LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, PLANNING, TRANSPORT AND CITY SERVICES

(Reference: Inquiry into the Planning (Territory Priority Project) Amendment Bill 2025)

Members:

MS J CLAY (Chair)
MS F CARRICK (Deputy Chair)
MR P CAIN
MS C TOUGH

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 15 APRIL 2025

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Secretary to the committee:
Mr J Bunce (Ph: 620 50199)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 9.30 am

BOWLES, DR DEVIN, Chief Executive Officer, ACTCOSS
ERAI-COLLINS, MS CHERI, State Manager, ACT, NSW and Qld, Salvation Army Housing
GANI, MR JOSHUA, Senior Policy and Advocacy Adviser, Salvation Army

THE CHAIR: Good morning, and welcome to the public hearings of the Standing Committee on Environment, Planning and Transport and City Services for our inquiry into the Planning (Territory Priority Project) Amendment Bill 2025. We have received 37 responses to our call for submissions to this inquiry. These submissions have been immensely helpful. Thank you very much to ACTCOSS and Salvation Army for your thoughtful submissions.

This morning, we are hearing from the Salvation Army and the ACT Council of Social Service. In the next part of the hearing, we will hear from YWCA and Community Housing Canberra.

The committee wishes to acknowledge the traditional custodians of the lands we are meeting on, the Ngunnawal people. We would like to acknowledge and respect their continuing culture and the contribution they make to the life of this city and our region. We would like to acknowledge and welcome any other Aboriginal and Torres Strait Islander people who might be attending today's event or who might be streaming the hearing from somewhere else.

Hansard are recording and transcribing the proceedings, and publishing them. We will also be broadcasting and webstreaming live today. If you take a question on notice—and we do not particularly expect our community members to take questions on notice—if you can say, "I will take that question on notice," that helps our secretariat to track down the answer.

We welcome Salvation Army and ACTCOSS witnesses to the proceedings. Could you confirm that you have read and agree with the privilege statement? I will remind you of what that privilege statement says. Witnesses must tell the truth. Giving false or misleading evidence is a serious matter and may be treated as contempt of the Assembly. Of course, you are welcome to say that you do not know, if you do not know something, or to speak from your experience. If you have an opinion on something, you can say, "It's my opinion." All of those things are fine. Also, feel free to add any comments regarding the capacity in which you are appearing today.

Mr Gani: I have read and understand the privilege statement.

Ms Erai-Collins: I am the State Manager for Salvos Housing, which is the Salvation Army's community housing provider in Australia. I have read and acknowledge the privilege statement.

Dr Bowles: I have read, acknowledge and agree to the privilege statement.

THE CHAIR: Thank you for making submissions. We are in a housing crisis. We are all pretty well aware of and concerned about the problems that we are experiencing in

Canberra and the role that public and community housing play in that.

Joshua and Cheri, you have had a pretty thoughtful look at the bill, the drafting and how it may or may not apply to community housing. Can we have a conversation about some of the comments you have made on that? I will start by saying you have obviously thought about whether community housing should be covered; and, if so, in what manner. Tell me what you think about that.

Mr Gani: We are keen to see community housing covered by a system similar to this. We also acknowledge that there are many different structures which community housing providers can take. We appreciate that there will need to be additional considerations given to that. One of the major elements that we put forward in our submission was that social housing should be covered by the bill as it currently stands, because social housing is offered on a similar basis to people experiencing similar scenarios. Is that the nub of your question, Chair?

THE CHAIR: Yes. By social housing, do you mean whether it is from Housing ACT, Salvation Army or anybody else?

Ms Erai-Collins: Or a community housing provider, yes.

THE CHAIR: If it is offered at 25 per cent of somebody's income, do you think that should also be covered by the bill, rather than just Housing ACT?

Ms Erai-Collins: Yes.

Mr Gani: Yes, that is our intention.

THE CHAIR: Certainly, I understand the point; it is all social housing, isn't it? We were thinking a little bit in our office about what would happen when you have a development that is mixed, that may have some commercial and some Housing ACT housing in it, some commercial and some social housing, or some commercial and some community—75 per cent—housing. Have you had a think about what to do with mixed developments and whether they should have special treatment—whether they should go through the regular appeals process?

Mr Gani: We have considered it. We appreciate that there may need to be additional considerations for mixed developments. They would be of a very different scale, and the nature and the way that they would interact with the public would be different. Our critical nub was that social and public housing should be treated the same when they are exclusively social and public housing developments.

THE CHAIR: Whether or not the amendment that is before us at the moment is passed in its current form, we already have the existing sections 218 and 219. You have made some comments on that section and the suggestion that the notes in that section should be removed. We do not need to go into the legal definition, but, regardless of whether this bill passes, what should happen with 218 and 219? Do you think that social housing run by a community housing provider should be able to be declared as a territory priority project under section 218? Would that be useful?

Mr Gani: My interpretation of the legislation is that, as it stands, section 218(1) would allow for the social, community and public housing to apply for a discretionary determination by the minister and Chief Minister. We think that the discretionary element there is beneficial in some circumstances. We do not see that there should be any reason to prevent community, public or social housing from applying for that discretion from the minister and the Chief Minister.

THE CHAIR: Removing that note might introduce a bit of confusion, mightn't it?

Mr Gani: Yes. Our concern is that removing the note under paragraph (c) of the subsection is not the best way to remove confusion. We believe that the note provides clarity. As a matter of fact, to remove that note might create an impression that it is not the will of the Assembly that community, public and social housing would conform with the criterion under paragraph (c).

THE CHAIR: I had not read that note carefully until you noted it; then I thought, "Goodness, we don't want to remove that, do we? That's going to land us in all sorts of trouble."

Mr Gani: That is for the will of the Assembly. We would not support the removal of that note. If the desire is to remove ambiguity, we would be in the hands of redrafting that note, but to remove it might introduce a new ambiguity. It would imply that it was now the will of the Assembly not to have paragraph (c) apply to those types of developments.

THE CHAIR: I hear what you are saying. You have also mentioned that it might be useful if EPSDD had better guidance on, I would assume, the existing 218. Also, if there is an amendment that is passed, if EPSDD had good guidance, that would help. Do you think that you would be able to get more social housing properties to be approved and built if it was better understood as to how that pathway worked?

Ms Erai-Collins: In other jurisdictions, we have seen things like concierge teams being set up within planning departments to allow community housing providers to come to the planning team and get recommendations or suggestions on developments before they spend a lot of money, to get feasibilities done, and that sort of thing. Having really strong and well-articulated guidelines will provide organisations with the ability to meet the requirements without worrying that they will spend $100,000 on getting due diligence done, and then it will not stack up because there is something in the planning laws that they are not quite sure of.

Yes, we think that having either really strong guidelines or access to a team that can provide recommendations or support to the community sector would be beneficial.

THE CHAIR: Maybe a guideline; also, when you refer to a concierge service, you just mean that there is a contact somewhere in the authority so that, when a community housing developer have a possible project, they could have a 20- or 30-minute meeting or chat with somebody before they start that long DA and design process.

Ms Erai-Collins: Yes.

THE CHAIR: It sounds very sensible, and certainly within the goal of government to get more social housing delivered. I will hand over to Ms Carrick.

MS CARRICK: My question is to the Salvation Army, as well as to Dr Bowles. In your submission, your first recommendation is that the bill be positioned as part of a broader strategy to grow social and affordable housing. There is a lot that goes into increasing the housing stock. Could you tell me, apart from the third-party appeal rights, what barriers you face in trying to increase the housing stock here in the ACT?

Ms Erai-Collins: The biggest barrier would be the access to land. Where we do have land, it is generally in areas where there are already strong community connections and things. Being able to develop it has proven difficult in the past, due to there not being an appetite for it in the past, because there was already enough social housing in that area or because of local community opposition to a development or a redevelopment, in some cases.

The other thing, obviously, is the prescriptiveness of the cost associated with getting to a point where you can bring a development to life. If we are unsure of the fact that we are going to get that across the line, for community organisations to spend between $100,000 and $200,000 to get to that point and then have a development application refused for any reason, whether it is community opposition or whatever it happens to be, that is probably the most prescriptive thing at the moment in the ACT.

MS CARRICK: Have you had any issues with DAs not being complied with—being rejected for that reason?

Ms Erai-Collins: Not to date, no.

MS CARRICK: Have you had any problems or barriers regarding how long it might take for a DA to go through the approval process?

Ms Erai-Collins: We have only just started a lot of the processes in Canberra recently. It has only been over the last 12 months that we have been doing a lot of research into developing some of our land in Canberra, so I cannot speak to delays in the DA process at the moment. It is more about noting that this bill could possibly impact those developments that we are likely to be progressing through, with access to HAFF funding and other federal funds that are coming through.

MS CARRICK: One of the things we heard yesterday—you mentioned community opposition—was that consultation up-front would help to mitigate some of those concerns that the community end up having. If we have a TPP for the class of public housing, there is no requirement for community consultation on each DA as it comes through. That potentially causes a problem, when there is no up-front consultation and no appeal rights. It leaves the community feeling frustrated.

Ms Erai-Collins: The Salvation Army make every effort to do community consultation throughout the process. We are of the opinion that community matters. We are here to build community; we are not here to tear it down. While we understand that there are some genuine concerns raised by local community organisations, there is also a sense of nimbyism in some instances. We need to have a balance between where there is a

genuine concern about a development and people not wanting that type of development in their suburb.

MS CARRICK: The other thing is that, when you get people going to ACAT, with the hird-party appeals, the processes there potentially could be looked at, too. The whole process, from whoa to go, potentially can be looked at. Dr Bowles, what do you think about barriers?

Dr Bowles: My colleagues have set out the barriers very nicely. The cost and accessibility of land are key for a number of community services. There is also the element of financial risk, which is not insignificant. The government, in setting out this bill, noted potential costs and delays. Those apply equally to community housing, but community housing providers, necessarily, are a mere fraction of the size of government, so those potential delays or barriers are more significant for community housing providers than they are for government.

MS CARRICK: Because of the difficulty in accessing land?

Dr Bowles: Because of the difficulty in accessing land and because, for instance, if an appeals process through ACAT adds another year to a build time, that means the initial financing plan that the community housing provider had no longer works. They have invested a lot of money, and they are on the hook for more, but they are seeing zero return on that. It is difficult for business planning when you have processes which can go potentially for years and which will absolutely interrupt your cashflow.

MS CARRICK: Do you think there is any opportunity to improve ACAT's processes to ensure that they do not take that long?

Dr Bowles: I do not have enough understanding of ACAT processes to know.

MS TOUGH: My question is more to ACTCOSS; but, Salvation Army, if you have thoughts, please include them. In your submission you talked about some of the things that community housing providers have experienced through ACAT and through trying to have developments. Can you talk about some of the things that those organisations have experienced in the local community and through the ACAT process that have led to the delays?

Dr Bowles: They have experienced significant legal appeals which have led to delays that come close to two years. I do not know the ins and outs of build costs, but my understanding is that the legal costs were probably in the order of 10 to 20 per cent of build costs. That is a huge fraction of additional expense which we hope could be navigated around through thoughtful legislation.

MS TOUGH: Because of that increasing cost, if you are talking about 10 to 20 per cent of your build costs, that is a significant amount of money for a community housing developer. Do you know whether that then impacts the viability of their projects—not just the project that they are trying to build but future ones as well?

Dr Bowles: It is fair to say that there have been some high-profile community housing builds that have experienced significant legal costs and delays. Of course, that has had

a chilling effect on all community housing providers. It is a small world in community housing, and everyone will have learned that lesson. That means that when people are contemplating building community housing, they are not just having to think about how much it will cost and whether they will be able to make it work financially while still being able to meet their mission of providing housing for people who need it; they will also need to reckon with a giant question mark.

On some level, that is even more difficult than if, up-front, it was just going to cost 10 per cent more, because who knows how much more it will cost? Also, you do not know about the timing. The difficulty in not knowing the amount and not knowing when you will be able to finish is driving conversations in the community sector about the risks of community housing.

Ms Erai-Collins: With development costs, you are looking at between 12 and 15 per cent per annum for any delay in pricing. If we were to get a price today and we were delayed by 12 months, we would expect to pay probably 15 per cent extra this time next year, when we went to tender. If you add another 10 to 15 pr cent in legal fees on top of that, rental income is going up maybe seven per cent, if you are lucky, and that is seven per cent of a social housing income, so you are talking about between $5 and $10, possibly, per person.

I would suggest that it does make it financially unfeasible at that stage, unless there is grant funding, and even then funders are now looking at the price per unit and how expensive that is. On average, it is between $600,000 and $700,000 for a social housing provider to build a one-bedroom unit, nationally. If you are looking at that sort of pricing, and if you are waiting for 12 months and it is going up by another $50,000 per unit, it does make it financially unfeasible.

THE CHAIR: Have any of the community housing providers genuinely tried to get their housing declared as a TPP under the existing provision, which would also waive a few rights?

Mr Gani: I do not have that information to hand.

Dr Bowles: Not to my knowledge.

MR CAIN: A cynical approach might suggest that the government's bill is all about a message saying, "Finally, we'll be able to release more social and community housing; finally, we will get there." Over the last decade of government, what can you see as having been the government's priorities, or lack thereof, that have meant we are in a serious social housing deficit in the ACT?

Dr Bowles: I know that there has been a trend over several decades. The proportion of all housing which is social housing or public housing has declined. The government has committed to arresting the decline in social housing as a proportion of all housing. That will mark a change.

Coming back to basics, this bill notes that there is already a mechanism for something to be declared a priority. It is absolutely appropriate that public housing be considered priority infrastructure. I hope all MLAs—and I think this is true—recognise that we are

in a housing crisis and that those who are experiencing poverty are at the pointiest end of that crisis.

Accepting that legislation to make some projects priorities is already in place, recognising public housing—and I would add community housing—as a priority would seem to make sense. Also, I think it is important because it is an acknowledgment by government that it is a priority. If government is unable or unwilling to meet its commitments, I imagine the community would note that.

Mr Gani: Mr Cain, could you express the question in a different way? I am not entirely sure that I—

MR CAIN: This is a measure that the government is saying will help to address the supply of social housing. What else have you observed over the recent period of government in the ACT that has contributed to the significant deficit in social housing?

Ms Erai-Collins: Can I express a personal opinion? There is a lot of development in Canberra. There are a lot of new suburbs going up, and there is an expectation that we can access land through the SLA for social and affordable housing. The issue with that is that there is no social or public infrastructure in those areas, which means that we would be putting social and affordable housing in an area that is not serviced by public transport and that has limited access to shops, and we would almost be locking people in suburbs. We looked this morning, and to get from Whitlam to Canberra Hospital on a bus takes an hour and a half, and it is a 20-minute drive. Those are the sorts of things—

Mr Gani: Three buses.

Ms Erai-Collins: Yes, three buses, as well. It is across three buses, and an hour and a half.

MR CAIN: Oaks Estate has no public transport.

Ms Erai-Collins: Exactly. There are those sorts of things that we are seeing. While the government is committed to the provision of land for housing, access to well-located land in suburbs that are already well serviced is where we would see the benefit in a TPP being able to be used.

MR CAIN: Given the government's indication of how important social housing is, and given that, since the new planning bill, there has been a process to prioritise social housing through a TPP declaration, doesn't it puzzle you that the government has never used that for any social housing, let alone health infrastructure?

Mr Gani: I do not think that we could speak to the government's decision on that, Mr Cain.

MR CAIN: Dr Bowles, do you have any comment on that?

Dr Bowles: I cannot say that I am sufficiently familiar with the government's use of that provision to make a comment.

MR CAIN: Or there being no use of that power for social housing; thank you, Chair.

THE CHAIR: It is acceptable to leave Mr Cain's comments with Mr Cain.

MR CAIN: As is often the case, Chair!

THE CHAIR: Mr Emerson, do you have a question?

MR EMERSON: Dr Bowles, you mentioned before that the proportion of social housing has been in decline in the ACT. What proportion is required to provide a place for everyone on a lower income?

Dr Bowles: We think that getting to at least 10 per cent of all housing being social housing is where the ACT needs to get to. That is a lot higher than what it was last year, which was about 5.7 per cent for public housing, with a little bit more for social housing, or for community housing.

MR EMERSON: Do you have a rough sense of what the "little bit more" is? I know it is hard; I am trying to find the answer myself.

Dr Bowles: Unfortunately, I do not have those figures, but I will note that, in 1989, public housing alone accounted for more than 12 per cent of total housing supply in the ACT. While we think it is certainly ambitious, it is clearly not unachievable, and, in fact, it was achieved in the ACT.

MR EMERSON: Do you have a view on what the mix of public and community housing should be? My understanding is that the ACT has a low proportion of community housing in the total social housing mix.

Dr Bowles: I do not have a firm view, but I do note that it is important to have a minimum proportion of public housing as a base. Community housing can come with certain programs and wraparound services, so many of the best Housing First programs would be community housing. In that regard, it is not just about having a building which is owned by a community housing provider; it is about funding the supports that enable people that might otherwise struggle to maintain housing to do so.

We know that, often, after someone has endured homelessness for a prolonged period, unsurprisingly, other aspects of their life have become much more chaotic. It is hard to imagine having good mental health at the end of a year of sleeping rough. Similarly, if your physical health is likely to decline, your ability to engage in paid employment, just because you are trying to engage with other human beings in a way that is not scripted by presenting as a rough sleeper, would be a challenge. There is room for both. Both are required, and it is important to exploit the strengths of each, when we have them.

MR EMERSON: In the context of this bill, are you aware of any reasons that there should be different treatment of public housing as opposed to community housing?

Mr Gani: We recognise that there are different structures. There are different make-ups that go into the broader aspect of community housing. Community housing includes affordable housing, which is a very necessary element of the housing supply, but it is a

different asset. It is offered on a different basis and people pay a different proportion of their income for that type of housing.

Because it is a different product and they can exist in different corporate, charitable and trust structures, we can appreciate that they represent an additional legislative component that requires additional consideration. In the minister's tabling speech, my recollection is that he referenced that they were looking to include community housing more broadly at a future stage. That is my recollection. I apologise; I do not have a copy of the tabling speech here.

Our major ask was that social housing be included at this juncture, but we look optimistically towards the inclusion of community housing on a broader scale in future, in a structure similar to this, ideally.

Ms Erai-Collins: We took the view that even community housing providers can build multi-use developments, including commercial developments and market rent housing. We did not want to see this bill being able to be used necessarily to support the development of more market housing, with only a very small portion of social or affordable included in the mix. Unfortunately, to get some of the developments across the line, that is the only way to make it stack up feasibly, especially if a provider is building it themselves.

Those were the considerations that we had around this point: the inclusion of social housing, managed by a community housing provider, which aligns with public housing and how it is run, would be why we would be positioning to have social housing included, with a look at the broader community housing sector as a secondary piece, if necessary.

THE CHAIR: Where it is a certain proportion of the development or the entire development?

Ms Erai-Collins: The entire development as social housing, yes.

MS CARRICK: The government has committed to 1,000 houses; you know that. Are you aware of how they intend to deliver those 1,000 public housing dwellings—a plan for where they might be located, in order to have the DAs and get it out there?

Mr Gani: We do not have that information to hand, I am afraid.

THE CHAIR: Thank you very much for your time. Thank you for your evidence and for your thoughtful submissions.

CRIMMINS, MS FRANCES, Chief Executive Officer, YWCA Canberra
DWYER, MS LEAH, Director, Policy and Advocacy, YWCA Canberra
WISBEY, MS KATE, Chief Operating Officer, Community Housing Canberra

THE CHAIR: We now welcome witnesses from YWCA and Community Housing Canberra. Thank you very much for your time today. I will start by reminding you of the privilege obligations. Witnesses must tell the truth. Giving false or misleading evidence will be treated seriously and may be considered a contempt of the Assembly. You are, of course, welcome to say that you do not know something or to speak from your experience or to say, "in my opinion." All of those things are absolutely fine, particularly from our community witnesses. Can you please confirm that you have received and you agree with the privilege statement?

Ms Wisbey: I received and read the privilege statement and agree.

Ms Crimmins: I have received and read and agree to the privilege statement.

Ms Dwyer: I have received, read and acknowledge the privilege statement.

THE CHAIR: Thank you. In our last session we spoke to one of our community housing providers, the Salvation Army, who gave us some pretty specific drafting instructions and some goals for how community housing might be treated by the planning system and by these amendments. It was a really useful discussion. They suggested that social housing—so housing that charges 25 per cent of somebody's income—whether it is run by Housing ACT or run by a community housing provider, should be given the same footing and the same rights and status under the system.

They also suggested that a good way to allow for territory priority project declarations, under the provisions we have now or under any amendments that pass for community housing and social housing, is that, if a development is entirely social housing, maybe it should be able to access a territory priority project declaration but that, if a development is part community housing, part commercial housing and part affordable housing, maybe it should not. We had quite a few thoughts about how community housing and social housing should be treated as well as ACT Housing. Would anyone like to weigh in with some views on that?

Ms Crimmins: If it was just limited to social housing, it may not necessarily financially stack up for a community housing provider if affordable housing was not part of the mix. It is our view that we think it should be community housing providers who are primarily working in social and affordable and mixed. If it entailed commercial, that would not be something that YWCA would support. We believe, from our experience, that it does need to include community housing providers, particularly organisations like us doing niche specialist housing, because the current system has let us down. We are happy to share the experience, if I am allowed to—unless you want to make a comment on that first, Kate.

Ms Wisbey: No; just to agree with you, in that CHPs, or community housing providers, are not for profit, and any partial sales are reinvested directly back into building supply of affordable housing into the future and, wherever possible, we try and keep it in perpetuity; we do not just sell it on. Some level of sale may be required to make a project

viable, but all of our developments are carefully, to the cent, balanced in terms of loan repayments, the subsidies and the maintenance reserves. So mixed tenure is required to make those viable and particularly to cross-subsidise affordable homes.

Ms Crimmins: We are a charity and a registered community housing provider. As a charity, I really want to emphasise that any retained earnings—what some people would call profits—though, of course, we have to be sustainable, has to be reinvested back into housing. That is part of the regulation of being a community housing provider. I think that is a very important note as to why we are calling for community housing providers to be included.

I would also like to note comments in yesterday's hearings from community councils that pre-DA consultation would mitigate against future legislation. We do not agree with this position. Our own experience demonstrates that, regardless of undertaking pre-DA consultation in good faith, including face-to-face on-site meetings and making significant adjustments from our original proposal of a two-storey, 16-unit development to a single storey 10-unit development, that we felt was a genuine good faith adjustment pre-DA, it did not make one difference.

As a community housing provider, we encountered the same barriers in delivering 10 homes and delaying our project. It was eventually delayed over a year at significant cost to our organisation. I note that a comment was made about the intimidation in ACAT. On the intimidation that we experienced by resident groups appearing at ACAT, we experienced unbelievable harassment. Our project was exposed to a campaign of intimidation; absurd exaggerations that we were gifted the land, that we did not own it; that we were freeloading off the government; that we were not entitled to build; and that we were building an Ikea. Fake renderings were drawn of our building and distributed across the suburb. Fake signs were put up saying we were demolishing the park—"Save Bill Pye Park."

It was, I would say, a totally dishonest campaign. That information is still publicly available on some of the community associations that are actually impossible to be a member of. Some people have tried to join these community associations but it appears that, if you do not agree with their position, you are not welcome. We even experienced phone calls to our office interrogating staff about who is going to live there. We experienced people trying to set up and say they are a donor—"Can we get access to your grants?" and "How are you funding this?" During ACAT, one of the people who appealed said to us, "We are just going to drag this out so you run out of money and that you will not get your money from the government anymore."

So I just want to say that in, engaging in genuine community consultation in good faith, maybe call me naïve but I genuinely felt that reducing the yield and making those significant adjustments was listening to the community. I also want to say that, on the back of that, the majority of the community did support us and we received overwhelming support from many of the residents, who still continue to be donors and are very good neighbours to the people who now live in our beautiful development. So, in that regard, I do want to say that most of the residents of the inner north have been very supportive.

THE CHAIR: We are really, really sorry to hear about the details of that experience.

I think most of us saw this and had some involvement, and we are very, very sorry about that.

MS CARRICK: Yes; sorry about that experience. Have you had any other experiences that have been better?

Ms Crimmins: We have, since then. Just on turnkey, we want our properties to be safe for the cohort we are housing. We are planning future developments as a community housing provider. Our first Housing Australia Future Fund is for turnkey, which will eliminate the risk. But, of course, you have got to pay a premium upfront to purchase turnkey. That has been our approach, but we are hoping to do future developments. But we are genuinely concerned that, with any future developments that we have to provide—and our commitment to do that with the Housing Australia Future Fund is for 25 years—we will receive the same treatment, even if there is genuine consultation.

MS CARRICK: My question is about other barriers. We know how important public and community housing is. Aside from that third-party appeal issues, what other barriers have you faced to trying to develop more stock?

Ms Crimmins: I think the other barriers have just been the challenges of securing land. But I still would not say that that has been a barrier. We are still very open—our appetite to develop is genuine—to develop social housing. The main concern our organisation and our board has is the prohibitive costs of putting in a development application in good faith, knowing that it will be appealed. We want to build a bigger development—I would not say it is a large development—and that is in the pipeline, and we are concerned that the more financial risk we take to contribute to the housing crisis in the ACT without this protection, it will just make it financially unviable. It really makes you consider the risk appetite that you are putting the whole organisation under to do social and affordable housing developments.

MS CARRICK: Thank you.

MR EMERSON: I just wanted to ask about the cost of those delays in the case of the women's shelter in Ainslie. Do you have an estimate of the total costs?

Ms Crimmins: Yes. To run the appeal and then put in a whole new DA application, which we were required to do, we have estimated it to be about $350,000. We reduced the yield to nine. You need to understand that, when you are doing income-based rent, it was a big financial decision for us to go from 16 to 10, even at social housing rent, income-based rent, because it needs to be financially viable. Our organisation wants to build to keep. There have been superficial comments around there being too many trees and it will cause too much shading and that we are not building good stock. I disagree with that, because I am building to keep and I have to maintain that for 25 or 40 years. We do not want to build substandard units; we want to build good quality units that will provide good living opportunities for the people there. That is the types of costs that be incurred.

MR EMERSON: Where does that come from?

Ms Crimmins: We have to pay for it out of our own money.

MR EMERSON: So that means other programs are not going ahead and other developments are not going ahead?

Ms Crimmins: I could have bought another one-bedroom unit for that.

MR CAIN: Obviously, there was a call-in power exercised very late in the piece. Did you actually call on the government to intervene during this whole saga? You would have saved a lot of money, by the sounds of it, if the call-in power had been used earlier? What was your engagement with the government and the planning department during this whole episode?

Ms Crimmins: We engaged with SLA in terms of requesting support for the second DA. That decision to call it in was the minister's alone. We did not engage with the minister's office to achieve our call-in.

MR CAIN: Had the call-in option been thought about, as far as you know, earlier in the piece?

Ms Crimmins: I cannot say, but we would have obviously liked to have a TPP process.

MR CAIN: Or if the call-in was there.

Ms Crimmins: Yes, or a call-in process. But I cannot really comment on that. We were engaging with—

MR CAIN: Very quickly, why did the minister use the call-in power at the time that they did, as far as you know?

Ms Dwyer: I think that the value of the project was self-evident, eventually. Like what Fran has explained, there was essentially a campaign of harassment against us. That was very public and, obviously, the minister's office probably would have been aware of that. So there was the value of the project to the community, obviously; the cost of the project to the Y; and the hit pieces that were coming to us. I think it is self-evident.

MR CAIN: I guess a comment is that the government could have called it in much sooner, which would have saved you a lot of money.

THE CHAIR: I might just test on that. We do not have the call-in powers anymore. We have the declaration of a territory priority project process, which is already part of the act. Have you had any thoughts about whether you could or should already use that declaration of a territory priority project process, rather than having the amendment we have before us on the table? Have you have you engaged with the existing powers that are already there?

Ms Crimmins: The legislation is too new. It only came into effect in 2023, and we have not had a development application.

THE CHAIR: Okay; so it actually has not come up.

Ms Crimmins: It has not come up. It is too new.

Ms Dwyer: I think it is also worth noting the process that we went through from, I guess, the initial consultation that we did. This was before COVID. We had meetings onsite before COVID was declared, and then it took a two-year process to eventually end up with the call-in and then the build. So if you are talking about whether the existing section in 218 of the legislation will cover us, I think we would still be looking at a two-year process. We do not know, because the bill is so new. Ultimately, the amendment to the bill would streamline the project through ACAT. It does not negate the consultation requirement.

THE CHAIR: It does, because the TPP provisions in the act that are already there say that the ministers can only declare it as a TPP after there has been sufficient public consultation; whereas the amendment before us does not have any requirement for consultation. There might be some—there definitely may well be some—but there is no statutory requirement for any consultation. I think it can just be declared, unless I am misreading the legislation.

MS CARRICK: My understanding is that the consultation is on the whole TPP—the whole class of public housing. So you would not be required to do it as each individual DA goes through, because it is done for the class that is being declared a TPP.

MR EMERSON: What I was hearing from you earlier, Ms Crimmins, is that it is in your interests for the community to support a project in their area. Is that right?

Ms Crimmins: Yes.

MR EMERSON: For example, if you have vulnerable residents going into a new suburb, you do not just plonk them down.

Ms Crimmins: No.

MR EMERSON: You actually want community support for those new residents.

Ms Crimmins: Absolutely.

MR EMERSON: So even if there was not a consultation requirement—

Ms Crimmins: Yes, of course; you want people to feel welcome in that community. But I think a point that has not been raised is that all of the future funding for our sector—which we do not want to lose—in the ACT through the Housing Australia Future Fund is time bound. You must deliver housing in the first round. That must be completed by 2029. We know they are coming with time-bound deliverable dates. If we are going to meet our housing accord and community housing providers are going to meet those funding requirements from Housing Australia, we cannot afford a two-year delay, because we will not then be able to access any of that funding to build houses that are so desperately needed in the ACT. So it is a matter of time as well.

MS TOUGH: Thank you for sharing your experience of the development and everything that happened. I know you went through a lot of work. You have mentioned having consultation on site with the community and that, regardless of whether you

legally have to do consultation or not, as you have mentioned, it is an important part of actually having community housing. Can you speak about how going through that has affected the timeline and how it is now affecting the possibility of using the HAF? How important is it to send a message that social housing needs to be built on time, otherwise people just are not going to invest? Is there anything else from your experience that you would like to share about how that has impacted decisions going forward?

Ms Crimmins: It is a really important message for all Canberrans, including those living below the poverty line, that you are a valued member of this community. If we do not start addressing the housing gap for this portion of the community, what does that say about us? If we, one of the wealthiest cities, cannot provide social housing for our most vulnerable what does that say about us? That is another clear message: you are important and you matter—and that is why the TPP covers this.

Ms Wisbey: Further to that, I would say in terms of the affordable housing side of things that CHC's tenants are critical service workers. They are the age and disability workforce sector; they are the carers; they are the early childhood educators; they are older people that are just about to hit that income cliff of stepping into super that will not cover their rent. So, while public housing and social housing are incredibly important, we divert people away from the system altogether. So every single home that we build is working towards making sure people are not dependent on the system in the long term wherever possible. But, right now, we are forced through the same lengthy, complex and protracted planning processes as speculative developers, despite being not for profit with clear public benefit and purpose.

So we are taking incredibly seriously the role we play in being top and tail in the system, in that social and public housing being built and fast-tracked is incredibly important for those immediately at risk. But having a good news story of being able to divert people away and put them on a trajectory to success and step out of that system altogether and away from it is where we place affordable housing. That is why, in our submission, we put forward not only to include community housing provider-led and owned projects but also those that include affordable housing, where we lead and own them, and deliver those on the ground to make sure that we are alleviating the housing crisis with our own funds, with funds from the commonwealth, where available, and also with ACT government funds.

In relation to community consultation, I would say that nearly all the community housing providers in the ACT that I am aware of use their own funds to subsidise and to fund community engagement and community development positions to make sure that, regardless of whether it was a requirement or not, we take our role as neighbourhood builders incredibly seriously, put our money where our mouth is and make sure that we have people on the ground, not just because we are building it but because we are enduring stakeholders in that we are maintaining that building. We are looking after the wellbeing of the tenants within that community, and we are developing and delivering program within that neighbourhood as well. Probably one of the most important things that I would like to make sure that we are all aware of is that community housing providers, unlike developers, are enduring community members within the communities that we build as well.

MS CARRICK: It is incredibly important that we have enough housing for everybody, and the ACT government has committed to a thousand public housing dwellings. Do

you know if there is a plan to deliver those and how we are going to get those houses built in a timely fashion?

Ms Crimmins: I am not aware of where they would be planning to build. I think it is important that we include in our planning where public housing will be. But I do not think we should have a public flashing light saying, "Living here is somebody who cannot afford housing." We all grew up here and loved the salt and pepper that Canberra was and I think it is important to maintain that. I strongly encourage that social housing, public housing, should still remain in all of our city centres, and it should be a priority that that is not always just greenfield. We worry about the lack of infrastructure by pushing people out to the outer suburbs if you do not have a car and you are not able to access services. We also really support urban infill and to include every income bracket in our urban infill and, when it is done, tenancy should be blind.

MS CARRICK: Yes; and you should not be able to tell whether it is public housing or not.

MR CAIN: I explored this with ACTCOSS and our previous stakeholders this morning. Obviously, the government is saying, "Here is one way that we are going to increase the supply and the speed of delivery." I encourage you to reflect back over the recent period of government in the ACT, even a decade back—and thank you again for what you provide to our community. Apart from what this current bill is seeking to address, what other deficits do you see have transpired over the ACT to see us with a serious lack of public housing and social and affordable housing?

Ms Dwyer: Can you explain to me what you mean by "deficits"?

MR CAIN: What else has the government not been doing, in your opinion, or needs to do as well to make sure that we get to a greater point of meeting the real needs of the community?

Ms Dwyer: I would reflect back on Fran's earlier comments about the availability of land and the unavailability of subsidised land to community housing providers to provide housing that might be income-based rent in a way or at a cost that we can make the project viable. That has been a policy priority for YWCA Canberra for some years now.

Ms Wisbey: Yes, and it is not just the availability of land; it is the availability of well-located, suitable land to be able to build appropriate and affordable social housing. It is the ability to be able to lodge DAs earlier in the process and the planning process, in general, being improved to allow us not to waste precious funding on holding costs, because every dollar that we spend holding a really delicate deal together is a dollar away from bricks and mortar on the ground. So, for us, there are definitely levers that can be improved to be able to make sure that we can hit the ground running and allow us to do what we are really good at, which is build quality product that then house people for the long term.

MR CAIN: And, obviously, if it is of a quality that befits the neighbouring areas, then there is really not much of a reason for people to object, unless there is some other reason behind it.

Ms Dwyer: You would be surprised.

Ms Crimmins: This is a direct quote from one of the people who opposed. Their main reason for opposing is: "One of the problems that might be from the development is a skewing towards people who essentially are living in poverty and there might end up being over 50 per cent of the actual 25 people in the street in poverty." That was one of their reasons for opposing: there may be too many people who live in poverty in the community. There is always, unfortunately, stigmatising people who live below the poverty line, which is why we are calling for these projects to have TPP.

Ms Dwyer: Your question was: what else can the government do to free up public housing? Obviously, the land release is one part of the deal but, from our view, the third-party appeal for public housing and for social and community housing is quite low-hanging fruit, in terms of your—

MR CAIN: And high impacting, as you have described.

Ms Dwyer: If we think about the process that we went through or that might continue under the TPP if section 218 were to be the chosen outcome, if the bill does not succeed, the reality is that we would still probably be exposing people to that kind of behaviour. I know that yesterday the conversation was around whether pre-DA consultation effectively mitigate against those kinds of spurious claims about aesthetics, and then you can only take an appeal to the tribunal on Planning Act violations, or whether you had a planning panel as per the New South Wales model. We actually think that it would not matter. Even without the effort that we went to with the pre-DA consultation and the amendments that we made to the proposal, we still had to fight claims that 40-year-old trees were heritage, and every time that those claims were made we had to pay an arborist to dispute it.

MS CARRICK: Do you think there are opportunities to improve the ACAT process?

Ms Crimmins: Absolutely. The ACAT process, I feel, sets up an adversarial position. The ACAT process did not allow me to really speak at all as the proponent. While the people who were appealing it were able to give their opinions on the tenants who speak there, I was declined to even tell a story of one of our older women, who helped meet with the architects and built into the design what having a purpose-built home meant for her. So it really is not a process that I would wish to go through again on either side. It seemed to be semi-quasi-legal but not actually. The process, the expense and time, really needs a review

THE CHAIR: We have heard a lot about your experience and the difficulty with the consultation. Do you imagine there is any way that consultation can be done that avoids this experience—if, for example, it were facilitated by the government? Or do you just believe that for the sorts of housing that you are building, any consultation is always going to have this extraordinarily negative response?

Ms Crimmins: As I said, we also had some really positive feedback from the majority. The issue is who is able to dominate the conversation and get the attention of media. That seem to dominate our experience. We would always do consultation. The challenge for community housing providers is that it has to be financially viable. When

we are preparing our developments, we have to have concepts. So to say that we come to the table with a blank concept and have community tell you what they want, no development can start from that. We have to present our vision at that consultation. You cannot have a blank slate and say, "Tell us what you want." The community consultation has to be done in good faith, like we did. We presented three options and we went with the smaller-yield option. But, at the end of the day, if we have to pay market rate for land, it has to stack up when you are doing an income and affordable rental model.

MR EMERSON: Has the CHC been subject to third-party appeals?

Ms Wisbey: Consultation themes and historical appeals have been lodged over height and density traffic. The emerging themes from consultation have been about misconceptions of who will live in the social and affordable housing and how that might impact the neighbourhoods. While we have not had a significant third-party appeal, like our colleagues at the YWCA of Canberra, standing alongside them during that process really highlighted how delicate and fragile the delivery pipeline is for community housing providers.

We are operating in a high-risk environment, and it discourages the very development that we need, which is the quality and well-located homes. We are concerned in relation to our commitments under HAFF to deliver considerable affordable and social housing within those projects and the impact of trying to hold those together should there be delays. I cannot stress how much of a high-risk environment it is to be able to pull those deals together using your own funds, your own capital, your own equity at times with that pretty recent and unresolved experience.

I would echo and reiterate ACTCOSS and Devin's points in their submission, which is that we have the lowest thresholds in the country for appealing planning. We have broad rights of appeal, low application costs and minimal consequences for spurious claims, and that contributes to the environment that we are operating in. It seems an absolute travesty to delay or to waste the time and the funding that has been so hard won and move that away from housing essential service workers, the very people that are keeping the city going and cannot afford to live in it. We are very aware of the environment that we are operating in and moving from the small infill builds to the significant HAFF projects that will actually make a huge impact on some of the low- and moderate income workers in this city and in this region, and then having to think about, "How the hell do we get through this if this is delayed?"

MR EMERSON: Do you have any HAFF funding that has essentially been approved that could be lost if there were a one- or two-year delay on a project?

Ms Crimmins: Yes.

Ms Wisbey: Yes. Absolutely.

MR EMERSON: Both of you do?

Ms Crimmins: Yes; and they are all time bound.

Ms Wisbey: Yes. Some have to be shovel-ready within 12 to 24 months.

MR EMERSON: This could be dozens of dwellings?

Ms Wisbey: Yes.

MS CARRICK: Are they all time bound by the ACAT process? Do you have any concerns about the processes that lead up to being shovel-ready?

Ms Crimmins: It would be helpful if the DA process were faster. By the time you build in that timeframe, hold your breath and see if there is a third-party appeal and, particularly, if you have to then go back right to the start—as we said, we lost two years—it then goes to the financial viability. Some of the stakeholders involved in ours were aware of that, and that was the long game they were playing—hoping that we would actually run out of money.

MR EMERSON: I have a question that actually goes back to a question that was aside earlier. Common Ground in Dickson is one of my favourite developments.

Ms Wisbey: It is one of ours, too.

MR EMERSON: I thought it might be, so that is why I thought I would ask you about it. In terms of the definitions that we are talking about, we have social housing and affordable housing, and I understand there is a mix there—and going back to the point about the salt-and-pepper approach—my concern is ensuring that, whatever the outcome of this bill is, the bill does not disincentivise those kinds of developments or perhaps incentivise other kinds. If we had a thousand Common Grounds, I think we would be pretty stoked. Would you mind talking me through how whatever comes forward with this bill could either incentivise more Common Grounds or not?

Ms Wisbey: Can you imagine if community housing providers were able to put their own money into building Common Ground type models and Housing First models without the reliance on government subsidies to make that stack up? Being able to deliver both the social and affordable is all about the formulaic sort of rent and management fees that you would get to manage that building into perpetuity. I am an idealist, but there is no why, with the right ratio of social and affordable, Housing First models like Common Ground can house people that are immediately exiting street homelessness as well as housing essential workers. That model has been proven to work. It is quite expensive, but you need to get the formula right.

Ms Crimmins: We are using that model of Common Ground Dickson—and, just for clarity, both CHC and YWCA work in partnership doing the tenancy and the support. So we are speaking from actual experience of maintaining and providing support for the ACT government for that facility. That is our next model we are hoping to develop on a slightly smaller scale, because we know it works. But I cannot stress the financial model. When we take a step to from our original planned small one up to what would be a medium one, of close to 30 units, it is very high risk if there are any delays. But we know the model works, which is why our board has the risk appetite to replicate it with our own funds, plus funds from the Housing Australia Future Fund plus some of the funds available for affordable development from the ACT government. That is what we cannot afford to have delayed as a community in Canberra.

MR EMERSON: I just want to really quickly clarify that question because the previous witnesses were talking about TPP. This bill cap could capture social housing, but we have heard evidence that you would like it to capture community housing, which includes social and affordable. Would a Common Ground project not become a TPP if the definition were narrower and we just focused on social housing?

Ms Crimmins: Correct.

Ms Wisbey: Yes.

THE CHAIR: But you believe the TPP provision, as it is already drafted, probably would include Common Ground if you sought a TPP declaration today for Common Ground?

Ms Crimmins: It has not been tested, so it is a little bit—

THE CHAIR: Yes; we do not know. But there is nothing in the provision right now that excludes it?

Ms Wisbey: No; but it would be excluded if I were building it. If I was using my funding to build a model that was affordable housing and social housing—

THE CHAIR: Not the amendments on the table—the section 218. That is already in the act and which I think already lists a few different housing types. It may be that you do not know because you have not considered it, but—

Ms Dwyer: I think goes to the point that what we made earlier. There is the provision under section 218, but what we would expect to experience were it to be tested is that we would be stuck with the same situation that we had when we tried to build our project. It would draw on our protracted process, and we would still be exposing vulnerable clients and communities to disparaging comments around the process of having a project developed in the end.

MR CAIN: But the government could declare another Y development as a TPP now, which would take it out the scope of what you have just expressed.

Ms Dwyer: Not the time scope. Well, we do not know. We are talking in hypotheticals.

MR CAIN: Yes, but the government could do it now if they wanted to.

MS CARRICK: But that would depend on the appetite of the government of the day.

Ms Dwyer: Yes. There is also, I guess, the value add of saying, "To Canberra, social and community housing is so important that it could be its own pathway to being built without having to be subjected to the thoughts of the government of the day that it might not be viable for a TPP declaration."

THE CHAIR: Thank you so much. I am so sorry we ran out of time.

Short suspension.

BOUCKAERT, MR RAMON, Deputy Convenor, Greater Canberra
DONNELLAN, MR ANDREW, Secretary, Greater Canberra
MACLEAN, MR HOWARD, Convenor, Greater Canberra

THE CHAIR: Welcome, Greater Canberra. Thank you for joining us today. I will remind you of your privilege obligations. Witnesses are required to tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be taken as contempt of the Assembly. You are welcome to say you do not know something, and you can say if something is your opinion. That is what we expect of our community members and our representatives. I will get each of you to confirm that you have read and agree with the privilege statement, beginning with you, Howard.

Mr Maclean: I have read and agree with the privilege statement.

Mr Donnellan: I have read and agree to the privilege statement.

Mr Bouckaert: I too have read and agreed with the privilege statement.

THE CHAIR: Excellent; thank you very much. I trust you have been watching the proceedings. We have also received some further information from you.

Mr Bouckaert: Yes.

THE CHAIR: We have not read it; it arrived during the hearings. We will read it, and we will consider it in the report, but we did not get it, I am afraid—

MR CAIN: It is a bunch of ACAT cases.

Mr Bouckaert: Yes.

THE CHAIR: Yes.

Mr Maclean: We have got some printed copies of them here too as well, so—

THE CHAIR: And you are welcome to speak of them, but I, for one, will not have read those yet, sorry. I am interested in having a chat about how DAs are passing through public consultation. We have heard a lot of mixed evidence. I would say that is probably one of the things we have gotten quite strongly mixed evidence from different witnesses on.

We heard a bit of cynicism yesterday from our community members who suggested that if there was no statutory requirement for consultation, there simply would not be any from government at all. And we have heard quite strong feedback, I suppose, from YWCA, in particular, that any requirement for consultation might lead to types of consultation that are not particularly helpful for the participants and not particularly helpful for the project. Have you got a view on whether or not it is acceptable to run major projects without any requirement for consultation?

Mr Maclean: I will kick off, and then my team members can add. Obviously, there are consultation requirements for every DA. We open them for public consultation and

people can put in submissions, so that exists—just flatly.

I disagree with the premise of the question, because the real question here is to what degree consultation matters, particularly because we are actually talking about provisions related to third-party merits appeal. Can we solve this problem by adding more steps of consultation? If we do pre-DA consultation, if we go around three times, would this solve the problem? Would we be able to resolve issues? I think the evidence from the YWCA YHomes project and plenty of other public and social housing is it would not.

THE CHAIR: Sorry, I should probably re-state my question. I have been quite confusing. Of course, any DA that gets lodged must have consultation on it. I think the fear that has been stated to us from quite a wide range of witnesses is that if there is absolutely nothing that attaches to that consultation—there is no requirement for government to consider it; there is no requirement to report on that consultation; there is no legal or appeal rights that attach to it—how valuable is that consultation at all, and will people even bother to submit their views in the first place? Will it diminish that consultation to the point where there is not really any requirement?

Mr Maclean: I will pass to Andrew here to elaborate on the provisions, but I do believe that there is a requirement to consider matters raised in consultations—effectively, in submissions to a DA. That does not necessarily mean that those matters will be decisive considerations. Most of the submissions against public housing revolve around the idea that a triplex in a street in Griffith is too high density, so most of the issues that we see coming to ACAT on public and social housing are simply that there is too much of it. So the determinative factor here is that it is not small matters which can be resolved at consultation. The heart of this is people who simply do not want high-density or medium-density public housing near them.

THE CHAIR: Do you think there is any relationship between whether people feel like they have been genuinely consulted and whether or not they run an appeal?

Mr Maclean: No.

THE CHAIR: Do you think they are less likely to run an appeal if they feel they have been?

Mr Bouckaert: Our commentary on these kinds of submissions to DAs and these kinds of appeals is that when these groups ask for more consultation, what they really are asking for is to get their way. And their objective in pretty much every case that we have seen is they want less density in these developments. Now, in most cases, the planning rules and zoning allows building at a certain density, but nonetheless, they want to use every avenue at their disposal in order to try to impose costs on the government for building at that density or to stop it.

We heard evidence yesterday that people were throwing everything at it, pulling every lever they could in order to oppose this kind of density, and there is no expectation that would stop if other avenues were open to it.

Mr Maclean: I did not catch all of the YWCA's evidence this morning, but I am sure

they talked about the pre-DA—the multiple rounds of consultation they went through for the YHomes project—and how that did not prevent the ACAT appeal.

THE CHAIR: They were pretty compelling. Not in the community housing phase but in the public housing realm, my office has gone through the figures on appeals and consultation, and we have gone through the annual reports. What it looks like to us is that before 2019, Housing ACT ran a lot of public consultations; there is a period in there when they ran consultations on 44 public housing developments, and they only had four appeals on those.

In more recent years, there is a three-year period when they ran consultations on two public housing developments, and they had 12 appeals. Correlation and causation are not the same thing, and I will ask the minister this: I am interested as to why Housing ACT stopped consulting around about 2019-20, but I am also genuinely interested in whether there is any relationship between that; if you genuinely talk to the community, are you less likely to get litigation at the end of the pipe?

Mr Maclean: We cannot speak to that, because we do not know. I would venture my opinion is that COVID would probably be the largest reason why consultation stopped or slowed down around 2020, and potentially why previous practices did not continue forward.

We do think, however, that very few people in Canberra, when it comes down to it, are interested in appealing against public housing. We are talking about a very small group of people here. You heard from a good chunk of them yesterday; individuals who decide that they want to take up a project where they prevent public housing from being built or oppose public housing being built—an example here is the Griffith Narrabundah Community Association that appears to have a standing policy of simply suing every single public housing development in Griffith that they can. That meaningfully changes things. The actions of individuals here do change the rate at which appeals occur. The emergence of that behaviour in the early 2020s would also, in my mind, be a factor here, as well as COVID, for the rising number of appeals.

THE CHAIR: Interesting. We are operating under a new act at the moment, and nobody can give us an example of a territory priority project appeal and whether they have genuinely considered going through that—the community housing providers. Nobody yet has said, "Yes, we had a DA, and we held it up." We have some evidence from government that they have considered and then stopped, withdrawn, revoked and not proceeded. It is very early in the first year of operation to be amending a provision that has not yet been used. Do you have a view on whether we have enough information to be able to decide that we already need to start rewriting that section?

Mr Maclean: Our view here is that the TPP process was designed with things like light rail in mind—major projects, really substantial things. Obviously, going through that process for every single public housing triplex in the inner north and inner south is unworkable, so we do think that there is a case for this bill, particularly in relation to public housing. Some good points were raised yesterday about whether public health infrastructure in relation to major projects could go through the pre-existing TPP route. We think that that is much less clearly made out.

THE CHAIR: I am not sure I agree with your take on the existing act, because the act lists light rail already as a territory priority project, so we explicitly do not include projects like light rail. Light rail is already included. It does not go through the TPP pathway. It is listed in the act, so that one is definitely not going to be covered in the TPP provisions. The notes to the TPP provisions that we already have, explicitly offer up public and community housing as examples. So do you think that the provisions were maybe designed for public and community housing?

Mr Bouckaert: What we would like to see is fewer barriers to the construction of more public housing in the ACT. By designating all public housing projects as territory priority projects, as the government has suggested, we are removing a barrier. By suggesting that we have to go through the TPP process pre-emptively for developments that we might think might attract opposition from certain nearby residents is just going to add an additional barrier. We are in the business of trying to reduce barriers and getting more housing built.

Mr Maclean: Our submission—and Andrew can follow up on this—to the original planning bill was that ACAT in general is not a good forum for planning appeals. I am sure you have heard from many different members about how unworkable the process is for everyone involved. Our view would have been that we never should have gone down the TPP route as it currently exists in the bill.

It is not surprising that the government has come back and said, "Well, we are realising these problems with actually implementing these provisions." This is particularly because, of course, the vast majority of public housing that gets built in the city is not subject to ACAT appeal, but we do not really know where it will be. We do know that there is a tendency for appeals to be concentrated in Yarralumla, Ainslie and Griffith because of certain people that live in those suburbs, but it becomes very unworkable if the Assembly needs to consider a TPP bill for every single public housing triplex.

THE CHAIR: And I believe the former planning committee also suggested we have an expert panel process or something other than ACAT, but none of us got what we wanted. Ms Carrick?

MS CARRICK: The Griffith Narrabundah residents' group did have some wins at ACAT. There were some design changes that were made. Do you think that those design changes should be made when non-compliant things come through? Why are non-compliant DAs coming through?

Mr Maclean: I think it is worth diving into why this happened. In Griffith, in order to unlock the density bonus under RZ1, you need to build to a supportive housing standard, which has quite a high set of accessibility requirements; and that is good. We want really high-quality disability standard housing that is available for public housing.

Part of the problem is ACAT and EPSDD, the planning authority, have longstanding disagreements about how to interpret effectively those rules. That leads to minor differences in the process. For instance, ACTPLA had a standard thing where they had a development condition saying that the contract is certified later down the line—that the development would comply with the standards. ACAT disagreed with that. So this results in a lot of really minor changes to the overall built form where it is a very

expensive way to get those really minor changes to the width of the driveway.

Fundamentally, the Griffith Narrabundah Community Association was not going to ACAT to get those changes. What they actually went to in their major claims in all of these cases was that having a triplex in Narrabundah or Griffith in RZ1 was non-compliant with the neighbourhood character and that it should be lower density, and it always got dismissed in court in 15 minutes. Andrew did attend one of these multi-day ACAT hearings for one of these cases, so he can speak more. Do you have anything further to add, Andrew?

Mr Donnellan: Yes. The result of the tribunal considering compliance with AS4299 Adaptable Housing standards is, essentially, that you spend a large period of the time in the tribunal discussing very minor variances to those standards, such as something being located half a metre too far away, or something like that. It is obviously not ideal for there to be any deviancy from the strict requirements of the standard; however, a lot of those things are matters that can and should be resolved, I think, outside of the tribunal process, and fundamentally, they do not go to the core point. As Howard said, the core objection is to delivering medium density housing. That is something where ACAT has always consistently said, "Well, that is not what the zoning rules actually say, and they are entitled to build up to what the zoning says that they are allowed to build, and that is not a relevant consideration for us." But then they proceed to go through the laundry list of many other items.

MS CARRICK: Do you think that there are ways to reform the ACAT processes, or even the assessment processes of the planning directorate, so that we do not end up in this situation? Potentially, there are some legitimate reasons why people might want to question or have a government decision reviewed. Hopefully that would be a very small per cent of times, but if there were some reform of the processes, do you think that would help?

Mr Bouckaert: No. I think the process is just fundamentally broken and empowers a small number of people to waste an extraordinary amount of the government's time and money. We have tabled seven different examples of ACAT decisions which are the result of either a community organisation or an individual objecting to the construction of public housing or a DA for public housing. In all but one of those cases, the DA was ultimately upheld with very minor variations. In the case where it was overturned, it is a laundry list of minor variations.

What you get is these groups whose real objective is to try to impose costs upon the community for density in their suburb and costs upon the government for doing that. They end up litigating a series of in some cases trivial—in some cases they are quite important—variations which end up being minor, through ACAT, and ultimately not achieving the objective they want and not achieving the objective, really, that the community wants or the objective of the government.

Mr Donnellan: I should add that during the inquiry on the planning bill back in 2022, insofar as the existence of a review mechanism, we proposed developing, essentially, something more akin to an internal review mechanism that could be run by experts rather than tribunal members and be more focused on planning outcomes rather than being run by lawyers. That is beyond the scope of this inquiry, I think, as far as how

that reform could potentially be done.

But specifically in relation to projects that go through the TPP process, I would also suggest that EPSDD, being very conscious of the fact that the power to decide DAs that go through the TPP pathway is with the minister and the Chief Planner—and this is something I am sure the government would be happy to answer questions on—could develop an internal development assessment pathway that ensures that projects going through TPP get a more rigorous standard of review.

Mr Maclean: Just quickly, stepping back a little, we also reject the notion that third-party merits appeal to ACAT is a good form of public consultation.

Mr Bouckaert: Agreed.

Mr Maclean: It takes what should be a public decision, as a community, about what we are doing with public housing, and it reframes it as a quasi-judicial, closed private matter between whomever complained and the government, and it cuts the rest of the community out. We do not think that is a good outcome. We think there are much better ways to do this. Any reform which allows a litigation pathway and allows for anyone in the community to potentially bring a case—you are not going to convince everyone. Even if 99 per cent of people agree it is a good thing, if the one per cent remaining is able to take it to ACAT, they will.

Mr Bouckaert: It is inherently one-sided, because if I really like the public housing development next to me, I cannot sue the government and say, "Hey, hurry up with it. I really think this is a good idea," but my neighbour can sue and say, "Let's hold it up and stop it."

MS CARRICK: Do you think dialogue is good?

Mr Bouckaert: I think dialogue is good. There is a bit of a fundamental problem when we try to endlessly ratchet up the level of time and energy that we expect community members to give in the process of consultation, because there is an inequitable distribution of the amount of time that people have. We all have full-time jobs, so we probably cannot afford to engage in consultation processes to the same extent that, say, somebody who has retired might be able to.

MS CARRICK: Going back to the chair's point about consultation, if a class of public housing is wrapped up in a TPP, the dialogue and the consultation happens for that class of assets, not for each individual DA that goes through. There is no requirement for—

Mr Bouckaert: That is not quite true. There would still be a DA for every development.

MS CARRICK: There will be a DA, and you can put a representation in.

Mr Bouckaert: That is right.

MS CARRICK: But there is no dialogue. There is no up-front dialogue. There is no pre-DA consultation. There is no dialogue. You just put your representation in.

Mr Bouckaert: Sure. Is there good dialogue at ACAT? Most of these cases—

MS CARRICK: No, I am not talking about ACAT.

Mr Bouckaert: Sure; okay.

MS CARRICK: I am talking pre—at the DA stage; some dialogue at the beginning of the process. I am not saying that that would mitigate every appeal, but it would help a smoother process, perhaps, if we had dialogue at the front end.

Mr Maclean: A subtext to this—and we know this from international research; we know this from an AHURI paper in 2012—is that social and public housing simply get a lot more opposition than private housing, and it is not hard to put two-and-two together. No-one is going to come out and say why they oppose public housing, but if you read through the comments section on the *Canberra Times*, if you listen to what some people who call into ABC radio say, there is a lot of stigma attached to public housing tenants and that drives a lot of the opposition.

Dialogue is good, but dialogue on whether public housing should exist, where effectively it just turns into a session where people come and say to Housing ACT all the various different mean things about public housing tenants—I am not sure who that helps and if it is a good use of government time and resources.

MS CARRICK: No; it is not that sort of dialogue. Griffith Narrabundah yesterday—there was three with the supportive housing and the access, and then two. They said they did not appeal against the DA that had two because that was compliant.

Mr Bouckaert: That was because it was lower density. They have an issue with density. Even if it is allowed in the planning rules, they do not want to see high density in their—

MS CARRICK: So is it density? Is that the main issue? Or is it the stigma and that they do not want people—

Mr Bouckaert: A bit of both.

Mr Maclean: Obviously, a development with three tenants has more public housing tenants than a development with two.

MS CARRICK: But what about compliance? The point is that the three were not compliant, so that is why it went to two. So is compliance an issue?

Mr Maclean: This goes back to the matter we were talking about earlier with the accessibility standards and the differences in interpretation with ACAT. There is no question that Housing ACT is allowed to build a triplex, provided it is compliant with the standard. What the Griffith Narrabundah Community Association was objecting to was not whether the driveway was exactly wide enough; they did not raise that in any of their originating applications. Instead, they were saying that it is non-compliant for there to be three houses on this block rather than two, and ACAT knocks that out of the park in 15 minutes every time.

MS CARRICK: When you say "knocks it out of the park", does that mean—

Mr Maclean: They dismiss it.

Mr Bouckaert: They dismiss it because the planning laws allow them to build three, and their objection is more of an opinion on how they think the planning system ought to work rather than an appeal to the system as it is.

MS CARRICK: Well, if they knock it out of the park in 15 minutes and we progress, where—

Mr Bouckaert: Some of these things take 15 days, because we have to go through all the minutia—is this gradient of this driveway slightly too high or low?

Mr Maclean: ACAT makes a decision in the shoes of the original decision-maker. The original applicants say, "We do not like the density." ACAT says, "Well, that is ridiculous. That is not a reasonable ground. We are dismissing that, but we are going to go through everything about this DA, and we are going to find differences of opinions on the interpretations of the rules." This is how you end up, for instance with a tribunal ruling—a really good example, and we can provide this; I forget the exact case—that a hedge no longer counted as blocking principal, private open space privacy, which means that, effectively, if that applied retroactively, a good deal of inner Canberra would suddenly no longer have legal privacy screens, because they have hedges.

We go to this related matter that a lot of these problems are differences of opinion between ACAT and the planning authority over exactly how certain rules work, while the objections that community members bring, overwhelmingly, are: "We do not like public housing. We do not want as many in public housing developments on this block. We want less."

THE CHAIR: Ms Tough?

MS TOUGH: You have mentioned in your submission, and this morning, about how a lot of the appeals are mostly in the inner south and to an extent the inner north. What impact does this then have on the geographical distribution of social housing across Canberra, and how does that impact the salt-and-pepper approach? What does that mean for the future of housing?

Mr Donnellan: It is obviously going to increase the risk to Housing ACT of bringing forward proposals to build in inner suburbs. We want to see more medium-density developments in inner Canberra more generally, but particularly for social housing residents, inner city suburbs are better connected to transport, and they are better connected to services and facilities and to job opportunities that can allow people social mobility. So having an appeal system that introduces a structural bias towards making it cheaper to deliver social housing in suburbs that are less connected and have fewer services and opportunities just feeds a cycle. We think the system should instead favour more medium-density development in the inner ring suburbs.

MS TOUGH: Yes; and that is pushing people out into greenfields development in newer developments that are less connected.

Mr Donnellan: Yes, and the impact of appeals potentially creating risk means that it is not just the developments that go through the DA process and then end up in ACAT that we have to be worried about; it is potentially the developments that do not happen at all because this has to be budgeted for.

Mr Bouckaert: The chilling effect.

Mr Donnellan: Yes, the chilling effect.

Mr Maclean: It is not hard to imagine that you are a Housing ACT officer, and you are deciding where to make DAs and you say, "Oh no, let's not go to Griffith again, because they will sue, and I will spend the next three months of my life having to deal with it. It will be a lot easier on our time and resources to instead locate more public housing than we otherwise would have in Gungahlin or Tuggeranong because there is less litigation risk there, fundamentally because of the different social status of those suburbs and the different people that live in them."

Mr Bouckaert: And I would go as far as to opine that it is a deliberate strategy of some of these community groups to put legal opposition against every single public housing development of substantial density in their area in order to introduce that chilling effect.

MS TOUGH: Thank you.

THE CHAIR: We have a supplementary question from Fiona.

MS CARRICK: I just wanted to note that the inner north has got the highest percentage of public housing in any district and that it is government policy to sell off high value land in the inner areas to get more value in the outer areas. That is government policy.

Mr Maclean: And we do not necessarily agree with that government policy. The reason why the inner north has the most public housing is historical, going back to the previous Canberra in the 20th century, as opposed to newer districts that were developed for less, and also, in my view, because it is the best place for public housing to be. It is the best-connected district; it has the most services. This is where we want people who are vulnerable to be able to live, because they have the best access to opportunity and the best access to health care.

MR CAIN: I am interested in your response to a question in the annual report hearings on the 18 February from Mr Cocks that was taken on notice by the Minister for Planning, and it was about the number of ACAT appeals on social housing matters. This is the minister's answer on 2 March this year:

> In 2023-24, three third-party applications were made to the ACT Civil and Administrative Tribunal (ACAT) in relation to development applications (DAs) for public housing. Out of the three ACAT applications, two related to the same proposal where ACAT confirmed the original DA decision, with amendments. The remaining matter was mediated …

Basically, in 2023-24, there were two ACAT appeals on social housing matters. That is the minister's information. It kind of gives the appearance there is not a problem to fix.

Mr Maclean: I think that it is really worth mentioning that when we are talking about projects here, sometimes we refer to a lot of triplexes, but the recent case that just came through earlier this month of Landau v Territory Planning Authority was a development in RZ2 for, I think, about 40-something public homes. So ACAT cases do not neatly translate to an equivalent number of houses. It is not always small developments. Sometimes these cases can hold up a very substantial number of public houses.

MR CAIN: But the bill is all about stopping ACAT appeals. I am just reading the record from the minister. It is a question taken on notice from this planning committee, annual reports, no 32, which is obviously publicly available.

Mr Bouckaert: I think it is important not just to hand-wave this away and say, "It is only a few appeals. It surely cannot have that much of an impact." We heard evidence earlier today that a single appeal cost a community organisation, I think it was, $350,000 to defend and might have delayed their project by 12 months.

MR CAIN: And you would have also heard that the minister called it in and could have called it in much sooner if they had so wanted to—

Mr Bouckaert: Absolutely, they could have, and I think they should have.

MR CAIN: to save that community organisation a lot of money.

Mr Bouckaert: They could have. But imagine how much cost is being borne by the ratepayer for all these appeals against public housing that are not that transparent to the taxpayer.

MR CAIN: Bear in mind there was an option available to the government of the day, which they took late in the piece, and as Ms Clay has pointed out, there is a current option available to the government to declare any project a territory priority project. I guess what I am throwing out there is: what is getting fixed here when the government has a tool at its disposal already?

Mr Maclean: Defaults matter. We think that this bill should be extended to social housing projects like the YWCA. We do not want social housing projects to be reliant on the minister's generosity and the minister deciding to take an action of their own volition in order to make sure that they can remove themselves as risk. We want there to be an even playing field. We want the default to be there and to say, as a community, that these projects matter, that these risks are real, that they do cost the community a lot of money in terms of government time and effort through ACAT, the ACT Government Solicitor, Housing ACT and all of the contractors associated with it. If you go to one of these appeals and you sit in the hearing and watch, there are about 20 different public servants with however many people supporting them having to be paid to sit there. It is not inconsiderable.

Mr Bouckaert: Mr Cain, you suggested yourself that the minister might have taken too long to make that decision, so there clearly is a problem that needs to be fixed here. The minister's discretion is not enough.

MR CAIN: The minister's discretion is a real power, irrespective of whether you think it is enough. It is actually a real power, as is the current TPP declaration power available to two members of the executive.

Mr Donnellan: I think it says something that the executive has that power but has determined to bring forward this bill regardless, having considered the legal implications of—

MR CAIN: Which we will be asking the minister about shortly.

Mr Donnellan: Yes, sure.

MS CARRICK: When we look at policy development, we look at the problem and we look at the options to fix the problem. Are we looking at all the options to fix the problem? Are there other ways in looking at the ACAT processes, looking at the DA processes and looking at the up-front consultation?

There are blocks of land like the Yarralumla one that sat there for four years before—and this is all about getting public housing out there. People need somewhere to live. It is a really important issue. The one at, I think, Macquarie in Turner, Macquarie Street—that was first notified in about 2017, and they are only going through the DA process now.

So when we are trying to get those thousand public housing houses out there that the government has committed to—if we had a plan that said where they might be on the land release program. People do not always want to know where the land is, but if there was some consultation, even internally—I am not sure—and if we knew where it was, and we could start getting it out there and more blocks of land and more DAs happening, to make it happen faster. Are we looking at the possible solutions properly?

Mr Bouckaert: There are plenty of things that we can do. We made a submission to the new planning bill—I think it was last year—that suggested a whole raft of things that they could do to speed up the process of DAs and to get more housing built. This is one important step, and it is the start of a journey towards a better planning system where more housing is approved.

Mr Maclean: We all wish that Housing ACT was more capable, had more capacity and had more funding, but we need to take the measures that we can. One of the attractive features of this is that this is effectively a bill that would cost the ACT government nothing in terms of its ability to implement but substantially free up the bandwidth and capacity of Housing ACT to get on with the job.

THE CHAIR: We have now run over time. I am so sorry, team. Thank you for your time. You mentioned at the start some international research. We have got the AHURI paper, but if you have that international research, it would be great to send it through to the committee. If you do not have it, that is okay, but we would certainly appreciate reading it, if it is handy. Thank you very much for your time and your evidence today.

Short suspension.

BERRY, MS YVETTE, Deputy Chief Minister, Minister for Education and Early Childhood, Minister for Homes and New Suburbs and Minister for Sport and Recreation
STEEL, MR CHRIS, Treasurer, Minister for Planning and Sustainable Development, Minister for Heritage and Minister for Transport
BORWICK, MS AILSA, Executive Group Manager for Housing Assistance, Community Services Directorate
CILLIERS, MR GEORGE, Chief Planner, Statutory Planning, Environment, Planning and Sustainable Development Directorate
GREEN, MR BEN, Executive Group Manager, Planning and Urban Policy, Environment, Planning and Sustainable Development Directorate
RULE, MS CATHERINE, Director-General, Community Services Directorate

THE CHAIR: We welcome Mr Chris Steel, Minister for Planning and Sustainable Development, and Ms Yvette Berry, Minister for Homes and New Suburbs, and officials joining us this afternoon. Thank you very much for coming. I remind you of the privilege obligations. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. What I might get each of you to do, before you first speak, is if you could state that you have read and agree with the privilege statement.

Ms Berry, I might start with a question that is probably best directed to you, I think, but I am open to the panel as to who should answer. We have heard quite a lot of concerns from people about the quality of design of Housing ACT and consultation with Housing ACT. These seem to be some of the issues that people maybe raise that end up in ACAT litigation or processes that, frankly, all of us agree do not get a great outcome for anybody. Can you tell me, with the designs for public housing, I understand Housing ACT uses a panel of architects?

Ms Y Berry: Yes.

THE CHAIR: Do you have set fees that you pay your architects for dwellings? Are there set panel fees for that work?

Ms Y Berry: I might ask Ms Rule or Ms Borwick to provide a little bit more detail on the architects' panel but I would not entirely agree with some of the comments that people have made. Of course, people can make judgments about anybody's home. You know, people do it all the time. People should be living in houses, not apartments, or vice versa, or the colours are wrong, or whatever the design. I would not say that that was something that is specific to Housing ACT homes. In fact, it is very rare that you could identify out of a suburb which homes are public housing because they are designed to fit in and not look like anything different to anybody else's homes. In fact I get asked questions all the time of me, "There is no public housing in this suburb," and I just go, "Well, I am telling you there is but you cannot see it." It is supposed to be that way because people are entitled to their privacy but Ms Borwick—

THE CHAIR: The question was probably—

Ms Y Berry: Sorry, before I keep going. I have read and acknowledged the privilege statement.

THE CHAIR: Thank you. So the question was whether there are set fees for the architects on the architects' panel who design the public housing.

Ms Borwick: I have read and agree to the privilege statement. I will just ask for some specific information around the fees. We have a number of panel arrangements for builders, for architects and for real estate agents as part of the process that allows us to go and commission those services when we need it. I suspect the answer is the fees will vary depending on the architect themselves, and the scope of works that are required, but I will come back with a—

THE CHAIR: That is okay, or you can take it all on notice. I will let you know the rest of the things so that you can maybe take the whole lot on notice. We have heard that there is a schedule of rates, so whether there is a schedule of rates that would be great.

Ms Borwick: There is. I can confirm there is a schedule of rates.

THE CHAIR: Yes, great. Then if you could give us an indication of what that schedule pays for. I have some examples but I do not mind if you come back with different examples. We were thinking of how much Housing ACT would pay an architect to design a single dwelling; how much Housing ACT would pay for two dwellings over that schedule; and how much Housing ACT would pay for a development of eight units. If we could come back with the schedule but also how it works. Is that information that can come—

Ms Rule: I acknowledge the privilege statement. It will not quite work like that. So we have a design brief which lays out the kind of design requirements and standards for public housing. We then work with architects and builders to come up with a site specific plan, but it depends on—some sites are much simpler than others, some developments are much simpler than others, but the panels that we use—architects, builders and real estate agents, all the things that need to go into supporting the work that we do, are procured within the normal procurement guidelines. There will be set fees for pieces of work. We can absolutely provide that on notice. It will already be on the public record what those panel arrangements are, so we will provide some information to the committee on that, but I suspect the way it works is not to price per size of dwelling or size of development; it will depend on the nature and the scope of the works. How it would typically work is we would go out to our panel and say, "We are doing this development. Give us a cost for you to do your bit of it." They would come back to us within the schedule of rates that are set from that procurement and we would engage them or not, or negotiate, whatever it might be.

THE CHAIR: Maybe then the more sensible question on notice is the schedule of rates and then a few examples that were recently procured and are no longer commercially sensitive so we can see how it works in real life.

Ms Rule: Sure, happy to provide that.

THE CHAIR: There was another item of concern. We have heard really mixed evidence on this during this hearing. You often get similar evidence but I can tell you we have had opposite evidence on this. There is a number of people who talk about the

value of consultation and a dialogue and we noticed—we went through the annual reports—we noticed that up until 2019-20 Housing ACT did a lot of consultation on public housing developments. The figures that I have got down, and feel free to correct me if I have written this down wrong, but it looks like Housing ACT undertook pre-DA community engagement on 44 developments in 2018-19 and 2019-20 and we only had four DAs appealed then. So they consulted on 44 and there were appeals on four. Then more recently, in the three year period from 2020-21, according to the annual reports, Housing ACT only undertook consultation on two Housing ACT developments, and there were 12 DAs that were appealed. So it looks to us—and one thing does not always lead to another—but it looks to us as if pre-COVID Housing ACT did lots of community consultation on their developments, and post-COVID, Housing ACT has not done much. Do you think that is an accurate read of the practices?

Ms Rule: Not quite. So a couple of things. The first one is the earlier consultations, so what you describe as pre-COVID consultation, was at the start of the Growing and Renewing Program, so we were setting up a new program of implementing commitments around new public housing stock and renewing existing housing stock, and so we consulted on that program of work.

There is no requirement for consultation to happen on individual public housing developments beyond any other development. So we do not have extra consultation requirements beyond private developers to consult with community groups and with neighbourhoods around developments. That is all laid out in the Planning Act. The same rules apply to us as apply to private developers. So there is no requirement for us to consult on a dwelling by dwelling or development by development basis, and when you say that we consulted more and now we consult less, and there were more DAs appealed, I suspect that is also to do with the life cycle of the program.

So at that beginning period, we did not have many DAs in place because we were in the planning phase. We were procuring. We were planning the whole project, whereas now we are right in our peak delivery period, so we are putting in many, many more development applications now than we would have been in 2018 because of where we are in the Growing and Renewing Public Housing Program. I am not sure that I can quite put my finger on cause and effect but the volume absolutely has to have something to do with that.

THE CHAIR: I do wonder, though, were there any—like you have the experience of doing lots of consultation in 2019-20. We see that in the annual reports. Are there any negatives from doing that consultation? Is there any reason you would not keep doing that sort of consultation?

Ms Rule: Time and cost. Our goal is to get as many public housing dwellings available to allocate to people for their homes as quickly as possible and so we comply with the rules that are set in the Planning Act and other things, but additional consultation on top of that takes time and it takes resources. It is not part of the Growing and Renewing Public Housing Program that we do additional consultation, but we are regularly consulting with people on broad policy issues, like we do on everything. So I think there is a difference between consultation as government on the delivery of a program and program parameters and all of that stuff versus consultation on individual developments.

Mr Steel: The chief planner might be able to talk to the consultation process that would be undertaken.

THE CHAIR: I think it might be more helpful if I continue with my line of questions but thank you. You are always welcome, of course, to submit on anything that we do not get to. You are welcome to submit more evidence. I take the point that it is time and cost but I believe the fundamental point of the bill that we have before us is to reduce time and cost. We have some good evidence that an ACAT appeals process costs at least $50,000 to the ACT government. That is evidence from the government's submission, and that it adds time. I am just wondering, given the experience earlier on in the group program when you did do lots of consultation on builds, would it be cheaper and quicker to do consultation and have fewer appeals perhaps? Given that it looks like you have made a conscious policy choice to not do consultations on developments. Is that what I have heard?

Ms Rule: No. We do consultations on developments as required by the planning laws of the territory.

THE CHAIR: On the DAs?

Ms Rule: Yes, and we have done consultation on the broad policy settings around public housing. So I think, is there a gap in between? They are different things, right? So—

THE CHAIR: But there was no change in practice between 2019-20 and 2022-23?

Ms Rule: No.

THE CHAIR: You have continued to do the same things—

Ms Rule: Yes.

THE CHAIR: It was just a different stage of the cycle?

Ms Rule: That is right. Can I share some data with you that I think is helpful because I heard some of the evidence yesterday about people talking about particular developments and consultation? Under the Growing and Renewing Program, until the end of March 2025, we have lodged around 219 development applications. Only 15 of those have been appealed to ACAT. Of those projects, so that is 15 projects, we have had to redesign, following consideration by ACAT, to the extent that we have lost seven dwellings and one bedroom. It is a small proportion of the program. So I think there is something right in the settings of the program if the number of appeals to ACAT are that small, and then the number of successful appeals are smaller still. So I think that is really important context.

MR CAIN: I was going to ask: a peak delivery period, could you explain more what you mean by that? You mentioned it earlier. Is that just the annual period each year is a peak delivery period?

Ms Y Berry: No.

MR CAIN: So please explain what that is?

Ms Y Berry: Yes, we can.

Ms Rule: So the Growing and Renewing Program covers a number of years. The first few years were about getting the program up and running while we planned where the developments would be, which properties we would look to divest, which properties we would look to renew, where we might be able to get a greater yield for dwellings, to get all the panels in place and the design briefs that we have already talked about, and demolitions on sites. All of those things took us a while to kind of get going, and then it obviously takes some time to actually build new developments as well. So we are now in the period of the program where we are delivering the bulk of the growth in stock and the renewed stock under the program, and as we get towards the tail end of the program, that will lessen. So when I say peak—

MR CAIN: So what is the delivery expectation and by when?

Ms Rule: So it is all under the Growing and Renewing Program, I am referring to. So it is 400 new dwellings by the end of the 2026-27 financial year.

Ms Y Berry: The other impact on the time frames was within the construction sector, not within housing or the governments control. We had challenges around construction supplies, workforce and weather, which meant that our builds were taking around 18 months, whereas now they are back to a normal time frame, which is around nine to 12 months. This has meant that we are in this really good position now where we are having a lot more homes being delivered on the ground and people moving in.

THE CHAIR: Great to hear.

MR CAIN: You mentioned a very low incident of ACAT matters. In response to a question taken on notice from annual reports—it is question taken on notice number 32, from the minister—in 2023-24 there were three third-party applications to the ACAT, two of those were actually to do with the same DA. ACAT confirmed the original decision with some amendments and the other one was settled between the parties. So it kind of begs the question, you said yourself, and now the minister has confirmed, there is really not much action in the ACAT on social housing. So what is the purpose of the bill?

Mr Steel: I think the difference is, Ms Rule was referring to the public housing development applications, of which there is a small number. But when you actually look at the DAs overall, public housing and non-public housing, that have been appealed to ACAT, there is an overrepresentation of the number of public housing development applications that have been appealed compared to non-public housing applications.

MR CAIN: But in 2023-24 you, yourself minister, said on 2 March this year, that there were only two in the ACAT.

Mr Steel: Over the last five years, as we presented in our submission, 15 per cent of DAs that were appealed to ACAT were public housing compared to just four per cent for non-public housing DAs. So that suggests that they are being appealed in a greater number than they should be. In most circumstances, when those have been appealed to ACAT, in by far the majority of cases the original decision by the independent Planning Authority to approve the development has been upheld or it has been upheld with very minor conditions attached. The problem for those developments that have been approved and where the development original decision by the independent Planning Authority has been upheld is that they are then delayed from being built. So they are projects which are compliant with the Territory Plan and the planning rules and they are being delayed. So people on the public housing waiting list, of which there are I think 3,002 or thereabouts, are then having delayed access to essential shelter which they need. So that is the sort of crux of the issue.

MS CARRICK: This morning the Salvation Army noted their first recommendation is the need to position this bill as part of a broader strategy to grow social and affordable housing. My question is about the 1,000 public houses that have been committed to. Is there a plan of where the sites would be? Do you know where the sites would be and are then getting ready with the DAs and getting on with that? Where are we up to with those 1,000 commitment dwellings?

Ms Rule: So we have an overlap, if you like, between—so we will finish the Growing and Renewing Program, which has a set number of houses that we have to deliver. At the same time we will start planning the delivery of the additional stock. We are in the process now of planning that out. Some of it is opportunistic. So, for example, every time we have a vacant public housing property, we do an assessment of that property. We look at its condition, its location, its land size and decide whether it one that we want to re-tenant or if it is one that could be upgraded, or demolished and redeveloped, or sold. So we do some planning based on what we know the sort of turnover rates are going to be and we work with the Suburban Land Agency and other parts of government around availability of land.

There is a whole range of factors that go into it. So it is not that we can right now identify a site for every one of those thousand properties. The other way we do it, is acquisitions from the market. So we also buy properties. So we will do some broad planning, based on what category type, whether it is an acquisition or a redevelopment or whatever it might be, and then we monitor that carefully. We will use the infrastructure that we have set up around growing and renewing, around panels and architects and design briefs and all of that stuff to deliver the next wave of houses that have been promised.

Ms Y Berry: In addition to that, Ms Carrick, we look at the suburbs and where our public housing is already situated, to make sure that we are not overdeveloping in some areas as that does not provide good outcomes for anyone, but particularly our public housing tenants. So that is why we talk about the salt and pepper approach to our public housing, in making sure that it is spread across our city in all suburbs, so that public housing tenants have the same kinds of opportunities and choices that the rest of us do to live in areas that suits their needs.

MS CARRICK: Will you meet your targets for the Growing and Renewing Program?

Ms Rule: Yes, yes.

MS CARRICK: You will. Could you deliver more at the moment? Could you speed up the program?

Ms Rule: Well, not the Growing and Renewing Program, because we are almost at the end of that program, and therefore we are almost at the end of the delivery schedule. We do not have time between now and when the program is due to finish at the end of the 2026-27 financial year to load a lot more into that. We could potentially deliver more with acquisitions from the market but that would be relatively small. So that program is fully committed. We have all of the work scheduled for new builds and for renewals, and we have some work in progress around potential acquisitions. So we have a very specific plan in place now for growing and renewing because we are right at the end of it.

Ms Y Berry: Ms Carrick, just to add to that. The other thing that impacts on the delivery, of course, is the appeals to ACAT, which takes the focus away from building homes to those appealed cases. Whilst the construction industry is on the repair, I guess, after COVID and the impacts of things happening internationally beyond our control and the weather, it is still not in a great place. There are still challenges with workforce and the like. So even if we were ready to and committed to build more, it would be a challenge for the sector. I think we are putting a lot on the sector, on the building sector, to build homes—every home, but including public housing.

MS CARRICK: So you are sort of at capacity?

Ms Y Berry: We are pushing them to capacity, I think. That is the feedback that I am getting anyway.

MS CARRICK: I just wanted to mention the salt and pepper, because with the appeals we hear that they come from the Inner North and the Inner South primarily, but the Inner North has the highest—no, second highest number of—it has the highest percent of public housing anyway. It has 9.2 per cent, which is the highest per cent for any district. So when we are doing the salt and peppering, would you be putting more into those districts that have the highest percentages when we are trying to salt and pepper?

Ms Y Berry: No, that is why we consider the suburbs and the numbers of public housing within those suburbs before we commit to building more into those areas, because otherwise then you are increasing the density. Those numbers have gone down because under the previous Growth and Renewal Program, whilst we did replace some of the homes that were demolished in the Inner North and the Inner South, a lot of the other homes were built all across the city. So people who lived in the City previously in public housing live all across the city now.

MS CARRICK: Yes, it would have been a much higher percentage because this—

Ms Y Berry: It was.

MS CARRICK: —these numbers are December 2024, so there are only—

Ms Y Berry: It was well over 20 per cent from memory, yes.

Ms Rule: Yes.

MS CARRICK: So it is down to 9.2, but it is still the highest area. So if it has the highest area, we are at the capacity, what is the problem if a very, very small amount of people go through the appeal process—when there could be opportunities to actually improve the ACAT appeal process?

Mr Steel: I think the problem is that if development applications for public housing are being appealed in a particular part of Canberra, it is effectively creating a situation where it is then easier to just build public housing anywhere else. So it limits the opportunity to have public housing built in well-located areas that are close to services, which is the City, the Inner North, the Inner South, as well as other areas. So we are seeing quite a bit of pushback at the moment.

I think, and certainly in my own electorate, I can speak on that basis, on some of the public housing that is being built in greenfield areas. It is very easy to build public housing in greenfield areas because no one used to live there before, and so they are there from the beginning. So everyone has the expectation that the public housing is there from the beginning when they are moving in. But when we are talking about urban infill and building more homes within existing areas, then we are looking right across the city for those opportunities. The missing middle reforms may provide a further opportunity for more public homes to be built, townhouses and so forth.

The problem is, if they are all being appealed in the Inner South and the Inner North, then the opportunities in those areas are going to be different to elsewhere. That is a problem, I think, that the committee needs to think about, and the government has been thinking about, as we try and address these issues through a streamlined pathway that will provide a way that the community can still have their say on a public housing development, through the independent planning process, with an independent decision-maker in the chief planner. But there would be a decision that is final, that would be made according to the Territory Plan and according to planning law, and then Housing ACT can get on and build the development, build the new housing as quickly as possible to house the people who are experiencing homelessness on the waiting list.

MS TOUGH: In Greater Canberra's submission, they refer to this bill as low-hanging fruit, as something that is only one initiative for solving the housing crisis. Why is the government pursuing this initiative that will have a small impact as opposed to some of the other things Greater Canberra have suggested?

Mr Steel: Well it is part of the next stage of planning reform, where there is a wide range of initiatives. We see middle housing being one of those. It is also part of the National Housing Accord and National Planning Reform Blueprint where all governments have signed up to the measures under the blueprint. One of those measures is to create an accelerated development pathway and streamline approval processes for eligible development types. In this case it is territory priority projects, in well located areas such as the Inner North and the Inner South, but also other areas of Canberra, including to support the rapid delivery of social and affordable housing. So this is a

decision that has been made by all governments. Other jurisdictions have already made this change to actually streamline the pathway by removing third-party appeal rights specifically for public housing and so we are seeking to do exactly the same thing in the ACT.

When we undertook the planning system review—I was not the minister at the time, so officials can probably speak to the detail—there was a decision by the Legislative Assembly, and negotiation with the parties that were in the Assembly at the time, around the removal of the call-in power mechanism, which was a very broad power that the minister could call in any development application and make a decision, him or herself, on that application. We decided and agreed that we would remove that power but that we needed a mechanism to be put in its place; a more refined mechanism that was specific to certain types of development that have a significant community benefit, and that was where the territory priority projects mechanism came from.

The intent of that was to apply that mechanism for the public housing growth program to build more public homes. The Environment Defenders Office—I got to catch some of their evidence yesterday—I think correctly pointed out that the explanatory statement for the Planning Bill 2022 outlined that the intent was to apply to critical public housing in multi-site, multi-development programs, like the public housing program. However, since the planning bill was passed by the Assembly, EPSDD working closely with Housing ACT, has realised that the technicalities of the bill actually mean that it would be very difficult to use that mechanism to declare public housing as a territory priority project through the existing mechanism under the act. Hence the reason we have brought forward a bill to declare them automatically, or by default, as territory priority projects without going through that mechanism. While it was intended to include the public housing program, in reality it has not. We acknowledge that, and that is one of the reasons why we are trying to fix this in the legislation. I do not know whether you want to comment.

Mr Green: No. I think just following on from that, the minister mentioned the explanatory statement from the original bill. It does make clear, and I do not want to quote from it necessarily, but happy to do so. It does—

THE CHAIR: You do not need to read the ES to us.

Mr Green: No, no, but I think it does highlight the types of projects, and it is not just about housing. I think this bill that is before this committee for consideration now also goes to health facilities. So in addition to the housing element there is a direct reference within that explanatory statement around development applications with respect to the Canberra Hospital expansion. We know there has also been discussion around other proposals such as schools. We have heard the circumstance that has happened out at Macnamara and Ginninderry with the school and the appeal through that process. So it is worth mentioning the government have not limited, from our perspective, working through the policy to potentially look at these other matters that were originally raised in that explanatory statement.

Ms Y Berry: I think beyond planning, Greater Canberra are right. This is only one part of what the government is doing to manage a significant challenge that the whole country is experiencing around housing. So dealing with each different area and

spreading our attack, I guess if you like, on the issue means that we have to make a range of different changes and really push ourselves to be able to put people into homes. Back to your comment, Ms Carrick, about the small number of development application appeals, while it might seem like a small number, it is still 120 dwellings, so several hundred people being left out of homes. The delay in getting housing to them is the focus of trying to get these homes built as quickly as possible and get more people into safe and secure shelter, off the housing list and off our streets.

MS TOUGH: You mentioned it is about building new dwellings, so why are new builds so important as part of the portfolio rather than just housing going and buying houses off the market?

Ms Borwick: We do a mix of acquisitions. It will depend on what stock is being built but also the design brief that we have. We need to make sure that we account for a certain level of energy efficiency. We accommodate Class C adaptable and Liveable Gold. That is part of the intent of the program. Those products are not always available to us but again if we think about costs and driving value for money, which is one of the things that we need to consider, redeveloping our own land rather than buying a house with land is obviously a fairly cost-effective way for us to achieve the outcomes of the program. So we need to balance a range of those things, plus the houses that might be for sale may or may not be the ones that meet the needs of our tenants within the wait list versus what we design around in standard service offerings. So those are some of the things. Older houses give us some legacy and potential liabilities around repairs and maintenance and those sorts of things too. So again we have to strike a balance between all of those when considering what we are doing.

Ms Rule: I think when you look at the numbers that Ms Carrick just quoted about the proportion of public housing in the Inner North and Inner South, which is some of our best located stock for people who want to live in those areas, it is also some of our oldest stock. So we need to look at opportunities to upgrade that stock in those locations. Sometimes that is renewal within, to renovate a property, but often it is about starting again on what actually are very well located, often large blocks where we can get high quality stock available for a larger number of people.

THE CHAIR: Minister, I am genuinely trying to get my head around this. We heard from the health minister who told us, and I do not believe I am verballing her, that she thought she could probably already use the 218 TPP provisions in the act. She would quite like these. She seemed to think that those would work for her just fine. We have heard in your submission that you have had seven development considerations. You have not actually gone through the process for declaring a Territory Priority Project, but you have had seven examples come up. I am going to assume they are all public housing. And we heard today that it is just not feasible to run through that process. What is the problem with running through the process that we already have?

Mr Steel: It is the criteria in the act. Also, there is a technical reason why the declaration may not be able to be made lawfully, for the public housing program. But even if it was possible, there is the administrative process around the Territory Priority Projects which means that for public housing specifically, it would actually create more regulatory burden and delay to building the homes because—we have tried to explain this in the first half of the submission—the declaration process itself requires effectively a full

development application to be presented to the public for consultation. This is ahead of the DA process that would usually occur. Consultation with the community on that. It has to go to the Legislative Assembly for a decision on the individual declaration—

THE CHAIR: I believe it does not go for a decision. I believe it can be disallowed. Does it need a positive decision from the Assembly?

Mr Steel: I thought it was a positive decision, but we can clarify that in a second. But then only after there has been a decision by the Assembly to actually approve the declaration is there then the third-party appeal right. Removal or exemption comes into effect two months after that. So you are talking about quite a significant delay in that process just to get it declared as a TPP. Then you have to go through the development application process which obviously takes time and has its own consultation process attached to it.

So I might hand over to Ben Green just to talk about the technical issue with public housing being even declared as a TPP.

Mr Green: So I think it is worth pointing out that, in that explanatory statement that I have mentioned earlier, the criteria have not changed much. What has changed is the cumulative impact of that. So in the original explanatory statement it had to meet one of the criteria. The bill, as it was amended through the Assembly in the last Assembly, sets criteria which says it would have to achieve: a major government policy outcome that is of significant benefit to the people of the ACT; and would substantially facilitate the achievement of the desired future planning outcomes set in the planning strategy, relevant district strategy, the Territory Plan, or the relevant zone; and is for significant infrastructure or significant facilities that are of a significant benefit to the people of the ACT; and has been subject to the consultation process which the minister has just outlined. So there are several—

THE CHAIR: And you do not think public housing meets those first three criteria?

Mr Green: The complexity around the public housing element is that it needs to be done on a development basis, not on a program basis. So when you look at a full dwelling development proposal in Ainslie, to then apply that to the criteria that I just mentioned becomes very difficult to say that it is for a significant infrastructure, significant facilities, and significant benefit to the people of the ACT. The compounding element of that criteria means that almost all of those assessments would fail at the first hurdle. We do not have an ability, the way the act has been drafted, to look at it from a program perspective.

MR CAIN: Minister, have there been any TPP declarations on anything?

Mr Steel: No, but there has been outlined in our submission—we were discussing—well, because we thought that there was that ability to make a declaration in relation to public housing and so we—

MR CAIN: But any TPP on anything?

Mr Steel: No, because it is a relatively new mechanism and when Housing ACT

suggested—

MR CAIN: Well, November 23.

Mr Steel: I think there were seven original developments. We realised the challenge, the technical difficulty in actually being able to declare them in the first place. And then we went back to the drawing board and said, "I think we actually need to look at an amendment to the act". The best way to make sure that public housing is included as a TPP is to list it similar to light rail as a default Territory Priority Project as a whole program—firstly to address the technical issue, but secondly to make sure that for every single little development application, of which there will be many, given the salt-and-pepper approach, we do not have to go through individual declarations.

There could be hundreds of declarations that would be required if that were the case, whereas we want to try and treat this as a program of growth of the public housing system and treat all of them as being priority. Effectively, at a principle level, this is about the government and the Legislative Assembly recognising that public housing is a priority and declaring on that basis—and making sure that we can access the mechanism that was intended in the legislation, which it clearly is not working.

MR CAIN: Minister, if there have been no TPP declarations, that is an admission that it is a failed regime. Why are you just trying to work with a failed regime as opposed to reviewing the whole approach altogether?

Mr Steel: Well, we are reviewing the approach with the—

MR CAIN: No, no, you are keeping the TPP scheme there. You are just denying an ACAT process, which is kind of irrelevant because you never made a TPP declaration.

Mr Steel: Well, we couldn't for the public housing, so that is why we are trying to—

MR CAIN: But not on anything. Not on anything, apparently.

Mr Steel: Well, it is a relatively new mechanism.

MR CAIN: November 23.

Mr Steel: Yes, that is right, so it has not actually been in place for all that long.

MR CAIN: Nearly a year and a half.

Mr Steel: Yes, and we expected that it would be used sparingly; it would not be used for every private project that comes up, but for those projects that have a significant benefit to the community. So light rail is already acknowledged in the act as being a default. But this is similar to the same mechanisms that exist in New South Wales and Victoria, for example. I think in New South Wales they call it State Significant Developments where those state-level sort of functions like hospitals or schools could be declared as projects.

We do not build hospitals every year, Mr Cain. We have in the past year, but that was

not eligible for this new process. But we will be building a new hospital in the future: the northside hospital. And, of course, the major focus we have is on housing and that is an absolute priority during what has been described as a housing supply crisis; to deliver that as quickly as possible. We have signed up to deliver it more quickly. We want to move with the other states, like the other states have done to speed that up. And the main mechanism for speeding that up is to remove the third-party appeal rights while still providing the opportunity for community consultation through the independent planning process, as we currently do.

MS CARRICK: My question is about people-focused planning. So we talk about people-focused planning but the consultation that you refer to is putting in a representation. With the removal of pre-DA consultation there is now no opportunity for a dialogue, for a conversation, and then there is no appeal right. So people feel frustrated that they cannot participate in the process and that is what we were hearing yesterday. So how is that people-focused, to have no dialogue and no ability to appeal where there could be noncompliant projects go through?

Mr Steel: Well, firstly, I want to dispel the myth that there is no appeal right. There would still be judicial review available in most circumstances. So if the community believes that the independent planning authority, the chief planner, has made a decision where they have not applied the law or Territory Plan, for example, then they may be able to seek a review of that based on judicial review.

MS CARRICK: At the Supreme Court, does that mean?

Mr Steel: Yes, it would mean the court who are there to make determinations about matters of law. They would be able to appeal on that. That would remain under the TPP mechanism. It is just that merits appeal would not be available for these very specific projects that have been identified as a TPP. The community consultation will still occur through the independent planning authority, where they will assess that feedback and take it into account when making a decision, as well as information from the referral entities that they might have to consult with. And I do not know if you want to talk a little bit about that process—

MS CARRICK: No, that is okay. I have my next question.

Mr Steel: Well, there is a bit of background about why—

MR CAIN: Yes, I would like to get a question.

Mr Steel: So the other thing is that housing obviously has their own discussions, particularly with tenants. Now, tenants are the people who are left out of this conversation, often. And in our submission there is a section on the design of public housing where a housing design brief has been developed by Housing ACT in consultation with the future tenants about what their homes should look like and all of the best-practice planning and design that should be required of public housing.

And that is from the get-go, to make sure that these new public homes are delivering good design outcomes which is, of course, the focus of our planning system as well. And the new planning system has also put in place a whole range of other things like

design guides that must be responded to and a range of other outcomes-based and design-focused requirements that did not exist under the old planning system, and which we hope will improve the quality of all housing overall, including public housing.

But ultimately, a range of issues are raised in these ACAT appeals. But when it has come down to it, in by far the majority of cases, the original decisions by the independent planning authority and the chief planner and the delegates, are being upheld. But it has a consequence of those projects, which are much-needed, being significantly delayed by up to 12 months because once an alternative decision is made—or a decision with conditions—Housing ACT has to then respond to that decision with changes to the design and then that sets the project back.

MR CAIN: So you have touched on other jurisdictions doing something similar. You have mentioned New South Wales had a State Significant Development. You may want to take this on notice: could you provide this committee with a breakdown of every state and territory, how they treat third-party appeal rights for public housing? Because you have obviously made a broad, sweeping statement: "We are just doing what everyone else is doing".

MS CARRICK: And what sort of consultation do the other jurisdictions have for those state-significant projects?

MR CAIN: Yes, and including the consultation process that each of those have gone through. Obviously as you would be aware, minister, you have a policy area that supports your ideas with saying, "Well, they do this over there and they do that over here". So I think the committee would benefit from a comprehensive summary of what the other jurisdictions do that you are claiming to emulate and how they got to that position.

Mr Steel: Happy to provide that at a state level, just noting that, unlike the ACT, the other states have Local Government Areas as well.

MR CAIN: Well, we will start with the states and territories and see how we go.

Mr Steel: Yes, so we will try and stay with the state-level development and we will see what we can provide there. On the rationale why they are doing it, we will see how much we can provide. But we can certainly provide what the mechanism is and how it applies to public housing. I think that is a reasonable request.

MS CARRICK: But do the states or the local governments deliver public housing?

Mr Steel: Well, it is a shared responsibility but obviously the New South Wales state runs their own public housing, yes.

MR CAIN: And the more explanation you can provide—

Mr Steel: It is the planning systems that exist at the local government level. It is a shared responsibility with the states.

Ms Y Berry: But do you know what? Regardless of what is happening across the

country, I would not mind leading the way in this space.

MR CAIN: Yes, but that is not the claim the minister has made, Ms Berry.

Ms Y Berry: Because I think it would be a great outcome for a government to really take seriously this housing crisis—

MR CAIN: So we are working with the minister's statement here. We are not working with a hypothetical.

Ms Y Berry: —and build more public housing faster, and get more people into homes as quickly as we can.

MS CARRICK: Yes, that would be good.

THE CHAIR: I might just jump in and remind witnesses we are all going to speak one at a time. That is great to have the extra evidence, minister. Thank you very much. I think Mr Cain is still asking his question.

MR CAIN: Yes.

Mr Steel: And sorry, page 2 was the reference to the State Facilitated Developments in Queensland and Victoria's Big Housing Build, and in New South Wales there is the State Significant Builds.

MR CAIN: Sure, so as comprehensive as you are able to provide would be appreciated. And if there is any way you can help this committee understand the nexus between council and state—I guess, approvals of social housing—that would be appreciated.

Mr Green: I think there is a broad summary on that, Mr Cain, that local councils—

MR CAIN: Well, we have taken it on notice so I do not think we need to hear any more.

Mr Steel: There is one thing that needs to be clarified, because I heard some evidence from the hearing yesterday. Not all of it, but I heard quite a bit. One of the suggestions was around having like planning panels, which New South Wales does, but it is specifically for contentious development. I would hope that public housing developments are not contentious, but those exist in New South Wales. I think the critical difference in the ACT is we have an independent planning system with an independent planning authority or a chief planner that are making decisions.

MR CAIN: Sorry, you have taken my question on notice. I think that you can add to it as you wish. Thank you, Chair. Over to you.

Mr Steel: Yes, it is just a key element that was raised yesterday.

THE CHAIR: Yes, thank you. We are back to the beginning.

Probably for our planning minister but, again, open to views, we have heard a number of drafting tests, drafting amendments—some corrections. I will probably run through

some of the main ones that leapt out to me. We have heard from some of our witnesses that waiving environmental rights out of hand is a bit dangerous, and waiving First Nations cultural rights is a bit dangerous. We have also heard from a number of witnesses that they are not certain why public housing gets a status that is not open to community housing. That is also 25 per cent income-tested public housing. Did you hear any of the evidence on some of those specific concerns from people who suggested drafting changes?

Mr Steel: Certainly, with the call for community housing, we have been discussing this issue for some time. Some of the higher profile ACAT matters have related to community housing being held up. We looked at that in developing the bill, and we have addressed that in the submission, around there needing to be some further work before we would consider community housing in addition to public housing as a territory priority project, if it were to be declared by default as a whole program.

The reason is that community housing projects, as they are being delivered across the territory, often occur in partnership with a private developer, clubs or other organisations. There are complexities around exactly what you would be supporting and whether the whole development, which may include a non-community housing component, is then given a streamlined pathway, even though it may not have a significant benefit for the community.

We are not ruling it out, and it may be a recommendation from the committee that we should continue to look at that, if you are minded to do so. We think there is some further work that needs to happen in consultation on that particular issue.

THE CHAIR: Do you believe that community and social housing would already be able to be declared as a territory priority project, or haven't you considered it?

Mr Steel: Not as a program.

THE CHAIR: No; under the existing section 218, has that come up at all? Do you think it is already—

Mr Green: No, it has not come up specifically. The minister has talked about some of the challenges around it. I do not want to stray into other spaces, but developer regulation is coming in, so we also need to look, in that context, at that kind of public-private partnership around these types of projects and, ultimately, the protections that need to exist for those residents that will be taking occupancy of the dwellings.

THE CHAIR: In terms of waiving environmental and First Nations cultural rights, which are the other rights that get waived, along with appeal rights, did you hear any of the evidence? Have you had any thoughts about whether that is appropriate?

Mr Green: I have not heard the evidence on that. I am happy to review that and provide a response back.

THE CHAIR: Sure. We had evidence from a number of witnesses, including the Environmental Defenders Office. We have not managed to have, I believe, a witness from the First Nations cultural space. I believe that all of those appeal rights would also

be waived with this amendment. Surely, that must have come up when you were developing the policy for the bill?

Mr Steel: Certainly, it would be assessed during the development application process by the Planning Authority.

THE CHAIR: Did you not consider it in the development of the bill, though, that you were not just waiving community appeal rights; you were also waiving environmental and First Nations cultural appeal rights?

Mr Cilliers: I have read and accept the privilege statement. The consideration of First Nations provisions, and particularly tree aspects or environmental aspects, are part of the normal DA process, as part of public housing, similar to any other development application.

THE CHAIR: I understand that it is part of the DA process, but you have put up a bill that waives the ACAT appeal process, and some of those rights at the moment can be enforced in the ACAT appeal process. If the answer is, "It didn't come up in policy discussion," that is okay. It does not sound like there was much engagement.

Mr Cilliers: Most of the public housing applications that we have seen, with regard to environmental aspects, are limited to particular regulated trees or removal of those trees. Occasionally, we see trees that have potential habitat value or something like that. I do not think that warranted being a significant reason to exclude it from the requirement. In terms of First Nations, I have never had it come up in an ACAT appeal previously—not as an ACAT appeal for public housing, from my recollection.

THE CHAIR: In terms of environmental rights, in the realm of public housing, which I think is what we are mostly talking about, it sounds like the only time environmental issues have come up on appeal has been regarding regulated trees—

Mr Cilliers: It is mostly in relation to regulated trees.

THE CHAIR: You have not had any thoughts regarding waiving appeal rights for endangered and threatened species, or any other environmental matters where there is a problem? It has not come up so far?

Mr Cilliers: I do not think EPBC provisions are waived.

Mr Steel: No. The commonwealth act would still apply in relation to those things, though. Certainly, that would be considered during the independent planning process as well.

THE CHAIR: Would EPBC approval processes and EISs apply to public housing and health facilities if they were declared? If, under this amendment, they were listed in the bill, would there be another EPBC and EIS process?

Mr Cilliers: They do not generally apply, but it is not impossible that there could be a case. I have not had an example of that.

THE CHAIR: I will try and be as clear as I can. I will give you a really good example. Light rail is listed in the act at the moment as being exempt from appeals. The bill that is before us would give public housing and health the same status as light rail. Light rail has already been through an EPBC process. It has already been through extensive EIS processes. It has been through a number of environmental processes at the commonwealth level. When that act was being drafted, people were not concerned that we were waiving environmental rights, because they were already protected. With public housing and health facilities, if they get listed, are you telling me that there is no commonwealth process that applies?

Mr Steel: No. We would expect with light rail that there would be an EIS for stage 2B, as part of our own ACT planning process, and not just the EPBC. But it will be the same EIS that is considered by both entities. We might provide on notice the exact provisions that show how the environmental considerations are still considered.

THE CHAIR: That would be great; thank you.

Mr Green: Just so that I am clear in my understanding, because it will be my team that will be responding to these questions, from our perspective the bill does not change those requirements. Is that the position that is being put—that the bill is changing those requirements?

THE CHAIR: My understanding of the amendment is that, because it does not go through the normal DA ACAT appeals process, and because it does not go through the normal TPP declaration process, and it simply lists the project in the act as, "This one can go ahead," I do not understand at what point there is any ability for anyone to make sure that environmental and First Nations cultural things have been considered properly. You can take on notice and provide any information that answers that point. Do not give it to me now, but that is the concern, and I think it is a concern that has been raised by a number of different witnesses.

By all means, too, if you are ever writing a question on notice and you genuinely do not understand what we mean, call this man here; he will ask one of us and we will tell you in plain English what it is that we want. We are usually reflecting a concern that has been given to us by somebody else. We are rarely making it up on the spot.

Mr Steel: We will look at the evidence given yesterday and provide that.

Mr Cilliers: I can confirm that the EPBC Act still applies on both light rail and on what we propose to do here, with public housing.

MS CARRICK: Have there been any appeals under the new act for public housing?

Mr Steel: Yes, there have been, I believe. I think we provided that on notice, but Mr Cilliers might be able to answer that.

Mr Cilliers: There are two appeals. I believe there is one in O'Connor and another one in Yarralumla, and they relate to about 45 dwellings.

MS CARRICK: I know the Yarralumla one; there has been a decision and it just went

through. The DA was upheld.

Ms Borwick: Yes.

MS CARRICK: I do not know about the other one. With the new outcomes-based system, where it is now all primarily on guidance, and the Planning Act says that the planning directorate has to consider the guidance, what impact does that have on the ACAT process? Won't the government lawyers go there and say that you have considered the guidance? What law is left for there to be an appeal? Will there be many appeals, once they all just start going through?

Mr Cilliers: What I have seen so far is that the ACAT follows the usual process of putting themselves in the shoes of the decision-maker. They apply their thinking to the policy and guides, in terms of whether it has been applied correctly or not. I do not think there is any difference between the way that the ACAT applies it and the way that the planning authority applies it. From what I have seen so far, from the limited number of cases we have seen, they still apply.

Obviously, we will provide assistance to the ACAT, and try and explain to them how we came to our decision, but it is open to the ACAT to form a different view, from their reading of the guidelines.

MS CARRICK: We do not have enough of a sample to know how ACAT will uphold or interpret the new planning laws?

Mr Cilliers: I think we are getting close to that. We have had a few fairly reasonable decisions lately. I cannot say that we do not have a sample at this stage.

MS CARRICK: With the decisions under the new Planning Act, were there any conditions or were any of the DAs rejected for being non-compliant, or were there conditions about compliance? Was there anything about compliance at all?

Mr Cilliers: Is the question in relation to all DAs or just public housing? With all DAs, I can say that we have had applications where the ACAT decided against the Planning Authority.

MS CARRICK: What about public housing?

Mr Cilliers: With public housing, I am only aware of the Yarralumla one that is—

MS CARRICK: What happened to the O'Connor one?

Mr Cilliers: I would have to take that on notice. I think it is still waiting for a decision.

MS CARRICK: I am trying to get to the bottom of how ACAT is applying the new laws.

Ms Y Berry: Yarralumla is resolved.

Ms Rule: Yarralumla is resolved. Ms Borwick can give you some information on

O'Connor.

Mr Cilliers: I think that, with O'Connor, we are waiting for it.

Mr Steel: We will take that on notice.

Ms Y Berry: We have the O'Connor one. We can tell you now, quickly.

Ms Borwick: It is going ahead, but there was a loss of some dwellings, as part of that process. There were a number of different issues within that around our pre-consultation with TCCS. We are talking around waste management. We submitted and enabled 11 dwellings. There were some concerns raised by that during the development process. We worked with that and the feedback through the normal DA consultation process. People go through and lodge that information, and we have redesigned it to eight dwellings.

MS CARRICK: Was this the MacArthur Place one?

Ms Borwick: I would rather not give the specific addresses of public housing in a public forum.

Mr Green: Ms Clay, you asked a question earlier that I did not answer, in relation to decision-making on territory priority projects under the current legislation and the role that the Assembly plays. I highlight that, in section 219 of the act, subsection (2) states, "The Assembly may, by resolution, approve or refuse to approve the declaration."

THE CHAIR: Yes, it is proactive. I looked it up, too. Thank you.

Ms Borwick: With the DA assessment, it is still in DA assessment, for that O'Connor one, so it is not resolved yet.

MR CAIN: That is MacArthur Street?

THE CHAIR: We are saying O'Connor. It is actually already in the public domain. It was put in the public domain by the residents.

Ms Y Berry: Yes, but we make a habit of not doing it.

THE CHAIR: I understand, but it was already submitted by the tenants. I am certain that you watched the evidence they gave. There was an excellent session from the residents in the street that you should definitely look at.

Thank you very much for your time and attendance today. We have had a number of questions taken on notice. There may be a few more lodged. You will get a copy of the uncorrected proof *Hansard*, and we would like to have your answers back within five working days. I appreciate how busy you are, but we are on a statutory timeline for this one, and it is very hard for us to meet our statutory timeline if we do not get those answers back. Thank you.

Hearing suspended from 12.32 to 1.30 pm

BERRY, MS ASHLEE, ACT and Capital Region Executive Director, Property Council of Australia

THE CHAIR: We welcome Ashlee Berry from the Property Council of Australia. Ashlee, I will just check in with you about the privilege obligations. Witnesses must tell the truth. Giving false or misleading evidence will be taken as a serious matter and may be considered contempt of the Assembly, but of course you are welcome to say you do not know or to offer an opinion if that is your opinion. We do welcome that from our stakeholders.

Can I just get you to state your name, your role and just confirm that you have read and you agree with the privilege statement.

Ms A Berry: My name is Ashlee Berry. I am the Executive Director for the ACT and Capital Region of the Property Council, and I confirm that I have read and agree with the privilege statement.

THE CHAIR: Thank you very much. We are coming to the end of these hearings. I do not know if you have managed to hear any of the evidence so far, but we have heard a pretty mixed bag, and we will just run down the line in the usual manner.

One of the things that has come up a few times—and I would say it is one of the few things that every witness is probably in agreement on—is how long and how difficult the ACAT appeals process can be. I think people who are very strongly in favour of third-party appeal rights also yearn for a quicker and simpler process than the one we have before us.

I am just wondering if you have any particular suggestions to offer on that aspect of it?

Ms A Berry: Firstly, you are spot on. It is a complicated, convoluted process that we hear takes not just months but sometimes years to get through a hearing and then get a final decision, because often you have the ACAT practitioners and members re-examining development applications that in the first place took 12-18 months longer to actually get to a decision on.

So there is a lot of information, a lot of conflicting views, a lot of evidence that needs to be determined—often by someone who has no planning experience. That, from a Property Council perspective, is an issue because members go through the entire process with the ACT government, with the planning authority, with the experts.

There are times when, from a planning perspective, decisions need to be made to keep all of the referral agencies happy, and to make sure it is compliant: to make sure Icon Water is satisfied, also Evoenergy, transport. There are a lot of competing factors, and so when you give something to ACAT to look at as part of a third-party appeal, there are a lot of moving parts. So I understand it needs to take some time, but it is too long.

From a practical perspective, what could we do? You have got the Property Council submission. We do not support third-party appeal rights in their current state. We absolutely recognise there needs to be some mechanism—because there should be, and we need that community consultation. We think the community consultation should be

at the beginning of a process rather than at the end.

Let's get it right at the very start rather than when a developer, when a community has gone through that sort of 12-18 month process that I just spoke about and spent, quite honestly, not just thousands but hundreds of thousands if not more. Let's give both the developer and the community that certainty that is needed.

I think one of the things that I often hear from members, and in discussions with community members, is that the lack of certainty and the unknown are what causes friction and what causes a lot of these third-party appeals in the first place. It is that lack of certainty, lack of consultation, collaboration. And so what we would like to see is a real emphasis on the consultation as part of the DA.

Good developers often start the consultation process even before they lodge their DA. They start it from the very concept: "We have got an idea, let's start engaging with the community". So let us front-end it so that we do not get to a situation where you go through the entire planning process, you have a decision, you think, "Yes, I can finally get this project under way, can deliver more homes, deliver more buildings, shops, infrastructure for Canberra", only to receive a third-party appeal because there is something that someone is not okay with, does not understand.

That, for me, is what we need to do. We need to maybe limit the ACAT process to those really nuanced or specialised type appeals. Not just have it as carte blanche, that anyone that is unhappy with a DA can lodge an appeal.

THE CHAIR: When you say "nuanced" or limited—and we have had a number of people who have come in with specific changes that they might make—I understand the Property Councils have no appeals, but if you were limiting appeals, have you had any thoughts about where you would limit them? What timeframes? Would you reduce ACAT timeframes? Is there some other limit?

Ms A Berry: Well, ACAT would probably need more resources to reduce those timeframes from how long it takes them to review things and look at their caseloads.

Our issue is around a threshold. In an ideal world and what we would like to see is: you go through the DA process; you provide your opinion as part of that community consultation; government looks at that as part of the planning process; in order to lodge an appeal, you need to be able to get past a threshold. It cannot just be re-stating what has already been stated as part of that consultation process. There needs to be something more. Whether it is a change in circumstances; whether it is proving that the planning authority has not properly taken into consideration the suggestions made; or the feedback given; there has to be a threshold, not just, "I do not like this development".

THE CHAIR: We had some pretty mixed views on consultation. There were a number of people who thought that really good quality consultation would probably reduce the need for appeals. We looked, in our office, at the date on public housing because that is probably the primary thing we are looking at here, and it looks to us as if Housing ACT used to do lots more consultation than they do now.

They have had a different take on that. They have suggested maybe it is different stages

in the pipeline. But you mentioned that good developers tend to do early consultation. Do you think it is useful to? We also had some pretty negative feedback from one community housing developer in particular, that any consultation might lead to negative results. Can you tell me what makes good consultation and how that might help?

Ms A Berry: Absolutely. From our perspective, consultation does not necessarily mean that you need to adopt all of the feedback that you are given. I think that is a really important starting point. But you need to be able to be empathetic to concerns. To me it is just about communication 101.

It is about listening to the right stakeholders; making sure you seek out the people in the area. For argument's sake, that is community councils; it is perhaps local businesses; local shop owners if you are doing something around a shop front. Good developers know—for every development—who they should be speaking to. So it is about engaging with them early, and it is about being open-minded. It is about getting feedback and, as I said, you will not always do exactly what everyone else wants.

That is not what consultation needs to be. But it is about listening and it is about giving reasons, generally speaking, about why you are not adopting something. To be fair, we see it with government all the time. Government consults, and there is good consultation and sometimes not-so-great consultation. As part of that, not everything the Property Council says gets adopted by government, and that is perfectly legitimate.

That is the way consultation works. So we need to have that. I have seen the good developers going out very early—in those early planning stages before they have lodged a DA—to seek views from the community to make sure that those are incorporated into their plans. And I think that should be adopted across the board; whether it is public housing, whether it is community housing, whether it is a private development.

On that—and we have seen it in some of the coverage of this legislation being introduced—there is still a stigma about public housing: about what it is, and what sort of demographic it brings to a community. I think we all have a role to play in changing that, because it is a vital part of our housing market.

I had a look at the waiting lists for public housing as part of writing the submission and I was astonished and quite appalled. So we need to do something. And it is housing across the board, but in particular housing for vulnerable Canberrans needs to be addressed. We have seen examples of how projects have been caught up as part of third-party appeals, and that is just not a good outcome for anyone.

MS CARRICK: Just on the ACAT process: Do you think there is any opportunity to triage in the context of public housing because it is a priority? It gets prioritised through ACAT or triaged in the context of a prima facie case, so that: this one does have some non-compliance issues so perhaps it does go through the process; and this one does not really so it gets a shortened process? I do not know. There might be ways to deal with it?

Ms A Berry: Absolutely. I think some sort of triaging. We see it in other courts and tribunals where there is a case manager or case officer that looks at: is there a prima facie case here? Is this something that could be resolved with mediation? Is this

something that we think is actually a vexatious complaint, and we do not think there is any standing?

That is really important. It needs to happen as soon as possible, not six months down the track once people are starting to file witness statements and things like that. The minute that something is filed, there needs to be a timeframe. Perhaps it is 14 days, perhaps it is 21 days, but a really short timeframe where it is assessed by someone who has the power to make those decisions, and triage it accordingly. And if it is something where some minor tweaks to a DA could be made that would satisfy the people that have made the third-party appeal, then let's have that discussion and have it quickly before everyone comes with lawyers at 20 paces.

It is not just lawyers; it is normally barristers as well. The government gets involved, and we are talking half a million dollars in costs before we even get a decision. So absolutely, I think a triage process would work across the board.

MS CARRICK: Perhaps there could be a look at the cases and some lessons learned. What happened? What were the implications, and how could we address these going forward, to have a better process?

Ms A Berry: I think some data, as well, would really help with this. I went back through all of the ACAT cases as part of this process just to see if I could find a trend, and it was a painstaking process to look at the planning cases and read through the judgments. And that was only the ones that have a published judgment. It is not all the matters that are settled, which is probably the majority of them. So getting that data from ACAT would be really helpful.

THE CHAIR: We have requested it.

Ms A Berry: Fabulous.

MS TOUGH: You mentioned about good consultation as a way of mitigating potential third-party appeals at the end, but we heard from a witness this morning that said they did everything they could for good consultation and they were just up against a really well organised harassment campaign against them.

So no matter what they did, no matter what feedback they had on board, reducing the number of dwellings, anything they did, they could not stop the vexatious claim. Do you see a way that you could show there was consultation as a way of blocking vexatious claims, or some way of mitigating against those vexatious claims?

Ms A Berry: Absolutely. I think that is where we need to look at that threshold test for when you can actually lodge an application to ACAT. So, if there is a best-practice guide to consultation, whatever that looks like. From our perspective I think that should be developed. I know that I would have members that would be very willing to put forward their ideas about how they have engaged in that best-practice consultation.

Then, if you have done that and you have ticked those boxes and you have complied, there has to be a threshold test to lodge an application to ACAT. It cannot just be, "We do not like this and we are having our fourth, fifth bite at the cherry to try and stop the

development". Because you are right: you can go through that process and someone can still lodge a third-party appeal, and that is not a good outcome for anyone. As you suggested before, it can result in people going, "Well, what is the point of good consultation? Why would I expend all of those resources and that money, if they can still go and lodge an ACAT application because they are just ideologically opposed to that development? They do not want it there and it does not matter how much I work with them, I am never going to make them happy."

That is where we need to make sure that there is a threshold test as part of that ACAT process; because what we tend to do is allow the people that live in a certain area to have so much of a say, as opposed to the people that want to live in that area. And we need to get the balance right. It needs to be rebalanced.

MS CARRICK: I feel that densification is fraught. Some people do not want it and some people do. We heard this morning that they are trying to get as many public housing developments in as possible, and I think sometimes there can be motivation or incentives to get those thousand houses, to get the Growing and Renewing public housing program done. There was one block that was 11 but could potentially be eight. What do you think about trying to get the balance between good densification and getting as many in as possible to meet targets?

Ms A Berry: It is a hard issue. We have a waiting list that is five years for public housing, but we need to make sure it is sustainable. We need to build as many as we can, but putting a 100 dwellings on a site that is really only fit for 50 is not going to result in good outcomes for anyone—for the people who live there, for the community and for Canberra. It is just not a good result. From our perspective, it is about early engagement and it is about being realistic. Absolutely, there is a desire to be able to have the big announcements and say that we have delivered a thousand dwellings or a hundred dwellings or whatever that is, but we need to be really pragmatic about it.

Density should not be a dirty word, but quite often it is thrown around as "density is bad". We need to get the balance right. We need to make sure from a public housing perspective as well that there is a variety of housing types, because there are some families that need public housing for whom an apartment is just not suitable. So we need to have that broad perspective to make sure that we have the balance and we have the choice.

Similar to what I have been saying about housing generally, we have a housing choice and a housing affordability crisis. People need to be able to choose whether they live in a townhouse, an apartment, on a quarter-acre block or in a greenfield suburb with a brand new home. We need to be able to have that choice, and that is what we are missing at the moment. We need to have some density, but you are right: there needs to be that balance between, "Let's just put as many dwellings as we possibly can on a block to get that yield," and having responsible planning proposals.

MS CARRICK: I also think the language used is "putting public housing where people want to be, with access to services". I understand that. Everybody wants to be in the inner north or the inner south because there are a lot of services in those areas compared to some of the outlying areas. But it is a matter of the salt and pepper and spreading it around Canberra. So there are other factors that play into all this, like good public

transport to get people to the services.

Ms A Berry: You are correct: public housing needs to be in well-located areas. But that does not just mean inner north or inner south; it means that it needs to be close to schools, close to shops and close to public transport, so that getting into the city or accessing those services that are not in walking distance are accessible for people who do not have a car. Part of what we are missing as well with public transport and public housing is making sure that it is located within walking distance to bus stops and, if it is on the light rail corridor, somewhere close by as well. Again, it comes down to planning across the spectrum and having that really broad planning approach from public housing to community housing through to apartments, greenfield development, retirement living and all of the types of housing that we need. We need to have some well thought out planning.

MS CARRICK: Thank you.

MS TOUGH: In your submission you have talked about the delays that have been caused by ACAT appeals potentially then having delays for future developments that have not been lodged yet—just the risk of being caught up in the process. What impact do you see on people considering lodging a DA and their thinking on whether to go forward with a development and what impact does that then have on housing supply in the long term?

Ms A Berry: I hear time and time again from members, especially those that have had experience with ACAT—which is probably a lot of developers in Canberra—that they are continuously cautious about, "If I lodge this and I know that maybe it is a little bit controversial or it is a little bit different, even if I have undertaken really well thought out and properly considered consultation, I could get through that and I could tick all my boxes with all the utilities, and I still could face an ACAT application which is going to set me back 12 months or 18 months." What I hear regularly from member is that they then do not take that innovative approach. They are perhaps a little bit more conservative. This is speaking very generally, but they are more conservative then in what they are developing and what they are building in Canberra, which, realistically, leads to some poorer outcomes because we are not getting that housing stock or they will not do certain developments; they will only have one development on the go at a time.

So what it means, ultimately, is that we are seeing fewer houses, because people cannot afford to take that risk. They cannot afford to be held up in ACAT for a considerable period of time. I mentioned earlier we are looking at about half a million dollars in legal costs across the board from a government perspective and for the developer, but it is also the time involved. A lot of these developments are funded by finance and so developers are paying ridiculous interest—we are talking in the hundreds of thousands of dollars every month—whilst the ACAT process is going. That is the impact it is having. Every ACAT case probably then impacts future developments, because they have less money to fund the next development. That is one of the issues that is holding us back.

MS TOUGH: Do you see this bill as one of the ways of mitigating that and ensuring we do increase housing supply?

Ms A Berry: This bill will help.

MS TOUGH: In the public housing space?

Ms A Berry: Yes; correct—it will help public housing. As I put in my submission, we would love to see the reforms go further and have a really sensible and pragmatic discussion about how we can balance the need for community groups and the community generally to have a say and to be able to be involved but also provide that certainty for the development community.

So we would love to see it extended to not just public housing but also community housing and all types of development—because there is another part of the puzzle. Housing is vital; we need it. But we also need the enabling infrastructure and the enabling services around housing—schools, shops, facilities, employment opportunities—around housing. We need that around housing, because that will actually help stimulate the growth. It is all development that we would like to see this extended to.

MS TOUGH: You mention in your submission some of the things New South Wales is doing. Are there things happening in other jurisdictions that you think would improve public housing and housing supply in that development space?

Ms A Berry: Engaging with private developers and getting private developers to be engaged in the public housing, social and community housing is a really good way to fast-track that. There is sometimes discussion around allowing more yield and things like that on developments, whether there is certain social and affordable housing and if there are federal government grants. I think it is a collective approach that we need to take here. There is no silver bullet to fixing the housing issues that we have; we need to be using every little lever that we can pull.

MS TOUGH: Thank you.

MR CAIN: The government is saying, "If we get this bill through, it is going to remove some hurdles to social housing and health infrastructure." The impact of that is obviously yet to be seen. What else should the government be doing to provide more social housing in our community—given the track record, looking backwards, and seeing a deficit in social housing compared to our growing population as time has gone on?

Ms A Berry: From our perspective, it highlights how difficult it is to develop and build here in the ACT.

MR CAIN: And why is that?

Ms A Berry: How long do we have?

THE CHAIR: Six minutes.

Ms A Berry: There are a number of reasons. Our planning system is the first part of

that. It is complicated. As I said, it is taking 12 or 18 months to get planning approvals through, and that is because of the number of entities that a developer, whether it is government or a private developer, need to approach in order to get their DA. Often they are getting conflicting advice as well from the entities about what they need to do for a certain development. Housing ACT is no different. Anyone that is providing public housing is absolutely no different. They are dealing with all of those hurdles, similar to what a private developer is. So that is No 1: we need to fix planning. We understand that is on the minister's agenda, and we are trying to do everything we can from a Property Council perspective to make it favourable to develop and build here, because we are competing with New South Wales and other jurisdictions for that capital investment workforce. So that is No 1.

Cost of construction is always an issue. We have seen that is impacting development not only across the private sector but also for government. You get less for your money now than what you did a few years ago, pre the COVID pandemic.

They are some of the big issues that are impacting it. It is planning and it is zoning as well. We have seen some announcements around changing what can be built in RZ1. We welcome that. We need that reform. As I said, there is no silver bullet. It is all of these things that make it just that little bit harder and harder to actually get a development to stack up.

MR CAIN: And the LVC?

Mr Berry: It would not be a Property Council appearance without mentioning the lease variation charge. It is absolutely an issue. The LVC turns a development that could be feasible and makes it not feasible. From a private perspective, most members are not funding it themselves; they have finance. Quite simply, they just will not get the finance; it does not stack up. We have been talking about this LVC issue for years. What we need is a really considered approach around it and a targeted approach. We are not saying realistically that it needs to be entirely scrapped, but there should be some targeted remissions around the housing that we need in areas that we need to enable growth and enable that development to come through.

MR CAIN: There are a range of remissions. There is the 75 per cent of the uplift in the value, which in a way is a discounted purchase plus remissions. Apart from the remissions available now which are pretty favourable—a 25 per cent discount usually for each of them—what other remissions would you think are appropriate?

Ms A Berry: We should have remissions across the board for housing. That is our perspective.

MR CAIN: Anything residential? Is that what you are saying?

Ms A Berry: Absolutely. We are in the middle of a housing crisis. So we need to do absolutely everything we can do to alleviate that. Part of the issue that we keep hearing from not just our members but also members of the public is that they need choice. That is not just apartments or townhouses; it is a mixture of everything. We keep calling it the missing middle.

We need to use every lever that we possibly can. LVC, yes it is a 75 per cent of the uplift, but quite often a developer or an owner is not getting that cash in hand. So they still have to come up with the money. On paper, it may seem like it is a discount of about 25 per cent. But, in reality, they are paying a purchase price. They have got their taxes, charges and construction cost and, then, at the end of the day, they are constrained by the market on what they can sell projects for as well. We are often seeing that, if you take away a little bit of the LVC, you have a project that stacks up and, if you put LVC in it does not stack up. That is the problem.

MR CAIN: Is the New South Wales capital improvement levy an answer?

Ms A Berry: In addition to LVC, we pay things to Icon Water and pay things to Evoenergy that are essentially a capital contribution charge. So we are paying a lot every time we are "upzoning", for want of a better word. So it is looking at all of those things. If we want to build more homes and we want to have a good mix of public housing, social, community and private, then, from my perspective, we need to do everything in our power to make it easier, more efficient and more affordable to build and develop, so we can get more homes out.

MR CAIN: Okay. Thank you.

THE CHAIR: We are at the end of our session. Ashlee, thank you very much for coming in and thank you for your evidence.

Ms A Berry: Thank you.

Short adjournment.

JACKSON, MS NICHELLE, Vice President, Housing Industry Association, ACT and Southern New South Wales
WELLER, MR GREG, Executive Director, Housing Industry Association, ACT and Southern New South Wales

THE CHAIR: Thank you both very much for coming today. Welcome, Greg Weller and Nichelle Jackson from the Housing Industry Association. I will start by reminding you of your privilege obligations. Witnesses must tell the truth. Giving false or misleading evidence is a serious matter and may be considered contempt of the Assembly. Thank you for joining us. Can I get both of you to state that you have read and agree with the privilege statement?

Ms Jackson: I confirm that I have read and understood the statement.

THE CHAIR: Thank you.

Mr Weller: I have read and understood the statement.

THE CHAIR: Thank you very much. I am going to start with something we heard from the minister for housing and suburban development. She suggested that our panel of builders for public housing is already quite stretched; they are working pretty hard. I do not know if she said they were completely building as much as they possibly can, but she certainly seemed to indicate that they were building quite a lot. Would you imagine that, if the ACT government wanted to build more public housing, we would have any problems expanding that panel? Do you think there is capacity?

Mr Weller: I think there is capacity in the industry right now. I think that a challenge is, potentially, working for the ACT government. I imagine a lot of builders would suggest that it is not necessarily a preferred client, and they would probably prefer working for a private developer. I imagine that is one constraint.

There is obviously a number of things that are required, to work for the ACT government, such as the Secure Local Jobs Code, which there is quite a deal of compliance around. It also opens up holders of the Secure Local Jobs Certificate; It does expose them to a number of other factors. So I think there is a hesitancy in the industry to work for the government. The feedback we get is that it is not always a model client. And I think there is work there that the ACT government could do, whether it be ensuring that bills are paid on time—

THE CHAIR: Yes.

Mr Weller: Also, in terms of the relationship with clients, it can be "my way or the highway" when it comes to dealing with government on these projects as well. So, yes, there is capacity in the industry; I think there is work that can be done to improve the opportunity for people to work and the willingness of people to work for the government.

That said, public housing is an important part of the mix, but we would always argue that private housing is, obviously, the majority of the residences that are within the

territory, and we view housing as a continuum. When someone moves into a home in Whitlam, or even a more high-end suburb, they have moved out of a home somewhere else, and so on; and when someone moves out of a rental property, it creates a house, and no matter what that new suburb is that the home is built in, it creates a vacancy and a dwelling, whether that is a rental or an opportunity for ownership. That is relevant to today's discussion. We should not say this is all about public housing. We should be looking at it across the entire continuum and say, "How can we get more properties being built elsewhere?"

THE CHAIR: I think you are in a happy phase at the moment, Greg and Nichelle, where most members agree that we would like more housing of all types, so well done!

We are, at the moment, talking about a bill that is primarily, I think, going to deal with public housing; it also deals with health facilities, but we had some different evidence on that matter. It is interesting to hear some of the industry information about working for Housing ACT. I have heard previously, and this might be outside your field, that the architects and designers sometimes find it a bit challenging to work for Housing ACT because of the panel fees and some of the conditions. Obviously, some of your builders are also finding that it can be a challenging gig to work for Housing ACT.

Mr Weller: Yes, as I said before, I would agree; that feedback, whether it is from professionals or whether it is from builders, is something we hear. It is something that can be worked on. But, importantly, the issue of today is third-party appeal rights.

THE CHAIR: Yes.

Mr Weller: We can only support the minister for making this decision, and, again, argue that it should go further—whether or not it is the answer in terms of excluding third-party appeal rights, or whether it could be done in a different way. We definitely talked in our submission about some of the things that are done in New South Wales. I suppose I would characterise them as focusing a lot more on what is being built, not who is living in it. I think that comes back to a lot of our thoughts on this matter on the questions we have heard in some of the other sessions talking about consultation. I think consultation is important, but if the question was put to me, "How do we make sure we get density right?" it is the Territory Plan and the planning system.

THE CHAIR: Yes.

Mr Weller: We have spent the best part of the decade bringing this thing together, and we have got it now, whether people necessarily like all of it or not. Now is the time for all of us to jump behind the Planning Authority. We have got professionals in there, and that is the answer to the question, "How do we make sure density is done correctly? We let the planning system do its work.

THE CHAIR: Thank you. Ms Carrick?

MS CARRICK: That is interesting. We just discussed that in the last session—doing density well. There is a housing crisis, and we all want more housing—people should have somewhere to live—but it is not necessarily about the highest yield that you can

get on a block. I wonder, with the industry, how they go with—I think sometimes there is a lot of pressure to put in a lot of places. We talk about public housing—we heard of one this morning where they said it has gone from 11 to eight, potentially. And a lot of those inner south ones are two to three, which might seem all right, but when they become supportive housing and they do not have the right access, then you get compliance issues. I am wondering about your views on your industry trying to work with the government and, perhaps, feeling like they have to put too much on a block. Does that ever happen?

Mr Weller: I do not think industry feels the government is forcing it to necessarily do anything. I think the fact is that we are in this crisis at the moment. The government set a target of 5,000 homes a year. This is the governments number, not ours. We agree with it, but we are sitting at less than half of the approvals right now over the last 12 months that we need to do that. We get questioned, "Is LDC a problem? Are these things a problem?" The proof is in the pudding: projects are not getting built. It is not just one factor, but all these things are happening, and we are not getting the new homes.

The reality is, if we are going to make the city more dense—there is no doubt about it that a lot of our members, while you say they are being pigeonholed into putting up too many homes, would quite happily, if they were here, say, "Gee we'd love to be building in greenfield because there is no tree protection unit, no parking issues, no neighbours." They would love to be building in new suburbs, but that is not the way that we are heading, as the territory.

I think, really, it is for the Assembly and for the territory to be showing leadership and saying to people, "This is what density looks like: townhouses within your street and some inconvenience while they are being built and a few more cars in the street." That is the consequence of density, and that is what it looks like. That is not to say we do not get it right, and we do not strive to do the best we can. But a lot of what we seem to be hearing in this debate is people being concerned about too many more people in their street. That is what density looks like.

MS CARRICK: We have the new Planning Act and the new Territory Plan, but we do not have the new zoning, until they do the RZ1 uplift; there were a lot of investigation areas in the district strategies that will be looked at, in order to up-zone, because they are on public transport or close to shops. That bit has not been done yet, so we are in the middle stage between the new Planning Act and the new zoning. The new zoning might make it easier to provide some certainty around the level of densification.

Ms Jackson: I have a comment about that. Historically, when there has been some concern about public housing developments under the old Territory Plan, some of that uncertainty lay in some of the sites on which that housing was proposed, and the thought that it was inconsistent with the zoning or the land use. That has now been changed, as part of the new Territory Plan. I feel that the new Territory Plan will resolve that uncertainty that persisted in the past around public housing processes. I think that is a positive step. The district strategies also give a little more certainty to the community about where change will occur.

Part of the noise and the agitation that we have previously experienced with development—residential, public housing and private alike—have been about that

uncertainty. However, some of those issues have been resolved in the new planning system. I would like to think that, moving forward, that may take some of that heat out of the appeals process. It will still not change where people do not like it; but, from a planning perspective, there should be more certainty.

MS TOUGH: I have a question that is similar to the one I asked of the Property Council before. Do you see the delays that are happening from the ACAT appeals, the third-party appeals, having a potential flow-on to developments either not going forward or a change in what someone might have wanted to develop, and scaling that back to being something smaller? What flow-on effect will that have, in this case for public housing supply, but housing supply more broadly?

Mr Weller: On the question of whether it has influenced the development in any meaningful way, the public comments of the minister have been that, in the vast majority of these cases, the decision of the Planning Authority is vindicated. I would expect the answer to be no, in terms of whether there are drastic changes. That is something where we are looking for the evidence.

We are talking about not just public housing but housing more broadly, with third-party appeals. The evidence that we are seeing involves problems with ACTPLA. We would be the first ones to say that we need to look at what the Planning Authority is doing, if all of these decisions coming back from ACAT are overturning their decisions. But we are not seeing that. We are certainly not seeing the evidence of that.

Going to the other part of your question, absolutely, members tell us that it drags out the development and it costs more. We are simply saying that we agree with the minister, and we can assure the Assembly and committee members today that our members feel that pain that the government is feeling as well. We are simply saying that, if it is unfair for public housing tenants or potential tenants, it is equally unfair for people who may well be investors; they may well be people with a mortgage.

Again, even in a private development, all of those people who will move into the townhouses are renting somewhere else. They are paying additional rent, they are living with in-laws, or whatever it is. There is a big cost that those people are bearing for all of that time. That cost will go into their dwelling. That cost goes into extra rent and loss of amenity when, ultimately, the development goes ahead.

That is one of the frustrations that we see a lot in the industry. We have been having some very good discussions with the government in terms of red tape more broadly. With so many of the frustrations that builders bring up in infill areas, whether it is around appeals or trees, it ends up happening, in the end. Things just take way longer than they have to, without anything changing. There is just process put in place which is unnecessary.

MS TOUGH: In your submission you talk about this not being an extreme proposal, compared to what is happening in other jurisdictions. Can you elaborate on what is happening in other jurisdictions that shows that this is just a step to align us with what is happening elsewhere?

Mr Weller: Yes. I talked a little bit about what is happening in New South Wales.

Before I go into that, one of the previous comments related to what it might look like. Like the previous speaker, we would like to see third-party appeals pretty much gone. In the case of New South Wales, though, there is a small right there, but that is restricted not to planning issues but to issues where there may be a breach of an act or, alternatively, for major environmental projects. We need to accept that these blocks that might be an RZ2 or RZ3 are there to have houses built on them, so we should not need any of those environmental-type approvals. Certainly, it should be set for extreme things, rather than planning issues.

Some of the things I referred to related to particular projects—not just public housing but also community housing, Indigenous housing or affordable housing; it could be being built by Landcom or community housing providers. There are a number of aspects there, which go back to the point I made earlier about what is being built, and not who is going to live in it. Decision-makers in New South Wales are not able to bring that into the discussion, as to who will be living there. The question is about the merit of that dwelling, compared to the planning act, regarding what can be built there. That would be worth looking at there.

Some of those agencies I have mentioned can self-assess and are able to build up to around 75 dwellings, so there is a form of an exempt development there, when they are building dwellings for these particular vulnerable groups. They are certainly given a reasonable leg-up. These are not necessarily private developments, but they are given a lot of opportunity.

With the idea of preferencing these developments, in the case of private developments, there are no third-party appeal rights, so what we have been talking about here is not particularly extreme, compared to what happens in New South Wales—quite the opposite. Their housing SEPP promotes housing. The default, where there is a question, is in favour of housing rather than against it.

MS CARRICK: Talking about other jurisdictions, you said that they limit it in New South Wales where there is a breach of the act. Under the law, you can still appeal, but if it is vexatious, you cannot. Ours just takes away all rights, completely.

Mr Weller: When I talk about laws, we are not talking about issues within the Planning Act or matters of interpretation. It could be something like an environmental law. It is a very high bar; that is my understanding. I would not compare it to what happens with this. It is an exceptionally high bar, in terms of whether you could access those mechanisms.

MS CARRICK: We have a low bar, apparently; that is a high bar. It is about where the bar potentially lies. The other thing is that, when we talk about other jurisdictions and they do not have third-party appeal rights, do they have consultation? Do they have dialogue, so that you can have a conversation? Ours is a representation. You write your representation, and off it goes. There is no dialogue.

People like to feel heard. Often, when you put in your representation, you do not feel heard, because it goes into a black hole and you never hear anything again. With the other jurisdictions, even though they have taken away the third-party appeal rights, at the front end do they have some sort of dialogue or consultation?

Ms Jackson: In my limited experience face to face with New South Wales planning, particularly for residential development, there is not a requirement to consult, particularly on residential projects. However, if someone puts in a representation on a development application, the council will respond to each and every submission that is made, which is a bit different to how it is done here in the ACT. There is a bulk response given in the notice of decision, and only the representers will get a copy of that, to see how the matters have been responded to.

Mr Weller: We previously had a system where, if a certain development was over a certain size, there was a requirement for community consultation. That was removed. However, there was a second stage added into the system where there was a change to the DA, so that there could be two notifications, potentially.

With that consultation period, one bit of feedback that I had from a few members was that, while at first they were perhaps apprehensive about it, they found it to be a good process. The problem—and it is probably not unlike the design review panel, which is another process that is looking, hopefully, at improving developments—is that there is a feeling of no credit within the system for that. You go through the design review panel, which could add a year to the project. You go through a consultation process and, of the people that show up, you can get 19 out of 20 of them on board, understanding what the development is about and sharing your vision. If there is one person who wants to go down the path of a third-party appeal, there is no credit, for want of a better term, regarding what you have done there.

With any move or consideration towards more consultation or mandatory consultation, we would be open to contributing to that discussion. Again, rather than it just being another step that slows down the process, the design of anything would want to ensure that a proper process is then recognised at the other end. Perhaps it is about whether that means appeals do not happen.

It is very important to note that consultation does not necessarily mean that the objectors or the people living around the development get their way. It may come as a shock to people that, as we densify the city, there will be a lot more buildings in their street. As I said before, that is what density will look like, and it is incumbent on all of us to help people come along on that journey. They need to understand that there is a chance, if they live in RZ2, that there may be some townhouses in their street. In the future, there may be a small apartment building in their street, and that will be a reality.

MS CARRICK: If people get a material detriment, there should be some recourse. There can be serious overlooking or overshadowing, and sometimes these things do slip through the system. If there is no third-party appeal, you are left with very unhappy—

Mr Weller: On the question of overshadowing, I would hope that the planning system and the professionals within ACTPLA would be managing that. In regard to other questions, on things like views, the Territory Plan does not protect a view. You may well get a two-storey building next to you.

MS CARRICK: No, I am not talking about a view; I am talking about overlooking. It is different from a view.

MR CAIN: I have a broader question, but we will get back to the key topic. What are you hearing from your members or what have you concluded yourself about why DAs are taking so long? Why is development of our land in the ACT taking so long?

Ms Jackson: Development is taking a long time because of the approvals process. It is not just the approvals process that happens before a decision is issued; it is the steps that need to be taken after that development approval is given. That involves engaging with entities to achieve any additional endorsements and payment of lease variation charges, which, in itself, can take a long time. It is about lining up all of those factors, as well as incurring the ongoing holding costs that occur with delays, which make marginally economically feasible projects even more marginal, to the point that they do not commence.

MR CAIN: Why is it taking so long, from your observation, and from what your members are telling you?

Ms Jackson: Probably, there is a lack of lining up of communication between those things to enable it to occur in a concerted fashion, in having to liaise separately with different components along the way, or there are bottlenecks where a decision cannot be made until a certain decision is reached, which compounds the overall delay. With the need to have to go to every single agency or utility provider in the process to gain these little bits of the puzzle to enable things to begin, collectively, that is what causes the delay. It is not one of them, on its own.

MR CAIN: You would have heard the Property Council representative, Ms Ashlee Berry. Do you have any thoughts on the LVC and some alternatives? You have already mentioned it as a factor. Are there any alternative approaches to it?

Mr Weller: Yes. Likewise, we have concerns with the tax. Earlier this year, in the budget re-forecast, we saw close to a 50 per cent drop-off, in terms of the expectations regarding collections of LVC for the year. Certainly, with respect to a comment that I have made to Treasury, as we have seen with one of the big inhibitors to the take-up last year of dual occupancy, the opportunity unit title in RZ1, we saw, on average, last year, in the first full year of this policy being in place, less than three applications go in, in a month. The government talked about between 40,000 and 50,000 blocks, when it was announced, being potentially eligible for unit titling; we are getting less than three a month happening throughout the year.

Part of that has related to the limitation of 120 square metres, but the other part has definitely related to the LVC. The comment I have made to Treasury is, "You're not collecting any LVC now, and we're not building any homes. Why don't we try, hopefully, building some homes? You still won't collect LVC but, right now, you're not collecting any, anyway."

I think it is a great policy—unit titling in RZ1. There are some great opportunities there. I do not think that that, on its own, will solve our problem. We will need more in the missing middle. We will need townhouses. I think we are all in agreement that there is not one solution. I think that is one area, and particularly with a lot of this low-rise, where maybe we could try giving 100 per cent remission on it for a while, and see what

happens. We might build some homes. We would be happy to be proved wrong, if there is another problem, but I think we can do away with it.

Going to the point that Ms Carrick made earlier, in terms of where there are big developments and people in the community have to get something—apologies for paraphrasing—I am sure you will all have read our document that we put out around election time, talking about issues with housing. One of the suggestions that we made, along with significantly winding back or doing away with LVC for a lot of these smaller developments, was to look at some of the major developments and whether there was an opportunity to hypothecate some of that LVC, potentially, for community-nominated projects within the vicinity. It would be some way of bringing the community along with one of these larger developments. The community might have some ideas on the local park, or whatever it is, where there could be some infrastructure that potentially some of the LVC could fund. We are more than happy to talk about that one further as well.

MR CAIN: Going back to the processing side of things, the supply of stamped plans seems to be a very delayed process. Do you have any thoughts on how that could be improved?

Ms Jackson: Often there are a number of conditions in the development approval that need to be met before the stamped plans can be released. If there is a lease variation component to a development, those plans often are not released until the lease variation is paid. There could be ways in which conditions could be stated to enable the release of stamped plans while simultaneously ensuring that the obligation to pay LVC is met. That way the project can start sooner.

MR CAIN: Obviously, without that stamping, nothing can start?

Ms Jackson: If you do not have stamped plans, you cannot get building approval.

THE CHAIR: That brings us to the end of our hearing. Thank you so much for coming in. On behalf of the committee, we would like to thank Hansard and broadcasting. Thank you very much, as always. If you have a question on notice, please upload it within five days. We are now adjourned.

The committee adjourned at 2.28 pm