



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS REFERENCES COMMITTEE

Non-conforming building products - the use of non-compliant external cladding materials in Australia

(Public)

WEDNESDAY, 19 JULY 2017

SYDNEY

CONDITIONS OF DISTRIBUTION

This is an uncorrected proof of evidence taken before the committee.
It is made available under the condition that it is recognised as such.

BY AUTHORITY OF THE SENATE

[PROOF COPY]

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

To search the parliamentary database, go to:

<http://parlinfo.aph.gov.au>

SENATE

ECONOMICS REFERENCES COMMITTEE

Wednesday, 19 July 2017

Members in attendance: Senators Kim Carr, Ketter, Xenophon.

Terms of Reference for the Inquiry:

To inquire into and report on:

Non-conforming building products with particular reference to:

- a. the economic impact of non-conforming building products on the Australian building and construction industry;
- b. the impact of non-conforming building products on:
 - i. industry supply chains, including importers, manufacturers and fabricators,
 - ii. workplace safety and any associated risks,
 - iii. costs passed on to customers, including any insurance and compliance costs, and
 - iv. the overall quality of Australian buildings;
- c. possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of:
 - i. policing and enforcement of existing regulations,
 - ii. independent verification and assessment systems,
 - iii. surveillance and screening of imported building products, and
 - iv. restrictions and penalties imposed on non-conforming building products; and
- d. any other related matters.

Additional terms of reference—*asbestos*

On 13 October 2016, as part of its broader inquiry, the committee resolved to inquire into the illegal importation of products containing asbestos. The committee adopted the following additional terms of reference for this part of the inquiry:

The illegal importation of products containing asbestos and its impact on the health and safety of the Australian community, with particular reference to:

- a. the prevalence and sources of illegally imported products containing asbestos;
- b. the effect of illegally imported products containing asbestos on:
 - i. industry supply chains, including importers, manufacturers and fabricators, and
 - ii. workplace and public safety and any associated risks;
- c. possible improvements to the current regulatory frameworks for ensuring products containing asbestos are not illegally imported to Australia, with particular reference to the effectiveness of:
 - i. policing, enforcement, surveillance and screening of imported products, including restrictions and penalties imposed on importers and end users of products containing asbestos;
 - ii. preventing exposure and protecting the health and safety of workers and other people affected by the illegal importation of products containing asbestos,
 - iii. establishing responsibility for remediation of sites where illegally imported products containing asbestos has been found;
 - iv. coordination between Commonwealth, state and territory governments and the role of the Australian Government in coordinating a strategic approach to preventing the importation of products containing asbestos;
- d. any other related matters.

WITNESSES

ATTWOOD, Mr Graham, Director, Expanded Polystyrene Australia	1
BARNETT, Dr Jonathan, Chair, Society of Fire Safety, Engineers Australia.....	28
BHASIN, Mr Sahil, National General Manager, Roscon Property Services.....	51
DWYER, Mr Phillip, National President, Builders Collective of Australia	51
FAIFER, Mr Norman, Immediate Past National President, Australian Institute of Building	45
GARDNER, Mr Ken, Chief Executive Officer, Master Plumbers and Mechanical Services Association.....	51
GENCO, Mr Joseph, Director, Technical and Regulation Division, Victorian Building Authority	74
GILLIES, Mr Andrew, Managing Director, Fairview Architectural	71
GILLIES, Mr Roy, Sales Manager, Fairview Architectural.....	71
GODDARD, Mr Stephen, Spokesperson, Owners Corporation Network.....	41
HEATHER, Mr Paul, National President, Australian Institute of Building	45
HILLS, Mr Rodger, Executive Officer, Building Products Innovation Council.....	1
HUGHES-BROWN, Mr Benjamin, Managing Director, Ignis Solutions Pty Ltd.....	28
IRELAND, Miss Talissa, Senior Client Liaison Officer, CertMark International	35
LECK, Ms Amanda, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council	12
LLEWELLYN, Mr Robert, Built Environment Consultant, Australasian Fire and Emergency Service Authorities Council.....	12
MARTIN, Mr Wade, National Technical Manager, Halifax Vogel Group Pty Ltd	64
McINTYRE, Mr Peter, Chief Executive Officer, Engineers Australia	28
O'BRIEN, Dr Darryl, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors.....	20
OLDS, Mr Troy, Board Director, Australian Institute of Building Surveyors	20
RATZ, Mr Laurie, Special Risks Manager, Insurance Council of Australia	58
RAYMENT, Mr Bruce, Chief Executive Officer, Halifax Vogel Group Pty Ltd.....	64
SMITH, Mr Murray, Acting Chief Executive Officer, Victorian Building Authority	74
STEWART, Mr Greg, Sales Manager, Fairview Architectural	71
STILES, Ms Karen, Executive Officer, Owners Corporation Network	41
STOLTZ, Mr Christopher, President, Victoria Division, Engineers Australia	28
SULLIVAN, Mr Karl, General Manager Risk & Disaster Planning, Insurance Council of Australia.....	58
THORPE, Mr John Charles, Chief Executive Officer, CertMark International	35
TUXFORD, Mr Timothy, National President, Australian Institute of Building Surveyors	20
WILLIAMS, Mr Scott, Chief Executive Officer, Fire Protection Association Australia	12

ATTWOOD, Mr Graham, Director, Expanded Polystyrene Australia

HILLS, Mr Rodger, Executive Officer, Building Products Innovation Council

Committee met at 08:31

CHAIR (Senator Ketter): I declare open this hearing of the Senate Economics References Committee for the inquiry into non-conforming building products, external cladding materials. The Senate referred this inquiry to the committee on 23 June 2015 for a final report by 31 October 2017. The committee has received 155 submissions so far which are available on the committee's website.

This is a public hearing and a Hansard transcript of the proceedings is being made, although the committee may determine or agree to a request to have evidence heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of the evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may also be made at any other time. I ask photographers and cameramen to follow the established media guidelines and the instructions of the committee Secretariat. Please ensure that senators' and witnesses' laptops and personal papers are not filmed.

I now welcome a panel of representatives from the Building Products Innovation Council and Expanded Polystyrene Australia. Thank you for appearing before the committee today. I invite you to make brief opening statement, should you wish to do so, and then we will open it up for questions.

Mr Hills: BPIC, Building Products Innovation Council, wishes to thank the Senate Economics References Committee for the opportunity to appear before this public hearing. We support the Senate inquiry into non-conforming building products, as the prevalence of building products not meeting relevant Australian standards and codes has increased significantly and is in step with increased global sourcing and purchasing practices in recent years.

BPIC would urge the inquiry to bear in mind that non-conforming building products are a persistent and endemic problem in the building industry. Therefore, the strategy and tactics required to eliminate them must work across the building spectrum and not product by product, product group by product group or as a reflexive response to a recent crisis or recent crises, such as Grenfell Tower in the UK. While there is much concern about high-profile issues like non-conforming cladding, these instances can have the effect of overshadowing a broad supply chain and construction problem. While the National Construction Code has focused on ensuring that products meet minimum standards in code compliance, far less emphasis has been placed on ensuring that products are used only for the purposes for which they are intended. This is a significant weakness in the current code and regulatory regimes in Australia that requires immediate attention.

Our first submission to the Senate inquiry emphasised this and made a range of recommendations, 19 in all, that the federal and state governments could or should adopt. We are concerned that, given the urgency of the situation, after the passage of two years few of these recommendations have been implemented. We would urge the inquiry to move as quickly as possible to conclude its deliberations and produce a report that can be acted upon by government and industry. The building products industry in Australia is, and always has been, self-reliant and self-funded, and is confident that the measures outlined in our submissions, as well as the submissions of our colleagues in the industry, will help create a level playing field. This will lead to good outcomes for consumers and taxpayers as well as strengthen the national economy. This concludes my opening statement. I would be happy to answer any questions you might have regarding my statement or our submission.

Mr Attwood: Thank you for the opportunity to speak to you today on behalf of the Expanded Polystyrene Australia group. The EPSA group represent a number of EPS manufacturers throughout Australia and has been in existence for over 20 years. I would like to make reference to the overview in the submission that we sent forward and to the fact that there are key issues with specific product related applications which we would like to recommend to the Senate hearing. These specifically make references to several particular areas. First of all, there is a need for common standards across Australia and moving away or combining the state-by-state based building codes into a more robust and fully encompassing National Construction Code, specifically with relation to the product lines that my group manufactures. There are no specific areas in the code that determine high levels of quality standards, particularly when it comes to fire related mechanisms for the products, and in particular cladding and cladding related issues. At the moment within my membership there are two particular product lines that can come into the country and are manufactured within Australia: fire-retardant and non-fire-retardant. There

is currently no requirement that specifies a fire retardancy mechanism for the product lines that are manufactured to put into building products.

Senator XENOPHON: What do you mean by that?

Mr Attwood: There are two actual product lines. One is fire retardant EPS and the other is non-fire retardant EPS. You might be familiar with the good old 18-litre eskies. That is non-fire-retardant expanded polystyrene. However, over the past 20 or 30 years a lot of products have now moved into the building products arena and there's a fire retardant grade of material that should, as far as my organisation is concerned, be mandated. All the groups that work within EPSA mandate it, but it is a voluntary code. We're certainly aware and have had anecdotal reports of certain products being used within the Australian building sector that are non-fire-retardant.

CHAIR: To be clear, you're saying that the Building Code does not mandate fire retardant forms of polystyrene to be used as building products.

Mr Attwood: For certain building products, correct. The National Construction Code has not developed and been amended to keep pace with the technology of the building lines. There are certain product lines now that exist and have been implemented within commercial and domestic buildings that do not have the specific call-up of Australian standards. Some of the Australian standards that currently exist do not make reference to these new brands of building products, so there's a need for those Australian standards to be amended and be called up by the National Construction Code to align all building products made of this particular material to require fire retardancy grades.

CHAIR: Are there buildings out there at the moment that have used building products made of non-fire-retardant polystyrene?

Mr Attwood: Within the organisation we have had reports come in. We haven't had any audited or validated reports, so it would be difficult for me to specifically say there are. We have had reports come in, particularly for domestic housing, of non-fire-retardant-grade insulation foams being used for that. I cannot specify and determine exactly—

CHAIR: So that is anecdotal?

Mr Attwood: That is anecdotal, yes.

CHAIR: That is a major concern.

Mr Attwood: I would hasten to add, we actually haven't got any defined data to validate that. I would also hasten to add that it is in the construction phase, so it is difficult to visually determine whether a product line has actually got this incorporated fire-retardancy or not. You would have to go through a chemical analysis or a fire-burn test to determine that. The EPSA has mandated within its membership that all building products must contain the fire-retardant grade of EPS. That is a voluntary compliance mechanism. What we are looking for through the recommendations is to mandate in a far more robust way and have our auditors approve that.

Senator XENOPHON: Are you saying that because it is a voluntary code, if you do not comply with the code there are no consequences? So you would be using building materials that are non-fire-retardant—in other words, don't offer any protection in the context of a building fire and there is nothing to stop those non-fire-retardant products being used.

Mr Attwood: The National Construction Code calls up certain Australian standards. Those Australian standards have elements of fire protection requirements mandated. However, those Australian standards do not have the widest spread of applicability to all the building products. The Australian standards have not kept pace with the building products that now exist and the new technology that has been brought in over 10 or 15 years.

CHAIR: But polystyrene has been around for a while.

Mr Attwood: Correct.

CHAIR: So there really should not be any excuse for the standards to not comprehend the fact that we have building products made of this material.

Mr Attwood: I will perhaps explain and expand on that. Development of some of the building products has moved on significantly from when the Australian standards were first implemented. So now there is a need to amend those standards to adapt to the new building products that exist because 15 and 20 years ago the applicability of EPS building products was quite low and quite simplified. It has moved on quite considerably. So the standards need to adapt and adopt an applicability test to these new product lines. The association is looking for a global approach to say any building products whatsoever that are used in either domestic or commercial buildings absolutely need to have flame-retardancy EPS as part of the primary mechanism to limit fire.

CHAIR: Do you have a view as to whether there are other building products where technological progress has marched on and the standards have not kept up?

Mr Attwood: I have a personal view but I am not an expert in that area, so I am afraid I cannot answer that.

CHAIR: Mr Hills?

Mr Hills: There would certainly be products that are beyond the standards that apply to that sector in the same way as expanded polystyrene. The difficulty is it literally takes years to write a standard and more years to amend that standard. A lot of the issues are that the industry has to come together, there is voluntary involvement within the standard writing process and there are a heap of technical challenges in making sure that the standards apply in the way they are supposed to apply and things like that. So getting standards correct is a very difficult and time-consuming process. Usually by the time it is correct, technology has moved on. I think that applies to a number of product groups not just this.

Senator XENOPHON: Are you saying that the current process—the four-year period, the various iterations, being voluntary—is just too cumbersome and too flawed in its current form? Particularly where there are safety issues involved, the process needs to be more streamlined and quicker and more effective.

Mr Hills: That would help, yes.

Senator XENOPHON: How would we do that, though? There is this process now of changing the standards and getting them into the code. How would you do that?

Mr Hills: I am not a standards expert in terms of how the committees get together. The difficulty we have, I suppose, is that the people who advise the standards committees are all voluntary people who come together at their own cost, their only expense, and who give their IP and their expertise. That then gets turned into a standard and then the standard gets sold to the industry, and people have to purchase the standard. Because they have to purchase the standard, generally people don't use the standard because it's a cost burden. There needs to be a change to the way, and I think there is a change to the way, that Standards Australia and SAI Global, whoever is going to publish, actually do their thing. It appears to be that IP is being collected and hoovered up from industry, turned into a standard and then sold back to industry again. We believe there needs to be a streamlined process within Standards Australia. What that is, I am not—

Senator XENOPHON: Sure. Mr Attwood, do you have any other thoughts on that?

Mr Attwood: I would absolutely reinforce that, having spent 30 years in the manufacturing sector. There is a disincentive for industry groups to participate because of the cost and the efficiency involved in inputting and participating in developing Australian standards. There's certainly a disincentive. It's not the highest priority, and, relatively speaking, it's a cumbersome way of actually getting best practice into a strongly organised conformance mechanism. The efficiency is not strong, and I guess it's not seen to be a priority for many organisations who are there trying to survive on a day-to-day basis. Certainly, the efficiency and the cumbersomeness need to be looked at.

CHAIR: I'm conscious that we might've interrupted your opening statement, Mr Attwood, but do you have a view as to how that process could be improved?

Mr Attwood: Certainly ongoing collaboration between the different stakeholders, but, at the same time, streamlining of the national code and the state codes would certainly be something we need to have a very serious look at. But we are talking about a time pressure, and certainly with the industry group there is a need, absolutely, to make some very strong inroads into, in my particular case with my industry group, having very simplified immediate steps forward, which is mandating flame retardancy on building and construction projects for this particular product. That's a black-and-white yes or no and would very much enhance the immediate issue associated with that.

Senator XENOPHON: Sorry; I find it staggering that flame retardancy wouldn't be mandated now. I think if you ask most people, they would assume that the buildings that they are in, the buildings that are being built, particularly now, would be flame retardant.

Mr Attwood: There are loopholes in the Australian standards, and there are loopholes in the NCC, the National Construction Code, that allow certain product lines to fall into play. That may or may not be a conscious decision, but, in the whole building process, once an approval is given to construct a domestic or commercial building, the next stage on is to look at ways and means to minimise cost in the construction phase. Sometimes loopholes are found to actually implement and move away from this, while still supposedly compliant with the broad element of documentary compliance; however, the specific and detailed areas of, for instance, applying

certain Australian standards to this particular code have got flaws and have got holes in them that need to be tightened up.

CHAIR: Should non-fire-retardant polystyrene building products be allowed in the country?

Mr Attwood: Absolutely not. If I can just expand on that: not only not allowed into the country, but not allowed on buildings because Australian manufacturers in my area can actually manufacture flame-retardant and non-flame-retardant polystyrene foam. I would go further than what you have perhaps just suggested: non-flame-retardant EPS material should be banned from all workplaces and worksites. They should be limited to the traditional packaging areas, not building and construction.

CHAIR: And shouldn't be manufactured in the first place.

Mr Attwood: No.

CHAIR: You were suggesting—

Mr Attwood: I don't agree with not manufacturing. Manufacturing absolutely should take place. We have a strong manufacturing industry for this particular product line in Australia, but—

CHAIR: Under what circumstances can a building product made of non-fire-retardant polystyrene be used?

Mr Attwood: Sorry, I misinterpreted your question. For all applications in building and construction, the only EPS material that should be allowed is flame retardant.

CHAIR: Thank you.

Senator XENOPHON: The fact that we are supposed to have a standards system in place, the fact that we are supposed to have a National Construction Code, and you're telling us this morning, and I accept what you tell us, that there are loopholes in place that actually have profound implications for public safety: how did we get to this stage, particularly given the warnings we had with the Lacrosse fire back in 2014? Indeed, that was the instigator of this inquiry in the previous parliament. This is obviously something you have been agitating for for some time. Have you made representations, and to whom? Have your concerns fallen on deaf ears?

Mr Attwood: The concerns with regard to flame-retardant products have not fallen on deaf ears. As I mentioned earlier and in the submission, I cannot give you any specific auditable, validated areas where this has taken place. These are anecdotal pieces of information.

Senator XENOPHON: There should be an audit though, should there not?

Mr Attwood: I believe so, but if I just take the next stage on from that: you were asking about where this has fallen down. There is quite a significant gap in the inspection site during the building phase.

Senator XENOPHON: Say again: you are saying there is an inadequacy of rigour, a lack of rigour, in terms of the inspections phase?

Mr Attwood: Correct.

Senator XENOPHON: Was that a matter for state regulators or local government regulators? Who handles the inspection phase?

Mr Attwood: Basically it's a state inspection mechanism, but it is also across the board. It also rolls all the way back through to things like specifics of analysis, codemarking mechanisms and auditing processes during that manufacturing and installation phase. There is a really big area of concern around—once the design is actually signed off and mandated, working all the way through to the construction phase and during the implementation stage, there is a gap there. There's a significant gap in terms of ensuring that the installation applies to the standards and is of good quality. It's one thing looking at building products, but, alongside building products per se, the installation also is absolutely critical to maintain that line and that chain of protection for particular fire protections.

CHAIR: Mr Attwood, I hear you saying that there are problems across the supply chain and regulators have responsibilities within certain parts of the supply chain. Would you agree with the proposition that there is a lack of national oversight of the whole of the supply chain, a lack of somebody ensuring, from end to end, that the safety of end users and residents or people working in these buildings is actually uppermost in their mind?

Mr Attwood: I would answer that question by suggesting that each part of that supply chain has elements of audit and quality assurance that needs to be in place. Some areas are strong and some areas are less strong. To have an oversight into the complete supply chain, I struggle to see how such a complex mechanism could actually be fully undertaken.

CHAIR: We have a National Construction Code.

Mr Attwood: Yes, but the National Construction Code doesn't necessarily take into account all of that area. That needs to be tightened up. There's an element of oversight for sure, and my particular group is advocating having (a) a national approach and (b) a consistent approach from state to state, because these product lines and installations might be designed in one state and implemented in another state. So there is certainly an overview mechanism that can take place, but I would not be advocating removing focus on that quality assurance mechanism for each of the elements—

CHAIR: I am not advocating that; I am just saying that in the absence of some central or national oversight of that system, it's too easy for people to point the finger of blame at somebody else along the supply chain, which is what we are hearing in this inquiry.

Mr Attwood: I agree with you, yes.

CHAIR: Someone needs to say, 'We need to stop the blaming of other people and let's take responsibility for this'.

Mr Hills: To answer your question about how we got to here: it's a longwinded saga. Basically, over 10 or 15 years, the supply chain has changed dramatically. Going back 10 or 15 years, most products were made in Australia by manufacturers in Australia, so the code requirements were known and all the processes were in place. Once our supply chain became global and opened up, a whole plethora of new products came into the marketplace. The code, the National Construction Code and the standards have not kept up with that. The way that the Building Code and the NCC have developed over the years is that it was actually upgraded every year. What would happen is that some parts of the code might be updated and other parts of the code might not be, so you sometimes had parts of the code not actually articulating with each other. So wherever you have a situation where two parts of the code don't articulate, you end up with loopholes. And it is the same thing with standards. It takes four years at best to get a standard through the system. Within four years a whole multitude of new technologies and products can come into the marketplace—in EPS, in glass, in steel. So it is a process where the regulatory and code compliance systems that we have been trying to catch up with a rapidly changing world, and I think we are in a situation now where there are gaps.

CHAIR: We're constantly trying to shut the door and the horse has bolted.

Mr Hills: Exactly; that's right. And, then, trying to write a standard in a predictive way is very difficult because you don't know what new technology's going to come round the corner. If the standards process could be sped up, it could be fairly arranged so that industry actually was compensated or at least given some incentive to be involved. If standards that were actually published at the end of the day weren't so expensive and people could actually use them—in the same way that the NCC is now free and people can access it—that would reduce those barriers to people understanding what the requirements are.

Senator XENOPHON: I will just follow that question. Mr Hills, you made the point that standards should be free. One of the reasons for noncompliance or nonadherence is that it's a commercial operation. I'm not being critical, but that's how it has developed. But when it comes to these issues—to standards that relate to issues of safety—you shouldn't be charging a fee for it. It should be something that's readily available, should it not?

Mr Hills: That's what we're saying. The standards should be free; they're not.

Senator XENOPHON: But the way Standards Australia is structured it works on the basis of making a quid. It funds itself by charging people for the use of the standards; correct?

Mr Hills: At the moment, that's its role. It was actually changed in 2003. It used to publish its own documentation. Then a Productivity Commission report said that that was actually a conflict of interest, which was when SAI Global became the publishing arm and Standards Australia became the body that produced the documentation. So Standards Australia takes a percentage of the royalties that are achieved from the publishing of the documentation. But those documents, those standards, cost huge amounts of money, and if you're a manufacturer you can be up for thousands of dollars. Part of the reason people aren't complying with standards is that they don't know what the standards are because they haven't bought them, and the reason that the NCC has gone from being a couple-of-hundred-dollar book to free is to actually get over that problem of people using those codes and being aware of those codes.

CHAIR: We also heard from Mr Savery from the ABCB. He talked about the fact that, at the same time as we had the globalisation of the supply chain, we also moved away from mandatory inspections of buildings. Do you see that as being part of the problem here?

Mr Hills: Absolutely. It goes back to what Mr Attwood said. A big part of the problem we have at the moment is that the regulatory bodies within each state and territory over the years have, for whatever reason, been under-resourced or lacking resources. I have seen that it's been very, very difficult for them to regulate, so they're

not actually inspecting buildings to the extent that they used to, so many of these products simply get on and nobody checks. And, at the very end of the stage, it's up to the certifier, who's been given all of the responsibility to check things out. And the building certifier, even the very best of them, will struggle trying to do that. I've just come back from Queensland where the Queensland government is looking at a new bill to try to spread the risk and the responsibility for compliance across the supply chain rather than leaving it to the very end. We think that that's a very healthy, sane and intelligent way of going, and we are advocating that each state and territory should actually look at something like that.

Senator XENOPHON: Do you think it's a good bill?

Mr Hills: We do think it's a good bill, yes.

Mr Attwood: I'd like to make a further comment to that. The advancements in building technology and building products technology have put tremendous pressure, if you like, on the inspection mechanisms. From an educational perspective, it is almost impossible to expect the building inspectors to be across every single technical detail of every single product line. There is and can be a tendency for a little bit of a tick-and-flick approach where the educational process of the inspectors might not be up to speed with the specific technical and installation requirements.

Senator KIM CARR: We've just come from a meeting of sprinkler fitters. The sprinkler fitters told us that there are a number of problems with the certification process. They say that people are certifying product as being fit for purpose when they're not physically inspecting it. Are you aware of that practice?

Mr Hills: Yes, I am, but there is no quantitative way of telling that.

Senator KIM CARR: So you are saying that people would certify a building as being fit for purpose, but they haven't physically examined it?

Mr Hills: Yes, that has happened.

Senator KIM CARR: They also say there are fly-by-night companies that operate, where the proprietor might be licensed, but everyone who works for the company is not. The people actually doing the work are not licensed. Are you familiar with that practice?

Mr Hills: Yes.

Senator KIM CARR: Is it widespread?

Mr Hills: Again, it's very difficult to tell you factually about quantities because we don't know, but I can tell you that it does exist.

Senator KIM CARR: It does happen? You're aware of it?

Mr Hills: Yes.

Senator KIM CARR: We are also aware that people who are unqualified are undertaking that work. They are brought in—we were told Pizza Hut managers might be brought in—to do inspections and certifications. They are totally unqualified. You say they're not technically competent because of the latest technology, but they're not competent at all. They have no trade qualifications and are not actually suitable for the job—not fit for purpose.

Mr Hills: That would happen—yes. Again, I can't tell you exactly where and—

Senator KIM CARR: But, in your experience, you can confirm that this actually occurs?

Mr Hills: Yes. It is one reason that I think our industry and the building manufacturing industry would like to have licensing of installers.

Senator KIM CARR: I'll come to that in a minute. I am happy to talk that through. I want to deal with another issue that's been put to us and that is the question of fraud. Certification is provided to say that a building's componentry is compliant, but the certificates are fraudulent. Are you familiar with this practice?

Mr Hills: Absolutely. We have a lot of qualitative data about that. One of our members, the Australian Window Association, has literally thousands of documents that are fraudulent—

Senator KIM CARR: Thousands?

Mr Hills: Yes, and they can provide evidence.

Senator KIM CARR: Could we have that? Is it possible to have that?

Senator XENOPHON: Chair, given that revelation from Mr Hills—and we need to emphasise that the Australian Window Association has been a long-term advocate on non-complying and non-conforming products and has been a great advocate for Australian manufacturing and for appropriate standards—perhaps we could

write to the Australian Window Association to ask for the fraudulent documents that were referred to that came into their possession.

Senator KIM CARR: We need to have the detailed evidence. It's been put to us that the fraudulent certification practice is widespread in the building industry. Are you aware of this being brought to the attention of authorities?

Mr Hills: Yes, we are. We have made submissions at the state level. In our original submission to the Senate inquiry we said that fraudulent documentation is a massive problem within the industry. Since at least I've been part of the Building Products Innovation Council, which is the last three years or so, but even before that, we have been saying that it is a massive issue.

Senator KIM CARR: Could you detail the broad areas in which the fraudulent documentation occurs?

Mr Hills: A large part of it—I won't say all of it—is from imported products. The imported products, for whatever reason, can be tested to varying standards and not necessarily the standards that people think. The documentation could be completely fraudulent, with no testing done at all. There has been forging of NATA certificates and forging of industry code certificates and things like that. It gets very difficult then for a building certifier or an engineer who is trying to check, to think that they are actually getting what they are doing. If you look at the asbestos contamination in the Perth hospital, the builder had all of the proper information and all of what they believed to be relevant certification documentation, which turned out not to be correct. We have evidence of those as well.

Senator KIM CARR: When this matter was put to public authorities and regulators, was any action taken?

Mr Hills: We are not aware of that, no. It has been talked about, and we have advocated that one of the potential ways of overcoming that is to expand the definition of 'building products' within the ACCC's definition of a 'consumer good', because, at the moment, if somebody comes across fraudulent documentation, who do they report it to?

Senator KIM CARR: The police. What about the police?

Mr Hills: The police will turn around and say, 'That's not our jurisdiction.' If they take it to the ACCC, the ACCC will say, 'It's not our jurisdiction.' So, at the moment, there is nowhere to report lots of these instances because simply there is nothing there.

Senator KIM CARR: So you are advising this committee that, where there is a clear case of fraud—the criminal definition of fraud—there has never been a prosecution?

Mr Hills: Not to my knowledge. I do not believe so—not in terms of product certification.

CHAIR: And furthermore you are saying that there is a grey area as to which would be the appropriate enforcement agency?

Mr Hills: Yes, and there are gaps and loopholes in that area because it is not clear who is going to take responsibility for prosecuting these issues.

Senator XENOPHON: Which sends a clear message to those involved in the fraud in the first place that they can keep doing it again and again.

Mr Hills: It is big business.

Senator KIM CARR: This is big business—there is a lot of money to be made. It has been put to me that there are occasions where money changes hands on these matters. Are you familiar with that?

Mr Hills: I do not know if money changes hands or it doesn't. I would imagine that money would have to change hands, because fraudulent documentation costs probably as much as or almost as much as genuine documentation does.

Senator KIM CARR: We often hear of that sort of corruption in other countries. Are you aware of any of that type of activity occurring in this country?

Mr Hills: Yes.

Senator KIM CARR: In what fields?

Mr Hills: In a number of fields. I used to be the CEO of the Association of Building Sustainability Assessors—the people who do the energy ratings on homes—and we were constantly looking at fraudulent NatHERS documentation that was submitted. So it is not just building products documentation; it is certification documentation.

Senator KIM CARR: Are you saying that people take bribes to accept false certification?

Mr Hills: I do not know whether they take bribes or how the money changes hands or what incentives there are. It may not necessarily be a monetary thing; it might be the fact that somebody produces fraudulent documentation in order to get something reduced or to speed the process through—those sorts of things.

Senator KIM CARR: Again, that might well be argued as secret commissions.

Mr Hills: Absolutely. Yes it is.

Senator KIM CARR: That is a criminal offence.

Mr Hills: Yes.

Senator KIM CARR: But you are saying that no action has been taken?

Mr Hills: Again, those reports, as I say, when I was CEO of ABSA were reported to the state regulator, and the state regulator looked into them and, at the end of the day, they said, 'There's nothing we can do; we don't have the jurisdiction; we don't have the power.' If you look at, say, the QBCC—we had a conversation with them recently—their current powers allow them to look into the licensing of their licensees, but, if it is beyond that, if it is a manufacturer producing fraudulent documentation, it is outside their powers.

Senator KIM CARR: It is just that the question of licensing comes up and the question of regulatory enforcement comes up, and the evidence before the committee is that everyone's got someone else to blame. This is one of the great buck-passing exercises I've come across, and this is my 25th year in the parliament. And it seems to be endemic. Subcontractors blame builders and builders are able to blame architects and then surveyors engineers—it goes on and on, to the point where certifiers are actually signing documents that they are not entitled to sign and insurance companies are then saying, 'We're not going to pay out on a claim because someone is at fault,' and the tenant or the occupant of the building is then left with the liability to clean up.

Mr Hills: That is right.

Senator KIM CARR: Is there not a need here for us to break through all of that and have some sort of national licensing system in place for the building industry, as to people who are installing products, and in terms of the actual application of the national building codes?

Mr Hills: The building products industry, or the building products manufacturing industry, would be supportive of a national approach, whether it be a single national body or a harmonisation of state-based things—

Senator KIM CARR: But that could take years and years. It's like the railway gauges question. It might take us the best part of the next century to sort that out.

Mr Hills: Exactly. Our dilemma as an industry is: we want this stuff to happen, but the mechanisms to make it happen are just like watching grass grow. That's our difficulty.

Senator KIM CARR: Clearly, the issues of privatisation and deregulation have left us with this dreadful legacy. Would you agree with that assessment?

Mr Hills: Absolutely.

Mr Attwood: Yes.

Senator KIM CARR: Trying to identify who's actually responsible seems, to me, to be a never-ending task. The question will be, as far as the public is concerned, given that public safety is paramount here: what action can we take to actually break these deadlocks? It comes down to what national regulatory regime we should put in place. That's what we'd be interested to hear from you on—what action can be taken by the national parliament. I'm thinking particularly about licensing, because we do have some capacity through the training regime to actually put in place national licensing for installers and people actually putting the product together, which can also put in place standards that will not be able to actually fit non-compliant products. Do you think there is any merit in that type of approach?

Mr Hills: Certainly. There are things that we believe the federal government is better placed to do as opposed to the states. One of the recommendations that could come out of this committee is that the ACCC reviews its definition of 'consumer products' to broaden that out. Another recommendation could be to look at Border Force and say to them: 'At the moment, you're looking at drugs, arms and that sort of stuff as a priority. There are priorities in other areas, such as asbestos and flammable products.' There are things in terms of, like you said, actually nationalising the licensing arrangement for installers. One of the biggest issues that we have is that, even if you do have a fully compliant product, the potential for that product to be used in an inappropriate application is very high. Licensing of installers would help to reduce that problem significantly, whether that's done at a national level or it's—

Senator KIM CARR: Let's start at the national level. You won't get national consistency. Then, the question will be: what standard do you do it at? We could go for the lowest common denominator, which is the worst feature of our federation. You'll need to be at a standard that's actually going to ensure quality.

Mr Hills: That's right. The beauty about a national standard for installation or licensing is that, if somebody is actually licensed within Victoria and they go to Queensland, that licence goes with them. They don't have to change—

Senator KIM CARR: That's what I'm saying. National consistency is critically important here.

Mr Hills: That's right.

Senator KIM CARR: But there are, at the moment, circumstances where you can be a builder in Victoria and not require any qualifications whatsoever. That's clearly not appropriate.

Mr Hills: That's right. What you'll find is that the state acts which actually regulate the building activity within each state have been written in a way where most of them place all of the responsibility on the building certifier. They put implied warranties onto the builder and the installers. We would argue that that is fine, except it means that there's no duty of care in a direct way to the end user, the developer or the end purchaser. One thing that could be done is we could encourage the states to actually look at their building codes to actually build responsibility in and be very overt about what responsibility the builders have and what training they require—have all that stuff actually written into the building acts and not have such a reliance on the building certifiers to fix everything.

Senator KIM CARR: The problem is: if you say to the states, 'We want you to have a look at it,' they'll get the mirror out and they'll have a look into it. It will take a hell of a long time before anything's actually done. That's why I'm saying there may be a more urgent response.

Mr Hills: And we would support that. That would be great if we could work out how that could be done, because the problem that we have is that housing, I believe, is not something that the Commonwealth government has jurisdiction over constitutionally.

Senator KIM CARR: But the Commonwealth has responsibilities under the Corporations Act?

Mr Hills: That's right.

Senator KIM CARR: Clearly, it can ban non-compliant products. There's no question about its capacity to act on that level.

Mr Hills: That's right.

Senator KIM CARR: But it has capacity under the training regime in terms of the Commonwealth funding powers?

Mr Hills: Yes.

Senator KIM CARR: So there are Commonwealth heads of powers that can actually act here?

Mr Hills: Yes.

Senator KIM CARR: The question is: is there a political will to reregulate what has now become a pattern of deregulation and privatisation which, as I said, has led to this disaster?

Mr Hills: And the industry would support all that. I suppose I cannot articulate the details of how that would unfold, because you are putting me on the spot. But I can tell you that the building industry would support nationally consistent approaches to training, licensing and banning of non-complying products and buildings and those sorts of things.

Senator KIM CARR: I have just one final question. The proposition has been put to me numerous times in terms of my work in industry, and it is the decent employers, the decent, reputable companies, that actually want to see proper regulation, because it provides a level playing field for them. It's the fly-by-night corrupt operators that what deregulation and a capacity to undercut people and to not have anyone call them to account. Would that be fair?

Mr Attwood: Absolutely correct, that's right.

Mr Hills: There is also, unfortunately, an argument used about affordability and that we can't have more regulation because it is going to affect housing affordability. We would argue that affordability needs to actually include minimum standards. Building should be safe, regardless of how much it costs. So the use of the word 'affordability' can sometimes be used as a means to either restrict the amount of regulations or to water things down.

Senator XENOPHON: Or red tape. That's the mantra isn't it?

Mr Hills: Or red tape. I would say another thing, and you were talking about a level playing field, just to give you an example of what's happened recently. Viridian is a CSR company and has spent \$140 million building glass plants in Australia to produce double-glazed glass of high quality. They have just gone out of business and have closed the Viridian plants down because they have been undercut by imported glass from China. They simply cannot support their supply chain or their product.

CHAIR: Does that product to meet the same standards?

Mr Hills: Probably not. It is not absolutely guaranteed that those products from overseas are not compliant. They may be compliant, but the fact is that Australian manufacture has closed down due to an uneven playing field.

Senator KIM CARR: Yes, so the point is that, with proper safety standards, we may in fact help build national capacity to meet those standards. Is that the proposition you're putting to us?

Mr Attwood: I would agree with that comment.

Mr Hills: Part of the standards reduction is the fact that a lot of our capacity to test and comply has disappeared over the years.

Senator KIM CARR: But that's not an excuse for not doing anything. That seems to me to be justifying poor governance. If we haven't got the capacity we should get the capacity to be able to test building products for safety. Would you agree with that?

Mr Hills: Yes.

Senator XENOPHON: I have some questions to put on notice, because we'll run out of time, but the broader issue is that you've talked about the loopholes and noncompliance and fraud. What do we do about these dodgy products that are already in buildings? How do we deal with that issue, if there are many thousands of buildings? I'm not talking just about external cladding, something that you can see, but something that's internally in buildings. How do you deal with that?

Mr Hills: It is a very difficult question to answer. In Victoria, for example, with the cladding audit that was done after the Lacrosse fire the difficulty is that the VBA, as I understand it, cannot punish or chase after people once a building is completed. It's the same with the Queensland Building Codes Board. Their responsibility stops once the building is handed over to the owner. So even if they want to, with their current powers they can't reach out beyond that final construction stage and prosecute. So it's left to the owners to fix the building after they become aware of noncompliance within their building. We believe that is unfair and that there needs to be other mechanisms in place to allow people who put the stuff there in the first place to be prosecuted. Perhaps if fines and punitive measures were levied against those, that would pay for a more robust inspection process.

Mr Attwood: They are the challenges post-build. It is extremely difficult, sometimes, to identify exactly what has taken place during a process. It might be embedded under concrete, inside of walls or in roofs, so it is very difficult on occasion to actually identify what the products are. But the point I would make is that focusing purely and simply on the products themselves is only part of the challenge and part of the problem. It's the total element of systems and installation and also upkeep. So just focusing on the product line itself is not going to address all these problems; it's the totality.

CHAIR: We are over time, but my final question would be: have either of your organisations had much involvement with the federal department of industry looking at this issue? If we are going to adopt a national approach, some of these areas should be of interest to the department of industry. What is your experience there?

Mr Hills: We have had difficulty engaging with the department over the last couple of years because there has been a change of minister on a regular basis, and so our ability to inform the department has been hampered by the fact that there has been a change of—

Senator XENOPHON: What, three ministers in two years?

Mr Hills: Basically, yes.

Senator XENOPHON: No. Three ministers in 15 months.

Mr Hills: Something like that, yes. So it is very difficult for industry to get its consistent message to people when they change. It is the same at the state level. But within that we have tried to make it very clear to them that we need more investment within innovation and we also need more policing, we need training and all those sorts of things.

CHAIR: What are the mechanisms for engagement with the department of industry?

Mr Hills: We talk with them and we try and have meetings with them, but you have a meeting with a minister who may be not there in a month's time.

Mr Attwood: I would mirror that. It is an ad hoc arrangement really in terms of trying to engender an engagement process. People are interested and they want to, but it is an ad hoc arrangement and it very much depends on what the priority of the day is.

CHAIR: Thank you very much for all of that and thank you for appearing before us.

LECK, Ms Amanda, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council

LLEWELLYN, Mr Robert, Built Environment Consultant, Australasian Fire and Emergency Service Authorities Council

WILLIAMS, Mr Scott, Chief Executive Officer, Fire Protection Association Australia

[09:21]

CHAIR: Welcome. I apologise for calling you late today. We are running behind time. I invite you to make a brief opening statement should you wish to do so, and then we will open it up for questions.

Ms Leck: Thank you for the opportunity to address the committee today. I would like to acknowledge the traditional owners of the land and pay my respects to their elders past and present. AFAC wish to extend our condolences to all of those who have been affected by the Grenfell Tower tragedy. We extend our thoughts to the emergency services, who showed extreme courage and professionalism whilst tackling that incident and putting their own lives at risk in doing so.

The unprecedented fire at Grenfell Tower and its tragic human impacts on those directly involved serve as a sobering reminder that the threat to the community from structure fire is ever present. AFAC remain deeply concerned that there are many high-rise buildings around the world that have flammable materials installed, with the potential for external fire spread.

AFAC is the Australia and New Zealand national council for fire, emergency services and land management, creating synergies across the emergency management sector. We represent 31 member agencies, comprising permanent, part-time and volunteer personnel, totalling around 288,000 fire and emergency service workers. We have no legislative power. This rests with our members, through their respective state and territory legislation. Our role is one of influence, coordination and advocacy.

Australian fire authorities have an expectation that new buildings are constructed in accordance with the National Construction Code and that developers, architects, builders, building surveyors, fire engineers and others involved all check and certify that construction meets the required standards. These processes are in place to protect the health and safety of building occupants and also firefighters, who may be required to enter burning buildings and search for occupants during fire events.

We seem to have a situation where we may have potentially a large number of buildings, Australia wide, with non-compliant combustible materials. What we don't definitively know is why. Is it certification, code interpretation, procurement, importation, falsified records or all of these reasons? We also need clarity, simplification and consistency across the states and territories of the application of clauses in the National Construction Code, building material certification compliance and regulatory enforcement.

We have also identified a need to formalise building commissioning practices on a national basis to ensure the building functions correctly and all the fire and life safety systems function as designed. Once commissioned, these systems need to be maintained. Currently, this is a state and territory requirement, however AFAC recommends a national maintenance regime be mandated. AFAC has held meetings and detailed workshops with the Australian Building Codes Board and the Fire Protection Association Australia to progress fire safety measures and seek a way forward to balance the need for new developments to have effective fire protection and the increasing costs to builders and developers.

Fire authorities have received criticism in the past from state and territory officials and building authorities because the fire agencies are not all consistent in their approach to fire safety regulations. We acknowledge that and are working to establish a better national approach. However, we need to improve the current compliance certification and enforcement regime. There is also discussion among fire authorities that we should be able to conduct audits to ensure the existing system is functioning correctly. This would speed development approval and potentially reduce costs for developers, particularly where we can adopt a national approach. Currently, there is a lack of confidence in state and territory arrangements to ensure existing private certifiers are fulfilling their responsibilities.

Fire authorities are independent of the certification system and our interest is in maintaining and upholding public safety. Consequently, we must remain part of the approval process. The more we can focus on engineering out the high risk of high-rise fires, the less fire services will need to respond to emergencies—and that is in everyone's interests. Relying on fire services to put out the fire is too late and, for high-rise fires where compliance has not been met, this can be very challenging.

In the built environment, there is a chain of responsibility which is detailed in legislation and extends from the building concept stage through to building occupation. The legislative environment places obligations on a range of parties to ensure buildings are safe for occupation and fit for purpose. AFAC does not advocate for wholesale change. Rather, there are opportunities to examine the current effectiveness and improve regulatory controls in key areas to improve building safety outcomes and the performance of building practitioners.

These changes are necessary. If change does not happen, it is fire and emergency services that must attend the catastrophic fires that will inevitably occur. As we have seen overseas recently and also in the Lacrosse building in Melbourne, it is the fire and emergency services who must decide to send more firefighting appliances to some buildings because the risk to life is greater than if the building was constructed properly. It is the firefighters who must confront risks and try to assist scared, vulnerable, elderly and disabled residents. It is the senior officers who must make decisions about whether the risk at a fire is so great that firefighters must be withdrawn to protect their own safety, with residents consequently unable to be assisted as they otherwise would be. Change is needed so that the emergency services are not forced to make these decisions and the community does not bear the human and financial cost of regulatory failure.

In a more recent development, AFAC is working with our research partner, the Bushfire and Natural Hazards Cooperative Research Centre, to commission some public good research to assist fire services in relation to dealing with combating fires. We are attempting to gain understanding into the risks to occupants and emergency responders when buildings are identified as not complying with regulations and what strategies can be implemented to reduce the risks. We seek to understand why people take the actions they do when confronted by major fire event. We are also considering a further research project to identify best practice operational responses internationally to the increased risks associated with fires related to non-conforming products.

AFAC, together with our New South Wales member agencies, are currently investigating a fit-for-purpose sprinkler system for residential buildings under 25 metres in height. This is the result of the tragic apartment fire in Bankstown New South Wales and the aim is to provide a sprinkler system that will provide a safer environment for occupants to escape the fire or take refuge within the occupancy until the arrival of fire crews. Thank you, I am happy to take any questions.

CHAIR: Thank you, Ms Leck. Mr Williams, do you have an opening statement?

Mr Williams: Yes, I do. I will make this fairly short. Thank you for the opportunity to appear before the Senate inquiry today. Fire Protection Association Australia, known as FPA Australia, is Australia's major technical and educational fire safety organisation and the national peak body for fire safety. It provides information, services and education in the fire protection industry and to the community. FPA Australia is a not-for-profit organisation supported by approximately 1,500 members, consisting of leading companies and organisations around Australia, employing an estimated 20,000 individuals and operating across every aspect of the fire protection, building and construction industry. Our vision is very simple: leading and supporting a professional industry to minimise the impact of fire on life, property and the environment for a safer community. The associations involved advocate for the continuous improvement of legislation, codes and standards and provide guidance and education independently to pursue our vision, free of bias, coercion, favouritism and external commercial interests.

As comprehensively discussed in FPA Australia's submission to the terms of references in this inquiry, product conformity is extremely important; however, FPA Australia contends to achieve compliant quality outcomes where buildings meet the National Construction Code requirements. It is paramount to have the following three pillars or elements that all come together: (1) conforming products, which are what they claim to be, are validated and, importantly, are fit for purpose; (2) conforming people, who are professional, educated and accredited practitioners who are fit for action; and (3) enforcement, so empowered regulators who are proactive and willing to act to ensure that people and products come together succinctly to achieve the necessary compliant—and I emphasise the word 'compliant'—building outcomes that meet the goal of the National Construction Code, which is to achieve minimum standards of public safety, health, amenity, sustainability and efficiency

FPA Australia contends that no amount of codes and standards will ever replace or compensate for the need for people to be properly educated, professional in their conduct, accountable and able to deliver these minimum building outcomes. Improvements in the National Construction Code and standards will always be healthy to respond to the latest trends in techniques, technologies and advancements. However, unless products are fit for purpose, people are fit for action and, importantly, there regulators willing to act and put in place the necessary administrative and building controls to ensure this occurs, then we will continue to see an unacceptable level of risk to the community. To understand the risk of not taking action, you only need to look at the recent tragic

Grenfell Tower fire in London, which represents the full and shocking magnitude of a breakdown in regulatory control. Thank you.

CHAIR: Firstly, in terms of the three pillars that you have identified, would you agree that the three pillars that we currently have are pretty shaky and there a lot of cracks in the system there? Would you agree that we have got a lot of work to do to fix the current system?

Mr Williams: I could not agree more. It is fragmented, it is disconnected and it has too many cracks.

CHAIR: I do not think there are too many witnesses who have disagreed with that general proposition. How do we address that issue if we do not do it at a national level, take national oversight end to end of the problem and pick up the three pillars that you talked about?

Mr Williams: We certainly do need national leadership. I think what we have seen for the last couple of decades is, in fact, a couple of decades of neglect. That is particularly since 1996, when private certification came in. There certainly needs to be national leadership. I have used the terminology that there needs to be a model code surrounding fire safety in this country. There needs to be an expectation set. I think what we have unfortunately seen for the last decade or couple of decades—certainly, from a state and territory perspective—is a lack of enforcement and a lack of controlled administrative processes, which of course have allowed for this to escalate to the issue it is today.

CHAIR: In your submission, you talked about the eerie similarity between the Lacrosse fire and the Grenfell Tower disaster. In terms of the cladding issue, what would you say are the lessons for us?

Mr Williams: If we can just talk about Grenfell, when you have building products, which are installed in a building, that obviously do not perform to the level they should, you obviously can see—as I said to you—the consequences that can occur, which is very tragic. Just coming back to Lacrosse, you have heard many, many comments around how that will not happen in Australia, as our buildings have sprinklers. But I can certainly tell you—and I'm no technical expert, but I certainly have a large team of technical experts—that if in fact that fire propagated and spread beyond just the singular balconies that went to the roof and engulfed the building like it did certainly with Grenfell, then the sprinklers would not have performed. Unlike what we see in Hollywood movies, not every sprinkler in the building goes off. Certainly with Lacrosse the sprinkler system—

Senator XENOPHON: Sorry to interrupt, but just to follow up on that, are you saying that in the Lacrosse situation the sprinklers wouldn't have been effective?

Mr Williams: Just to clarify that comment, say we had an event similar to Grenfell where in fact the fire engulfed a large proportion of the building, whereas with Lacrosse, if my memory is correct, started on the sixth floor and I think went to the 21st or 23rd floor. But keep in mind that it was a singular vertical plane of the actual balconies. So, my point is that if in fact that fire propagated and spread—

Senator XENOPHON: Internally?

Mr Williams: Externally—and then obviously if the fire penetrated internally, then the sprinkler system wouldn't have operated. My comment was that a sprinkler system probably in that sort of building—from memory I think 23 heads performed—I think the design was for about six heads. Clearly once you get beyond a certain point—

Senator XENOPHON: Sorry—it was fortuitous that it performed above specification?

Mr Williams: Absolutely.

Senator XENOPHON: Hang on: so, if in the Lacrosse fire it performed just to specification, that would not have been enough, in your view? Or it would have been problematic.

Mr Williams: It would have been problematic. If the fire spread beyond in fact the balconies that were there with Lacrosse, that fire would have been far more problematic.

CHAIR: And you pointed a couple of times to private certifiers, and the lack of confidence in the certification process at the state and territory level. What is the appropriate response we should consider in respect of that?

Ms Leck: From the perspective of the fire authorities, we have numerous examples of our fire safety officers inspecting buildings that have been signed off as being compliant when they clearly are not—essential services not installed or not working as they should, and that sort of thing. As I said in my opening remarks, we have received criticism from state and territory officials in recent years that we are increasing the regulatory burden, holding things up, costing the building industry more and so on. But it is our contention that, given that our role is very clearly to uphold public safety and given the issues we are currently experiencing, we should still be an essential part of that building commissioning and signing off the compliance.

CHAIR: So, you're getting push back from some of the construction companies? Where is the push back coming from?

Ms Leck: It is coming from I suppose more of that building regulatory area. We have been working closely, though, with the ABCB, because some of the criticism has been that our industry, because of the state and territory jurisdictional arrangements, is inconsistent in its application of guidelines and codes and so on. So, we have been working quite hard over the last year or two to try to get in place some national systems such that all of our member agencies will have a similar set of requirements for any given building.

CHAIR: Does your organisation come across fraudulent certificates and that sort of thing? Is that something that comes across your offices?

Ms Leck: It probably wouldn't come through to AFAC. It would probably be more through our member agencies. I'm not aware of any direct examples. We hear anecdotal evidence of that sort of thing, but I'm not personally aware.

Mr Llewellyn: We are aware of some in the public domain—a sprinkler head that was copied, and there was a notice put out in the public domain for people to watch out for that particular type of sprinkler head. There has also been some other anecdotal evidence, but we don't actually have any specific hard evidence to be able to present.

Senator XENOPHON: We heard evidence earlier about fraudulent documents—widespread fraud of certification. We are actually talking about counterfeit parts, in a sense, or counterfeit sprinklers that aren't to specification, that something as critical as a fire sprinkler is a dodgy product. Is that what you're saying?

Mr Llewellyn: We are aware of one of those, and that's in the public domain, and we can make that available after we've finished today.

CHAIR: What's the nature of the defect?

Mr Llewellyn: I think it was a copy of a sprinkler head that had an approval on it, and I think it had the problem that the glass bulb wasn't to the specification for it to correctly operate. That was a few years ago, and that was a worldwide issue.

Senator KIM CARR: I'm interested in this question about what we do about this problem. You've identified this question of privatisation and deregulation as being at the core of your concern for the failure to actually get proper safety standards implemented. We can have the best standards in the world, but if no-one takes any notice of them then it's all pointless. Would you agree with that contention?

Mr Williams: Absolutely. I think my statement for copious numbers of codes, copious numbers of standards, copious numbers of regulation—if people don't make quality decisions through the building and construction process, you don't get quality outcomes.

Senator KIM CARR: So, the question then of enforcement becomes essential.

Mr Williams: It's paramount.

Senator KIM CARR: And do you think the privatisation of the inspection service is critical to that, and the failure to actually get the enforcement in place?

Mr Williams: I do. Just going back to the question of privatisation, our organisation supports privatisation, but you can't have privatisation but then a hands-off approach from the government, from the enforcement agencies, to say, 'It'll be fine.' So, there must be surveillance, there must be auditing, there must be compliance and there must be consequences through that process for behaviours that don't support the process.

Senator KIM CARR: Mr Neil Savery from the Australian Building Codes Board told this committee on Friday that the industry has changed dramatically in recent decades, with deregulation and globalisation making it harder to ensure that buildings are built to certain standards. He went on to say that sophisticated performance based codes of regulation were introduced in the early nineties which need highly qualified people to understand how it works. He said that, at the same time, former government-run building certification was privatised, and the industry underwent a process of deregulation—for example, a reduction in things like mandatory inspections. Have you noticed that trend?

Mr Williams: Yes.

Senator KIM CARR: What is the consequence of that?

Mr Williams: The consequence of not upholding a regime of auditing and checking is obviously that you can then have opportunistic, unscrupulous behaviour of individuals through different processes, and that includes the sourcing and supply of products and the installation of products and right through the process of commissioning,

certification and even post-construction maintenance that we were talking about before. So, clearly there must be a level—and a high level—of auditing and compliance to uphold the whole integrity.

Senator KIM CARR: But that requires government regulators to actually want to enforce regulations.

Mr Williams: Absolutely.

Senator KIM CARR: And I think, as Ms Leck indicated, there is push back from state authorities that to make that suggestion is to be resistant. Is that correct?

Ms Leck: We have certainly experienced that in recent years. However, as I mentioned earlier, we have had numerous examples where fire safety officers have done inspections of buildings that have not been fitted with essential fire safety systems yet have been—

Senator KIM CARR: And have been certified. How does that happen? Can you explain that to the committee? In your experience, how does that occur?

Ms Leck: Well, clearly they're not being certified correctly.

Senator KIM CARR: Yes. Is anyone held legally responsible for that?

Mr Llewellyn: Not that I'm aware of, no, and I think some of the issues are associated with change of specifications and change of given materials during the process. That doesn't get picked up as part of the certification.

Senator KIM CARR: If someone were killed as a result of that, surely a question of manslaughter would be raised.

Mr Llewellyn: One would think so, yes.

Senator KIM CARR: So there is a question of criminal liability at some point here, but are you aware of any prosecutions? We have heard of fraud. We have heard of all of these questions being presented to authorities and no action being taken. Is that your experience?

Mr Llewellyn: I am not aware of any prosecutions, personally, no.

Mr Williams: I am not aware of any prosecutions.

Ms Leck: Nor am I.

Senator KIM CARR: We have this philosophy of deregulation and privatisation where people are able to abrogate their responsibilities to the public on the basic question of public safety. Is that correct?

Mr Williams: Yes.

Senator KIM CARR: That is where we come back to: what do we do about it? One of our tasks here is to recommend action to the national parliament. There are your three pillars, Mr Williams. Can we have copies of your opening statement? Is that possible?

Ms Leck: We are certainly happy to provide them.

Senator KIM CARR: If you could get them the secretariat, that would be really handy.

Ms Leck: We recommend building commissioning practices on a national basis for fire and life safety systems. We recommend that firefighters or fire safety officers still be involved in checking for compliance, whether that is every building or random inspections or whether that is at the time of compliance or subsequent audits. We would recommend ongoing involvement of the fire services.

Senator KIM CARR: I want to put a bit more than that to you. These are national standards, so there is no question about there being a national regime in place. We need enforcement of those national standards. How is that done? A licensing arrangement may well provide a sanction—that is, you can take someone's livelihood away from them if they do the wrong thing in terms of installing bodgie products or if they are negligent in the work that is undertaken. Do you think there is any merit in that approach?

Mr Williams: I certainly do. I used the language before of auditing, surveillance, compliance and importantly, I think I said, consequences. Certainly, my observations around the country are that there are not a lot of consequences for the people doing the wrong thing. To pick up, if I can, on the previous session and a comment that you made, Senator Carr: there is also not much incentive for the organisations who are doing the right thing. There are many good operators within the Australian building and construction industry; but, unfortunately, I think we all know that it is very competitive out there, certainly commercially, and the good operators are not generally rewarded for a higher level of compliance; it is the minimum.

Senator KIM CARR: This morning, Senator Ketter and I were at a meeting with sprinkler fitters. They reported that they work for reputable companies and that where reputable companies would issue default notices

the building owners would ignore those and get in a fly-by-night crook operator to give a clean bill of health to a building that had not had those faults corrected. Are you aware of that practice?

Mr Williams: Our organisation is obviously heavily involved with all state and territory governments, not only from an educational perspective, as we are a registered training organisation, but also from talking nationally about competence broadly in the industry. I am certainly aware that generally across Australia—with the exception of Queensland, the QBCC, ex-BSA, where there is occupational licensing—that, within the fire protection industry, there is little to no licensing at all. As we sit here, the New South Wales government is moving to a new co-regulatory framework that has been announced, and new regulations will come in on 1 October.

Senator KIM CARR: They have standards that are amongst the lowest in the country. Is that correct?

Mr Williams: Yes, that is right. At the moment, through fire protection, irrespective of design, installation, commissioning, certification and post-occupational or occupying the building from the point of inspection and testing, repairs, alterations and/or maintenance, there is no requirement to be a registered practitioner at all.

Senator KIM CARR: It has been put to us that this dumbing down, this de-skilling of the industry through this privatisation and deregulation approach, is actually putting public safety at risk. Do you think there is merit in that claim?

Mr Williams: Absolutely, there is merit in that claim.

Senator KIM CARR: I want to come back to the original point I made: can the Commonwealth intervene to establish a national licensing regime, with sanctions, to lift the standards across the country?

Mr Williams: Yes. I agree it needs to be national. But does it need to be licensing? I don't know. Certainly, the medical profession, the accounting profession and the legal profession operate within an accreditation framework controlled by industry. It works extremely well.

Senator KIM CARR: Sure. You try and get a run in this country being a bodgie doctor and see how far you get.

Mr Williams: Absolutely. We all know what happened with Dr Patel. But I think it proves that the system works—that is, accreditation of practitioners. I think it starts with understanding the roles and responsibilities of individuals in the industry.

Senator KIM CARR: The problem is that the TAFE system, the VET system, has been devalued; it has been deskilled.

Mr Williams: Yes.

Senator KIM CARR: The competency based model has meant that there has been a substantial reduction in the amount of resources required to be put into the training of people claiming to be tradespeople. In Victoria, which I am very familiar with, you don't have to have any qualifications to assert that you are a builder, for instance. How can we allow that situation to continue—that is, the process of self-accrediting that is going on? How can that be satisfactory?

Mr Williams: It is not satisfactory. As I said before, you use the terminology or the language of 'licensing'. I use the terminology 'accreditation', because it is not just about getting a licence at a point in time; it is also about the ongoing, continuing professional development to make sure that, as Australian standards change, and the building code changes, people have knowledge of it. We don't have a mechanism at the moment for that.

Senator KIM CARR: There is a question about the scale of this problem. There have been reports of thousands of buildings across this country that are characterised by the use of non-compliant building products. In your experience, how big is the problem in Australia?

Mr Williams: I believe it is a huge problem. What concerns me, senators, is not what we know but what we don't know. We are focused at the moment on a single building element within the fire protection industry called 'cladding'. Certainly, we are aware of Infinity electrical cable and we are certainly aware of asbestos, but they are just a couple of products within thousands and thousands of products within the building and construction industry. Certainly, as we speak, we all know that around the country different government task forces are undertaking a whole range of different things to try and identify the condition of our building stock. Certainly, what we are seeing coming back is potentially an alarming statistic about the amount of non-conforming buildings; but, of course, as I said, to repeat and reiterate: we are looking at one building element and we are not looking at how the systems perform. We are not looking at post-occupation from the point of maintenance, inspection and testing and all those other things that you spoke about before.

The difficult thing about fire is that it does not happen very often. We have an excellent building code and excellent standards, but it is alarming to me, certainly in my role, to think that a fire protection system might never work or be required to work to the point that you have a fire and then you really want it to work and it might not work. If you just analyse that statement, it is alarming. We are in a building right now, and I can see some sprinklers right there. We hope they work. We don't really know that they do. We just hope they will work, knowing in the background that nobody needs to be competent, licensed, accredited, have knowledge or have skills. You and I could subscribe to SAI Global standards online for the maintenance of this product. You and I could grab a Wix website and register our business name, and there is nothing to say that we need to have insurance. There is no requirement to say that we even need to have business insurance. It is alarming, isn't it, to think about public safety when we have that situation?

Senator KIM CARR: Yes, indeed. Ms Leck or Mr Llewellyn, how widespread do you consider the problem to be?

Ms Leck: We are currently on the advisory group for the Victorian task force that has been established to deal with this matter, and it is clear that, as reported at the inquiry on Friday, that the 170 that have been identified—

Senator KIM CARR: They are in the CBD—

Ms Leck: In the CBD. They have not moved outside of that, and this task force seeks to do that. We are also concerned about this legacy issue. There are currently buildings—whether it is hundred or thousands—that are noncompliant and potentially have flammable cladding. So, from a fire agency perspective, we are in discussions with our members on risk management around that. Many of our members are now conducting audits on fire safety checks in residents' homes and towers that have been seen to have flammable cladding and increased response rates—so if they would normally send one to a particular call-out, they are now sending two, three or more based on the risk. We are about to start working on developing some sort of risk framework to identify—'If we have to inspect all these thousands of buildings and there are only so many resources, how do we prioritise which ones we should inspect first?' So we will be doing some work on that. Our thoughts are around non-sprinkler buildings clearly having a heightened risk and buildings where people sleep as distinct from office buildings. Part of our interest is: how do we deal with this legacy issue while maintaining and upholding public safety?

CHAIR: I was alarmed this morning to hear of an inspection done on the sprinkler system of a major hotel in Sydney—and I will not name the hotel—and, when the defects were pointed out to the owner of the hotel, there were attempts made to bar the sprinkler inspector from the building. This is a person with decades of experience in the industry. Then there were attempts made to bring in, as Senator Carr indicated, a dodgy operator to certify that the system was working. So you might think that you're dealing with a properly certified building, but it is actually not the case. How do we get to the bottom of those types of situations?

Ms Leck: I think Mr Williams had something to say about that in terms of accreditation and ongoing professional development of people who work in that industry.

Senator KIM CARR: It is criminal. This is not professional development. This is a crime school. I do not know where you do your professional development in crime school. Maybe in this town it is a great feature of public life, but it really is just not satisfactory. No amount of soft-soaping will cover the proposition where a major hotel gets in a dodgy operator to give them a leave pass so they get their insurance in line.

Senator XENOPHON: There is a question as to whether the hotel should be named. I do not know which hotel it is.

Senator KIM CARR: We can't verify what we are told, so I think—

Senator XENOPHON: I understand that, but if it gets verified it may be in the public interest—

Mr Williams: I am certainly not going to mention any names, but you may be aware that several years ago G20 took place in Brisbane. Before all of the various hotels were occupied, the commissioner at the time, Commissioner Lee Johnson, ordered an audit of all 71 hotels where dignitaries were staying, including Mr Obama and Mr Putin, amongst many other dignitaries, and 71 buildings were audited. How many buildings do you think actually passed?

Senator KIM CARR: Three.

Mr Williams: Sixty-eight buildings failed. Those failures included pumps, where the batteries were flat and would never start, and diesel tanks that had no diesel in the tank. Particularly concerning was what we call passive fire, where there were penetrations over many, many years and different contractors coming in punching holes

through firewalls without then having the necessary collars or seals. I could go on and on and on. Mind you, Queensland has had occupational licensing for many, many years. So what does that tell you?

Senator XENOPHON: It is a lack of enforcement. I do want to put some technical questions on notice, including on Australian Standard 5513, about the new standard for private property testing and classification of external wall cladding. It is a technical question as to whether you believe it could be improved in any way. Unless you want to answer that quickly now, I am happy for that to be taken on notice. But I also have question for Ms Leck, Mr Williams and Mr Llewellyn. You mentioned, Ms Leck, the issue of private certifiers. If the system is breaking down with the drop of standards with deregulation and the like, do you think it ought to be a criminal offence for a certifier to recklessly certify something rather than it just being a question of professional standards? In other words, it is not a question of them just losing a licence; they could lose their liberty if they have been reckless in the way that they have certified a building.

Ms Leck: There certainly needs to be an enforcement regime, whether that enforcement translates into criminal penalties I don't know. But there certainly needs to be an enforcement regime and currently that does not appear to be occurring.

CHAIR: Thank you very much for appearing.

Proceedings suspended from 10:01 to 10:13

O'BRIEN, Dr Darryl, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors

OLDS, Mr Troy, Board Director, Australian Institute of Building Surveyors

TUXFORD, Mr Timothy, National President, Australian Institute of Building Surveyors

CHAIR: Before I call on our next group of witnesses, I note the presence of media in the room. Gentlemen, I take it you have no objections to being filmed? Okay. I ask cameramen to follow the established media guidelines, to follow the instructions of the committee secretariat and to ensure that senators' and witnesses' laptops and personal papers are not filmed.

I now welcome representatives from the Australian Institute of Building Surveyors. Thank you very much for appearing before the committee today. You have provided us with copies of your opening statements. I take it that you have no objection to those being tabled and accepted by the committee?

Mr Tuxford: Not at all.

CHAIR: Thank you very much. I invite you to make a brief opening statement. Mr Tuxford, would you like to kick off?

Mr Tuxford: On behalf of the board and members of the Australian Institute of Building Surveyors, I thank the committee for the opportunity to make a written submission and to appear before this public hearing to represent the profession of building surveying. In Australia, it is now known that the use of non-compliant cladding is not limited to a few isolated cases. Media reports indicate that in New South Wales up to 2,500 buildings could have dangerous cladding on them, while anecdotal evidence in Victoria suggests there could be thousands of buildings in that state. The Queensland government has recently convened an audit task force to assess buildings with aluminium composite cladding constructed some time ago. That study is going to be looking at buildings that were constructed over a 10-year period between 1994 and 2004. This is a systemic problem and detailed research and investigation needs to identify the root cause of why non-conforming external wall cladding has been installed on so many buildings in Australia over the past 30 years.

In our submission, we have identified some reasons that we think could be the basis of that and I will just briefly go through them now: incorrect and misleading marketing of the various products; a historic acceptance by building practitioners that the material was non-combustible and compliant; confusion and inconsistency with the application of the National Construction Code; ambiguities in the National Construction Code that permit differing interpretations; variations in the National Construction Code over time, with an increasing reliance on performance-based solutions in lieu of deemed-to-satisfy provisions; compliant products are being specified and approved but then are possibly being substituted during the construction phase; possibly incorrect, fraudulent or inadequate documentation and certificates relied on; a lack of knowledge of building practitioners in the design, construction and industry section basis; and also the demise of the former clerk of works role.

Building surveyors have a crucial role to play in the building regulatory system and we want to contribute positively to finding solutions to the current issues. For this reason, our written submission contains a number of written recommendations, and I draw the senators' attention to those recommendations. Over the years, governments have introduced measures to cut red tape and entered into free trade agreements with other countries, leading to a great variety of products in the marketplace. As is readily evident in a number of our cities across the country, the landscape of the built environment has changed significantly in recent times. These changes have brought about a number of issues for all building practitioners. For example, an emerging area of concern for the regulatory system and consumers is the issue of professional indemnity insurance. The current public debate on external cladding is already having a negative impact, with AIBS recently being advised that some insurance companies are inserting exclusion clauses for external cladding and non-complying building products into their policies.

AIBS believes there is a clear need for regulatory reform. But unlike the current situation where each state is undertaking their own individual reforms, there needs to be a more harmonised and consistent national approach. Reform should focus on such things as a more consistent approach across borders to mandatory inspection and auditing regimes, along with the licensing and registration of building professionals and practitioners. We all need to improve to keep pace with the modern building industry. That means all of us: regulators, suppliers and basically all professionals involved, including building surveyors. What are we doing to ensure best practice among building surveyors into the future?

Right now, AIBS is developing a professional standards scheme for building surveyors. We expect this scheme will provide increased consumer protection and contribute to an improved building regulatory system in

Australia. A professional standards scheme will further establish the competencies and skills required of a building surveyor. At present, it varies from state to state and in some jurisdictions are not clearly defined. However, for the scheme to be successful, it needs to be supported by all governments and regulators. Finally, I would like to emphasise that the Australian public must be protected through safe, compliant buildings and that will only be achieved through buy-in by everyone involved in the building and construction industry working together to improve the system and the professional practices across the board. Thank you again for this opportunity to appear before this committee. We hope, through our submissions and recommendations, we can make a positive contribution to addressing the issues related to the use of non-conforming building products and non-compliant wall cladding.

Dr O'Brien: I would like to take the opportunity to thank the committee for taking the time to listen to my evidence and my position on this. In the Middle Ages the Roman Catholic Church introduced the concept of papal indulgences: a means by which good works on earth could lead to immediate salvation. By the 16th century this practice had evolved to a situation by which indulgences were sold as a form of confessional insurance to the faithful. In 2017 and we may be sceptical that payment to a higher authority could provide the faithful with insurance for the afterlife, but in many ways our reliance on certification and test reports for building materials is similarly based on faith not evidence.

The failure of the product testing and certification structure for building materials represents a systemic failure of regulatory authorities to respond to the fundamental shift from domestic supply chains to a global supply network. To illustrate this point, comparison with the 1990 version of the Building Code of Australia—the first uniform national code—evidence of suitability rules that govern building material compliance with today's show only minor changes and housekeeping amendments to the rules. But, in 1990, in Australia, we manufactured the following motor vehicle brands: Holden, Ford, Toyota, Mitsubishi and Nissan. Today, only Holden is left and, unfortunately, they are ceasing domestic operations later this year. This fundamental change in the manufacturing base in response to globalisation means that in 2017 the great majority of products emerging and entering the domestic market come from overseas supplied networks.

I have been personally involved in researching the issue of non-conforming building products since 2013, and my PhD thesis examined the ability of the Building Code of Australia to respond to change. So, in short, my testimony today is based on evidence not opinion. Importantly, whilst today we are discussing the reasons for and the prevalence of non-conforming external cladding materials in Australia, to a large extent this represents the canary in the coalmine in relation to non-conforming building products. If there are significant incidents of noncompliance in external cladding in the domestic market there is no reason to imagine the same concerns to not exist for a range of systems and products that comprise the modern Australian building. This is because the same systems and laws that allow the importation and use of non-complying external cladding apply to all other building products.

Building surveyors take our role in ensuring that buildings the community live and work in are safe and healthy extremely seriously. However, to do this we need effective tools and processes, including a more stringent inspection and testing regime for high-risk building products. I am acutely aware of the valuable time of the committee today and I will again take this opportunity to thank you for the opportunity to make a submission and answer any questions you may have.

CHAIR: Thank you very much, Dr O'Brien. Mr Tuxford, I suppose the elephant in the room, in a sense, is that most people would think that building surveyors are the people who take final responsibility for a building being safe. You've pointed to a lot of other issues that we should look at, and throughout the course of this hearing we've heard quite commonly people say, 'There's somebody else responsible. There are other problems in the supply chain that are causing problems.' What do you say to the common conception that the building surveyors are the people that should ultimately sign off and say a building is safe?

Mr Tuxford: I think it goes back to looking at how big the problem is and how long the problem's been going on for. That's the reason we've put in our different thoughts in regard to what could have led to this. Talking about external wall cladding, the building surveyor can only visually inspect the external wall cladding and rely on certification in regard to that cladding. They're not the body that has purchased the material, they're not the body that has installed the material, so there is limited control that they have in that regard. As I said in my opening address and as in the written submission, the issue really needs to be investigated in detail so that we know exactly where it's failing. As Dr O'Brien said, is it failing at the borders? Is it failing with certification? Is it failing with the testing? We need to understand that so that we can get to the root cause of the problem and rectify the problem.

CHAIR: It would appear that the failure is across the board. There are failings across the whole of the system. Given the fact that we've got globalisation of the supply chain, deregulation of testing, technology changing, products changing, standards unable to keep up with those changes, we have a potentially deadly cocktail here. You have come up with some suggestions. Ultimately, should there be national oversight of this problem? In my view there should be, but I'm interested in your thoughts on this.

Mr Tuxford: I think that the basis of our submission is that, yes, there needs to be a national approach. It needs to be harmonisation at the national level. In our submission we identify some variations in the different systems. It's a very complex matter when you look at all the different regulatory systems and go into detail in such a short space of time with what the variations are. But it doesn't make sense that there is that inconsistency and lack of harmonisation across the entire nation.

CHAIR: In terms of the products that you're looking at—and your building surveyors are signing off on the use of products—we're hearing that the certification system is part of the problem. Can you rely on CodeMark and WaterMark in your work?

Mr Tuxford: I just might ask Mr Olds to respond to this question.

Mr Olds: Our position would be that we can rely on CodeMark and WaterMark as a system. But I think part of the problem is it's such a slow, difficult, costly, inconsistent process. Whilst you can rely on what is there, it needs to be improved. It needs to be more efficient, in the timely manner that products are coming to market, to ensure that it works for everyone in the practice.

Mr Tuxford: Senator, I will maybe also just pick up on something that you raised in that question. You talked about certification. A problem that we have with our profession is that the term 'certification', when referring to products, gets thrown around quite a lot. People see that as being certification by the building surveyor rather than by appropriate testing authorities. That's something that we have highlighted as well in our submission.

CHAIR: Yes, I know. But in your own statement—and correct me if I'm wrong—yes, you have referred to 'fraudulent or inadequate documentation and certificates'. So, Mr Olds, you're telling us that you can rely on CodeMark and WaterMark, but you're coming across these fairly significant problems with the system.

Mr Olds: CodeMark as it's designed to be used and operated, I think you can rely on it. But I think the problem with false documentation is companies, products and suppliers who are doctoring up documents and supplying them to the system which can't be controlled. If you could have a CodeMark system where it's all electronic, it's all online and a building surveyor can or a product manufacturer or an architect or whatever could go onto that system and know that, in that one portal, it's 100 per cent right, then I think you could rely on that.

CHAIR: If we are talking about the hypothetical situation, that's alright. But, in the real world, it's not working; isn't that correct?

Dr O'Brien: I will just respond to that. I think we need to recognise that, with the evidence of suitability, CodeMark is just one method that you can use to demonstrate product compliance. There are also registered testing authority results, JAS-ANZ product certification and expert judgement, and it actually says 'any other means', so it's very open-ended as to what evidence can be provided to demonstrate compliance. In relation to testing and certification, I think that's more so where there might be evidence of fraudulent documentation, because the more that companies go online to make this material available and open and accountable the more it provides an opportunity for less scrupulous people, particularly overseas, to use that as a template to provide documentation that purports to show compliance.

Senator XENOPHON: Do you believe that fraud is widespread?

Dr O'Brien: I would not like to make a comment on that because I do not think enough research has been done into that issue, and I think it is an area that does require some urgent attention to see the prevalence of non-conforming product and documentation in the Australian marketplace.

CHAIR: The problem is that nobody is doing that, and who is actually responsible for it seems to be a grey area. Who do you say should be doing it?

Dr O'Brien: That's correct. Border Force, to my knowledge, are only there to intercept illegal goods entering the country. To my knowledge, there is not a national response. At a state level, there seem to be gaps between the offices of fair trading and some of the building regulatory bodies. You would be aware that there is a draft bill in Queensland for the Queensland Building and Construction Commission to undertake this surveilling. That is a very good first step. In some jurisdictions, at the moment, it would be the individual building surveyor who would have to take on the role of the crown to assess product conformity. Obviously, even a local authority would not have the resources to undertake that investigation—nor should they, in my view.

CHAIR: Are the situations where building surveyors are leant on to sign off on buildings that are not safe, where the surveyor has little option but to sign off to say that they are safe?

Mr Tuxford: I have no evidence of that, but I think it would be naive to say that it may not happen. But I am not aware of there even being any proceedings by any of the regulators to indicate that that is the case. And I think that is where we would look to try and find that sort of proof.

Senator KIM CARR: Why would a regulator take it up?

Mr Tuxford: Because the regulator is the one who accredits or licences the certifier.

Senator KIM CARR: But there is no evidence that anyone has ever been prosecuted for fraudulent presentation of documentation—and, in this country, fraud still remains a crime. There is no evidence that anyone who has signed off on a bodgie certification has ever been prosecuted. No-one who has put in unsafe materials has ever been prosecuted. Why would a regulator in this country take any interest whatsoever in taking these matters forward?

Mr Tuxford: Sorry, Senator Carr, I think we have crossed wires. The question put was whether building surveyors, as accredited certifiers who are doing the final occupation certificate on a building, have had put pressure on them—

Senator KIM CARR: I understand what the question was.

Mr Tuxford: What I am saying is that those building surveyors, who are accredited by state regulators, are held to task by those regulators. There is a list of various actions that are taken against the accredited certifier by the individual state regulators. As it stands at the moment, it is their role to take action if there is evidence of that. I am just saying that I am not aware of any evidence of it but it would be naive to say that it possibly does not happen.

CHAIR: Do you have a view about the fact that building surveyors come in at the end of the process, when issues may have occurred prior to that, and it is very difficult for surveyors to actually verify what has happened.? Do you see a role earlier on in the process?

Mr Tuxford: We do. Our submission identifies the need for there to be consistency with regard to the mandatory inspections that are undertaken on buildings. It would be a matter of it being a risk based approach, but it should be consistent across the country. One of the documents annexed to our submission is a little chart that identifies the variance in inspections that apply as mandatory- or critical-stage inspections across each of the states. Again, it does not make sense that that is the case; it should be a consistent approach.

CHAIR: Mr Savery, from the ABCB, pointed out that there has been a reduction in mandatory inspections in the process. Do you see that as having been part of the problem going back over some decades?

Mr Tuxford: It is our view that it could be one of the elements of the problem. It is one of our recommendations that there should be a consistent regime of mandatory inspections by the building surveyor or accredited inspector.

CHAIR: Would you put the deregulation of this area as one of the critical problems we need to look at?

Dr O'Brien: When you talk about deregulation, is that a question in relation to private certification?

CHAIR: Yes.

Dr O'Brien: In my view, no. I think it is possible to conflate two issues. One issue is private certification and the second one is globalisation. In fact, they occurred at around the same time. I do not know that private certification would have any more influence on the occurrence of non-conforming building products than when we had the old 'command and control' local authority model. Indeed, the Queensland government is undertaking an audit of buildings at the moment, for the period from 1994 to 2000, and that encompasses a period before private certification. In my view, private certification is not a major factor contributing to this issue.

Senator KIM CARR: Mr Savery, from the Australian Building Codes Board, observed that the industry had changed dramatically in recent decades, with deregulation and globalisation making it harder to ensure buildings were built to certain standards. He noted that the sophisticated performance-based code regulation was introduced in the early nineties, which needed highly qualified people to understand how it works; and, at the same time, formerly government-run building certification was privatised and the industry underwent a process of deregulation—for example, a reduction in things like mandatory inspections. Clearly, they were two separate events: the importation of non-compliant building materials and the failure of the regulatory system to actually pick this up. This is where the deregulation issue arises. Do you think there is merit in the proposition that it is now time to re-regulate?

Dr O'Brien: My view is that we do not need any more regulations; we need to improve the ones that we have.

Senator XENOPHON: And enforce them.

Dr O'Brien: And definitely enforcement. Ultimately, all building materials come under the Building Code of Australia evidence of suitability rules, and that was a point I alluded to in my opening address. Those rules have not changed substantially since 1990. So building surveyors stand ready and continue to ensure buildings are built to the highest standards for the safety of the community. But we need to look at the rules that are there, and everyone in the process needs to have the tools to be able to do this.

Senator KIM CARR: Sure. Mr Tuxford has indicated the need for national licensing, and that is clearly an area where there needs to be national regulation. So you cannot say there is not a need for further regulation and then call for national regulation; that is quite inconsistent.

Dr O'Brien: I take that point. But I think with the national regulation we are talking about licensing. Building surveying is a highly qualified profession now. My job is as a lecturer and head of program for building surveying at Central Queensland University. It is now a bachelor degree with honours to be a building surveyor. The cadre of building surveyors in the profession now, in my view, are of a high quality.

Senator KIM CARR: Your submission, Mr Tuxford, looks to the issue of national licensing. National licensing does not apply just to surveyors; it applies to all people installing products. Surely, that might be where we could turn to actually enforce standards. We need someone to be actually held responsible for the proper installation of a compliant product and if you do not do it properly you lose your licence. That is quite a severe penalty. Is that the proposition you are supporting?

Mr Tuxford: That's correct. That is the proposition we are putting forward.

Senator KIM CARR: Clearly, I think there is some merit in your proposal. But your submission does seem to suggest a need for re-regulation of the industry.

Dr O'Brien: Sorry, I probably was not very clear on that point. We have state licensing regimes—or we had state licensing regimes—

Senator KIM CARR: Yes, and most of them are hopeless.

Dr O'Brien: It is about taking that regime and applying it nationally and consistently across the board and for all practitioners.

Senator KIM CARR: You would have to have qualified, licenced tradespeople to put the materials into the buildings. Someone has to be held accountable that it is a safe product. The tradesmen has to be able to say, 'I'm satisfied that it is a compliant product that I have been asked to install.'

Dr O'Brien: I think the draft Queensland bill goes some way towards achieving this. It looks at a chain of responsibility that includes the product designer, the manufacturer, the supplier and the installer. If that could be picked up and harmonised across all states and territories—

Senator KIM CARR: That's the problem: it is model legislation that no state has agreed to do; it has been drafted by senior officers on that basis, but no-one has actually—

Senator XENOPHON: Do you think it is good legislation, a good bill?

Dr O'Brien: I think it is a good starting point, yes.

Senator KIM CARR: What we are suggesting, though, is something that might speed this up some. And this is why I am asking for your advice on whether it would be appropriate for the Commonwealth parliament, through the training system, to say that licensing must be put in place so that people are properly trained.

Mr Tuxford: We would support that; that is our submission. We also would support a harmonised auditing of those licences once in place.

Senator KIM CARR: And properly updated?

Dr O'Brien: And properly updated. And we would support ongoing professional development and training—all the things that come with that sort of licensing or accreditation.

Senator KIM CARR: The other issue is the importation of non-standard products. Do you support banning non-standard products?

Dr O'Brien: I think under our obligations under the Uruguay round of the World Trade Organization we are not allowed to use technical standards as a barrier to—

Senator KIM CARR: It is not a technical standard; it is a safety issue.

Dr O'Brien: I agree. I think the issue is that the elements and attributes that could make a product dangerous are not often visible to the naked eye. We are talking about the strength of steel. We are talking about whether the carpet we are on now is nonflammable; it should be, but we cannot see that. I think we need to have type auditing, randomised testing—

Senator KIM CARR: I am going a bit further than that. Under the World Trade Organization conditions, and in all our free-trade agreements, there are carve-outs for public safety. Why can't we use those to ban non-compliant products that are dangerous?

Dr O'Brien: I do not disagree with that proposition; the issue is about identifying whether they are dangerous non-conforming products or not. At the moment, when container loads of products hit the docks, nobody is there actually checking for testing.

Senator KIM CARR: And the Customs people are not able to do it—they are not interested in doing it—because it is not illegal.

Dr O'Brien: That's correct.

Senator KIM CARR: So we should ban it so it becomes illegal—like an asbestos product; asbestos is illegal—and therefore it will become a matter for Customs to take an interest in. Why can't we do that for non-conforming products that are dangerous?

Dr O'Brien: The difficulty is with, for argument's sake, glazing or carpet. Floor linings have to satisfy minimum fire hazard properties. You are not going to know by looking at it. Really, the only way to know whether it is a dangerous, non-conforming product is to test it.

Senator KIM CARR: So it has to be certified that it is compliant with Australian standards, which is then verified by a third party. Would that cover your reservations?

Mr Tuxford: We would agree with that. That was in our earlier submissions when we were focusing on the non-conforming product issues, and that is that this needs to be stopped at the border, if it can be, especially for dangerous products, as you have identified, such as products with asbestos. There needs to be some sort of regime of testing before they're allowed to come in the country.

Senator KIM CARR: In the case of cladding, which is obviously the one that gets public attention, surely it can be demonstrated that it is dangerous.

Mr Tuxford: It is more difficult because some of the cladding is dangerous when it is used in certain applications.

Senator KIM CARR: So then it would have to be certified for only use in that particular application. This is where the complication comes into it. It would have to be certified that it was being imported for that use only.

Mr Tuxford: That is correct.

Dr O'Brien: Context is very important. Some of these are not actually non-conforming; they are non-complying. In a certain context, they would be quite lawful and quite fit for purpose, but, used in the wrong context, there could be—

Senator KIM CARR: The next question that arises is: how do you stop a product that is allegedly brought in for a low-rise building being used in a high-rise building?

Dr O'Brien: Education is one element.

Senator KIM CARR: That won't wash, not when greed is involved.

Senator XENOPHON: AIBS's technical discussion paper, 'External wall cladding systems: Building Code of Australia', says that the standard for cladding is open to interpretation. In other words, it's ambiguous. Doesn't that set off the alarm bells—the fact that you say in your own technical paper that there is an ambiguous standard? Surely a standard that is open to interpretation, with ambiguity, is itself not just problematic but, in fact, downright dangerous?

Mr Tuxford: We reiterated that concern in even the shorter submission that we put forward. We talked about the interpretation of the National Construction Code and some of the ambiguity between whether something is a cladding, a lining or an attachment. We stand by that position. I go back to Senator Carr's question. There is a difference, as Dr O'Brien was saying, between dangerous products and products that are not fit for a particular purpose. If there were ways of testing the products that have various applications at the border and having them certified for a particular use—for example, a particular cladding is or is not combustible in accordance with the relevant standard that applies—and if it were clear and you could link it to a particular product clearly, that would have to improve the process.

Senator KIM CARR: The problem arises when a product is imported for a specific purpose and is then used for another. This is where the question of licensing would come in. A person would only be licensed to install a product that was fit for purpose. They then take responsibility and they won't install a product that's not. If they actually breach that licence, they lose their licence. What do you say about that principle?

Mr Tuxford: We don't object to that principle, Senator Carr. We think that's sound.

CHAIR: Thank you very much. I really appreciate your submissions. That was very useful.

Senator XENOPHON: Mr Tuxford, in your view, have free trade agreements compromised our sovereignty to deal with these issues?

Mr Tuxford: We've identified that free trade agreements are one of the issues that impact on the problem that we're all trying to address. I'm not an expert in that area, but I understand, through discussion and the media, that there are limitations on what can and can't be asked to be done because of products coming into the country as a consequence of free trade agreements.

Senator XENOPHON: You referred in your opening statement to the demise of the clerk of works role. Most people wouldn't know what a clerk of works is. Could you explain to us, very briefly, the history, the context and why that must be addressed, in your view?

Mr Tuxford: I will, as simply as I can. The clerk of works was largely engaged by the architect or the owner and was on site to look after the interests of the owner. They largely had a quality assurance role. They supervised what was happening on site. There was a deregulation of the Institute of Clerk of Works in about 1984.

Senator XENOPHON: This goes to Senator Carr's question regarding deregulation. So you are saying that, from the mid-eighties, there was a reduction in the level of supervision and quality assurance for building sites?

Mr Tuxford: I believe so, yes.

Senator XENOPHON: And that has been a retrograde step?

Mr Tuxford: I believe so, yes.

Senator XENOPHON: We saw what happened at Lacrosse and we know what happened at Grenfell tower very recently. In your view, is there now any excuse for us not to have a rapid overhaul and reform of this? How urgent do you regard this?

Mr Tuxford: As Dr O'Brien said, the cladding issue is most probably the canary in the mine. We have had significant disasters and it is something that we believe identifies a systemic problem and that systemic problem needs to be addressed. That is the basis of our recommendations that we have put forward to try to assist with going forward with trying to have that addressed.

CHAIR: I have a final question just to clarify your opening statement. You made the comment in relation to your professional indemnity insurance that the insurance companies are now putting an exclusion in there for buildings with external cladding. How is that exclusion working? Does that cause you some concern?

Mr Tuxford: I think it should cause everyone some concern where these types of exclusions are added. Obviously professional indemnity insurance is there to protect consumers and, if there are limitations on the insurance that is available, that is of concern. This only came to us fairly late in the preparation of our submission, but we have examples of what is being suggested. I do not think the regulators would be happy to accept that. So I think that there will be an issue with those types of clauses.

CHAIR: How are they defining the external cladding?

Mr Tuxford: The one in front of me at the moment says under 'Noncompliant cladding exclusion':

We shall have no liability under this policy, including in respect of any claim or cost or expense or indemnity or payment or loss arising out of, based upon, attributed to or in consequence of the use of external wall cladding that is not compliant with the applicable building standards in respect of fire resistance.

Senator KIM CARR: What is wrong with that? Why shouldn't the insurance companies say that someone is going to take responsibility, and it goes right to the bottom line of the building owner, building developer or everyone associated with it, and you won't get insurance unless that is compliant? What is wrong with that proposition?

Mr Tuxford: That exclusion would be applied to the PI insurance that the accredited certifiers would be required to have in place. Not all professions within the building industry—as we have said and discussed at length about the licensing and accreditation arrangements nationally—have those sorts of obligations on them. If that was something that was applied uniformly, it may be appropriate. But at the moment that they are proposing to simply put on PI insurance for the accredited certifier.

Senator KIM CARR: But isn't it a commercial reality that, after these major events, what is going to happen is insurance companies will say, 'We're not going to be liable for a dodgy building'?

Mr Tuxford: That may be the case. Again, I am not an insurance expert, and I could not comment in any detail on that.

CHAIR: Gentlemen, thank you very much for appearing before us.

BARNETT, Dr Jonathan, Chair, Society of Fire Safety, Engineers Australia

HUGHES-BROWN, Mr Benjamin, Managing Director, Ignis Solutions Pty Ltd

McINTYRE, Mr Peter, Chief Executive Officer, Engineers Australia

STOLTZ, Mr Christopher, President, Victoria Division, Engineers Australia

[10:55]

CHAIR: Welcome. Thank you for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

Mr Hughes-Brown: Thank you for the opportunity to present. Professional fire engineers are not involved enough in building design and construction. They are typically used for code deviations, noncompliances or construction errors. Registered professional fire safety engineers should be involved in all buildings of type A construction, to advise, report and certify, much like the process in the Middle East, the Americas and parts of Europe. We cannot leave it to a project certifier or the fire service, who have many other factors that they need to focus on.

The Building Code is too complicated. It is contradictory, with no hierarchy of control for various clauses which compete with each other. The matter of fire safety and building compliance is too great to rely on one person. By way of example, let's take sarking used for external walls for weatherproofing. One part of the code requires it to have a flammability of less than five. This indicates that combustibility is permitted. Another part of the code says that the external wall must be non-combustible. How is this to apply for a consecutive nature? If it is used externally, does the clause that allows it to be used as combustible apply internally? Well, you don't put sarking on internal aspects of a building. And does it apply to only low-rise type C construction? There are no requirements for fire resistance in many applications for that. So what does the flammability requirement actually hold on that front? The Australian Building Codes Board has written a nine-page document to provide clarification on these two levels of clauses. A nine-page document to provide clarification certainly highlights that something is not right.

In my submission, there is a case study about the supply of composite panels such as those from suppliers here today who have had their product tested by a registered authority and presented to certifiers. By all means it was proven that this must be okay. It was accepted for many years, certainly for over 10 years, in Australia, and it is not exclusive to Australia. We have seen it elsewhere in the world. Clause 82.1 of the BCA requires materials to be fit for purpose. We now know that polyethylene based materials are not fit for real fire events. Could this have been avoided? With the complexities and the ambiguity of the code, I really don't know.

We have a voluntary certification scheme, but, to quote Mr Dalrymple of the MFB, the Metropolitan Fire Brigade, in the paper the other day, we have lost trust in certification. This has led to dissent and suppliers complaining about professional engineers, who are actually trying to keep buildings and occupants safe. Further to this, we have mandatory certification schemes for plumbing products, but recently a New South Wales government agency has rejected the WaterMark Certification Scheme on a plastic sprinkler pipe product and then commissioned an out-of-state, non-accredited lab to make an observation test on an American standard, which the pipe failed. They then used this result to demand the pipe be removed from many homes, at substantial cost, endangering the occupants, who needed to have sprinkler-protected building. This has almost destroyed the pipe manufacturer's business.

We also see suppliers who have a large amount of relevant fire tests, such as those suppliers here today, and they can prove that their product is a very low hazard, but they are constantly challenged, on a regular basis, to prove that their product performs. It is clear that there are problems with the testing, the code, the certification of products, and the building code application and ability to have confidence in compliance of proven products. We need acceptance criteria that all bodies will follow. We need a clear test requirement for small-scale and large-scale, for internal and external applications.

Our suppliers here have a similar thought, and I support their context. We need a professional register of fire engineers involved in projects to complement the certification process. Don't leave it up to one person. As a first step, I think we need to have an appropriate industry body such as Engineers Australia or the Fire Protection Association to establish criteria which we can follow so we can accept the safe use of combustible materials. You mentioned EPS previously. We still see a lot of EPS in the Canberra market being installed in car parks or off at applications, and this is going on on a regular basis. So we do need some strong action.

Mr McIntyre: Thank you for inviting Engineers Australia to give evidence to the inquiry. I would first like to outline a bit about the organisation and then cover some of the key points of evidence that we'd like to present.

Engineers Australia is a not-for-profit professional organisation for engineers. Established in 1919, the organisation is constituted by a royal charter 'to advance the science and practice of engineering for the benefit of the community'. Engineers Australia is the trusted voice of the profession, and we are a global home to engineering professionals and are renowned as leaders in shaping the sustainable world.

Importantly, we have come here today to talk on behalf of the entire engineering profession, without commercial pressures affecting our evidence. Today we're going to have some detailed evidence provided by Chris Stoltz. Chris is the president of the Victorian division of Engineers Australia and has acted as a public face of the organisation on a number of matters. This has included a lot of media activity in response to the Grenfell Tower fire, in which he has been educating the public about the technical issues at play and highlighting the regulatory issues that affect building safety in Australia. Jonathan Barnett is the president of the Society of Fire Safety, which is what we call a technical society of Engineers Australia. As you might expect, the Society of Fire Safety is made up of fire engineers and acts as our primary source of technical advice for fire safety related issues. Like me, both Chris and Jonathan are chartered professional engineers and are registered on the National Engineering Register, with Jonathan registered under the fire safety category of engineer.

The inquiry has been active for a long time and has a wide remit. However, our submission to the committee and our evidence today are focused on fire safety in buildings. It is also in the context of the Grenfell Tower fire in London and the Lacrosse tower fire in Melbourne in 2014. With that in mind, the matter of non-conforming building products is, of course, important, but different issues play other fundamental roles. These are construction phase inspections, self-certification, building commissioning, essential safety measures, and the roles of professions like engineers and their registration.

I'd like to make a handful of key points. Firstly, there is one Building Code in Australia but eight separate building acts. This has led to inconsistency in construction regulation and enforcement. However, one consistency is that fire engineers are not a mandatory part of the regime of final inspections. It is recommended that engineers, especially fire engineers, have a more prominent role in building inspections.

Secondly, building surveyors are often unable to be truly independent because they are often employed as part of the wider building team. Self-certification is a similar issue, and it is recommended that the engagement of building inspectors be changed so that they are always truly independent and able to provide full and frank assessments.

Thirdly, the inspection of buildings for commissioning is difficult because mandatory inspections do not include the inspection of safety measures before final close-up of building. This can lead to situations where fire safety measures may have been installed that are not compliant with the code and which cannot be seen by the building surveyor or fire engineer. This therefore means they cannot be seen as a building defect until a full audit is undertaken or the failure of a system occurs.

There is a lack of essential safety measures—I will refer to those as ESM—maintenance being performed at an adequate level. Deficiencies are often noted year after year, with no mechanism to force rectification. The ideal solution would be for an independent, qualified fire safety engineer, or other specially qualified independent person, to conduct an ESM on a periodic basis such as every five years.

Lastly, under the performance based Building Code of Australia, building surveyors require engineering advice, and some are reluctant to acquire it, due to the fact—just on costs they have. As a result, engineering decisions are sometimes made by people without the technical training, skills or knowledge to make them. Cost-reduction imperatives highlight that cost can override the process of engaging technically-experienced professionals in the system. Thank you.

CHAIR: Thank you very much. I will start off with that final point that you made, Mr McIntyre, about engineering decisions being made by people who are not qualified. You are advocating that fire engineers play a greater role in the inspection process. So that is another layer in the process. We have already heard that, throughout this, we have got a patchwork of regulators and a patchwork of regulations. How are we assisted by another layer being put in here? Are your members lining up to be finally accountable for a fire that occurs because of dodgy products being installed in a building?

Mr Stoltz: It might be better if I answer that. I think what we are saying is that, due to the financial pressure and time pressure on building surveyors, they are called upon sometimes to make decisions where they should go and seek the advice of a fire safety engineer. In the situation that we are talking about now, a building product has been substituted but there has not been a redesign or a consideration of the design as to what the impact of that change of product is. Fire safety engineers are involved in the design of buildings, in the early phases, like other specialists who are required. In a structural case, you have engineers who inspect the structure from time to

time—and maybe that is not enough either. You also have, obviously, electrical works and mechanical works that are inspected by the relevant engineers. Fire safety is an emerging field of expertise, and we are saying that, at the moment, we need to make sure that that expertise is applied, particularly when there is product substitution.

CHAIR: Dr Barnett?

Dr Barnett: I am a technical director for a fire safety engineering firm, and not a day goes by when I do not ask my team: 'Are we sure this design is appropriate? When there is a fire and we are going to testify before the coronial inquest, can we defend our design? If we can't, I'm not interested in supporting you.' I have given a talk now three times around the country on unsafe deemed-to-satisfy designs, saying that, as a fire safety engineer, I can say, 'That is not appropriate to sign off on.' I am willing to take the responsibility for that. Unfortunately, building surveyors and others do not have that luxury because they are tied in by the building act which says: if it is deemed to satisfy, they have to accept it. We don't and we won't, if it is unsafe. So the answer to your question is: yes, we take responsibility and we are willing to.

CHAIR: We heard from the building surveyors about the demise of the clerk of works. Do you have a view as to whether that was a retrograde step ending that role; and is it appropriate that that role be reintroduced so that it could provide the type of technical advice that your members are capable of providing?

Mr Stoltz: Many of our members do lament the demise of the clerk of works. It was seen as a system that in hindsight seemed to work well. I spent a year as clerk of works on a dam building site, and it was incumbent upon me to test—

Senator XENOPHON: Is that a damn building site or a dam building site?

Mr Stoltz: A small dam, and I was engaged by what was then called the State Rivers and Waters Supply Commission to make sure that the contracted builder for that dam was compacting the dam wall to meet the design standards. I had to continually monitor the compaction as the dam wall went up. It's a bit like that in a building: the clerk of works was responsible to the owner of the building to make sure that the builder was building the building as it went up, using the materials, fitting the material and constructing the building according to the design.

I don't know whether it was the eighties or the nineties, but we changed the process, and so we have things like self-certification now. We have the change that came in in Victoria in the nineties where building surveyors were no longer the employees of local government, although some still are, but they could also be private—in other words, the process could be outsourced. That in itself is not a bad thing, provided we have got the checks and balances to make sure that, if you like, the auditors are audited and that the competencies are there to make the decisions that they're making. So many of our members do lament the loss of clerk of works.

CHAIR: Could the clerk of works be considered to be independent of the builder? Were they prepared to be frank and fearless in what they did?

Mr Stoltz: I think that's dead right. I think that many clerks of works—I'm not sure of the plural—were feared by the builders. However, not to make too big a point, it was very cooperative relationship—in my experience, it was anyway. But it was clear that I had a role to play, and that role was to make sure that the works were undertaken in accordance with the design.

Senator KIM CARR: In your submission—and, again, in our presentations today, Mr McIntyre and I think Mr Hughes-Brown, you were saying similar things and I quote you here. It says:

In a system that puts cost ahead of professionalism we have created an industry where margins are thin and corners are cut. Professionals are left out of the process and decisions are being made by those who do not have the experience or knowledge to make them. This ... leads to unacceptable and unnecessary risks being taken in the construction of people's homes.

We are obviously concerned not just about people's homes but particularly high-rise buildings where there is considerable public safety. That issue has been demonstrated across the country. We believe the evidence presented to the committee in many thousands of cases. I am just wondering in your assessment, how is it that such a situation has been allowed to develop where, as you've described it, costs are put ahead of professionalism and that safety is now put at risk?

Mr Stoltz: I will, first of all, just clarify the meaning of the word homes there. There are two ways to look at it, and both are right; many of these high-rise buildings are apartments and they become homes.

Senator KIM CARR: Yes, of course; I accept that.

Mr Stoltz: But, also, this systemic problem that we have got extends into the suburbs so that you can see houses, small apartments, dual tenancies—

Senator KIM CARR: You have said that. Fair enough, but I am interested to know in general: how did this systemic problem arise in the assessment of Engineers Australia?

Mr Stoltz: As professionals, we're not perfect, but what we are saying here is that: over a period of time, the system has been altered so that now we have different drivers—cost is one of them—but we don't have the checks and balances. As we said, clerks of work had a role to do.

Senator KIM CARR: So costs are now more important than public safety?

Mr Stoltz: We are not saying that at all.

Senator KIM CARR: Is that not the implication?

Mr Stoltz: We are saying that that appears to be what is happening in the industry—the builders and the subcontractors and so on. Remember, a lot of the buildings are constructed by a myriad of subcontractors, and so there is pressure. So many times, a tender is all about costs.

Senator KIM CARR: What struck us on this committee, and I think I speak for all senators here, is that no-one is held responsible. Everyone has someone else to point the finger at. The product of deregulation and self accreditation, this process of abrogation of responsibility, is that no-one is responsible. What do you say to that?

Mr Hughes-Brown: I will chime in on that. It is also a matter of who is going to fund that process of holding someone to account? Is the DPP going to pick it up and run with it? Do they have the finance program to do that? I've seen cases where private organisations have had to go through the legal process to defend themselves, and then run out of money and lose their whole business with it.

Senator KIM CARR: Again, so there is no accountability?

Mr Hughes-Brown: Yes.

Senator XENOPHON: On notice, can you give us examples of where people go through this quagmire but it doesn't actually help make buildings safer and it instead becomes a regulatory nightmare?

Mr Hughes-Brown: Yes, absolutely. I will provide that.

Senator XENOPHON: That is not taking away from what Senator Carr has said. It seems we have had too much red tape on some things but on the things that matter we have deregulated when we shouldn't have.

Senator KIM CARR: The question we just asked is: what we do about it? One of the matters that has come to our attention is this need for national regulation and to put this question of responsibility back into the system through licensing. What do you say to that?

Mr Stoltz: Engineers Australia have established what we call the NER, the National Engineering Register. As far as our profession is concerned, after failing to get the states to agree to a national register of engineers, we created our own. That has been in place for a number of years now. We are now working with each state, state-by-state, to establish a register of engineers.

Senator KIM CARR: That is terrific. It takes forever. We are thinking about recommendations to the Australian parliament about establishing a regulatory regime of national licensing not just for engineers but for all the different players in terms of holding people responsible. One for professional qualifications, not just the question of people at the top of the food chain but also the plumbers and all of the other tradespeople on a building site, so that someone has to say, 'I won't put this particular product into this building if I believe it to be non-compliant and I can demonstrate that it is non-compliant with national standards.' What do you say to that?

Mr Stoltz: Hear, hear!

Senator KIM CARR: You agree with that?

Mr Hughes-Brown: Absolutely. In the ACT, we don't have any controls on the registration of engineers. My nearest competitor, to my knowledge, has a year 10 certificate, and I have 17 years of tertiary education, qualifications and all of that with it.

Senator KIM CARR: So what is happening is that there has been a debasement of the vocational education system in many aspects of our training system? I know you will say to me that, in terms of your professional qualifications, the university system still maintains high quality assurance. I take it that is your evidence? But it is not the case in all—is that true or not?

Dr Barnett: No—well, I can answer that a little bit. We have only three programs in the country for fire safety engineers, for example, at the university level, but it is only as a postgrad certificate or program.

Senator KIM CARR: So the higher education system is letting us down as well?

Dr Barnett: It is not world class. It is not recognised internationally. I was a professor for 30 years in America, and we are not there yet. We do have a problem across the board, you are right.

Senator KIM CARR: The question is, what can we do about that? I'm not proposing another series of inquiries and another series of consultations, given that this is a public safety issue. Would you agree there is an urgency required? I am sorry, a nod and a shrug will not be picked up.

Dr Barnett: Yes, absolutely. I agree with that. There is not only an urgency—Lacrosse should have woken everyone up; it didn't. I have given 79 talks on facades now, including in Boston just last month. Grenfell has finally woken people up. Do we need a Grenfell in this country? I hope not. Let's do something before that happens.

Senator KIM CARR: The senior official from MFB in Victoria apprised us on Friday that many officials are still wiping the sleep from their eyes. Do you think part of the problem is that there is a failure to respond to the urgency of this situation?

Mr Hughes-Brown: I think it hasn't been a substantial failure. After Lacrosse I know a number of the suppliers who are here today took immediate steps to stop providing polythene cladding, but that, unfortunately, is only the responsible ones, the larger organisations.

Senator KIM CARR: That's the problem. The building industry is renowned for the crooks and shysters that dominate the place.

Mr Hughes-Brown: But equally under the code it's too complicated and ambiguous. You can see my flowchart in there to try to work out how you validate that everything is okay.

Senator XENOPHON: In your opening statement and your submissions, Mr Hughes-Brown and Engineers Australia, are you basically saying that the system of regulation and enforcement for ensuring that we don't have dangerous building products in our buildings, putting people at risk, is essentially broken?

Mr Hughes-Brown: Or non-existent.

Senator XENOPHON: That's even worse, isn't it.

Mr Hughes-Brown: Yes, and further to that, to validate and confirm that a product is okay is too complicated or subject to interpretation, and a lot of fire agencies' building certifiers don't know what pathway to take. They are unsure, because of the insurance aspects. If we then add more substantial issues to that—you may have criminal proceedings and all that—we won't get any certifiers. It'll be too much of a risk.

Senator KIM CARR: But on the other hand, surely if there is some question about safety of a product, why should it be put into a building?

Dr Barnett: We have a performance based Building Code, which allows us tremendous economies of being able to use new construction techniques and the like.

Senator KIM CARR: Enormous responsibility too.

Dr Barnett: It is very complicated, which is why we need professionals who have the proper training. We can't do things the old way, because our systems are much more complicated than they used to be. That's one of the challenges that we have. The argument Engineers Australia is making is that we need the trained professionals to get involved. In the old days, it could be the carpenter or the tradesperson who had the knowledge, but techniques have changed. We need to have an understanding of that, and it comes down to having the right professionals involved.

Senator KIM CARR: It's been put to us that this question of fit-for-purpose alternatives is open to very substantial interpretation and maybe that in itself is the source of the ambiguity. You say it's a person not qualified to make the judgement, but the escape route is always going to be there. We have heard evidence today from expert witnesses that one of the provisions is that any other measure can be employed if certifiers claim it's satisfactory.

Dr Barnett: My argument is it shouldn't be any other measure by someone who's not trained and doesn't have the knowledge. Fire safety is an emerging discipline. It's different from other engineering disciplines. It requires a lot of engineering judgement. My background—I'm on the NER—is civil mechanical building services and fire safety. You can't do it as just one narrow thing; you have to bring many different disciplines and skills together. Many of our fire safety engineers have that. The argument is that if we're doing something complicated and going to one of these other systems, we need to use the right professional and they absolutely need to be accountable.

Senator KIM CARR: Some allegation could be put to you that your concern, though, is with the engineers but not for the sprinkler-fitter. What are their responsibilities? Aren't they entitled to be part of that process of making professional judgements?

Dr Barnett: I'd argue that they need to have a certain amount of autonomy, but it still needs to be supervised by the professional. Again, I apologise; part of this comes from my American background—

Senator KIM CARR: You shouldn't apologise for that, surely.

Dr Barnett: I did notice there were no dual citizenships in the Senate that included Americans.

Senator KIM CARR: For very good reason.

Dr Barnett: I'm sure! But, quite seriously, when it's something complicated, the sprinkler technician needs to be able to identify that, no, that's different. Then, the professional needs to be called in to work with them. It's a partnership, and it's really important that both sides of the partnership play the right role.

Senator KIM CARR: My argument is that the sprinkler fitter needs to be licensed, as does the engineer.

Dr Barnett: I agree with you.

Mr Stoltz: If I may, I've prepared the six recommendations that are drawn from our paper. I might table that and leave them with you.

Senator KIM CARR: I appreciate that.

Mr Stoltz: One of those recommendations is that the full building fire systems commissioning be witnessed by a fire safety engineer, because it's the function of the system that's going to make it safe. So you can have things installed and you can have somebody look at it and say, 'Yes, that looks like it's installed properly,' but, at the end of the day, it's got to work. It's a bit like with ransomware. It's not much good having a backup of your computer system if your restore function doesn't work.

Senator KIM CARR: The Property Council will tell us that your proposals are frightfully expensive and should be ruled out because they're adding costs to the building. In terms of the percentage of the cost of a building, are you proposing very significant increases in costs?

Mr Hughes-Brown: Absolutely not—not in that process. Many a time, and I think Jonathan can speak to this as well, when a fire engineer comes onto a project, we are actually making it more cost effective in many ways. Occasionally I would say, 'Do you want me to have my fee as a fixed fee or a percentage of the savings that I can develop for you as well as improving or at least maintaining the level of safety'—

Senator KIM CARR: Or the coroner's inquiry that might follow.

Mr McIntyre: Can I just make an additional point. You mentioned the licensing and the registration. I fully support those initiatives. One of the concerns I have is that you may have a building designer—that can be structural, electrical or fire—who does a design and certifies that as an appropriate design. Any changes made to that design afterwards need to come back for re-evaluation. People who don't have the skill to understand the impact of those changes, whether it be materials, design, supply, configuration or commissioning, may inadvertently undermine the intended integrity of the entire system. So you need to have enough robustness in the process so that a building, as constructed and commissioned, is built as per design or, if there are amendments made during the construction or the fit-out commissioning, that they are checked and certified to be appropriate to give the end outcome the design was after. That's a very critical point, in my view.

Senator KIM CARR: Thank you very much.

CHAIR: We are approaching time. I note that Senator Xenophon is going to place some questions on notice. Finally, Mr Hughes-Brown I note that, in your previous job with the New South Wales fire brigade, in that role you assess 9,000 performance solutions over a three-year period. That is an extraordinary number of permutations and combinations of situations that you would have to be across. Have we got to the stage where there is too much flexibility in the system for any one category of professional to be across and to be able to sign-off on?

Mr Hughes-Brown: In short: yes. That's why I highlight that the role of the certifier should be shared and not put on one person in one location. They've got a lot of other things to contend with, and there should be a balanced approach with it. Also, there's a lot of things that we deviate from in the code, like minor travel distance and other things, which we know will work provided you've got a balanced system in there. But, with certain fire service applications, they have to go to them for review. We should look at more of a national balanced approach to it, give that role to the fire engineers, have a peer review process, allow the fire services to focus on what they are experts on so they can focus on that and take responsibility and give other engineering or mathematics things to people who actually have that skill set.

CHAIR: Thank you very much, gentlemen, for appearing before us.

IRELAND, Miss Talissa, Senior Client Liaison Officer, CertMark International

THORPE, Mr John Charles, Chief Executive Officer, CertMark International

[11:29]

CHAIR: Welcome. I invite you to make a brief opening statement, should you wish to do so, and then we'll open it up for questions.

Mr Thorpe: Firstly, I would like to thank the Senate for allowing us to address you today. We're the largest certifying body under the CodeMark Scheme in both Australia and New Zealand. As a consequence of that, we certify most of the products that have been mentioned here today. We would like to propose an argument for mandatory certification of particular building products, and I think we have a reasonably succinct presentation on why that can be done within the framework that already exists.

This washer that I purchased from Bunnings yesterday is WaterMark approved. It costs \$2.50. If a plumber fails to install a WaterMark approved \$2.50 washer he can quite literally lose his licence. That is covered under the actual WaterMark Scheme, which is legislated in exactly the same way as the CodeMark Scheme. Conversely, this aluminium composite panel does not fall into the same regime. So, the question needs to be asked: why do we have in place a system whereby something as simple as a tap washer is covered with a mandatory certification—that there are consequences, as has been talked about today, or ramifications for the licensed installer—whereas there is nothing similar that would affect an aluminium composite panel? And I am not singling out ACPs; many other products fall into that category.

The CodeMark Scheme and the WaterMark Scheme have both gone through a bit of a rebirth recently. They've both been enhanced. One of the things that's been enhanced in the CodeMark Scheme is the removal of the mandatory requirements for the certifying bodies, such as us, to inspect the factory. We don't need to go and look at the product being made. That may seem counterintuitive, but the logic is that on any day I can send any of my staff, and Talissa can send any of her inspectors, and they can be making the golden sample. What's important is what is actually—

Senator XENOPHON: Could you just put on the record what the golden sample is?

Mr Thorpe: A golden sample is basically when you go and look at a factory and the sample that's been tested and the sample that has actually been manufactured is to spec. You walk out of the factory, and what is going to go into the container that's going to be shipped to Australia may not be of the same quality as the actual golden sample. So, it's basically product substitution.

CHAIR: If you didn't give advance notice of when you were going to be at the factory, that minimises the risk of that, doesn't it?

Mr Thorpe: Indeed, that would minimise the risk of it. The scheme has been changed to require the certification body to conduct market sampling and testing of the certified product when it actually arrives. Some comments have been made that we see these container loads of products coming into the country and we have no idea what they are. So, what we see is that the CodeMark Scheme has in place the mechanisms that allow for this type of supervision of the products. You then have to say, 'Well, if CMI is sitting here and saying let's have a system where we have mandatory certification, what do we certify?' The CodeMark Scheme has levels of requirements—level 1 and level 2, and I think level 2 is being phased out—but basically it looks at the risk factor associated with the product. The building code itself has a risk factor scale in it—a risk matrix. The risk matrix is broken down into two sections, and I am happy to leave all this written material here with you. It looks at the risks associated with the manufacture of the product and, probably more importantly, the risks associated with the installation of the product.

When somebody comes to our company and asks to have their product certified, we run the risk matrix and we look at things like the nature of the materials, the extent of the requirement for sampling and testing and the number of sites involved in manufacture of the product, and where they are. Issues of public safety is one of the major ones. We look at the nature of the certification holder: are they an importer? Are they a manufacturer? We look at things like ease of rectification. They're all things that we look at on the manufacturing side of things. The risks associated with installation are the nature of the materials and, most importantly, as we heard earlier here, how they interact with other building materials. We look at the extent and nature of the product verification of compliance—what's actually required to be able to verify it on-site. We also look at the number of trades involved in installing the product and we look at, once again, the nature of the certification holder: are they accountable?

The revision to the CodeMark Scheme has added, as part of the contract we enter into with the certificate holder, that there is a product quality plan. It is legislated in this and it has gone through the ACCC; it's been

approved. We also have a new addition in there that there is a requirement under the product quality plan for a product recall system that meets the ACCC's requirements. So, all of this exists. It's all here. The only thing that isn't here is the fact that the CodeMark Scheme is voluntary whereas the WaterMark Scheme is mandatory. We say that if a product is evaluated and it's evaluated as high-risk then that should be moved in to the mandatory certification system that's available within the CodeMark Scheme, because when we issue these certificates of conformance they have mandatory acceptance under the building code.

Senator KIM CARR: Can you just explain the difference between 'mandatory' and 'voluntary' in these circumstances? For how many of the products that are certified is it actually on a voluntary basis?

Mr Thorpe: For every product that we have certified under the CodeMark Scheme, because it is a voluntary scheme, the companies have come to us voluntarily and asked us to certify them against the CodeMark Scheme. Once we've certified them, there is a mandatory acceptance of these certificates of conformity.

Senator KIM CARR: Your submission says that there is a considerable price difference between the flammable PE core material and the fire-retardant and fireproof core material. That is the aluminium honeycomb core material, which is the focus of what we are doing here. Are you able to tell us whether there is also a considerable price difference between the mineral and PE core materials?

Mr Thorpe: There is. As with anything, you get what you pay for. I believe—and a couple of our clients are coming along later and can probably give you exact figures—the difference between a PE core and, say, a fire-retardant core would be something in the range of about \$7 to \$10 a sheet. So, if you're putting a high-rise building up and you're using several thousand of these sheets, then there is a considerable cost saving to be had.

Senator KIM CARR: What sorts of percentages do you think a \$7 to \$10 a sheet difference would be?

Senator XENOPHON: Based on the difference between the non-fire-retardant and the fire-retardant sheet.

Miss Ireland: Because we're involved in the process prior to that we don't actually know.

Senator KIM CARR: Well, we might have to try to find that out. But is it a significant price difference?

Mr Thorpe: Yes, there is a significant price difference. I think Fairview Architectural are coming in later, and they could possibly give you exact figures.

Senator KIM CARR: I'm just wondering whether there is a significant financial justification in the use of the flammable materials.

Mr Thorpe: Yes. I think that has historically been proven to be the case. We've looked at many buildings since the Lacrosse fire in 2014. We've actually gone onto high-rise properties where the body corporate has shown us the plans and the plans specifically state that fire-retardant material is to be used and there's been a substitution for a PE.

Senator KIM CARR: How does that happen? How does that substitution occur?

Mr Thorpe: Substitution occurs, from our perspective, when a builder, or somebody involved in the purchasing process, is looking to save money. Basically, what's happened is there's been a tender go out for the building, a company's won the tender and the first thing that happens is they look to find savings.

Senator KIM CARR: Cheaper products. Has someone signed-off on that building?

Mr Thorpe: Yes. Somebody would have signed-off on the building.

Senator KIM CARR: Has anyone ever been held responsible for a non-compliant building?

Miss Ireland: The problem with that is that you can look at it at face value and you won't know.

Mr Thorpe: Indeed, and that's where—

Senator XENOPHON: Until something goes wrong.

Miss Ireland: That's right.

Mr Thorpe: This is where the people, who have come before us, have been pointing out there is a need for a stronger look at how this is actually done. If I can just go back to the example of the humble washer here: we produced a few weeks ago—along with the submission that you've got there—a notation to all of our clients who manufacture aluminium composite panels. The suggestion that we made was that they should be branded. In a similar way to the way these ones are branded. We suggested that the branding should mention the name of the product, the dimensions, the batch number and, most importantly—because we're talking about aluminium composite panels—what the product is. If it was PE, there should be a warning that it's combustible and it should actually state the class of building that this product can be used on.

If we use these two examples here, we have got a PE product, which we've certified for the Vitrabond company. Under the conditions and limitations, it states, 'This product may only be used in Class C construction.' Under the Building Code, it clearly states that Class C construction is basically a single-storey residence. This is a case where this product is combustible, but there is a place where it can be used.

If we move to their FR material, it states quite clearly that it can be used, 'In type A, B or C construction.' Most buildings are type A, B or C. By incorporating that, we've had very positive feedback to our company. I think you'll find that a lot of them have actually adopted it. Just yesterday one of the companies sent through their actual designs for the labelling that they're going to put on.

If we had a situation where there was a decision made for a mandatory requirement under the CodeMark scheme to certify these types of products because they are high risk and put this sort of branding on it, then, as with the plumbing products, a builder or a tradesman onsite—when the panels were delivered to the site—would see them and say, 'Hey, hang on. This says it's combustible and class C only. This isn't a one-storey building; this is a 24 story high-rise. Hey, boss, what's going on?' There would be that trigger and there would also be the ability for penalties to be levied against the installer, if they installed it incorrectly. It could also be whistle blown back to the regulatory authority. I will use the example of somebody saying to the installer, 'No, don't worry about that. Just stick it on.' All they need to do is—

Senator KIM CARR: And that's the problem here. The industry is full of people being told, 'Just put it on.'

Mr Thorpe: Exactly.

Senator KIM CARR: We're interested to know what we can do to change that, and the evidence seems to suggest that there needs to be some penalty for people who actually don't do the right thing.

Mr Thorpe: Exactly. I have heard a few times today that there hasn't been a case where anybody has been penalised. We have one case that we can use as an example. In 2014 we certified a company called ModakBoard Australia. ModakBoard were importers of a Chinese magnesium oxide board material. Magnesium oxide board, for those who don't know, is a product that's used to substitute plasterboard and fibre cement board. We found out, through a whistleblower, that they were substituting a poorer quality board. These boards were fire rated and they were certified by us to be used as intertenancy walls in high-rise buildings.

We investigated. Once we investigated, we discovered that there was credence to what we were being told. We went on site. Under the CodeMark Certification Scheme and the contract we have with the clients, we're allowed to go on site; we're allowed to conduct inspections. The inspection revealed that, yes, they were substituting the product. We're Queenslanders, so we got on to the QBCC. The QBCC became involved. A long story short: we ended up with the Office of Fair Trading. Fair trading are prosecuting the certificate holders. The certificate holder's certificate was immediately suspended, so there is, within the structure that we have, with the mechanism, if they are a certificate holder, to penalise them for what's going on.

Senator KIM CARR: That's very good, Mr Thorpe. That's one case.

Mr Thorpe: Exactly, that is one case, and I take your point. If there was a problem with tap washers, we'd have hundreds of cases. If we had a mandatory requirement for all high-risk products to be certified at a federal level, which is where we would come through with the CodeMark scheme, we would be able to—

Senator KIM CARR: And the question arises: are people putting lives deliberately at risk by this substitution?

Miss Ireland: How do you prove that? That's the problem.

Senator KIM CARR: It's a judgement question that you have to ask. You deal with this on a regular basis. You're saying it's a voluntary certification arrangement that is able to be counterfeited. That's the first problem. Do you have any experience of counterfeiting?

Mr Thorpe: We have had several counterfeit CodeMark certifications come from China. They don't last very long when they hit the marketplace, because they're generally referred back to the certification body, so it'll immediately refer it to JAS-ANZ.

Senator XENOPHON: But not to the police?

Mr Thorpe: Sorry?

Senator XENOPHON: You don't refer it to the police, do you?

Miss Ireland: No.

Mr Thorpe: No. As has been mentioned, one thing that did come out of the tragic Grenfell incident is the fact that it looks like manslaughter charges may be raised. At issue is that the people who are doing this, the people

who are substituting products, are doing so with the belief that they have some sort of anonymity; they can just go on and do it. They can do a drop-and-roll and turn up somewhere else. I believe the only way that this is going to improve is with some sort of a mandatory requirement for the entire chain. We have talked about what the Queensland government is trying to put in place—

Senator XENOPHON: And you welcome the Queensland government measures?

Mr Thorpe: Absolutely.

Senator XENOPHON: Is that the way forward?

Mr Thorpe: I think it is the way forward.

Senator XENOPHON: But other states haven't committed to do that?

Mr Thorpe: No, not that we know.

Senator KIM CARR: Mr Thorpe, that's a lengthy process. There are other things that the Commonwealth surely can do that are more rapid interventions to prevent malpractice?

Mr Thorpe: Indeed. When you say 'a lengthy process', we talked about, or other people have talked about, creating standards and how long it takes to get a standard in and how long it takes for something to actually come through. As a certification body, we produce acceptance criteria for products. Acceptance criteria are something that we go to the company that is supplying for certification of the product. Basically, it details what we require for them to supply to us in order for us to certify the product. It goes above the Australian standards because we consult with industry and we also consult with people like the fire engineers, who were here earlier, on the actual requirements. We can produce one of these reasonably quickly, and what that means is that if we certify a product based on an acceptance criteria—and this is modelled on the American ICC-ES international building codes criteria—we can actually make sure that not only is the standard is met, but that it's also gone well above. This is because in the acceptance criteria there are requirements for what we call a scheme of testing inspection. They agree to what we're going to do as far as looking at how we monitor their annual audits, how we do regular surprise surveillance on the products and things like that.

To get something to happen quickly, in our opinion, the quickest way to do it would be to consider taking it to the Building Codes Board and saying, 'Guys, you've got a mandatory plumbing certification scheme; how about there's a mandatory building scheme under the CodeMark scheme that is applicable to high-risk products.' I'm not saying everything needs a mandatory certification—decorative items that are non-flammable, obviously not—but that could be a move that could go ahead quite quickly.

Senator KIM CARR: I can understand that. Given that Victoria doesn't have any regulations with regard to defining what or who a builder is, that might be an interesting question for them.

Mr Thorpe: You then get to the point where you have the national plumbing code, which requires a plumber to install this product there. If we have a situation where these high-risk products are clearly certified and clearly branded, at the very least what you have is a paper trail where you can follow these things back and you can even move it forward. Another example, if I may, is when we talk to our clients in the ACP industries, one of the things we ask them is, 'Do you, as suppliers, ever question when you get a big order?' If they get a big order for polyethylene core, PE flammable core or aluminium composite panel, does somebody ring up and say, 'Hey, we've just won this contract; we want 6,000 sheets,' we ask them if that would ring an alarm bell. They're not going to be sheeting 6,000 domestic single-storey homes in it, because you don't use it for that. You can use it for—

Senator KIM CARR: But who's going to do that? Which company, realistically, is going to take any action to knock back a 6,000-sheet order?

Mr Thorpe: No company realistically is going to do that. One of the things we do, once again going back to the CodeMark scheme, when we do the annual audits is we are required to look at the product they've sold and where it's gone. That's in the scheme. What we do ask is: 'You're using a government scheme. That logo is owned by the government; you're stamping it on there. Where have you sold the product?' This is something that is becoming more prevalent worldwide with certification bodies; the certification bodies are being asked to police what's going on with the actual certified products. If we go in—I can speak for my company; I cannot speak for the other certification bodies—and do an audit and we see that they've suddenly sold an awful lot more polyethylene core material than they have FR core, and we know this material is predominantly used as a decorative facade on the outside of buildings, the question's going to be asked: 'Who did you sell it to?' While we do not have the ability to take punitive action against it, we do have the ability to raise it with the Building Codes Board. We can raise it, as we did with the ModakBoard example, with the state body that's involved.

Senator KIM CARR: Thank you, Mr Thorpe. What do you say to the question that Customs officers should be taking further action to prevent the importation of dangerous building goods?

Mr Thorpe: My answer to that, Senator, would be that—as was mentioned earlier, what happens is companies in Australia purchase these materials from overseas, predominantly from China. Last week I was in China. We signed a cooperative agreement with the China building manufacturers' federation. The China building manufacturers' federation represents just about every manufacturer in China. Through that organisation, they supply roughly 68 per cent of the world's building products, and a fair whack of that comes into Australia. They're particularly concerned that companies in Australia will buy products and they'll come into Australia and those products aren't fit for use.

If I can go back to the example of the ModakBoard, the ModakBoard got certified based on an extremely high-quality magnesium oxide board that was tested and certified in Australia by the CSIRO. The company that was supplying the ModakBoard to that client, that particular company, went to China and saw that that company manufactured various grades of board and actually found they had one that looked pretty similar, but wasn't fireproof. They actually ordered that board. We have documented evidence from that manufacturer in China that they advised them: 'It's not fireproof. If you're going to be selling it as that, it won't stand up to a major fire event.' That product came in on ships. It looked the same. They had fraudulently put the CodeMark stamp on it. I don't think that customs can pick up on that. I think it is too big of an ask. The requirement would then fall to us as a certification body, because we are certifying the product. It has the government CodeMark logo on it. If something goes pear-shaped, it needs to be up to the certification body to work with the state regulatory authorities when it is brought to out attention. Hence, once again, my passion is to have the high-risk products listed as mandatory certification and to have mandatory branding so at least, like my washer here, there is some way of identifying the product.

Senator XENOPHON: I want to go to the question that Senator Carr put to you about whether someone does something deliberately. But let's go back a step. This particular hearing has been triggered by the Grenfell Tower fire tragedy. We are talking about the aluminium cladding with the polyethylene core, which acts as a fire accelerate in a sense. But you are allowed to use that product on single- or double-storey buildings—correct?

Mr Thorpe: Yes, class C, which is basically a single storey. It can go up to a double storey.

Senator XENOPHON: If you could just follow me on this in terms of my logic, which I hope is logical. For those buildings, if you are allowed to have that cheaper material on single- or double-storey buildings at the most, presumably you are not going to be using that much cladding, unless it is a very large commercial building.

Mr Thorpe: Exactly.

Senator XENOPHON: In other words, the quantity generally used is not much by virtue of the fact that it is either a single- or, at the most, a double-storey building and you should not be using them on anything beyond two storeys. So why not just ban them and say, 'Let's not let these products into the country at all'? It's just not worth it. The regulatory compliance enforcing it is almost impossible because if it gets through customs then you need to enforce where it is going to be used. If you are only going to be able to use it on single-storey buildings, why not ban it? The marginal cost of having fire-retardant building cladding on a single-storey building is going to be negligible in the scheme of things. We are going through all of these contortions when shouldn't we just ban polyethylene building cladding materials?

Mr Thorpe: I think there is a very good case for that. The logic behind being able to have a niche market for a flammable product in the building, I particularly think doesn't hold.

Senator XENOPHON: Does that send shivers up your spine—that we are okay with having a flammable product?

Mr Thorpe: I think the simplest way with PE flammable core materials, as with any flammable material that is in a building, is it should be banned; it should be kept out of the marketplace.

Senator XENOPHON: And to make it clear: with something like a beautiful timber product, it is pretty obvious that it is timber. If it is on a single- or double-storey building, that is quite different. Of course, there are ways to make that fire retardant, but that is quite different. My final question goes to what Senator Carr alluded to. I think it was put to you, Ms Ireland, or to both of you. It relates to the thing about 'deliberately'. I think the question was asked about people deliberately putting people's lives at risk. I think the response was: how do you prove it? Is an alternative way of proving it to have offences that if you do not comply with a set of procedures and a set of processes that are robust and transparent then you will be criminally liable?

Miss Ireland: I actually do not think that that is a bad idea—making you criminally liable. If you talk about the QBCC having that chain of custody, I think that that would assist in that greatly.

CHAIR: Finally, you may not be able to answer this question, but I am interested in your view as a certifying body. You have extolled the virtues of the WaterMark. You would be aware that the Aldi tap issue came up recently where it was found there were 15 times the level of lead coming through the tap. I am not sure to what extent you can comment on that, but do you have a view about that? Even where we have a mandatory system, there can still be issues.

Mr Thorpe: I do. One of the situations that has been mentioned repeatedly is the fact that—and the expression sometimes gets used—we have 'leaky borders'. We have products coming in from overseas that aren't subject to the scrutiny that they should be subject to. We have had a case over the last few years where one of our major building and construction companies, John Holland, has been bought out by a Chinese company, CCCC. When you get a situation like that, you are going to get the parent company—and please don't think I'm China bashing—but you get a situation where you have a major contract like the Perth hospital that was let. John Holland had the contract, and all the materials for that contract came from the parent company in China. The amount of scrutiny that went into those products—and there is also asbestos that building as well—being John Holland, you would think a robust system would be in place. That is obviously an ongoing situation, but what has actually occurred there with the lead in the plumbing is that there was substitution of product. There were specifications clearly written to say 'no asbestos' and specifications written to say there was to be watermark-approved products, and some of these products got through. So who is liable for that? You have a major construction company in John Holland, who I know are being very proactive in trying to run down what is going on. But what we are having are situations where there is so much product coming in from overseas that there is so little oversight on that product. Once again, I go back to the need for some sort of mandatory branding of these products. Any wall tiles or sound tiles in the ceiling that have asbestos should be picked up by thorough testing and thorough certification of compliance and inspection as it arrives in Australia and goes in.

CHAIR: Are you postulating that the ALDI taps had fraudulent certificates?

Mr Thorpe: I don't have enough information to be able to comment succinctly on that. I would say that the only way the ALDI taps would have got through would be if there were some sort of certificate of compliance. If they have failed it is due to either a golden sample being tested to get a certificate, which was then replaced with substandard ones, or there was an actual, deliberate attempt to mislead by producing a false certificate.

GODDARD, Mr Stephen, Spokesperson, Owners Corporation Network

STILES, Ms Karen, Executive Officer, Owners Corporation Network

[12:02]

CHAIR: I now welcome Mr Goddard and Ms Stiles, representing the Owners Corporation Network.

Mr Goddard: The Owners Corporation Network is a public interest advocacy group with chapters in three states and the ACT. Our role is to assist in the development and implementation of public policy in the strata space. OCN is the voice of the end user, the people you are seeking to protect.

Using New South Wales as an example, there are more than 72,000 registered strata schemes in this state, with a combined asset value of more than \$350 billion. Strata schemes represent a store of our national wealth, exceeding \$1 trillion nationally. Across New South Wales, two million people live within strata title dwellings. Within 20 years it is expected that half of this state's population will be living or working in strata or community title schemes.

The trend towards strata living is meant to continue. The draft metropolitan strategy for Sydney to 2031 sets out the need to identify more urban renewal areas, locate housing in centres close to transport and where community infrastructure already exists. This planning trend brought about by necessity is national. Research by the Grattan Institute identified a preference for homes near jobs and community facilities amongst Australians living in our capital cities. The same research also identified a mismatch between housing stock available and the types of housing people want to live in. The logical preference was to accept strata living.

CHAIR: Mr Goddard, I am loathe to interrupt, but I note that the document I have just received is fairly lengthy. Was it your intention to read the whole document?

Mr Goddard: Not entirely, sir.

CHAIR: We would like to open to questions. I apologise that we are running a bit late. Could I ask you to compress—

Mr Goddard: Capsulise.

CHAIR: Yes.

Mr Goddard: To capsulise that which you have, it has been in our various states a matter of public policy to encourage urban consolidation and densification of our populations. That public policy barometer has been undertaken at the expense of consumer protection. In all of our states, we have seen our home building acts and our home warranty insurance whittled away progressively in order to help the builder build the buildings that are meant to house our growing population and deliver the sorts of planning initiatives that our various governments have been concerned about for the whole of this century so far. The outcome has been that building defects are now present in up to 75 per cent of all residential strata schemes created certainly in New South Wales and probably Victoria. Building defects are no longer an insurable risk; they are an absolute certainty.

This situation has come about, again, as a result of the public policy compass turning towards urban consolidation as the first priority and consumer protection taking a very clear back seat. We have seen consumer protection, if you like, wallpapered over by the fact that progressive increases in the capital value of apartments have hidden the fact that badly constructed buildings still show capital growth on resale. The fact that owners corporations have had to invest significant sums by way of special levy to deliver something as basic as the Building Code of Australia has not been a punishment that the market has delivered because it is wallpapered over.

In 2002, I gave evidence to the joint parliamentary inquiry in the New South Wales parliament as the chairperson of the then largest strata scheme in this country—650 lots. That was a scheme in which Sydney City Council came and inspected 15 lots between levels 19 and 35 and found 14 of them failed to effect fire isolation. That was in 2002. It is now 2017. Fire safety is a frequent flyer in the home building defect sector. You have been asking: why has this happened; how can it happen; what have we been doing? The answer is we have been encouraging the builder to build. We have been whittling away consumer protection and home warranty insurance because home warranty insurance could not underwrite the certainty that there was going to be a defect.

Only in November 2014 the High Court was asked whether Multiplex owed a duty of care to the owners corporation in Chatswood that had claimed Multiplex owed a duty of care to deliver the Building Code. The High Court resolved that its hands were tied. Unfortunately, the building contract between the builder and the developer was so whole and complete in its description of the work and what the builder was intended to do that there was nothing left over for the end user, who did not exist at the time that contract was entered into or completed.

CHAIR: But did that contract comply with the Construction Code?

Mr Goddard: That building suffered \$8 million in building defects. The owners corporation, because our home warranty legislation does not allow us to make the sorts of claims that were confronting Chelsea at the time because they were out of time—six years and out of time—were compelled to litigate and they had to find a basis for litigation. Now I stand here to tell you that the New South Wales Supreme Court in the first instance did not find a duty of care owed by that builder to the end user but the Court of Appeal did. At the High Court we were told the end user is too remote. That contract was complete.

If this situation is to be remediated, it falls upon the parliaments of this Commonwealth to create a statutory duty of care that extends beyond the contract to the people who did not exist at the time the contract came into existence. Gentlemen, I heard you this morning ask: how can this continue? Why should a person who knows that something is wrong do anything about it? It is a good question when you now know that person does not owe the end user a duty of care at all. There is no punishment to be extended for the failure to deliver the BCA. If that were the case, we would not be sitting here.

The reality is that we, as a community, need to redefine our public policy priority. I have told you we have invested \$1 trillion of our national savings in strata schemes. You know that 75 per cent of those new buildings have been constructed with defects. You now know the High Court has said the builder does not owe a duty of care to the people who do not come into existence until the building is completed and the strata plan is registered. The solution that the Owners Corporation Network would put before you is to consider a statutory duty of care extended to the end user, the victim, the person who buys into a strata building unable to see the invisible absence of fire dampers and fire collars and now the existence of flammable cladding.

When I gave evidence in 2002, the building industry saw what I had to say as a victim and a public nuisance. The economic agenda was to build the buildings that were necessary to deliver the urban consolidation. You now know that, underneath that wallpaper of capital gains, is an extraordinary cost in redeveloping—retrofitting into buildings the life safety that was not put in at the time of construction. You know now that there is a consequence of not realigning the public sector moral compass and delivering the consumer protection which we have been whittling away with, dare I say, gay abandon. You have a duty, gentlemen, to consider us, the end users. You now know our lives are in jeopardy. It is not merely raising special levies to put in what the builder did not. It is more than that. It is preserving life safety.

You have seen in the Lacrosse building how it can happen here and to what extent. You have seen in the United Kingdom the level of loss of life that you are facing. Your failure to act has dire consequences. The act we ask you to take is to cause the building sector to become truly accountable—not regulated in the way that we have seen regulation fail to deliver life safety for the whole of this century so far. We ask you to introduce that most important of all regulations: personal accountability, duty of care, responsibility—the burden of discharging good responsible behaviour in the interests of the end users. Gentlemen—

Senator KIM CARR: Mr Goddard, you have made a powerful presentation to us; but, specifically, what would you have the Commonwealth parliament do?

Mr Goddard: I would like you to first listen.

Senator KIM CARR: We have done that.

Mr Goddard: I am not convinced, sir.

Senator XENOPHON: You are not suggesting we are not listening. We are listening.

Mr Goddard: I am concerned that most of the issues that you are actually addressing are state and territory issues.

Senator KIM CARR: Yes. That is the point of my question. It is clear from your presentation that that is what you thought. We are charged with the heavy duty of identifying what we can do to fulfil what you are saying you want and which I happen to agree with. It is a question of responsibility. How do we put the duty of care back in to the question of our regulatory regime? How do we, the national parliament, do that? You have heard today some of the propositions that we are considering. We are asking you—and, Ms Stiles, should you have any suggestions for us—what can we do with the powers available to the Commonwealth to deliver the message that you are putting to us today?

Mr Goddard: I am of the view that your regulatory powers are limited, except to the extent that you can regulate the importation of product, because that is a border issue. However, you are our federal parliament. You are our federal leaders. I ask you as people of influence to bring to our state parliaments the error of their ways. Ask them to see that they have a consumer protection role to play with you. You can merely regulate what comes

across the border. Our state parliaments can introduce the consumer protection that has been whittled away by time. Our federal parliament is our greatest peak body. You are our greatest source of influence in the public domain. Your role, Senator, is to go to our state houses and remind them that they have breached their duty of care to the community at large.

CHAIR: For example, the corporations head of power has been used somewhat creatively in recent times. Perhaps—

Senator KIM CARR: Interstate trade.

CHAIR: Do you have a view about some of this?

Mr Goddard: I thank you for your innovation. I remind you that I speak to you merely as a representative of an owners corporation and as a strata lawyer who has had to deal with the fallout of these events. We sit here as the human face of what needs to be done. We have been sitting here in these rooms for 15 years and not been heard. We have not been seen as important as compared with the planning agenda for housing our growing population. Your failure to be innovative is going to play out in a loss of public confidence in strata living. That will have a state and federal impact.

Public confidence has so far embraced strata living as a lifestyle of choice. A flat was where we used to live on our way to somewhere else. Now strata living is where a whole generation of Australians will start their family life. You have a duty to preserve that public interest and public confidence. How are you going to preserve public confidence if the Lacrosse story plays itself out throughout Queensland, New South Wales and Victoria—not just because we imported shoddy product but simply because we have failed to implement fundamental consumer protection and cause those who are building the buildings to have a level of personal accountability?

CHAIR: Do you have any knowledge of the Queensland bill in respect of supply chain responsibility?

Mr Goddard: No, sir, I do not.

Ms Stiles: Senator Carr, if you were asking for a specific mechanism for the Commonwealth to work with the states to provide a duty of care or enforce a duty of care, you have the Building Ministers' Forum, and certainly in New South Wales there is a joint responsibility between New South Wales planning and innovation and fair trading, and that is a very powerful body.

Senator KIM CARR: I used to chair that body. I am not so certain about how powerful it is. Certainly I can tell you: if you want procrastination, you go there. So we will have to do better than that. I'm actually thinking about whether or not we can legislate. We need to take parliamentary action rather than have a further array of consultations and navel-gazing because, as you say—I think the presentation you made today is entirely appropriate—it has been a long time. But it is broader than the question of just the planning agenda. There is a whole philosophical agenda that is being pursued here, which goes to the question of neoliberalism and deregulation and privatisation, and cost-cutting and red-tape reduction. These sorts of analogies are being used. So public safety questions have been pushed to the background. You are putting to us the question of consumer rights being pushed as well. It is all part of the same issue, as far as I'm concerned. But I'm trying to identify, through these hearings, what actions we can take. That is part of the process here—asking expert witnesses: 'What actions can we take to deal with this issue? Having identified the problem, what is the solution?' Further talk is not necessarily going to be of much satisfaction. What do you say to that proposition?

Mr Goddard: It is the reason we're here. We ask for the legislation that delivers a statutory duty of care in circumstances where we know the common law cannot provide that tortious remedy.

Senator XENOPHON: And that is what the High Court effectively said in the Multiplex Chelsea decision.

Mr Goddard: It most certainly is.

Ms Stiles: Seven to zero.

Mr Goddard: So you are on notice, sirs, that you cannot rely upon a tortious remedy—the High Court has told you and six other houses. We need your help. We need you to create that statutory duty of care to bridge the gap that we can't traverse. Remember, please, that we do not come into existence until after these buildings are constructed. Owners' corporations only exist upon registration of the plan. The plan is only registrable after the building is certified as complying with the Building Code of Australia.

Senator XENOPHON: And that is the catch 22.

Mr Goddard: Give me a break! Seventy-five per cent of these new buildings are going to have the sorts of building defects that you are now concerned about. And we have a regulatory system that I have been listening to whittle itself away since 2002.

Ms Stiles: If this were a \$10 product or a car, it would be recalled, but these are where people live.

Mr Goddard: I have more consumer protection buying a refrigerator than a \$1.5 million apartment. How can that happen?

There's a greater duty of care in the sale of a refrigerator than in the delivery of people's homes. How did we get to that? The answer, it seems to me, is that we have had this planning focus, this building focus, this population growth and this economic agenda, all of which has hidden the cost of retrofitting building defects and now the threat to life safety.

You have no option to kick this down the road another five years. There has to be a level of accountability. We can't help the buildings that are built. I know that in the Docklands area there are many buildings in the same position as Lacrosse. The same is the case in Sydney and probably on the Gold Coast. Your future legislative reform can't help those buildings. Lacrosse was fortunate in some ways. It burnt—there was no loss of life, but it burnt. That gave the owners of that building an insurance claim, at least the first time round—not the second time if they don't get rid of the cladding. Consider all of the buildings adjoining Lacrosse that have the same cladding and now know, or ought to know, that they are a vertical barbecue, and they don't tell their insurer.

Ms Stiles: Or if they do, as one building has done, they are unable to get building insurance. All of those owners in that building are jointly and severally liable for any debt.

Senator XENOPHON: Which is one of the problems in Lacrosse. There's now this huge legal bunfight as to what to do about the damage done, and who knows what that's going to cost, what stress it will cause and how many millions of dollars it will cost in legal fees?

Ms Stiles: People suicide. That's just a public illustration of what's going on every day across this country. Marriages are breaking up. People are bankrupted. People suicide with the stress. This is a terrible, terrible problem, and I can only thank God for Grenfell.

Mr Goddard: In 2002, our parliaments were deaf to what you are hearing now, because the agenda was entirely different. This is not a statement of blame; it's a statement of fact. At that time, there was a focus upon helping the builder build for the economic benefit and to house the growing population. Again I say that capital growth in our housing market wallpapered over the damage, and it's only now, with Lacrosse and the Grenfell situation, that we're pulling the skin off the custard and looking at it in the cold light of day.

Senator XENOPHON: Ms Stiles, do you want to reconsider what you said? I'm just inviting you. I think what you meant to say was—

Ms Stiles: What I wished to say was that it has made people aware and they are very actively looking at it.

Senator XENOPHON: But no-one wanted that tragedy to occur.

Ms Stiles: Oh, God, no.

Senator XENOPHON: But, now that it has, there is no excuse. Well, there was no really good excuse after the Lacrosse fire, but the loss of life in Grenfell has put into sharp focus the catastrophic consequences of not doing the right thing.

Ms Stiles: Yes. I apologise for stopping too soon earlier.

CHAIR: Can I just raise an issue in relation to one of the things in your submission, where you seemed to call for a simplified national regulatory framework. I presume from your opening statement that the introduction of this statutory duty of care obviates the need for complex legislation.

Mr Goddard: Not at all. We seek a statutory duty of care for those who are compelled to litigate in circumstances where their other statutory warranty periods have expired. You will hear much evidence about how building defects do not surface for many years. There are buildings in this city, very close to where we sit, where I know fire collars and fire dampeners were not installed 10 years ago. Those buildings do not have access to any of the legislative warranties, because they're out of time. But I'm suggesting to you that, rather than dumping that regulatory system, what we need is something additional so that, when people go to litigate, they are in fact owed a duty of care.

CHAIR: Thank you very much for your comments and your submissions today. Unfortunately, we are out of time.

HEATHER, Mr Paul, National President, Australian Institute of Building

FAIFER, Mr Norman, Immediate Past National President, Australian Institute of Building

[12:30]

CHAIR: I now welcome representatives from the Australian Institute of Building. Thank you for appearing before us. I invite you to make a brief opening statement, should you wish to do so.

Mr Faifer: The Australian Institute of Building, whose motto is advance through learning, considers the following to be vital pillars in the handling and dealing with the issue of non-conforming, non-complying product. We consider it to be a multifaceted issue. The Australian Building Codes Board is the publisher of the Building Code of Australia, the BCA. We believe that there is uncertainty within the building industry and within the practitioners of the building industry; in the readability, clarity and the comprehension of what is meant; and the intention of the words in the Building Code of Australia.

Firstly, as senators may be aware, the builder of the Lacrosse building will be appearing before a building practitioner's board hearing shortly, within the next few months. It will then be a litmus test of conflicting expert witness reports on the interpretation of various clauses and regulations within the Building Code of Australia. We are aware of the mandatory WaterMark and voluntary CodeMark systems, and senators may be aware that the NATSPEC organisation has been requested to provide some listing of the approved products. CertMark International, who appeared before, are a player in that sphere.

Secondly, on the regulatory framework: as has been said before, there are six states, two territories and a federal jurisdiction all overseeing building work and administering the Building Code of Australia. Each jurisdiction is a little bit different in what they want. Their criteria is a little bit different. Their licensing and their registration of builders and other practitioners in the industry are different. You would be aware that, several years ago, the National Occupation Licensing Authority was formed and one of the five industries that they wished to look at all for uniform regulation was the building industry. NOLA folded up after two and a bit years.

Thirdly, on education: many builders—whilst they should know, ought to know or must know their regulations—are unclear as to the interpretation of the BCA. That is, what is a class A, B and C building; what is a structural element; what are facades; is waterproofing a structural element; is fireproofing a structural element; what is a high-risk product; and what is a high-risk situation? All that has to come and be clarified so that everybody in the industry knows what they are dealing with. On the roles of the parties in the building process: the architect; the building designer; the consultants; the electrical, structural, mechanical, civil and hydraulic engineers; the building surveyor or certifier in approving the building; and the building inspector and surveyor in certifying the final product are all parts of the sum.

On free-trade agreements and customs, we are not experts in free-trade agreements and customs but we do know that a lot of product is coming in and being used inappropriately. We also have heard of insurance companies now not wishing to insure parts of buildings to builders before they start construction. I haven't got any hard evidence on that, it is just hearsay.

CHAIR: Does that involve cladding materials?

Mr Faifer: Particularly cladding, yes. There will be many findings from the coronial inquests into Grenfell fire that must be taken into consideration when discussing both non-conforming products and the use of external cladding materials. We do not believe that there should be a discussion about the complete banning of imported building products. Rather, it should address issues of non-conformity, direct application and other issues.

The Australian Institute of Building also believes in a stronger focus on continuing professional development for relevant organisations. That is, for the building practitioners, possibly—and I will be a bit controversial here—a regime whereby every builder who is registered or licensed within Australia, it does not matter what jurisdiction, must complete a course on the Building Code of Australia. That is particularly on the issues of non-conforming and non-complying products, their use, where these things are, what is a high-risk product and other issues that come out of it. We would then give you, say, three years to do that course. At the end of three years, if you haven't done it, you will lose your ticket. Those are just some of the things that we see. We put in a submission in 2015 and we put in a submission about a week ago. Thank you.

CHAIR: There's an old saying that too many cooks spoil the broth. I know that in this inquiry there are so many experts with different areas of expertise, different regulators and numerous jurisdictions to deal with. I think the building surveyors that pointed out that in the past we have had a function called the clerk of works. I just wonder if you have had any experience with that function in the past and whether or not you see that as being something that might be useful?

Mr Faifer: May I part answer that this way: in Victoria, where I am from, the clerk of works was not a statutory function. The clerk of works on major projects was normally appointed by the owner—not the architect or the builder, but by the owner—to oversee building work on behalf the owner. It was not necessarily for conformity or for regulation, but standards, tolerances and quality assurance for the owner. In New South Wales, and my colleague can correct me if I am wrong, there used to be a clerk of works scheme where they had some function.

We have just come back from Hong Kong. We do have reciprocal rights with the Hong Kong Institute of Engineers, the Hong Kong Institute of Construction Managers and the Hong Kong Institute of Clerks of Works. They have a statutory function under Hong Kong law. I am not sure—I struggle to understand Victorian codes—of the Hong Kong regime, but they have a statutory function. I do not know what class of building it comes in at: what value, what storey, what size or what value of money. The clerk of works, in my time, used to not have any function. They used to give the builder an instruction and the builder said, 'You're not part of the contract; we won't look at it' or 'We'll take it on board and refer back to the architect for his instruction and variation.'

CHAIR: Couldn't the contract make reference to the clerk of works if the owner is negotiating—

Mr Faifer: Yes, what you put in the contract is between the two parties.

Senator XENOPHON: Or have a statutory requirement that there is a role there.

Mr Faifer: Yes, there may be. We have advocated in the past that possibly construction managers should be registered like a building practitioner or a licensed builder. This is where we come with the nomenclature and we are all skew-whiff. In Victoria, we call everybody a building practitioner, a builder or demolisher. In other states, they call them builders class I, II and III or class A, B and C.

Senator KIM CARR: In Victoria there are no qualifications required whatsoever; isn't that the case?

Mr Faifer: No. Under the building act, a diploma is required and, failing that, a certificate IV with relevant experience.

Senator KIM CARR: Relevant experience! I put it to you that, in reality, no qualification is what actually happens.

Mr Faifer: In reality is one thing, what I read in the act is another.

Senator KIM CARR: We are interested in the reality.

Mr Faifer: I am a builder; I'm interested in reality.

Senator KIM CARR: We know it is a rough industry.

Mr Faifer: Yes.

Senator KIM CARR: The question is: how do we account for so many buildings in this country being non-compliant, so many buildings using dangerous goods? How do you account for that?

Mr Faifer: As I said, it's multifaceted: regulation, misunderstanding and a lack of understanding of what these elements are.

Senator KIM CARR: It's been put to us that there might be a cultural question as well—that is, the culture has changed within the building industry. It has been put to us by senior regulators that the culture now with privatisation and deregulation is cost-cutting and the whole attitude towards public safety has now changed, and that is a critical part of why we are increasingly getting dodgy products being used now on building sites, and we are talking about thousands of building sites; would you agree, thousands?

Mr Faifer: Yes. The Victorian Building Authority have through, coercive powers, identified 173 other buildings plus Lacrosse.

Senator KIM CARR: That is in the CBD—very limited numbers.

Mr Faifer: Yes, and over a certain size.

Senator KIM CARR: That's right, over a certain size for buildings where people sleep overnight. We are not talking about commercial buildings; that is just in the CBD.

Mr Faifer: Yes.

Senator KIM CARR: Do you think thousands of non-compliant buildings is a reasonable number?

Mr Faifer: In Victoria, yes, and I would venture that there would be tens of thousands nationally.

Senator KIM CARR: Thank you. We are on the same wavelength there. Why are there so many buildings that are now non-compliant in terms of public safety?

Mr Faifer: You mentioned cultural change. I was at a lecture last week and the statistic came out that Victoria grew at 146,000 people last year. I believe Sydney is growing at 85,000 people a year. These cities are going to be megacities very soon, if they're not already. We don't have enough housing. We don't have enough infrastructure. We don't have enough of anything. Yet, we are accepting over 200,000-odd people a year into the country because it is a very attractive country to come to. In that you do get shortcuts occurring.

Senator KIM CARR: But why is that an excuse for breaches of public safety?

Mr Faifer: It is no excuse. But in having the juggernaut go forward, things get left behind. I mentioned the four pillars, including the Building Code and how practitioners interpret it. The case in Lacrosse, which is coming before the Building Practitioners Board, will pit one expert against another with diametrically opposed opinions and interpretations of an act.

Senator KIM CARR: You have said that you don't think we should ban unsafe aluminium cladding. Did I understand you correctly? You may not have put it exactly that way, but I think that was the import of what you were saying.

Mr Faifer: Our view was that that in itself does not fix the problem.

Senator KIM CARR: No, but why shouldn't this committee recommend the banning of an aluminium product that is dangerous?

Mr Faifer: You may well decide to do that, and we would welcome that if it's something for safety. This would be part of the thin end of the wedge of banning one product and then you go to the next product.

Senator KIM CARR: But it's dangerous, so why would we? Would you agree that asbestos should not be used in Australian building sites?

Mr Heather: Agreed.

Mr Faifer: And, years ago, lead was taken out of paint.

Senator KIM CARR: That's right. But there was a view, additionally, that this should be resisted because of cost factors. There was a view that asbestos wasn't such a problem. James Hardie clearly thought that it wasn't such a big deal. But it's now become accepted that that was a legitimate thing for parliaments of this country, particular for us in Canberra, to actually say, 'That will not be imported.' Why shouldn't we do it for aluminium products that have currently been deemed to be dangerous, even if it is used on single-storey buildings? Why shouldn't we simply say, 'No, we're not going to have it on Australian buildings?'

Mr Faifer: That is parliament's prerogative, and we would welcome whatever leadership the national parliament shows in this regard. There is also something else that comes into it, which was just illustrated by the ALDI tap. There could be a tradesman who comes in and he knows very little about the Building Code of Australia—he's a good tradesman, buys a panel from a reseller and puts it somewhere, but it's non-complying and non-conforming—whatever—and it catches on fire in a small job. This is not just confined to Lacrosse, Grenfell or the fire that occurred in Miami last week. It crosses every size and shape of building.

Senator KIM CARR: Have you given any thought to what other measures you think the national parliament should legislate in terms of restoring public safety to our building sites and Australian buildings?

Mr Faifer: You should bear in mind that the Australian Institute of Building represents builders, and we have a panel of experts in the building industry who we hope are competent and can guide in their field of expertise. In that respect, it's not wholly our field of endeavour or expertise.

Senator KIM CARR: Nonetheless, you must've given some thought as to what action the Commonwealth parliament can take.

Mr Faifer: We would like to see a national-licensing scheme for builders. We would like to see the regulations—the BCA and NCC—promulgated even more. We worked very hard in the past to get the NCC issued for free. That was done, but it was done online. We want to go one further and see if it can be reissued for free in hard copy so that everybody can get a hold of it and see it in the written word rather than on a computer screen. There are other issues involved with this. For instance, the Building Code of Australia references hundreds of documents which then become part of the Building Code of Australia. Many of those documents are published by Standards Australia, but they cost a fortune and are not available for free online. These things also have to be put out in the field.

Senator KIM CARR: The Safety Commissioner was put in place by the Commonwealth parliament, but it's been discovered that it has no effective powers.

Mr Faifer: Correct.

Senator KIM CARR: Do you support giving it effective powers so that it can actually take action against people who are breaching public safety?

Mr Faifer: We would welcome that. There are other issues involved in enforcement and compliance. For instance, from the Lacrosse fire, when over 600-odd people walked out, there was a revelation that most of the flats there were over occupied. For instance, if someone had a two-bedroom apartment and four people should've been living there, there were eight or 10 were living there. There is also the non-conforming and non-complying use of balconies. Other people have told you about sprinklers and the building alarm systems. These are all issues that come out of this.

CHAIR: Your organisation represents the construction managers. Is that correct?

Mr Faifer: Builders and construction managers, yes.

CHAIR: And you've had a role in accrediting courses?

Mr Faifer: We accredit 13 universities around Australia in courses for bachelor of building, bachelor of construction management and masters degrees.

CHAIR: What do you consider to be the primary factor that leads to the use of non-compliant external cladding?

Mr Faifer: Misunderstanding—misunderstanding by various levels of experts within the building industry.

CHAIR: Perhaps you could elaborate, because, if the standards make clear that a particular type of cladding is not applicable for use for certain heights of building, then how is it possible that misunderstanding occurs?

Mr Faifer: And you have just asked a question which is the problem. Various experts, in reading the code, deem: that is okay. Another expert will say: it's not okay. The builder is not an expert in regulation; the building surveyor and certifier is. You would hope that the architect and building designer know those regs too when they specify these things to be used. Engineers, particularly fire safety engineers, ought to know these things as well. To get into technicalities, which I didn't want to do because it's not my area of expertise, we have an Australian standard code, AS 1530—.1 and .3. It's been said that there is no panel around that complies with the requirements of AS 1530.1, so we're still using them.

Senator KIM CARR: It has also been put to us that certification is, at times, fraudulent.

Mr Faifer: Yes.

Senator KIM CARR: Do you concede that?

Mr Faifer: We've just come back from Hong Kong and we've had to interview people who have a poor knowledge of English. They speak English better than I speak Chinese. I understand full well about the fraudulent documentation that we see.

Senator KIM CARR: So what do you do about that?

Mr Faifer: That's one of the questions: what do we do about it? Personally, I don't know.

Senator KIM CARR: Can you expand on that, Mr Heather?

Mr Heather: In terms of your question, it comes back to raising awareness and, I guess, identifying what a fraudulent document typically would look like. Not everyone can see it. We can read a set of specifications, we can read a certificate of compliance and give it to five different people and have five different answers in terms of the way they view that. So consistent understanding of what to look for through continued development—

Senator KIM CARR: But is it not a case of fraud?

Mr Heather: It probably is a case of fraud. But, in terms of the members that I represent, I would say most of them would not knowingly commit that. They would accept in good faith the expert comment and advice given to them by consultative inputs at certification and through the architects and engineers. They are not those experts; they rely on that.

Senator KIM CARR: To your knowledge, has anyone ever been prosecuted for the presentation of fraudulent documentation or fraudulent certificates?

Mr Heather: Not in the time I've been president of the institute.

Senator KIM CARR: Do you find that strange?

Mr Heather: I'm sure it exists. To answer your question: it probably is strange. I guess we've got to look for it in closer detail—dig deeper into the detail.

Mr Faifer: Since the Lacrosse fire in November '14, the amount of information that has been issued and disseminated by the Victorian Building Authority and the Australian Building Codes Board on complying, non-

complying, non-conforming and conforming product and the use of composite panels is vast, compared with the amount of material that was issued prior to November '14. To me, that indicates that we need clarification of the existing regime. Why have we had it since '14 but not before? We've identified a problem. The VBA has worked hard to clarify that. So has the Australian Building Codes Board. As I said, prior to '14, there wasn't any of that.

Senator KIM CARR: An additional problem is the question of substitution.

Mr Faifer: Substitution comes in where a product has been specified or it has been specified generically—'XXX or similar'—and a product is found that may be cheaper, yes, or may be more readily available. Instead of a six-month lead time, it has a six-week lead time. Those are some of the factors that come in—or maybe a product looks better than the other. When you do get a substitution on the bigger jobs, then it is up to the builder or whoever wants to install it to put the product on the table and say, 'Here is a sample; these are the test certificates that go with it,' and the architect, certifier, approver, whoever, puts it to the owner, and the owner says, 'Yeah, it looks great.'

Senator KIM CARR: And the certification may or may not be genuine.

Mr Faifer: Correct. And how are we to know that? I would be suspicious if I got a photocopy that had been copied four times. Why?

Senator XENOPHON: Many have referred to the Queensland legislation as a template for reform. You may want to comment on that. Further to Senator Carr's line of questioning: if you were to require that, if you are an importer of this product, the liability falls on you—on your company, on you personally—to be responsible for the testing of it, would that be a way forward?

Mr Faifer: Yes. I think would. You are responsible for testing—

Senator XENOPHON: Certificates in many cases are not even worth the paper they are printed on. In fact, they can positively mislead.

Mr Faifer: And, as an adjunct to that, testing by a NATA registered laboratory in Australia or a JAS-ANZ joint New Zealand-Australia certification.

Senator XENOPHON: So not tested overseas, tested here?

Mr Faifer: Unless the laboratory overseas has been approved by NATA, the National Association of Testing Authorities, here so that we can be confident that any certificate issued by an overseas entity meets our requirements. The litmus test there is to have it tested by one of us here or in New Zealand.

CHAIR: What about private certification in Australia?

Mr Faifer: Certification of product or building?

CHAIR: Building certification, for private.

Mr Faifer: We have the private certification in Victoria, as opposed to municipal certifications. Again, this comes back to: what is the building surveyor's, or private certifier's, interpretation of the regulations?

CHAIR: We again have a terrible mixture of risks here, if we have confusing standards and private certifiers able to come up with multiple different answers.

Mr Faifer: I will talk about Victoria. We had the old VBRs, the Victorian Building Regulations, which morphed into the Uniform Building Regulations, and then that morphed into the Building Code of Australia, which, added to the Plumbing Code, becomes the National Construction Code. Before the Building Code of Australia was in, we had only one regime, and that was prescriptive, highly specified, in the book. If it was not in the book, it did not get a look. In order to provide innovation and inventiveness and allow some latitude to architectural design and construction techniques, we went to performance based. Opening the door to performance based product and solutions then opened up the regime of who certifies, who says that this is approved method or product to use, under the performance based.

CHAIR: Is it a mistake to use the performance based approach?

Mr Faifer: I wouldn't go there. I would probably end up getting chewed up!

CHAIR: Well, go there. I encourage you!

Mr Faifer: It's my body, not yours!

Senator XENOPHON: Who's going to chew you up?

Mr Faifer: Industry. I am broad-shouldered and thick-skinned. It is okay.

Senator KIM CARR: We need some frank and fearless advice here.

Mr Faifer: Yes. I know.

Senator XENOPHON: And you are covered by parliamentary privilege, absolute privilege, in terms of what you say here.

Mr Faifer: Okay.

Senator KIM CARR: That's encouraging, isn't it!

Senator XENOPHON: That's supposed to encourage you, not discourage you.

Mr Faifer: I get off the plane, and I'm told I'm covered by parliamentary privilege! What was the question?

CHAIR: Was it a mistake to move down this track of a performance based system?

Mr Faifer: No, I don't think so, because it allowed industry and architecture to move forward.

Senator KIM CARR: Yes, but it also opened the door to the crooks and bloody shysters and all sorts of other scoundrels to rip off the system in the name of innovation, didn't it?

Mr Faifer: Yes.

CHAIR: So should certification services be run by local and state governments?

Mr Faifer: There's an argument for it, but they didn't want it. That's why they went to privatisation.

CHAIR: The question of whether they wanted it or not is immaterial. It's a question of public safety and outcomes.

Mr Faifer: In terms of public safety, probably yes. In terms of getting the job done, probably not. In Victoria, when we had municipal building surveyors and the only way to do it was to go through your local council, it took forever to get a building permit. Forget the planning issues, which may take two or three years. It took forever to get a building permit. Now at least you can go to a relevant building surveyor—a private building surveyor—and, within a reasonable time, have your building permit. They don't deal with planning permits. You go with your planning permit and your working drawings and say, 'May I have a building permit,' based on the planning permit.

CHAIR: Isn't that a question of the efficiency of a particular local authority?

Mr Faifer: Yes, and how big a municipality they are, what the demand for building there is, and how they staff their municipal building surveyors' offices.

CHAIR: My experience is that some local authorities are quite efficient and expedite, particularly, major projects.

Mr Faifer: Some are better than others, yes.

Senator KIM CARR: And some are still better than others.

Mr Faifer: Yes.

CHAIR: Thank you very much for coming all the way from Hong Kong just to be with us today.

Mr Faifer: No, we live here.

CHAIR: It is very much appreciated.

Proceedings suspended from 13:01 to 13:31

BHASIN, Mr Sahil, National General Manager, Roscon Property Services

DWYER, Mr Phillip, National President, Builders Collective of Australia

GARDNER, Mr Ken, Chief Executive Officer, Master Plumbers and Mechanical Services Association

CHAIR: Welcome. Thank you for appearing before the committee today. I invite you to make a brief opening statement should you wish to do so.

Mr Dwyer: The Builders Collective is a voluntary organisation. We care about the building industry that we have watched go into decline over the last 10 or 15 years to the point where we believe that the industry is virtually in crisis. In the next number of years the situation will be terrible for all of us, I believe. Some say it started around 1994, when we privatised the building surveyors and so on, but I think it was probably moving forward to 1999, when we had the 'deemed to satisfy' type of products et cetera and the performance based products that opened a can of worms. Then we got to 2002 and builders' warranty insurance, courtesy of HIA. While builders warranty insurance is a product that is supposed to be there as a consumer protection, it also brought industry management with it. So, whatever went wrong in the industry was controlled by that regime. You went to a tribunal—that was the only place you had to go to to resolve a dispute.

What basically happened was that the insurers were vetting the builders. It was Royal & Sun Alliance at the time. The bureaucracy and their agencies and so on took a back seat to registration of builders because the insurers were doing it. A letter of eligibility became the criterion for registration of a practitioner. So we ended up with a situation where the bureaucracy basically decided the way things would operate in each case. People that were concerned, such as ourselves and so on, became very marginalised by the various building commissions at the time. Basically, we believe that anyone that had technical prowess was removed from any of those agencies, so we have ended up with a situation now where the industry itself is in such decline. The Lacrosse fire should have been a wake-up call but wasn't, and we have done nothing about it. It still sits there today with the cladding on it, and now the owners are being faced with a bill to rectify it. But what on earth it had to do with the owners, I'll never know.

We believe there is any amount of regulation existing but not enforced, and that's where our problem is. That's why we've got such a ratbag building industry at the moment. We had these training organisations bringing people into our industry. For a few dollars, you can get a building licence in a few weeks, and that's been happening around the country. We have a huge element of people that don't know what they are doing in Victoria. In Victoria, we don't register trades, which is ridiculous. Everyone should be accountable in the building industry. We're responsible for building people's homes. We need to be responsible and accountable, but we're not. We've got the codes board and so on that have oversight over the whole lot, but they do nothing and haven't done anything. The codes board really needs to start ramping up where compliance and regulation comes from and enforce it and make sure that it happens. We have the situation now where we are just building anything and getting away with it, without accountability. If you've got a good relationship with a building surveyor, away you go.

Senator XENOPHON: What do you mean by a 'good relationship' with a building surveyor?

Mr Dwyer: Builders favour a certain—by working with them over a long period of time. Keep in mind that if the building surveyor doesn't have income and doesn't have a builder to employ him he isn't going to have any work. Relationships are always formed, and that will always happen to a large extent, but we need to make sure that we are making these people accountable, whether it's a building surveyor or an architect that specifies certain products and so on. I don't think the problem is with the products; it's what we are allowing to happen within the industry and we are allowing everything. There is self-certification and so on and 'deemed to satisfy'. What does any of that mean? Either the product is right or it is wrong. The suggestion Senator Carr made earlier about banning aluminium panels would probably be a very good start if it came from the Commonwealth.

I think also though that the Commonwealth has to have something very strong to say. I think we have to. I think the Commonwealth can play a role in authorities like the Victorian Building Authority or New South Wales Fair Trading, where people from industry that have technical prowess are involved with those organisations. Whereas, at the moment, no-one can get within cooe of them. No-one like a builder knows building better than a builder. Or it might be a plumber or whatever, but we need that technical prowess that covers our industry in the organisations that run it. Because we're a paying a huge amount of money supporting these organisations, and they are not delivering. We are not getting value for money and we've got an industry in such decline and dilapidation over the last 10 or 15 years that it's just shameful. I've been building for 40-odd years, and to see the downhill slide in the last 10 or 15 years is really an affront to all of us. We need to do something about it. Talk must stop and we must do something very practical about it, because if we have an industry that is made

compliant and we have enforcement, that fosters compliance and brings people into the industry that will be very robust and so on in terms of what is good for the industry. At the moment, we're just going along with, 'This developer wants this product built for that amount of money, and that's what it's going to be, so where do we cut corners?' We're cutting corners everywhere, and we're going to have a disaster. Maybe it won't be so much with the high-rise, but it will be with these developments in the suburbs that are three, four, five, six or seven stories but under 25 meters et cetera. They are clad with cladding and so on, and we are going to end up with a disaster in those areas.

The question was posed earlier of how many buildings do we have. For 20 years we've had aluminium cladding, and we estimate at least tens of thousands of buildings would be the number we've got in terms of cladding, if we are just talking about cladding. But we have so many other areas where non-compliance is just rife.

In Victoria, the Auditor-General found that 96 per cent of building permits were non-compliant. We've got an industry that's out of control. It's really out of control, and it comes down to enforcement. There is no enforcement at any level, and that's where we've allowed the industry to go out of control. You can put in as many layers of regulation as you like, but if you don't enforce it it's never going to work. That's where we see the problem, and that's coming from builders and plumbers and people that work in the industry who are at the coalface, not sitting in an ivory tower or anything like that. We work at the coalface and understand building, and while none of us are ever perfect, at least we've got a far better idea than a lot of people who make comments. Enforcement of regulation is the key to the problems we've got.

CHAIR: Is your opening statement on behalf of the other industries?

Mr Dwyer: No. Ken is from the master plumbers, and I'd like him to have something to say. Sahil is from Roscon, and he represents owners corporations and so on and sees the faults in buildings a lot. I would really appreciate it if those two gentlemen could have a minute or two.

CHAIR: Time is marching on, so I would encourage you to provide a brief statement to us, Mr Gardner and Mr Bhasin.

Mr Gardner: I'll keep mine very brief. Plumbing is a regulated industry and is licensed. We do have the benefit of having the WaterMark scheme and the gas appliance approval scheme. None of those things are perfect however. In terms of the WaterMark scheme, or any product approval scheme, if you are considering broadening that and introducing it on a wider basis, I do think you need to incorporate point of sale controls. At the moment, for plumbers, it's up to them. They can only install products that are WaterMarked, but you find a lot of people buying non-WaterMarked products, either on the internet or overseas, that get imported. And although properly behaving licensed plumbers will refuse to install them, the person who's bought them will find someone to do it. So there needs to be a point of sale.

It is also much easier way to regulate the industry, because if you find a non-WaterMarked product at one Bunnings store and point it out to them, they will fix it in every Bunnings store in the whole of Australia. It's a much better way to deal with it. It also needs more random-sample testing. We have seen a possible example that has been referred to this morning as a 'golden child' situation—

Senator XENOPHON: A golden sample.

Mr Gardner: Or a golden sample. I think the only way that you can stop that in terms of the false documentation is if there is an inspection, audit and enforcement regime that randomly selects products that they go out and buy in a marketplace to ensure that what is being supplied is the same as what was tested. There are four ways failures occur. Firstly, you have a non-conforming product; secondly, you have a conforming product but you use it for something that it was not designed for; and thirdly, you do not install it correctly or there is poor workmanship. So, in terms of those broader areas, I do think you need better enforcement, inspection and audit.

As I think Phil was raising, you can always improve the standards and you can have the best standards in the world but, if you don't enforce them, it is not going to deliver you the industry that you want. If you are a plumber who is trying to do the right thing and only installs compliant product and only installs it in accordance with the regulations and somebody else down the road is prepared to ignore all the regulations and do a much cheaper job, that is who the builder will go with. If you had a strong regulatory framework, the chances of that happening would be much reduced. So the good plumbers, the ones who are going to install the compliant product in a high-quality way, would win the work and you would have a much better system.

It seems to me that there is always a lot of buck-passing between the Commonwealth and the states about who sets the standards, who is responsible for enforcing the standards and to what level the standards get enforce, and

we need to resolve that. If the states are doing the enforcement, there needs to be a funding mechanism to fund that activity, because that is the critical part that seems to be missing at the moment.

Mr Bhasin: By way of background, Roscon has been a national provider of building consultancy since 1987. We provide services to the owners corporation and industry. You may be aware that aluminium composite panelling, ACP, can be acquired in three forms: combustible core, fire retardant core and non-combustible core. As highlighted in the Lacrosse apartments, our data suggests that the failure in the system is occurring at the procurement of the product and not of the actual specification or design. Architects may stipulate a non-combustible core in size 6 font on architectural drawings; however, builders trying to reduce costs and increase profits are obtaining orders of the cheaper combustible core, as consumers can't notice the difference until it is too late.

The Hon. Daniel Andrews recently formed the Victorian Cladding Taskforce, to be headed by former Victorian Premier Ted Baillieu. Without predicting the outcome, all buildings with ACP may have to be tested. One of the shortfalls which needs to be addressed as soon as possible is the resources for testing for ACP. Currently in Victoria the CSIRO is the only organisation with the capabilities to conduct such tests. However, based on our experience, the capacity of the organisation to complete such works within a reasonable time frame is questionable based on demand if we are talking about thousands of buildings. There is essentially one person at the CSIRO. The imported combustible cladding installed at the Lacrosse building was tested by the CSIRO and found to be so combustible that the tests were abandoned after 93 seconds due to the potential for the equipment to be damaged.

The Victorian Building Authority, the VBA, conducted an audit of some 170 high-rise buildings within the Melbourne CBD and, as you are probably aware, found 51 per cent to not meet the standards; however, they were deemed safe to live in by the municipal building surveyor. One would question if this was due to the pressure of occupants of 85 buildings being displaced of housing. My opinion is that the audit did not scratch the surface, as buildings outside the Melbourne CBD were not part of the scope. The audit needs to be conducted on all buildings with ACM, regardless of the geography, and cladding that is not compliant needs to be rectified through urgent building orders issued by the municipal building surveyor for the retrospective municipalities.

It is also really important to note that buildings outside the CBD generally have cladded buildings up to 25 metres in height or seven levels, which generally do not require fire sprinklers. One of the main saviours of Lacrosse was the fire sprinkler system. What you saw at Grenfell was without a fire sprinkler. So it should be kept in mind that everything in the outer suburbs which has not been tested most likely does not have a fire sprinkler system installed.

The authority requested documentation relating to the external wall cladding, but overall noted that the nature of the scope of the design and detail contained within the drawings and specification that formed part of the building permit appears in some instances to be adequate. The detail was occasionally ambiguous for the purposes of determining compliance with the National Construction Code, and that's what we're talking about today: the ability to work around the code to have a product that can deem to certify. The report's findings also indicated documentation received by the VBA to illustrate materials and methods of construction used by the builder was inconsistent with the approved building permit or inadequate to demonstrate, as built, that the building complied with the building permit. That's what we see at the coalface every day auditing these buildings after they're complete on behalf of the owners corporation. The builder, once awarded the job, is taking shortcuts in the process of ordering the material from overseas, not the actual specification.

The aforementioned building permit oversights have transpired by the privatisation of building surveyors. As Phil mentioned earlier, 96 per cent of building permits in Victoria were not compliant in accordance with the Auditor-General report of 2011. The privatisation of building surveyors has resulted in an alternative solution, which we've talked about at length today, being noted on most building permits, resulting in a lack of amenity or total non-compliance with the National Construction Code. Eighty-five per cent of New South Wales apartments have defects. This was exposed by University of New South Wales research funded by the federal government.

Due to time, I'll skip most of this and will go to the last point. As a nation, we need to improve our urban planning laws and processes for the longevity of our stock being produced. We could be observing a systemic problem due to lightweight construction. Lightweight construction such as polystyrene finished with a sliver of render was originally used for top-storey constructions of double-storey dwellings. This is a completely separate product that we're talking about—polystyrene. Lightweight construction is now being used for the entire dwelling, with consumers being led to believe they have purchased a solid-brick home when it has only been rendered. They discover they have purchased something like a polystyrene esky. There is no way to get polystyrene to work

on a wood stud frame and make it watertight. We are going to have a huge epidemic of water ingress in the next three to four years. It is being widely publicised at the moment. That product needs to be outlawed.

Senator XENOPHON: That is polystyrene?

Mr Bhasin: Correct. Polystyrene cladding. That is completely different to ACM.

Senator XENOPHON: In addition to being a fire risk, it will be a maintenance—

Mr Bhasin: A maintenance and longevity risk.

Mr Dwyer: It can be both.

Mr Bhasin: It can be both—yes. In the next 30 to 40 years, my real belief is that the homes that have been made by polystyrene will need to be demolished. They're not being built to outlast 100 years.

Senator XENOPHON: Who allowed the polystyrene to be approved in the first place?

Mr Bhasin: The building laws that were changed in 1996 to allow alternative solutions. Polystyrene is now a compliant solution.

CHAIR: How many buildings do you estimate have this material in them?

Mr Bhasin: I would have to take that on notice, but more than—

Mr Dwyer: Just about every double-storey townhouse. For a pair on a block and that type of thing, they use lightweight at the top. It is the same product that New Zealand had. It was called the leaky home syndrome, and that cost \$80 billion in New Zealand.

Senator XENOPHON: That has a sixth the size of our population.

Mr Bhasin: What I also mentioned there is that lightweight construction was first designed for second-storey dwellings in order to reduce engineering, footing and concrete costs essentially. Now builders are utilising the product for the ground storey and top storey of the building.

CHAIR: And that would have structural implications?

Mr Bhasin: Not structural implications. It has watertightness implications. You could imagine polystyrene sitting on wood. How would you keep that watertight on the ground level when you have soils, sand and concrete? It is impossible.

CHAIR: Gentlemen, you're telling us that we've got a broken system, an industry full of ratbags, standards that aren't worth the paper they're written on, you can't get copies of the standards because they're too expensive and people can't afford to access them—

Mr Dwyer: SAI Global is a private company. They control all of that, and it's very, very expensive. It shouldn't be a private company. The Commonwealth could very easily make sure that those publications are available to everyone. If we need to, put a levy on something.

Senator KIM CARR: You're suggesting that the Commonwealth should take full responsibility for the standard?

Mr Dwyer: Not necessarily full responsibility for it but be involved in our facilitating the fact that—

Senator KIM CARR: It used to be, didn't it? It was once a public body?

Mr Dwyer: Yes.

Senator KIM CARR: And it was then privatised.

Mr Dwyer: Correct.

Senator KIM CARR: And the consequence of the privatisation is that it becomes more difficult to get access to it—is that the proposition?

Mr Dwyer: Yes, mainly because of the expense—thousands of dollars—and 85 per cent of the registrar of builders in each state and territory is represented by small to medium builders.

Senator KIM CARR: Refresh my memory: does the Commonwealth have a golden share in the—no more? Is that not the case?

Mr Dwyer: No. We don't.

Senator XENOPHON: When was the certification? When was it privatised in terms of SAI, because it used to be—

Mr Dwyer: I don't know the exact date—

Senator XENOPHON: But roughly?

Mr Dwyer: Probably about 15 years ago.

Mr Gardner: It's up for renewal at the moment—2018, I think it is.

Senator KIM CARR: I recall this matter came up when I was minister, and the Commonwealth does have the capacity to force public interest declarations. Is that your understanding?

Mr Gardner: That is my understanding. The Commonwealth—

Senator KIM CARR: You're saying that it's not being enforced now?

Mr Gardner: The Commonwealth is a significant funder of the standards writing process as well, so you certainly have influence.

Senator KIM CARR: You're saying that it's not sufficient?

Mr Gardner: No, it's not sufficient. The best way to improve compliance—or the first way—is to make the information available.

Senator KIM CARR: I think that's right.

CHAIR: So there are no simple solutions to this issue, but I was going to ask: to what extent do you see the desirability of returning to responsibility for the certification of buildings back to local or state authorities rather than having the private building surveyor problem that you have referred to? Would that be part of the solution, not necessarily the whole of the solution?

Mr Gardner: I think that's part of the solution. The concept of having a private building surveyor that the builder chooses could create a scene of potential conflict of interest. If they were private building surveyors and they were allocated by some sort of public system rather than up to private choice, then that might impose a better level of control.

CHAIR: But, even then, there's always the potential for private providers to want to be accommodating in order to get repeat business.

Mr Bhasin: Currently, that's what you've got occurring. Currently, it's all driven by price. A tender goes out for building works. A tender also goes out for the building surveyor, and the builder generally works with a building surveyor who will give them the outcome that they desire, whether that is deemed to satisfy or with dispensations of other sorts—disability ramps at the front entrance. Dispensations are given out by private building surveyors to satisfy the requirements of the builder and achieve the developer's requirements.

Mr Dwyer: That will always happen while we don't have enforcement when things go wrong. It's across the board. It doesn't matter what area we look at, whether it's domestic, high-rise whatever, it's across the board that we have this problem of lack of enforcement. Back in 2002, the high-rise builders were supposed to be included in the last resort warranty scheme. They kicked up, so what happens? 'Well, we'll take you out of that.' 'Oh good, that's okay. We'll say nothing now.' I don't understand how we can have just the domestic builders funding a consumer protection regime that doesn't work anyway. There's no consumer agency in Australia that has any time for builders warranty insurance.

Even the Insurance Council that you have on after us will say the same thing. They've made statements in their 'house of horrors' story last year that it's fundamentally flawed. We need to get rid of that system altogether and have a proper system under a statutory fund run by state bodies. It happens in Queensland. We're prepared to fund it. We'd be paying less than what we're paying now, because all the private enterprise are taking all the money out of consumer protection and leaving nothing for consumers. Senator Carr, you were at the 2008 builders warranty insurance inquiry in Canberra. You will remember we said exactly the same thing, that we were going to have these ongoing problems, but HIA were very effective in those hearings, and it all remained exactly the same. We need a system of proper consumer protection that includes the high-rise purchases. We have such a dog's breakfast of a building industry at the moment. It doesn't matter whether it's consumer protection or compliance; think of any area and we can find issues with it and, these days, not too much in favour that gives it credibility.

Senator KIM CARR: We appreciate your analysis, and I think there's considerable sympathy within the committee for your observations. We are looking for advice on what to do, including some of the suggestions that've been made today. There's a question around banning dangerous building products entering the country. You're supportive of that approach.

Mr Dwyer: Of course.

Senator KIM CARR: But it's a question about whether or not we enforce a more effective regulation in regard to licensing throughout the building process, from architects and surveyors through to engineers and

tradespeople. The plumbers are a fully licensed industry; do you support the extension of that type of arrangement throughout the industry?

Mr Gardner: I certainly do. I think it would strengthen the whole system.

Senator KIM CARR: I'm particularly interested in how we get some enforceable action that means people have to take responsibilities for actions.

Mr Dwyer: That's what we don't have at the moment. When it comes to the litigation side of things, we use the scattergun approach and target everyone around the area that's been involved, instead of focusing on what has caused the problem in that particular building. Architects seem immune from anything, yet a lot of times will design a building that could cause problems later on, but are never accountable.

Senator KIM CARR: There's a question about people being able to abrogate responsibility. This keeps coming up in all the evidence that we're hearing. The licensing regime that's being suggested would require some sanction for negligence, for failure to take responsibility. What do you say to that proposition?

Mr Dwyer: That's probably the key to it, because at the moment we're not targeting the right people for responsibility, so we end up with no outcome. In so many court cases a consumer believes they will get justice by going to a tribunal. They don't get it, in their eyes, and they're probably right, but we don't seem to be able to target anyone, because of our very loose arrangement. There are all these subcontractors in Victoria and not one of them is registered. The attitude of the authority is, 'It's not registered so we can't do anything about that.' That is where we have got this lunacy of a system where people cannot be made responsible. We need to make people responsible. If you or I go and drive over somebody's fence or something—whatever—we should be held responsible, and rightfully so. If we build a building and get paid money for it, and we do the wrong thing—and it could be a safety issue or whatever it might happen to be—we should be directly responsible for that. We need to be able to target those people, and we have got to strengthen that side of the building industry.

One final point I will make: we seem to have the authorities—like VBA, fair trading and so on—not working together, and, even with the NCC, in New South Wales they have decided they are not going to adopt those recommendations. It is one building industry; we should not have one authority, one regulator, over there saying this, and another regulator over here saying something else. We need a more uniform regulatory framework because, at the moment, we have got people in these authorities that, in many instances, have no idea of what they are doing. Even in Victoria, we have got consumers so hell-bent on getting at the VBA, we have got the Auditor-General, we have got the ombudsman and we have got IBAC—three agencies—now having a crack at the VBA. There is something very wrong with everything. We just need to get it fixed up, and I think that is where the Commonwealth comes in. Your government can do something as to turns of direction and how the pieces might be put together, and I do believe that that would be a role for the Commonwealth—to say, right from the very top: 'Boys, this is the way it's going to be, and these are the guidelines and so on, and we are going to have an industry that is going to operate under these rules and regulations, like it or lump it.' But I think that is where the Commonwealth could help enormously.

Mr Bhasin: Just one action point that could be tangible that could come out of this meeting is that the federal government also directs state governments to reform planning laws by including the review of actual products through the planning process. So, to give you a bit of a quick snapshot: the planning process largely focuses on dwelling densities, impact amenities, car park provisions, permeability and site coverage. However, none of that actually includes what building products are going to be used on the construction of that building. Once a planning permit is approved, then builders find the cheapest possible way to build that home and sell it. The consumers do not know the difference between a well built home and a cheaply built home. So they are trying to do anything they can to reduce the fees. The only time that building materials actually get reviewed in the planning permit process is in a heritage overlay environment. So I would suggest that the planning laws actually take into consideration building materials in every planning permit.

Senator KIM CARR: Can I go to this issue about the content—the componentry, you might say—in the manufacturing process. On the question of who takes responsibility for non-compliant products being placed in buildings: do you think there is any evidence of collusion between manufacturers and builders or installers in the placement of non-compliant products?

Mr Bhasin: We see the coalface on the floor when we audit these buildings. To give you some idea: when we ask for glass manufacturing—and here is an issue that has currently raised its head—at the end of glass manufacturing there is a process which is heat soaking, which essentially gets rid of some of the impurities, like nickel sulphite, in that glass. It cannot be tested, after that glass is actually produced, as to whether it has been through that process or hasn't. When we ask for testing data of that glass that has been coming in from overseas,

the test data certificates that we are receiving are for the dates that we are requesting the data—and this is two years after the building has been built—which clearly shows that the certificates are just saved on a Word document somewhere and produced, and the address is changed, and it is sent out to you, and that there is no testing of each batch of glass that is being produced at all.

Overseas, I wouldn't say there is collusion between the buildings and suppliers, but what is happening is that a builder is going to the cheapest supplier. In the case of glass manufacturing, there are processes that can be cut out quite simply, like heat soaking at the end, where you will not know if that pane of glass has been heat soaked or not. That will reduce the cost for the supplier, in turn achieving the builder's outcome as well. However, the certification comes with it.

The problem with the current building surveyor system that we have is that they are essentially becoming an administrative body to collect certificates. A building surveyor can sit in his office and ask for the builder to produce an electrical compliance certificate, plumbing compliance certificate, glazing certificate and waterproofing certificate. As long as all of those certificates are provided, that building is signed off, no matter if it is one storey, 50 storeys or whatever it may be. We need to have some monitoring, whether it be CCTV or whatever it be, in these plants.

Senator KIM CARR: So, in your view, if that audit's demonstrated that documentation that has been produced is false, what action should be taken?

Mr Dwyer: Prosecute.

Mr Bhasin: Yes, prosecute.

Mr Dwyer: Prosecute some people.

Mr Gardner: I think that while there may not be collusion, at best there is recklessness. If you all of a sudden get an offer from a supplier at a price that is half of what everybody else is prepared to supply it for, then I would have thought you would at least be asking some questions and looking for a bit more documentation than just accepting it and installing it without any further inquiry.

Mr Dwyer: We were talking about consumer protection in high-rises. If a domestic builder builds a single house, he provides a certificate of occupancy at the finish of that building. The high-rise builder that builds 500 houses, he also is only required to provide one occupancy certificate for the 500 houses. I'm not quite sure how that works either.

Mr Bhasin: In Victoria, just to add to that, the consumer that is purchasing a domestic dwelling has a little bit better consumer protection than someone purchasing a 50-storey tower, based on anything over three levels being exempt from builders warranty insurance. That is a complete farce which needs to be resolved.

CHAIR: Unfortunately, time is marching on. We appreciate you appearing before us.

RATZ, Mr Laurie, Special Risks Manager, Insurance Council of Australia

SULLIVAN, Mr Karl, General Manager Risk & Disaster Planning, Insurance Council of Australia

[14:13]

CHAIR: Welcome. Thank you for appearing before the committee today. I invite you to make a brief opening statement, should you wish to do so.

Mr Sullivan: Thank you, senators. It will be a very brief statement. The role of the insurance industry in this issue is that we price residual risk. In order to do that, we, naturally, rely on their compliant construction of the built environment and the fact that it has been certified as fit for occupation and fit for purpose. Insurers use a variety of methods to then further clarify the risk, but, essentially, we have incorporated all of the safety measures et cetera that the building industry is required to have put into a building in order to determine a fair price for what the residual risk of a total loss may be.

When it comes to non-compliant or non-conforming building products, we are as concerned as anybody else with that, and that has been a long-standing concern. The National Construction Code—and the former Building Code of Australia—is, in our eyes, a very robust set of methodologies for constructing buildings. However, it can be improved. One of the major ways that it can be improved, of course, is through the compliance-checking regimes that are devolved down to state and local governments.

Where an insurer determines, or becomes aware, that a building is not built to a compliant level or has non-conforming building products in there that might present a risk to the building itself, insurers have a range of options open to them. At the worse end of the scale, these include no longer insuring the building, but at the lower end of the scale it might be requiring some kind of rectification or risk mitigation system in order to lower the risks to the building or introducing clauses and exclusions into the policy to limit the amount of risk that the insurer is holding in that regard.

One of the ways that we see that this can be rectified is, naturally, to find out how big the level of risk is out there at the moment—so a national audit, either through the states or conducted nationally—to determine the level of compliance of all of these buildings as they stand out there. I'd suggest that it would be rare indeed to find a building that is 100 per cent compliant with all measures in the Building Code. There are always compromises. Some of them are quite grave. Some of them are things that can be easily rectified or risk-mitigated. Once a national audit program is done, or at least one at the state level, of course the community and those responsible can set about rectifying the non-conforming building product issue or introducing risk mitigation that brings the risk down to an acceptable residual level that can be insured for future use.

In the longer term, we see a need in Australia for more building products research. We quite often use overseas bodies to do this for us because of the lack of capacity here in Australia. The one we often point to is the New Zealand approach to things. The previous witnesses spoke about the leaky building syndrome. It was set up after that in New Zealand. There are organisations like BRANZ, Building Research Australia and New Zealand, funded by the building industry through a levy where they conduct testing on materials like these panels and on building methodologies to determine whether they will be compliant or not.

Senator XENOPHON: Is that primarily for use in buildings in New Zealand?]

Mr Sullivan: It is entirely for use in New Zealand. They did embark on some—

Senator XENOPHON: So, although it mentions Australia and New Zealand, it's basically for New Zealand buildings?

Mr Sullivan: I think that might have been something to do with marketing and trying to bring it over here to Australia, but it is primarily focused in New Zealand.

Senator XENOPHON: And we don't have that protection here?

Mr Sullivan: I wouldn't call it protection, but it's research. It's invaluable research.

Senator XENOPHON: The safeguard can lead to protection.

Mr Sullivan: Absolutely. I will leave my opening remarks there.

CHAIR: The building surveyors that appeared before us earlier today talked about the fact that they're starting to see exclusions in their professional indemnity insurance in relation to external cladding materials. Do you have any insight into that? Are you able to tell us more about that?

Mr Sullivan: I have no direct exposure to those clauses. However, it would be open to any insurer operating in the indemnity space to start to limit the potential losses that they see there arising from matters like choosing to

use an inappropriate building material. In general, an indemnity policy is not going to protect you against negligence, and you will start to see, globally, insurers limiting the potential losses in there.

CHAIR: Do you have a view as what's causing the prevalence of the use of non-compliant building materials?

Mr Sullivan: Having listened to the previous witnesses, I agree with many of the points there. It's essentially that we have quite a robust National Construction Code and set of building codes in Australia and an almost bewildering array of regulations, all to do with performance. A number of years ago, there was a move away from having strict deemed-to-comply measures or alternative solutions in there. That does open the door for a range of innovative practices, which is not always bad. However, the lack of compliance checking and certification at different stages through a building process, be it a small standalone house or a very large building like the one we're in now, does leave itself open to corners either inadvertently or deliberately being cut. I'd suggest that most of the time it is going to be price that dictates the innovative solution being adopted, including innovative building materials.

CHAIR: What about owners being left with the responsibility for the cost impact of non-conforming materials?

Mr Sullivan: That brings me back to the urgent need to do at least a state level or a national level audit to determine the size of this problem and then to start looking at who is responsible for doing the rectification work or the risk mitigation work to bring the risk down to a certain level. There have been a number of buildings assessed down in Melbourne, as we understand it, as having non-conforming building products, but they have been left with their occupancy because the risk has been presumably mitigated to a level where it is safe to leave the occupants in place.

Senator KIM CARR: In that case, the owners of the individual units are responsible for mitigation. If you are not prepared to insure them, what protections do individual owners have in that environment?

Mr Sullivan: I am not aware of any insurer not insuring these buildings at this stage. We have a very different situation to that in the UK, where buildings over a certain level do have quite comprehensive fire suppression and fire protection systems.

Senator KIM CARR: But the evidence we are getting is that insurance companies are now considering not insuring buildings that are noncompliant

Mr Sullivan: It would be open to an insurer to do that—

Senator KIM CARR: You have said that yourself?

Mr Sullivan: but we have not seen that occur yet. Insurers are far more inclined to work with the clients to work out how the risk might be mitigated or more finely measured so that they can continue to offer coverage for the building whilst rectification work is being done or whilst additional risk mitigation is put in place. At this stage, we are unaware of anybody being told that we will no longer insure their building. However, at the worst end of this scale, that is certainly a possibility if the extent of their non-conforming building product and the level of risk is so gross—

Senator KIM CARR: Mr Sullivan, if you have a sprinkler system that does not work and the insurance company knows about it, why would you insure the building?

Mr Sullivan: If the sprinkler doesn't work?

Senator KIM CARR: Yes.

Mr Sullivan: Certainly, the building should not even be occupied at that point.

Senator KIM CARR: But it is. We have examples of this, where faults have been found, because buildings have been certified and they have non-conforming safety standards. I presume that, if you were to know about that as well, you would not insure the building.

Mr Sullivan: That would be an option open to any insurer to say that they will no longer insure the building if it is inadequately protected or not up to the code. I am not aware of that occurring; but, in a gross example of it, it would certainly be something that could occur.

Senator KIM CARR: Equally, wouldn't it be the case that, if there were a claim on an insured building, the insurance company may well be reluctant to pay out on that claim?

Mr Sullivan: We do see that from time to time, even with small buildings where, for example, gutters might have been installed incorrectly or with the wrong material, and those gutters have then failed to move water away from the building as should have occurred, and that has subsequently caused a lot of damage to the building. You can see the complication of a claim as a result of that, anywhere up to and including a denial of liability.

CHAIR: So the owner is then left to pursue that matter with the builder, presumably?

Mr Sullivan: Yes.

Senator XENOPHON: And then there is a legal bunfight as to who is responsible for what, as we have seen with the Lacrosse towers.

Mr Sullivan: It is a very uncomfortable position for people who have purchased these assets that turn out to be noncompliant in some way.

Senator XENOPHON: It is more than uncomfortable, isn't it? It could be financially devastating for them, assuming that no-one is hurt.

Mr Sullivan: Yes.

Senator KIM CARR: As you know, insurance companies are not always popular when it comes to major disasters. Are you saying that no building in this country has been refused insurance because of noncompliance? That is the proposition?

Mr Sullivan: Not that I am aware of at this stage, in this context of non-conforming building products. However, it might have occurred, but I would say categorically that it is possible that that could occur.

Senator XENOPHON: Just putting on my suburban lawyers cap, having dealt with insurance companies, I think it is a question of the building could be insured but the claim isn't paid out because the person who is the policyholder has not complied with the terms of the insurance policy; there is an exclusion. That is pretty axiomatic, isn't it?

Mr Sullivan: There are those clauses in all policies and obligations on the policyholder to advise the insurer of any change in the risk circumstances or anything that they are aware of that—

Senator XENOPHON: Which is standard.

Mr Sullivan: It is very standard.

Senator KIM CARR: The owner may not be aware that the building is noncompliant until after the disaster strikes.

Mr Sullivan: Correct. This is why in fairly short order we need to do a national audit to determine that, I would suggest. I think most body corporates, the owners, would be aware that their buildings have issues and problems. As I said, I doubt you would find a building in Australia that is 100 per cent compliant with all measures in the National Construction Code, but most of those are probably not things that would end up in front of a coronial inquiry. So a national audit of where these issues are acute, or perhaps for maximum density buildings, I would start to clarify it.

Senator XENOPHON: This is very important: what do you say the national audit should cover, what buildings should it recover and how urgently should it be done?

Mr Sullivan: I think it should start, naturally, in the metro environment looking at high-rise construction anywhere from three storeys and above, looking initially at non-conforming building products. And this cladding example might be the start. But it would be senseless to do an audit and only look at one issue. You would take the time and the effort to do a complete or comprehensive compliance audit of the—

Senator XENOPHON: Can you on notice provide us a list of the sorts of things that should be covered. Are you aware of the Infinity cable debacle—

Mr Sullivan: Yes.

Senator XENOPHON: where thousands of kilometres of this defective cable—if it degrades it could pose a risk of electrocution or fire—has been installed in thousands of homes around the country. What do you say about that? That is something where you would actually have to find out whether there is Infinity cable in there or other defective cable. That would actually involve cutting through walls, would it not?

Mr Sullivan: Possibly, or looking at the junctions where metering is done, and things like that. It would not be a simple exercise to conduct this audit. You would have to use building surveyors of significant experience and engineers to go about doing this in a non-destructive way. And there may be cases where you do, in fact, need to dismantle a bit part of the building.

Senator XENOPHON: We are talking about a massive exercise nationally, aren't we?

Mr Sullivan: Enormous.

Senator XENOPHON: And you think it needs to start now?

Mr Sullivan: I would think that any delay is only going to end up, potentially—or in the worst case—in some kind of a disaster. I do not think we have the same levels of risk as the UK because of our additional fire suppression and protection systems.

Senator KIM CARR: The problem with that, Mr Sullivan—and we have heard this argument before—is it assumes that the sprinkler systems are themselves compliant and are working. We have had significant evidence to suggest that that is not the case. So we can rest all we like on our great claims to have sprinkler systems, but they have to work. Are you aware of any reports that sprinkler systems in our high-rise buildings do not actually work?

Mr Sullivan: I am aware that if an asset is over a particular value or a particular size insurers will send a risk engineer in, or a fire protection engineer, to have a look at the system to determine if it is compliant. Where there is a failure of compliance, that is raised as part of the premium setting process or even, ultimately, if the error is bad enough, in a decision not to insure the building.

Senator KIM CARR: We have heard evidence today from the various fire authorities of an audit of 71 buildings associated with the G20. Sixty-eight were found to be non-compliant. Is that right?

Mr Sullivan: They are their figures. I am not shocked by those numbers, though, in any way. It depends on the gravity of the non-compliance. If it is going to prevent the successful—

Senator KIM CARR: These are hotels that we are talking about.

Mr Sullivan: I agree. I do not disagree with those numbers. They are not my numbers, though.

Senator KIM CARR: In terms of the scale of the problem, we have had reports of thousands of buildings across the Commonwealth being non-compliant. Do you think that is a reasonable estimate?

Mr Sullivan: I would not be surprised if that is the case. However, I think before going down that path you would have to define what the target group is that you are looking at. I would suspect, as I said in my opening statement, that for most buildings you examine you will not find 100 per cent compliance with all aspects.

Senator KIM CARR: But the MFB in Victoria found that over 170 buildings in the central business district were identified—these were sites that actually had people sleeping over for the night. So they were not all commercial buildings. This was just in the CBD. So maybe the figure of several thousands is not unreasonable.

Mr Sullivan: We certainly need to audit it. I would not be surprised if it is at that level of non-compliance. It really depends on how compliant you require it to be. There could be minor oversights. For example, the sprinklers in this room might be too close to a partitioned wall. It will still successfully suppress a fire in the room but it is not compliant. So you have minor non-compliance issues and you could have, potentially, major non-compliance issues. I think that is why we need to have some kind of audit system put in place so that, as the previous witnesses have said, when the building is given its occupancy, its permit, the owners understand that they have purchased a building that, to the best efforts of all involved, is a building that is compliant with the National Construction Code.

CHAIR: So, who does the audit? And who's going to pay?

Mr Sullivan: Again, it is deeply unpopular to say this, but I think that needs to be a government-run function. They may use private certifiers to do it, but it certainly should be from a government authority, assigning them to do the task and do it to a sufficient standard, rather than self-certification, where a building construction company might be signing off on some measures themselves or bringing in their own private certifiers to do the work.

Senator KIM CARR: Is that because you can't trust them?

Mr Sullivan: I wouldn't go as far as to say that there is collusion or anything like that, but I think if they have the risk of losing their licensing or there are real consequences to not passing a building inspection it will lift everybody's standard of construction to a higher level.

Senator KIM CARR: What other national interventions would the insurance council seek from the Commonwealth parliament?

Mr Sullivan: I think down the track there needs to be some kind of national building research program whereby we are able to examine and understand all building products and building measures that come into the country that can then be endorsed as suitable for use in different circumstances. At the moment with building products coming into the country—putting aside the ones that are blatant counterfeits—there is potential for them to be misapplied in buildings. We had an example a number of years ago of a particular type of insulation being used in commercial construction which was being tested under the building code and found to be suitable for a suitable use. However, the testing methodology was inappropriate, and the industry spent some time, effort and

money to have it tested. The Building Codes Board, to its credit, changed the testing methodology. Having a central body that is able to do this on a longstanding basis would lift the standards right across the country.

Senator KIM CARR: What about national licensing?

Mr Sullivan: For builders?

Senator KIM CARR: For builders, or installers—for people who are actually putting this material into buildings.

Mr Sullivan: I think there is a range of reasons that national licensing or compatible licensing across all states is a good thing.

Senator KIM CARR: Where are we actually looking at national licensing? This is part of the problem—so-called compatible licensing invariably ends up at different levels. That's where the ambiguity sets in. As soon as one state looks at a problem, it comes up with a different solution to another state's, so there is no national consistency. Wouldn't that be a question of concern to the insurance council—a failure to develop national consistency in these issues?

Mr Sullivan: Certainly, but we do have a National Construction Code. How it's interpreted locally can sometimes be quite different from state to state. But, having said that, each state faces different natural hazards and has a different building need in some terms. The ability to have national compliance with licensing would be of great benefit to prevent somebody who has failed to build properly in, say, Queensland and has been found locally by the agencies there to have done that and has been penalised to then reappear in South Australia and start committing the same acts. So, some form of national compliance measures, which might involve national licensing, would certainly be of benefit.

Senator KIM CARR: So, the issue that arises is, at what point do people actually have to take responsibility for installation of product? At what point do we actually say that the qualifications that people have are adequate for the task? How do we ensure quality assurance? That is why there was the question of national licensing. What do you say to those propositions?

Mr Sullivan: I do agree that it is an issue. I would not draw the line, though, at just installers and builders. There are issues with those who are qualified to do the documentation around the testing of building materials as they are used in Australia, and that is something that insurers do point out from time to time, and generally we get a very good response from the Building Codes Board. But a way to streamline all of that effort would be some kind of national body that is responsible for the testing and evaluation of the building materials and methodologies that we endorse in Australia.

Senator KIM CARR: If these measures are taken, do you think that could actually encourage lower premiums?

Mr Sullivan: Certainly. Wherever risk can be demonstrated to be reduced—where that residual risk is decreased—you will find that premiums follow it. Whether you build a levy around a town so that it no longer floods or you change the nature of a building to make it less prone to burning down, you will find that premiums start to follow. Where there are fewer claims, the premiums come down.

Senator XENOPHON: I have a couple of questions further to that. You're effectively saying that there must be a national building quality watchdog to enforce laws and codes that are currently not being enforced?

Mr Sullivan: No. My comments are around a national building research organisation that can endorse and rate these materials.

Senator XENOPHON: Which we don't have here but they have in New Zealand, following their leaky buildings syndrome debacle.

Mr Sullivan: That's my understanding, yes.

Senator XENOPHON: Okay. I have just another couple of questions on that. Aluminium composite panels with a polyethylene core: highly flammable, a key factor in the Lacrosse fire and apparently a key factor in the Grenfell Tower fire. They are allowed to be used in this country as building cladding material on single-storey and sometimes double-storey buildings. Do you think they should be banned outright, given the risks they pose, given that it seems to be impossible to enforce those polyethylene core panels being installed on high-rise buildings?

Mr Sullivan: I doubt that it's impossible to enforce that non-conforming building product being used. It really is a question of will and regulation and compliance to ensure that that particular building material isn't coming in. I do think that these composite materials have a role to play in the built environment, but it must be done appropriately and—

Senator XENOPHON: What's appropriate, though—single-storey buildings only?

Senator KIM CARR: So, they can burn.

Mr Sullivan: No, but you might have other risk mitigation systems. I don't think anybody has allowed these polyethylene based materials to be used. Somebody is responsible for having cut a corner. Somebody is responsible for rectifying that. But there are safe materials—sandwich construction and composite construction—that can be used appropriately in some locations. What is missing is the person saying, 'That's appropriate' and 'That's not appropriate' at different stages of the design process and then during construction.

Senator XENOPHON: Hence the need for a watchdog, surely?

Mr Sullivan: Well, certainly some kind of compliance regime that is checking the building at regular periods, independent of the builder, to ensure that what has been approved is what's being constructed.

Senator XENOPHON: It sounds like a watchdog to me.

Senator KIM CARR: Why wouldn't it be cheaper and more effective to just say that we're not going to use them for external building product?

Mr Sullivan: That's really beyond my knowledge and my understanding. The removal of an entire class of building products could have other effects on the building industry.

Senator KIM CARR: We did that with asbestos.

Mr Sullivan: Certainly.

Senator KIM CARR: Was that not a proper thing to do?

Mr Sullivan: Absolutely. But certainly there are safe examples of this sort of building material in use in all buildings, and we don't regularly see these buildings having a problem with those products. The issue that needs to be resolved is working out which of those products is non-conforming and then getting rid of those and stopping them from re-entering the building system.

Senator KIM CARR: That would be a fine argument if this industry could be relied upon to actually do the right thing, and the overwhelming evidence before this committee is that they can't.

Mr Sullivan: Well, I think that comes back to the compliance regime that we've been talking about—that there needs to be an independent—Senator Xenophon refers to a watchdog—sort of arrangement where, at a local level, builders might have that compliance regime visit the site at any time or at regular periods to determine whether what has been designed and approved is actually being constructed and the right materials are in use, and then when something is determined to not be going correctly that compliance regime does result in some considerable action to prevent a repeat of it or prevent the problem from getting any worse.

CHAIR: Mr Sullivan, you might want to take this on notice, but Lloyd's has a Buildoffsite Property Assurance Scheme. Are you familiar with that?

Mr Sullivan: Very vaguely. I will take that on notice.

CHAIR: Yes, if you could take it on notice and give us your views as to whether that is one of the range of issues that we should be looking at.

Senator XENOPHON: And do you support the Queensland government legislation which many of the submitters who gave evidence today said was a big step in the right direction in terms of having some chain of assurance? Could you take on notice whether you think it's a good idea?

Mr Sullivan: I'll broadly say that we're strongly supportive of many elements of that and we'll take that on notice and come back to you.

Senator XENOPHON: Particularly on what you think are the best elements and what you think might be problematic from your point of view.

Mr Sullivan: Yes.

CHAIR: Thank you very much for appearing today.

Proceedings suspended from 14:39 to 14:50

MARTIN, Mr Wade, National Technical Manager, Halifax Vogel Group Pty Ltd

RAYMENT, Mr Bruce, Chief Executive Officer, Halifax Vogel Group Pty Ltd

CHAIR: Welcome. Thank you for appearing before the committee today. I invite you to make a brief opening statement, should you wish to do so.

Mr Rayment: Yes, please. HVG employs 200 people and imports a diverse range of semifinished goods, including building facade products, which have been the subject of intense recent interest. Our division of Alucobond Architectural is the exclusive Australian distributor of Alucobond aluminium composite material, commonly referred to as ACM or ACP. This is all manufactured in Germany by 3A Composites. We are the largest importer of ACM panels for use in building facade construction in Australia and have a well-established reputation for quality product, technical knowledge and technical support in the industry. Today the only ACM panel that Alucobond Architectural sells for multistorey construction is the fire-resistant Alucobond Plus product. As a responsible industry participant, we want to ensure that all stakeholders—not least end users—can have confidence in the safety and quality of our built environment. In light of the Grenfell Tower and Lacrosse building fires, we are aware of concerns that have been expressed about the suitability of polyethylene cored ACM panels for high-rise construction. We share many of those concerns.

Since 2010, we have been advocating for changes to the National Construction Code to clearly resolve certain critical issues relating to the use of ACM as a building facade. Our proposed changes include explicitly mandating the use of fire-resistant ACM in high-rise building facades. Our submission to this inquiry contains our concrete recommendations for improvements that we believe should be adopted immediately in the form of an amendment to the 2016 Building Code of Australia. In summary, they are: (1) Australian Standard 5113 to be immediately referenced in the BCA; and (2) a tightening of the deemed-to-satisfy provisions of the code to prevent untested products being used on building facades. Unless the deemed-to-satisfy provisions are tightened, the new Australian Standard is irrelevant. We're also calling for improved monitoring of the CodeMark certification process, which is the current verification method for the industry. I am happy to expand on those recommendations in the time we have.

Before I take your questions, I would like to respond to something that was said last Friday in Melbourne, if I may. Since I got here today, it's been brought to my attention that Mr Neil Savery, the general manager of the Australian Building Codes Board, appeared on Friday. The *Hansard* draft that has been published was brought to my attention. He was asked by the chair:

How do you respond to the claim that this matter was raised with you in 2010?

That is, polyethylene cored panels. Before I quote Mr Savery, I assume you have our submission in front of you. I would ask you to go to the first page of appendix 2 of our submission. You will see that is our 2010 proposal for change to the Building Code of Australia. It is the first page of the proposal for change.

CHAIR: It is from the ABCB?

Mr Rayment: It is the ABCB form that is filled out for the proposal for change. To quote Mr Savery from last Friday, he said:

That is a different matter. Our going back through our records would suggest that we became aware of this issue as a result of a proposal for change to the code from a product manufacturer who had potentially a combustible wall cladding or wall cladding system and wanted to change the code in order that the product could be used more universally. The PFC itself was not agreed to.

You can see that, firstly, the proposal for change was on behalf of ourselves, Alucobond Architectural, and also our industry colleagues, SGI Architectural, and we were working with a fire consultancy called Defire. It was not a proposal for change from one industry participant; there were two, plus a fire consultancy. Also, Mr Savery said that the proposal for change was so the product could be used more universally, meaning a polyethylene cored product. That is incorrect. You will see that, further down the first page of the proposal, under point 1, it says, 'What is the proposal?' and, under point 2, it says 'The mineral filled core contains not less than 70 per cent non-combustible material.' Our proposal for change in 2010 was clearly calling for fire-resistant ACM to be made a mandatory part of the Building Code of Australia.

CHAIR: I am struggling to see the page you are referring to.

Mr Rayment: It is the first page of the second appendix. It should have been appendix 2A when we sent the email through.

Mr Martin: I have a copy here, if that helps.

CHAIR: That might be helpful. Thank you, Mr Martin. It is in a different form to what you provided.

Senator KIM CARR: We appreciate it. You have corrected the record.

Mr Rayment: Yes. Since 2010, we have been calling for fire-resistant ACM panels to be made mandatory in the Building Code of Australia. We were also calling in the same submission for the rules and the code around fire-stop cavities to be cleared up and tidied up. The proposal for change at the time, whilst we'd put considerable time, money and effort into it, for some reason was not considered adequate.

Senator KIM CARR: We should ask for clarification, given the evidence you've presented today. Mr Chairman, do think that's appropriate?

CHAIR: Yes, we'll do that. Senator Carr, do have some questions?

Senator KIM CARR: Yes, I have. The Alucobond products were sold for some time prior to 2010. That is correct, isn't it?

Mr Rayment: Alucobond was the first aluminium composite material imported into Australia. It was the original invention of the product category in Germany in 1969 by Aluisse and BASF.

Senator KIM CARR: You have suggested here: 'There are many examples where our product was supposed to have been installed on a project as part of the specified materials for that project only for us to find that a substitute product was used, resulting in a quality issue of some type.' Is that correct?

Mr Rayment: Correct.

Senator KIM CARR: So there was substitution of your product. Is that the evidence?

Mr Rayment: Yes.

Senator KIM CARR: What did you do about it when you found out that your product had been substituted for an inferior product?

Mr Rayment: Generally, we would only find out some years after a building was complete when there was a quality issue. Often our sales team would be called to look at some project and they would say, 'This is your material' and we'd say, 'Sorry, that's just not our material.'

Senator KIM CARR: Who was responsible for that? Were you ever able to establish who was responsible for the substitution?

Mr Rayment: No, by that stage we aren't able to. Obviously some period of time has passed when a building is complete and we are not able to determine that.

Senator KIM CARR: I presume people would put substitute material on and make a claim that it met the deemed-to-satisfy provision of the code—would that be correct?

Mr Rayment: I think it's important to make sure we distinguish between non-conformance and non-compliance. There is some non-conformance, but it is not from the reputable suppliers in this industry. The issue of compliance is a very grey area which everyone has a different opinion on.

Senator KIM CARR: Sure. We're interested in the bad performers. How many are there?

Mr Rayment: They come and go. The established players in this market in the supply of aluminium composite material have been in it for decades and the fringe players come and go. It might be someone who has a little capital and imports a container load of product or something, and tries to flog it around the market and then disappears after a while.

Senator KIM CARR: The problem for us is how to stop this activity. Why shouldn't we just ban it outright if it is non-compliant? Presumably, you will tell me it's because it's within the standard and you use it for low-rise buildings.

Mr Rayment: I think there is an important differentiation to be made here in two parts of the major areas of use of aluminium composite material in Australia. The first major use is as a building facade product. I would estimate that market to be worth about 1½ million square metres per annum. My colleagues from SGI who are here today in the audience told me earlier they thought about 2½ million square metres or so.

Senator KIM CARR: How much is that worth in money terms?

Mr Rayment: About \$150 million wholesale. The other bigger part of the market for the use of aluminium composite material in Australia is in the signage, display and digital print market. That market would be worth three-plus million square metres per annum. That market is totally dominated by polyethylene core material. I would caution against a blanket ban on the importation of polyethylene core aluminium composite material into Australia because it would be a massive disruption to the sign, display and digital print markets.

Senator KIM CARR: There is no other replacement product that can be used for that?

Mr Rayment: There is in that some fire-resistant versions of the building facade products could be made, sourced and procured over time.

Senator KIM CARR: Can that be made in Australia?

Mr Rayment: No.

Senator KIM CARR: Why not?

Mr Rayment: The cost of manufacturing is way too high.

Senator KIM CARR: What is the difference?

Mr Rayment: Between making the product in Australia and importing it?

Senator KIM CARR: Yes.

Mr Rayment: I do not know. We are not a manufacturer.

Senator KIM CARR: I've heard this argument before that it costs too much to make it here.

Mr Rayment: I'm not a manufacturer. I'm not in a position to—

Senator KIM CARR: We have spoken to manufacturers and the advice I am getting is that there's not enough demand because people are using this cheap, highly dangerous product.

Mr Rayment: There's only one company trying to manufacture fire-resistant ACM in this country and I don't believe they have been very successful.

Senator XENOPHON: We need to distinguish between it being used for signage and being used as a cladding material—correct?

Mr Rayment: Yes.

Senator XENOPHON: We're talking about the polyethylene core.

Mr Rayment: The sign market could include a small sign at the entrance to a room in a hotel—

Senator XENOPHON: What do you mean; there's a polyethylene core in there?

Mr Rayment: Yes.

Senator XENOPHON: The sign physically could be how thick?

Mr Rayment: Three or four millimetres.

Senator XENOPHON: It has a polyethylene core?

Mr Rayment: Correct.

Senator XENOPHON: The old sheet of steel does not cut it anymore?

Mr Rayment: The old sheet of steel does not cut it anymore because it is nowhere near as flat as a sheet of aluminium composite material.

Senator KIM CARR: This is an argument why we shouldn't ban it?

Mr Rayment: I would caution against a blanket ban on it because of the disruption it would cause to that part of the industry. From a personal point of view, we're in an extremely good commercial position to benefit from that. I believe we've got the best supply lines in the world, and we'd probably do—

Senator KIM CARR: Is there a public safety issue here are not?

Mr Rayment: I'm not really sure.

Senator XENOPHON: Would it depend on the nature of the sign? If it's a small sign—for example, half a metre by one metre or a couple hundred millimetres by a metre—for the local fish and chips shop, presumably that might be flammable, but could that pose a risk to the rest of the building, potentially? Or, are you saying that it's used in such small quantities that it doesn't pose a risk? Are you aware of what the potential risks are? We're not talking about building cladding material now.

Mr Rayment: Yes, I understand. Generally, where it's used in the sign market as one individual sign, I don't think it would be perceived by certifiers or builders to pose a significant risk.

Senator KIM CARR: Our concern is external cladding, which is a safety risk. We've heard a series of arguments about the failure to actually get a regulatory regime in place that can be enforced. One response is to say, 'Why do we need to import this material at all?' The only ones who have said that we should maintain them, in effect, is you by saying it will disrupt the signage industry. I'm having a bit of trouble following this line of argument.

Mr Rayment: I'm saying I would caution against that as an immediate reaction because I don't see that there's very much, if any, polyethylene cored ACM being used for building cladding in this country any more. The buildings that people are concerned about are ones that were built many years ago.

Senator KIM CARR: So it's no longer a problem—is that the evidence?

Mr Rayment: Yes, if the building is built by a reputable builder with reputable contractors.

CHAIR: What's the \$150 million industry that you mentioned earlier?

Mr Rayment: At the wholesale level, the market for building facade cladding ACM in Australia would be worth—

CHAIR: So it's still being used?

Mr Martin: Absolutely—

Senator KIM CARR: The question is: why should we allow it into the country? What are the options available for people to say, 'We don't need to have this imported'? Your suggestion is that it will disrupt the signage industry.

Mr Martin: Yes. At the moment, with the signage industry, the actual product meets the requirements in the code. That's another thing. So unless the—

Senator KIM CARR: There's two questions here. There's the question of the adequacy of the code, but then there's the question of the enforcement of the code. We're hearing a lot of evidence that it's almost impossible to enforce the code because the regulatory regime is so weak. That's not to mention the adequacy of the standards, which the authorities tell us are very clear. There will not be flammable materials used on the outside of buildings unless they're one-storey high. Why should we have a provision in our code that says you can put a flammable material on the outside of a building if it's only one-storey high?

Mr Martin: The term 'non-combustible' is the issue within the industry.

Senator KIM CARR: I'm old fashioned. I think 'non-combustible' means it shouldn't catch fire and it shouldn't be a fire hazard. Is that what you think it means?

Mr Martin: Yes.

Senator XENOPHON: What's the difference between 'non-combustible' and 'fire retardant'?

Mr Martin: 'Fire retardant', or 'FR', has no reference in the code. It's not called up. There is no level of combustibility.

Senator XENOPHON: What standard is non-combustible then?

Mr Martin: The standard is AS1530.1. There is no such thing as a panel that passes AS1530.1 as the product would be supplied.

Senator XENOPHON: What do you mean by 'no such thing'? We have a standard, but no-one can comply with the standard? Can you explain that to me? So there's a standard for non-combustible material—AS1530.1—but no-one actually complies with that at the moment?

Mr Martin: As the material would be supplied. So, if you supplied a material, the product would not pass that test.

Senator XENOPHON: Sorry, I'm being a bit slow here. What are you saying? So there's a standard that we can't comply with?

Mr Martin: Correct.

Mr Rayment: Correct.

Senator XENOPHON: Why can't it be complied with?

Mr Martin: For one, it's because the actual test itself is not intended for these types of products.

Senator XENOPHON: So we have a standard that can't be complied with?

Mr Martin: Yes.

Senator XENOPHON: It's not much of a standard then, is it?

Mr Martin: No.

Mr Rayment: The bottom half of page 3 of our submission talks about the AS1530.1 test and how, going back as far as 2000, the Fire Code Reform Project report of 2000, said that 'this type of test was developed over 50 years ago and has shortcomings'. The Melbourne Fire Brigade report on the Lacrosse building also said:

... the MFB is not aware of any competitor ... produce which has been successful in being determined as non-combustible when tested under AS1530.1.

The difference here is that the AS1530.1 test is taking small pieces of product and dipping them in effectively a furnace. We are calling for full-scale facade testing of building façade products.

Senator XENOPHON: How would you do that?

Mr Rayment: You construct a mock facade and put a fire underneath it, in simple terms.

Senator XENOPHON: Maybe I am missing something here. You are concerned about the use of signage—about three million square metres being used for signage in Australia—of the polyethylene material.

Mr Rayment: Correct.

Senator XENOPHON: So about 1½ million square metres is being used for building—

Mr Rayment: Facade cladding.

Senator XENOPHON: With the building facade cladding, does it come as the same material and then it is shaped or—

Mr Rayment: There are slightly different specifications. Building facade products is a standard four millimetres thick. The sign market is a two, three and four millimetre thick product. There is a slightly different thickness of aluminium skins.

Senator KIM CARR: And there is no other product that can be used for signs?

Mr Rayment: There are plenty. There are substitute products.

Senator XENOPHON: Take for example the local fish and chips shop with a sign that is no more than one square metre—and that might be right if it is in a strip shopping centre. How much extra is it going to cost to have a fire retardant or non-combustible material?

Mr Rayment: I would have to take that question on notice.

Senator XENOPHON: What is the difference in price? Are we talking about another 20 bucks or 50 bucks?

Mr Rayment: No, we would be talking a few Australian dollars a square metre.

Senator XENOPHON: A few dollars a square metre?

Mr Rayment: Yes.

Senator KIM CARR: I am not certain that is a big argument in favour of not banning.

Mr Rayment: What I am trying to say here is that a blanket ban that was immediate would disrupt the sign industry and something that was not a blanket ban and there was a transition would enable industry to adapt.

Senator KIM CARR: Sure. Does your company ever install PE core products?

Mr Rayment: We have never been the installation business. The business, through its current ownership and previous ownerships, has only been an import and distribution business.

Senator KIM CARR: So you have never actually installed anything?

Mr Rayment: No, we have not installed one panel.

Senator KIM CARR: Have you supplied any PE products to anyone?

Mr Rayment: Yes.

Senator KIM CARR: So up until 2010 you actually supplied them?

Mr Rayment: We fully changed over in our product offer in 2013. In 2010, when we were calling for change and improvements to the Building Code, it was in anticipation of the 2012 update for the Building Code for Australia.

Senator KIM CARR: That is fair enough; you have made that clear. But your point is that you were selling the product until 2013.

Mr Rayment: Yes.

Senator KIM CARR: Do you know where the product went?

Mr Rayment: In some cases, yes; in many, no.

Senator XENOPHON: For signage or for buildings?

Senator KIM CARR: No; for buildings.

Mr Rayment: For both.

Senator KIM CARR: Are you able to identify any buildings in which this product has actually been installed?

Mr Rayment: Yes.

Senator KIM CARR: Do you know that there has been a discussion about the need for a national audit?

Mr Rayment: Yes.

Senator KIM CARR: Are you prepared to provide that data to audit authorities?

Mr Rayment: Yes; without question—no problem.

Senator KIM CARR: Thank you. Has there been any advice given to any of the owners of any buildings where your product has actually been installed, where they actually have this product on their buildings?

Mr Rayment: Not from us. We are aware of the audit that has gone on in the Melbourne CBD.

Senator KIM CARR: Is any of your product on that building?

Mr Rayment: I am not aware personally of exactly what buildings were or weren't audited, but I'm sure there was some.

Senator KIM CARR: The point is that you are prepared to provide the authorities—

Mr Rayment: Yes, definitely, without hesitation. We have been reaching out to the state building ministers in the last couple of weeks, and various other people, and we're actually meeting with the new CEO of the Victorian cladding task force next Wednesday in Melbourne.

Senator XENOPHON: There's the Baillieu inquiry as well, isn't there?

Mr Rayment: That's the Victorian cladding task force.

Senator XENOPHON: Okay, so the former Victorian Premier's been asked to chair it. Can you take on notice what the difference in price is between—

Mr Rayment: I don't need to take that on notice.

Senator XENOPHON: You said you couldn't tell us what the difference in price was for a square metre.

Senator KIM CARR: What is the price difference?

Mr Rayment: For the building facade cladding—and I heard this question asked of Mr Thorpe from CertMark earlier today—for us the difference in price between the polyethylene cored material and the fire-resistant material, at a wholesale price, is A\$3 a square metre.

Senator XENOPHON: I'm confused. I thought I asked that earlier.

Mr Rayment: No, that was in reference to the sign market product.

Senator KIM CARR: But it's \$3 a square metre. That's the difference.

Senator XENOPHON: Therefore the difference for the sign market would be \$3 a square metre, would it not?

Mr Rayment: Not necessarily. The current premium from our supplier in Germany for the sign market product, in an FR specification, is more expensive.

Senator XENOPHON: How much more?

Mr Rayment: I would have to check, but we're buying that in smaller quantities.

Senator XENOPHON: But, if you were buying it in larger quantities, presumably the price differential would come down, in terms of greater supply.

Mr Rayment: I'm sure it would.

Senator XENOPHON: So it wouldn't be unreasonable to say it might be \$3 or maybe \$4 a square metre?

Mr Rayment: It would probably be in that ballpark.

Senator KIM CARR: That doesn't seem to me to be a major impost to provide a safe product, as distinct from an unsafe product.

Senator XENOPHON: If we're talking about three million square metres of signage, we're looking at potentially \$10 million a year extra as a ballpark figure.

Senator KIM CARR: What's it going to cost to take it down? What's it going to cost if someone gets burnt to death?

Mr Rayment: I think we need to look here at trying to be sort of a link of all PE panels on all buildings being non-compliant, and that's not the case. Anywhere we've sold PE cored product in years past, we were compliant with the code. It was fire engineered in many instances, and the buildings were certified.

Senator KIM CARR: That's actually part of our concern. The buildings were certified, but they were not compliant. We're having trouble coming to terms with that.

Mr Rayment: Yes, and that's ultimately where the differences of opinion lie. I think there's also been a paradigm shift here from 10 years ago to where we are now over what is compliant and what is not compliant.

Senator KIM CARR: I think it's a bit more than differences of opinion. The overwhelming body of evidence to this committee is that there have been very significant numbers of buildings that have been certified that are not compliant, and it's not just a question of changing attitudes over the last 10 years; it's a more substantive problem than that. That is a statement of the bleeding obvious. I am surprised it costs so little. The cost difference is so small. You are certain of your numbers on that?

Mr Rayment: Yes.

Senator KIM CARR: How many other suppliers have there been in Australia apart from you for the non-conforming product in the past that you are aware of?

Mr Rayment: We have always supplied conforming product.

Senator KIM CARR: Sure, but the PE product—

Mr Rayment: As a business, we have only ever sold conforming building products. We have not sold anything at any time that has not been what we said it was and that has not performed exactly as we purported it to be.

Senator KIM CARR: When you were selling the PE product, how many other suppliers were there in the market at that time?

Mr Rayment: Probably another two or three major suppliers and probably 20 or 30 minor suppliers—probably more.

Senator KIM CARR: Do you have any idea of how much product would have been sold? You said you were the first to import the product, so do you have any idea what the national consumption has been in that period?

Mr Rayment: I would only be guessing to give you any sort of number. The original concept for aluminium composite material was developed in Germany in 1969. As of today, there would be 200 to 300 aluminium composite material production lines and production factories in China. The vast majority of the low end of the market is all drawing that product out of China. The reputable end of the market comes out of Germany and Japan.

CHAIR: There have been fires in the Middle East that you may be familiar with—fires in a number of towers in Middle Eastern countries. What types of materials have been used there? Do you know?

Mr Rayment: I really don't know. Like everyone, I've seen videos at different times of building fires in the Middle East, but I don't know and couldn't comment on what may or may not have been on those buildings.

CHAIR: So it potentially could have been a product made by the German manufacturers—or not?

Mr Rayment: I couldn't comment. I really don't know. It would only be speculation. But certainly the Lacrosse Tower fire in Melbourne was not Alucobond, and the Grenfell Tower was not Alucobond.

CHAIR: Thank you very much for appearing before us.

Mr Rayment: Thanks for your time.

GILLIES, Mr Andrew, Managing Director, Fairview Architectural

GILLIES, Mr Roy, Sales Manager, Fairview Architectural

STEWART, Mr Greg, Sales Manager, Fairview Architectural

[15:21]

CHAIR: Welcome. Thank you for appearing before the committee today. Do you have any comment to make on the capacity in which you appear?

Mr R Gillies: I am the state manager for Queensland and ACT.

Mr Stewart: I am the state manager for Victoria.

CHAIR: Thank you. I invite you to make a brief opening statement should you wish to do so, and then we will open it up for questions.

Mr A Gillies: Thank you for inviting us to appear. It is imperative to stress that aluminium composite material, or ACM, cladding is not of itself dangerous, but it is important that the right type is used for the required purpose. The vilification of panels via cheap cladding or combustible cladding, where many non-combustible, zero-flaming varieties are available by ethical manufacturers, only adds to the misinformation around safe ACM use. That is why, in 2015, Fairview sought to take a leadership role to better inform everyone about ACM panels in the aftermath of the Lacrosse Tower fire.

Our company has operated for over 25 years. Our ACM panels are manufactured to ISO 9001 quality standards and are CodeMark certified. They were not fitted on the Lacrosse Tower in 2014, nor on the Grenfell Tower in London. We manufacture two ACM panels. Vitracore G2 has a non-combustible aluminium core, and Vitrabond FR has a fire resistant mineral composite core. Fairview provides product specifications, installation guides and test data to help ensure all its ACM panels are used for the purpose for which they were designed and certified. It is critical that existing laws and regulations are implemented and adhered to. Let's better enforce those rules in Australia, which are already among the most stringent in the world.

Following the Lacrosse fire, the Building Ministers' Forum agreed to a range of measures to address risks associated with cladding on high-rise buildings. These included a national advisory note on how the NCC should be interpreted to assist in production, product selection, installation and certification and the development of full-scale testing and classification of external walls—AS 5113, which was recently completed by Standards Australia. Two years ago Fairview ceased manufacturing PE ACM panels. Remaining PE core stocks may be still be sold if requested and where fit for purpose under the building codes.

In 2015 Fairview wrote to and met a number of key federal and Victorian state MPs and senators or their advisers, including some senators here today or their advisers. We provided a submission to this inquiry in 2015 and produced a short video which explained that it is the core material used in the panels that primarily determines fire resistance. The video made three key points. All panels must be correctly specified, professionally installed and officially certified to perform to code and to regulations. It is not merely about the panels; the system of check, check and check again must work. The video was emailed to over 500 stakeholders. It was Fairview's position at the time that consumers, regulators, developers, building owners and occupiers, and government needed to be better informed about ACM panels so that community concerns were relayed. Fairview, in conjunction with leading fire engineers, ran a series of educational public and in-house seminars in each capital city about the compliant use of ACM cladding. We thought that the focus should shift to the material in the core of the cladding and where the people tasked with determining if the cladding was fit for a purpose had fulfilled their obligations.

The recent Grenfell fire has again brought this issue into sharp focus. We welcome efforts by governments to establish a task force and identify buildings fitted with non-conforming panels. Professionals who select, install and sign off on buildings must ensure that any ACM panel used fully comply with the relevant building codes. To assist with that task, Fairview has striking new red, amber or green labels to affix to our panels. Our panels have always been identified with ink-jetted identification. We believe that our new labels, developed in partnership with international standards certifier CertMark, will make it easier for builders, owners and other stakeholders to differentiate between panel types, and where they can be used.

We are happy to answer senators' questions.

CHAIR: Mr Gillies, what is the brand name of the ACM materials used?

Mr A Gillies: The fire-rated core panel is Vitrabond FR. The aluminium cored non-combustible product is Vitracore G2.

Mr Stewart: We have some samples here that we are happy to pass up, including the labels, if you wish.

Senator XENOPHON: So Vitrabond FR is what?

Mr A Gillies: FR—fire rated.

Senator XENOPHON: And the other one—that is the honeycomb—

Mr A Gillies: It is an aluminium profiled product core.

Senator XENOPHON: Okay. So you do not sell the polyethylene product?

Mr A Gillies: We, like the previous submission, sold the PE core up to about 2014.

Senator XENOPHON: But you won't sell it any more?

Mr A Gillies: As per the statement, we are running down stocks. We will sell only where we know it is used in a conforming situation.

Senator KIM CARR: So what sort of stocks do you have?

Mr A Gillies: The value of our current PE core stock would be in the order of \$150,000 or \$200,000.

Senator KIM CARR: You have given a figure here of the difference between the ratings—the price per square metre. This is on the third last page of your submission. The difference is \$7 between the PE rating and \$52 for the fire rating. Is that right?

Mr A Gillies: If PE was sold today, it would be more than that, I guess.

Senator KIM CARR: But that is what you have said in your submission.

Mr A Gillies: That was correct at the time—back in 2014 or 2015.

Senator XENOPHON: What would it be now? Do you want to take it on notice?

Mr A Gillies: I would say \$48. I would suggest that what was submitted previously—a price differences of \$3 or \$4.

Senator KIM CARR: It is \$3 or \$4 now?

Mr A Gillies: Yes.

Senator KIM CARR: That is, obviously, one of the questions—is there a discrepancy? But there is not. Three or four dollars is the difference. How long have you been selling the PE core material?

Mr A Gillies: We started selling aluminium composite material in late 2004.

Senator KIM CARR: And you are still selling it. You are running down stock.

Mr A Gillies: Running down stock. Our sales in the last financial year—it was just negligible, the amount of panel that we sold.

Senator KIM CARR: How much have you sold in that period of time?

Mr A Gillies: In that period 2004 to—

Senator KIM CARR: Yes.

Mr A Gillies: If I could take that on notice.

Senator KIM CARR: It is not something that you carry in your head?

Mr A Gillies: No.

Senator KIM CARR: Fair enough, too. If you would provide that, please. Do you know where it has gone?

Mr A Gillies: Our customer, typically, is a contractor and installer. We do not always know where it has actually been installed.

Senator KIM CARR: Do you know where any of it has gone?

Mr A Gillies: Yes, we would.

Senator KIM CARR: And I asked the previous witness—you support a national audit?

Mr A Gillies: Absolutely.

Senator KIM CARR: And would you provide information to that audit?

Mr A Gillies: Absolutely, without compunction.

Senator KIM CARR: Very good. You say here that each panel type has its own fire rating and is suitable in particular settings as set out under the BCA. Could you outline what you understand the legal use of the PE cladding to be?

Mr Stewart: The current code, as previously discussed, does allow for the legal use of PE cladding on type C construction, which typically is single-storey buildings.

Senator KIM CARR: This material was used in the Lacrosse building, was it?

Mr A Gillies: We didn't supply—

Senator KIM CARR: No I didn't ask who supplied it, but PE cladding was used in the Lacrosse building?

Mr A Gillies: Yes. Apparently, from the report, it was a PE product.

Senator KIM CARR: And that's clearly not within the guidelines, is it?

Mr A Gillies: Absolutely.

Senator KIM CARR: It's not within the standards. Under any circumstances, it's outside of what you might regard as proper use of that material?

Mr A Gillies: From what we know now, it is not—

Senator KIM CARR: How do you explain it being used, then? How do you see that? How did it actually get on the building?

Mr Stewart: There's a comprehensive report, I believe, on the Lacrosse building. As for how it made it onto the building, I don't believe I could answer that question.

Senator KIM CARR: You don't know?

Mr A Gillies: We don't believe the product was actually tested prior to installation.

Senator KIM CARR: Okay. And is it your understanding that the building was certified as being fit for occupation, fit for use?

Mr A Gillies: We understand from the MFP report that it was certified as fit for occupation.

Senator KIM CARR: And is this a pattern that was sent across the country, where cladding's used outside of category 1 buildings, on buildings that are certified, but clearly outside of standard?

Mr A Gillies: I think we could conclude that.

Senator KIM CARR: Many thousands of times.

Mr A Gillies: The number escapes me, but it certainly would appear to be a large number.

Senator KIM CARR: Why shouldn't the Commonwealth ban the use of this product, the importation of this product? Why shouldn't it?

Mr A Gillies: Are you referring to the low-density polyethylene—

Senator KIM CARR: The PE product: why shouldn't we now ban the importation of this product?

Mr A Gillies: We fully support that, absolutely, fully support it—and immediately.

Senator XENOPHON: There's no excuse not to do that, is there?

Mr A Gillies: There's no excuse.

Senator XENOPHON: Is that right? I mean, it's a direct question: is there any excuse not to ban this polyethylene core cladding material?

Mr A Gillies: No, there's not, and if you recall—and I certainly excuse you if you don't—it was our submission to you in 2015 that the product be banned, because it can be inadvertently substituted for the correct product.

Senator XENOPHON: Exactly.

Senator KIM CARR: The problem you have, in your case—you have said to us that you have product in stock.

Mr A Gillies: Yes.

Senator KIM CARR: What would that do to your stocks?

Mr A Gillies: Yes. We're a responsible industry player. We would write off that stock. We would accept that.

Senator KIM CARR: Thank you very much.

CHAIR: Senator Xenophon, do you have any further questions?

Senator XENOPHON: No. Thank you very much for your comprehensive submission and for your very clear evidence.

CHAIR: Thank you very much, gentlemen, for appearing before us.

GENCO, Mr Joseph, Director, Technical and Regulation Division, Victorian Building Authority

SMITH, Mr Murray, Acting Chief Executive Officer, Victorian Building Authority

[15:35]

CHAIR: I will read out my opening statement, but before I do that I will place on the record that the New South Wales Department of Premier and Cabinet had been invited to appear, but the committee secretariat informs me that we have not received a response from the New South Wales Department of Premier and Cabinet.

I welcome officials from the Victorian Building Authority. I remind officials that the Senate has resolved that an officer of a department of the Commonwealth or of a state or territory shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Thank you for appearing before the committee today. I invite you to make a brief opening statement, should you wish to do so, and then we will open it up for questions.

Mr Smith: Thank you for your invitation to attend today's inquiry hearing. The Victorian Building Authority welcomes the opportunity to address the inquiry. I will keep my comments as brief as possible. I understand that members of the committee may have specific points for discussion. I would like to focus my comments on two aspects: the specific actions concerning the VBA's cladding audit and more generally the challenges presented in the current supply chain for building products.

Most people would be aware of the November 2014 Lacrosse building fire. Unlike the tragic events in London, occupants of the Lacrosse building could evacuate safely and the fire performance of the building limited the destructive damage. As described in the MFB post-incident analysis, the fire safety equipment in place at Lacrosse included, but was not limited to, fire sprinkler systems, emergency warning intercom systems, emergency lighting, emergency exit signage, fire isolated exit stairs, fire extinguishers and fire and smoke detection systems. The point that I wish to make is that the Lacrosse building was constructed with a range of fire safety measures that have not been available in other jurisdictions. Beyond that, I do not intend to talk about the fire incident itself but rather the resulting cladding audit that the VBA commenced in May 2015. It released its audit findings in February 2016. The VBA recognises and has been actively involved in addressing matters arising out of that audit since that time.

The VBA audit was the first of its kind within Australia and represented a collaborative approach between the VBA, the City of Melbourne and the MFB. The audit focused on buildings that provided accommodation for sleeping occupants, including vulnerable-use buildings such as hospitals. Typically, those buildings fall under the categories of classes 2, 3, 9 and 9A of the National Construction Code. The audit scope was: new buildings constructed between 1 January 2005 and 30 April 2015 with a construction of 10 or more storeys and a construction value of \$2 million or greater. The suburbs of Melbourne, Docklands, Southbank, East Melbourne and Parkville were selected. The suburbs chosen were based on the assessment that the greatest density of the scope that I have previously described was in that general locale.

The 10-year window was determined as being the period in which the use of ACP as cladding was identified as becoming particularly prevalent in the Victorian environment. Within this audit process, some 168 building projects were identified. The process did not only rely on desktop audit; once building projects had been identified, a VBA inspector attended each site to assess the project and record details of their observations in writing and through the use of photographs. Those reports then formed part of the broader documentation relating to the building project.

The VBA audit involve the coercive acquisition and analysis of thousands of documents, including design drawings, specifications and permits. Where the VBA audit could not demonstrate compliant use of external wall cladding materials, the project was referred to the municipal building surveyor to independently assess the building. The MBS inspected each site and on most occasions was with the MFB to determine whether a building was able to continue occupation and, if it was not deemed suitable for occupation, to take any necessary steps to ensure the safety of the occupants.

To determine the level of risk posed by any non-compliance identified, a working group comprising the City of Melbourne's MBS, the MFB representatives and the VBA was established. The purpose of the group was to broadly monitor the remaining building compliance activity arising out of the audit; to identify any emerging issues, challenges or barriers, and resolve them collectively where appropriate; to achieve a consistent and common means of reporting; and to ensure a consistent and common means of communicating with owners, occupiers and the public relating to the audit and inspection results.

I would like to spend a few moments to provide context for the findings of the VBA audit. When the audit is discussed the emphasis tends to be on the findings that 85—or 51 per cent—of the building projects audited did not demonstrate compliance. In the context of this audit the term 'non-compliance' was used in its broadest sense—that is, if it was not possible to rule out non-compliance on the basis of the information that was available at the time of the initial assessment then it was deemed to be non-compliant. Of those building projects initially deemed non-compliant, a total of 44 have since been demonstrated to be compliant through the provision of additional documentation and/or fire safety engineering reports. In effect, 127 building projects—or around 76 per cent of those audited—were able to demonstrate compliance.

A total of 24 building projects determined to be non-compliant remain with the VBA. The VBA is working with the relevant building surveyor and builders to bring the building permits into compliance. The City of Melbourne's MBS has determined that these buildings are able to be occupied. A further 17 building projects in the scope of the audit remain with the City of Melbourne. In addition to the Lacrosse building, only one other building identified in the VBA audit required an emergency order to be issued by the MBS—in this case, it was at Port Phillip—and that was the Harvest Apartments at 144-150 Clarendon Street, Southbank. The VBA has further examined its audit findings to assess whether there are practitioners who were involved in serious or systemic instances of non-compliance. Those practitioners identified have been served with notices to produce documents related to other building works. The VBA is considering the material received in response to these notices to assess building compliance.

To ensure there is a consistent approach taken by architects, designers, engineers, building surveyors and builders to achieve compliance with the legislation, the VBA has undertaken the following. It has contacted more than 20,000 building practitioners in Victoria and registered architects and asked them to provide information about the possible use of ACP cladding as a component of the external walls of buildings they have been involved with. It issued its audit findings in February 2016. A copy of that has previously been provided to the committee but I am happy to provide another copy if you wish. The VBA issued an industry alert on 24 February 2016 to improve the understanding of building practitioners about the requirements of the BCA and the specification of components of external walls, including cladding. It also continues to work with the ABCB to identify opportunities to clarify relevant parts of the BCA.

After the release of the ABC national guidance note on external walls, the VBA removed its industry alert and published the guidance notice from the ABCB. The VBA has recently republished the ABCB note to all building surveyors, domestic builders unlimited and commercial builders. The VBA has organised and hosted roundtable discussions with building industry representatives, and meetings with stakeholder reference groups aimed at addressing the shortcomings in industry practice and knowledge identified during the VBA audit. Of course, we have undertaken compliance and enforcement activities when required, including in relation to both Lacrosse and Harvest.

I understand that the inquiry is keen to be informed as to the status of enforcement actions of the VBA against practitioners involved in the Lacrosse building fire. As these actions are afoot at the moment, I am only able to discuss these issues at a high level. The VBA referred the following practitioners responsible for the project to the Building Practitioners Board: the fire safety engineer, the registered builder and the relevant building surveyor. The architect's conduct was referred to the Architects Registration Board of Victoria. The Architects Registration Board has determined not to proceed with any action against the architect.

In a broader context, and as a result of the audit, the VBA supported the Victorian Minister for Planning to participate in discussions at the national Building Ministers' Forum, which determined that action on a national level was required. This resulted in a direction to the ABCB to consider mandatory third-party certification and the establishment of a cross-jurisdictional senior officers working group. The VBA will continue to press for the readability of the NCC to improve, as this is particularly important when the code is performance based rather than prescriptive based. We have commenced a similar cladding audit in the City of Port Phillip.

The VBA acknowledges and welcomes the establishment of the Victorian Cladding Taskforce. The purpose of this task force is to, broadly, bolster the state's ability to detect and address non-compliant cladding, and ensure residents, owners corporations and building managers are better informed about the issue. It will also make recommendations to the government on how to improve compliance and enforcement of building regulations to better protect the health and safety of building occupants. Key agencies at that task force include WorkSafe Victoria, the MFB, the VBA, the Municipal Association of Victoria, and Emergency Management Victoria.

Finally, I would just like to touch on supply chain issues. The Lacrosse building fire highlighted two critical weaknesses in the current building product certification system: firstly, that there is no single organisation or regulator responsible for certifying products for compliance with relevant standards and, secondly, that

certificates of conformity with the Building Code of Australia performance requirements, where available, are not always explicit in respect of the range of uses and circumstances in which a product may be relied upon to be fit for purpose. Complex regulatory frameworks exist at both state and national levels that need to be considered in a holistic way. The issue of industry supply chains and import of goods into Australia need to be considered in addition to the regulation of the use of and building of construction projects. From the VBA's perspective, heavily weighting compliance and enforcement activities for these types of products at essentially the end of the supply chain, as currently is the case, is problematic and requires further thinking. Otherwise, our regulatory efforts will remain largely reactive rather than proactive.

Senator XENOPHON: Can we please get a copy of that statement? It might be useful for the purpose of questions. It was a very comprehensive opening statement.

CHAIR: Yes.

Senator KIM CARR: We will get it photocopied for you.

Mr Smith: It has some slight changes to it.

Senator XENOPHON: That's all right.

Senator KIM CARR: We'll take it as delivered. That's the way we'll cover that.

Mr Smith: I can provide a cleaner copy at a later date.

Senator KIM CARR: Thank you very much, but it's just for the questions today. That would be very helpful. Mr Smith, thank you very much for coming. It's a long way to Sydney to actually appear—we were in Melbourne on Friday, but we couldn't quite get it to work for you?

Mr Smith: I am not aware of the workings of the inquiry or who attends when.

Senator KIM CARR: So I was very pleased that you were able to come today.

Mr Smith: Thank you.

Senator KIM CARR: Let's hope that you are just as pleased at the end of this as we are now. I have got here a report from the Melbourne *Age* of 23 June this year, and it says:

Planning Minister Richard Wynne has slammed the Victorian Building Authority, which has been leading the government's investigation into the cladding issue, for a slow response to the controversy.

"The VBA needs to be more responsive when dealing with the critical issue of cladding," a spokesman for Mr Wynne said.

He said the building authority needed to explain why it had taken so long to hold disciplinary hearings into the building practitioners who worked on the Lacrosse building, which was ravaged by a blaze fuelled by cladding similar to that installed on Grenfell Tower.

"They need to explain why it has taken so long to bring the practitioners in question before a disciplinary hearing," the minister's spokesman said.

Are you able to tell the committee why it has taken you so long?

Mr Smith: I would say that, in terms of the disciplinary process, the VBA referred that matter to the Building Practitioners Board last year, after an investigation was undertaken. In terms of the time frame, as to why that matter still is not resolved, as you would appreciate, inquiries in that form—and I note that they have since changed, under the new legislation that the government has introduced—are similar to court litigation and the subject of delays sometimes brought on not by the VBA but by the people who are brought before the Building Practitioners Board. Certainly in this case they have exercised their rights to access other courts to determine whether or not the Building Practitioners Board has the appropriate authority to hear the matter. So some of those delays are not as a result of the VBA, and in fact I would say that our investigation moved quite quickly and we are now faced with a situation—

Senator KIM CARR: It is four years since the fire.

Senator XENOPHON: Which fire are we talking about?

Senator KIM CARR: Sorry?

Senator XENOPHON: Which fire are we talking about?

Senator KIM CARR: The Lacrosse fire.

Senator XENOPHON: 2014.

Mr Smith: Yes, I understand that. The first part of the process was a post analysis undertaken by the MFB, which was completed, from my recollection, around the middle of 2015. The investigation commenced. What I am telling you is: it was quite complex in regard to the matter, and we have referred it as quickly as we can.

Senator KIM CARR: And, in particular, it became a matter of judicial contest as to your authority. That is the nub of your—

Mr Smith: Not our authority. The Building Practitioners Board is a separate, independent statutory body that hears disciplinary matters.

Senator KIM CARR: So now that has all been clarified, has it?

Mr Smith: There are hearing dates for August for all three of the practitioners—

Senator KIM CARR: And you do not want to prejudge any of that—I understand. So this is a sub-judice question now, is it?

Mr Smith: Well, it is more of a case that it is not a matter that the VBA has any control over, and, once it is handed over to the Building Practitioners Board, it is not a matter for the VBA.

Senator KIM CARR: There is another question that has arisen in the evidence before us and that is that the regulatory regime in Victoria is actually quite limited. For instance, who is a builder? Who is a building subcontractor? It seems that it is open to just about anybody who wants to claim that they are a builder or a building contractor. Is that the case?

Mr Smith: I would disagree that that is the case. There is clearly a regulatory scheme that involves registration and licensing of practitioners. In terms of that, what I can say is that, over the last few years, there has been significant reform of the legislation that governs the building regulatory system, and that continues. There have been two tranches brought forward, as broad as licensing and registration, through to disciplinary action, and that will continue this year in terms of the introduction of better inspection powers for the VBA and other authorised officers.

Senator KIM CARR: You have heard—or I am not certain that you have heard this, because you were outside, but we have been asking witnesses to explain why we should not recommend to the Commonwealth parliament that we seek national registration, national licensing arrangements, for people involved in the installation of building materials, in line with the national standards. What's the view of the authority on that matter?

Mr Smith: I have to be careful here, Senator, because we're straying into a policy question.

Senator KIM CARR: So you have not considered it?

Mr Smith: We know that currently mutual recognition exists between the states in regard to licensing and registration, and that's where it currently sits. So that's probably as far as I can take it for you.

Senator KIM CARR: What are the licensing requirements for builders in Victoria?

Mr Smith: They are stipulated under the regulations in the act.

Senator KIM CARR: How do you lose your licence in Victoria if you're caught putting up bodgie building products?

Mr Smith: You would go through the disciplinary process—

Senator KIM CARR: How many people have lost their licences in recent years?

Mr Smith: I don't have those figures in front of me. I'm happy to provide them.

Senator KIM CARR: Is it a number of people?

Mr Smith: I just don't have those figures in front of me, Senator. I'm happy to provide them.

Senator KIM CARR: Is it a common practice that people are actually brought before disciplinary tribunals in Victoria?

Mr Smith: People regularly appeared before the disciplinary process previously under the Building Practitioners Board, and it occurs both—

Senator KIM CARR: And that was common, was it?

Mr Smith: Yes, there were hearings quite regularly.

Senator KIM CARR: Can you give us, on notice, the numbers in the last five years?

Mr Smith: Certainly, Senator.

Senator KIM CARR: And the number of people who've actually been disciplined.

Mr Smith: Yes, we can do that.

Senator KIM CARR: For insulation and non-conforming building products.

Mr Smith: I'm not sure. It's difficult to provide that level of detail, in terms of the data. We can tell you—

Senator KIM CARR: Why not?

Mr Smith: We don't record the level of detail that makes it easily accessible. What we would have to do is go through each individual case to see what the allegations were in order to establish whether or not they're relevant to—

Senator KIM CARR: Whatever data you can provide would be useful to us.

Mr Smith: Certainly, yes.

Senator KIM CARR: We have heard a number of witnesses draw to our attention the assertion that there's widespread documentation fraud in certification processes. Are you familiar with those claims?

Mr Smith: Yes.

Senator KIM CARR: What have you done about it?

Mr Smith: In terms of that, there is an issue about who would actually respond, as a regulator, to that. For example, I'm aware that Consumer Affairs Victoria recently prosecuted a person for essentially having a false certificate in regard to a building product in the last few months.

Senator XENOPHON: What was that building product?

Mr Smith: As I understand, it was a fire safety wall or a separation product. In other words, it was designed to prevent the spread of fire.

Senator XENOPHON: Between apartments or between walls.

Mr Smith: Yes.

Senator XENOPHON: That's pretty serious. So the product itself did not provide the protection it was certified to—or the certificate was false.

Mr Smith: My understanding is it failed by a number of minutes or seconds. The details of that, again, I could provide to you.

Senator KIM CARR: Can you tell us how often these prosecutions for fraudulent use of documentation occur?

Mr Smith: I couldn't give you an answer, on the basis that, as I said in my opening statement, the regulation of those particular products is diffuse. If it's a product that is presented as something it's not, it may be false and misleading; therefore, it falls into national consumer law—in some cases, not all. So I can't give you an answer to that.

Senator KIM CARR: Do you have any data at all on the instances of prosecution for the misuse of certification, either for products or for buildings?

Mr Smith: In terms of buildings per se, the VBA undertook a significant and complex investigation in East Gippsland where a building surveyor was using unregistered inspectors, and they were held to account.

Senator KIM CARR: That was one case.

Mr Smith: Yes. It was one that involved a number of locations.

Senator KIM CARR: How often does that occur?

Mr Smith: I haven't got that information in front of me today.

Senator KIM CARR: Would you take that on notice, if you can't provide that advice?

Mr Smith: Certainly, yes.

Senator KIM CARR: It has also been put to us that a company will have one licensee and use people that are non-licensed for certification work. Is that a practice that you're familiar with?

Mr Smith: I'm not exactly sure what's being—

Senator KIM CARR: That certification processes are undertaken by companies where the principal might well be licensed but no-one else in the company is or a significant number of people are not licensed and are undertaking certification work.

Mr Smith: I might defer to our technical expert, if I may.

Mr Genco: That's not dissimilar to other sort of professions and practices where you might have a senior engineer, or a certifier, for want of a better word, that would be signing off on the end product and documents.

But they would have juniors that are qualified, and should be qualified, producing the bulk of the work that is then overviewed by themselves.

Senator KIM CARR: And you don't see a problem with that?

Mr Genco: That is the course of a professional practice. At the end of the day, the person who is signing off the certification takes the responsibility for that certification.

Senator KIM CARR: So in the case where a product has been certified but is actually non-conforming or non-compliant, who should be held responsible?

Mr Smith: It would depend on the nature. If we talk about non-conforming as to non-compliant, I understand the inquiry has had a lot of discussion around that in terms of the difference. It would depend on the nature of the use of the product if it was—

Senator KIM CARR: If someone signs off that a product is compliant when it's not, who should be held responsible? Or if a building is signed off as being fit for purpose and is not, who should be held responsible?

Mr Smith: There are two parts to your question. The first part is: if certification has been provided that is, for want of a better term, false, then the person that certified it should be held responsible. In terms of the building, it is a number of parties that have responsibility in that space. And as you can see from the Lacrosse matter, a number of people are going through a process of the responsibility they hold in that process.

CHAIR: Mr Smith, thank you for your opening statement. You indicated that 24 building projects following on from the audit are determined to be non-compliant, and those are with your organisation at the moment. When you say 'non-compliant', that is in the sense that they haven't demonstrated to be fully compliant and therefore are non-compliant. Can you tell us what degree of noncompliance we are dealing with here?

Mr Smith: I can tell you that all those buildings have been assessed to be able to be occupied, and, in terms of the level of compliance, it varies. It is certainly not at the high-risk end in terms of those particular matters.

CHAIR: So they are able to be occupied, but there still remains issues of breaches of the building code?

Mr Smith: Yes, the building code or the building act or the building regulations, as stipulated in Victoria.

CHAIR: And 17 projects are with the City of Melbourne?

Mr Smith: Yes.

CHAIR: Can you tell us anything about those?

Mr Smith: They remain with the City of Melbourne, because they work through to get them through the level of compliance and satisfaction again if those buildings were demonstrating to be the level of compliance that was such that it needed an emergency order, I'm quite sure that the City of Melbourne would issue an emergency order.

CHAIR: Are those 17 projects fit to be occupied?

Mr Smith: Yes, they are able to be occupied. That is my understanding.

Senator KIM CARR: I've been advised there was a cladding fire in Brunswick in March 2016. Were you familiar with that?

Mr Smith: Sydney Road in Brunswick?

Senator KIM CARR: Yes.

Mr Smith: Yes.

Senator KIM CARR: Brunswick's not been covered by your audit though, has it?

Mr Smith: No, but we're aware of the matter, and it was referred to the VBA last week by the municipal building surveyor of the City of Moreland.

Senator KIM CARR: So what action is going to be taken with regard to that?

Mr Smith: With respect to that, the municipal building surveyor for the City of Moreland is satisfied that it is currently safe to occupy, and it will now go through a process to determine what the next action is in regard to that particular building.

Senator KIM CARR: Have you looked at the circumstances around that fire at all?

Mr Smith: My understanding is an air conditioning unit malfunctioned on the eighth floor, and as a result of that a fire commenced. That fire travelled up outside the building to the ninth floor, and then travelled up further to the top of the building, essentially, and then petered out. Although it is not required to, the building has a sprinkler system and various other fire-safety measures.

Senator KIM CARR: What sort of cladding did they have on it?

Mr Smith: At this stage we haven't established that. We've just had the referral last week from the City of Moreland. We've certainly attended the site and are just working through the documents that are associated with that particular site.

Senator XENOPHON: Mr Smith and Mr Genco, thank you very much for being here. I want to go through some aspects of your opening statement. I understand you can't comment on policy. It is terrific that you are here. There is a great degree of irony that you have travelled up to Sydney to be here whereas the New South Wales government, I think it was, couldn't find the time or, for whatever reason, wasn't here.

Mr Smith: Senator, the only thing I can say is that the weather is better here today.

Senator XENOPHON: I thought you were just here for the pleasure of being before this committee!

Mr Smith: Well, of course I am!

Senator XENOPHON: In your opening statement, you made the point that the Lacrosse building was constructed with a range of fire safety measures that may not have been available in other jurisdictions, which is true. One of the issues that was raised in the report was that the sprinkler system played a key role in putting out the fire or stopping it from spreading internally.

Mr Smith: Yes.

Senator XENOPHON: We heard earlier today, and we heard it last week, that the speaker system worked above specification—beyond its minimum specifications—and we got more details on that today. In fact, what occurred, as I understand it from the evidence, was that 23 of the sprinklers were operating rather than six, which was the minimum standard. Has the authority, or any other body that the authority could instruct, undertaken any modelling to establish what would have happened to that fire at the Lacrosse building if only the six sprinklers as specified were working, and not the fortuitous situation where there were almost 4 times the number of sprinklers working, on that evening?

Mr Smith: No, I am not aware.

Senator XENOPHON: Do you think there ought to be some modelling done of that or some assessment or analysis done of that?

Mr Smith: As I understand it, there was a post-incident analysis completed by the MFB. They are the experts on this.

Senator XENOPHON: Sure. But it would be reasonable, without having a post-incident analysis in front of me—you are not aware of any analysis being done of what the impact would have been if only the specified standard was complied with and not well in excess of the standard being complied with?

Mr Smith: No, I am not aware.

Senator XENOPHON: Would you be interested in finding out what the result of that would be?

Mr Smith: Certainly. I imagine that would be of most interest to the ABCB in terms of the National Construction Code and whether there are alterations required to that.

Senator XENOPHON: Perhaps it is something we could ask the ABCB, Chair. Going through the actual audit itself—again, this is not a criticism; I am just trying to understand this—the audit's quote was new buildings constructed between 1 January 2005 to 30 April 2015, construction of 10 or more stories. This cladding material with the polyethylene core is not meant to be on buildings of more than one storey, or perhaps two storeys, as I understand it. Is that your understanding?

Mr Smith: Yes.

Senator XENOPHON: Two storeys in some circumstances, where it is certified or where exemptions are given. If you are caught in a fire and you are on the third, fourth, fifth, sixth, seventh, eighth or ninth floor, you are in real strife if you can't get out of that building safely. How many buildings are there, say, between three and 10 storeys? Is any assessment being carried out of that? I am concerned about all of those buildings where they are not high-rise—they are medium high-rise, if you like: seven to nine storeys. What is the position there?

Mr Smith: We modelled the scope on the basis of the building that was subject to the fire, and you can see that in terms of the scope. In terms of the broader question that you are asking, part of the answer or the answer to that lies with the establishment of the Victorian Cladding Taskforce to determine what other scoping or—

Senator XENOPHON: That former Premier Baillieu is chairing?

Mr Smith: Yes, with John Thwaites.

Senator XENOPHON: Okay. A former deputy premier. That is a bipartisan committee, if there was one.

Mr Smith: Yes.

Senator XENOPHON: A Liberal premier and a Labor deputy premier. I want to ask about the scope of the audit. It said that the process did not rely on a desktop audit, and you have gone into more details. You said once building purchase had been identified, a VBA inspector attended each site to assess the project, record details of their observations in writing and through the use of photographs, and then form part of the broader documentation. You also use coercive acquisition and the analysis and thousands of documents. You said that, where the VBA audit could not demonstrate compliant use of external cladding materials, it was referred to the MBS. Did the MBS come back to you in relation to their findings or their assessment?

Mr Smith: Yes.

Senator XENOPHON: You've said that the MBS inspected each site—on most occasions with the MFB—to determine whether the building was able to continue operation and, if it was not deemed suitable for occupation, to take any necessary steps for the safety of occupants. How many of those buildings actually were subject to testing of the panels? In other words, did it just rely on the paperwork? If the paperwork said, 'This has got fire-retardant material'—and we've heard evidence that there can be fraudulent documentation—was any testing such as destructive testing carried out, where you drill a hole in the core and determine whether that material is polyethylene or, in fact, fire-retardant material?

Mr Smith: The MBS does not have power to do destructive testing.

Senator XENOPHON: No legislative power to do so?

Mr Smith: That's correct. I would note that, later this year or early next year, that will change with respect to the ongoing reforms of the legislation and that the VBA will have the power to—

Senator XENOPHON: At a state level. Is that going to be rolled out nationally too?

Mr Smith: No, that's in terms of the Building Act in Victoria.

Senator XENOPHON: Just hold on a second. You're saying that the MBS inspected the site, in some cases with the MFB, but you had to rely on documentation as to whether there was polyethylene, fire retardant or a honeycomb structure?

Mr Smith: Yes.

Senator XENOPHON: Honeycomb you can work out.

Mr Smith: Yes.

Senator XENOPHON: But I think we had the material. I don't know if you can tell the difference with a visual inspection. You probably can't see. This is the combustible core. It's two or three millimetres, and then there's the fire-retardant core. How can you tell?

Mr Smith: That's why we look at the documents from three perspectives.

Senator XENOPHON: You relied on documents, though, didn't you?

Mr Smith: Yes.

Senator XENOPHON: You didn't actually rely on any testing.

Mr Smith: We don't have the power to undertake destructive testing.

Senator XENOPHON: But you accept that there've been cases of fraudulent documents with certification—correct?

Mr Smith: Yes.

Senator XENOPHON: So how confident are you that that audit that was carried out following the Lacrosse fire is robust and accurate?

Mr Smith: We sourced documents from three sources—council, the registered building surveyor relevant to that particular site, and the builder—and triangulated the data from those three to establish whether there were any discrepancies.

Senator XENOPHON: But destructive testing, so-called, wasn't carried out because you don't have the legislative power to do so?

Mr Smith: At the moment we do not have the legislative power to undertake destructive testing.

Senator XENOPHON: When you get that legislative power—and I hope you get that sooner rather than later—will there be any revisiting of some of the building sites that you audited to carry out destructive testing, even on a spot check basis, to see whether the documentation matches up with the actual reality?

Mr Smith: It'll depend on the nature of the legislation, but we'll certainly consider that. I have to note that, again, that's also an issue that the task force may take an interest in in terms of the new compliance and enforcement ability.

Senator XENOPHON: In terms of orders, were the residents of the buildings that were non-compliant—and I think the level of compliance went up after further tests or further inquiries—told, 'Well, you're in a building with polyethylene cladding or non-compliant cladding'? Were people informed as to the results of each building? Were the occupants told?

Mr Smith: If an order was issued, it's my understanding that, through the owners corporation—

Senator XENOPHON: Were there any orders issued?

Mr Smith: There were two: there was an emergency order issued for Lacrosse, and there was an emergency order issued for Harvest.

Senator XENOPHON: Okay, but there were still a number of other buildings that were non-compliant and had the flammable cladding on them—is that right?

Mr Smith: There were certainly non-compliant buildings, and on the VBA website we have a list of buildings that were on that. As they became compliant, they were removed.

Senator XENOPHON: But some of those buildings that are non-complying have the polyethylene cladding material—correct?

Mr Smith: Yes.

Senator XENOPHON: So that information was put on the website?

Mr Smith: Yes.

Senator XENOPHON: But the occupants themselves weren't directly notified with a note under the door or anything like that?

Mr Smith: I'm not aware of that.

Senator XENOPHON: Were the strata corporations or the owner corporations advised of that?

Mr Smith: I am not aware of that.

Senator XENOPHON: Do you think they should have been advised?

Mr Smith: As I say, we referred the matter to the MBS to determine whether or not they were able to continue to be occupied.

Senator XENOPHON: To put it fairly: you discharged your obligation. You referred it to the MBS, so it was up to the MBS to tell us whether they required occupants to be notified.

Mr Smith: That is right. It is up to the city of Melbourne to determine that.

Senator XENOPHON: So you are saying that, if polyethylene flammable material is on a building which is noncomplying, the risk is mitigated by a sprinkler system or other mitigating factors. Is that right?

Mr Smith: Yes. Because of the nature of the National Construction Code, there are a number of ways to mitigate that risk.

Senator XENOPHON: Even though the material is noncomplying it can still be allowed there, or does it have to be eventually removed?

Mr Smith: If it comes to a point of definition of saying that something is noncompliant and it can't be made compliant in accordance with the relevant act, yes, it would need to be dealt with.

Senator XENOPHON: It is not going to be some sort of miraculous event where somebody says that they can turn polyethylene into fire retardant.

Mr Smith: Yes.

Senator XENOPHON: Are you saying then that, if it is noncomplying, it could be made compliant by having, say, an adequate sprinkler system? You are not saying that, are you?

Mr Smith: I would just refer to—

Senator XENOPHON: It is a difficult issue; but, ultimately, if it is noncomplying, it is noncomplying. Correct?

Mr Smith: I might refer that to Joseph.

Mr Genco: Senator, if you wouldn't mind, I will take that question. The National Construction Code is a performance based code. Basically, you have your prescriptive requirements, which is your recipe-type book of 'You do this, this and this and it becomes compliant,' but at the higher level there are the principles of performance, which allow a bit of trade-off with regard to, say, if you provide sprinklers, you do other things and there is no recipe with the performance. It has to be a purpose design, where you put in safety measures to counteract and lessen other aspects of it. So there is the potential there that you can put in some sort of ACP in certain areas.

Senator KIM CARR: You are familiar with the evidence on Friday from Commonwealth officials. I will quote directly. The official is talking about the question of compliance, and he says that there has been action but then he says: 'The code is the code. The code has not changed. The code does not allow this type of cladding—combustible wall elements in buildings—so the only thing that is available to the ABCB, because we do not have powers to audit, is to seek compliance to enforce. There is a way we can better socialise what requirements of the code are. They were initiated in the first instance in 2011-12 and then subsequently in the cross instance through the National Advisory Note and the development of AS 5113 standard, which has been referred to. Bear in mind, there is already a standard in the code and it remains the code, which is AS 1530—the standard that must be used if we are going down to the deemed to satisfy pathway.' In other words, you are turning black into white by saying that these combustible wall elements have become compliant because you have a sprinkler system in place. Is that the evidence you are presenting to us?

Mr Genco: No, Senator. What I'm trying to say is that, in the context of what the ABCB were talking, they were talking the prescriptive requirements where you have your recipe book and you say, 'If you have a building of excellent—

Senator XENOPHON: You call it a recipe book?

Mr Genco: yes—deems to satisfy.

Senator KIM CARR: 'Deems to satisfy'—so it is clearly not compliant. It is a combustible wall element.

Mr Genco: In the 'deemed to satisfy' you have to meet all the deemed to satisfy provisions. However, at the higher level, it is a performance based code.

Senator XENOPHON: Sorry, I don't understand this higher level stuff. You are saying—

Senator KIM CARR: I tell you what, I understand what is going on here.

Senator XENOPHON: Hang on, you're not supposed to have polyethylene cladding on buildings more than one storey—correct? That is the general rule?

Mr Genco: Under the prescriptive requirements.

Senator XENOPHON: Okay, so you're not allowed to. It's not allowed, correct?

Mr Genco: Correct.

Senator XENOPHON: But you're saying it can be allowed if you do some other things.

Mr Genco: Correct.

Senator XENOPHON: You've got me completely bushed on that one.

Senator KIM CARR: So the prescription is really not a prescription at all.

Mr Genco: It is a method of compliance with the code. Performance requirements—

CHAIR: It's a get-out-of-jail free card.

Senator XENOPHON: It's not much of a code, is it?

Senator KIM CARR: It's not really worth a dab of glue, is it?

Mr Genco: The performance requirements are at the upper level in they're deemed to satisfy—

Senator XENOPHON: What's an upper level? Are you talking about the upper levels of the building or upper level as in some conceptual—

Senator KIM CARR: It's 10 storeys up, on fire!

Mr Genco: The performance requirements at the start of the code or of each section are the mandatory requirements that need to be met. They are deemed to satisfy it. Provisions that are prescriptive are one way of meeting those performance requirements.

Senator XENOPHON: You're not allowed to have it on polyethylene cladding on buildings of more than one storey, but you might be allowed to have it if other things come into play, correct?

Mr Genco: Correct, if it is purposefully designed.

Senator XENOPHON: You know, that doesn't pass the pub test. We are talking about single-storey pubs and multi-storey pubs!

Senator KIM CARR: It doesn't pass any test.

Senator XENOPHON: You agree that it does not pass the pub test?

Mr Genco: I agree that that is the way the National Construction Code is written. It is a performance-based code.

Senator XENOPHON: You know what the pub test is, in terms of the general pub test?

Mr Genco: Yes, I do.

Senator XENOPHON: It doesn't really pass it, does it?

Mr Genco: It's difficult to describe to people outside of the industry, as to the difference between performance and prescriptive—

Senator XENOPHON: That means that people living in a high-rise building with this polyethylene cladding presumably are allowed to live in those buildings because there is a sprinkler system in place or other mitigating measures, but it is not supposed to be on that building in the first place, correct?

Mr Genco: In the first place, as to prescriptive requirements: if the building is purely designed using the prescriptive requirements, no, it's not.

CHAIR: Was the use of that material compliant?

Mr Genco: In which building?

CHAIR: In Lacrosse.

Mr Genco: In Lacrosse, no, that was non-compliant. That was not even considered as part of the performance decisions that were incorporated in the design of the building.

Senator XENOPHON: Okay, this is doing my head in. I am very grateful for your evidence and very comprehensive submission and opening statement, but is it your view that sooner rather than later we need to remediate and remove this flammable cladding material on high-rise buildings?

Mr Genco: There has to be evidence and a purposeful design that it has been included in and that the appropriate safety measures have been put in place.

Senator XENOPHON: Hang on, but you're not supposed to have it on in the first place.

Mr Genco: In some cases, it may need to be removed.

Senator XENOPHON: But, hang on, it's not supposed to be on high-rise buildings, correct?

Mr Smith: If I could just interrupt for a moment, the answer to your question is yes.

Senator KIM CARR: Thank you.

Senator XENOPHON: So it has to be removed eventually?

Mr Smith: Yes.

Senator KIM CARR: Wouldn't it be easier, for the future, if we just banned this stuff from being used on external cladding?

Senator KIM CARR: There was a nod, for the *Hansard* reference.

Mr Smith: My apologies. Certainly, it would make regulation a lot simpler.

Senator XENOPHON: Sorry, Mr Smith, I'm having trouble absorbing this. Is it the evidence of the Victorian Building Authority that this polyethylene-material cladding ought to be relieved from buildings? As in, it must be removed in due course.

Mr Smith: That is certainly the position of the VBA. In terms of—

Senator XENOPHON: When, though? In what time frame?

Mr Smith: We are looking at our options to accelerate that in terms of the powers that we been previously given. We will look to do that in the very near future, noting that in the Victorian system if we issue a direction to fix that can be appealed to the Building Appeals Board.

Senator XENOPHON: But you've got to issue the direction first.

Mr Smith: That is correct, yes.

Senator XENOPHON: But we're talking about a bill for removing this flammable cladding that will run into the billions of dollars, so that's why there is resistance from industry—is that right?

Mr Smith: Yes.

Senator XENOPHON: Who's going to pay for it, though? If you've bought an apartment and you've done so in good faith, are you going to be lumbered with the bill or does it go back to the builder? Who is responsible for it?

Mr Smith: I can't answer that question.

Senator XENOPHON: Because is there is still a legal bunfight with Lacrosse, isn't there?

Mr Smith: Yes.

Senator XENOPHON: I need to ask you a question in the context of South Australia. What cooperation do you have with your South Australian counterparts? According to the *Guardian Australia* on 16 June, the South Australian government is conducting a cladding audit. Have you talked to them about your experiences? Who is the lead agency that you are dealing with South Australia?

Mr Smith: I can tell you that we have spoken to our South Australian counterparts. Not in great detail, but certainly we've exchanged what they're doing and what we are doing.

Senator XENOPHON: Which agency are you dealing with?

Mr Smith: I can't recall.

Senator XENOPHON: If you can just tell me on notice, I can check with the South Australian government.

Mr Smith: Yes.

Senator XENOPHON: In summary, to go back to before, you acknowledge that this flammable cladding material—this polyethylene cladding material—has to be removed from buildings?

Mr Smith: That is certainly the position of the VBA.

Senator XENOPHON: Thank you.

CHAIR: Mr Smith, you may not be able to comment on this, but you would be aware of the Queensland government introducing a chain of responsibility bill that is currently before the parliament at the committee stage. Can you tell us whether you have had any involvement in that consultation leading up to the development of that bill? That is because there is some suggestion this may be a template for a national approach. Can you shed some light on that?

Mr Smith: The VBA has certainly been briefed by the Queensland Building and Construction Commission about that legislation.

CHAIR: Is any similar legislation being developed in Victoria?

Mr Smith: That's not a matter that I could comment on as an independent statutory body.

CHAIR: Just finally, the audit report that you issued stated that many types of external cladding materials are used throughout the Victorian building industry but whether one is fit for purpose over another is not properly understood by architects, designers, engineers, building surveyors and builders. What do we need to do to fix that?

Mr Smith: I think there are a number of things that we can do and some of those been outlined in my opening remarks about ensuring that there the right amount of information available to people. It is also about making sure that, as we go through this disciplinary process, people are well aware of what occurs in terms of those particular matters. From a regulatory point of view, we will continue to use our appropriate enforcement tools as the situations arise and, again, bring issues and use powers that we do have when we need to. There is a much broader question in terms of the building regulatory system and there are a number of players in this space, as I'm sure you can appreciate.

CHAIR: And that's the problem, yes. Thank you very much for appearing before us today.

Senator KIM CARR: Thank you for coming.

CHAIR: I thank all of those who have made submissions and sent representatives here today. The committee stands adjourned.

Committee adjourned at 16:27