for the building. For example, whether we should use it for a 50-metre tall high-rise building or a single storey dwelling. The risk profile is obviously different and therefore that needs to be considered on a case by case basis.

The Hon. JOHN GRAHAM: We have had owners turn up and say, "We have a problem. We are now going to rectify. We are finding it really hard to sort through what product to use to rectify". We are getting competing advice and we are worried that the product we use might be allowed now but banned in two years time. How are you sorting through those?

Ms RUSBRIDGE: That would be the downside of a ban. If we can engineer any product for suitability it would not matter in some ways that it is highly combustible because we have put it in the right location with everything else in place. As long as there is no ban then it is always going to be okay going forward because the risk has been appropriately addressed. That is what we are doing at the moment.

The Hon. TREVOR KHAN: That is the point that Mr Gall was making, was it not? That if what you do is you simply take a core sample and therefore say the product has to come off, that is a problem if you do not put it into the context of where it is on the building, is that right?

Mr ANG: Yes. The idea is that we first need to understand the behaviour of the product from a fire safety perspective. So, a testing of its behaviour, the whole assembly, and thereafter we can decide from a life safety perspective whether it increases the risk to the occupants in the building before we actually come to the decision to say you have to take the cladding off.

The CHAIR: That is an academic conclusion in some regards. For the moment put that into play in the New South Wales construction sector where there are no on the ground inspectors, where we have private certification, where nobody is checking what is being built. Surely in that context, in the context we have at the moment, the only safe option is to have a product ban because I do not think anybody would be able to put their hand on their heart and say, "The industry will be able to comply with fire safety rules in how they install the cladding".

Mr EWING: Maybe I will make this point first. I think part of the issue is, and Ms Rusbridge touched on this, if we ban everything that is currently on the market we do not know what is going to come onto the market next and what falls in. With a ban that would suggest that if it is not banned then it is safe. That may or may not be the case. The assumingly appropriate product, and this is looking retrospectively and into the future, the assumingly appropriate product used in the wrong way, installed by somebody who does not have the necessary education or experience or its design in, it is not just the product; it has to be that combination of the human factors around people with the right education, the right experience and the right understanding to know the context of the individual building and where it is on that building and how it is going to perform. So just focusing on a particular product only addresses a very small part of the problem and may have unintended consequences also.

The CHAIR: But addressing the combustibility of the product, having cladding that is less rather than more combustible is surely a good starting point.

Ms RUSBRIDGE: It can be, but if the risk is so low it becomes is there any benefit to replacing something that is never going to cause a problem, because it might be highly combustible but it is in a place that is never going to—

The CHAIR: I think we are talking at cross-purposes here. I am not talking about getting a report to rectify a problem that we have at the moment, and I fully understand how your members' professional expertise is required for that. What I am saying is going forward surely a good starting point is to say highly combustible cladding products should not be on the market because we cannot ensure that they will be safely used and we should ban them.

Mr ANG: The other point to remember is fire safety is but one consideration when the product is selected. That is obviously sustainability, insulation and weight itself as well. So just simply banning a product may impact or the other could then show sustainability and insulation for the building and that may not be an alternative product, and of course the cost issue to it as well.

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Ms RUSBRIDGE: Certain types of building are allowed to be built combustible. For a small, low-rise building it is completely compliant to build them out of anything. So if we are banning all combustible products then probably it is going to increase the cost of building those little ones in the future.

The CHAIR: I think you have jumped well beyond where I was. I was saying highly combustible cladding products, aluminium composite cladding, perhaps some of these high-pressure laminates, products that we know are highly combustible, surely when we are weighing up cost and weight, given the nature of the industry the lack of checks and balances in how things are built, surely we are on the side at this stage of banning the product.

Mr EWING: Whilst acknowledging that safety is the primary consideration when we come to these things, I suppose the devil is in the detail and even in the semantics by what do we mean by highly combustible? Practically anything will combust given certain circumstances. So it is about thinking where is the level of comfort and surety that we build into the process, that if a product is used in the right way and it is by people with the right knowledge and understanding of how that product will perform given certain circumstances, then there is a lot of risk that can be mitigated in that situation. The difficulty is that if that is not the case then we have a situation where there is no surety or comfort in that place; we do not necessarily know what products have been used, where they have been used and what way they are being used, and I think that is when we have a level of uncertainty working back causing concerns for people in the community.

I think the challenge that we have to look at going forward is how can we bring more surety and comfort into that space. Perhaps an analogy around that would be that in 1760—a little bit of history—Lloyd's Register came into being because merchants and traders in that space were really uncomfortable about the viability of some of the ships they were using to trade. It came in because there were a lot of ships sinking. Lloyd's Register 1760 came in to give people some comfort and surety around that. We do not have that comfort and surety in the marketplace around insurance for units in this space at the moment and I think we heard that in the previous hearing. It is about bringing a level of comfort and surety into the market going forward and I would suggest that Ms Rusbridge and Mr Ang will say here that for us to just think about a blanket ban of all products is probably not going to do that.

The Hon. JOHN GRAHAM: What do you see as the path to break through this? The Government wrote to a whole range of councils in 2016 and said this is a major problem on the ground. There has not been a lot of activity other than the ban since that—I am just putting my personal view; I am not speaking for the Committee here. What does it take to get in a better position here, given the perspective you have got on this problem where you are out looking at these?

Ms RUSBRIDGE: There are things being done. We have done a lot of fire cladding audits based on council fire orders, assessing what there is, what the risk of it is, and yes they probably have not progressed far enough to go right through to the final end, but I think maybe that is where councils are unsure about whether a performance solution is going to be allowed or—

The Hon. TREVOR KHAN: Sorry?

Ms RUSBRIDGE: A performance solution, performance-based design from a fire engineering point of view, if all the insurance companies and the blanket bans and everything, then nobody has got any encouragement to look at performance-based design.

The Hon. SCOTT FARLOW: What is a performance solution? Is that sort of like putting in a sprinkler system or something?

Ms RUSBRIDGE: Under the building code we can do performance-based design or co-compliant design. Basic co-compliant design is following a recipe; performance-based design is meeting the performance. We are going to look at a building and look at the risk: Will this building burn down? You can follow the cookbook, non-combustible, or we can look at it—it might have combustible cladding but it has got sprinklers and multiple exits and all these checks and balances.

The Hon. SCOTT FARLOW: So mitigating—

Ms RUSBRIDGE: Mitigating risk, basically.

The Hon. MARK BUTTIGIEG: But, to take up the Chair's point before, would it not be intuitively correct that there is a correlation between if you are starting from the premises that we are not going to ban highly combustible material, there would presumably be a pretty positive correlation between the level of engineering required to mitigate that highly combustible material and therefore a whole lot of extra engineering complications and cost go with that. So is it not a good starting point to say beyond a certain threshold of combustibility we are going to ban it? Would that be a fair enough point?

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Ms RUSBRIDGE: I am pretty sure it is either combustible or not combustible; it is not a little bit combustible, slightly more combustible. Glass is combustible; are we going to ban glass in all external walls? What is "highly"?

The CHAIR: That is not the dichotomy that has been put to you by either Mr Buttigieg or myself; it is the highly combustible products, and we can no doubt argue what the definition of "highly combustible" is, but I am not personally putting glass in that bucket. That is what we are talking about. Often those performance design solutions may be cheaper at the installation but end up putting significant ongoing cost to the owners going forward in terms of maintenance and energy and upkeep to fix a bad design.

Ms RUSBRIDGE: And that might be the case. I think that is why fire engineers need to get involved early in projects with good registration. Very little of the time you are doing one solution. I may have a whole range of solutions that are needed to justify cladding, but there are 12 other issues I am addressing as well. So in some ways addressing highly combustible cladding may not be a big cost because I am looking at the building holistically, not one solution at a time with just that cost, that cost, that cost.

The Hon. MATTHEW MASON-COX: Could I ask about your members' insurance coverage for professional indemnity insurance? We have heard some evidence today in relation to difficulties in accessing professional indemnity insurance relating to cladding, and obviously some difficulties there in getting reports that are needed by various building owners or councils and the like to ensure that they can take the necessary remedial action. Can you comment on that and what sort of level of problems your members are facing accessing insurance and also providing the services that the market is looking for?

Mr ANG: Overall, the fire safety engineers are facing issues around claiming insurance. That is the first point. The second one is if they manage to acquire the insurance it could come with an exclusion, but it also has an impact on the cost of obtaining that insurance as well. We have heard that it has doubled, tripled from what they were paying previously before all this occurred.

The CHAIR: With an exclusion for flammable cladding work as well?

Ms RUSBRIDGE: A number of engineers cannot do any sort of cladding work and that seems to be taking it to the extremes of not even touching anything with a concrete wall with some plastic in it. They are excluded from doing aluminium composite panels [ACPs] and all these.

The Hon. MATTHEW MASON-COX: A member who does not have PI insurance for cladding work, be it a report or some sort of other investigation, would be—is it your experience that that engineer would not do that work as a result? They would not take the risk and, therefore, they are effectively excluded from the market.

Ms RUSBRIDGE: Yes, if they have exclusions on their insurance, they will not practise in that aspect.

The Hon. MATTHEW MASON-COX: Would you have figures on what number of engineers? I think you have mentioned that there were 156 in New South Wales that are registered. Would you be able to give us some understanding as to what percentage might have trouble in relation to getting that sort of insurance from insurers, or indeed whether some have closed as a result of that?

Mr ANG: We do not have formally documented numbers. A lot of this came about from discussions and from engagement with our members who are main practitioners in the industry, but we can certainly look into it.

Mr EWING: We can take that on notice and find some more information for you.

The CHAIR: We heard from the Insurance Council of Australia earlier that there is no product and that no insurer globally is offering professional indemnity insurance without an exclusion for flammable cladding. I know from my own observations that the last insurer that I was aware of that was offering it was Landmark and it withdrew from the market in July of this year. Are you aware of anyone who has been able to get insurance since July? I would ask you to take that on notice.

Mr EWING: Yes. I think that comes back to that position we are in at the marketplace because of course insurers are under no obligation to offer insurance.

The Hon. TREVOR KHAN: If the position is that nobody is able to get insurance to cover this field at the present time, who is providing the advice?

Ms RUSBRIDGE: We have got limitations on the amount of PI covered by the insurance. There are still engineers out there who can work in that aspect.

The CHAIR: Is that because they have got an existing policy?

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Mr ANG: Yes.

The CHAIR: But when they run out—

Mr ANG: The numbers will decrease. For example, some of the major international consultancies have global insurance coverage, so some of them may be able to provide assistance on that front as well.

Mr EWING: I think this brings us back to a point and a question that was asked over here about where we have got to in the process at the moment. It has stopped at councils. We have 156 at the last count—people who can actually do this work. That number may decrease depending on where we are going. That is going to impact on the next steps forward. Perhaps at this juncture I could maybe refer back—if the Committee has not seen this document, we can maybe table it—to a submission that Engineers Australia made into the inquiry into nonconforming building products. That was a submission to the Senate Standing Committee on Economics in July 2017. In that, the terms and the scope of that particular inquiry was inquiry into nonconforming building products, which was broadly to examine the supply chain of products into Australia do not meet Australian standards. That maybe comes back to that bit about what we call highly combustible cladding or whatever—that supply chain of products into Australia that do not meet Australian standards. In our submission we were looking at a whole range of different aspects of how we have to address things that happened holistically.

That comes very much into what Ms Rusbridge was saying: We can examine the gaps in the system and we can look at noncompliant products but we have to look at it very holistically because even if we then draw the lines very tightly around what products can and cannot be used, those products will change very quickly. Legislation would have to keep up with that but still if the people who are making the decisions of what to use, when to use it and where to use it do not have the underpinning understanding and knowledge, then we can ban every product that we want but we are still not going to get the outcomes that we were really looking for. I think one of the things that are a concern from Engineers Australia's perspective is that the reducing number of people who are able to practise, given the potential change in the insurance market, is actually going to lower our community's abilities to address this issue going forward.

The CHAIR: Could I ask you whether or not you believe this issue of professional indemnity insurance is the critical time issue thing at the moment because, from my observations, until that is resolved, we cannot even get to first base; we cannot even write the reports. If there were something to be solved before Christmas, would it be some kind of action to ensure that the engineers and other experts have the insurance coverage to get out and start actually writing the reports?

Mr ANG: That is right. It is on the critical path because if engineers cannot get the insurance, then they will not be practising in that discipline.

The Hon. SCOTT FARLOW: We had evidence only from both the strata network and the Owners Corporation Network, I think, that they are finding that engineers are making more conservative assessments because of that reason of a lack of public liability insurance. Is that something that you would agree with as well?

Mr ANG: In general, yes, because the safest solution is to say, "Just take the cladding off" instead of looking at it holistically.

The CHAIR: I thank Mr Ewing again for coming back and sharing your professional knowledge. Both of you, Ms Rusbridge and Mr Ang, I thank you again for your evidence today. We have run out of time, I am sorry.

Mr ANG: Thank you very much.

Ms RUSBRIDGE: Thank you very much.

Mr EWING: Thank you.

(The witnesses withdrew.)

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DARREN GREENFIELD, State Secretary, Construction, Forestry, Maritime, Mining and Energy Union, NSW Branch, on former affirmation

NIGEL DAVIES, National Assistant Secretary, Construction, Forestry, Maritime, Mining and Energy Union, NSW Branch, sworn and examined

The CHAIR: Mr Greenfield, I remind you that you are on your former affirmation. We will not be re-swearing you but you remain bound by that affirmation in the evidence that you give. Thank you both for taking the time out to attend today. Do one or both of you want to start with a brief opening statement?

Mr GREENFIELD: I will give a brief opening statement. Thanks for the opportunity to return here. I will touch on a few things here in New South Wales and Mr Davies has experience from Victoria as well and some things with New South Wales. I will mention today that as with a lot of things in our industry in New South Wales, I think this is a farce of it sits at the moment with the cladding and the flammable cladding. We have home owners out there who have no answers to how they fix the issues on the apartments they bought. At our estimates, I think we have about 3,500 apartments across the country that are affected by this. As we are aware, the State Government—I think it was around the last time I was in here actually; on that day—announced about the 440 cases that it needed to get to but did not release the information on them and obviously held on to that.

As I have said before, that is alarming to me and to us as a union because we have got members of the public here out there who have bought apartments in good faith. In buying their apartments now they have been notified and they are living in an apartment with the cladding on there, but nothing is said publicly because obviously—whether it is trying to protect the value of the property for the home owners—but I think I said before as well that they are living in a death trap. It should be out there where these apartments are. People should know openly where they are. This is a major concern, obviously, in New South Wales and around the country that people are living in these apartments.

As we all know with apartments, people have barbecues on their balconies. They smoke out there. There are examples of this that Mr Davies will talk to. It is a major concern out there and I think not enough is being done there. There is the issue, also, that we had the regulations here in New South Wales that could have been abided by and this would not have happened. But, obviously, products were allowed to be brought in and used on buildings. They complied at the time, as far as certifiers and people at the time ticked off on, and they do not comply now. To us, this is an issue for the State Government to get involved in and they should be wholly involved in it. It involves, as I just heard then and I have heard before, certifiers and different people with insurances. It needs the State Government to grab hold of this and get a system in place to cover people and get things repaired so that we do not have people living in death traps out there. It is not going to get fixed, in our opinion, until that happens.

As we know, in Victoria the State Government stepped up to the table and put forward \$600 million to start. They put 300, I think, and 300—Mr Davies will go into that. But that starts the process and starts putting things in place to get these things fixed. No-one will touch these; because there is no insurance there, no builder and no contractor is going to go near it. People will not get paid; that creates another whole issue out there in the construction industry. They need to get involved and start setting things up so that these things can be rectified. As I said, they are all across New South Wales. I might leave it at that and get Mr Davies to touch on some of his experience with it.

Mr DAVIES: Thanks, Mr Greenfield. Just to follow on from Mr Greenfield—I have only got two copies, unfortunately. If we can pass these around and if everybody could have a copy. This is a letter to Mike Baird dated 26 May 2015. That was from Michael O'Connor, the national secretary of the Construction, Forestry, Maritime, Mining and Energy Union [CFMMEU]. Basically, he was highlighting the issue of the Lacrosse Docklands fire that we had in Melbourne, and that is back in November 2014. That is five years ago last month that this issue was a major, major issue. Since then, unfortunately, we had the disastrous events of the Grenfell Tower also, and yet we still seem to be parking this in the too-hard basket. Like Mr Greenfield said, we have got to do something here. What are we going to do? Are we going to wait for another Lacrosse? Are we going to wait for another Grenfell?

I will go back to the Andrews Government in Victoria. They have committed to \$600 million—\$300 million from the State and then the other \$300 million over the next five years of issuing permits for these other dwellings of \$800,000—and starting to work. They have already committed to a task force and the task force consist of all sides, including engineers, and all the stakeholders, including ourselves; the unions are on that task force. It seems to be working. Now in Victoria, for example, my figure so far—they are still being inspected now—there were 2,227 buildings inspected. Out of the 2,000 there were 1,069 that were deemed as flammable,

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and then they cut that down again: In the high-risk category there was nearly 500 and the extreme risk was 72 buildings of extreme risk. Since that time, they have put the actual addresses out of the ones that they are going to work first. Obviously, hierarchy of control—they are going to start at the top 12 and I believe that there are works going on there now. They are taking it pretty seriously. They have put a five-year campaign on this in order to get all of these buildings fixed up by that time.

Obviously, from a national union perspective and from State to State—I go to every State—we encourage every State Government to follow this lead. I am staying in a building tonight in Sydney and the first thing I did was look at the cladding, and I know for a fact that I am in a highly flammable building. The first thing I did, because I know, is I know what my exit strategy is. Does everybody else know that, that lives in these buildings? It is a very, very real problem. I hope we can really push this as much as we can because I have been dealing with the Western Australian Government as well, and all they are doing there is just spinning the wheels. The bureaucracy just goes round and round in circles. I hate to be blunt, but that is the reality of it.

The CHAIR: Thank you both for your evidence. Full disclosure: When I am looking at booking holiday accommodation, I also look at the exterior of the property.

The Hon. JOHN GRAHAM: Thanks for your evidence. Mr Greenfield, you have given evidence before about your views on building regulation across New South Wales. You gave some pretty blunt and frank advice about the general regulation. Would you agree that this is the most urgent part of the problem, in that it is where the public safety risk is highest?

Mr GREENFIELD: Definitely.

The Hon. JOHN GRAHAM: So if we are tackling all of the problems across this area, this is the one we just have to get right and have to deal with urgently. How urgent is it that we deal with this properly?

Mr GREENFIELD: This needs to be dealt with now. People's lives are at risk here. To talk about the Grenfell incident, we all saw it. We all saw what can happen with these buildings. Over there they still say they are lucky; the number of people that died could have been double or triple that. We have that here now in New South Wales. That is how important it is. It needs to be dealt with now. It cannot be passed on and dealt with next year or the year after; it needs to be dealt with now. Who is going to take responsibility if this happens to one of these buildings?

The Hon. JOHN GRAHAM: There have been a couple of incidents in Australia, but there have been these incidents around the world on a reasonably regular basis, which leads to the expectation that it is certainly not out of the question that we will have another incident in, particularly, New South Wales or Victoria.

Mr GREENFIELD: Yes, definitely.

Mr DAVIES: That is one of the reasons why I brought this letter: just to highlight the fact that Grenfell had not taken place before this letter was written.

The CHAIR: Mr Davies, reading from the letter, which I note was sent more than 4 ½ years ago—this is the CFMMEU national secretary to then New South Wales Premier Mike Baird—the second paragraph on page 2 states:

As a matter of urgent public safety we are formally requesting that you direct the relevant government department to conduct an audit of the use of this product with a view to compelling building surveyors, builders, architects and designers to outline wherever the use of this product has occurred in your State. The purpose of the audit would be to ascertain the extent of the problem, then place the information on the public record along with a site-specific explanation to be shared with the at-risk public. This information would include the methods used to determine the products respective applications are safe and/or what remedial action will be taken to ensure that is the case.

I have to say it is an extraordinary amount of foresight from your union in sending that communication 4½ years ago. What answer did you get?

Mr DAVIES: Nothing.

Mr GREENFIELD: No answer.

Mr DAVIES: If you read further down, it says:

We look forward to your response to our proposal within two weeks of the receipt of this letter.

Nothing. Like you said, 4½ years later.

The CHAIR: This looks like correspondence that you have sent to each Premier and/or chief secretary or whatever they are in the Territories.

Mr DAVIES: Yes.

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Mr GREENFIELD: Yes.

The CHAIR: Did you get a response from other jurisdictions?

Mr DAVIES: I would have to take that on notice. But, obviously, the Victorians have been working quite hard on this so I would say there would have been a response there.

The Hon. JOHN GRAHAM: Can I just ask some more about the Victorian comparison, because it is really useful having that perspective here. You have talked about the funding. Have you got any other views about how Victoria stacks up in a practical way on the ground on this issue when it comes to auditing or enforcement? Obviously they are starting now on the rectification. Just give us some more details on that.

Mr DAVIES: I think the only detail I can give is basically how this letter came about because of the Lacrosse building, because of the severity of it. With all the testing—and it goes very briefly into some of testing on this stuff—it does not take time to go up. It goes up. You have no chance to escape it, especially with the balconies and stuff like that. It is the way it has been built. How can I explain it in layman's terms? It is like, you know how you have a flue on a chimney and you need that flue to get that draught, there is a draught area behind this panel and it acts like a chimney so it creates that draught and it is all highly flammable product. We cannot express the importance and the safety behind this. It is unbelievable.

The CHAIR: But again this goes to the complexity of the issue, doesn't it, Mr Davies? It is not just the cladding itself; it is also how it is installed. If it is installed with a space between it and the substance of the building behind it, that allows for that flue to operate—

The Hon. TREVOR KHAN: The chimney effect.

Mr DAVIES: It has a chimney effect, yes.

The CHAIR: —and allows it to spread. It is complex, isn't it, in terms of identifying the product and the installation to assess the risk?

Mr DAVIES: Yes.

The CHAIR: And you could not do that just from a visual inspection, for example.

Mr DAVIES: No. You would have to start pulling the stuff off and have a look. During this time, after the Lacrosse, I was working in Melbourne alongside one of the major companies, which I will not mention. They addressed this issue by putting in another sheet at their own cost to stop that third element, because obviously the fire needs three elements in order to go. It was to stop that air contact in order to prevent this from happening again.

The Hon. COURTNEY HOUSSOS: Thanks to both of you for your time and thank you, Mr Greenfield, for coming back. Mr Davies, this question is perhaps best directed to you. I want to ask about the really useful report that the CFMMEU produced, entitled *Shaky Foundations*. It really does go to the heart of the economic effects of the lack of action in this space. Are you seeing any difference in New South Wales versus Victoria in terms of actually taking action on cladding?

Mr DAVIES: No, not compared to Victoria. But unfortunately I hate to say New South Wales is not on its own either. There are many other States that are dragging their heels here. They are all just waiting to see what happens in Victoria. As Mr Greenfield mentioned before, with the prices, is it going to affect development? Is it going to affect building more of these buildings? It is a bit of a worry.

The Hon. JOHN GRAHAM: Although, with respect to those other States, probably because of the scale of development in Sydney we probably have a more pressing—

Mr DAVIES: Yes. This is a Federal Government issue and needs to be addressed by the Federal Government—some intervention from the Government.

The Hon. COURTNEY HOUSSOS: We would say there are aspects that can be addressed at both the Federal and the State level. That brings me to the issue of the products themselves. We have heard evidence earlier today about some other different products that are still on the market, that are still considered "safe" for use, but potentially are just as dangerous. Have you got any experience in waffle cladding or honeycomb cladding, which we have heard about, and the breakdown of the composite? I have forgotten what it is called again, Mr Chair.

The CHAIR: High-pressure laminate.

The Hon. COURTNEY HOUSSOS: High-pressure laminate or even Biowood, which was the subject of an NCAT ruling just two weeks ago? Mr Greenfield, this question might be best directed to you. In your experience working in the building industry, particularly in New South Wales, how prevalent are these products?

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Mr GREENFIELD: They are out there as well and as you said they are still going on buildings today. This is why it is that important and that urgent an issue to get onto it today. And when I say "today", I mean today. Because from when this got sent out after the Lacrosse, as you said, 4½ years ago now, buildings have been built. This stuff has been put on. Action needs to be taken and it needs to be led from the State Government. If it is not, it will not encapsulate everything that needs to be done, it will not be done properly and we will have ongoing issues for years. As I said, at the worst extreme is death, at the end of the day, and that is members of the public out there.

In my experience, just to step back a bit to one of the last questions, from my discussions with Mr Davies and the Victorians, the Victorian Government has been on the front foot. From discussions I have had with the branch down there, from day one, basically, they were out there and organised a task force with all the parties that should be involved in it. They then took the next step, as Mr Davies has said today, of where they are heading to get things fixed. I keep saying that we have nothing here. It needs to be acted upon now.

The CHAIR: Will it take a building to go up in flames like we saw in Victoria?

Mr GREENFIELD: That is our fear. We have some big buildings here in New South Wales, as they do in Victoria—probably the two States with the most work, as you said, over the last few years and now. We could lose a hell of a lot of people if that happens. What price is a life? That is our fear that that is what it will take to get them to go.

The Hon. COURTNEY HOUSSOS: On the question of noncompliant cladding, we have talked about the dangers of complying cladding that is on the marketplace and is going up, but your report, Mr Davies, specifically talked about the use of noncompliant cladding. How prevalent is that Australia-wide, statewide, and how dangerous is that?

Mr DAVIES: Non-conforming?

The Hon. COURTNEY HOUSSOS: Yes.

Mr DAVIES: It is very prevalent. As Mr Greenfield said, we have still been building these buildings after the event. I daresay there are still a few going up out there now with noncompliant cladding in the suburbs, and they will probably get away with it for the simple fact they might be classed as in that cottage sector, which we certainly do not have any influence in.

The Hon. TREVOR KHAN: Sorry, I missed that. You said, "Might be"?

Mr DAVIES: We call it a cottage sector, so up to four levels or whatever, and how many developments are out there not only in the suburbs but also in the regional areas that have height restrictions and they are guaranteed to be in that non-conforming cladding? Not only that, you can go to your State schools, your hospitals and the like as well.

The Hon. COURTNEY HOUSSOS: Mr Greenfield, what can you tell us about the enforcement regime in New South Wales around the noncompliant products?

Mr GREENFIELD: I do not think there is any enforcement out there, to be honest with you. That is why we have ended up in this situation. That stems from my last visit here with all that and into this. This is why we have ended up in this position, because there is no enforcement. As I said earlier, we have laws and Acts in place to stop these things but when they are not enforced, this is what we get and that is where we end up.

The Hon. MARK BUTTIGIEG: My question is probably to the both of you but I think particularly Mr Davies, because you touched on this. What you are telling us is that we do not have to reinvent the wheel to sort through some of this, particularly with regard to remediation, because the Victorians seem to have a model which is working quite well. You said there was a \$600 million fund and \$300 million was stumped up by the State Government down there. Can you elaborate on that other \$300 million? I did not quite catch where that came from. You mentioned a permit system, I think.

Mr DAVIES: Yes. Every new building, their application for permits now for buildings with dwellings to the value of between \$800,000 and \$1 million, apartments, their permits have been increased so it is going to be a cost to the developer and not so much the builder but the actual developer. That is over the course of five years until they get that \$300 million.

The Hon. MARK BUTTIGIEG: And then this task force has identified a hierarchy of high risk, medium risk and low risk, presumably.

Mr DAVIES: Yes.

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The Hon. MARK BUTTIGIEG: And I think you mentioned 72, was it, they have narrowed down to high risk?

The CHAIR: Extreme risk.

Mr DAVIES: No. The high risk is near to 500. In actual figures, it is 481 in Victoria that are deemed as high risk and the extreme risk are 72. But out of that they have obviously gone to another level again and I believe they have identified 12 that they have to do immediate works on.

The Hon. MARK BUTTIGIEG: Straight away. Have they got full access to that \$600 million to help with that remediation?

Mr DAVIES: I could not tell you. I will have to take it on notice.

The Hon. MARK BUTTIGIEG: Okay. Thanks.

The CHAIR: Thank you very much for your evidence.

Mr GREENFIELD: I add one more thing. There is also here in New South Wales a lot of concern about where this stuff ends up when it eventually comes off buildings as well. That has to be part of the whole program of this coming off and getting replaced. You will find this stuff going up on residential houses cheap—that is how it works. This stuff will be out there. It comes off, still intact, and it will be used by homeowners thinking it is okay to put it on their houses. It needs to be tracked all the way from when it comes off that building to where it ends up and it is destroyed.

The Hon. JOHN GRAHAM: That is quite incredible.

The CHAIR: Yes, holiday houses up and down the coast covered in cheap, flammable cladding.

Mr DAVIES: It is a very fair point that Mr Greenfield makes because we have hundreds and hundreds of storeys of this stuff cladding our cities and it has to go somewhere. If anybody can make a buck out of it, they will, and it will end up in our domestic and cottage sector, I guarantee you.

The CHAIR: Thank you for opening up a whole new issue as you leave. Thanks, Mr Greenfield and Mr Davies. Particularly with that national perspective your evidence today has been really useful. Thank you both.

(The witnesses withdrew.)

(Short adjournment)

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DAVE HUDSON, Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force, sworn and examined

MARK WHYBRO, Assistant Commissioner, Community Safety, Fire and Rescue NSW, sworn and examined

The CHAIR: Welcome back to the afternoon session of the inquiry into the regulation of building standards, building quality and building disputes. Our next two witnesses will be the Assistant Commissioner of Community Safety for Fire and Rescue NSW, Mr Whybro, and the Deputy Commissioner of Investigations and Counter Terrorism for the NSW Police Force, Mr Hudson. They will be followed by two government witnesses. Would either or both of you like to make a short opening statement?

Mr WHYBRO: Thank you for the invitation to attend today's session and to assist the inquiry. My part of the world, which is community safety, is part of the field operations division within Fire and Rescue NSW, with metropolitan and regional operations. The directorate has two main branches focused on prevention and education: community safety and research and fire safety. They are overseen by an executive and project management team. I have served in the role of assistant commissioner, community safety since 2011. I assumed the position 10 days after the Quakers Hill nursing home fire and lead the directorate through the changes in retrofittings in aged care facilities. We have three main functions: community engagement, which is focused on public education and community risk-reduction campaigns; fire investigation and research, which is the technical engine room of the directorate and drives a lot of our changes in policy and programs to reduce community risk; and fire safety, which undertakes our regulatory role in built environment and which has done the hard yards on Fire and Rescue's priority response to the cladding issue.

At the national level I have chaired the Australasian Fire and Emergency Service Authorities Council [AFAC] built environment technical group since 2012. That group includes representatives from fire services across Australia and New Zealand. What we do there is drive national consistency in doctrine, research and programs. Since 2011 I have represented Fire and Rescue NSW on AFAC's community safety group, which looks at both the built environment and the community engagement part of the world. Since 2007 I have chaired the national Triple Zero Awareness Working Group, which focuses on the promotion and education of Australia's national emergency number and produces assets such as the Emergency+ app and the Triple Zero Kids' Challenge. Since 2017 I have been the co-chair of the Australian Home Fire Sprinkler Coalition, which looks to promote and research residential sprinklers, the lifesaving benefits of which are quick well known. Since 2017, because fire safety fits within my directorate, I have been a representative for Fire and Rescue NSW on the New South Wales Government cladding taskforce. I can go on further, if you like.

The CHAIR: I suppose the issue before us is not so much your CV. The issue is more about flammable cladding. Do you have anything to add about where the State Government is up to on flammable cladding?

Mr WHYBRO: To help the inquiry I would like to lead you through the process of when Fire and Rescue NSW identifies a building or has a building identified to it. It can be identified in certain ways through the data analytic centre analysis that was conducted at the beginning of the process using both publicly available databases and commercially available databases. Also, Fire and Rescue identified buildings itself during inspections. It came across buildings that had not been reported and put those buildings on the list to be inspected. Later buildings were identified by the Department of Planning, Industry and Environment's cladding register and council inspections. Once the building is identified we do an operational risk assessment and a fire fighting risk assessment.

That assessment is not done to determine the type of cladding or the combustibility of the cladding; it looks at the building, sees the presence of cladding and, based on the location, the arrangement and the quantity, and determines whether it is no risk, high risk or low risk. Priority is obviously given to class 2 and class buildings—shared accommodation buildings—because people are most vulnerable when they are asleep. That is where we prioritise our actions. Data about the building is captured in a Fire and Rescue NSW app that is based on the Geographic Information System. That is then put into the New South Wales Government cladding taskforce database. If it is deemed operationally as higher risk then a whole series of processes are put in place. The first of those is an enhanced alarm response protocol. The normal response from Fire and Rescue to a structure fire is two pumps. Within days of Grenfell Tower Deputy Commissioner Hamilton placed a mandatory sixth alarm response. A sixth alarm response is 12 pumps.

The Hon. MATTHEW MASON-COX: What is a pump?

Mr WHYBRO: A fire truck. It also has a rapid intervention crew, two rescue trucks, two HAZMAT trucks, three aerials, a model command centre, a rehab pod and an instant management team consisting of a

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minimum of five senior officers. The way we assess that for firefighting is a sixth alarm, but a normal structure fire is a first alarm, which is two pumps—two fire trucks.

The CHAIR: Does that apply to any building with flammable cladding identified?

Mr WHYBRO: No, it is done on a risk-assessment basis. The local commander and local crews go out and assess those sites.

The Hon. JOHN GRAHAM: You are saying there is a scale of no risk, low risk and high risk. For a high risk building this would be response?

Mr WHYBRO: For a high-risk building we would go out and assess the situation based on the size of the building, the occupancy, the installed fire protection, which comes with—

The CHAIR: Is that a separate list to the list of 444 buildings that the State Government has provided?

Mr WHYBRO: No. The higher risk list is Fire and Rescue's operationally assessed risks.

The CHAIR: Is that separate to the list of the 444 buildings that has been provided by the Department of Customer Service?

Mr WHYBRO: No, it is the same list.

The CHAIR: We have been told that not all of those buildings have been inspected.

Mr WHYBRO: No. But they have been inspected for the operational response from Fire and Rescue NSW.

The CHAIR: So they have been inspected?

Mr WHYBRO: There has been a visual inspection. Then a pre-incident plan is put in place.

The Hon. JOHN GRAHAM: We might come back to that.

Mr WHYBRO: It is not a fire safety engineering risk assessment.

The CHAIR: We are talking about the same list?

Mr WHYBRO: Yes.

The Hon. COURTNEY HOUSSOS: Do all of those 444 buildings require a sixth alarm?

Mr WHYBRO: No, they would require up to a sixth alarm.

The Hon. COURTNEY HOUSSOS: So when you say—

The CHAIR: Sorry, I started this, but I retreating back to my chair in silence and we will let Mr Whybro continue.

Mr WHYBRO: The visits by fire crews and their commanders are part of our operational preparedness. They help the crews familiarise themselves with the buildings, the systems and the occupancy. The pre-incident plan includes information that is critical to situational awareness and firefighting operations should an emergency occur. They help crews better understand how a building can help them render the incident safe.

An enhanced alarm response protocol is determined based on the size of the building, the class of occupancy and the quantity, location and arrangement of the cladding on a building. As I said before, standard Fire and Rescue NSW response to a structure fire is two pumps but we can have up to a sixth alarm. The site-specific information is then entered into ESCAD, our emergency services computer-aided dispatch system, and should a fire be reported at that address with a 000 call talking about rapid vertical spread of fire, for example, then the enhanced alarm response protocol kicks in and the appropriate weight of attack is responded. The enhanced alarm response protocol stays in place until such time as the building is cleared. That means that the actions of the regulatory authority have been finalised.

The best way to minimise the impact of an emergency on the community is to prevent it from happening in the first place. We also focus our attention on reducing the risk among the occupants as well. Fire and Rescue NSW has a home visitation program called Safety Visits where we go around to people's homes, look at the risks within their home and fit free smoke alarms if they need a free smoke alarm. We have had to redevelop the home visitation program from a single dwelling street base to a vertical delivery model. As I said, a Safety Visits app is used to collect data on those visits as well so that we can assess risk. If the building is deemed firefighter high-risk ACP, which is the term that we put on a high risk building—

The CHAIR: What does ACP stand for?

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Mr WHYBRO: Aluminium composite panel. Other regulatory actions are then taken by Fire and Rescue NSW and the Cladding Taskforce. For private cladding buildings these include referrals to council, exercising the Fire and Rescue NSW Commissioner's powers to ask councils to check on the adequacy of fire safety provisions within a building. They have to report back to the fire commissioner. Letters to both owners and occupants are sent and a review of fire risk assessments and rectification proposals.

Mr HUDSON: I will be very brief. The NSW Police Force has had very limited involvement in this process. Quite recently we were asked for advice as to whether we would support the publication of the premises identified as being hazardous. We had objections to that based on security concerns of those addresses being published. That advice has been provided to Government. At this stage we stand by that advice.

The CHAIR: What does quite recently mean?

Mr HUDSON: Three weeks ago was the first time we were officially asked for advice on it.

The Hon. JOHN GRAHAM: Thank you for the description of the process, Assistant Commissioner. That was quite helpful.

The Hon. TREVOR KHAN: Actually it was very helpful.

The Hon. JOHN GRAHAM: Indeed. I think that really clarifies this, because there has been quite a lot of information about how many visual inspections Fire and Rescue NSW has undertaken, but you are really explaining that is about the operational response should the building catch fire.

Mr WHYBRO: Yes.

The Hon. JOHN GRAHAM: Less about the cladding risk assessment and rectification. They are really two quite different issues in some ways.

Mr WHYBRO: It does not assess the type and combustibility. It assumes the worst case. Both.

The Hon. JOHN GRAHAM: So you are planning to cope, but these inspections are not actually about assessing the risk. Those are being referred off to councils.

Mr WHYBRO: Yes. Where we have difficulties with the building, where we think that there is a risk, based on the location, quantity and arrangement, they are the ones we refer to council because council has the statutory powers to do that.

The Hon. JOHN GRAHAM: Yes, understood. Can you just give us some sense of how far through this process we are? Not referring to the operational side of things, but referring to the inspection for cladding and the risk associated with cladding. How many inspections of properties has Fire and Rescue NSW undertaken for that task?

Mr WHYBRO: There were 4,127.

The CHAIR: Those are the visual inspections. Not getting out and fully testing for design or looking at the materials. It is a visual inspection.

Mr WHYBRO: It is a visual inspection.

The Hon. SCOTT FARLOW: But it is not the role of Fire and Rescue NSW to test the design and materials.

Mr WHYBRO: We do not have the capacity to do materials analysis on cladding.

The Hon. JOHN GRAHAM: I am not asking about the operational inspections, the 4,127. Really, you are saying you are not doing any inspections for the actual cladding risk assessment. Is that correct?

Mr WHYBRO: Cladding risk assessment?

The Hon. JOHN GRAHAM: Turning up to an apartment and doing an inspection is not the job of Fire and Rescue NSW. That is all left to the councils.

Mr WHYBRO: That is a fire safety engineer or a fire risk assessment.

The Hon. JOHN GRAHAM: None of this activity relates to those inspections?

Mr WHYBRO: No.

The Hon. JOHN GRAHAM: You have given us the number of what I think we understand is the number of high-risk buildings on the register now. That is 444 was the last public—

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Mr WHYBRO: It is 463 as of 6 December.

The Hon. JOHN GRAHAM: Great. Okay.

The CHAIR: It has gone up.

Mr WHYBRO: Yes.

The Hon. JOHN GRAHAM: Is there an extreme risk number on that list?

Mr WHYBRO: Extreme list?

The Hon. JOHN GRAHAM: We were given evidence about the Victorian system of categorising. We are not drawing a distinction between high risk and extreme risk as they are.

Mr WHYBRO: We do not have a classification of extreme risk.

The Hon. COURTNEY HOUSSOS: Are you using the same classifications or have you spoken to the Victorians about their classifications?

Mr WHYBRO: Yes, we have. Through AFAC, the Australasian Fire And Emergency Services Authorities Council, we share information between fire services, but we all operate under different legislation. Certainly we have learned lessons from Victoria and Queensland. The sharing of information between the fire services allows this to develop what fire services see as doctrine around cladding and our response to it.

The CHAIR: But, Mr Whybro, there is no legislation that sets up how you certify a building as no, low or high risk. There is no legislative criteria.

Mr WHYBRO: No.

The CHAIR: There is a different set of categories in Victoria. They have an extreme risk category. What was the rationale for not adopting their criteria of extreme risk?

Mr WHYBRO: We developed our own. High risk means the highest risk that we rated a building at for life safety.

The Hon. JOHN GRAHAM: Chair, I will skip through and get some of these details first and then maybe move to broader questioning. So that is the number of high-risk buildings. The latest figures is 463. How many buildings have flammable cladding? Do you have a number for that? Is there a current estimate?

Mr WHYBRO: I would have to take that on notice. We have assessed that, on worst-case scenario, without knowing the exact type, product and combustibility of the cladding.

The Hon. JOHN GRAHAM: Yes, some are high risk, some have cladding that are not high risk. Do we know how many there are in total?

Mr WHYBRO: I could refer you to the customer service dashboard that has—

The Hon. JOHN GRAHAM: We might come back to them.

The CHAIR: You know there is that separate list, a much larger list with buildings with flammable cladding. You are aware of that list, Mr Whybro?

Mr WHYBRO: The cladding database?

The CHAIR: Maintained by Planning.

Mr WHYBRO: Yes. I thought it was maintained by the Cladding Taskforce.

The CHAIR: Well, it was maintained by Planning at least from the last evidence we had. Are you aware of that list?

Mr WHYBRO: Planning's list should be the same as the Cladding Taskforce's list.

The CHAIR: It is significantly more properties than the 444 or 463 on that separate list. Are you aware of that separate list?

Mr WHYBRO: Yes.

The CHAIR: I think Mr Graham is asking you how many buildings are on that list.

Mr WHYBRO: Will, on the list there are 4,127, which is the buildings we have inspected.

The CHAIR: Well, no—

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Mr WHYBRO: We have inspected all of the buildings on the Cladding Taskforce database list.

The CHAIR: I will let Mr Graham explore this with you.

The Hon. JOHN GRAHAM: I think what you are saying is that broader list is 4,127 and they have all been inspected.

Mr WHYBRO: Yes.

The Hon. JOHN GRAHAM: So you have an operational plan for each of those?

Mr WHYBRO: Not necessarily. For the high-risk ones we either have a plan or the plan is in the process of being developed. You have seen, just on the basis of 444 versus 463, that the number is fluid and changes week by week.

The Hon. JOHN GRAHAM: As it should.

The Hon. COURTNEY HOUSSOS: Of those 4,127, have they all been classified low, no, high or medium?

Mr WHYBRO: Yes.

The CHAIR: Is there a medium?

Mr WHYBRO: Low, high or no ACP, but it is all ACP.

The CHAIR: We are only talking about aluminium composite panelling.

Mr WHYBRO: Yes.

The CHAIR: We will come back to that later

The Hon. JOHN GRAHAM: I want to get these figures and then I am happy to move on to the broader issues. Of the 463, how many of those are we still waiting for information to come back from the council? They have been referred to the council, to the consent authority, but we are yet to have any information back.

Mr WHYBRO: I would have to take that on notice too.

The Hon. SCOTT FARLOW: On that point, do you get that information back? Does it come back to Fire and Rescue after you have referred—

Mr WHYBRO: Which information?

The Hon. SCOTT FARLOW: The information in terms of a building in the 463 which were referred—

Mr WHYBRO: Yes. It is accessible to us as part of the Cladding Taskforce.

The Hon. SCOTT FARLOW: Through the Cladding Taskforce though, not through Fire and Rescue.

Mr WHYBRO: Certainly where we have referred a building to council to further investigate the adequacy of fire safety provisions, that information has to come back to the Fire and Rescue Commissioner. There may be other—there is a council support unit that is being set up for the Cladding Taskforce and information is also coming into that.

The Hon. JOHN GRAHAM: On notice, how many of the 463 are we still waiting for information back from the council about their assessment? Secondly, how many are in the category where an expert assessment just has not been sought or received?

Mr WHYBRO: I will take that on notice.

The Hon. JOHN GRAHAM: Okay, but if you could return on notice. And how many have been cleared by a consent authority?

Mr WHYBRO: Referring to the Cladding Taskforce, I will take that on notice as well. By the time we get an answer back to you it may have changed again.

The CHAIR: You also said that you were looking at protocols for those buildings to determine whether or not they were—I think you said a six alarm response was required. How many have had the protocols done by your office?

Mr WHYBRO: All of them. All of the 463.

The CHAIR: How many of them then have a six alarm response?

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Mr WHYBRO: Thankfully quite few, if any. I would have to get back to you on the exact range.

The CHAIR: So none of them may have a six alarm?

The Hon. TREVOR KHAN: He said he is going to get back—

The CHAIR: No, you said, "If any". That is why I was surprised because you spent some time talking about your six alarm response and now you are telling us—

Mr WHYBRO: The original response as set following Grenfell Tower was a mandatory six alarm to any cladding fire. As we learned more and more about the building and assessed the risks operationally, that changed. It usually came down. I would have to go back and refer to whether or not, or how many are still six alarm. Whether or not the rectifications and mitigations have now meant that it was allowed to drop further.

The Hon. COURTNEY HOUSSOS: On the six alarm: It is dependent on the building but it can also be dependent on the phone call. If the phone call says, "We have rapid vertical spread of fire" then that can trigger it as much as the actual building itself.

Mr WHYBRO: Yes. Within the dispatch system it is flagged—

The Hon. TREVOR KHAN: If you had a three storey building where they said there was rapid vertical escalation of fire, you would not turn that into a six alarm, would you?

Mr WHYBRO: How many storey building?

The Hon. TREVOR KHAN: Three storey.

Mr WHYBRO: Probably not, but that is called by both the responding officer and also the emergency call-taking dispatch centre who has control over the dispatch of resources until such time as we have got eyes and ears on scene.

The Hon. JOHN GRAHAM: I want to ask one final question about the register itself. How confident are you about all the buildings that are on that list to start with? The reason I ask is that when the Victorian process looked at it, when the co-chairs recent report talked about Victoria, it said that it is the only jurisdiction to have proactively sought to identify buildings with combustible cladding. They made this observation that is relevant to New South Wales:

In some other jurisdictions building owners have been required to declare whether they have combustible cladding – a process prone to delay, limited disclosure, failure to identify cladding and or malfeasance.

How confident are you that all the buildings with cladding are on this list and all the high risk buildings with cladding are on the high risk register?

Mr WHYBRO: I would be surprised if we do not keep finding buildings for a while. As it is, the numbers change week by week. There are still dribs and drabs coming in from the cladding register that was passed through the Department of Planning, Industry, and Environment.

The Hon. COURTNEY HOUSSOS: I am happy if you want to take this on notice. You outlined the four different sources that the Cladding Taskforce receives notification of buildings: Through the data analytics centre; through Fire and Rescue during your inspections; through Department of Planning, Industry, and Environment; and through councils. Are you able to give us a rough breakdown and perhaps take on notice for exact figures what proportion of buildings were referred from each source?

Mr WHYBRO: I can take that on notice.

The Hon. TREVOR KHAN: With regards to that breakdown, there are at least some strata buildings that have to take an annual fire inspection?

Mr WHYBRO: Yes.

The Hon. TREVOR KHAN: That fire inspection is done by private entities that are retained by the body corporates, is that right?

Mr WHYBRO: Yes.

The Hon. TREVOR KHAN: That is not only an inspection of the individual units to check that their smoke alarms work. There is also some more formalised reporting mechanisms that those entities have to undertake, is that right?

Mr WHYBRO: Yes, an annual fire safety statement.

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The Hon. TREVOR KHAN: And that annual fire safety statement, does that deal with the presence or absence of cladding?

Mr WHYBRO: No, not that I am aware of.

The CHAIR: Why not?

Mr WHYBRO: It is currently on the installed fire safety systems—extinguishers, smoke detectors, fire doors and things like that.

The Hon. TREVOR KHAN: That deals with, in a sense—

The CHAIR: The active systems.

Mr WHYBRO: Passive systems and active systems. The construction itself.

The Hon. TREVOR KHAN: But it does not deal with issues that may affect the combustibility of the building?

Mr WHYBRO: Not that I am aware of.

The CHAIR: Would it not make sense to have it amended so it has to be addressed? If the building is clad head to toe in flammable cladding, that is as important from a fire safety perspective as whether or not the fire doors are working.

Mr WHYBRO: The owner of the building already has to declare that they have cladding on their buildings through the legislative amendment passed by the Department of Planning, Industry, and Environment.

The CHAIR: But they are not required to deliver a report and they are not required to have a remediation plan in place. They are just required to declare whether or not they have it.

Mr WHYBRO: Right.

The CHAIR: Which is quite a different thing to ensuring the building is safe, Mr Whybro. Do you agree with that?

Mr WHYBRO: Yes.

The Hon. TREVOR KHAN: What we have heard in some of the evidence is that some people have made disclosures of the presence of combustible cladding almost in a precautionary sense because of the penalties that apply without really knowing whether it is combustible or not. That is reasonably unhelpful in the scheme of things if people are simply making a speculative declaration to cover their tail, so to speak.

Mr WHYBRO: Yes. Out of the 1,600-plus registrations from the cladding declaration, around 60 per cent had no cladding. We went out and visually inspected a lot of buildings that had been placed onto the register as a precaution, I suppose.

The Hon. TREVOR KHAN: Taking into account the not inconsiderable commitment of time that it has taken your service to undertake those inspections, can you give me an explanation as to why a body corporate would make a declaration or a disclosure for cladding purposes for you then to go out there and say, "Well, they do not have any combustible cladding"?

Mr WHYBRO: I would only be speculating.

The Hon. TREVOR KHAN: I invite you to.

Mr WHYBRO: Possibly a property management firm just registered their portfolio as opposed to individual buildings. Perhaps it was a precautionary thing to have it on record that they did not have cladding but they have registered as having cladding so they could then say it is—

The CHAIR: Is it not a simple is this: There was a penalty for not disclosing but there was no penalty for over disclosing. When people did not know, they just disclosed. It is a simple as that, is it not?

Mr WHYBRO: It could be that as well.

The Hon. MARK BUTTIGIEG: We heard evidence earlier from Engineers Australia regarding the merits and demerits of banning combustible cladding. Given your opening statement where you said prevention is always the best, that the hierarchy of controls engineer it out of the system. Their view was that it is not necessarily a black-and-white situation. In other words, you could have combustible material on buildings but if the engineering framework was okay around that, it may reduce that risk. Therefore, a total ban is not necessarily the way to go. Do you have a view on that?

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Mr WHYBRO: I would fall back to the National Construction Code, which talks about a product being fit for purpose and certainly does not allow the spread of fire on a facade.

The Hon. MARK BUTTIGIEG: In other words, irrespective of the engineering you put in to compensate for combustibility, the best policy is to just ban a combustible material for building use?

Mr WHYBRO: Some combustible cladding is allowed in certain circumstances. A single storey class 1A can have combustible cladding on it and that is compliant with the National Construction Code. The product itself is not necessarily the problem, it is its use in certain circumstances—in certain structures, in certain buildings.

The Hon. MARK BUTTIGIEG: Like if you build a house out of weatherboard it is fine but if you put a weatherboard facade up 20 storeys of a building you are probably creating a bit of a fire hazard, I suppose.

Mr WHYBRO: I would say that would spread the fire.

The Hon. JOHN GRAHAM: We have taken evidence from councils that they are struggling with knowing what the guidelines are—how to assess the products, how to assess the risk of a fire and how to recommend a successful rectification. They are struggling to do that and, as a result, we might get a patchwork quilt of answers from various different councils as they go through that process. Do you have a view from your perspective about the risk of getting a patchwork quilt of solutions here for what products are to be used, what the risks of a building are and how to rectify them?

Mr WHYBRO: We certainly have a position about what a rectification proposal should look like: any product that has failed an Australian standards 5113 test, which is a full-scale facade combustibility test, should not be allowed to be maintained on a building; a product that has had its certificate of conformity removed by a certification authority, such as CodeMark, should not be on the building; and any product that has been banned by the New South Wales Government's building products safety ban should not be on a building.

The Hon. JOHN GRAHAM: But why are we leaving it to more than 100 councils to make these assessments and decisions, rather than centralise things, as it is increasingly the case in Victoria, where, for high-risk buildings this is now being brought into the building authority down there to lead this process. Why not have the experts do this centrally rather than come up with a patchwork quilt of answers?

Mr WHYBRO: I am not sure I am the right person to answer that question.

The Hon. TREVOR KHAN: It is probably a bit unfair to ask him that policy question.

The Hon. COURTNEY HOUSSOS: Can I ask you a slightly different version of it then, Mr Whybro? You rattled off a series of things then, have they been issued in any type of formal communication from yourself or from the cladding task force to councils or to the public more generally?

The CHAIR: Just to be clear, Mr Whybro, we heard from Local Government NSW that they have not been given that guidance.

Mr WHYBRO: Yes, they have not been given that guidance.

The CHAIR: Do you know why they have not been given that guidance? Because obviously that would help.

Mr WHYBRO: It was reviewed by the cladding task force at its last meeting and goes before my organisation's executive next week for a final approval, at which point in time that will then become a publicly available document. It has taken some time. The National Construction Code has changed since we started this process and other policy and legislative amendments have happened. We needed a very firm, and what is eventually a very conservative view, on what is an acceptable rectification.

The CHAIR: Mr Whybro, do I understand that the registers that you have at the moment are about ACP?

Mr WHYBRO: That is correct.

The CHAIR: And that has been the focus of the investigation and that is the focus of your remediation proposals?

Mr WHYBRO: Absolutely.

The CHAIR: Could I show you this video?

Mr WHYBRO: This is The Cube at Bolton, Greater Manchester?

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The CHAIR: Correct. This is in the middle of last month and the cladding there is not aluminium composite—

Mr WHYBRO: No, it is high-pressure laminate.

The CHAIR: Correct.

[Video played.]

The CHAIR: Mr Whybro, that has raised extreme concerns in the United Kingdom about that form of cladding, which is highly flammable. You can see from that video that not only has it spread rapidly but you can see the cladding falling and burning as it falls. We heard from the FBEU and we have had previous evidence that that is the very kind of behaviour—rapid spread, falling burning debris from flammable cladding—that is extremely high risk and has led to the concerns about aluminium composite. How can we be sure that there are not hundreds or thousands of buildings with that type of cladding on them, which on the face of it is every bit as risky as the aluminium composite materials that form the sole basis upon which properties are on the list, at least in New South Wales? How can we be satisfied?

Mr WHYBRO: That high-pressure laminates—

The CHAIR: —are not being used as cladding and that there are not buildings with that form of cladding on them with the type of fire safety risk that is obvious from that video.

Mr WHYBRO: Certainly we are as concerned about that as we are about ACP.

The CHAIR: How can you say that when the only properties that are on the high-risk list are those that have ACP and you have not done the same studies for high-pressure laminates? How can you say you are as concerned? There is no evidence of that.

Mr WHYBRO: We have only become aware of that since the Bolton fire—that high-pressure laminates react under fire in the same way as aluminium composite panel. As you said, it was only last month. It has been raised at the cladding task force as a point of discussion.

The CHAIR: When?

Mr WHYBRO: If not at the last meeting then the meeting before that.

The CHAIR: But there have been proceedings commenced in the NSW Civil and Administrative Tribunal well before this in relation to Biowood and other flammable cladding products. You are aware of that? That does not come as a surprise to you?

Mr WHYBRO: I am certainly aware of the Biowood product.

The CHAIR: So what are you doing beyond the aluminium composite materials to ensure that there are no other cladding materials that will be as big a risk as aluminium composite materials?

Mr WHYBRO: Certainly as we become aware of products we pay attention to them and put them through the same rigour as we would aluminium composite panels.

The CHAIR: Do the rectification guidelines that you are producing now include a prohibition on putting high-pressure laminates and Biowood on them as a rectification?

Mr WHYBRO: We fall back to the standards and codes. If it fails a 5113 test, if it has had its certificate of conformity removed then it would be called up or at least assessed by the principles.

The CHAIR: I can assure you now that I could go out this afternoon and buy Biowood or high-pressure laminates, which have a certificate of conformity and have not been banned. What are you doing about that risk?

Mr WHYBRO: We have raised it at the appropriate forum, which is the cladding task force.

The CHAIR: Don't you see the obvious problem? We had that evidence this morning from two home owners, who said they have buildings clad in flammable cladding but they do not know what to replace it with because they are not sure whether six weeks from now or six months from now high-pressure laminates or Biowood or other cladding that they put on it will then be retrospectively banned and they will have to do it all over again. What answers do you have, sitting there today—

The Hon. TREVOR KHAN: Don't be rude, David. It is unreasonable.

The CHAIR: What answers do you have to those home owners?

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Mr WHYBRO: The answer is: Comply with the National Construction Code, which places clear direction around limiting the spread of fire or not having combustible material or flammable material on the building. If we complied with the code, although it is only a minimum standard, these sorts of materials should never have been used on buildings.

The Hon. COURTNEY HOUSSOS: Does the use of HPL conform to the national building standards on the exterior of buildings?

Mr WHYBRO: Not if it spreads the fire in the way that we have seen it.

The CHAIR: Has it got a certificate of conformity?

Mr WHYBRO: I do not know.

The CHAIR: Are there products made of HPL which have a certificate of conformity?

Mr WHYBRO: I do not know.

The CHAIR: Can you provide that answer on notice?

Mr WHYBRO: Yes.

The Hon. COURTNEY HOUSSOS: In terms of the increase of the number of high-risk buildings are they all high-rise buildings from 444 to 463?

Mr WHYBRO: Four levels and above, I believe.

The Hon. COURTNEY HOUSSOS: They are all four levels and above?

Mr WHYBRO: No, 271 of those buildings are four storeys and over. Out of the 463, 271 are four storeys and above.

The CHAIR: Mr Whybro, you had a print-out of a dashboard, is that right?

Mr WHYBRO: Yes.

The CHAIR: Would a simple way of avoiding all these irritating questions be for you to table that dashboard?

Mr WHYBRO: I am happy to table that dashboard. I have actually got the previous one as well to show the movement in numbers.

The Hon. COURTNEY HOUSSOS: Can I come back to the question about conformity to the national codes?

Mr WHYBRO: Yes.

The Hon. COURTNEY HOUSSOS: We have asked a number of questions today about HPL and waffle or honeycomb; it goes by a couple of different terms.

Mr WHYBRO: Waffle.

The Hon. COURTNEY HOUSSOS: Waffle cladding. And then also it was the subject of the NSW Civil and Administrative Tribunal ruling a couple of weeks ago. Are all of those conforming currently as they are with the national building codes?

Mr WHYBRO: I do not know.

The Hon. COURTNEY HOUSSOS: Are you able to provide us with that on notice?

Mr WHYBRO: Certainly.

The Hon. COURTNEY HOUSSOS: Can you tell us whether they pass the 5113 external combustible building requirements?

Mr WHYBRO: There is another test as well, 1530, which looks at the elements and their combustibility.

The Hon. COURTNEY HOUSSOS: If we could find out if those three particular types of cladding, whether they conform to the national building codes and particularly those two tests?

The Hon. TREVOR KHAN: That may not be the question because it may be individual products as opposed to a broad range of products.

The CHAIR: They each may have a separate standard and the standard may be for separate purposes.

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The Hon. TREVOR KHAN: Yes.

The CHAIR: You can shed light on that in your answers on notice.

Mr WHYBRO: It can certainly be compliant use in a one level class 1A home.

The Hon. COURTNEY HOUSSOS: I understand that.

The Hon. SCOTT FARLOW: With respect to the flammable cladding register, the Hon. Trevor Khan has asked questions of other witnesses previously. We have heard witnesses express concern when it comes to the publication of that for residential properties and particularly strata communities. But there was some argument put with respect to items such as shopping centres, movie cinemas, hotels, that was put before. I would like your perspective on that and whether you see that being a public danger if that was to be released in advising flammable cladding on shopping centres or similar buildings and whether that is on the register?

Mr WHYBRO: The public release of information that identifies a building that is more vulnerable than other buildings in the community is not something that Fire and Rescue recommends.

The CHAIR: What about before you decide to take your kids to a cinema, should you have the right to know whether or not that cinema is clad in flammable cladding before you take your kids to a cinema, that it is a high-risk building? I personally would like to know it. Do you think the public should have a right to know that?

The Hon. SCOTT FARLOW: Let us ask them the question rather than the Chair.

Mr WHYBRO: There are risks in the community that I would not know about either.

The CHAIR: No, Mr Whybro, do you think people should have the right to know before they take their kids to a cinema—I give that as an example—whether or not the cinema is a high-risk building and a clad in flammable cladding?

Mr WHYBRO: If it is a question of that information also being available to people who may want to do harm then I think in the interests of public safety the information should be as tightly controlled as possible.

The Hon. SCOTT FARLOW: Further to that question, Mr Hudson, from your perspective of terrorism, by putting such buildings and centres on a public register and making it known would that then become a terrorist target?

Mr HUDSON: It is a matter of balance and whether the information outweighs any detrimental effect. In our opinion publicly making the information available, there are certain aspects of our society—and Sydney is surrounded by bushfires at the moment and we are investigating a minimum of seven of those as being deliberately lit—there will be people who will try and set fire to those buildings. There are miscreants in our society who will try and do that. In relation to specific terrorist threats there has been some confusion with this. Earlier I said we gave advice to Government about three weeks ago, which was the first official advice we had given. Other comments have been attributed to us but were not made by us.

The CHAIR: Is that the single page letter from Commissioner Fuller?

Mr HUDSON: That is the advice. In our opinion, whilst there is no direct terrorist threat, it has been mentioned in Islamic State of Iraq and the Levant [ISIL] and al-Qaeda communications over the last 10 years of terrorism by fire—normally as wildfires in the United States—which we have been alerted to. Whilst we do not think there is any specific terrorist threat from my point of view it would be, whilst not terrorism, more miscreant behaviour trying to set fire to buildings to cause damage if the list was publicly available.

The CHAIR: Mr Hudson, the Committee has not got that correspondence, it was sent to the Parliament in a different format. I would invite you on notice to provide that advice to the Committee?

Mr HUDSON: I can do that.

The CHAIR: That is the extent of the advice you have provided to the State Government, that statement from Commissioner Fuller, is that right?

Mr HUDSON: Yes.

The CHAIR: Mr Whybro, very real concerns were raised by the FBEU about the resourcing of the fire safety unit, a 20-position strong unit that deals with proactive fire safety inspections, responding to complaints about blocked fire escapes and the like, but also is the unit that is addressing the cladding issues and responding to requests for assessments, particularly from councils for the cladding issues. Have I got the name of the unit right or wrong?

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Mr WHYBRO: The fire safety branch has between 40 and 50 people in it. I think the FBEU may have been talking about uniformed positions as opposed to building surveyors and engineers.

The CHAIR: Would you mind giving us, on notice, the position in terms of what the positions are, what the head count is and if there are positions that are unfilled?

Mr WHYBRO: Yes.

The CHAIR: Local Government NSW said that their perspective was that there is a resourcing issue in fire safety in that unit because they are waiting up to six months or more for a response from that unit when they are referring buildings for a risk assessment from Fire and Rescue. Would that be right? Is there a lag of six months or more?

Mr WHYBRO: There has been a lag since the original submission of some of those. As I mentioned before, it has taken us a while to get to a landing on the policy position on how we are going to risk assess. You mentioned before biowork, we have even taken that into account now, but that is only a recent development in the development of our position on how to assess rectification proposals.

The Hon. TREVOR KHAN: Mr Whybro, is the delay of up to six months that Councillor Scott referred to a resourcing issue or is it as a result of this settling on a policy question that has led to a delay?

Mr WHYBRO: Certainly the settling on a policy question has been a component of that. But, this is discretionary work for us. We have regulatory responsibilities and other built environment issues and that obviously has our focus. Even operations intrude. For the past couple of days we have had fire safety officers out on trucks in strike teams fighting the bushfire emergency. We prioritise our resource allocation on the basis of where the greatest need is at that particular time. Cladding has certainly been at the forefront of our minds and our efforts.

The CHAIR: But if we have got a delay of more than six months, if you are viewing it as a discretionary part of your duties, that does not sound like it has got the priority that some people have suggested is required given the public safety issues at hand.

Mr WHYBRO: Yes, I take that on board. As I said, we now have a position that has been reviewed by the Cladding Taskforce and is going to our executive for approval. We have started a preliminary assessment around the rectification proposals that have come to us. It falls into a couple of categories: yes, no and maybe, in terms of whether or not a rectification proposal will be acceptable.

The Hon. TREVOR KHAN: Have you got any view or are you going to determine a protocol as to how long it is going to take to get these issues considered by your service?

Mr WHYBRO: We are going to get through them as fast as we possibly can.

The Hon. TREVOR KHAN: That is like how long is a piece of string. Have you got any view as to what an appropriate time frame is?

Mr WHYBRO: As I said, we have started the preliminary review of the proposals. I would like to think that within a couple of months we will be able to have got back to all of the councils with advice. It is only our advice; they are the regulatory authority with the powers to make a decision.

The Hon. TREVOR KHAN: But plainly it would seem, I think not unreasonably, council is going to look for some direction from you before they make a decision. If not for legal reasons they are going to be looking to what they see as your expertise, so the longer you take the longer they are going to take. You would agree with that would you not?

Mr WHYBRO: Yes.

The CHAIR: And that means we have got yet more delay before even the first step can be taken by council, which is the notice of intention to issue an order. Do you require additional resources from government to properly fund this unit given all the other pressing demands on your service at the moment, given the intensity of the fire season, which we understand?

Mr WHYBRO: We have just gained approval for the establishment of seven additional temporary positions to assist with this and other building work that is coming our way.

The CHAIR: Are seven positions going to be adequate? How many did you ask for?

Mr WHYBRO: Seven.

The CHAIR: And are seven going to be sufficient?

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Mr WHYBRO: I am given an allocation to do the job that is expected of me. I will always advocate for more when required, but any larger, broader implications around staffing establishment I think should be referred to the Minister or the Government.

The Hon. TREVOR KHAN: But you sought seven and you got seven.

Mr WHYBRO: Yes, temporary positions.

The Hon. COURTNEY HOUSSOS: Are they uniformed positions?

Mr WHYBRO: Yes. And there is a cost to that because we are now removing people off the back of trucks to come in and do fire safety work. So there is overtime maybe incurred in the commands on the basis that we have seconded their positions into our directorate.

The CHAIR: So these are not new firefighters, you are taking them off trucks.

Mr WHYBRO: Yes.

The CHAIR: Is that really a solution, given the fire season we have got at the moment, to the cladding problem, to take firefighters off trucks? That does sound to me like a suboptimal solution.

Mr WHYBRO: It goes the other way as well. They go back onto trucks on blow-up days, on severe fire weather days, as they have for the past couple of days. We move the pieces around to address the risk.

The CHAIR: Mr Whybro, we have run out of time. There are just a couple of matters I would raise with you. You provided us with the two printouts from the dashboard from 29 November and 6 December. Unless you tell us otherwise, the presumption will be we will publish those documents. Do you have any objection to that?

Mr WHYBRO: They are publicly available on the Customer Service website.

The CHAIR: You took a number of questions on notice, I think, and Mr Hudson as well. You have until 28 January to provide those answers, but could I ask you as well if you do have your guidelines completed before then, the guidelines you spoke of which will give the directions to council, if you could provide those as well or the draft guidelines that you have, between now and 28 January? That would be appreciated. On behalf of the Committee, I thank you both for your evidence today, and Mr Whybro in particular, those men and women in your service, all the firefighters in fact in your service, the work they are doing over this fire season is enormously appreciated.

Mr WHYBRO: Thank you.

(The witnesses withdrew.)

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JOHN TANSEY, Executive Director Regulatory Policy, Better Regulation Division, Department of Customer Service, on former affirmation

ROSE WEBB, Deputy Secretary, Better Regulation Division and NSW Fair Trading Commissioner, on former affirmation

The CHAIR: I welcome back Ms Webb and Mr Tansey. Do you have a brief opening statement you want to make in relation to flammable cladding?

Ms WEBB: No, nothing.

The CHAIR: I will hand over to the Opposition then.

The Hon. JOHN GRAHAM: We have just had supplied a useful update about some of the figures I was going to ask you about. I just want to be clear that I properly understand it. The number of buildings on the register at the moment, that is high-risk buildings with combustibile cladding, is now 463?

Ms WEBB: I will get Mr Tansey to answer these questions because his staff have done this.

Mr TANSEY: That is 463 are currently potentially high risk.

The Hon. JOHN GRAHAM: And eight of those are owned by the Government, is that right? There are only eight public buildings?

Mr TANSEY: Based on the current assessments, that is correct.

The CHAIR: Is that what "public" means: owned by the Government?

Mr TANSEY: The dashboard that you are looking at says yes, government-owned.

The Hon. COURTNEY HOUSSOS: Are there any additional buildings to those eight that contain public agencies but are not owned by the Government?

Mr TANSEY: Yes, there would be. There are private buildings in which public servants are tenants.

The Hon. COURTNEY HOUSSOS: How many of those?

Mr TANSEY: I do not have that figure in front of me.

The Hon. COURTNEY HOUSSOS: Can you take that on notice please?

Mr TANSEY: Yes. I will certainly take it on notice. From best recollection it is about 18.

The Hon. JOHN GRAHAM: Okay, that is helpful. So the vast bulk of these have been referred off to councils, 414 of the 463. Councils really turned up again and on this specific issue said, "We need some guidance. We are having a lot of trouble here knowing how to assess the risk, how to work out how to rectify it." You are now, through the task force, we have just been told, about to provide some additional policy guidance. When will that be issued?

Mr TANSEY: We have continued to try to work with councils across the whole time of this issue, keeping in mind that it has been going now for a couple of years, because, as we all fully understand, the regrettable signal event was the Grenfell fire in June 2017. So we have been working with councils across that whole time.

The Hon. JOHN GRAHAM: Understood.

Mr TANSEY: And, as we have said before, the very, very large and significant task for most of that time has been actually identifying the buildings and doing a vast body of work to scope and identify them to get them down to this cohort. We are continuing to work with councils to assist them and, as I have heard my colleague Mr Whybro talk about, they have very recently arrived at a policy position for Fire and Rescue, its policy framework that it will use to assess referrals from councils. That is their own goalposts for the assessment. We have in particular in recent months, through the Cladding Support Unit, ramped up the amount of both direct advice and resources to councils.

The Hon. JOHN GRAHAM: Understood. I just want to stop you there, though. You are saying that the policy guidance that will be issued will not be issued from the task force, it will just be issued from Fire and Rescue NSW.

Mr TANSEY: The document, as I understand it, and as it came to the task force, was Fire and Rescue's own framework for providing an opinion, not binding advice, an opinion to councils where councils seek input from fireys about particular issues and particular rectification. So it is their own, and I think I heard my colleague

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say, admittedly conservative view about appropriate rectification. So that is for them, but I think Mr Whybro said he would make that publicly available as an internal decision-making document of fireys, so I will go with that advice.

The Hon. COURTNEY HOUSSOS: So is the Department of Fair Trading or are you currently considering any formal advice to provide to councils, or is this going to remain a draft sort of document for councils to consider if they so choose?

Ms WEBB: I think we just need to distinguish between advice that we might give as a department and advice from the Fire and Rescue service. Mr Tansey was starting to talk about the advice from the department's unit with him. I will just continue that. But it is a separate piece of it. Our advice from the department is not the same as the piece of advice that Mr Whybro was talking about.

The Hon. COURTNEY HOUSSOS: Surely, you can understand that comment that you just made then is emblematic of the confused advice that is being provided to the public. We have just been told—

The Hon. TREVOR KHAN: I do not think that was confusing. There are two different things that are being talked about.

The Hon. MARK BUTTIGIEG: I was certainly confused, I have to tell you.

The Hon. TREVOR KHAN: You might be.

Ms WEBB: I am very happy to try—

The Hon. TREVOR KHAN: Let them give their evidence.

The CHAIR: Stop, stop. Mr Khan, is that a point of order?

The Hon. TREVOR KHAN: Yes, it is.

The CHAIR: On what basis?

The Hon. TREVOR KHAN: There is an opportunity for these witnesses to answer questions. They were in the process of answering the question and then Ms Houssos jumps in with editorial comment. They should just simply allowed to answer the question.

The CHAIR: I think that the substance of the question is perfectly in order. I might get Ms Houssos to put the substance of the question again.

The Hon. COURTNEY HOUSSOS: Ms Webb, we have heard time and time again today—

The Hon. TREVOR KHAN: I will take a point of order again. She is entitled to ask a question, not make a statement.

The Hon. COURTNEY HOUSSOS: I am allowed to reframe the question how I like.

The CHAIR: To the point of order: I think Ms Houssos is allowed to frame her question. It may be firm; it may have a small amount of rhetoric in it but it has to be a question and she only got about two seconds into it.

The Hon. COURTNEY HOUSSOS: We have heard consistently today that there has been a lack of clarity and a lack of advice from the Government. The evidence that we have now received in the first few minutes of your evidence has been that Fire and Rescue is going to work on one document and that you are going to be providing different advice. Is there going to be a comprehensive set of guidelines issued by the Government saying, "This is the position of what combustible cladding is and this is what is dangerous."

Ms WEBB: I apologise if I confused; I absolutely did not intend to do that. I was just trying to make the point that that there are specific areas of expertise that Fire and Rescue has that we do not have and that it is doing some work on its specific piece of expertise. The expertise that we have in the department is about the Building Code. We are working very closely together to make sure that not only that the information provided to the public joins up all these areas of expertise in a helpful way but also that we do it in a way that is customer-oriented and, as you say, makes it clear for people what they need to do, but it is a very complicated picture that we are putting together.

The Hon. JOHN GRAHAM: I want to come back to what I now understand is Fire and Rescue policy guidance that will go out. Can you tell us, from a task force point of view, what will that cover of the three things that councils in particular, who are dealing with the bulk of this problem, are saying that they are not clear about: What products are safe, how to assess the risk, and how to safely rectify? Which of those three elements will be covered in that Fire and Rescue policy guidance?

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Mr TANSEY: I think you just heard Mark Whybro say that that is their advice that they will use for their own fire brigade's decision-making. When council seek their advice, which they are doing—councils are doing that voluntarily, seeking the advice of fireys—in response to those requests, the fireys—sorry for the shorthand—Fire and Rescue NSW has been refining its own position. Mr Whybro just said that it is still subject to sign-off by the executive of that agency. That is what it will use. He said it will make that available to councils so they know what that view is. That is the decision-making parameters for Fire and Rescue where councils ask them for Fire and Rescue's opinion.

The Hon. JOHN GRAHAM: About what—about the risk assessment and about rectification?

Mr TANSEY: No. They are intending it for—when councils, as the consent authorities, are dealing with the owners in a real building—so you are dealing with the known facts of a specific building—and they can voluntarily—and do—seek input of Fire and Rescue about whether or not particular treatments for the particular circumstances of a particular building are appropriate. Mark Whybro explained the framework that it will choose to provide that advice back.

The Hon. JOHN GRAHAM: So it is about the risk assessment that councils are conducting.

Mr TANSEY: No.

The CHAIR: Mr Tansey, in your own words rather than adopting Mr Graham's, tell us what it will cover.

Mr TANSEY: As I said, this would be where councils have actually been through a process hypothetically. The building has been identified through us and them as potentially high risk. It is most likely the case that the council with its own officers have done some level of their own investigation and then either agreed with owners or ordered owners to have expert assessment of risk of the building and particular remedies made. Because councils are the ones that can issue the orders and/or approve the development necessary to fix the building, they may seek the advice of Fire and Rescue to say, "Do you agree with these proposed specific rectification measures?"

The Hon. JOHN GRAHAM: Right, so it is more about the rectification.

Mr TANSEY: It is, we you are getting with real determination of the problem or extent of rectifications of a building, and how it is going to be fixed.

The Hon. TREVOR KHAN: Mr Rumore's circumstance.

The Hon. JOHN GRAHAM: We have been told when it comes to those risk assessments and also the rectification, we are going to end up with a patchwork quilt of answers from what you tell us and now the 36 councils who are dealing with this. Why not—

The CHAIR: Fire and Rescue told us unambiguously that it is not its job to do the risk assessment. It seems to be contrary to what you are putting to us now, Mr Tansey. I could be misunderstanding your evidence and but they were quite unambiguous: They said it is not their job to do the risk assessment; that is the job for private consultants.

Mr TANSEY: I think that is correct. I have been trying to listen, between other tasks through the day, so I am broadly aware of some of this. I am the first to admit that these are difficult issues and technically complex issues. If they were simple and straightforward, any and all of us would have solved them by now. We wish that it is but they are not. To go back to your question, when we talk about risk assessment and the preliminary risk assessment that Fire and Rescue did, that was its visual operational inspection of every building to identify those that may or may not be at risk. When you have worked all the way through that, and they have been referred to the consent authorities, who have the responsibility and powers to take action to rectify them—I am not going to quibble with what they call it—they have to determine with the owners of the building whether or not it needs fixing and how to fix it.

The Hon. JOHN GRAHAM: But the evidence we are getting is that they are struggling with that task. What I am asking is that why do we not do what Victoria has done, centralise this and have the experts assess it? In Victoria this is all being pulled up to the Victorian Building Authority. They will get one set of answers, not 36 different sets of answers depending on the resourcing of the council or their ability to navigate the problem.

The CHAIR: It is 128.

The Hon. JOHN GRAHAM: This now says 36 councils have got 414 buildings sitting in front of them for assessment.

Mr TANSEY: Correct.

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The Hon. JOHN GRAHAM: We are going to get 36 sets of answers, are we not?

Mr TANSEY: No. There is a single national set of rules—it is the National Construction Code. I was overhearing the last testimony from the back of the room, and Mark Whybro made that same point: the National Construction Code is the set of rules for what you should or should not do on a building. When people are looking to rectify a building, that is still the main set of nationally consistent technical rules.

The Hon. MARK BUTTIGIEG: Are all councils using that as the go-to guide and the standard?

Mr TANSEY: Yes. That is given force of law in New South Wales through the Environmental Planning and Assessment Act.

The Hon. JOHN GRAHAM: But they are saying they are struggling to come up with a consistent set of answers. They do not know how to apply that consistently with other councils. Do you accept that?

Mr TANSEY: I agree that this is technically difficult work. In all our discussions with councils, we completely acknowledged that. But there is no—

The CHAIR: But they are telling us—Local Government NSW told us—that you are not helping them in that, that you are not giving them the guidelines and the set of rules that they want to assist them doing their job. They were unambiguous in saying that, yes, you have got a central place where they can phone, but they phone there and they do not get any answers.

The Hon. TREVOR KHAN: That is not quite what they said.

The CHAIR: That was their evidence that they do not get the professional assistance they want. There are grateful for having a single place to call but they would like some answers.

Mr TANSEY: We have, since establishing the particular cladding support unit back a couple of months—because we did reach a particular threshold where we are going from, as I said, finding the needles in the haystack, if you will, to having a reducing and more and more focused cohort of buildings that we needed to deal with. We commenced with councils a program through the cladding support unit of actively providing them more detailed information. We did provide written documentation—it is on our website; councils have it—around the different assessment methodologies and the other tools for both preliminary risk assessment and then the International Fire Engineering Guidelines about how to go through a whole process of designing a rectification.

We are trying to do that. We are trying to help them through the cladding support unit to talk through and think about other issues. We are actually also trying to join up councils because some of them are, for a range of reasons, tackling this with more confidence or comfort than others. We are trying to use them to share their own expertise, for those that are doing it most effectively and quickly. So we are providing advice but, as I said before, at the end of the day the task is to find specific solutions for specific buildings. That takes technical expertise. I think through the testimony today Engineers Australia may have said the same. This requires technical expertise.

The Hon. COURTNEY HOUSSOS: That specific point—technical expertise and the lack of it—was specifically raised with us today by Local Government NSW: that when they call the cladding support unit, they need that technical support and they are not getting it at the moment. Perhaps that is something that you can take as feedback.

The CHAIR: Do you have fire safety engineers there to answer the phone and help?

The Hon. TREVOR KHAN: If you want to get advice from a fire engineer over the phone, you are in desperate trouble. That is not how you do it.

The Hon. COURTNEY HOUSSOS: Mr Tansey, how many people work in the cladding support unit at the moment?

Mr TANSEY: There are four staff in the cladding support unit.

The Hon. COURTNEY HOUSSOS: What are their qualifications?

Mr TANSEY: One of them is from our own agency and is a member of the cladding task force. Another is an officer from the Department of Planning, Industry and Environment who, in fact, has now joined our agency. We have had a member of Fire and Rescue NSW advising on that.

Ms WEBB: I think we are prepared to concede that our cladding support unit has not set itself up as experts providing expert advice in the way that people need to get expert advice for these complex issues that Mr Tansey is talking about.

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The CHAIR: That is an answer. Thank you.

The Hon. COURTNEY HOUSSOS: Once we get this policy advice from Fire and Rescue NSW, will it be available? If a council picks up the phone to the cladding support unit, will those councils be referred to the Fire and Rescue NSW policy?

Ms WEBB: I understand it was going to be made public, so of course we would provide a copy as well. But we would provide a copy in any case, but I think what I am hearing from you is actually what people are asking is something that is slightly more sophisticated than just the information that we are trying to distribute. We are working on all the different ways in which we can put people in touch with the people who can provide that expertise.

The Hon. COURTNEY HOUSSOS: They are getting that in other States.

The Hon. TREVOR KHAN: Do I take it that the process will be this: Whether because council has identified it themselves, whether it is because the fireys have identified it or whether it is because of self-reporting, at some point in time there will be a discussion that takes place between a council and a body corporate, generally, where there will be proposals going backwards and forwards as to how to fix the problem. The body corporate may be saying, "We don't want to remove all of the cladding, but we will remove that bit and that will minimise the risk." Do I take it that what will commonly happen is the council will then refer it to the fireys and the council will be saying, "What do you think of this proposal for partial removal of cladding as opposed to whole?" That sort of criteria?

Mr TANSEY: Correct. Councils have the powers and the authority to make the decision themselves, but they can voluntarily seek the advice of Fire and Rescue NSW. The document that Mr Whybro was referring to before is the document they have now crystallised, so they have a decision-making framework for providing that advice back to councils. Councils are not bound by that advice but they are, obviously, understandably reassured by the advice of Fire and Rescue NSW.

The CHAIR: I think that misstates Mr Whybro's evidence, because Mr Whybro's evidence was unambiguous. It does not matter where the product is. He gave a whole variety—even a sliver on top of a door. It should not be there and it should be removed.

The Hon. SCOTT FARLOW: I do not think that was his evidence.

The Hon. TREVOR KHAN: I do not think that is right.

The Hon. SCOTT FARLOW: He said to refer back to the National Construction Code. I do not think that was his evidence at all.

The CHAIR: The transcript will speak for itself.

The Hon. SCOTT FARLOW: It will, and that was not his evidence.

The Hon. TREVOR KHAN: The situation is going to be, if it is a conservative council, the conservative council may simply issue a notice that says, "Rip it all off." It is likely that they are going to go to the fireys in the circumstance where the body corporate is saying, "There's an alternate solution." It will be up to the fireys to say whether they are comfortable or not with that sort of solution.

Mr TANSEY: Broadly speaking, yes. That is the dynamic.

The Hon. TREVOR KHAN: This document that the fireys are developing is their internal decision-making document that will allow them to deal with these compromise solutions that may or may not be satisfactory to the fireys. Is that essentially what it is about?

Mr TANSEY: Yes, correct. It is their decision-making framework when they are asked for an opinion on a proposed solution.

The Hon. TREVOR KHAN: But, again, the council always maintains the capacity to say, "Just rip it all off." That will create its own set of problems for the individual body corporates.

The Hon. JOHN GRAHAM: When will this be issued, just to return to the question asked? When will the fire brigade's advice be issued?

Mr TANSEY: I understand, as Mr Whybro said, it is still in draft. It was noted by the task force in our most recent meetings. It is still a matter for the Fire and Rescue NSW executive to consider and endorse if they see fit.

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The CHAIR: Before I go to the Hon. Courtney Houssos, who has been again waiting patiently, will that protocol from Fire and Rescue NSW be consistent with the residential hazard identification protocol that has been established by the Insurance Council of Australia? Has any effort been made to make it consistent with the residential hazard identification protocol from the Insurance Council of Australia?

Mr TANSEY: If I can take a moment, I will have a look in my papers and see if that is the document. I think it may be.

The Hon. COURTNEY HOUSSOS: The Hon. Trevor Khan just asked a question, saying that it is still in the purview of a conservative council to make a particular decision—or, that is, a council that wishes to take a different view. That highlights that there could be two different approaches within New South Wales, depending on the local government area that they reside in.

Ms WEBB: As we have been trying to explain, each building has to be assessed on its merits and the particular circumstances, so it sometimes can be difficult to know that you are comparing apples with apples. But the way the planning system works in New South Wales, it is a council-by-council decision-making process for many planning decisions. That would include how councils exercise their powers to issue rectification orders as well.

The Hon. COURTNEY HOUSSOS: Do you not think on an issue like flammable cladding, which has been escalated by a number of other State governments, including in Victoria, to have one central authority coordinating it and one central set of standards, that that would be more appropriate, rather than having 36 or really, in effect, 128 different approaches?

Ms WEBB: I think that is the sort of policy question for government that we cannot answer.

The Hon. SCOTT FARLOW: To that point, Ms Webb, you are saying, effectively, that the standards are the same. It is up to the councils, though, how they interpret them and the rights are still with the council.

Ms WEBB: Yes.

The Hon. SCOTT FARLOW: But the guidelines from you and from Fire and Rescue NSW will be the same and consistent.

Ms WEBB: Yes. The building code will be the same. The guidelines will be the same. Part of what the cladding support unit, as Mr Tansey said, is doing is saying to councils that seem to have more expertise in this area to assist ones that do not. I think that would help with consistency as well. But ultimately this is a council-by-council decision to apply the Environmental Planning and Assessment Act and issue the rectification orders appropriately.

The Hon. COURTNEY HOUSSOS: Who does the cladding support unit report to?

Mr TANSEY: Into the task force.

The Hon. COURTNEY HOUSSOS: Do they report internally within Fair Trading NSW to anyone?

Mr TANSEY: Yes.

The Hon. COURTNEY HOUSSOS: Who do they report to?

Mr TANSEY: Me.

The Hon. COURTNEY HOUSSOS: Do you report to the Building Commissioner on that?

Mr TANSEY: Not strictly.

Ms WEBB: Mr Tansey reports to me, as Fair Trading Commissioner. The Building Commissioner, though, closely works with us on all these issues.

The Hon. COURTNEY HOUSSOS: Where is he today?

Ms WEBB: Today he is out. He had already arranged a number of site visits out of Sydney for today, so he was unfortunately unable to appear.

The CHAIR: When will Mr Chandler's recommendations on flammable cladding be made publicly available? He gave evidence that he had provided his recommendations to the Minister within a few weeks of assuming his position. That is now well over three months ago. When will Mr Chandler's recommendations be made publicly available by you?

Ms WEBB: I do not have an answer. They will not be made publicly available by me. I think they will be made publicly available by the Minister, as I understand.

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The CHAIR: When can we expect the Government's response to be made publicly available?

The Hon. TREVOR KHAN: That is a matter for the Minister, I think.

Ms WEBB: I think that is right.

The CHAIR: Is that your answer? You do not have a timetable?

Ms WEBB: I honestly do not have an answer to that. I could take it on notice and see if I can identify any more detail, but I do not have an answer today.

The Hon. COURTNEY HOUSSOS: We heard earlier today that the Building Commissioner had made a presentation to Local Government NSW on his plans for flammable cladding. Are you able to provide a copy of that to this Committee?

Ms WEBB: Of the presentation?

The Hon. COURTNEY HOUSSOS: Yes.

Ms WEBB: I will look into that. I will certainly take it on notice.

The Hon. COURTNEY HOUSSOS: Are you able to provide us with any feedback or any information today on what was in that presentation?

Ms WEBB: I have seen a number of his presentations on flammable cladding. The particular one he gave to Local Government NSW—I do not know for sure that I have seen that particular one.

The CHAIR: Perhaps you could provide, if they differ materially, whatever presentations he has given.

Ms WEBB: Yes, we can.

The Hon. COURTNEY HOUSSOS: You said you have sat through a few of them.

Ms WEBB: I have not sat through them; I have read them.

The Hon. COURTNEY HOUSSOS: Can you provide us with some of the information in those?

Ms WEBB: I think the Building Commissioner is focusing on the issue that it seems the Committee is also concerned with, about making sure that there is sufficient expertise available to be able to assist with these very complex issues and working through various ways in which that expertise could be made available to assist with these processes.

The CHAIR: Is it true that it includes the Building Commissioner going to Bunnings himself personally and issuing orders banning products when he gets to Bunnings? It was suggested that part of his presentation to local government was that.

Ms WEBB: I cannot recall that being in a presentation so I am not sure.

The Hon. JOHN GRAHAM: What powers will the Building Commissioner have?

Ms WEBB: We currently have the provisions in relation to banning specific products under the Building Products (Safety) Act and those powers would be able to be delegated to the Building Commissioner.

The CHAIR: "Would be able to"?

Ms WEBB: I will just take on notice whether we have issued that. I think we have actually now delegated those to him but I can double-check that.

The Hon. JOHN GRAHAM: What other powers have now been delegated from the secretary to the Building Commissioner?

Ms WEBB: The powers under the Building Products (Safety) Act, the powers under the Building Professionals Act, the powers under the Home Building Act, the powers under the Work Health and Safety Act, as far as I know.

The CHAIR: Has Biowood been—

The Hon. TREVOR KHAN: Would you be able to provide for us some detail as to what those powers are?

Ms WEBB: Yes. We will give an answer.

Mr TANSEY: I am just checking but I believe that we have, either to this Committee or the estimates committee, provided those same issues on notice before.

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The Hon. TREVOR KHAN: You might have, but if it is to estimates—

Mr TANSEY: We find them again.

Ms WEBB: We will provide that.

The CHAIR: About four weeks ago the NCAT handed down a judgement which found Biowood to be a high-risk flammable cladding product. Has that product been banned?

Ms WEBB: Not under our Building Products (Safety) Act, no.

The CHAIR: Why not?

The Hon. TREVOR KHAN: It is at the signalling to parties anyway, isn't it, David?

The CHAIR: I am asking why not.

The Hon. TREVOR KHAN: It is not at large.

Mr TANSEY: We are aware of that decision which was made only in the last few days, I think, or weeks.

The CHAIR: No. It was on 15 November 2019.

Mr TANSEY: I beg your pardon.

The CHAIR: That is why I said "four weeks ago".

Mr TANSEY: Sorry. We sought a copy of the decision from the tribunal because it had not published them so we needed to get those. I have had one read of that decision. As you will be aware, it was a finding regarding defects under the Home Building Act, so it did find in the instance of that case, it accepted the advice of one of the experts that that product was combustible and should not have been used in the way it was on that building. We have taken action since then to talk to the manufacturers and get information regarding their testing history and the history of the actual alleged combustibility of that product so we are still looking at that.

But these matters are not actually that straightforward or simplistic. It does not follow necessarily that the tribunal having found that that product was defective in the way it was used on that building that it is automatically a noncompliant product. It is part of the ongoing challenge of dealing with this issue. It is not as simple as "good product", "bad product" in most circumstances. It is about: What are the characteristics of the product, how does it perform and how has it specifically been used on a building? So in that case the tribunal member, preferring the advice of one fire engineering expert over the other party's fire engineering expert, determined that it was defective because it was not appropriate for use in that manner on that building.

The Hon. MARK BUTTIGIEG: So you can see how individual councils might be a bit confused with this sort of thing. Ms Ward, you suggested that you have a degree of comfort over that individualised council approach. You said, "It is a council by council decision."

Ms WEBB: I absolutely did not give an opinion about my comfort or not. I just said that it was a matter for the Government as to how the Environmental Planning and Assessment Act worked.

The Hon. MARK BUTTIGIEG: In your opinion is there a requirement for a more stringent overarching coordination authority for this?

Ms WEBB: As I keep saying, that is a matter for the Government in the administration of the Environmental Planning and Assessment Act.

The Hon. COURTNEY HOUSSOS: I have a follow-up question. Mr Tansey, how many other cases are in NCAT at the moment regarding cladding?

Mr TANSEY: I am not aware.

The Hon. COURTNEY HOUSSOS: Are you notified of them?

Ms WEBB: No.

Mr TANSEY: No.

The Hon. COURTNEY HOUSSOS: How did you become aware of this decision?

The Hon. TREVOR KHAN: A newspaper article, I suspect.

Ms WEBB: You are right—yes. Because NCAT does not just publish its decisions.

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The Hon. COURTNEY HOUSSOS: So NCAT could be making these rulings on a range of different flammable products that it considers flammable. So one part of government is saying, "This is flammable and this is not appropriate," and the other part of government is not even notified of the decision.

Ms WEBB: We have some engagement with NCAT about the transparency of their decision-making process and it is a continuing conversation but we were not notified of this decision.

The CHAIR: But don't you have a protocol with NCAT where if they make a finding about an unsafe building product they inform you of it? Isn't there that protocol in place?

The Hon. MARK BUTTIGIEG: Apparently not.

Ms WEBB: Unfortunately—and that is exactly the topic we are having some discussions with them about—there is not such a protocol at the moment.

The Hon. JOHN GRAHAM: But there should be, shouldn't there?

Ms WEBB: My view is that there should be and that is why we are having discussions with NCAT about the transparency of their decision-making.

The CHAIR: You are saying "the transparency of NCAT's decision-making". They largely publish all their reasons. Surely you have an obligation to sit down—

Mr TANSEY: They did not publish this one.

Ms WEBB: They did not publish this reason.

The CHAIR: You have an obligation as the regulator to proactively establish that and you have not done that until very recently. That is my understanding.

Ms WEBB: No. I think I can honestly put my hand on my heart and say since the day I became Fair Trading Commissioner it has come up in a lot of areas, not just this one, that the lack of transparency of NCAT's decisions impacts on our work and we have had ongoing dialogue with them about it.

The CHAIR: Have you made a recommendation to the Minister to fix that?

Ms WEBB: It is not a recommendation to our Minister because—

The CHAIR: Or through your Minister to the Attorney.

Ms WEBB: Yes. So we have had some discussion about all of that.

The CHAIR: Have you made a recommendation?

Ms WEBB: I have not made a formal recommendation but we are going to start—

The Hon. COURTNEY HOUSSOS: Surely the cladding—

The Hon. TREVOR KHAN: Just let her answer it. This witness is trying to be helpful.

Ms WEBB: We do review all the published NCAT decisions. We try to find out what is on at NCAT but we do not get notified, which I think was the question you were asking me. We do not get notified.

The Hon. COURTNEY HOUSSOS: Surely—

The CHAIR: And you are taking steps to have that protocol established.

Ms WEBB: We are taking steps to try to find a way in which we can be notified, yes.

The Hon. COURTNEY HOUSSOS: There is clearly an issue with building products, but surely the NSW Cladding Taskforce should send off a little note to NCAT to say, "We've established this task force. We're looking at flammable cladding. If you make any decisions, maybe you should send us a copy."

The Hon. TREVOR KHAN: You should deal with judicial and quasi-judicial members. You might not get the answer you want back.

The CHAIR: Well, you would send it to the Attorney General.

Mr TANSEY: We will keep collaborating with the tribunal. At the risk of quibbling, the tribunal is not empowered to make findings on "compliant" or "noncompliant", or "combustible" or "non-combustible" cladding. What it has found in this matter is that the product used in a particular building was defective in the terms of the Home Building Act because we amended the Home Building Act to make it clear that the presence of unsafe combustible cladding would constitute a major defect. It has found that that product on that building was defective.

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The CHAIR: "Not fit for purpose" was the finding.

Mr TANSEY: That does not equate to a ban or a blanket technical decision about the suitability or non-suitability—

The Hon. TREVOR KHAN: And based on the evidence that that member received.

The CHAIR: No. It is your job. Mr Tansey, it is your department's job to issue the ban. What NCAT has found is the product is not fit for purpose.

The Hon. TREVOR KHAN: In that case, based on the evidence received.

The CHAIR: Of course based on the evidence received. But NCAT has found, based upon two contested expert views, that it is not fit for purpose. It is your job, it is your department's obligation, to issue a ban. So far as I understand, you have not contacted the expert who gave the evidence that was accepted by NCAT; you have simply gone to the manufacturer.

Mr TANSEY: As I said, we have been dealing with the tribunal, in the first instance requesting—which they did—to give us the decision. We will continue to look into the matter. If we can get access to the expert evidence provided to the tribunal we will do that.

The CHAIR: As I understood your evidence earlier, you have approached the manufacturer—is that right?

Mr TANSEY: Correct.

The CHAIR: But you have not approached the expert whose evidence was accepted by NCAT. I would suggest you are only going to get half the answer if you go to the manufacturer and if you do not go to the expert whose evidence was accepted.

Mr TANSEY: As I said, we are working through the decision. We will keep the issue directly under review and agree to your helpful suggestion that getting access to the expert report would be useful.

The CHAIR: Speaking to the expert was my suggestion.

The Hon. JOHN GRAHAM: Can I now ask about the dashboard again? This is a range of helpful information about where the statuses of these 463 buildings are up to. One number that is not there is the number of buildings that have now been successfully remediated. Of the 463 high-risk buildings, how many buildings have been remediated?

The Hon. SCOTT FARLOW: It would be none or they would be taken off the list.

Mr TANSEY: You are right, Mr Graham. That is not on the dashboard because this is tracking the process of assessment together with councils. I can take that on notice.

The Hon. JOHN GRAHAM: Agreed.

Mr TANSEY: There have certainly been buildings—there are buildings that have been rectified.

The Hon. JOHN GRAHAM: Great.

The Hon. SCOTT FARLOW: I take it, Mr Tansey, that when a building is rectified it is then removed from the list as well.

Mr TANSEY: Correct. The task here is winnowing.

The Hon. JOHN GRAHAM: I think that is understood. I am asking how many—

The Hon. SCOTT FARLOW: That is what I am saying. It is none, effectively, of the 463.

The Hon. JOHN GRAHAM: Yes.

The CHAIR: It would be a separate data point.

The Hon. SCOTT FARLOW: It would be a separate database.

The Hon. JOHN GRAHAM: I want to know how many have been remediated. I think it is pretty straightforward.

The CHAIR: Can we just do a last round of questions, given the time?

The Hon. JOHN GRAHAM: No. I have two other issues to raise and then I am done.

The CHAIR: All right. Then I may hand over to Ms Houssos to chair the balance.

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The Hon. JOHN GRAHAM: One of the issues that was raised by the most recent Victorian report was their concern about how some other States were dealing with the audit process. They made this observation:

In some other jurisdictions building owners have been required to declare whether they have combustible cladding—a process prone to delay, limited disclosure, failure to identify cladding and/or malfeasance.

Do you have concerns that the process of asking owners to identify their own buildings might mean that the register itself is not comprehensive? Do you have any views about that?

Ms WEBB: As Mr Tansey has mentioned a few times, we had a multi-pronged approach to identifying the buildings. We were not relying only on the self-declarations in the register. Quite a bit of work was done by the taskforce in the early days to use other data sets to establish buildings. That is why we are confident that we are not just relying on people declaring.

The Hon. JOHN GRAHAM: Do you accept that there is an incentive for people to not declare in the way that is being drawn attention to here? That is of the challenges of this process, rather than having the more centralised approach that the Victorians have in terms of the audit process itself.

Mr TANSEY: They are not mutually exclusive. I can I concede that yes, sometimes there can be perverse incentives and people do not want to out themselves. I acknowledge that that may be a risk. But you have already heard evidence that said that the obligation to register comes with compliance and penalties for not doing so. I think you have also heard evidence that people have over reported in very significant numbers. The purpose of doing the register was part of the Government's 10-point plan back in 2017 to recognise that while we would do everything we could to proactively go and identify buildings, we also wanted to have a backstop provision to ask owners to take that advice—

The Hon. JOHN GRAHAM: I accept that that is your position. My final issue is that the Government wrote to all these councils in 2016 saying that there was a problem. Why is it that only now, three years later, that we are issuing the policy guidance about how councils should assess or rectify the issues? It seems remarkable that we are turning to that guidance only now—and it has not even happened yet.

Mr TANSEY: I would not accept the characterisation that nothing has been provided. The advice that was provided by the then Secretary of the Department of Planning—keeping in mind that in the early days of the cladding journey and was pre-Grenfell Tower—to try to make sure that councils were aware of the issue and were aware of their obligations under the Environmental Planning and Assessment Act and pursuant to the building code to be on top of these issues. There has been continuous engagement with councils about the issues. To the best of my recollection, there were further building advisories issued by the then Department of Planning about the issue as it evolved. We have continued to endeavour to collaborate with councils and I have personally addressed a number of roundtable-style meetings that were open to all councils to try to share that information. We have tried all the way through. As I said before, we acknowledge that the task has changed from identifying all the buildings and understanding the scope and nature of the problem to the point where we are now, where we have a much more focused cohort of buildings and are trying to assess those buildings in detail—

The Hon. JOHN GRAHAM: Do you accept that councils are still struggling?

Mr TANSEY: Yes, I have heard that from them.

The Hon. COURTNEY HOUSSOS: Are there any further questions?

The Hon. MATTHEW MASON-COX: I have one question. I am interested in the professional indemnity insurance issue. We have heard some evidence today, which you probably were listening to, from the Insurance Council and the engineers about access to professional indemnity insurance and how it is becoming harder and harder to get. Whilst the Government acted properly and quickly in relation to amending the regulation to allow certifiers to have an exclusion for PI insurance for the purposes of cladding, as a result of that about 10 per cent of the certifying industry has left the business of certifying over the past number of months. Are you aware of that?

Ms WEBB: We register certifiers so we would be able to get you some exact numbers around who has given up their registration. I do not about the 10 per cent for sure—

The Hon. MATTHEW MASON-COX: I understand that that is an Australian-wide figure that was based on a recent survey. Could you clarify that for New South Wales?

Ms WEBB: How many have given up their registration?

The Hon. MATTHEW MASON-COX: Yes. The cost of insurance has gone up very significantly. The concern is that fire engineers in particular are looked to by councils to give recommendations on rectification and the like but they are facing pressure in terms of getting PI insurance. Getting that advice is becoming a real

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problem. How are we dealing with the professional indemnity insurance conundrum for engineers, who we vitally need to determine what rectification should be done? We just cannot just throw it at Fire and Rescue NSW, which is obviously going to kick it back and look for that independent report. How are we solving that conundrum?

Ms WEBB: It is one of the difficult issues in this complex dynamic. It is another part of why councils and building owners are struggling to manage all of this. From our perspective, getting confidence back in the industry that buildings are properly rectified will make them more insurable. Getting confidence back to people about what is the appropriate standard will also help with the professional advice as well. I do not think we have an easy answer to that. We are working very closely with the Insurance Council. Mr Tansey and the Building Commissioner are meeting with them again tomorrow morning. We are continuing to work with them, but we absolutely recognise that this is an issue.

Mr TANSEY: I also acknowledge that given the size of the Australian market—and this is not forum punting—it is genuinely a national market problem. It is a very big focus of the building Ministers, who will be considering this issue when they meet on Friday.

The Hon. SCOTT FARLOW: I take it that it is a global issue.

The Hon. MARK BUTTIGIEG: But is that not a function of the degree of proactivity of a regulatory regime? An insurance market is usually a market of last resort and the market exists because there is profit in it and there is only profit in it because the risk is so low. The risk is only low if you have a regime which prevents these things from happening in the first place. Are we doing enough to make sure that we get to that stage? That is the question, isn't it?

Ms WEBB: I think you are saying exactly what I said, which is that bringing confidence back into the market, including through ensuring the regulations are working properly, is part of the issue.

The Hon. COURTNEY HOUSSOS: I am going to draw the hearing to a close in about six minutes. We have time for a last question from Mr Khan, a last question from Mr Farlow and a last question from me.

The Hon. TREVOR KHAN: My understanding is that body corporates are required to have building insurance in place. Is that correct?

Ms WEBB: I do not think it is building insurance; it is called strata owners' insurance.

The Hon. TREVOR KHAN: This morning we received evidence that some of the buildings that have been identified as having flammable cladding may be essentially uninsurable. If that is the case where does that leave the body corporates?

Ms WEBB: It leaves them in a very difficult position. We are absolutely aware of that issue. It is one of the other interesting dynamics here. If they cannot get the insurance they are required to have then they are not complying with their requirements under the strata Act. We are absolutely alive to that being an issue.

The Hon. TREVOR KHAN: My concern is that we sometimes talk in the context of body corporates but in any event where we have a body corporate we have strata holders. They are unable to take out building insurance themselves because the building insurance is to be held by the body corporates, but they may have a very substantial loan over the unit that they hold. What is the security for these unit holders if these buildings are without insurance?

Ms WEBB: That is why it is a requirement under the strata law to have this insurance. I think what we are seeing a little bit more is that it is not so much that the insurance is unavailable but that the price at which it is available is very difficult for them. We have not hit a point yet where there is an uninsured building but we absolutely acknowledge that this is another one of the pressure points in the insurance market.

The Hon. SCOTT FARLOW: At some point I will have to take my daughter to see Frozen 2. We have heard a bit of evidence about cinemas and shopping centres. I would like to know what additional safety measures might be in place in those public areas that have become part of the flammable cladding register?

Mr TANSEY: For any building that has been assessed and determined that there is a potential issue for it, where councils or the department of planning is the consent authority, where they have those concerns, they have required those premises to put in place interim fire safety measures. Generally they have either negotiated those with the owners or enforced them through an order. With the dashboard that you now have there is actually a figure on there that shows that for 95 of those buildings, in fact, there are interim fire safety arrangements in place. So if there is any real concern about the immediate risk of the building, fire measures are put in place, which can be about how you use the building, improved maintenance and decluttering of the building or trying to mitigate any other behaviours that might crystallise the risk. They are not left untreated. They are treated if there is an immediate concern around the building.

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The Hon. SCOTT FARLOW: I think to Mr Whybro's point before as well, your area of most concern is where people are most vulnerable, which is when they are sleeping, so largely residential buildings in that case as well.

Mr TANSEY: Correct.

The Hon. SCOTT FARLOW: These have a complexity because of the volume of people as well?

Mr TANSEY: Yes. Really, our views on this are directly informed by the Fire and Rescue view. Yes, it is the nature of the fact that people are vulnerable because they are sleeping. It is also about the way we all live and use our buildings. It heightens the risk. If you live in a building you are more likely to have a barbecue on the veranda than if it is a commercial office tower. The nature of bedding, furniture, the filling of a building makes it a greater risk. So it is absolutely the case. That is why all the way through multistorey residential high-rise has been our absolute number one focus.

The Hon. COURTNEY HOUSSOS: On the dashboard that was provided to us, under remediation it said that there were 77 remediation orders I understand. Do you have a breakdown of which of those have been issued by the department of planning and which have been issued by the councils?

Mr TANSEY: I do not have it handy but we can provide it on notice.

The Hon. COURTNEY HOUSSOS: ** Because according to your question taken on notice in budget estimates it said the Cladding Taskforce is in the process of taking detailed advice from councils that comprise the majority of consent authorities regarding the progress of those.

Mr TANSEY: That is correct. In fact, the dashboard you are looking at today shows the amount of greater information, more detailed information that we now have, even compared to back when we were in this forum or estimates talking about it. We basically now know the status of treatment of every building because of the collaboration with councils.

The Hon. COURTNEY HOUSSOS: Have you made any submissions for further staffing or additional staffing for the Cladding Support Unit?

Mr TANSEY: No, we have set them up with four and that is what we are operating with. We have done that since they were established just a couple of months ago.

The Hon. COURTNEY HOUSSOS: You have not made any provision for increasing that?

Mr TANSEY: Not at the moment. We have four and that is adequate for the task that they have at the moment.

The Hon. COURTNEY HOUSSOS: I thank all of the witnesses from today and all of the Committee members. I declare the hearing closed.

(The witnesses withdrew.)

The Committee adjourned at 17:28.