

TRANSCRIPT

LEGISLATIVE ASSEMBLY ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into Employers and Contractors Who Refuse to Pay Their Subcontractors for Completed Works

Melbourne – Monday 29 May 2023

MEMBERS

Juliana Addison – Chair

Martin Cameron – Deputy Chair

Jordan Crugnale

Daniela De Martino

Sam Groth

Martha Haylett

David Hodgett

WITNESSES

Mr Andrew Grear, Executive Director, Building Division, Department of Transport and Planning; and

Mr Aaron Hemsley, Director, Building Policy Projects and Intergovernmental, Building Division, Department of Transport and Planning; and

Ms Katrina Excell, Chief Finance Officer, and Executive Director, Corporate Services, and

Ms Lisa Rongo, Senior Legislative Adviser, Victorian Building Authority.

The CHAIR: Today the committee is hearing evidence in relation to the Inquiry into Employers and Contractors who Refuse to Pay Their Subcontractors for Completed Works, and that evidence is being recorded.

All evidence taken is protected by parliamentary privilege, as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Assembly standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record – and we will start with you Aaron – can you please state your name and any organisations you are appearing for.

Aaron HEMSLEY: I am Aaron Hemsley. I am the Director, Building Policy Projects and Intergovernmental, in the Department of Transport and Planning.

The CHAIR: Terrific. Thanks for joining us today, Aaron.

Andrew GREAR: I am Andrew Grear, Executive Director of the Building Division within the planning group, Department of Transport and Planning.

The CHAIR: Thank you, Andrew.

Katrina EXCELL: I am Katrina Excell, Chief Finance Officer and ED, Corporate Services, with the Victorian Building Authority.

The CHAIR: Thanks, Katrina.

Lisa RONGO: I am Lisa Rongo, Senior Legislative Adviser, Victorian Building Authority.

The CHAIR: Thank you so much for being here. We are really looking forward to hearing from you today and the opportunity to ask some questions. Did you want to kick off with a discussion to start off with or a presentation?

Andrew GREAR: I am happy to do just an opening statement to set the scene if that assists.

The CHAIR: Sure. That is terrific.

Andrew GREAR: My colleagues of the VBA will do the same, and then if the committee is happy, we can go to questions if that works.

The CHAIR: Terrific. That would be great. Thanks, Andrew.

Visual presentation.

Andrew GREAR: As you will see, this presentation covers quite a few areas. I will move as quickly as I can through those. I would like to thank the members for the opportunity to have this conversation.

As you can see on this slide, the *Building Act* is the head Act. There are then the building regs, the plumbing regs, the National Construction Code and the Australian standards. I will not read through the slides; they are provided. We then also have the *Architects Act*, the *Residential Tenancies Act*, Cladding Safety Victoria legislation and the *Domestic Building Contracts Act*. But the purpose of today is really to talk about the building and construction industry security of payment legislation. That is going to be the focus of what we will talk about today.

This slide provides an overview of the security of payment framework, which comprises the Act and the regs. The framework is supplemented by guidelines. Principally the framework seeks to meet two objectives for persons carrying out construction work or providing related goods and services: one, persons are provided statutory entitlements to receive timely payments for works undertaken, and two, persons are able to access a process to recover payments for work undertaken without the need for litigation. At the high level it is important to point out that if the first objective of the framework is working effectively – statutory entitlements to timely payments – subcontractors and tradespeople would only require a traditional court process to recover payment by exception. That is the ideal. It may be a bit of a utopia, but that is what it is about.

An effective, efficient and strong security of payment framework ensures the flow of payments across the industry. Now, that is pretty critical for three reasons: one, it supports the building and construction industry. Why? It is a critical sector that supports economic growth and jobs in the economy. The sector contributes \$21.6 billion per annum to the Victorian economy and employs 310,000 people. It is about 9 per cent of the Victorian workforce. That was in the 2021–22 financial year. By any stretch of the imagination, including with the projections that we are talking about, I think we will overtake New South Wales in terms of scale of population in about February next year. If you take that through everything that we do in Victoria, we are definitely on a growth trajectory. The other thing to say is that the vast majority of businesses in the building and construction industry are small businesses. Approximately 90 per cent of businesses actually have less than five staff.

The second point is that this process mitigates the impacts of structural vulnerabilities in the industry which lead to higher insolvency rates, particularly for subcontractors. I will talk more about that on the next slide. The third is that it supports the financial viability of business and workers. When workers and businesses do not receive timely payment, their financial viability is threatened. This increases the risk of substandard work delivered by contractors and subcontractors to meet costs and deadlines. This in turn increases the risk of building defects as part of the final build. It also sees a deterioration of mental health for workers and business owners, as was explored in the Commonwealth's 2020 *Small Business and Mental Health* report. Financial concerns are one of the greatest stressors, particularly maintenance of cash flows in this sector. When these pressures culminate in business insolvency, the consumer may face significant delays and transaction costs to find replacement practitioners or tradespeople willing to complete the work.

Despite the role of the strategic security of payment framework to manage payment issues, the process does not resolve all payment issues experienced by subcontractors for at least two reasons. There are more, but I will just focus on these two. One, the matter is resolved outside the security of payment framework – that is, they do it another way in an informal agreement – or two, the security of payment adjudication outcome is not accepted and then it is referred to the relevant court.

Given the uniqueness of the security of payment framework in the building and construction sector, I thought I would just focus on a couple of things with this slide. It is worth pointing out that our understanding is that the security of payment framework is unique in the sense that only the building and construction industry has a legislative framework seeking to support timely payment for persons down the contract chain – that is, subcontractors and tradespeople. There is also a security of payment framework in each jurisdiction, and as I was in the room to hear the earlier speaker, probably the most contemporary at the moment are New South Wales and Queensland, and Western Australia has just done work as well.

The security of payment framework is necessary due to structural vulnerabilities that are unique to the building and construction sector. These lead to higher insolvency rates, particularly for subcontractors. These structural vulnerabilities include firstly, a lack of capital that is held by firms – and recent media in and around the Porter

Davis et al. matters show us that – two, a fragmented market, encouraging underquoting and many participants at each contract node; and thirdly, vulnerability to input price increases. We all know that timber, steel et cetera – we have seen materials increase. And there is a prevalence of fixed-price contracts.

So due to the structure of the contract chain, anecdotal evidence would suggest that payment practices are less than best practice. Late payment pushes cash-flow risk down the contract chain to parties less able to manage it – that is, small businesses, tradespeople and subcontractors. Cash flow is king for those businesses. At the same time, temporary but persistent market pressures due to the pandemic are exacerbating these structural vulnerabilities. I will not go into the price increases which we have seen, but we have seen approximately 40 per cent price increases in some inputs.

The security of payment framework is not the only way the Government can support the flow of payments in the building and construction sector – government has a number of key levers to ensure the payments actually flow. A couple of them are (1) the *Domestic Building Contracts Act* administered by the Minister for Consumer Affairs. That framework outlines the legal requirements for contracts the consumer enters into with a builder for building or renovating a home. It starts at a point, we also know because of recent times, but there are questions about that point and what constitutes signing up at that point; people have had different interpretations. The *Domestic Building Contracts Act* provides for limits on deposit amounts, restrictions on the stages of when payments must occur and statutory warranties for the consumer. It also establishes the Domestic Building Dispute Resolution Service Victoria, which seeks to resolve disputes for both consumers or builders prior to a court or tribunal process.

The second is the Victorian Government procurement policies and procedures, which are administered by the Assistant Treasurer, noting that in most government contracts involving contracting direct to head contractors, government can play a role in influencing best practice payment terms through the contract chain. Third, programs and supports to lift business acumen are available through Business Victoria. The Minister for Small Business manages those, and they look at effective and targeted education programs to lift business acumen, which will assist mitigating identified risks for businesses. And finally, there are relevant industrial relations rules that are managed through the Minister for Industrial Relations. Industrial relations policy generally has an impact on the culture, the tone and the manner in which the building and construction sector works. In addition, industry can also play an important role to support efforts in this space. Industry actions already include developing and promoting programs to lift business acumen amongst members and supporting and promoting efficient dispute resolution processes.

As I mentioned earlier, the security of payment framework provides statutory entitlements for those engaged in the construction sector. This slide outlines the specifics of the statutory entitlements, which includes a progress payment effectively due 30 days after construction work was first carried out or goods and services were first supplied if the contract is silent. This time frame consists of a statutory entitlement to make a claim for payment 20 days after construction work was first carried out or goods and services were first supplied if the contract is silent. The due date for a progress payment is 10 business days after a payment claim is made if the contract is silent. The amount of the progress payment is calculated on the basis of the value of the construction work carried out or the value of goods and services. The definitions of ‘claimable variations’ and ‘excluded amounts’ can impact what can be considered for a claim on a progress payment under the security of payment framework. If a progress payment claim is due and payable, the claimant is entitled to exercise a lien in respect of the unpaid amount over any unfixed plant or material supplied. Should these statutory entitlements not be effective, the second key objective of the security of payment framework – that is, the adjudication process – can be drawn on to recover progress payments.

This slide provides an overview of the key outcomes of the security of payment adjudication process. I will only just touch upon this, because I know my colleagues in the VBA are going to talk further about this. These figures are from 2021–22. Subcontractors initiated most claims. Most claims were made against the head contractor or a developer. The majority of the number of claims made were for less than \$50,000. Thirty-nine per cent of applications did not proceed to adjudication. Of these, 50 per cent were withdrawn and 23 per cent saw early settlement. There has certainly been a recent decrease in adjudication applications, likely due to pandemic disruptions.

As tables 3 and 4 show on this, the applications are unevenly spread across Victoria. The vast majority – 77 per cent – are lodged within Melbourne, unsurprisingly. The other two key spots are the North West and Latrobe Valley–Gippsland, which are the main areas.

Table 5 shows us the total number of adjudicated claims – 61 per cent of all applications were adjudicated – and the value of claimed and adjudicated amounts. Twenty-six per cent of the claims were awarded – at varying ranges – for the financial year 2021–22. As mentioned before, most claims were \$50,000 or less. For the higher end claims, while they are lower in number, they do obviously represent the vast majority in terms of dollar values. Of the 324 payment claims submitted for adjudication in 2021–22, 61 per cent resulted in a claim determined by an adjudicator. Of the 39 per cent not determined, 50 per cent were withdrawn, 23 per cent were actually settled, 6 per cent were undetermined – they are still pending – and 20 per cent were rejected for no jurisdiction or other reasons (6 per cent), or they timed out (14 per cent).

In closing, the department is progressing to improve the operation of the building system on a number of fronts. The first thing is there is the review of Victoria's building system, and you would be aware of the expert panel on building reform which has already landed one report and is scheduled to land a second report and is also scheduled to complete its work by the end of 2023. They have turned their mind to a number of these matters. The second, of course, is that the cladding rectification program has assisted in this space, because the removal of cladding has also enabled us to identify a range of defects, and it is ongoing evidence in terms of the work that needs to happen in terms of basically getting quality builders. The third is that we are supporting a more effective security of payment framework by remaking the security of payment regulations. To be clear, that is principally due to the sunset provisions, where regs sunset at the end of 10 years. But it does enable an opportunity to do alterations and improvements as needs be. Finally, of course, this inquiry is going to give us a range of things to consider by Government, and then obviously the department will be instructed accordingly to take on any of those.

I will stop there and hand over to my VBA colleagues.

The CHAIR: Thank you very much, Andrew. Thank you, Katrina.

Visual presentation.

Katrina EXCELL: Thank you, and thank you for the opportunity to present today. Like I said, I am the CFO and the ED of corporate services and Lisa is the manager responsible for the SOP function within the VBA. So with the presentation, I am just going to basically focus this presentation on really the role and functions that the VBA do under the security of payment Act. Mainly that focuses in on the adjudication process, so I will take you through that. So really just the overview of obviously what the VBA do is: we are here to regulate the building and plumbing practitioners, and monitor compliance with the relevant laws, regulations and standards. We are responsible for issuing licences, conducting inspections, handling complaints and promoting safe and efficient building practices. It aims to protect the communities and maintain a high standard of quality and safety in the built environment.

So really in respect of our role under the security of payment Act, the Act is actually designed to provide a fast, inexpensive process to recover payments due under a construction contract. Our function is: we authorise the nominating authorities, so the ANAs, and I will talk about that – there is a slide coming up in respect of that. We maintain the register of ANAs, and that is done by keeping it updated on the website who the ANAs are so that people can know where to find them. There are currently four at the moment. Then we maintain the records of determination, and this is a record of all documents that the ANAs or adjudicators are required to submit through to us, with all the documents so we can keep track of those. We also publish – which is non-identifying information – the adjudication determinations, and there is a slide coming up on that. We also keep a regular review of the administrative effectiveness of the Act.

Our regulatory functions are just the oversight of the ANAs and the management of that process, so like I said, it is quite, probably, narrow in that respect. We provide information about the framework, which is in respect of information on our website and assistance with forms and things like that on the website. I guess from application of the Act and what is covered, pretty much everything on the left is covered, which is, you know, a vast array of industries. Sometimes some of them are also outside the remit and our regulatory space as well – so electrical and things like that. What is not covered are the domestic building contracts between a builder and

a home owner. So like Andrew would have said previously, they are covered through the *Domestic Building Contracts Act*. However, the contracts between, say, a home owner's building contract and a subcontractor are covered. There are also some sections, sections 5, 6 and 7, of the Act, which exclude things like the mining, oil and gas exploration, employment contracts, contracts that are not based on value, and loan agreements. Also it does not apply for works carried out outside of Victoria.

This slide basically takes you through the overview of the adjudication process. So this gets to the point where obviously the claimant – there has been a dispute, so they are going to use the adjudication process in respect of this. So the claimant lodges an application with the ANA, and basically the ANA then, usually within four days, nominates an adjudicator. Then the adjudicator accepts that nomination, normally within four days of that application being made. Then the adjudicator makes a determination. It is made within 10 days, but it can be extended to 15 if it is accepted by the claimant. Then basically the adjudication determination is in writing, reasons given and given to the ANA, and then that is reported back through to the VBA, and we record that as well.

So in respect of the ANAs and our management, currently, like I said, there are four ANAs in Victoria. There is Adjudicate Today, Resolution Institute, Rialto Adjudications and RICS, which is the Royal Institution of Chartered Surveyors. So really how we have set it out is obviously there is the SOP Act, there are the regulations and the ministerial guidelines, and we also have the ANA conditions of authorisation and also the procedural guidelines that the ANAs have to abide by.

So the current authorisation period commenced on 1 July in 2022, and that goes for three years. And through that the ANAs are required to demonstrate their ongoing compliance with their conditions of the authorisation, and they have compliance and reporting requirements through to us as well. The current authorisation period expires on 30 June 2025.

In respect to the publication of the adjudication activities, really what the ANAs are required to do is provide their quarterly reports through to us. We consolidate all those quarterly reports then consolidate them in our annual data, which is then published in our annual report. And on our website there are the annual statistics report and the activity reports and there are some historical reports, which all sit on our website and also on the Data Vic website.

This slide is the activity and basically what has happened since 2007–08. I guess you could have a look at sort of 80 per cent of the activities that have happened in the last nine years, probably since the VBA was established. I think Andrew even touched on this: 65 per cent on average is determined – this is the applications – and then it takes the difference of what has been determined and what is still not determined. With all this data, it is also a point in time. So it is annualised data, and so some obviously are not determined, and they can roll into the next year as well. Reasons that, say, for instance, they are not determined are: there could be conflict, the jurisdiction is not right, they were settled by the parties prior to going through, they have timed out or some are withdrawn by the claimant. So if you look at the past, basically about 10 per cent were probably over the journey I guess settled by parties, and about 15 per cent were withdrawn by the claimant, so sometimes it does not even get to finalisation.

David HODGETT: What does 'timed out' mean?

Katrina EXCELL: Basically some people let it time out. So it goes to the –

David HODGETT: They do not respond within the deadline or something, it just lapses?

Katrina EXCELL: I think it is the deadline.

Lisa RONGO: So section 28 of the SOP Act allows the claimant to withdraw the application if the ANA has not nominated an adjudicator within four days. It also provides for the adjudicator to allow the matter to essentially time out and not make a decision, and sometimes that is at the request of the parties.

David HODGETT: Yes. Okay. Thank you.

Katrina EXCELL: And then the next slide is just about the claimed versus adjudicated amounts. Like I said in respect to this, there is no rule of thumb on what is claimed and what gets adjudicated. So it is really the

difference. Say, for instance, someone can put a claim in, it might be adjudicated and the outcome might be 30 per cent less than what was put in. So roughly at the moment they sort of track around – this year's stats – about 27 per cent. So from the amount of claims that have come in only about 27 per cent of that from a dollar value has been adjudicated and completed.

The CHAIR: Katrina, could you just explain what was going on in 2019–20?

Katrina EXCELL: I guess, like I said, it is a point in time. It might have been that there were some large claims or some large contractors. I do not know if Lisa has got any more detail on it.

Lisa RONGO: We could probably extract some of that data and provide a written report. My recollection is that there were a number of big-value claims in that period that did not progress through the adjudication process, but we could pull that together for you.

Katrina EXCELL: Yes.

The CHAIR: That would be interesting. Thanks.

Jordan CRUGNALE: Can I ask, because the same thing happened on the previous slide – so it has increased since the VBA has been established and then has that sharp decrease in 2019. I am just keen to drill into that.

Katrina EXCELL: We will have a look at it, but it can be around when COVID happened as well. It is about I guess the use of the SOP Act, so I am happy to provide a bit more information on that. The other one is just really I guess the cost of adjudication. Really, basically it can be adjudicator fees, ANA fees, certificate fees and administration fees, but it is mainly made up entirely of adjudicator fees. None of the ANAs actually charge an application fee anymore, but one ANA does charge a fee for certificates. There is a fee-share arrangement on average at a ratio of about, from an ANA to the adjudicator, 20 to 80. The fee all depends on the complexity of the issues that you are dealing with, how good people's documentation is that they have provided and the paperwork and submissions for the adjudicator. All adjudicator fees are published by each of the ANAs on the websites. Some do an hourly rate. Some do fixed rates. It is hard to get a real average of what it is, but we have tried to indicate there the average of each of those segments where the claims are. This slide talks about completed claims, not just the total claims, so these are the ones that have actually been completed.

Martha HAYLETT: There are four ANAs, right, Katrina? How is the work divvied up between the four? Is it allocated by the VBA, or how is it done, in terms of who deals with what?

Lisa RONGO: By application – so it is determined by the claimant making an application to an ANA. They can make that application to any ANA – unless the contract provides a list of three, and then the claimant must make an application to one of those three. So it is the choice of the claimant.

Martha HAYLETT: Does it look like there is a preferred ANA? Do most people go to particular ones and then others are going to others?

Lisa RONGO: We do have some data on where that falls, so we could have a look at that.

Martin CAMERON: Just following on from that, is it what the claim is for – like, a particular part of works goes to a particular ANA?

The CHAIR: An ANA could be really strong in plumbing, do you think?

Martin CAMERON: Yes, or electrical. Are they divvied up that way?

Lisa RONGO: We can have a look. I think generally the way the ANAs present themselves is not so much about a trade or industry focus. There is no sort of promotion of particular skills – or even their adjudicators.

Katrina EXCELL: That is the final slide. We are happy to take any questions to assist the committee's understanding. Over to you.

The CHAIR: Terrific, Katrina. I might kick it off, and I think this is probably a good starting point. The VBA has a role in regularly reviewing administration and effectiveness of the Act. From the submissions that we have received, whether they are from adjudicators, industry groups or academics, there has been a real sense that the Act is outdated and needs to be improved and a lot of comparisons to New South Wales, WA and the work that is being done there, as well as Queensland. So how does the authority undertake this role, aside from the collection and publication of data, in terms of reviewing the Act?

Katrina EXCELL: Absolutely we maintain our functions and things like that, and from I guess the oversight in the review we do promote it. We do put it on our website. We do things like that. We work in conjunction with the department as well. I do not know if there have been any. I think in the past there probably have been some reviews that Lisa was involved in, but I think we have not done – there is a lot coming up, review in the building segment and the sector, so I do not think a review of SOPs, probably, you would do in isolation. It would be through what Andrew said. Is there anything else you want to add to that, Lisa?

Lisa RONGO: In terms of the role in keeping the Act and regs under regular review, our principal focus is on the operation of the adjudication process, because that is the only process of the mechanisms and entitlements under the Act that we have a direct line of sight on, and the only process in which we have involvement. That is through monitoring the adjudication activity, looking at cross-jurisdictional analysis to see if our trend is consistent with other jurisdictions, but our focus is on how the adjudication process is working.

The CHAIR: Terrific, thank you. Other questions?

Jordan CRUGNALE: Can I ask in the adjudication process and the claims that come in and then the adjudication, how that compares with other jurisdictions. Also is there sort of a weighting of certain subcontractors in that that come seeking that adjudication?

Lisa RONGO: On the jurisdiction, yes, we can come back to you on the cross jurisdiction and also probably on the subcontractors. The stats report that the VBA publishes, which has been spoken about today, talks about the claimant and respondent types and some of those trades, but you want to go into the type of work?

Jordan CRUGNALE: Yes.

Martin CAMERON: As a former tradie five months ago before stepping into the current role, as a plumber in country Victoria, the avenue to be able to access, to say, 'Hey, I'm not getting paid by the builder or contractor' – I have been in the game for over 30 years and realistically I cannot remember ever seeing this or knowing this was an avenue. A lot of people, the mums and dads, that go into the trade industry in country Victoria, they do their apprenticeship and then think, 'Hey, I'm going to go in,' and you are dealing with mates that are the building contractors, which does create a little bit of conflict. Do you think that it is not widely known enough for country Victorian tradies? Are they not looking in the right spot? Is the method of getting the word out there that this is an avenue that you can pursue just not getting through to them, that this is the avenue? Because as I said, I had never heard of it, and I know talking to a lot of other tradies back then when things were tough and even now that I know that this is an option, they have got no idea that this avenue is available to them. That is open up to anyone.

Katrina EXCELL: Yes, I think we do promote it on our website and there are all the socials, but it probably more comes back to that initial training through the education part of it as well. I do not know if, Lisa, there is anything else you want me to – we do a lot; one of our highest hit sites is the SOP section. I think there are 18,000 or so hits on that at the moment, so it is out there, but it has probably had some focus off it of late as well.

Martin CAMERON: I am probably talking about more my vintage, because they are not up to date with social media to be able to access it all, just that other avenue – they like to get a letter or an email they can physically read or see rather than a pop-up on a Facebook page or VBA website.

Lisa RONGO: VBA did partner with Small Business Victoria in 2016 to deliver a course focused on tradies and the SOP Act and how that can assist, so I think that ran from about 2016, which is the same year we released the video, until about 2020. I would have to check. Actually one of the directors of one of the ANAs had tendered and delivered that program. I think MNAV actually was our first initial host, and it was definitely

intended to try and contact subbies in trades and I think it had a good start, but it did just sort of drift off in the end. It was actually delivered online, and that did not really work as well as the face-to-face delivery.

Martha HAYLETT: Just following on from Martin's point, because it is a really good one, how do you think we can better promote this? Because our first witness said promotion is a big aspect of it, and there is the internet and all that sort of stuff. Is there more outreach that you think can be done? What ideas, what proactive ideas, do you think you have currently on better ways to promote it in the future? I do not know if that is –

Andrew GREAR: I am happy to weigh in there. From the department's perspective, we think the answer is 'many and varied'. What do I mean by that? What I mean by that is the authority can do work – the government department. When I had the opportunity to give you an informal briefing last time, I made reference to the VBA's YouTube clip. I think it is also a partnership with the professional groups, so the master builders association, the Master Plumbers – those things. As one of the members has said, I think the reason for that is there is not a magic answer. There is not one magic platform. It has actually got to be a multitude of platforms, because those people that are starting in the industry – no disrespect to people with my hair colour – are a bit more phone savvy in terms of the info that is actually there, whereas others are not. So you actually need the full spectrum in terms of that. The other thing is that we have got, as all the stats are showing – and the master builders association, the HIA, the plumbers and the Electrical Trades Union et cetera will say the same – that average age in terms of those trades is getting older and older, so having the messages go to those. There is a lot of information out there, and I am not a marketing person, but obviously we talk to marketing people to get messages out. It is: how do you get them to come to it? You know, you start googling and go across a whole range of industry and government websites. There is a lot of information, but how do you actually get them to have a look at it? If the committee comes up with an answer to that question, I think there will be a lot of us who would be very happy to hear it, please.

The CHAIR: I think even, moving forward, with the younger generation coming through, perhaps there is a role for us at TAFE to make sure that we are promoting it to the next generation –

Sam GROTH: During their apprenticeships.

The CHAIR: coming through. Can I just ask, Katrina: what is our presence, following on from Martin's question, in regional Victoria in terms of the VBA? Do you have officers across the state or representatives in key communities?

Katrina EXCELL: It is usually the office of the building surveyor. Usually they do a lot of regional – I guess they go out and give presentations, especially I guess the NCC would have been one of the big roadshows that they did recently. They call out regularly – Andrew Cialini and them, they are quite regularly out there. We do not have offices as such that are operational, but we do touch into the regions. I could probably get you some information. They do have an educational process – and the technical side of it, which is usually published as well in the annual report, what they do and where they go. I am happy to provide some of that information as well.

Daniela DE MARTINO: In terms of communicating this information out – I am sort of thinking with my old small business owner hat on. My accountant was often a source of information. Do you communicate this information to accountants across Victoria? Does it get disseminated to them? Because that is often the person that the small business owner will speak to and get guidance from when it comes to money. If it is not happening, there you go; there is my little suggestion. But, yes, I am just wondering if that is already in train.

Katrina EXCELL: Yes. We have recently gone out with a campaign and gone out to the industry, and CPA Australia was one of them. There is still some more, I think, collaborative work that will be done in that space.

Jordan CRUGNALE: And in our multicultural community in the regions – in the south-east anyway – how do we message out? Because you go online and there is a whole heap of information, which can be quite daunting. Is that something we need to consider in our deliberations as well?

Katrina EXCELL: I think so.

The CHAIR: Good question.

Jordan CRUGNALE: And out of those subcontractors, I guess, I am really keen to sort of get some more information on our culturally and linguistically diverse communities as well.

Andrew GREAR: The department will just come at that from a slightly different perspective, because we are at the policy level. That is why we have those links with the Master Builders Association, HIA and others, because they do have regional groups. The other reason that the department will use those sorts of avenues is because, 'Hi. I'm from the government. I'm here to help you' – no, they would not listen to that. So you actually want the HIA providing the message and the MBA providing the message. The Victorian Municipal Building Surveyors Group is a group, because the Australian Institute of Building Surveyors will tend to attend those meetings as well. Again, I will go back to my previous answer. We are looking for whatever avenues we can to get the messages out there, and certainly I think the partnership with the industry associations is very, very important, because then the information is coming at the individual from both sides of the fence, if you like. The government side and their trusted industry organisation as well are providing them the information. That is the approach that we will tend to take. Regional councils are a very good avenue through their economic development offices, which certainly the department will use to get messages out as well, because they tend to be linked in with the local chambers of commerce. I know that seems a bit oblique, but they will tend to Hoover up a range of different entities in a region, which does not necessarily normally happen in Melbourne. It works more in a regional context.

Katrina EXCELL: I think the challenge that we probably have at the VBA is that the ranges of people that use the SOP Act are more vast and more wide than what we regulate. Like I said, there are the electricians, there are the painters and there are things like that, so when we go and talk, usually it is the plumbers and the builders, but there are a lot more people and industries I think that use it as well. So I think that is a challenge we have too.

The CHAIR: David.

David HODGETT: It seems a pretty efficient process in terms of the fact that in 10 to 15 days you get a decision. If either party disagrees with the adjudication, is there a review mechanism after that? The second point is: once it is adjudicated, if the party does not pay, what is the next step there? I know the VBA have some processes, but I guess, one, statistically, how often don't people pay? What else do you do?

Katrina EXCELL: Do you want to explain that for me? Thanks.

Lisa RONGO: In terms of review, the Act provides a very limited right of review. The review provisions require a threshold of over \$100,000, and the grounds for review are limited to how the adjudicator dealt with the excluded amounts. That is used very infrequently. That process has been available since the amendments came into operation in 2007, and there have only actually been 13 review applications in that period, so it is very infrequently used. The only other mechanism to challenge an adjudication decision is in the Supreme Court and the judicial review process. So those are the very limited review rights.

But in terms of not paying, one of the sets of information that the VBA publishes is on the number of adjudication certificates issued, and that provides a bit of a proxy or an indicator of the failure to pay an adjudicated amount after the decision has been made. I think our average for that – we have taken an average over the last nine years – was about 30 per cent.

David HODGETT: Are the parties identified? You know, if I was engaging a plumber and there was a serial offender, is that known? You might choose to therefore go and contract elsewhere.

Lisa RONGO: The Act actually prohibits the VBA from publishing identifying data and projects and addresses. We cannot publish that information under the Act.

Andrew GREAR: Can I just jump in there. I will just quote in terms of this. If the claimant is not paid after an adjudication, a claimant can apply for a court enforcement against the respondent. They do that by filing an adjudication certificate, which they must request from the ANA. The point I am making is that you go through the process, you go to the ANA and the ANA actually provides a court-recognised document of a process that is actually there. As I am not a lawyer, effectively I am fronting up to the court, I have actually got a piece of paper which says this is ridgy-didge – I have actually been through a process – and then the court process takes over. But you are not entering the court cold, because you have already been through the ANA process, and it

has been documented that you have in the sense that you have that certificate. One assumes the aggrieved party can then actually start a process with the court. That is, I think, one thing which is prudent, because you can get that certificate from the ANA. Yes, you have still got to take the action with the court, but you are not fronting up to the court cold.

Sam GROTH: From scratch, yes. Understood.

Daniela DE MARTINO: The VBA can take disciplinary action and refuse to register a registered building practitioner who fails to pay an adjudicated amount. Have you got any data on how often that has occurred, or would you be able to provide that? It would be interesting to see, even over the last few years, how many times that has taken place given that we have got, as you were saying, a proxy indicator of failure to pay of about 30 per cent.

Katrina EXCELL: I am not in the operations with that area, but I can take that on notice and provide that information.

Daniela DE MARTINO: Thank you. That would be great.

Sam GROTH: I just have a couple before I step out. Katrina, you mentioned that the Act would never be looked at in isolation – the security of payment Act – but would come under a broader framework, and Lisa mentioned that your focus is on education and administration, not actually the strengthening of that Act. We heard from another witness this morning and probably all can agree that the Act has not been strengthened or reviewed enough over the last 15 or 16 years. Who does that actually fall back on, then, if it is not a priority of yours? Does it fall back on the department? Does it fall onto the relevant minister at the time? At the moment it seems like the Act is actually being overlooked in terms of strengthening it. It is about education and administration, but it does not seem to actually be helping the subcontractors compared to what is happening in New South Wales, Queensland or Western Australia.

Andrew GREAR: I am happy to take that one.

Sam GROTH: Sorry, I know it is a –

Andrew GREAR: No, that is absolutely fine. You are going to hear from Murray today?

The CHAIR: Yes, we are.

Andrew GREAR: Effectively the Murray review, for want of a better term, is a bit of a line in the sand in terms of this. Since that time, there was discussion at the building ministers meeting, and effectively what the building ministers said was – I think you heard it from the first person this morning; I will say this as a public servant – that getting all the jurisdictions in the room with all of the ministers is a bit like herding cats. Take that forward – so what has occurred? What has happened is Western Australia have now done some work, and their legislation commenced in August 2022. New South Wales, as you have heard about, has made some changes. Queensland have made some changes. Are they all consistent? No, they are not; they are all slightly different because each jurisdiction is different. It is certainly part of the considerations of the expert panel on building reform. From our perspective in terms of Victoria, we are seeing that as being a watershed moment as to what needs to change.

Why do I say you wait until that point in time? One, you have the benefit of seeing what things or what options have been tried in the other jurisdictions. Two, it is not as if Victoria has done nothing in this space, and I have referred to a number of pieces of legislation that we do have in place. Three, the expert panel on building reform is taking a holistic approach to building – and it is multiple pieces of legislation, so it not just in terms of the building system to simply make the changes to the security of payment legislation without being cognisant of the domestic building dispute resolution service. What does that mean for VBA legislation? What does that mean for the *Building Act* legislation? What does that mean for consumer affairs legislation? I think that complexity for people that do not work in the building area – when they do come to understand the building area, they realise the critical interrelationships between I think it is four ministers in terms of this term of government and it is five or six different departments. Getting that right so that citizens get the best outcome is critical.

And to be honest, we do look over the fence. We do see what is occurring in New South Wales, Queensland and also WA. That will be I think really critical for 2024, because you will have evidence that you can go, 'Okay, these policy options are worth doing.' Then ultimately all of you have got to make the appropriate changes to a piece of legislation if it goes through the Parliament. From the department's perspective, we are very aware of what is going on. Building officials in each state meet regularly. Building ministers meet regularly. As you can imagine, the agenda lists are substantive in terms of what is on the go. But we are all watching what is working and what is not working, because ultimately the financing side – and at the end of the day this comes back to how you finance, how you actually get your money at all levels of the chain – is something which has got its volatility. But that is a critical driver in terms of what we change and what we do not change. Also there is the sector's capacity to absorb change. We know that we have got a strong energy agenda at the moment around the country, and changes to the National Construction Code which are being mooted have been taken at different speeds in each state depending upon the industry's – not willingness, because they all do want to make the changes, but their – capacity and the speed at which they can actually make the changes. Each state is slightly different in its propensity to adopt change and put change in place. That is not only from the Government perspective but that is also from each of the industry's perspectives.

The honourable member opposite said in regional Victoria you have a different mindset in terms of the way things are going as opposed to in Melbourne. The other day I heard anecdotally you are looking at up to 24 months before you can get a builder in Swan Hill because there just are not the people there to actually do things. So in introducing changes – let us just use that as a location – to that area it is not a matter of just going bang and go and do it. It might be different for someone working in Ascot Vale or out in Kew, but it is not going to be like that for the building industry, the suppliers and the people working in Swan Hill, because the time lines are different, the supply chains are slightly different. Hopefully that answers your question.

Sam GROTH: I know it crossed a lot of things. I appreciate it.

Andrew GREAR: Hopefully – I tried to cover it.

The CHAIR: Thanks so much. Andrew, that is probably a good segue. In John Murray's submission to our inquiry he said that when he did his review in 2017, late or delayed payment was not only extensive within the whole supply chain of the construction industry but payment practices within the Australian construction industry were poor when compared internationally. So what is it that is wrong with this industry?

Andrew GREAR: Can I have an easy question?

The CHAIR: You go and get goods and services from a dentist or you go and buy a beer in a pub and stuff like that – you cannot wait three months to pay for your beer. Payment is demanded when I go to the dentist; they are very quick to swipe the credit card as soon as you leave. How is it that we have created this culture in Australia, which does not compare well internationally?

Andrew GREAR: From my perspective, I am actually going to answer a question with a question.

The CHAIR: Good tactic.

Andrew GREAR: I say that from the department's perspective, because Mr Murray, who you will speak to, is extremely well known. The report was very good. It highlighted a range of things. He is an absolute specialist in the area. The other thing would be speaking to the industry perspective as well. I was alluding to that in my earlier answer. Yes, you can sit back and say that these things are not working, but it is not just one element. So how does a bank finance? At what points in a process does it actually finance? That is going to determine how the contract is actually written. That is then going to determine if it is a head contractor model or a how many subcontractor-subcontractor-subcontractor model. I think what the security of payment legislation has tried to do, coupled with the Domestic Building Dispute Resolution Victoria, coupled with consumer affairs legislation in Victoria, those multiple things, is basically understand that for many subcontractors the flow of cash is quite important. Hence the security of payment is that thing you lodge 20 days, 10 days. It is very finite in terms of its time frame to be able to do that. Yes, it is an opt-in scheme, absolutely, but it works in that way.

So I think the thing that I have seen in terms of this business and in terms of doing that is, 'How do we get the marriage between the insurance perspective, the funding perspective and the employing perspective right?' It is the time line thing, and to be honest I think you will get better value out of Mr Murray than what you will get

out of me in terms of the answer to that one, but that seems to be it. In terms of then a regulator, what do we look at? It is the balance between how much you regulate as opposed to how much you let the system actually run with it. So what are the key points in the process where you actually want to ensure that a payment is actually made? One, a system has got to be there which actually requires you to be in the system – so it is not an opt-in, it is a ‘you’re in’; two, then it is what are the penalties, because my colleagues in the Victorian Building Authority really are only as strong as the tools they have got to be able to take the matter to a court; and then, three, it is the speed at which you can get through the court process, because we all hear about how long it takes to go through a VCAT process. So I think those are three elements, and Murray alluded to those in his report. Likewise, the red tape commissioner – soon to be the new CEO of the Victorian Building Authority – has raised that on a number of occasions in terms of good regulation about how you actually do that.

And then I think the Government is already, in my view, doing a number of things that are right. So we have model payee requirements, all of those sorts of things. It is leading by example in terms of what we can do as well. And then working with our industry colleagues – the master builders association, HIA, plumbers et cetera et cetera; I have probably missed someone out in that list – to get that right, because Dame Judith Hackitt, who is on the expert panel for building reform, talks from her knowledge in the United Kingdom area about quality. One thing that is quite clear in this sector is that a culture of quality – we need to embrace that, celebrate it, push it and expect it, and that is not necessarily there at the moment.

Martha HAYLETT: You have looked at other jurisdictions in Australia, but internationally, has that analysis been done of who is using best practice, what they are doing and what we could adopt here?

Andrew GREAR: So Murray –

Aaron HEMSLEY: Murray did that, to a degree.

Andrew GREAR: That is right, Aaron – Murray did that, again, so he certainly did that in terms of that –

Aaron HEMSLEY: Singapore I think you identified, Lisa, as having some of the recommendations linked directly to Singapore’s scheme, so that work has been done, to a degree.

Andrew GREAR: So the answer is, ‘Yes, there are elements,’ again, as my colleague Aaron just said, in terms of Singapore. But then it is also a matter of looking at what their regulatory regime is and then thinking about the cultural governance nature of that country. Those two I think are quite linked, and I think that is an element to it. But Murray certainly looked at it and has highlighted it. Everyone in the world is at different points on the continuum in terms of trying to improve outcomes for citizens in terms of that. So in our case – let us just stay within Australia – WA has had a bit of a crack, Queensland has had a bit of a crack, New South Wales had a bit of a crack. Can we cherry-pick bits out of that? That would actually make us jump three steps ahead because we do not have to go and do the work, it has already been done there – apart from if you have to do the regulatory impact statement component. But yes, we cherry-pick that sort of stuff all the time.

Martin CAMERON: Do you think that, in the different states, if they get it right, it is going to be a feeder to attract tradies into those states for that security of picking where they are going to work? Because at the moment, if you are born and bred in Victoria and you are working here – but there is a real pull to rip trades out of Victoria to get them up to Queensland and over to WA. If their set-up is better, then that might be an option that the tradies actually look for.

Andrew GREAR: Again, the Master Builders Association and HIA would be good people to talk to, but there is absolutely no doubt that people do have a look. At the same time, though, in terms of those sorts of subcontractors, a lot of people move to Queensland for the weather. I do not know that we can do anything about the weather here in Victoria. But they do move for those things as well, so it is a combination of those factors.

I think that is where the finance side is important. So that is where we will have conversations in policy development with the finance sector, because just as states are looking for, you know, appropriate credit ratings and the like, likewise finance sectors look around – ‘Where have I got a safer investment?’ So I think it is also really prudent to be cognisant of the insurance and finance sectors and how they are loaning money and in what way they are loaning money. Again it comes back to what point in the process will they loan the money that then trickles through to subcontractors and at what point they are being paid. I think a combination of those

things is part of the process – just like with all of the climate level work that has occurred and the flooding that is done you know that 2 minutes after the floodwaters hit there the Insurance Council are already redoing their flood maps to look at what things are going to be done, and that changes the dynamic as well. It is no different I think with the insurance and finance people, which then flows to: will a tradie work in one place or another place? But I think it is probably also fair to say – and given you have worked in that industry – that is one component of the decisions you make as a tradie as to why you are working in a state or in a part of a state. It is one of the decision-making points across a number of things that you weigh up before you decide if you are going to pick up and move to another state.

Martin CAMERON: Thanks, Andrew.

The CHAIR: Martha.

Martha HAYLETT: I have just got a bit more of a granular question for Katrina and Lisa. It is just on the authorised nominating authorities and if you are able to elaborate a bit more on the process of how those are selected and how that process may be able to be improved in the future.

Lisa RONGO: So the slide Katrina had up about the framework included a copy of the ministerial guidelines. So the ministerial guidelines set the framework for the authorisation process and procedure, and they also specify the criteria against which the VBA must assess applicants. The application process is open all the time. There is not a fixed time that applies. So the ANAs are not selected; they make applications. The VBA assesses the application against the criteria in the ministerial guidelines, and the ministerial guidelines also set the duration for the authorisation period. So it can only be for a period of up to three years. And the ministerial guidelines set that out and also set out the link to the conditions of authorisation, which the ANAs are required to comply with and show ongoing compliance with over the period of the authorisation. And the ministerial guidelines also set out the show cause processes that are available to the VBA if the ANAs are shown to not comply with the conditions of authorisation.

Martha HAYLETT: So it is changed every three years. How many of those four ANAs are just being kind of moved back over and over and over, or do they change frequently in terms of who those ANAs are?

Lisa RONGO: The ministerial guidelines require a fresh application every year. So although it might be said to be a renewal, it is not; it is actually a fresh application. So they have to start afresh each period. In Victoria, I would have to go look at the numbers of ANAs that have operated, but there have been four or five operating probably for the last nine years at least. And one of those ANAs is actually a merger of two previous ANAs.

Martha HAYLETT: Oh, okay.

Lisa RONGO: So that is part of the reduction in the number.

Martha HAYLETT: Yes. Okay. Thank you.

David HODGETT: Andrew, I spent a bit of time looking at that table 5 about the number and value claimed. You had it up on the screen as well as in your submission. Looking at the numbers, at first I did not think they were too bad. About 61 per cent were adjudicated, and I think you said the 39 per cent, the rest, were early settlement or withdrawn, which on the surface seemed okay, but the value of it is significantly less than what was claimed. Is there a reason for that, or do people go in with a sort of high-bid claim and get a more realistic amount adjudicated?

Andrew GREAR: That is potentially one of the reasons why that is the case. The VBA might be able to help me out here, but in terms of the numbers that are there, all we know from the data which is published is that 61 per cent are determined by the adjudicator. Of the remaining 39 per cent, 50 per cent of those were withdrawn by the claimant. I do not know why the claimant chooses to withdraw it. Twenty-three per cent were then settled outside the system, 6 per cent were still undetermined and 20 per cent were rejected (6 per cent because ‘no jurisdiction’ or other reasons and 14 per cent ‘timed out’). The other thing is they go in with a particular amount. Yes, that may well be the tactic – that it is X, and they accept ‘X minus’ because X minus is still better than zero.

David HODGETT: Yes.

Andrew GREAR: Without interviewing the adjudicators, unless the VBA knows, I do not know the answer to that question.

The CHAIR: That is interesting as well because a lot of the applications have talked about excluded payments, so that figure could actually be a lot higher if excluded payments – under I think section 10A – were included. But what is the cost, then, to people in the community – the economic cost? If you have lost millions of dollars on a previous project, do you then try and make that up on your next? Are we all paying more? Is this increasing costs across the board and impacting on the economy, because it is swings and roundabouts – ‘I lost on that job. I’ve got to make it up on the next’? Is this having a detrimental impact on our capacity to build?

Andrew GREAR: My answer to that would be: potentially yes. Do I have data? No. The reason that I say that is because of the nature of the model. Certainly it did come to light – and again some of our colleagues in Consumer Affairs Victoria et cetera might be able to help on this – that the business model for a number of people tends to be an aggregation. You are basically funding across multiple jobs at the same time. It is swings and roundabouts in each of those jobs, no different to when you are bidding: ‘Yes, okay, I’m going to be able to get 25 per cent on that’, ‘I’ll only get 20 per cent on that.’ It is the nature of the business. Unless it is a fixed-price contract, then you know exactly what the overhead margin is that you are going to actually do. Is an individual tradie moving things around? That is up to an individual tradie to answer, but sit back and go, ‘Is that likely?’. Yes, it would be a pretty natural financial thing to move those things out, given that the inputs are changing costs all the time, as we know.

Aaron HEMSLEY: I think one other way of thinking about it is: not knowing whether subsequent jobs are where lost funds are sought to be recovered, but we do know anecdotally that some SOP claims arise because of the lack of specification of a job. Perhaps using a plumbing example – you think you have got an easy job, you bid for it for an amount, and then you go and look at the job and you are like, ‘This is going to take way more work.’ And then you are, like, ‘Hey, mate.’ And if you have got a good relationship with the person who is paying you, ‘Oh, yeah, fair enough. Didn’t know about that. We’ll cover it off.’ But obviously we know in some instances that person is going to have to just foot the bill or they can push it into SOPA. But potentially if the issue is a latent defect, that is not covered. There are issues with pricing and specification. As Andrew was alluding to earlier, this is a systemic issue of how jobs are tended and bid for. Some jurisdictions have different models for how they deal with tendering. I think in Italy when this tendering occurs we have heard that the winning bid is the one that is in the middle. They do not take the lowest; they do not take the most expensive. There are different models, but it is hard as a subbie to know, when you have got a job, if it is a simple, quick electrical job, changing a few things, or perhaps you have got experience in terms of getting there and realising this is way bigger than what you expected.

Martin CAMERON: Exactly. No, it is. That is one of the concerns, especially if you are not going to have a look at the works before you actually put your bid in. Things get out of hand rapidly.

Andrew GREAR: A lot of contracts will have that variation in terms of ‘if I hit rock if I’m doing a footing’, because that is just an unknown. You have your work done and have your soil reports done, they are doing the test holes and then it is the luck of the draw – I am being cheeky – in terms of if you manage to do it; you could get a plug of rock in a spot and you did not even know about it. So that is why they have always got the variation clause sitting in the contract, because you do not know what you do not know.

The CHAIR: The joys of coming from Ballarat with mine shafts throughout our city: our concrete slab on our garage is very deep and tripled the cost, so, yes, I understand.

Andrew GREAR: I think that is the thing, though. That is where it goes back to when we talk about the system. It is the nature of the contracts that are written and it is about the clarity of it, because there are some jobs, as the honourable member is saying, that might be sight unseen type jobs because it is in that spectrum. But who knows? You pull the thing off the wall and, ‘Whoa, what’s going on under here?’ Suddenly you are in a whole world of pain that you did not realise, and that is all going to come back to how the contract was written and if that variability was actually highlighted to the person who signed it, particularly too with a lot of building matters. I think the other thing that is in this space is we are talking about contractors being paid. For citizens that are entering into these things, by and large people do not enter into many of these things as a

citizen all the time. I think I might have used this before: when we are talking about homes, as a citizen you are making a decision with that, you are not making a decision with that and that is why we have got –

The CHAIR: For the record, that was heart and head, Hansard.

Andrew GREAR: the domestic building dispute resolution service. That is why we have got SOPA and whatever. That is why we have got a number of tools for people to exercise rights if they choose to – if something does not quite go as you wanted it to.

The CHAIR: I guess that would be another good segue. Are there any non-legislative options that the committee should explore in considering non-payment of contractors?

Andrew GREAR: Well, in order to set the things up you have got to have legislation that is in play. Obviously Domestic Building Dispute Resolution Victoria is in effect an opt-in process, SOPA is an opt-in process. They have got legislation around them, but they require people to go in there. So there are things that are in play. I think the committee has covered the education issue, but it is not just government doing the education. I think it is industry groups doing the education as well. It has got to be that partnership between both and not the traditional. As the honourable member said, it might be making sure you are latching onto the finance sector as well – doing some of those. I think you have got to play a full-court press, really, to get to as many people as you possibly can. You are never going to get everyone, but at least you give it a better than even money chance if you do.

Martha HAYLETT: Just sort of following on from Juliana's point, obviously this is opt in. Like, there is a lot of work in it, but it is on those individual players to come to you, right? Just a point on enforcement and compliance, is there a way that the enforcement side of things could be strengthened? Are there particular ideas that any of you have on that side of it, with enforcement and compliance on this issue?

Katrina EXCELL: I think from the compliance and enforcement side they use the trends and the information that we publish. There is a section of the Act that says we can only use the information for the SOP Act and it is confidential, so that probably is a restriction.

Martha HAYLETT: You cannot go out and say, 'Hey, are you doing the right thing?'

Katrina EXCELL: The compliance and enforcement area of the VBA can use our data, our trends and our reports, but that is probably one of, I would say, the limitations at the moment.

Andrew GREAR: And that is arguably the carrot and the stick in terms of a policy perspective, isn't it? Because if that is not there, then you might potentially have more people come to the system. Because at the moment if it does not work you then just jump out into the traditional system, but noting that if you have gone through the process you do have that certificate that is issued by the authorised nominating authority, so you are not coming to the court cold. But, yes, that is a policy option, but that arguably might change the dynamic in terms of people who would use it as opposed to people who would not. But is it an option? Absolutely it is an option, yes.

Daniela DE MARTINO: I am just wondering: has the department done any work around possibly using cascading statutory trusts as recommended by Mr Murray? Because I know that – and correct me if I am wrong – it occurs with defence contracts already, I believe.

Andrew GREAR: No, government has not progressed that particular avenue at this time.

Daniela DE MARTINO: No? Thank you.

Martin CAMERON: Lisa, you said before that if there is an issue come through you do not actually keep the stats on individual builders as such, you know, if there is one particular builder that is causing a lot of grief. Just for argument's sake – and I will use the name Porter Davis – if you are getting all of a sudden 250 people sending through, chasing invoices for a particular builder, do you think that there should be a warning mechanism so that you can alert government or ministers that we may have an issue here as it comes through? Is there any way to be able to do that at all?

Lisa RONGO: As Katrina mentioned, there is a confidentiality provision in the SOP Act which prevents the VBA from using or disclosing information received under the SOP Act for any purpose other than –

Martin CAMERON: What it is doing or what it is for.

Lisa RONGO: what is under the SOP Act. But we do have the names of the parties to every application. The adjudicators are required to submit documents to the VBA, including notices of application, copies of the determination and other related adjudication documents. So we do maintain a register of the parties to matters, and we can see trends. If I told you Porter Davis was not there, then I would be telling you if it is not there. It is the same thing.

Martin CAMERON: I was just using their name.

Lisa RONGO: So there is some limitation on that, but I think we could probably provide some information about that without naming individuals.

Martin CAMERON: But do you have an avenue to actually go and talk, to progress that concern if you see it come through?

Lisa RONGO: No.

Martha HAYLETT: Would that require legislative changes to make that amendment?

Lisa RONGO: To the confidentiality provision?

Martha HAYLETT: Yes.

Lisa RONGO: That is probably something we could provide a view on in a written response perhaps.

Martin CAMERON: Thank you.

The CHAIR: You have been under the microscope for a long time, and you have done such a great job answering all our questions. We have still got a few minutes left. Was there anything else that people would really like to get a response to that might help in advancing this inquiry, or do we say thank you? Daniela.

Daniela DE MARTINO: Yes. Great. Another one. Has there been any kind of work done in the background in surveying of people? And this is tricky I know because we are talking about what you do not know. Is there any survey work that has been undertaken of people who are not using the SOP Act who could have used it or have decided that they will not use it again because it did not work well for them the first time they ever tried? Is there any kind of data collected in that field or area where people have tried to trigger it, its time limitations have precluded them from actually using it or anything out there that would indicate who needs it but has not been able to access it or has chosen not to?

Katrina EXCELL: I have got no knowledge.

Lisa RONGO: In the time I have been involved – this is more from my memory – no. I do think there were some research projects prior. We could have a look at those. I do not know if they are particularly on point in terms of use and ‘Would you come back?’ It might have been a related research project, but we could have a look at that.

Daniela DE MARTINO: That would be great, because it has been noted that in New South Wales they have got double the number of applications that Victoria has, and I am wondering if that is because domestic building is carved out of our SOP Act potentially or if it is not being used as frequently here for some reason. I know it is a tricky question, because I am asking you to answer about data you do not have, but I am just wondering.

Martha HAYLETT: I think we have just created a lot more work for you, Lisa.

Daniela DE MARTINO: Sorry!

Lisa RONGO: Hopefully not too much!

Jordan CRUGNALE: I have got a question, please, Chair. Ideally you do not want to have an SOP, really, because you want everyone to be paid properly, so I am just throwing this right around, really. What can we do in that chain to ensure – not that we are going towards not having an SOP – the fundamental changes that have to happen? This is sort of a symptom of something. Have you got any insights?

Andrew GREAR: If I may, that is the sort of thing that Murray touches upon and a great question for him. That is why I made the point of saying that Western Australia have picked some things, Queensland have picked others and New South Wales have picked others. When I say it in that way, that is because it is not just one thing; you have actually got to do a multitude of things at the same time. In really crude terms, effectively if you want to be able to enter into work over X amount of dollars, you are required to have a contract. And then is the government saying, ‘This is the model contract,’ those sorts of things, ‘and it’s that type of process’? Then we already know that there has been the discussion around the trust approach. That is where I mentioned earlier about financing. It is critical to talk to that industry, because it is about how that is washed through the system. And there are other jurisdictions that are looking at those sorts of things. From Murray’s perspective, I would venture to say, the ingredients are there. It is about the make-up of those ingredients which works for Victorian citizens. Then I think again, as the honourable member has mentioned, there is a variation on a theme from a geography perspective, because I would say that Melbourne is a little bit different from the rest of Victoria. And then it is the scale of development as well, because domestic construction is a very differently organised part of the construction sector to a tier 1 when we are looking at a 40 or 50-storey building, because even the financing models for those are very, very different and the levels of scrutiny on those larger buildings are totally different to a \$500,000 build. It is the relationship between those, which Murray did touch upon, and the most recent three states have done a variation on a theme.

Martha HAYLETT: Are there currently requirements on all contracts to actually state ‘We will pay you within X days’, or are there some that actually do not specify, and that is where we run into problems?

Aaron HEMSLEY: I think that the industry have their own code of payment terms, and I think SOPA can operate within that. We understand that lots of contracts are set up to have their own dispute resolution processes to avoid SOPA. Lots of contracts set up their own and they might have different payment terms and milestones, but there is an industry standard that exists that essentially tries to provide for those payment terms and obviously the Assistant Treasurer through the model contracts. HIA actually publish a model contract that relates to the domestic home owner, and then there are other contracts. I do not know if the VBA has any more information on that, but there are model contracts. Of course we do not have visibility of those, and I think sometimes they can be very much bespoke. Sometimes variation is permitted for when you hit something, sometimes it may not be. It depends on the relationship and where it sits, because lots of what SOPA allows for is verbal contracts to be covered. Lots of tradies do not operate on a formal contract. It might be a text message as well. ‘Will you do it for \$200?’ ‘Yep, no problems.’ So this kind of stuff happens, and a question you will probably explore through this committee is: how much does the way we contract off paper actually impact the ability to leverage SOPA? A lot of contracts are just a phone call. Do we want subcontractors to actually capture a paper trail of their agreements? Is that fair on them to do that? These are all the kinds of questions that go to that bigger system.

Andrew GREAR: That just raises that visibility question. Invariably in a regulatory regime you have a starting point – at X it kicks in – and as Aaron is suggesting, visibility of what is going on is to a point because there are those security provisions. There are certainly security provisions in the Cladding Safety Victoria legislation as well in terms of those. So it comes back to: what is the information that is out there, and then what is the information that you actually have visibility of? There are good reasons why some data, some information, is not public.

The CHAIR: Terrific. On that note we would like to thank you all for your contribution today and remind you that you will receive a copy of the transcript in a few weeks for proofreading. It has been a very long amount of time and we have covered a lot of issues, so I sincerely thank you for the preparation work that you have done and also for the work that we have created for you in the follow-up. Thank you very much for being so generous with your time and insightful on these issues that we are really trying to get our head around, so thanks so much.

Martin CAMERON: Good luck.

Witnesses withdrew.