

**STANDING COMMITTEE ON ESTIMATES AND  
FINANCIAL OPERATIONS**

**2015–16 ANNUAL REPORT HEARINGS**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
THURSDAY, 27 OCTOBER 2016**

**SESSION ONE  
BUILDING COMMISSION**

**Members**

**Hon Rick Mazza (Chair)  
Hon Peter Katsambanis (Deputy Chair)  
Hon Alanna Clohesy  
Hon Helen Morton  
Hon Sally Talbot**

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**Hearing commenced at 9.35 am**

**Hon MICHAEL MISCHIN**

**Minister for Commerce, examined:**

**Ms ANNE DRISCOLL**

**Director General, examined:**

**Mr PETER GOW**

**Building Commissioner, examined:**

**Mr DAVID GOODWIN**

**Chief Finance Officer, examined:**

**The CHAIR:** On behalf of the Standing Committee on Estimates and Financial Operations, I would like to welcome you to today's hearing. Can the witnesses confirm that they have read, understood and signed a document headed "Information for Witnesses"?

**The Witnesses:** Yes.

**The CHAIR:** Thank you. It is essential that all your testimony before the committee is complete and truthful to the best of your knowledge. This hearing is being recorded by Hansard and a transcript of your evidence will be provided to you. It is also being broadcast live on the Parliament's website. The hearing is being held in public, although there is discretion available to the committee to hear evidence in private. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before answering the question. Agencies and departments have an important role and duty in assisting the Parliament to review agency outcomes, and the committee values your assistance with this. Do you have an opening statement, minister?

**Hon MICHAEL MISCHIN:** No.

**The CHAIR:** Very good. Who would like to start?

**Hon KATE DOUST:** I will kick off. My first question goes to page 48. The line item is "Significant issues impacting the agency". It is the reference to "Auditor General's Report: Regulation of builders and building surveyors". I have about five questions around this particular point, just to give you an indication, Chair. I refer to a Building Services Board disciplinary complaint obtained through FOI against a Mr Jeffrey West, who is a registered builder trading as Kameleon Homes. The things I would like us to talk about are that, given that the Building Commission was aware of the appalling conduct of Jeffrey West back in late 2013, why has it taken nearly three years for the commission to take action against him?

**Hon MICHAEL MISCHIN:** I will ask Mr Gow if he can recall the details of that particular case; otherwise, we might have to take some elements of that answer on notice.

**Mr Gow:** Yes, look, I think some of the details will have to be taken on notice if you want dates and specific actions.

**Hon KATE DOUST:** I actually have the complaint in front of me. The date is correct according to the complaint.

**Mr Gow:** I am sure you do, it is just that I do not have all the facts in front of me. The issues with Mr West were originally raised with the commission. The commission obviously had to take time to investigate them and then the detailed evidence that was produced had to be considered and then put before either the Building Services Board or the State Administrative Tribunal, so there is a process

that we have to go through to do that. In terms of Mr West and the complaint, I do not have the details of it so I cannot give you a running commentary on why it took that long, but I do recall that it was a reasonably contentious matter and it required a fair degree of looking at.

**The CHAIR:** Did you want that information on notice, member?

**Hon KATE DOUST:** Thank you, yes.

*[Supplementary Information No A1.]*

**Hon MICHAEL MISCHIN:** Perhaps if Mr Gow is able he can just outline some of the processes more generally taken and the considerations that are taken into account in investigations generally of those types of complaints. That might assist in putting it into context. If he feels more comfortable in taking it on notice to deal with that specific case, so be it, but he may be able to assist the member in understanding more generally how these things are reported.

**Hon KATE DOUST:** I might come back to that shortly, minister. I just have a couple of other questions to ask before we get to that. I just want to know if the commissioner agrees that if more steps were taken to reprimand Mr West back in 2013 and perhaps remove his licence, other issues of misconduct that have followed may not have occurred. I mean, you are aware of the other complaints that have followed. What I am saying is that if perhaps more strident action had been taken against him in that initial complaint, there would not have been the follow-up complaints that have occurred in the last 12 months or so.

**Mr Gow:** Look, certainly; the quicker we can come to a finding on these complaints, the quicker the action and the less the consequences. I agree with the proposition that you put. If we had been able to take him out of the industry or restrict his access to work earlier, it is clear that things that happened down the track would not have happened.

**Hon KATE DOUST:** Following up on what the minister just said, could you perhaps outline for the committee what are the steps that are actually taken once a complaint is made?

**Mr Gow:** We are talking here about disciplinary complaints about the conduct of a builder, painter, plumber or such like. The outcome is disciplinary action, rather than with a consumer complaint where the outcome is an order to remedy work or the like. We receive a number of disciplinary complaints each year—around a hundred, I think. The first step is that they get examined through a triage process to see what is the conduct that is being complained about and is it serious or not so serious, and what does the evidence on first blush look like in terms of the ability to deal with it. It is then allocated, on the basis of that triage, to an investigating officer, who goes and collects the evidence. On the basis of that evidence, a recommendation is made for relevant disciplinary action to the Building Services Board in the case of builders and in the case of plumbers it would be made to the Plumbers Licensing Board. That disciplinary action that the board can choose to take varies from no action if they are not satisfied, to a reprimand, a condition on a registration, a fine, or reference to the State Administrative Tribunal to have the registration suspended or cancelled. There is, I think, a reasonably common process for these sorts of disciplinary matters that we follow. To a large extent, the timing of it is dependent on gathering the evidence and also, to some extent, how quickly we can prioritise the work.

[9.40 am]

**Hon KATE DOUST:** In the annual report, it refers to five key areas for improvement. Do you feel, commissioner, that the five key areas of improvement due to be fully implemented in June 2017 will stop builders like Jeffrey West from roting consumers?

**Mr Gow:** I have to be honest; I would not pretend that we can absolutely stop every piece of conduct like that, but I believe they will improve our ability to do as you suggested earlier—get on to them quicker and bring them to a quicker conclusion.

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**Hon KATE DOUST:** Given you have had a whole series of complaints around these areas, why were these types of changes not implemented earlier?

**Mr Gow:** To some extent we are learning as we do more things. The Building Commission in its current form has been in operation for five years. Over that time we have put through quite a few disciplinary complaints. We have learned better how to use our processes. We have also discovered where there are deficiencies in that process or where we could do more or better so that we are continually improving. The Auditor General's review earlier this year was very helpful in identifying some areas where we can do more, but by and large the Auditor General was reasonably satisfied with how we were proceeding. In recent times, since the Auditor General's report, with the support of the director general, we have worked to get more resources into our enforcement area. They are starting to show an improved ability to react to these things.

**Hon MICHAEL MISCHIN:** Can I just add to that. As I understand it, the Auditor General's report did not identify any significant adverse issues with the Building Commission and found that the Building Commission resolves its complaints and disputes about builders in a reasonable manner and has significantly improved its timeliness, and also generally takes satisfactory action to assess the merit of a complaint and to investigate those that have merit. It also indicated, as I understand it, that the average time in 2015–16 to deal with disputes compared with the old Building Disputes Tribunal—which was around 72 weeks—was 27 weeks. The average time to deal with disciplinary complaints in 2015–16 was 28 weeks, compared to 32 weeks in 2014–15. There have been significant improvements in timeliness. It seems to indicate that the current legislation and the current model are significantly better than the previous model that was in existence. The sorts of disputes and things, I would have thought, are part of a learning process to be able to tighten up the processes and will improve over time, and I think that some work had been done on these things before the Auditor General's report was delivered, unless I am mistaken.

**Mr Gow:** That is correct.

**Hon KATE DOUST:** Thank you for that, minister. I have only two more questions; just to give the Chair an indication.

You would be aware of media stories. Recently, there was an article in *The West Australian* in the "Agenda" piece about complaints from consumers about the timeliness of the process for their matters. Has the commissioner been directed by the minister or have you chosen to implement a policy that does not focus on the consumer rights but, rather, on those of assisting builders in the construction industry, so it will assist them to continue rather than putting the focus on perhaps reducing the time issues or getting the outcomes dealt with in a faster way for the consumer?

**Hon MICHAEL MISCHIN:** I can say that I have never given any such direction.

**Mr Gow:** There has been no direction from any minister.

**Hon KATE DOUST:** We know also that there have been a number of budgetary constraints placed upon a vast range of government departments. What impact have any budgetary constraints played in the wait times for building complaints to be resolved? This might come back to your staffing.

**Mr Gow:** In general, I would say it has not had an impact on our complaints process, but I make the point that this is the complaints process where a consumer is looking for some remedy and we issue an order, as opposed to the disciplinary complaint or the conduct of builders area. When we were set up in 2011 under the current legislation, we anticipated through the complaints process, where people come to the Building Commission with their complaint, that we would deal with about half of them, which was 800 a year then, so we thought we would deal with about 400 a year, and about half would go on to the State Administrative Tribunal for formal tribunal hearings, because that was the pattern, I suppose, under the former Building Disputes Tribunal. In practice, we have been able to take on more and more and resolve more and more. About 80 per cent are now resolved and about 20 per cent have gone to SAT. In budgeting terms, we provide SAT with around \$3 million

a year out of the building services levy for their operations. Because their operations are smaller now in respect of that, we are negotiating a smaller payment to SAT, and that money has come back into our complaints area to help bolster the resourcing and the capacity to deal with complaints.

Secondly, because of the success of the complaints process and the demand—demand has gone up from 800-odd to a bit over 900 in the last year—we have diverted internal staff. That has included particularly people like building inspectors to help with the complaints process rather than going out and doing the proactive audits of builders. It has had an internal impact on where we have put our effort, but we have been able to resource the complaints area reasonably satisfactorily within the current budget. We think there is still some scope to improve how we do that. Clearly, the times are further out than we would like them to be and we are constantly looking for better ways to do it and more efficient ways to spend our money. As we do that, you may want to consider that we are moving through the whole department to electronic licence management, which will free up staff. As that sort of thing happens, we are constantly able to move people into areas of demand. Certainly, for those complaints, I do not believe that we have been unduly hampered by budgetary constraints.

[9.50 am]

**Ms Driscoll:** May add to that, minister. In considering the impact of the savings across the divisions, whilst there was some consideration of the Building Commission and how it might contribute to those savings, that was counterbalanced by a recognition of the increased levy to enable some endorsed projects to move forward. It actually has not had a reduction in staff as others have because of the need to advance a range of activities. I think what has contributed to the pressure—there has been the high levels of activity in 2013–14 and 2014–15 in terms of building and construction activity that led to, as Peter indicated, an increase in the number of complaints. We have seen a lower number of disputes and issues being raised in the last financial year relative to the previous one. That is enabling us to really get on top of the number of investigations and dispute matters, so we are confident that we can continue to decrease the wait times associated with both of those.

**Hon KATE DOUST:** I have one more question. I just want to talk about the home indemnity insurance that is listed in the annual report. The second paragraph talks about how there is work currently being done to look at amendments to the Home Building Contracts Act 1991 to look at flexibility of cover and insurer. The Master Builders Association has come out talking about looking at the need to remove that type of insurance. Minister, I would be interested in your view about whether or not you would continue to support the home indemnity insurance.

**Hon MICHAEL MISCHIN:** You asked a question on home indemnity insurance in the Council about a week or so ago—without notice, as I recall. As I indicated, the question of home indemnity insurance and the pathway for government to take is a vexed one. The two insurers, QBE and, at the time, Calliden—which has now renamed itself as Great Lakes Australia or something—had exited the market. That left the government with the position that there was no private insurer to provide this insurance as required under the act. The options were either to exempt insurance or for the government to undertake the underwriting of the risk for a period of time and to examine whether a private insurer could be encouraged to re-enter the market. The government took that course rather than to leave consumers unprotected. Since then, a number of proposals have been raised to allow for the home indemnity insurance package or product to be attractive to private insurers so as to relieve the government, and hence the taxpayer, from the risk of underwriting the risk of the collapse of builders, the exit of builders or defects in the work, and that work continues. The indication we have received to date is that in order to make the product attractive, there may be some requirement to amend the legislation, perhaps by splitting the risk from the collapse or exit of a builder—disappearance of a builder—from the risk occasioned by defective workmanship. It has also been suggested that the period of indemnity be reduced or other modifications take place to

that. Those are all under consideration and no decision has been made on them because I am conscious that the primary purpose of this insurance is to protect the homeowner, so I am reluctant to fiddle with the nature of the coverage. However, it may be necessary to do that in due course. That is work in progress and no decisions have been made in respect of it. We are still exploring what is necessary to try to get the risk off the state and back onto the private market if at all possible, but it may be necessary to refine the products and the risks concerned.

Some states—I think the Northern Territory, from memory, does not have home indemnity insurance. Other states have also encountered—the commissioner can correct me if I am wrong on this—a similar issue to Western Australia, where private insurers have exited the market and where their jurisdictions pick up the risk. I am hopeful that we can still craft some kind of product that will be attractive to private underwriters. At this stage, there is still some significant way to go and, certainly, no decision will be made in the near future regarding that. The burden of insurance, of course, is, essentially, covered in the end by the consolidated revenue or through increased premiums on builders. That is a matter that needs to be delicately handled as well because, ultimately, it is the home builder, rather than the contractor, that ends up bearing that cost, but that has flow-on effects as to whether one builder is paying greater premiums than others and so forth and hence price themselves out of a very tightened home building market. There are a number of factors that need to be taken into account, but at this stage I have no intention and I cannot conceive of abandoning the idea of home indemnity insurance outright as I do regard it as important coverage and it has protected those who have been encountering the collapse of builders more recently, either through the risk being covered by the government or by the original insurers, although their period will be coming to an end once the six-year indemnity period expires. The state will be carrying all of the risk after that.

**The CHAIR:** Just while we are on home indemnity, minister, with the collapse of Collier Homes in Western Australia, how many people have been affected? Do we know?

**Mr Gow:** Directly, because they have homes under construction that have not been completed, we are aware of 29. However, people who have had homes built in the last six years and, therefore, theoretically are covered by the defects cover of the indemnity insurance is a larger number which we can probably provide you with.

**The CHAIR:** It is not so much the existing properties that have the six-year cover on them that I am interested in; it is more those 29 people and what shortfall is expected on those 29 contracts that will make claims against the home indemnity insurance system.

**Mr Gow:** I cannot give you a number at this stage. QBE is the insurer for that risk; they have a group of builders going out and assessing the completion cost at the moment, and we will have a better idea then. But in normal terms, with a building contract you pay in arrears for the work that has been done. The builder does the work and you then pay the progress payment up to that point. For a properly run building company with well-conducted contracts, there should not be a large amount of extra payment that is needed to actually complete the work, so it should be well within the \$100 000.

**The CHAIR:** Unless a builder has asked for it early and someone has been foolish enough to pay that.

**Mr Gow:** But we have had circumstances in the past where builders have done that and the claim has gone up to the full value of \$100 000.

**The CHAIR:** From memory, I think the last hearing that we had—the indemnity covers about \$150 000, is it?

**Mr Gow:** It is \$100 000.

**The CHAIR:** Okay; \$100 000. And that is really to cover the change from one builder to pick up where the other builder left off and then complete the home.

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[10.00 am]

**Mr Gow:** And to complete any defects. The total value of the insurance is \$100 000. So, if you have to claim, say, \$50 000 to complete the house, you have only got, residually, \$50 000 left to cover the defects.

**The CHAIR:** Just to be clear, the minister spoke about the fact that the government is currently underwriting the home indemnity insurance policy. You mentioned QBE. Is there a bit of a mix of underwriting at this point in time?

**Mr Gow:** There is. QBE are far and away the biggest insurer, but what is now called Great Lakes Australia used to have a very small part of the market, particularly the bottom end—builders with turnover less than \$2 million or \$3 million a year. They remain and they continue to manage that insurance. We reinsure them the same as we do with QBE. Great Lakes has looked at being able to expand their cover and to take on some larger builders as well, which is open to them because effectively the state is underwriting the risk. But we have to put some controls on how far they can go to avoid there being a bidding war at our expense between the two insurers, and that has been further refined as we go along.

**The CHAIR:** One last question: the average new home contract is, say, \$250 000; what is the home indemnity policy premium when you go and build a home for that value?

**Mr Gow:** It varies. That really depends on which builder has the contract because the insurers have different premium levels based on their assessment of the risk of the builder going broke. So, a large well-capitalised builder, of which we have a large number in Western Australia, would pay less than \$1 000. A small less well-capitalised builder or new-in-the-game one can pay in excess of \$5 000. So, there is a quite a spread in the premiums.

**Ms Driscoll:** May I just add a couple of points? In terms of Collier, I did speak with the compliance director responsible and she had organised quite recently a number of audits of Collier in relation to, basically, their administrative activities as well as the workmanship of the homes. I think what is comforting is that we have recently checked that there is no improper behaviour in terms of expecting people to pay moneys earlier than is appropriate in terms of the progress payment arrangements.

The other comment I thought that was appropriate, member, in terms of the issue you raised about QBE, to respond to your question very clearly, the state does take all of the liability at the moment. The issue is that QBE has some latent liability for the insurance arrangements that were in place about—well, it was three years ago.

**The CHAIR:** A six-year indemnity period.

**Ms Driscoll:** That is why we are talking about them having a share for those older matters.

**Hon MICHAEL MISCHIN:** Hence once the six years expires from them getting out of the business their risk disappears but in order to provide protection for consumers we are continuing to stay as the insurer. Currently, the arrangements are that they write the policies and they get paid for that because we are not equipped to do it. But one of the models that are being looked at is whether that process can be taken over by, say, the Insurance Commission of Western Australia. There are difficulties with that from a legislative perspective. So, there is no quick fix for any of this stuff, but it does require some delicate management in trying to minimise the exposure for the state, but bearing in mind the need to give comfort for those who are building their homes.

**The CHAIR:** It is an interesting area, just reflecting on Mr Gow's answer to the premium. You would have to be a fairly prudent consumer to make sure that you go to a builder where their premiums are not too high because they will add it onto the contract, so if you have a builder who is at risk with a \$5 000 premium, you end up paying.

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**Hon SALLY TALBOT:** I have one or two questions. Can I take you to page 35? I have just got a couple of WorkSafe questions. Can you start with page 35?

**The CHAIR:** WorkCover is next.

**Hon SALLY TALBOT:** I wanted to talk about WorkSafe, which I think is under this agency. Your explanation about the WorkSafe division, basically, talks about compliance responsibilities and education responsibilities. Can you talk about how you divide resources between the two activities?

**Hon MICHAEL MISCHIN:** Perhaps the director general can address that.

**Ms Driscoll:** The division is primarily focused on its inspection activities and currently there are —

**Hon SALLY TALBOT:** That is compliance.

**Ms Driscoll:** That is correct, yes. That is a mix of both inspections as well as investigations where there is a potential breach that may be taken to prosecution. Then, additionally, there is a policy area and an education area and that is very much involved in getting the message out in terms of safety practices et cetera. In fact, at the moment October is the WorkSafe month where a range of activities —

**Hon SALLY TALBOT:** So you have got three functions. You add the policy function to the two.

**Ms Driscoll:** Yes, that is in terms of the development of the regs and the legislation that applies in this domain. The primary area is in inspections and I think what is really very creditable in terms of the WorkSafe division is it actually has had an increase in the number of inspections this year over the last two years and, obviously, continues very much to focus on trying to fast-track as quickly as possible the more detailed investigations that are necessary.

**Hon SALLY TALBOT:** Okay. So, let us just talk about those inspections. What proportion of those is initiated by complaints?

**Ms Driscoll:** I would have to take that on notice. From memory, it is about a third, but I would like to provide the absolute detail to you.

**Hon SALLY TALBOT:** Could you, and if you could give us as much detail about what—well, just the breakdown between the two different categories.

**Ms Driscoll:** Certainly.

**Hon SALLY TALBOT:** But also I am interested in the level of resources that goes into each of those. So, what is the practice whereby you do an inspection that is not related to a complaint?

**Ms Driscoll:** Certainly I can talk about the approach that is taken for those matters that are not the subject of complaints. Clearly, we are constantly reviewing data in terms of lost time injury, obviously fatalities et cetera, and looking to target areas where we see greatest risk. We also get information from WorkCover in terms of the compensation claims that arise and where they have seen areas that warrant further intensive review. So, the high rates of injury that have then prompted us to focus on specific areas include things like mobile plant, manual task, work at heights, hazardous substances and machine guarding. As a consequence, there is a program of work that is set that particularly focuses on areas of high risk.

**Hon SALLY TALBOT:** Could you provide the committee with that priority list? I think I have just got two questions on notice there. Do you want to do it as one question because the first one is the numbers that are initiated by complaints and the number that is routine inspections and the second question is about the priority areas for the routine inspections?

**The CHAIR:** Have all as one.

*[Supplementary Information No A2.]*

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**Hon SALLY TALBOT:** You have got a financial commitment to run the WorkSafe division. I want an idea about how that is broken down into the three areas. So, you are saying the majority of those resources go into the compliance/inspections. What proportion of WorkSafe allocations?

**Ms Driscoll:** I do not currently have the FTE for WorkSafe alone. So, I would have to take that on notice. I do know that we have 88 inspectors with another two being recruited and due to be authorised in November, bringing us to 90. From memory, it is about 130 in the total division, but I would have to take that on notice.

[10.10 am]

**Hon SALLY TALBOT:** Can you take that on notice?

**Ms Driscoll:** Yes.

[*Supplementary Information No A3.*]

**Hon SALLY TALBOT:** The sort of information I am looking for, director general, would be along the lines of the work undertaken by the WorkSafe division—90 per cent of it is devoted to inspections, five per cent to education and five per cent to policy. That is what I am looking for.

**Ms Driscoll:** Yes; and, of course, it is the case that from time to time every inspector is doing education of some form and they may actually assist in —

**Hon SALLY TALBOT:** As part of the inspection?

**Ms Driscoll:** That is right; or, alternatively, assist in a presentation to workers et cetera. Indeed, to ask that question will be a slightly different slice, if you like, in that a person's time could be spent on a multitude of programs.

**Hon SALLY TALBOT:** Do the inspectors also deliver the education programs?

**Ms Driscoll:** From time to time, a component of their work might involve that as well.

**Hon SALLY TALBOT:** Maybe another question on notice would be: of the education programs that WorkSafe has delivered, how many are delivered by inspectors and how many are delivered by what I assume would be third parties—contractors?

**Ms Driscoll:** Or dedicated education officers within the team.

[*Supplementary Information No A4.*]

**Hon SALLY TALBOT:** As part of your answer about the inspectors, are you going to include the whole staff of WorkSafe so we can see which are inspectors and which are education officers? Do you have some people who are purely policy?

**Ms Driscoll:** Yes.

**Hon SALLY TALBOT:** Do inspectors do policy work as well?

**Ms Driscoll:** Certainly they would advise and be involved in the consultation about what is going to work and be practically relevant. I think to respond to your question—and we will seek to provide that in terms of the intent—it is, if you like, the formal layers but also the proportion of time allocated to the range of tasks.

**Hon SALLY TALBOT:** If I take you then to the following page, page 36. It is mentioned there that mental health is one of the areas—I think it is under “Proactive campaigns”. The report states —

... completed a number of key proactive team projects aligning with the *Australian Work Health and Safety Strategy 2012–2022* and targeting hazards in industry sectors of concern which include: —

One of those is —

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... mental disorders arising from psychological strain/organisational issues, particularly related to work-related stress, violence, aggression and bullying; ...

How do you deliver specific programs or campaigns that look at the prevalence of mental illness in the workplace?

**Ms Driscoll:** I am aware that information sessions are held on this particular issue across — you know, that are available for the general community. But I will take that on notice as well, in that we understood that the focus would be on the Building Commission and we do not have the WorkSafe commissioner here today, so I think it best that I take that on notice.

**Hon SALLY TALBOT:** Yes, that is fine.

*[Supplementary Information No A5.]*

**Hon SALLY TALBOT:** Do you have people working in the WorkSafe division who are specialists in mental health?

**Ms Driscoll:** I am not aware of any, but I will inquire.

**The CHAIR:** We will take that on notice too.

*[Supplementary Information No A6.]*

**Hon ALANNA CLOHESY:** I come back to the Building Commission. I understand the Building Commission has set up a register of builders at risk of insolvency; is that correct?

**Mr Gow:** Perhaps calling it a “register” might make it sound more formal.

**Hon ALANNA CLOHESY:** I think that is what the Auditor General called it.

**Mr Gow:** But, yes, we have a list that we keep up to date of builders we are activity monitoring on solvency issues.

**Hon ALANNA CLOHESY:** So it is a list rather than a —

**Mr Gow:** It is not a publicly available register in that sense.

**Hon ALANNA CLOHESY:** How many builders are on that list at the moment?

**Mr Gow:** I would have to take that on notice.

*[Supplementary Information No A7.]*

**Hon ALANNA CLOHESY:** Maybe just as a point of comparison, when was the list established?

**Mr Gow:** There has been a list of this form almost since we have been operating, whereby if an issue of insolvency comes to us it gets put on our radar. But we have formalised this process more, and also the data gathering that we have done in the last 12 months or so, through an internal committee called the FRAG, the financial regulation advisory group, which comes together to look at people who have come to our notice—so, it is around 12 months old.

**Hon ALANNA CLOHESY:** From when that was commenced to now, just as a point of comparison, it is about 12 months, so that is sort of August. Certainly the Auditor General had a perception that it was a little bit more than a list, I think. That kind of relates to my next question. How do you get on the list?

**Mr Gow:** As I say, it is a —

**Hon ALANNA CLOHESY:** What determines—what red flags—the commission to say —

**Mr Gow:** With regard to the flags that come in, we have a complaints process which I have mentioned before. If as part of dealing with a complaint that comes in we see a concern about a builder's solvency, that is referred into the FRAG process. If we have a disciplinary complaint about somebody not finishing work, behaving badly or whatever, that would feed into FRAG. Through the indemnity insurance arrangement we have with the underwriting that we now do, we

have very good access to insurers' intelligence. They are constantly doing reviews of builders to check their finances, turnover and risks. If they advise us that a builder has come to their notice, it comes to our notice. We have also taken on, in the last 12 months, a contract with Dun & Bradstreet, so they provide commercial services to people whereby they monitor corporations and others about the returns they put into ASIC, court lists, payment times et cetera. We are now plugged into that data, so if someone is notified to us through that process, they too go on the list. They are our core ways. Finally, we keep our ear to the ground, if are complaints in the press; there is also social media now.

**Hon KATE DOUST:** A question in Parliament.

**Mr Gow:** A question in Parliament; for example, if someone raises an issue with us, we go and look at it.

**Hon ALANNA CLOHESY:** At what point from complaints from consumers would you say, "Yes, that is a serious complaint and this person should go on the list of risk of insolvency"? At what point would you say that? Is it a volume of complaints? Is it the depth of type of complaint?

**Mr Gow:** The triggers that warn us that somebody is potentially in financial difficulty is slowness to complete work—they are just not getting the tradies on the job in a reasonable time; or complaints about not paying subcontractors or not paying bills, which is probably the most serious one. We also pick up sometimes demands for early payment, which was mentioned earlier, whereby builders are trying to demand money before work has been done. If you see any of those conducts, they are an indication there might be a financial difficulty and then we would raise that, and typically an inspector of some sort would go out and look at what is happening on the ground and come back with a view.

**Hon ALANNA CLOHESY:** Based on that view, that builder or company goes onto the list?

**Mr Gow:** Sorry, in terms of sequence it would be referred to FRAG to say we have a concern here. Typically, what the FRAG group would say is, "We will put an inspector out just to verify the information we are getting." When that is verified, then further action gets taken.

**Hon KATE DOUST:** At what point, commissioner, does the consumer have access to this information, because whilst these individual companies might go on your list, they are still continuing to operate and continuing to have new clients come onto the books who may not be aware of any of these issues? At what point is that information made public to protect the consumer?

[10.20 am]

**Mr Gow:** We have, I suppose you would call it, internal processes and then there are the formal naming processes or disciplinary action that we can take. Until we get to a point where we believe that some action needs to be taken or some warnings put out, we would not normally put out a general warning to consumers. If, however, we found a situation where an individual consumer has brought a complaint to us, and is being pressured to pay money for work that had not been done, we would certainly advise them not to do it, and to stay with the terms of their contract.

In terms of controlling the risk, which is essentially what we have got here, the other thing to bear in mind is that, for housing, they need home indemnity insurance and so the insurers, who are really the people who are right down there checking the details of those people's finances on a regular basis, have the ability to close down access to indemnity insurance, which closes down access to new work. We have had a number of cases where we have been aware, and we have spoken with, and by joint agreement insurers have closed down access to indemnity insurance, either restricting it or closing it down completely, while we complete an investigation, and until we come to a view where there is a need to do something public.

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There is a potential risk that, if we announce that we are investigating a builder that is in fact not in financial difficulty or has reasonable prospects of continuing to trade, that can be difficult as well, so we need to be balanced in the way that we deal with this information.

**Hon ALANNA CLOHESY:** So there is no real way of flagging to consumers at the moment, particularly if they are going to sign up to a builder, that a builder is at risk of insolvency and has been under investigation for some period of time?

**Mr Gow:** Not until we come to the view that we need to either put out a warning or take some formal action in respect to that.

**Hon ALANNA CLOHESY:** Which could, in theory, take months—six months or 12 months.

**Mr Gow:** It could, but potentially during that time, if there was a serious risk, we would have worked with the insurers to close off new people coming in.

**Hon ALANNA CLOHESY:** Unless you were not working with—there was a different insurer, for example.

**Mr Gow:** There are only two insurers, and the relationship and the data flow is very clear, and very transparent there, so we have never had any difficulty with an insurer agreeing to react where we raised a problem with them, and equally we are usually very supportive of the insurers limiting access to work when they raise issues with us.

**Hon ALANNA CLOHESY:** So, why did it take 15 complaints, then, for BDH Homes and its various incarnations before action was taken which, in effect, was insolvency, and consumers were made aware of the problems with this company?

**Mr Gow:** In broad terms—again, I do not have all of the detail of the file in front of me—when issues were raised, we investigated the builder. The builder indicated that he had financial issues, so we knew there were some concerns there, and he had a process in place to bring in additional money into his business.

**Hon ALANNA CLOHESY:** So the commission was satisfied?

**Mr Gow:** On the basis of that, we did not think there was a need to deregister him through our processes, but the insurers, with our knowledge, closed off his access to new work, until he had sourced that finance. In the end, it did not eventuate, and he went insolvent, but during that period—I would have to check to be absolutely certain on this point for every person—no new people were being signed up because he did not have the access to the insurance. I have got a feeling there may have been one or two that he did, now that I recall, but in bulk there was no flood of people being signed up.

**Hon ALANNA CLOHESY:** It does demonstrate that people are signing up even when they have been closed down by the insurance company, and that there is still no mechanism to warn consumers that builders are either under investigation or are close to insolvency, and that the insolvency is not necessarily the fault of the investigation. The reason behind the insolvency might be any multitude of business decisions made by that company.

**Mr Gow:** I would probably challenge you and say that there is a mechanism to warn people—several mechanisms—in terms of Building Commissioner's warnings, legal action, disciplinary action et cetera, that we can take. The issue here is how quickly, and what evidence we have to actually put out a public warning as opposed to control access to work while we continue investigation. There is a mechanism, but I think your issue is that we have not used it.

**Hon ALANNA CLOHESY:** So this company is particularly still out there marketing on new home sales at the same time and, as you said, signed up a couple of new consumers at the same time. That process needs to be examined and more clearly. Related to that is the licensing system.

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**The CHAIR:** Sorry, if you can make this one last question, noting the time, and then I will hand over to Hon Peter Katsambanis.

**Hon ALANNA CLOHESY:** Okay. When will the online licensing system be implemented?

**Mr Gow:** The director general can perhaps give greater detail of that, because it encompasses the whole department.

**Ms Driscoll:** The first online licence to be rolled out will be high-risk work licences, and a soft launch of that is proposed next week. It is intended over the following year that we will progressively use that same new facility for licences across Commerce. The next ones after this are, I think, electrical contractors, and I think plumbing is in the next batch, and then there are some property industry ones in the following batch with gasfitters et cetera. It is a program over a year. It is the case that builders' licensing will actually be last, because we are rolling out in the sequence of complexity. Builders have the added complexity of the detailed financial analysis that is done in terms of each application, and the financial viability of the business. Already it is a rather judgement-based assessment, as opposed to something that is going to redeem enormous dividends from an online process. We are really looking to have a lot of the work available to applicants out of hours, so they will be able to confirm their identity, do a national police clearance and link with credit provider assessments all online and basically launch the application in one sitting, which is a big difference to having to go around to post offices et cetera.

**Hon ALANNA CLOHESY:** So at least for the next 12 months for builders, it will still be a paper and ink process?

**Ms Driscoll:** Yes.

**Hon ALANNA CLOHESY:** Okay. Will the new licensing interface with the complaints system? Will you be able to say, "This is the builder that is being licensed, this is the investigation that is currently underway, that investigator X is currently on site examining"?

**Ms Driscoll:** Absolutely. Already the system for builders licences is the same as the complaints database, and any application for a licence needs to consider the complaints that are held against that same entity and so that is —

**Hon ALANNA CLOHESY:** And renewals?

**Ms Driscoll:** Absolutely, yes.

**Hon PETER KATSAMBANIS:** Do I get to ask a question at all, or do I just make up the numbers?

**Hon ALANNA CLOHESY:** Make up a question.

**Hon PETER KATSAMBANIS:** No, I am here to make up the numbers, am I not?

**The CHAIR:** Members, we will keep it civil. I will go to Hon Peter Katsambanis.

**Hon PETER KATSAMBANIS:** It would be good if we could keep it civil.

Thank you. Everything you do is important, but red-tape reduction is clearly important. I refer to page 50 of the annual report. I do not have much time and I have a number of questions around this. How do you determine the bills that need to be repealed?

**Hon MICHAEL MISCHIN:** The department is conducting reviews constantly as to areas where red tape can be reduced. It gets feedback from a number of advisory bodies that are set up under each of the divisions, and will advise me as to areas that are worthy of attention. Otherwise, I personally get feedback from people that I meet in the industry, when I have contact with them, such as REIWA and the like, and bounce the ideas of the department in order to determine whether there are ways that processes can be improved. As far as mechanical processes are concerned, perhaps the director general can explain.

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[10.30 am]

**Hon PETER KATSAMBANIS:** I am not interested in the mechanical processes at this late stage because we just do not have time. What I am keen to know is whether there is there regular consultation with industry as to which parts of red tape they want to see removed.

**Ms Driscoll:** Yes, absolutely. It is interesting that often it is the industry itself that is quite supportive of the existing regulation. An example is the current review of motor vehicle repairer and dealer legislation. We have spent essentially two years with the industry working through the possibility of reducing the amount of regulation in that area—do we need salespeople licensed if we have got dealers licensed, for example? We have also spent a lot of time looking at the future in terms of the nature of cars going forward and the likelihood of them being less owned but more user-accessed, and the fact that most would be bought online. There is quite a reluctance to modify the regulation that exists. Having said that, employment agents is an area where the government has supported the development of legislation to remove licensing in that area but ensure that certain provisions that protect the job seekers are protected.

Another area that the minister has been very keen for us to advance, and we have not been able to do it as quickly as he would have liked, is auctioneer's licensing—the question of why can auctioneers in the property industry not be just part of the real estate licence, and do we need licences in some of the other auctioneering activities? Certainly there is ongoing discussion with the building industry, and there have been two summits this year that the government has called to seek the views of the building industry about where they would like to see red-tape reduction.

**Hon PETER KATSAMBANIS:** All this sounds high level. All this sounds like you go through the representative bodies, and I understand that. But is there a formalised process—not an ad hoc process where they might bump into the Attorney General or the minister by accident—where members of the public and businesspeople who are struggling under red tape can actually seek some form of redress?

**Ms Driscoll:** Certainly the Department of Finance has the Regulatory Gatekeeping Unit and there is a point of reference for people if they are really frustrated with regulation. But I think it is appropriate to mention that there is a property industry advisory committee and a motor vehicle industry advisory committee. There are many advisory committees in the building area. There is also a consumer advisory committee. We regularly also have resident committees that represent retirement villages and park homes et cetera. So, there are many interest groups that represent the community as well as industry, and we are constantly asking them, “What do you see we could do less of?” But to some extent, certainly the community, too, often are looking for more safeguards as opposed to less. So it is a conundrum, and we continue to try and challenge people.

**Hon PETER KATSAMBANIS:** So if you are a plumber, a cafe owner or a retailer and you are struggling up against this barrier of legislation, and some of it in practice you realise is a piece of paper that gets shuffled around from one department to another, and you think—I am saying this from the businessperson's point of view—that this can be done better, there is no process where they can click a button and report red tape so that we can look at it and address it.

**Hon MICHAEL MISCHIN:** There is a comment form on the department's website. What I find in my experience is that people complain about red tape, but when we ask them which particular piece of red tape is causing a problem, they are lost for an answer. The ideas as to how it can be reduced come from a variety of sources, as I have indicated. The department is active in trying to identify areas that do need attention. Apart from that, the advisory committees are meant to represent, as well as the community, the industry and be a focus for those in the industry who think that there is a piece of paper that they do not need, and they do not do it.

**Hon PETER KATSAMBANIS:** Not always, but sometimes, these industry groups act as craft unions or closed shops. The director general in her comments was quite careful to suggest that there

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are a number of industries that you liaise with that at a high level are very happy to keep the existing regulation.

**Hon MICHAEL MISCHIN:** I will just distinguish that, if I may. That is a slightly different issue. There is one thing about regulating the industry, and, yes, I have found in my experience that a number of trades and professions do enjoy the element of regulation by government to ensure that the standards in that industry are at a particular level and that others—I suppose the subtext is—who may decrease the reputation of that industry and create problems in that industry are kept out unless they meet those standards. That is a different form of regulation to the one that is involved with red tape, which is where there are processes that may be unnecessary or that may be truncated and still achieve the relevant end, which is appropriate consumer or industry protection. So there are two different issues, and it is the latter that quite enjoy any feedback that can be obtained through these bodies as to how that can be reduced, and it is in their interests to do it. If there are ways of filling in one form instead of five, I am sure that we will be told. But we are also active in doing it. The Department of Finance is responsible, as has been mentioned, for coordinating the red-tape response for government. There are comment facilities I think even on the Department of Commerce website if people have complaints and the like, and those I expect are analysed in order to see whether there is anything worthwhile that can be submitted for policy consideration.

**Hon PETER KATSAMBANIS:** We do not have time today to go into that but, with respect, there is also a grey area in between those two areas that you talk about. In relation to one of the industries that was raised earlier, I really cannot see how someone wanting to sell the product that that industry sells at a quarter past one on a Saturday afternoon is going to lead any diminution of any standard anywhere.

**The CHAIR:** Noting the time, I have got one brief question, although it might end up having a lengthy answer. In regard to settlement agents and real estate agents and the searching of titles to determine what is on a property, there have been a number of imposts and encumbrances now put on properties in fire-prone areas and environmentally sensitive areas that are behind the title. What procedures are being put in place with real estate agents or even settlement agents to make sure that those things are identified for consumers when they buy a property?

**Ms Driscoll:** There are new codes of conduct for the real estate industry and settlement agents industry. Certainly from the real estate industry in particular, there is an obligation to convey any material facts, when one is selling a house, that are known to the agent. If they are selling in a regional area, I would expect that a material piece of information is being aware of this legislation and ensuring that they obtain a property interest report, which now includes information about —

**The CHAIR:** Sorry, a property —

**Ms Driscoll:** Interest report, which is the Landgate report that you were referring to, yes, which obviously would convey that that particular property is in that zone. Peter, the commissioner, may have further comment in terms of the information available to agents.

**Mr Gow:** Yes. One of the key things that we are doing in this area is putting in place a building permit database. That has now been completed and we are certainly bringing local governments online to feed that information in. That has got a lot of tie-ups with everybody from ABS at one end, who can use that to extract their building statistics, to Landgate, who extract information and feed it into these property industry reports. It is the same thing with—you mentioned bushfire-prone areas. The DFES commissioner has provided a map of bushfire-prone areas. That is in an electronic form which maps straight onto the Landgate records so that people know instantly that that block of land is or is not in a declared bushfire-prone area. So the linkages of data going into this are getting better and better and people are getting more and more aware of what you can get through these property interest reports.

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**Ms Driscoll:** I did mention settlement agents. As basically the contract of sale has already been signed—usually—by the time the conveyancer obtains the information, I am not certain that it would be an obligation of the settlement agent to point it out. The contract has been signed. They may as a service indicate, “Did you know that it is in a fire-prone zone and there are consequences if you are building?” et cetera. But I just need to emphasise —

**The CHAIR:** Which is my concern—that this stuff is found out after fact. Anyway, we had better leave it there because we are running short of time.

On behalf of the committee, I thank you for your attendance today. The committee will forward the transcript of evidence, which highlights the questions taken on notice, together with any additional questions in writing, after Monday, 31 October 2016. Responses to these questions will be requested within 10 working days of receipt of the questions. Should you be unable to meet this due date, please advise the committee in writing as soon as possible beforehand. The advice is to include specific reasons as to why the due date cannot be met. If members have any unasked questions, I ask you to submit these to the committee clerk at the close of the hearing. Once again, thank you for your attendance today. As a reminder to members, the deadline for submitting additional questions is 12.00 pm—midday—on Monday, 31 October 2016, as stated in paragraph 8.2 of the procedure policy.

**Hearing concluded at 10.41 am**

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