

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

REGULATION OF BUILDING STANDARDS, BUILDING QUALITY
AND BUILDING DISPUTES

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At Macquarie Room, Parliament House, Sydney, on Tuesday 27 August 2019
The Committee met at 9:30

PRESENT

Mr David Shoebridge (Chair)
The Hon. Robert Borsak (Deputy Chair)
The Hon. Mark Buttigieg
The Hon. Scott Farlow
The Hon. John Graham
The Hon. Courtney Housoss
The Hon. Trevor Khan
The Hon. Matthew Mason-Cox

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IAN ROBERTSON, Secretary, Development and Environmental Professionals' Association, affirmed and examined

The CHAIR: Do you want to give a brief opening?

Mr ROBERTSON: I would like to give a brief opening because there is a familiarity about this process. It was in 2001 where I did precisely this with the Campbell inquiry. The only difference being that at morning tea before we began giving the evidence David Campbell sidled up to me and said, "Have you got anything to say other than, 'We told you so'?" Of course the answer to that is, "Probably not". But we are doing it again today. We have been steadfastly opposed to the concept of anyone but local government certifying the adequacy of the construction of buildings. The concept of certifying was alien to local government until it was introduced into the private sector and then flushed back into local government. It was a job done by people with a variety of other jobs as well.

The issue for us has always been, since the Government flirted with it in the late 1980s and again when they introduced it with much more vigour as an amendment to the EP&A Act in 1988, was that the model itself is so fundamentally flawed with the inherent conflict of interest that it is impossible to manage it in a way that allows people to have confidence in it. We keep saying that and have been saying it for 30 years on the 1988 initiative and 20 years on the 1998 initiative. I have high expectations that inspired by John Cleese doing something significant about a dramatic change to the development of comedy that you open minded and enthusiastic lot are prepared to do something that will mean I do not have to come back in five or 10 years time and say, "Well, all you really did was to put a bit more lipstick on the pig or a bit more string on the car held together by string".

That is basically our position. We not think there is anything that can be done to legitimise it or make it transparent. On the issue of construction, we think that if you build it, you fix it. I am not an expert in the area; I am not qualified to do building work of any description at all. I have, in a way, perhaps, the luxury of dealing with an examination of principles and issues of governance that allows me to be able to come along and talk about how it would work better. Our view is that it can only really work effectively and better by returning it to local government. We put that in our submission. It has horrified many; horrified the Property Council of Australia, for one. It would require significant lead time to ensure that, with the cooperation of government and funding assistance, councils were able to retrieve something which they did run, without the dramas that we have witnessed over the last 20 years. We believe that is entirely possible and a realistic proposal to the Committee, notwithstanding the fact that pretty much everyone sitting at the table, apart from you two at that end, have got skin in the game on this—the Liberals moved in the eighties and Labor came smashing through with it in the nineties. So it will be, as Sir Humphrey might say, courageous of you to do something that really reverses what has been an historical commitment. We look forward to that happening.

The CHAIR: Thank you, Mr Robertson.

The Hon. MARK BUTTIGIEG: Mr Marinelli, who was here previously, made a comment that builders are under significant pressure. I think that went to the core of the problem. Correct me if I am wrong, but essentially what has happened here is that there has been a laissez-faire, deregulatory approach, based on trying to stimulate a building boom, which has engendered a cowboy approach to building—in a nutshell. It encourages bad behaviour and bad outcomes because if you try and do the right thing and comply with paperwork that is there but is not enforced, it actually costs you on the job—you lose profit. That is essentially the issue, is it not?

Mr ROBERTSON: I think you are absolutely right. It is the issue. It has been a political product, constructed over 20 years of an obsession with deregulation. When you look back to the Labor Government in the form of Craig Knowles, introducing it in the nineties, which is where the real damage was done, it was all about competition policy and cheaper, quicker, less regulation, less red tape—all of that kind of political sloganeering stuff. What it delivers is a flawed system. I think it was telling that in July the Premier announced that the system was not working, that it had been deregulated too much and something needed to be done—and within a week the CEO of the Master Builders Association was calling for more regulation to make sure that her members get the job done properly. It would be like me turning up to a parliamentary committee saying that my members were idiots and we needed money involved to train people up. I mean, it is a concession unusually made. It really goes to the heart of the fundamental problem that there is no confidence; the developers call for things to happen. Developers have been calling for things to happen for the last 20 years. I think it would be good if they could just calm down a bit.

The Hon. ROBERT BORSAK: Was the Premier's statement just putting more lipstick on the pig?

Mr ROBERTSON: Well, I do not know. She said in *The Sydney Morning Herald* on 10 July that it has not worked—that we allowed the industry to self-regulate and it has not worked. This is a test of well, yes, fair enough, we all get that but what are you going to do about it?

The CHAIR: What do you make of the Building Commissioner's evidence that he thought that it requires a very light regulatory hand—that is about culture change and leadership and a light form of regulatory reform?

Mr ROBERTSON: I think the Building Commissioner demonstrated amply, why he got the job.

The CHAIR: What do you mean by that?

Mr ROBERTSON: I think it is a disappointing response. If you look at the Building Commission in Victoria—and we went and talked to the Building Commission in Victoria in 1987 about what it was doing and the commissioner had a \$5.5 million budget—which was a lot of money in those days—and 55 staff. His view, when we talked to him about what was being proposed in New South Wales, which had virtually no regulatory mechanism attached to it because the Minister thought that this would be a way of stimulating and doing things cheaper and quicker—notwithstanding the evidence at the time that this was not true in other places where it had happened—the Building Commissioner in Victoria said that the New South Wales proposals were half-baked and that they would create headaches. Now with hindsight, that was quite an understatement.

The Hon. JOHN GRAHAM: Do you think there were any issues with local councils dealing with this before that were driving this reform? Excepting part of your view about the public discussion, were there any issues with councils previously?

Mr ROBERTSON: The problem with regulating this area, particularly in the application area—mostly we are talking about compliance with things already, so we need to separate the two out. The difficulty for councils is that you have an applicant and you have objectors and someone at the end is going to be unhappy. It is easy to put the boot into the council. When you look at how compliance with the building system operated, prior to 1998—notwithstanding the porkies in the Property Council of Australia's submission—between 1989 and 1998, which is the critical period of the start of the ICAC and the amendments to the Environmental Planning and Assessment Act, there was only one building surveyor in a council caught for taking bribes—and caught spectacularly by taking an envelope, by *60 minutes* on television. Only one.

The Hon. JOHN GRAHAM: Were you comfortable with the interaction between councils and council officers making decisions in this area?

Mr ROBERTSON: Yes we were, yes we are. The difficulty had been that local government is an industry where—it does sound like I am putting lipstick on the pig, in a way—people work thinking that they are working for the public good. I remember when I first started for the union back in 1985 or 1984, going to an institute of building surveyors conference and Nick Greiner was there and he was a young Turk—from your side, if I have the sides right—

The Hon. TREVOR KHAN: Their side.

The CHAIR: Basically over there.

The Hon. SCOTT FARLOW: It is a happy coalition.

Mr ROBERTSON: He got up and he said that the three great lies in life—he was the after-dinner speaker—were, "your cheque is in the mail", "of course I will love the morning" and "I'm from the local council and I'm here to help."

The CHAIR: He stole that from Reagan.

Mr ROBERTSON: Did he? Well, I hope no-one laughed at Reagan as well, but no-one laughed at that. But it is true to say that these are people who think that their job is working for the community to make sure that standards are upheld in the interest of the community.

The Hon. JOHN GRAHAM: On the question about how costs have changed and how the ease for consumers have changed, excepting the significant problems that exist at the moment—I accept that view you are putting. Do you have any observations about what has happened on costs and on convenience for consumers under this regime?

Mr ROBERTSON: I do not have any data to demonstrate it but we know that at the time—leading up to 1998—that all of the evidence was that it would increase costs. It might be a bit quicker but—

The Hon. JOHN GRAHAM: Do you think that has happened? You do not have data to say, but do you think—

Mr ROBERTSON: No I do not. I know that when it was introduced in 1998, councils were criticised by those who wanted to set up a level playing field and have competition policy go crazy, councils were criticised by advocates of the free market because their fees were too low. In fact, Sutherland Council famously doubled its fees so that it could not be said that it had an unfair advantage. That is not how capitalism works, is it?

The CHAIR: It is how some people in the property industry wanted it to work from 1998 onwards. One of the criticisms about private certifiers, as opposed to councils, is councils have in place a management structure, internal accountabilities, independent auditing and oversight, whereas private certifiers can either be sole traders or set up their own corporate structure. Do you want to talk about those differences between the structural integrity, if you like, between the two models?

Mr ROBERTSON: Sure, I would welcome it. Because that was precisely our argument back in the lead up to 1998, that anyone as a private certifier could be operating out of their garage. If you worked as a building surveyor—which is the title of what the job is called, not a certifier—in local government at the time, you would invariably be allocated work that was consistent with your level of skills, qualifications and experience. You would have oversight while you were getting skills in the industry, you would have a team leader, you may in a larger council have a manager. All of these people were watching what you were doing because they were all liable for the way you were doing the job.

Above the manager would be a director, a general manager, and then of course the elected council, all of whom have an interest in ensuring that the council gets the job done properly. When you compare the two models, there really was no comparison at all. That was a fundamental flaw in the argument. It was a bit rich I think in a way in the 2001 inquiry of David Campbell's for people to be complaining about setting up a level playing field. We are going to set up a level playing field so we want to accredit people who already have such a significantly higher level of management, control and oversight that anyone operating as a private certifier, even now, would have.

The CHAIR: We have had a couple of notorious cases more recently where a private certifier has been deregistered by the professional board, but then has remained in the industry by either getting a relative or close associate to be the accredited private certifier but they have been the CEO, or owner, or manager of the same corporation and retained that stake in the industry. What do you say to that?

Mr ROBERTSON: I think it is bloody appalling, of course. I am amused by some of the responses you were getting in that questioning about what happens if you are doing the wrong thing: Can we strike you off forever? It becomes an issue about income stream, when it is an issue which is much more important than that. It is about consumer protection and the quality of building. I thought that appalling. I did not know that. Of course, there is nothing regulating that and by any measure the way the Building Professionals Board [BPB] has run their penalties regime and their complaints mechanism, talk about a slap on the wrist with a wet lettuce leaf. It has been a disgrace. In fact, there was one private certifier fined \$100,000 and he had an appeal based upon feeding the family. They cut it in half. He does not work as a private certifier any more.

Really, there has to be something seriously done if that kind of system continues, and that is one of the risks of course with what you are all doing, you are looking at more lipstick or more string, and if it continues there has to be a really serious and punishing regime. Anyone who makes a fundamental error, to be polite about it, in local government can end up sacked, can end up performance managed, all of these kind of things. But these things just sort of bob along. If you look at the penalties page, on the BPB it is quite extraordinary how many complaints are made, and there is reprimand, reprimand, reprimand. For a while we used to joke about running a book on who would be the first private certifier in jail. That might be a good idea to do, might it not?

The Hon. SCOTT FARLOW: Prior to 1998 who was the auditor or overseer of certifiers or building surveyors?

Mr ROBERTSON: The Local Government Act 1919 up until 1993 regulated building. The Environmental Planning and Assessment Act provided for development applications, and they operated pretty much in parallel so that the more simple not too hugely amenity imposing things could be done by a building application. The development application [DA] was where the developer had a bit of a go and a bit of a gamble about floor space ratio or how many floors they could get or whether they could build eight times over the legal limit in Piermont, for example. That is how it worked then. It was a system that worked really well for people who wanted a simple addition done to the back of the house or whatever, which now falls into the exempt and complying, could get it done very fast, almost instant turn around. Applicants, developers, particularly bigger jobs, could file a DA to have the argument about floor space ratio and where it sat and how, and all those things,

Piermont

and at the same time could be working on a building application to ensure that at the end both those things were completed pretty much at once. Now it is a much more complicated system, which is funny seeing it is meant to be easier.

The Hon. SCOTT FARLOW: We have heard a little bit about the void between the clerk of works model and then the current model. I am interested in terms of what happened during that period when the clerk of works was offsite and before we had the introduction of private certification, which I imagine sits in that period you are talking about there and that process. Do you think it worked better during that period, even with the clerk of works offsite?

can't
Mr ROBERTSON: I cannot remember—we have said it in our submission at some stage there, but the end of the Builders Licensing Board was a big problem for the industry and you sound like a bit of a dinosaur going back. But when there was a system where there was a clerk of works on site, there were people working for the Builders Licensing Board who were builders in their own right and capable of inspecting and dealing with issues, and then there were building surveyors from the council. If there were an issue picked up, those people would go on site and they would talk to the clerk of works, who was responsible for quality control on the job. It would all be resolved with potentially the clerk of works, the council person, or if necessary the people from the Builders Licensing Board. It is going back to an old fashioned model, but nevertheless one that worked well and where we did not have any of this sort of disastrous stuff that is coming out in the five famous buildings in Sydney.

The Hon. SCOTT FARLOW: On one of those famous buildings, we have got Mascot Towers, which was certified by the local council in Botany. I think we have heard the private certifiers effectively saying they have had an impossible task. I am interested in your perspective, with Mascot Towers in particular, as to whether that was an impossible task for certification or whether there were other issues with the certification process there?

nya, nya, nya
Mr ROBERTSON: The private certifiers have leapt upon Mascot Towers as a nah, nah, nah, kind of experience. But remember that it was certified in 2008 and it operated quite happily for a decade until some bloke dug a giant hole next door.

The Hon. TREVOR KHAN: Well, I do not know if that has necessarily been—

Mr ROBERTSON: You are absolutely right, unlike the Opal building, there has not been a definitive examination so that you can say—This is the reason.

The CHAIR: The evidence was pretty clear, that the owners and I think even the building commissioner do not yet know what the cause of the problem with the Mascot Towers is.

The Hon. TREVOR KHAN: The evidence also was that the building had been having various problems. I am not understating it but it seems we might have a series of problems, then this cracker of a one.

The CHAIR: I think Mr Farlow's question was, in the current system whether it is a council doing the certification or a private certifier doing the certification, are there still problems in it, even if you have council certifiers?

Mr ROBERTSON: There are problems in it because there is not the on the site person who is responsible for the quality of the building, who is there every day, who can go if you have got 100 wet areas, for example—everyone is talking about wet areas—instead of just having that quick sampling of whatever percentage is required. There are two considerations. The first is that you have got your clerk of works onsite overseeing it all happening properly. The second is, of course, that when people do the job properly, no-one gets upset about insurance.

The Hon. TREVOR KHAN: Well, less upset.

Mr ROBERTSON: Less upset.

The Hon. ROBERT BORSAK: Do you want to expand on that last comment? I am sure the insurer gets upset about what is going on.

Mr ROBERTSON: The insurer is more likely to get upset about insurance when they are insuring something which is fundamentally uninsurable, which is high-risk construction.

The CHAIR: It is not as though this is a novel problem. Two years ago the Government came to Parliament and said it needed to reduce the consumer protections under the rump home building insurance scheme because insurance was too expensive. The reason insurance was becoming very expensive was because building standards were so terrible all these defects were being paid. The insurance problem is really a consequence of a fundamental failure of building standards.

Mr ROBERTSON: Absolutely right, and people are focusing on resolving the wrong thing, trying to make insurers insure the uninsurable, rather than making sure that something is done about construction into the future that makes claims on insurance less likely.

The Hon. TREVOR KHAN: Are there not two parts to it? You actually want the various trades and the various professionals who are involved in, particularly, major buildings to be insured so that there is skin in the game. I think one of the things that the private certifiers observed—and on the face of it I would accept—is that because there is an obligation for them to have professional indemnity insurance, they become a target for everything that goes wrong in the building because they are known to have insurance. If you have all of the professionals involved required to have insurance then, hopefully, there will be a greater degree of targeting of any litigation that then flows to the correct party?

The CHAIR: Proportionate liability.

The Hon. TREVOR KHAN: Yes. That is right.

Mr ROBERTSON: That was the whole idea in 1998—that there would be some proportionate liability arrangement—and that was regarded as some kind of breakthrough at the time.

The Hon. JOHN GRAHAM: Why has that not happened?

Mr ROBERTSON: I do not know, I am sorry. I do not know why it has not happened yet.

The Hon. ROBERT BORSAK: Your comments feed on quite nicely into the discussion we have had so far in this inquiry in relation to \$2 companies. I know of a number of development companies that do not, let us say, cauterise their potential long-term liability and long tail liability or warranty liability by shutting down the company and starting again.

Mr ROBERTSON: But they do. They do cauterise.

The Hon. ROBERT BORSAK: No, I said I know of companies that do not do that. That is what I said.

Mr ROBERTSON: Oh, right.

The Hon. ROBERT BORSAK: The process is exactly to do that—to cauterise their liability.

Mr ROBERTSON: Right.

The Hon. ROBERT BORSAK: Do you have any comments to make in relation to that?

Mr ROBERTSON: Just that it is undesirable to not have someone responsible for poorly constructed buildings.

The Hon. TREVOR KHAN: Particularly if you are the strata owner.

Mr ROBERTSON: Particularly if you are the strata owner, certainly. You are right.

The CHAIR: If the building is built by a \$2 company that then goes into liquidation as soon as it is finished and the profits of been distributed, that puts the additional pressure on the private certifier or the council certifier—the certifier who, as the last person standing, has got a bucket of money attached to some indemnity insurance.

Mr ROBERTSON: Yes.

The CHAIR: There is a wicked problem that always goes back to the absence of accountability—

Mr ROBERTSON: Yep.

The CHAIR: —and the absence of standards at the outset.

The Hon. ROBERT BORSAK: We have had it put to us that, just as in the case of certifiers, this is the case of, say, accountants and others—that the liability insurance for builders should attach to the individual licensed builder, not just the company. What do you say to that?

Mr ROBERTSON: I do not know the answer to that question. It is not really my special expertise. But, clearly, what is going on now is not working. The idea that you can set up a \$2 company, make some profit and then be out of there is just appalling. It is hard to imagine anything you do in life where you are more vulnerable financially than in getting caught up in property transactions.

The CHAIR: The Hon. Courtney Houssos has been waiting very patiently.

The Hon. COURTNEY HOUSSOS: We have kind of moved on—

Mr ROBERTSON: Happy to go back.

The Hon. COURTNEY HOUSSOS: —but I just wanted to come back to the current regulatory scheme where you talked about the lack of penalties for certifiers, in particular. We had the Department of Fair Trading who came before us on our very first hearing. Among other things they were talking about the 10,000 building inspections that the department had conducted over the last five years and said that in the last 12 months six certifiers' accreditations had been cancelled. They seemed to tell us that everything is okay here and we do not need to worry too much about it. Would you agree?

Mr ROBERTSON: That is a pretty fresh regulatory regime, though. There was some doubt about who was actually in charge of the PB and all of that for some time. We have met with Fair Trading and they are people who are keen to provide some dignity and respect in the system. I would have thought in a perfect world they would be operating under a Building Commissioner.

The Hon. COURTNEY HOUSSOS: Thank you.

Mr ROBERTSON: Is that where you were going with that?

The Hon. COURTNEY HOUSSOS: I have two follow-up questions. That was one of them.

Mr ROBERTSON: Right. That is what should be happening.

The Hon. COURTNEY HOUSSOS: So a building commission?

Mr ROBERTSON: A commission, yes. A building commission.

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

Mr ROBERTSON: A building commission should be big. If it is 55 people as it was in 1997 in Victoria, it is hard to imagine it would be any smaller in New South Wales.

The Hon. COURTNEY HOUSSOS: There are 400 in Queensland.

The Hon. JOHN GRAHAM: And a similar number in Victoria.

The Hon. ROBERT BORSAK: The commissioner says he does not need one.

Mr ROBERTSON: Yes, I know. As I have already said, and I do not want to appear rude—

The Hon. ROBERT BORSAK: He is going to provide leadership that will sort all this out.

Mr ROBERTSON: Well, good luck to him. But it does demonstrate why he is in the job, does it not? I think we need something a bit more broad and courageous about that. But the Government does not want to appoint a Building Commissioner is going to come in and say, "I want \$20 million and 50 staff and I'll let you know how it's looking in two years' time."

The CHAIR: Mr Graham?

The Hon. JOHN GRAHAM: I think Mrs Houssos wants to finish up on her question.

The Hon. COURTNEY HOUSSOS: I was just going to say on a more serious note the Lambert review, which was a very serious analysis of what we needed to do going forward, said fundamentally that Fair Trading was not the right decision to be doing it.

Mr ROBERTSON: Right.

The Hon. COURTNEY HOUSSOS: They have the wrong ideological approach because, as you say, buying a house or buying an apartment and buying a toaster are fundamentally different. There is a need for a Building Commissioner.

The Hon. ROBERT BORSAK: Or buying a house.

Mr ROBERTSON: Yes.

The Hon. TREVOR KHAN: Is that a question or a statement? I heard his evidence too.

Mr ROBERTSON: I think the answer is yes. Yes, I agree with you for that question.

The Hon. COURTNEY HOUSSOS: You answered my follow-up before I got to ask the question.

The CHAIR: The question might be this: Did you see Mr Lambert's evidence to this Committee? Have you had a chance to review that?

Mr ROBERTSON: I have had a quick read of that. We did in fact spend an afternoon with Mr Lambert when he was doing the review. Like the other investigation done by Tim Moore and—what is his name, the Labor bloke? I have forgotten his name.

The Hon. TREVOR KHAN: Oh, there are plenty of them.

The CHAIR: He was shorter than Tim. I remember that.

Mr ROBERTSON: He was much shorter than Tim, in fact, yes. But that investigation by Tim Moore and the other person and Michael Lambert, they were enthusiastic people who wanted to fix things but they have been mistakenly put into the job by a Government who did not want to do anything. Neither of them was very satisfied with their results, particularly from the look of Michael Lambert's evidence.

The Hon. COURTNEY HOUSSOS: And certainly his submission.

The Hon. JOHN GRAHAM: On the Lambert review, which is where my question was heading towards, you are really saying, "Look, hand it all back to councils."

Mr ROBERTSON: Yes.

The Hon. JOHN GRAHAM: That is not the conclusion that Lambert comes to, though.

Mr ROBERTSON: No.

The Hon. JOHN GRAHAM: Do you have a view about why? That does weigh heavily on me that he looks at it and says, "Look, whether a council certifier is doing it or private certifier, it is regulation here that is the issue." Why do you come to a different conclusion?

Mr ROBERTSON: The effluxion of time.

The Hon. JOHN GRAHAM: But his view is quite recent. He would still hold that view, I think.

Mr ROBERTSON: He may well. I do not know.

The Hon. JOHN GRAHAM: Yes.

Mr ROBERTSON: But it would be good to have an argument with him about it.

The Hon. JOHN GRAHAM: Yes.

The Hon. MARK BUTTIGIEG: But is it not essentially about breaking the nexus of conflict of interest?

Mr ROBERTSON: Yes. That is entirely the issue.

The Hon. MARK BUTTIGIEG: That is the essence, whether it is a council doing the employing or anyone else. The key is to break the nexus of conflict of interest.

Mr ROBERTSON: Absolutely right: Someone from a council who goes out to certify whether a building is complying with the conditions of consent.

The Hon. JOHN GRAHAM: I am clear that that is your view.

Mr ROBERTSON: Yes.

The Hon. JOHN GRAHAM: My question is different, which is: Do you have any view about why the key review, the Lambert review, does not come to the same conclusion as you?

Mr ROBERTSON: No, I do not.

The Hon. JOHN GRAHAM: Okay.

The CHAIR: Do you want to take that on notice to review that?

Mr ROBERTSON: I am happy to have a look at that, yes.

The Hon. JOHN GRAHAM: I think we would be open to a view from you on it.

Mr ROBERTSON: Someone tells me the list of things that are on notice, do they not?

The CHAIR: The secretariat will. One of the potential solutions, if you like, about the problem of the conflict of interest is to say, "Well, that can all be fixed by having a cab rule provision", where, instead of having the builder choose a certifier, some central authority nominates a certifier and you get who you get, and you do not get upset. What do you say to that as a solution?

Mr ROBERTSON: It rhymes as well.

The CHAIR: It does.

Mr ROBERTSON: You can see it on their masthead.

The Hon. SCOTT FARLOW: It works great on five year olds, Chair, to which you could probably attest as well.

Mr ROBERTSON: But really it is the cab off the rank and all of those things that they looked at, what?—only last year or the year before as well?

The CHAIR: Yes.

Mr ROBERTSON: But they are steps people want to take to try to make something that is fundamentally conflicted look better.

The CHAIR: At the end of the day, we have not had somebody articulate the benefits of private certification. We have had a variety of models suggested about getting rid of some of the problems with it, but are you aware of someone—you are probably the wrong person to ask.

The Hon. SCOTT FARLOW: I was going to say, "I think so."

Mr ROBERTSON: Bloody oath I am, yes.

The CHAIR: The problem seems to be: Where has somebody articulated the benefits of private certification?

Mr ROBERTSON: Well, I would have thought these blokes. If these blokes did not do it, no-one is going to do it.

The CHAIR: Some of your earlier submissions point out the fact that the review that was done when Victoria moved to private certification saw a doubling of the cost of certification services. That review also found that private certification was 37 times more likely to have defects than council certification.

Mr ROBERTSON: Yes.

The CHAIR: Have there been any of those kind of reviews of the New South Wales system?

Mr ROBERTSON: No.

The CHAIR: Who should do that?

Mr ROBERTSON: The Government should do it. If the Government is going to do a proper examination of the exercise, they should be keeping some stats of it.

The Hon. JOHN GRAHAM: Can I return to the cab rank issue? I accept you have a strong position on this. Why will the cab rank system not work? Why does that not break the link between the person who is choosing and paying?

Mr ROBERTSON: It will break it, but it will still mean that they get paid by the developer and that becomes the problem.

The Hon. JOHN GRAHAM: But the developer is not choosing who they are, though.

Mr ROBERTSON: No.

The Hon. JOHN GRAHAM: So there will be greater rotation. A certifier will not be receiving all their income from one source—that would be a concern. But, crucially, it is that link to the next job, isn't it, that is really the potential conflict here, the potential incentive. Why doesn't the cab rank system break that?

Mr ROBERTSON: The cab rank system would break the idea that Triguboff or someone has the same person all the time, but it still has the problem that whoever gets the Triguboff job from the cab rank—for want of any other developer; I am not picking anyone in particular—is still going to be paid by that developer.

The Hon. JOHN GRAHAM: Understood.

Mr ROBERTSON: And there is still that difficulty of wanting things done that the developer does not really want to do.

The Hon. COURTNEY HOUSSOS: But there are plenty of industries where that financial relationship exists; say, for example, financial auditing—that continues to exist, but would you not agree that it is about putting the safeguards in place to mean that there are checks and balances on that relationship?

Mr ROBERTSON: Well, yes, you could have a go at that if you like. I think we said when there were three options about how you allocate in the transparency of the system, imagine asking us how we could make the system look more dignified and respectable. What a joke! They had three options at the time. We said we would have them all, "Give them all a go if you insist on it." And the test will be whether it is lipstick, or whether it is string or whether it has worked.

The CHAIR: But then even if you have a cab rank rule, you still have, on one hand, certifiers employed by council with all of those checks and balances you spoke about earlier in a sophisticated organisation as against somebody who may be operating out of their garage.

Mr ROBERTSON: Yes.

The CHAIR: And which is going to better protect the public interest? Some people would suggest someone operating out of their garage is not where you would go.

Mr ROBERTSON: No. I think you are right. You would want a more sophisticated organisation. I think it is also a bit of a problem, the cab rank. I get the idea of the cab rank but it is like roulette in a way, isn't it? Flick your marble and whatever the certifier is you take.

The Hon. JOHN GRAHAM: Well, it introduces a random element into what, I think, there is some public disquiet about, which is the choosing of the next job. What I certify on this job raises the question will I influence my next job? It would break that aspect.

Mr ROBERTSON: It would break that but I would be interested to see, though, whether for those five properties in Sydney—and we know one was done by the council but the other four properties, for example—the certifier had a longstanding relationship with the applicant, with the developer. That may be the case or it may not. We do not know that, do we?

The CHAIR: We can all agree it fixes one problem, but what you are saying to us is there is a variety of other structural problems that were not be addressed by that. Again, it is going to be piecemeal reform.

Mr ROBERTSON: Yes. And we have been doing this for 20 bleeding years.

The Hon. SCOTT FARLOW: Mr Robertson, I am just interested in that point again as well because the mounting evidence is that certification is not the total answer when it comes to this. I think we have heard that from yourself when it comes to Mascot Towers and also when it came to our previous witnesses as well. I am interested in going back again to that period between the clerk of works and then the introduction of certification by the council and then the movement to private certification, and just seeing what were some of the different aspects potentially, from your perspective, when councils were certifying it that improved quality that we have not seen since the introduction of private certification. Has there been anything else that has changed or was there a more rigorous assessment process when council was doing it? What was that missing ingredient?

Mr ROBERTSON: There would be a less conflicted inspection process. That is all I can really say, and I am happy if it is noted there. Wasn't that one the first question that was on notice for me?

The Hon. SCOTT FARLOW: I do not know if it was the first question.

The CHAIR: It was about that.

Mr ROBERTSON: Yes. You have just asked me again to see if I was hedging. I am not.

The Hon. SCOTT FARLOW: No, no. We have seen the council certification changes and I am just interested as to whether there is some sort of missing ingredient, potentially, that we are not seeing in terms of the clerk of works model's return, and we are looking at in terms of the certification that may be conducted by council and the private certifiers. And then there is the conflict-of-interest argument that we have seen Mr Graham canvas as well and whether there is anything else that could potentially be part of that process that has changed over recent years?

The CHAIR: I think Mr Robertson has already said he will take that on notice and come back to us within seven days.

Mr ROBERTSON: I do not have the answer.

The Hon. SCOTT FARLOW: Sure.

The CHAIR: Mr Robertson, nothing happened after the delivery of the Lambert report. Do you know why nothing happened?

Mr ROBERTSON: I would guess because governments protect the private certification system. I think also you can go back further and say that the Moore and the other guy—

The CHAIR: Dyer.

Mr ROBERTSON: Dyer, that is it. The Dyer-Moore report—nothing happened with that either.

The CHAIR: Well, yes.

Mr ROBERTSON: So nothing happened with that, nothing happened with Lambert—

The CHAIR: Well, you could say the same about the Campbell report.

Mr ROBERTSON: The Campbell report pretty much only resulted in accreditation of council staff under the facade or the guise of constructing a level playing field.

The CHAIR: Did your union or the local government sector, to the best of your knowledge, say when the Lambert report was delivered to the Government, "Get on with this. We will back you. Put these reforms in"?

Mr ROBERTSON: I think we were getting sick of it by then. It was good that there were some nice, enthusiastic people that want to do something, but there is a limit to how many letters you can write to people who really do not want to receive them. Maybe we should have.

The Hon. ROBERT BORSAK: We have found that out, Mr Robertson.

Mr ROBERTSON: Have you?

The CHAIR: The last matter I hope to address with you is the Government rushed through some legislation, notionally to toughen up the private certification system last year. They said to the Parliament that it was urgent, it needed to be pushed through. Parliament approved it. It still has not commenced. We have not even seen a draft of the regulations in the public domain. First of all, has the Government engaged with your union on that? Secondly, even if that was implemented, do you think it is going to fix things?

Mr ROBERTSON: No, they have not engaged with us. They do not often do that. I would welcome it, of course, but they have not. It should. The financial penalty has to be some kind of deterrent, hasn't it, really? But it is one of those things, isn't it—it was an urgent matter and it has just disappeared again, like poor old Michael Lambert and Moore—

The CHAIR: Moore and Dyer.

Mr ROBERTSON: Moore and Dyer, yes.

The Hon. ROBERT BORSAK: It is indeed more dire than it was before.

The CHAIR: Thank you. On that note, Mr Robertson, I will say, on behalf of the Committee, thank you for coming back. You would have to be indifferent to suffering to not realise that this is not the first time you have said this and the frustration you feel on behalf of your members about the failure of the Parliament to act. I can only hope that now is the time that we will have some impetus for some genuine structural change. Thank you for your continued engagement.

Mr ROBERTSON: Okay. Thank you.

The CHAIR: That concludes the morning's hearings. We will have a lunch break and return at 1.00 p.m.

(The witness withdrew.)

(Luncheon adjournment)