

# TRANSCRIPT

## LEGISLATIVE ASSEMBLY ENVIRONMENT AND PLANNING COMMITTEE

### **Inquiry into Apartment Design Standards**

Melbourne—Wednesday, 24 November 2021

#### **MEMBERS**

Ms Sarah Connolly—Chair

Mr David Morris—Deputy Chair

Mr Will Fowles

Ms Danielle Green

Mr Paul Hamer

Mr Tim McCurdy

Ms Cindy McLeish

**WITNESSES**

Dr Paulo Vaz Serra,

Mr Steven Richardson, and

Dr Andrew Martel, Faculty of Architecture, Building, and Planning, University of Melbourne.

**The CHAIR:** I advise that the sessions today are being broadcast live on the Parliament's website and rebroadcast of the hearing is only permitted in accordance with Legislative Assembly standing order 234.

Thank you, Steven, Andrew and Paulo, for taking the time to come and speak with us today for this public hearing for the Inquiry into Apartment Design Standards.

On behalf of the committee I acknowledge the traditional Aboriginal owners of this land, and we pay our respects to them, their culture, their elders past, present and future and elders from other communities who may be joining us here today. I also again extend a very warm welcome to any members of the public or the media who may be watching the broadcast today.

This is one of several public hearings that the Environment and Planning Committee will be conducting to inform itself about the issues relevant to this inquiry. And before we jump right in I need to point out a couple of things to you. All evidence taken today will be recorded by Hansard, and it is protected by parliamentary privilege. Now, what this means is that you can speak freely here today without fear of legal action in relation to the evidence that you give. However, it is really important that you know that parliamentary privilege does not apply to comments made outside this hearing, even if you are just restating what you said here today.

You will receive a draft transcript of the evidence in the next week or so, and that is for you to check and approve. And corrected transcripts are published on the committee's website and may be quoted from in our final report.

So again, thank you for joining us today. My name is Sarah Connolly. I am the Chair of this committee, and I am also the Member for Tarneit. I will look to my colleague on the right.

**Mr FOWLES:** Hello. My name is Will Fowles. I am the Member for Burwood.

**Ms GREEN:** Danielle Green. I am the Member for Yan Yean.

**The CHAIR:** And Paul, who has just ducked out and will rejoin us very shortly, is Paul Hamer, the Member for Box Hill.

I am going to throw over. Is there someone that wants to lead or start with introductions? Yes. Andrew.

**Dr MARTEL:** Thank you.

**The CHAIR:** If you just say your full name, just for Hansard's purposes.

**Dr MARTEL:** Andrew Martel. I am a lecturer in construction management and architecture up at the Faculty of Architecture, Building, and Planning, University of Melbourne. Do you want me to introduce these guys as well?

**The CHAIR:** Yes.

**Dr MARTEL:** On my right is Mr Steve Richardson and on my left is Dr Paulo Vaz Serra. We are all staff members up at the University of Melbourne.

Can I start just by saying thank you for the invitation to come and present. We actually spend a lot of our professional lives thinking about quality and building. It is something that we do, and so we are really happy to be able to be part of this submission and to answer any questions that you have. I would also like just before we start to acknowledge the traditional owners of the land that we are on today, the east Kulin nation.

We were proposing to go over in detail our submission, which is there for you guys to read, but we thought we might just for 5 minutes go over some of what we think are the really most important points in there or the outcomes that we would like to see. We started the submission by pointing out that quality in apartments is a measure of quality in design but it is also a measure of quality in construction and that the two things are not separate and distinct, they are actually related. Some of the 10 points I have got here in front of me that I wanted to put forward today are, to start with, saying the current procurement and model that we have for apartments in Victoria operates on a contract-based distribution-of-risk model, and that effectively moves responsibility for design—and that means quality—further away from the client and the actual end user of the apartment. That is detailed in a bit more detail in the submission.

While programs, so time and cost, are really typically well understood by builders and developers and are often very explicitly stated in the contract, quality has a different nature to time and cost, and so quality is assumed to be delivered through the contract documentation. Time and cost are things that are well understood—that are flexible to a certain extent. You lose time, you make it up, you adjust. Quality is different. It is a longer time frame, obviously, so less front of mind, but it is dealt with by a series of procedures that are laid out in the contract documentation. But that documentation is not complete at the beginning of the project and in fact is not completed until the end of the project, so it is documentation that grows as you go along.

Quality assurance regimes are often invoked. Most builders—particularly tier 1, tier 2 builders, but really most—will have some quality assurance programs that they use, and they are absolutely capable of delivering high-quality apartment outcomes. But quality in the end is still reliant on the skills and the competencies of the workforce that is actually putting that regime into place. So that is the workforce of the contractors themselves, the subcontractors and also the inspectors, whether that is government building surveyors or whether that is consultants like engineers, who have responsibilities to sign things off and check off on quality at various stages of the project. So it always come back to people. No matter how good your systems are they are done by people.

What worries us is that there is a real lack of accountability for quality sitting specifically with individuals within firms who are responsible for making decisions and signing off where the contract obligations have been carried out sufficiently. Self-regulation is the norm in that sense, and there is little accountability around the performance of a company and the ability of its employees to hold their licences and their accreditation to build. If a problem happens with quality, defects et cetera, that does not in any way mean that your licence is going to be suspended. So there is no accountability that rests within individuals in the firm, and that is a very different situation, we would point out, to the situation around safety on site, where personal accountability is legislated and is backed up by enforceable penalties through WorkSafe and other things. That is personalised, but quality is not.

In our view responsibility rests with the state government—this is not a national thing, this is a state issue—to create a system that includes universities like us and vocational training centres, VETs, but also the Victorian Building Authority and peak bodies, because these are the people who educate the workforce—that is us—but also who give licence for people to work in the industry and accredit people in the industry. So what we think is that there needs to be a system in place where quality is a focus for all of those particular organisations, those who educate, license and accredit, but it must be backed up that there must be an accountability for practitioners around quality that will affect their ability to contain their licence and their accreditation.

We train them. So there are two things that go with quality, really. It is: what do you know? Are you able to see something and go, 'Oh, that's actually not how we should be doing it' or not? So there is a competency. But there is also an issue of 'What can I get away with? If I tick this off and it turns out that it's a little bit wrong, well, what are the consequences for my career?'. And at the moment there are not many. And so building is a complex thing. People are busy. There are time pressures. There are cost pressures. There are pressures all over the place, so the tendency to be able to just say 'Oh, it looks okay. Let's move on. I've got five other things I need to do' is there, and you do not find that as much with safety. Because with safety if you tick it off and something goes wrong, then WorkSafe come to your door and it is a legal process. And they say, 'You signed this and said this was okay. Why did you do that?'. So you think twice before doing that. You make sure that you think it is right. Quality is not yet treated in that same way, we do not believe. I guess they are probably the main points that we wanted to make, and we are really happy to throw open to any questions.

**The CHAIR:** I have got so many questions.

**Mr FOWLES:** So many questions.

**The CHAIR:** I think most of the ones I have been waiting for. I think you just really summed it up in a nutshell, about the quality—I mean, even some of the evidence that we have heard today—going to the heart of the end product, and then who is using it then and then into the future. Do you think that the licences are the lever that needs to be pulled to improve the quality? Is that what you are saying? And in order to do that, the tick-off—work safety and things like that obviously come with a personal financial risk about being sued but looking towards criminal negligence and stuff like that. We have been a government that has done a lot of work in that space. Is that what you think needs to happen here?

**Mr RICHARDSON:** Absolutely. Absolutely.

**The CHAIR:** Yes. I just want to cut through to: what do you want to be changed?

**Mr RICHARDSON:** As Andrew touched on, safety—we have spent years on developing safety through the industry. If you go back into the mid-80s and how it developed, where safety got used as a tool to control from an industrial point of view, from a time point of view and many other cases, but over that time it also developed into the critical nature of accountability and the way it is managed, the way jobs are built. And they are built just the same, on time; they are built with safety at the forefront. When you approach and look at how construction is carried out, the quality is just something that is assumed will happen. And with the transfer of risk, instead of having the head contractor being accountable, it has moved the obligation down the line. So in effect you are moving the quality and the accountability of quality down to the least accountable person through the head contract arrangements.

**The CHAIR:** Can you say that, unfortunately, the flow-on is on the purchaser?

**Mr RICHARDSON:** Absolutely without doubt. The whole thing is, and where we are looking at it, yes, it is the end buyer or the end user that is going to suffer. There is no doubt about that, but it is the process of getting there. So where we draw the comparison of safety is that it is a mechanical process of building a building or developing and construction, but that emphasis, the same importance of how this table is built—the selection, size, the coordination, the detailing—it needs to go through a proper process.

Andrew touched on that we sit with the pillars of time, cost and quality, as always an overriding strategy when accepting them and taking on a contract. They are the key points that developers, bankers, clients, everybody is looking at—the time, the cost and the quality. Time and cost, as Andrew said, is well understood, but time is such a fluid issue on a building site, and most buildings fall behind time. They fall behind in the delivery of the structure and the cladding and the envelope activities.

**The CHAIR:** Which gets costly on the developer, which incentivises them to move quicker.

**Mr RICHARDSON:** Yes. But the developer has moved his risk. He is safe because he has LD, so if he is late he passes it back to the builder and takes money off the builder.

**Dr MARTEL:** It is the head contractor that has taken on that risk with the way we do contracts now.

**Mr RICHARDSON:** So the head contractor, let us say—well, I worked for Grocon for 27 years and built things like the MCG, AAMI Park, the casino and a few of these other things. We as the head contractor took that whole responsibility. In the last I would say comfortably 10 to 15 years, since the GFC, the risk profile moved around with the head contractors and it put more reliance on the subcontract. So there is not a builder, and this would be—I am under privilege so they can get me later—your Multiplexes, your Baulderstones, all of these people, they are not builders.

**Mr FOWLES:** They are contract managers.

**Mr RICHARDSON:** They are managers, they are administrators, and they are driven by the contract. The contract is back to back to the subcontractor, but the subcontractor cannot argue his case because in the subcontract he is controlled from time through the head contractor—so he has to deliver to the head contractor's program regardless of what state or how long he has priced the job to do it. So if a plasterer or a fire-rating process is going to take five weeks, say, to do part of a job and the front-end time has been used up and he is forced to work overtime at extra cost to his costs and all these things that go in, he rushes through that

job as fast as he can. People come along and sign and tick off the boxes—yes, this is done, yes, this is done and yes, this is done—close the door and off they go. Then you get to the point where you are getting inspections done, people are signing off, you have got all these defects, you run through the process. It is all signed off, and yet you have two years of warranties or three years, five years or seven years of defects. Companies like Multiplex and others have a whole business that runs around doing defects for years. So they have just gone and built that, moved on, and this is now your job to go and fix up all the errors. The subbies go broke, the quality does not, they hold the money back, cash flow becomes a problem, so the whole thing becomes—it is confrontational.

**Mr FOWLES:** So there is a commercial imperative, and obviously there is a power imbalance between head contractors, subcontractors and then the individual trades that might be sub-subcontractors in effect. Is it your view that the change in that design and documentation, changing the rules around that, is the way to force a commercial change or would you actually propose to regulate the commercial relationships, because I feel like the latter would be really hard?

**Mr RICHARDSON:** Look, it is. I do not think it is broken. It is just not managed, if that makes any sense. You look at our technology—we have improved so much. You know, fax machines were just an outstanding asset to a building site when they came in. Now we have got the phones, the records, the communication skills, the processes and software to be able to really manage a project. But the accountability, in my mind, is still the biggest problem. A site manager who is controlling the site: he is the one pushing the trades on a day-to-day basis and he is pushing it for program safety. He does not really care about cost or quality. He is trying to get the trades running through a process and trying to get—it is like herding cats. The plasterers are in here, the next bloke who is coming in is the painter, the next bloke is the plumber coming in and they are all knocking things about. They are not really running a proper process, the checks and balances, fire engineering. We are building buildings that break, that burn and leak and do not perform very well from an environment point of view.

**Mr FOWLES:** So how do you fix it?

**Dr MARTEL:** So to come back, the subcontractors are responsible for their work, and they will sign off that their work has been done properly. Then the head contractors—

**Mr FOWLES:** They themselves will sign off on their own work?

**Dr MARTEL:** They themselves, and they are part of the process that the head contractor puts in—that they need to say, ‘Yes. We’ve done this and this, and we’ve done it properly to these standards’. Then the head contractors will have their own people who will check that as well, and then you may well at certain points have building surveyors and, as I said, engineering consultants, for example, coming in and checking off, ‘Yes, okay, the reo has gone in properly’, and those things. At that point in time the head contractor still has the final sign-off. So there are two issues that we see happening. One, as Steve was saying: the site manager is busy. He has got all these things to do. So it tends to be the younger members of the contractor’s team—the cadets, the recent graduates—who are often assigned the job of quality control, of going and checking for defects. It is a good way for them to learn, but it is a difficult thing when there are lots of time pressures and you are building up your own experience. So that is one issue—what do you know?

**Mr FOWLES:** But they are the less experienced ones. They may not have the competency to sign off on these things.

**Dr MARTEL:** Look, they are smart people.

**Mr RICHARDSON:** Absolutely—very smart people.

**Dr MARTEL:** They are smart people. They come through our university system. They are smart people. They have good systems around them, but they are learning their job. You do not have 30 years of experience after two years, so to know exactly what you should be looking for is not always as straightforward as you might imagine. Then there is also, as we said: what are the consequences for signing off on something when it is not quite right? The fact is there is very little consequence because you can back-end a fix-up within your own company, so you do not move to the next job with any consequences. So to come back to your original

question, Sarah, we do think at that level, the head contractor level of responsibility, what happens to my licence, my accreditation—

**The CHAIR:** Or livelihood, really.

**Dr MARTEL:** That is a nuance thing. It cannot just be the CEO, because the CEO cannot check the plaster. So it needs to be proportionate, like safety is. Safety goes up to the top, but it also goes down to the person who signed off.

**Mr FOWLES:** Are the head contractors allowed to use special-purpose vehicles for these contracts, or do they have to contract into their actual entity where the assets sit?

**Dr MARTEL:** To be honest with you, do you follow the Icon saga up in New South Wales at all? But no, they are all special purpose.

**Mr FOWLES:** Right. But why then is the building licence able to be sublicensed out to a special-purpose vehicle rather than being held by the head entity where the asset sits? Because otherwise everyone is just phoenixing around the joint.

**Mr RICHARDSON:** Well, exactly right. My builders licence has built from casino, MCG, AAMI Park to a number of other jobs—my number. That goes with me, but if something goes wrong on those jobs, nobody questions that number.

**Mr FOWLES:** So the builders licence attaches to an individual human being?

**Dr MARTEL:** Yes.

**Mr FOWLES:** And then a special-purpose vehicle enters into a contract with you to say, ‘You’re the builder for this job’, but we are building the MCG with 101 Pty Ltd.

**Mr RICHARDSON:** That is it.

**Dr MARTEL:** That licence follows people, individuals, not companies.

**Mr FOWLES:** So there is a sanction available to the regulator.

**Mr RICHARDSON:** Absolutely. And I think that is where your answer lies. If you start to make those guys and use that building licence—because a commercial building or an unlimited and/or apartment, there are a certain number of levels of the licence—you can focus on how they are managed and how they are used properly and make the person accountable.

**Mr FOWLES:** And so is that about the rules, the statutory framework, or is it about enforcement—

**Mr RICHARDSON:** I think it is both.

**Mr FOWLES:** because a lot of the feedback I have had has been about enforcement. Particularly the complaints we get tend to be more about residential, perhaps a bit more high-density for Paul. You have got building surveyors signing off on things as being ResCode, and in fact they are bloody three-and-a-half-storey monolithic things at the end of what are pretty standard suburban streets—and the question is whether the building surveyors are being held to account or not.

**Dr VAZ SERRA:** Paul, Will and Sarah, you are final users. When you arrive and buy a new house or an existing house, you need to be sure that that was built properly. That should be something, as a final user, that the system should give you that warranty that the structure was built properly in accordance with engineering regulations and all the connections and things were done properly. As a final user the system should protect you.

**Mr FOWLES:** Yes. You know how it works now? In Victoria it is very simple: you have someone that is making a design; the developer does not want to invest a lot in the design, they just need something nice because they need to sell; they find a builder, give the drawings to the builder, whatever drawings they are, and ‘Just do it’. As soon as you find that builder—you are not talking about tier 1s that are really on another level

but a builder like the ones that build all your houses here in Victoria—they are responsible for everything. They are disconnected completely from the design because they are the ‘certified builder’. And everyone believes that the certified builder is going to build according to the design. You know what the certified builder is? A young graduate with two years experience. And that person is responsible for all of this sophisticated design. Accordingly with you, the final user, look at the house that you are going to use, and this is the system that protects you. How is it possible to have quality?

**The CHAIR:** I see that in my electorate and other parts.

**Dr VAZ SERRA:** It is not possible. If you want really to do something in some legislation way, builders need to be not just certified, they need to be qualified. You need to have engineers, architects permanently on staff so that you are sure as a final user that that was built according to competencies that are required to know how to make the structure properly, make the architecture properly, and not just this kind of different world between one that was theoretically designed properly and the one that he is building. What are the certified plumbers, for example? And everyone relies on that, because the public engineer will think, ‘Plumbers are just connecting pipes’. No. Today hydraulics is an engineering domain. If a company wants to build and to be the plumber responsible for that job, it is not enough that they have certified plumbers. They need to have engineers there, the hydraulic engineers, to understand and to translate the new sophisticated drawings and translate them to the people that need to do the building. You cannot just produce complexity and give it to someone that knows how to assemble pipes and be relaxed. You, as a final user, when you are using your house, need to have a warranty that the process was protecting you.

It is not an easy way. We are not saying that is an easy way; it is very difficult for you to change such an established system. But if you want really to look at the new way things are now done, you need to ask every person who wants to build to have more qualified and permanent staff. As my colleague said, it is a young guy that is responsible for the quality, but he is not accountable. If he says no, what can he do? He loses his job; that is it. We have the quality in such a vulnerable environment. To be a builder, like in other countries in Europe everywhere, to get the permit to build, to open your business as a contractor, you need to have permanent staff there—engineers, architects, whatever qualification you need to build that job—and those people are the ones that give the permit to that company to build. If those permanent staff leave the company, the company lose their permit to build. And you have a real balance between the business and the technical competence. That gives you, as a final user, the warranty: ‘This was built because the technicians have their licence there, and if something happened I knew’—because each year they need to have their accreditation renewed, with all the jobs they have done. You have the universities that give you the technical competence and the professional body that gives you the experience and the way you are accountable regarding the jobs that you do.

It is not a simple solution, but this is what is happening around the world. Basing it on a self-regulating system is too risky. This is what we wanted to share with you. It is not something not tangible; it is very tangible. It is really the way to do those things to protect you as a final user. That is our message to you.

**Mr RICHARDSON:** You can track it back to when the wheels started to fall off a bit I think in this industry, certainly in Melbourne. If you look, there are two key points that I see that started this roller-coaster downhill. We have built quality buildings in this city; it is not as if we cannot do it. There are quality buildings built and quality structures built in this city. But if you look back at 2008, when the financial crisis came and risk became a big player in our language of construction and then when the model of apartment buildings came in, smart companies—and I will say very smart companies like Multiplex—took the opportunity, with developers, to look at ‘How do we get an advantage here? How can we start to fast-track delivery of these products?’. They went with the design, novate and construct contract, which is a different contract from a construct only but very similar to a D and C contract, which is design and construct. They went into design, novate and construct.

**Mr FOWLES:** So D and C is different from DNC.

**Mr RICHARDSON:** Absolutely.

**Mr FOWLES:** Australians say ‘D ’n’ C’, and that can be one of those two things. You have got to be very careful about—

**Mr RICHARDSON:** Yes, you have got to be very careful.

**Dr MARTEL:** The biggest difference is the N, the novate. The architects and the consultants, who originally worked for the client—when that contract is signed, they move across and they now work for the builder.

**Mr FOWLES:** I understand the technical difference. I thought they were always talking about DNC, the three letters, not D 'n' C, which is design and construction without the novation. That is going to make Hansard's life really easy, I suspect, so I think we need to be very clear about what we are talking about.

**Mr RICHARDSON:** You can still novate, but the rules changed in the way they novate. Because of the risk model, architects and engineers said, 'Well, I can't contract on full construction drawings because I have not done my due diligence. I'm only at design development or concept stage, and you're appointing a contract against my documents. I have PPRs, which are performance-based criteria, specifications'. So they become a bit of a model very much like a PPP works, where companies go out and take the whole briefing criteria and develop the design and spend millions of dollars putting that together as a bid. Well, these guys have priced it—they have got a fixed price—and they are building it and still developing it, and things start to substitute: 'I won't use this, I'll use this now. I'll get approvals'. Architects are only given so much value to work to, so their scope is very limited. If they want to do more, it is a variation. Nobody wants to pay a variation. Engineers now have done the concept. You have got to hire other engineers to do the engineering work, so the original engineer then becomes a checking engineer and so forth. So you have got all this passing of information around and it is within the consultant fraternity, and the builders are just building anyway.

**The CHAIR:** The way I see it is that as the years have gone by—I can always think back to Tarneit, which is largely three- and four-bedroom homes, but apartments and townhouses are starting to be designed. There is so much money to be made, and the demand is there and it is big time. I get very worried about the imbalance of power. Investors, yes, you will have renters come in and all that kind of thing, but the person purchasing it or moving in to rent it—it is their home. We have seen in New South Wales people having to leave their home—they could not go back into the building even to get their personal belongings. That is not the kind of thing we want to see here. That should never happen to anyone. If the accountability goes back onto the licences, where else can we pull levers that we should be pulling? We are going to be making recommendations that we want to see actually improve the standards.

**Dr MARTEL:** The issue around licences for the builders is kind of front end, because what you are trying to do is ensure good quality happens at the front so you do not have issues later on. But we know that—not sure when—20 years ago there was a change in the way that the state government insured people who bought a house and then it goes wrong, and a lot of that happens. What happened: builders disappear, their company goes and there is very little recourse for people. That is a back-end thing. That is not something that I would prioritise in front of a front-end thing. I think you are better off ensuring quality happens in the first place. But there is not much of a security net for people. The guys out west a few years ago, when the drought broke in 2010 there were a lot of issues with buildings around there with cracking and things like that, and there was not a lot of recourse for them. That used to happen through the insurance program that the state government ran. And we see the guys in Sydney with the Icon tower up there basically with very little recourse—there is not much they can do. You probably do not want to start us on the current situation around insurance and building surveys at the moment, because that is another big issue in the industry.

**The CHAIR:** It was recently on a 7.30 report. I am sure you guys saw that about—

**Dr VAZ SERRA:** The building surveyors do what they can, to be frank, but they have limited knowledge of the regulations.

**Mr RICHARDSON:** Very limited knowledge.

**Dr VAZ SERRA:** We cannot ask them to—it is like asking a fish to climb a tree and calling it incompetent. We cannot do that, because they are trained just to check regulations. And then as the final user, you have someone who says, 'Okay, this looks like it was built according to regulations'. But we are not talking about only being compliant with regulations; we are talking about quality. We are talking about things being well built, what is happening behind the walls. If you do not make sure that the builder has enough engineers, architects—whatever—with minimum levels of qualifications to sign off individually with a company that that was built accordingly, how can you as a final user be sure that it was built to quality?



**Dr MARTEL:** I think one thing that is important to mention, because I do not think it is widely understood, is that the building code is a performance-based code, not a prescriptive code, and it is in many cases interpreted by building surveyors. So it is not black and white—‘You need to do this’. There are elements in there—you know, how many nails you need to put in—but there are many things in the building code that are interpreted by building surveyors.

**Mr FOWLES:** Can you give us an example of a performance criterion that is—I will not say abused; actually no, I will say it—either abused or value managed to within an each of its life?

**Dr MARTEL:** Steve can probably give you a hundred, but I am going to start with one, because it is a bit of a hobby horse for me. Buildings are classified as to their use, so each building has a classification. So a typical domestic house is class 1. A hotel, for example—something like that—is class 3. Apartments are class 2. So buildings are classified. The only time in the building code that the word ‘disability’ is used for people with disability is under class 3 buildings, which harks back to when we used to institutionalise people with disabilities and they tended to live in group homes and things like that. So if I want to build a house for someone like my mum, for example, who is in a wheelchair, and I put all these things in, then there is a likelihood that a building surveyor will classify that house is a class 3 building, which brings with it all the extra fire protection, exit lights and disabled parking that you would normally associate with being needed for a hotel, for example, even if it is a two-bedroom weatherboard house that I have just built for my mum. So it could be classified as a class 1, but some will classify it as a class 3. So they are interpreted, and that has real effects on people. So when we talk about having building surveyors as a kind of safety check for us to check that things are done right, they do, but they still interpret things. They are never as black and white as people sort of believe, I think, the building codes actually are. I am not sure if you have any other examples, Steve.

**Mr RICHARDSON:** I probably look at it too simplistically. Construction is design, detail, sequence, program, cost. If you do not get the design right and the details right and the sequencing right—again this is privileged, thank goodness. I went in to help finish the Pride Centre in St Kilda. Terrific client, terrific people. They had a builder in there that actually just abused the system, to be honest with you. They had cut corners. They had done things the way they thought they would do it without looking at the documents and following the details. They substituted fire rating material and did not go through the process and tried to bully their way through with the architect. They withheld money from the architect to put pressure on him to accept things. The building surveyor just sat back and said, ‘I want everything signed off before I can go anywhere’. It went to the appeals board. The reports were not clear enough because they were not paying the fire engineering to do the report. So there was all just this bullying, stretching of the truth sort of process to get through the system. In the end we got it right, followed the process—first of all paid the consultants, which is always useful, and different things. And the whole industry—

**Mr FOWLES:** Says the consultant.

**Mr RICHARDSON:** No, no. I am only a consultant because I have done what I have done in the end. I am a retired builder. That is all I am—a self-taught, retired builder that just happened to be the builder of the year five times—I’m not a show-off or anything.

**The CHAIR:** Make sure we have got that on record.

**Dr MARTEL:** We have got that on the Hansard transcript, yes.

**Mr RICHARDSON:** You take the industry, and you were taught properly. I go back to the 1970s when we were talking about these sorts of buildings. That was a different way of building. The architect—you nearly bowed to them when they walked onto the site. Today they are just a nuisance—‘Go away’. The accountability—they have sold their soul through the process, where they are not architects anymore; they will look at the sculpturally external side of the building, but the detail, the conformance to specifications, the compliance to specifications. You could build a building—take 120 Collins Street. That was a design and construct building. Daryl Jackson, the architect, with Hassel; Connell Wagner at the time was the engineer, and Lincolne Scott. It was a collective approach to delivering a building, and it was detailed and understood before we built. We put a lot of effort into the design, the front end, the detail, as we were building. Today it is moved onto the subbies—‘You sort this problem out’. So everybody is building in cylinders. It is not coordinated. You

can imagine yourself coordinating an activity—coordinate this meeting. You need to communicate. You need to pass on information. You need to plan—

**Mr FOWLES:** Can you give us a worked example there? Is that down to the ‘We’ve specified a chrome tap, but we don’t care. You just sort out a chrome flick mixer tap—

**Mr RICHARDSON:** In some instances, yes.

**Mr FOWLES:** Like, ‘We haven’t actually prescribed the model’, and then you end up with some mismatching between that and the basin, which has been sourced by a different contractor or whatever. Is that what you are talking about?

**Mr RICHARDSON:** There are elements of that where you are allowed to substitute. So you might say, ‘Right, I’ve got a better brand than this. We’ll put that through the process’, and that is fine. But when I talk about specification, I talk about tolerances when you are building something. Construction is so easy; it really is. You are just spanning and connecting. It is no harder than that. So if you are not building to the tolerances, you cannot connect properly, right? If you get a wall that is built—just take any wall, a bathroom wall—the plasterer puts the studs up slightly out of line. He screws the head in where it should be free just to hold it in position. He does not take the screw out. The plasterer then comes on, puts his plaster sheet on, screws it in. The patcher comes in, the tiler comes in. The wall is built on an angle like that. Nobody picks it up until the tiles are on, because they see the corner, and then these fittings from the plumbing do not quite fit, so the thread cannot get on, so eventually it leaks. So you are getting down to that which forms the defects.

**Mr FOWLES:** But why does the accountability mechanism then fail? If I am the end customer and I have bought my apartment and I walk in and go, ‘Well, there’s a bloody gap here in the tiles’, why doesn’t the fact that I then have a claim against the builder force the builder to manage those issues better?

**Mr RICHARDSON:** It should, but this is where the tick of the box comes. He might come along and say, ‘Right, that’s okay. I see the problem. Now pull the wall off. Pull the tiles off’. So he does that and gets it right. But when he has done that he has damaged all the membrane, so he patches up the membrane.

**Mr FOWLES:** And then the base leaks.

**Mr RICHARDSON:** Once you start a defect you get this domino effect. So these are the things that creep—

**Mr FOWLES:** But isn’t just the sheer expense of that incentive enough for builders to get it right?

**Mr RICHARDSON:** Absolutely—

**Mr FOWLES:** So why don’t they?

**Mr RICHARDSON:** Absolutely, but they move on. They move on. I agree with you, it is frustrating because it is not that hard. But the problem comes because we are not keeping people accountable for that.

**Mr FOWLES:** But there is already financial accountability, is there not?

**Mr RICHARDSON:** Yes, but because they are a company that can close that door and move on—they have got their money—the head contractor who has taken it goes and says to you as the tiler, ‘Well, you’ve got these defects. I’m not giving you the retention system back, so I’ve got 5 per cent of your total cost of your building, 2.5 per cent. I’ve got to fix this up’. You go away; he keeps that money and just covers it up. It is just a mess.

**Dr VAZ SERRA:** That logic is what is happening now in Sydney with the buildings. It is exactly your thing. And now, as David Chandler said yesterday, use your money not in litigation but in repairing the defects. But according to that what happens now is the timing and costs in court.

**Mr FOWLES:** I appreciate that. So there is a power imbalance thing, like Joe Smith does not want to go and sue Metricon—sorry, not Metricon, Baulderstone, whatever—for some bastard. And then you are talking about class actions and stuff; I appreciate that. Does this stuff happen when the end user is a commercial client?

If you are building a commercial building for, let us say, the Parliament of Victoria, do you still have the same issues?

**Mr RICHARDSON:** I do not believe you do.

**Mr FOWLES:** So it is about the power of the consumer, like the small end ultimate owner of a strata title thing. They own \$400 000 worth of stuff out of a \$400 million development. That is a consumer protection kind of issue rather than a 'way in which the building process is managed' kind of issue.

**Dr VAZ SERRA:** Let me just explain to you our point of view on that—of a builder, an architect and a civil engineer. We have the three technical—

**The CHAIR:** What a dangerous combination.

**Mr RICHARDSON:** It is. It is scary, I tell you.

**Mr FOWLES:** Why is the engineer on this committee laughing the loudest at that?

**Dr VAZ SERRA:** Is that right? You are an engineer?

**Mr HAMER:** I am a civil engineer.

**Dr VAZ SERRA:** Then you understand more or less the frustration that we see: how it is possible to open a building company without having enough accountable technical skills. Because that happens naturally: if that building company has this amount of technically accountable people, things naturally happen better because you have better quality of knowledge doing things. The preparation, the translation between what is the design and how to build it, is done in a better way.

**Dr MARTEL:** The other thing I would say is that motivations and sophistication of clients differ. So if you are talking about a commercial building, for example, typically ANZ or AMP will not build their own building. They just rent these days. So someone who is building a commercial property, that is their business. They need to sell it, they need to think about maintenance because clients go in there and they need to maintain that building and the air conditioning and do all those sorts of things. So they tend to be more sophisticated clients. Governments are very sophisticated clients. The Department of Health, for example, putting in new health centres or hospitals, have done this before. They know they are accountable. It is their building, they are going to own it and operate it and so they are very careful about what they do. Universities are excellent clients as well typically, similar things. Typically for apartments, for developers, you get a very wide spread of competencies of developers and of motivations. Some are in it for the long haul. They do not want the kind of reputational damage that comes with people complaining in the press about their buildings, so they take a bit more care. Others do not care. They are just moving onto the next project.

So you do not necessarily have that client-driven expertise but also client-driven incentive to make sure that the quality is there. That will reflect in the kind of builders they hire and whether they take a higher cost to build but a more reputable builder or a lesser costing builder. So the thing will snowball because they do not care as much and the builders are operating on a finer margin, and whenever you are operating on a fine margin, you just want to get that job done and move onto the next one. That is the thing that apartments are particularly vulnerable to, because that developer will just sell it to the end user and then move on and so has very little accountability after that, whereas a government department has accountability for the schools that they build, for example, so they will have their own expertise, people making sure that it is done properly.

**The CHAIR:** It is a very dangerous set-up and business because for the end user, for the purchaser, for the family or whoever is living there, it is very, very, very costly to fix.

**Mr RICHARDSON:** Absolutely.

**The CHAIR:** It can bankrupt you.

**Mr RICHARDSON:** Yes.

**Mr FOWLES:** Paul, as the person here with actual domain expertise rather than just Sarah and me, have you got—

**Mr HAMER:** Not so much in structural. Mine was more on the ground. But I was wondering how—

**Mr RICHARDSON:** Well, there are plenty of basements that leak and crack.

**Mr HAMER:** I was more on the transport side. I guess, going back to the form of the contract and how that is actually going to then make a difference in those particular situations and deliver that accountability, so—

**Mr RICHARDSON:** Excellent point. It is the contract that is controlling ultimately everything here, and as a result the cash flow. You have got to understand that this industry survives purely on cash flow, right? There is no margin in construction. They are pricing jobs at 4 per cent—4 per cent. If you get out of bed, you lose that.

**Dr MARTEL:** Given the risk of building a multistorey building—a lot can go wrong.

**Mr RICHARDSON:** I am only talking about a building that is, say, at the \$10 million mark—your five-storey buildings and that. There is no margin in it for a lot of people. The subbies are pushed down and down and down with their price because they have got the work. We have got more building subcontractors than we have ever had in the city—

**The CHAIR:** Which do you think, Steven, then lowers the quality?

**Mr RICHARDSON:** Absolutely.

**The CHAIR:** Something has to give. It is not going to be time and cost, because no-one wants to wear the financial cost. It is the quality, which means that the purchaser wears the fallout from that.

**Mr RICHARDSON:** Absolutely, and this is our point, I think. We talk about the three pillars, bearing in mind safety sits above everything, right? So safety is a given in this industry, and we are very good at trying to manage safety to the best of our ability. But time, cost and quality, Andrew said at the start. We have got a pretty good handle on time and cost, but they are affected every day of the week. A builder is a manufacturer and a farmer. He is dependent on the weather, the supply chain and all of these things. So those things are vulnerable. The only thing that can give is quality, you know, and that can get down to how the door is hung. You can get by for a couple of years and then the thing falls off. It gets back to your point: who pays for that then? Who wears that consequence?

**Mr HAMER:** I was going to say, though, you are looking for a more robust or regulated contract system that would define that, and you are looking to having perhaps more descriptive quality standards. That will have an impact on cost as well, and we are talking about end users. You talked about the power disparity and they are just general households. So how would you actually see that being implemented in a real world, given the impact that that might have?

**Dr MARTEL:** We all want a crack at that one.

**Dr VAZ SERRA:** I think the three of us can comment on that. The first thing is the definition of ‘quality’. That is a word that does not mean the same—

**The CHAIR:** It sounds like committee inquiry, to be honest.

**Mr FOWLES:** It is obviously highly subjective.

**Dr VAZ SERRA:** It is not as subjective as it looks like, but it is subjective because it depends on each project. If you buy a Rolls-Royce, you want a Rolls-Royce with quality. If you want another brand, a different brand, you also want that with the level of expectation of quality—you know, the doors need to open properly. Think of quality as mainly what was initially defined as a specification of standards for the project, and it is quality if those expectations were met at the end. It should be built according to expectation. What you are talking about now is if the contract specifies just a certain level of quality at the beginning, because you just have drafts, and you give that to a builder that does not have the qualifications, the skills, to translate that draft into something that is properly built within the quality that was the initial expectation of the developer—

because the quality started out in the business model of the developer, whether you wanted to build something luxurious or you wanted to build different kinds of levels of apartment and did not need that kind of differentiation—‘quality’ is what was your initial expectation. At the end it should accord with what was your initial expectation and some basic things need to work, you know, be functional. What the contract means is what we are asking you to look at. As the system is working now, you need to have more qualified people accountable around the builders to make that end user more protected.

**Mr HAMER:** But I think there are two sort of elements to that. That would to me be more about, say, the finishes. But if you are talking about what Steven said before, there might be a wall of the bathroom and it is on a slant and then the tiles do not match up. No-one is going to be going into an apartment and saying, ‘Well, I don’t mind that quality’. I mean, everyone is just going to have a level of expectation that the building is not going to crack and it is livable and it is not a slant and all of that, and then the quality comes to me from personal choice and what we are prepared to pay in the finishes. It would be my experience that the builder might come and say, ‘Do you want wooden benchtops or do you want stone benchtops?’ or ‘What sort of fittings do you want on your taps?’ and those types of things, which is a perception of quality from the user. The actual building structure—you would hope that there is a more, I suppose, standard level of quality there.

**Dr MARTEL:** I will try to keep this quick, because I think we are probably eating into the next one. I will start by saying that none of us are lawyers. I think in our recommendation we recommend that what you do is put out developer plain language statements so that people understand the consequences of the contract. I am not sure you necessarily are going to be able to legislate against a specific contract type happening, but what those contracts do is, as we have mentioned, pushed the responsibility for quality down the chain to the subcontractors.

It comes back a little to Sarah’s question. Where the government has traction is in accreditation and licensing, because not anyone can be a builder—you have to be licensed, and that is regulated by the VBA. So it is post fact if something goes wrong, but if I am making the builder think up-front, ‘What if something goes wrong that has consequences for me personally, not just to my phoenix company which can disappear and I can start again with a slightly different name?’, then you are incentivising quality to happen during the build. And so that I think is where you have more leverage than in trying to direct how contracts—

Because no contract will say ‘You should build this to substandard’; the contracts will all specify what the quality needs to be. The question is, ‘Are we building things that actually meet those contracts, or not but are being signed off as if they have?’. So where is the accountability if you do that? And that is where we are arguing that you guys, we think, have some leverage.

**Mr RICHARDSON:** And if I take those two points, the key to it is if you build to the specification, you are building a good building. You really are. These towers in the city are a core 200-thick post-tensioned slab, and you hang a facade off it. Well, a post-tensioned slab 200 thick looks like that at the top, so your tolerance is gone. This table might be wobbly. Did they level the floor? Did they put in extra concrete? No. They will specify—engineers are great at this—a 120-thick slab. How do you construct a 120-thick slab? You cannot. It is that thick, so it has either got to be thicker or—

There is no accountability for those even though they sign off and tick off. If you were to strictly adhere to the specifications and the documents that are specified in the contract, you would build a quality job, but it is not, because the people that are supervising it and managing it are not held accountable for it in the end. They have done the best they can in the situation and the conditions they are in.

**Dr MARTEL:** Yes, and they are not bad guys in that sense. It is a real pressure industry. These things happen, but they should not.

**Dr VAZ SERRA:** Some things you can immediately visualise—it is not in our line—but some things happen only five years after. A noise and even smells because things were not built properly according to some new technologies. Things happen, and how are you going to solve the problem if after five years you start to have smells and noises and so on? Those things do not show up immediately—it is not visual like the drawings are not aligned.

**Mr RICHARDSON:** Nobody goes out to build badly. I do not believe anybody goes out to build badly.

**Mr FOWLES:** But there are those who go out to build cheaply and without necessarily an eye to the quality outcomes.

**Mr RICHARDSON:** Absolutely.

**The CHAIR:** We are going to have to guillotine it and follow the—

**Mr RICHARDSON:** That is all right.

**The CHAIR:** Thank you. Amazing.

**Dr MARTEL:** You are most welcome.

**Witnesses withdrew.**